

TRANSSEXUALISM

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DESPITE its obvious importance in human relationships and reproduction the definition of the sex of an individual is obscure, to say the least, from both medical and legal points of view. The assumption has usually been made that physical body characteristics, particularly those of the external genitalia provide the basis for distinguishing one sex from another. Yet medical practitioners are now aware that the diagnosis arrived at on these grounds may not be nearly as simple in persons with genetic or developmental abnormalities. Furthermore, they have come to appreciate that there are psychological and social processes involved that may be just as or even more important in determining an individual's sexual identity. Indeed the concept has developed of a spectrum of sexuality ranging from extreme masculinity on one hand to extreme femininity on the other.

Implicit in this concept is that the majority of people will have characteristics mainly of one sex but to a variable extent they will also have some characteristics of the opposite sex, whether they be of biological or psychological nature or both. In this regard it is of interest that ancient civilizations of the Orient and Greece espoused an androgynous idea of life generally and saw their gods as being bisexual.¹ Phanes, chief god of the Orphic cosmogony and the creator of all, is described as bisexual.² According to Ovid in his "Metamorphoses", Hermaphroditos, son of Hermes and Aphrodite, grew up a dazzling beautiful boy, and at the age of eighteen years kindled the love of Salmacis, the nymph of a spring of the same name in Caria; against his will he was enticed by her down into the water and forced to have connection with her; desiring never to be separated from her lover, the gods united them into a single being of two sexes. According to the desire of Hermaphroditos, Hermes and Aphrodite bestowed upon the spring the property that every man who bathed in it came out as semivir (half man-half woman) and effeminate in character. Hence the modern term hermaphrodite which refers to a person with both male and female physical characteristics.

Ambroise Paré, the famous royal physician and surgeon to the French Court in the second half of the Sixteenth Century, believed that whatever the external appearances might be, hermaphrodites should be able to choose whether they wished to be regarded as males or females.³ Thus he was probably one of the first to attach more importance to psychosexuality than to changes in the external genitalia. The importance of the psychological influences in human sexuality is highlighted in English literature since Freud's major contributions to psychology in the last century. The combination of male and female psychological characteristics within one individual is described colourfully by Lytton Strachey in *Elizabeth and Essex*; "yet the flaunting man of fashion, whose codpiece proclaimed an astonishing virility, was he not also, with his flowing hair and his jewelled ears, effeminate?" Referring to Queen Elizabeth, Strachey conjectures,

"She was a woman—ah, yes! a fascinating woman!—but then, was she not also a virgin, and old? But immediately another flood of feeling swept upwards and engulfed her; she towered; she was something more—she knew it, what was it? was she a man?"⁴

Virginia Woolf's *Orlando* presents a main theme of the relation of intersexual traits to creative ability. At one stage, Orlando, who has been living as a male diplomat in Constantinople, falls into a seven-day trance from which he awakes to assume his true sex as a woman:

"The sound of trumpets died away and Orlando stood stark naked. No human being since the world began has ever looked more ravishing. His form combined in one the strength of a man and a woman's grace."⁵

Returning to the concept of a sexuality spectrum, one might postulate that some individuals may move from one end of the spectrum to the other, in psychological if not in physical terms, and possibly back again to their original positions in the spectrum. It is now well established that such a remarkable sequence of events can occur in some unfortunate people. To this phenomenon the term transsexualism was applied by Cauldwell in 1949.⁶

Definition of Transsexualism

Transsexualism is the term used to describe adults whose biological sex is unambiguous but who are convinced beyond all shadow of doubt that they belong to the opposite sex, and no known medical or psychological therapy can alter this conviction. Such people have irreversibly accepted a gender identification opposite to that of their biological identity and have a sense of estrangement with their own

bodies, so much so that they find all physical manifestations of their biological sexual differentiation repugnant. Furthermore they have an overwhelming, all-consuming desire to change their biological sex so that it conforms to what their mind tells them they ought to be. To this end they will strive tenaciously and persistently to achieve the anatomical appearance of the opposite biological sex by hormonal, surgical and other means. Finally they are characterised by a desire to live and be accepted in the community as members of the opposite sex. Talking to transsexuals about gender identity, one is reminded repeatedly that they feel that fate has dealt them a cruel blow. The utterance, 'I feel as though I am a woman imprisoned in a man's body' or *vice versa* is commonly heard from such people. For those interested in the Buddhist philosophy of re-incarnation this description raises some fascinating questions pertaining to Karma.

