

ARTICLES

SELF-TRANSFORMABILITY

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TABLE OF CONTENTS

INTRODUCTION	122
I. THE CONCEPT OF TRANSSEXUAL	127
II. OPENING THE CANON	135
III. ABANDONMENT	140
A. THE ETHICS OF ABANDONMENT	141
B. SELF-TRANSFORMABILITY AND ABANDONMENT: A THOUGHT EXPERIMENT	147
C. GENDER AS A CLAIMING VALUE	149
D. CONVERSION AND FAITHFULNESS	159
E. PREFERENCE AND REPUDIATION.....	164
IV. TRANSGRESSION	170
V. INAUTHENTICITY	175
A. THE "TRAPPED TRANSSEXUAL"	176
B. THE SIGNIFICANCE OF MEMBERSHIP	185
1. <i>Being and Becoming a Transsexual</i>	185
2. <i>Circumcising the Member</i>	187
3. <i>Saying "I Am a Transsexual"</i>	190
C. THE MATRIX OF PRESSURE AND UNHAPPINESS	192
VI. EMBODIMENT AND METAPHOR	195

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INTRODUCTION

Some modern writers deny that there is such a thing as human nature; but others say that what defines human existence is our capacity as human persons to create and transform our goals, identities, and meanings.¹ From a certain perspective, what unites these two schools of thought may be more significant than what divides them, for both agree in stressing human freedom and responsibility for self-transformative projects. The point of agreement may be stated in the form of paradoxical apothegms, such as "It is human nature to have no nature," or Sartre's declaration that we are "condemned to be free."²

In an earlier article, I presented a version of this paradoxical conception of human existence and showed how this version enables an appreciation of the symmetry between three intrinsic goods: personhood, communality, and sociality.³ In that work I suggested how the implications of these goods and their symmetry might be drawn for a theory of the moral and legal rights of groups.⁴ My goal in this Article is to explore further the view of "human nature as self-transformability," this time studying self-transformation in personal life. The exploration will take the form of a case study, because I am increasingly aware that the features of self-transformation that are of moral significance are subtle and detailed, and can be understood best by means of a patient interpretation of the language that we use in expressing our inmost meanings, longings, and intimations of being.

Both ethically and biomedically, my case study in self-transformability addresses issues that Michael Shapiro has investigated in his path-breaking analytical work on performance-enhancement technologies.⁵ One way to sum up these issues is to ask whether, in assuming greater responsibility for the design of our bodies and for the lives whose living these bodies enable, we are doing something definitively unnatural or archetypally natural. Stating the problem in this way does not open

1. I discuss the intellectual history of these views of human nature and their place in contemporary political theory in Ronald Gare, *Human Nature as Self-Transformability* (unpublished manuscript, on file with the author).

2. JEAN-PAUL SARTRE, *BEING AND NOTHINGNESS* 567 (Hazel Barnes trans., 1966).

3. Ronald Gare, *Communality and Existence: The Rights of Groups*, 56 S. CAL. L. REV. 1001, 1001-04, 1061-75 (1983).

4. *Id.* at 1029-59.

5. Michael Shapiro, *The Technology of Perfection: Performance Enhancement and the Control of Attributes*, 65 S. CAL. L. REV. 11 (1991) [hereinafter Shapiro, *Technology*]; Michael Shapiro, *Fragmenting and Reassembling the World: Of Flying Squirrels, Augmented Persons, and Other Monsters*, 51 OHIO ST. L.J. 331 (1990) [hereinafter Shapiro, *Fragmenting*].

up the easiest route toward analysis of the normative issues raised by our use of new biomedical technologies, but it does expose the premise that rather radical projects to change personal identity or attributes, projects that might seem questionable or even unnatural from many vantage-points, may look normative (if not precisely admirable) from the vantage-point of "human nature as self-transformability."

In this Article I will illustrate and explore this premise by considering the experiences, choices, and identities of transsexuals. My goal is not to analyze the questions of policy that surround the lives of transsexuals: whether surgical procedures should be more or less widely available, whether public or private health insurance schemes should pay for such procedures, whether transsexuals should be able to marry members of the same biological sex, whether they should be able to adopt children or take custody of them, whether employers should be restrained from discriminating against transsexual employees. It is possible, however—though I do not argue for this claim here—that the answers to some of these questions might turn, in part at least, on how the lives and experiences of transsexuals might be interpreted, and how lives or actions so interpreted should be regarded morally. Those problems of interpretation and ethics are this Article's central concern.

My approach to those problems is governed by three methods or strategies. First, I will pay close attention to the words that transsexuals