The transsexual may be confused by some with the homosexual or the transvestite, as the last two also dress in clothes of the opposite sex, although not always in the case of the homosexual. The transvestite almost invariably a male, derives emotional satisfaction from dressing as a woman at times. Cross-dressing may or may not provide him with sexual stimulation. However, such men are only sexually attracted to women and have no desire to change their sex. Homosexuals may adopt the role of effeminate males in female attire — referred to in some quarters as 'drag-queens', I am told, or rather masculine looking females in male attire — sometimes referred to as 'butch lesbians'. In contradistinction to transsexuals, homosexuals are entirely satisfied with their anatomical sex and are only attracted to people of the same sex.

To the transsexual, cross-dressing is simply adopting the culturally acceptable dress of his or her gender identity and provides no sexual stimulation. Sexually, the transsexual is attracted to persons of the opposite gender identity to what he or she perceives to be his or her own identity. While transsexuals may associate with homosexuals before complete gender reassignment, because they are accepted by this group, they completely deny any homosexual feelings or behaviour.

Transsexualism in History

Although it is difficult to distinguish transsexualism from transvestism in historical reports, it appears that numerous individuals at all stages of history in different cultures have had a strong desire to change their sex before surgery made this possible. Many cases of transsexualism have not been reported in the medical literature but in the popular press, when discovery of the true sex has

accidentally occurred. Hence transsexualism might have been more common in the past than medical records would indicate.⁷

Philo, the Jewish philosopher of Alexandria commented on those who were discontented with their gender role:

"Expending every possible care on their outward adornment, they are not ashamed even to employ every device to change artificially their nature as men into women . . . some of them . . . craving a complete transformation into women, they have amputated their generative members."⁸

In ancient Rome, Juvenal satirised the transsexual phenomenon as follows:

"But why, are they waiting? Isn't it now high time for them to try, the Phrygian fashion to make the job complete . . . Take a knife and lop off that superfluous piece of meat."⁸

The Roman emperor, Nero, had his surgeons operate on a young male former slave to make him more like a woman and then the two were formally married. Another Roman emperor, Heliogabulus, is said to have been formally wedded to a powerful slave and then to have taken the role of wife after the marriage. He is also said to have offered half the Roman Empire to the physician who could provide him with female genitalia.⁸ French history of the Renaissance period is prominent for its public figures of transsexual ilk. At this time the term of reference to the sovereign was "*Sa Majeste*" which means literally "Her Majesty". The feminine gender was used initially, in deference to King Henry III of France who wished to be regarded as a woman. *Sa Majesté* made his point strongly felt in February 1577 by appearing before the Deputies dressed as a woman with a long pearl necklace and low-cut dress.⁸ Numerous other entertaining examples of cross-gender behaviour can be gathered from a study of mythology and ancient and modern history.

Prevalence of Transsexualism

It is difficult to find out how common the transsexual condition is in most countries because of its recent recognition as a definite entity. In Sweden the minimum prevalence is estimated to be one male transsexual per 37,000 men over the age of fifteen years and one female transsexual per 103,000 women over fifteen years of age.⁹ Similar prevalence figures have been obtained for England and Wales. These figures indicate that there were probably three times as many men in those countries wishing to be reassigned as women com-

pared with the number of women wishing to be reassigned as men. In Sweden the latest estimate suggests that the male to female transsexual ratio is approaching one to one. A preliminary investigation in Australia and New Zealand suggested that there are more transsexuals per 100,000 population than in any other country in the world and that more males than females present for reassignment in Australia.¹⁰ Several factors such as the rigidity of sex-role differentiation, the differing status of men and women and the ease with which surgical reassignment can be obtained within a society will influence the number of transsexuals who present for medical attention. Using the Swedish figures as a guide, one might expect a total of approximately four hundred male and one hundred and fifty female transsexuals in Australia at present. Transsexuals tend to migrate to the large cities where they feel that they will be better accepted and will be more likely to obtain employment and medical attention. It is not uncommon to find that transsexuals will bow to society pressures, marry and have children in an attempt to suppress their desire for gender reassignment, only to find that the desire returns with greater intensity later on in life. In England it has been observed that fewer female than male transsexuals enter into marriage before reassignment. Some studies have suggested that more transsexuals come from the lower socio-economic classes and because of the real difficulties of social adaptation, prolonged unemployment is common amongst them.¹¹

Generally female transsexuals are more stable and less vulnerable psychologically than their male counterparts

Aetiology of Transsexualism

Seven variables are thought to be involved in determination of sexual identity viz., chromosomal sex, gonadal sex, hormonal function, internal genital morphology, external genital morphology, assigned sex (rearing) and psycho-sexual differentiation.

The most acceptable explanation for most cases of transsexualism is one of an environmental error occurring during the gender identity differentiation of a child with predisposing vulnerability. Probably a combination of events is required but at present we do not know of their nature and relationship. There are certainly no consistent data to show that transsexuals as a group are different morphologically, chromosomally or hormonally from people with normal gender identity. Cross gender identification and behaviour may, in fact, be observed in many children at or below three years of age but after this gender identification usually becomes fixed as male or female. Conse-

quently, the recognition of a signification disturbance of gender identity in children below three years of age may provide a complex diagnostic task. Clothing preferences, activity, choice of playmates, mannerisms and the relationship of the child to each parent could provide useful diagnostic pointers to transsexualism.¹²

Animal experiments have demonstrated that sex hormones do influence the brain in fetal life, especially the hypothalamic centres that regulate the cyclic or non-cyclic function of the pituitary gland. Hormones produced by the fetus as well as those produced by or injected into the mother can also affect the fetal brain as can hormone antagonists administered to the mother. These findings may or may not apply to human beings. If they are applicable to the human it would not necessarily mean that the child-to-be-born would inevitably have a gender identity conflict. This is because gender identity is not developed at birth but the effects described might render the individual more susceptible to various factors operating in the social environment after birth.

Transsexuals are often above average intelligence and have high aspirations for themselves. Psychological testing of male transsexuals usually reveals a strong feminine orientation, more so than in normal women. However, in terms of psychodynamic factors there are no consistent differences between transsexuals and heterosexuals. Sexual drive is usually below that of other groups and mainly heterosexual in nature with a history of some minimal experimental homosexual activity. In a study of male transsexuals, Professor Richard Ball of the University of Melbourne found that the pattern emerged of the lack of a satisfactory male figure in any warm emotional relationship with subjects during the first five years of their childhood. In addition, the maternal role was usually one of a more active type possibly encouraging an abnormally dependent relationship between mother and child.¹³

Rarely transsexualism may appear as a manifestation of a pathological mental state or psychosis e.g. schizophrenia. It has also been reported in association with temporal lobe epilepsy, cerebral tumours and in subjects addicted to amphetamine. Again, these are rare conditions in transsexuals. Nevertheless, it is extremely important to exclude the presence of any underlying organic or psychiatric disorder in transsexuals, which is one of the reasons for a lengthy period of medical assessment before the decision is made concerning gender reassignment.

Problems Encountered By Transsexuals Before Gender Reassignment

Many transsexuals are subjected to a variety of stresses at different stages of their lives and for some temporary psychological disintegration is almost inevitable when the pressure of events becomes intolerable. Parents may react adversely to the knowledge that they have a transsexual son or daughter and may even threaten to commit suicide to dissuade attempts at reassignment. Relatives or friends may become so shocked that they indulge in subtle forms of blackmail, e.g. threats to reveal all to the transsexual person's employer, lover or friends.¹⁴

Cross-dressing by male transsexuals may lead to their arrest by the police for homosexual behaviour in public or for loitering with intent to solicit for purposes of prostitution. Transsexuals may also have difficulty in obtaining employment because employers are reluctant to employ 'freaks' or because they would find it hard to decide upon toilet arrangements for such a person!

Sometimes extreme difficulties are encountered by transsexuals in attempting to obtain a passport, borrow money or obtain accommodation. Hence, it is not surprising that some turn to making money as female impersonators or prostitutes and resort to addictive drugs when the desire to escape from the reality of a sordid life becomes urgent. When life becomes really desperate, self mutilation or suicide may be the end result for some transsexuals. Fortunately, largely as a result of the more liberal approach in society towards sexual matters, the life of the transsexual is becoming a little easier.

Gender (Sex) Reassignment

Candidates for reassignment are evaluated by psychiatric interviews and psychological testing. Relatives and friends are usually interviewed for additional information which may help to corroborate the claims of the subject. A general medical interview and examination along with appropriate special investigations are also performed to exclude organic disease and to assess the suitability of the subject for transformation procedures including sex hormone therapy and surgery. Because there is no laboratory test or special diagnostic technology to aid in selecting the true transsexual, selection depends primarily on psychiatric, psychological and behavioural data. A probationary period of twelve to twenty-four months is usually advised while the subject lives in the desired role completely, before surgical

reassignment is recommended. During this time the subject is asked to take the appropriate sex hormone to induce the required secondary sexual characteristics and may have various cosmetic surgical procedures to facilitate effective transformation. In the male transsexual wishing to be reassigned as a female, transformation procedures include oestrogen administration, removal of facial and body hair by electrolysis or depilatory agents, in some cases augmentation mammoplasty (silastic implants in the breasts), rhinoplasty (altering the shape of the nose), removal of tattoos and speech therapy to increase the pitch and modulate the tone of the voice. Finally, surgical removal of the penis and testes is carried out along with construction of a vulva and vagina. Of course, as these subjects cannot be given a uterus, Fallopian tubes and ovaries, they cannot bear children. In the female transsexual wishing to be reassigned as a male, transformation procedures include male sex hormone therapy, reduction mammoplasty (decreasing the amount of breast tissue), total hysterectomy and bilateral salpingo-oophorectomy (removal of the uterus, tubes and both ovaries), closure of the vagina and finally surgical construction of an artificial penis and scrotum.

Selection for Surgery

As genital surgical reassignment is irreversible there must be great caution in advocating surgery. Most clinicians would agree with the following conditions that should be fulfilled before genital reassignment is undertaken, as proposed by Jan Walinder of Göteborg, Sweden:

- (i) the diagnosis of transsexualism must have been clearly and unequivocally established over at least one year but preferably two years observation by clinicians well acquainted with the condition;
- (ii) the patient should have lived for at least one year in the contrary sex role, thereby demonstrating ability to cope with life in this role;
- (iii) the patient's personality should be adequate and stable, and psychosis must be excluded;
- (iv) physical features should be such that in the new role the transsexual will not appear too obvious;
- (v) close study of the symptoms and personality must have produced a firm conviction that other forms of treatment have no prospect of success;

- (vi) before medical and legal measures are embarked upon, the patient's social situation should be under the best possible control, e.g.: working life, attitudes of relatives and friends should be supportive;
- (vii) continuous contact with the treatment team must be ensured during the observation period;
- (viii) mental retardation and dementia must be excluded;
- (ix) serious abuse of alcohol or drugs must be excluded; and
- (x) there must be an absence of repeated criminal acts.

Results of Surgical Gender Reassignment

Generally the operative results are considered to be successful in about eighty per cent of cases in which follow-up interviews and examinations have been conducted for an average period of six years. Most of the cases followed up in Europe and the U.S.A. have been of males reassigned to females. In most of these subjects, libido improves and sexual intercourse and orgasm are achieved satisfactorily. However, the majority of transsexuals envisage the operation not as a fulfilment of their sexual lives but as a means of enabling them to conform to the desired sex and hence to be accepted by society in this role.⁹

Since the sex change operation was widely publicised in 1952 following Hamburger's reassignment of the American male George to a female, subsequently known as Christine Jorgensen, although it was not the first operation of this kind, surgical gender reassignment has become more widely accepted by the medical and legal professions and the general public.¹⁵ Nevertheless, it is regrettable that in some parts of Australia the bulk of the medical profession does not accept that the care and treatment of transsexuals is its responsibility. The recent establishment of an Australian National Transsexualism Committee should help to make the profession more aware of the legitimate medical needs of transsexuals.

Legal Aspects of Transsexualism

Interestingly the law does not provide any definition of sex, although the concept of sexual differentiation pervades our legal code: it seems to have been taken for granted and not made explicit. In society and the law persons are either male or female; the decision rests on the entry on the birth certificate.

Medicine has not defined sex either but recognises a number of relevant factors as determinants of sex, viz., chromosomal, gonadal,

hormonal, internal genital morphology, external genital morphology, secondary sexual characteristics, erotic orientation and gender identity.

As transsexuals begin to demand recognition and acceptance in society, the courts will be faced with rendering a definition of sex. In a sense, the sex reassignment procedures are worthless if the recipient of them cannot live thereafter completely in the chosen gender role.

Change of Name

The transsexual will want to change the given name, often only by a syllable or two, e.g. Christopher to Christine, Pauline to Paul. Often this is done well before surgical reassignment. There are no statutory legal requirements in Australia for changing of name. However, some subjects like to formalise the procedure as much as possible by use of a deed poll. A change of name on various documents such as the social insurance card, driver's licence, school and university records, degrees and diplomas, professional licences etc. can usually be obtained without too much difficulty providing adequate explanation is given.

The Birth Certificate

The change of designation of sex on the birth certificate is currently impossible in Australia and most other countries. As the birth certificate is a basic document of general identification, it may have to be produced for obtaining employment, insurance, travel documents and as proof of age in other situations. Hence it is of great importance to the transsexual that the sex designation on the birth certificate be changed. In most countries the birth certificate can only be changed if it can be shown that a genuine mistake had been made at the time of the original issue of the certificate.¹⁶ However, it is nowhere clearly laid down as to how the sex of the newborn should be determined. It is usually left to the doctor or midwife to determine the sex of the infant at birth by inspection of the external genitalia. In Switzerland and Sweden gender identity is accepted by law as the proper criterion for determining sex in transsexuals, not the birth certificate.

Marriage

Many transsexuals after reassignment wish to marry and some succeed but whether such a marriage, between a male reassigned as female and a male, is legally valid is open to question.

Indeed in the case of *Corbett v. Corbett* in the English High Court, Mr. Justice Ormrod held that a marriage between a male to female

transsexual and a man was void. The reasons for this decision rested upon the definition of sex, which in this case was held to be characterised by chromosomes, gonads and the genitalia, particularly when these three are in concordance.¹⁷ Gender identity *per se* was not held to be a criterion despite the overriding importance it has for the individual.

In 1971, the year following the *Corbett v. Corbett* case, when the Nullity of Marriage Bill was before the House of Commons, the judgement of Mr. Justice Ormrod was upheld despite representations to amend the Bill to take into account the plight of the transsexual. More recently, however, in the New Jersey Supreme Court it was decided that an individual who changes sex through surgery is entitled to all the legal rights enjoyed by others of the same sex including marriage, as long as the transsexual person tells the partner in advance about the sex change procedure.

Criminal Law

In most jurisdictions cross-dressing *per se* is not prosecuted. However, charges are often laid for causing a disturbance, for loitering with intent or for homosexuality and soliciting. Furthermore, a transsexual can be charged under certain circumstances for buggery or gross indecency which to her are normal sexual activities not chargeable when carried out by a mutually consenting adult man and woman in private. For these reasons it is probably helpful if each male transsexual at all times carried a letter written by her doctor giving an explanation of her condition and stating that a requirement of medical treatment is that she wears female clothing. It is interesting to conjecture what might happen legally if a man is charged with rape for sexually assaulting a transsexual male reassigned as female since a female person must be raped in order to sustain a conviction under the legal code dealing with rape, or if a female to male transsexual attacks a woman. In this regard one cynical commentator on the English law has written:

"Male adulterers should be heartened by the fact that they may indulge in cunnilingus, corpula crure, per oram, per anum and even per vaginam—perennially ad nauseam and with impunity. It is open season on transsexuals . . ."¹⁸

The male transsexual wearing female attire may also find himself in trouble in some circumstances because it constitutes a crime to form the intention of committing an indictable offence while being disguised.

Wills and Inheritance

The common law relating to wills and inheritance is such that a transsexual beneficiary may have problem in claiming an inheritance. For example, if a gift is bequeathed by the testator to his youngest son Christopher who has since become Christine after undergoing sex reassignment surgery, will she still be entitled to the gift? No such cases have been tested in law. However, in the dispute over succession to an hereditary title consequent upon the death of the nineteenth Lord Sempill in 1965, the Scottish Court of Session ruled that Lord Sempill's sister who after living as a woman for forty years and who had then become a man, claiming that her sex at birth has been mistaken, was now the closest male next of kin and had precedence therefore over the claims of a male cousin to the title. The cause for the incorrect designation of sex at birth is not known. It might have been due to some form of hermaphroditism, or to transsexuality. The effect of either on the life of the individual would have been the same but the law would treat the two situations differently. Thus the law is arbitrary in its determination of the legal gender status of a person.¹⁶

When a transsexual makes a will, it could conceivably be contested on the grounds of unsoundness of mind. Again such a situation has not arisen yet.

The Legality of the Sex Change Operation

In England, Mr. Justice Ormrod reviewing the *Corbett v. Corbett* case observed: "There is, obviously, room for differences of opinion on the ethical aspects of such operations but if they are undertaken for genuine therapeutic purposes, it is a matter for the decision of the patient and the doctors concerned in his case. The passing of the Sexual Offences Act 1967 S. 1 seems to have removed any legal objections which there might have been to such procedures."¹⁷ Similarly, examination of case law in the U.S.A. leads to the conclusion that a physician or surgeon may without fear of criminal liability perform a sex reassignment operation upon a consenting adult or upon a consenting minor where permitted by statute.¹⁸ A transsexual, free from psychotic symptoms, can probably give an 'informed consent' to a sex reassignment procedure. However, it is deemed advisable that the consent should be much more precise and detailed than the usual content for surgical procedures, and should be in writing and witnessed by a third person, preferably the patient's solicitor.

Sex reassignment surgery performed on a married transsexual could lead to court actions for damages for loss of consortium and

alienation of affection. Also under such circumstances, if spousal consent was not obtained for reassignment, grounds for divorce may be available on grounds of mental cruelty.

From what has been stated above, it is apparent that the law does not adequately provide for the needs of transsexuals and that new laws similar to those in Sweden are required in Australia. The Swedish law came into force in 1972 and for transsexual persons regulates surgical operations on the genital organs with the aim of rendering them more like those of the opposite sex and also official authorisation of the change in sex assignment. The change of name and sterilization or castration are regulated by other laws. Under the law the responsibility for the decision to grant sex reassignment to an applicant rests with a national board, which in turn has appointed a special committee possessing expert medical and legal knowledge. Before a decision is made, each case is referred for comment to three scientific councils, one representing psychiatry, one endocrinology, and one jurisprudence. Applications for sterilization or castration are also dealt with by the committee. In applications for change of name, the power of decision is vested in another authority, the National Registration Office, but when the application is from a transsexual person the case is referred for comment to the National Board before a decision is made. If the application is approved, the National Board instructs the parish office to change the entry in the parish register and to authorise other offices to make appropriate changes in various documents.

The new gender role, once assigned, becomes incontestable in court and applies to all aspects of the person's life. It is also irreversible.²⁰

The new law in Sweden has been inspired by humanity, tolerance and concern for an unfortunate minority in society and aims at making the lives of transsexuals more bearable. Hopefully, in Australia we might emulate the Swedish system to achieve a better deal for transsexuals in this society.

Transsexualism is a cruel quirk of fate of unknown cause. Much more research is required to unravel the complexity of factors that may be operating both before and after birth to bring about this state of mind—the absolutely irreversible conviction of having a female mind in a male body or vice versa.

Modern medicine and surgery have allowed these unfortunate people to be reassigned successfully in the opposite gender role, thereby improving greatly the quality of life they lead. However, there is always room for improvement in these areas as medical knowledge increases.

The law does not yet provide for the needs of transsexuals in this country and it is to be hoped that this situation will change in the near future. Without such legal changes the gender reassignment procedures are to some extent frustrated in their attempt to integrate transsexuals into society.

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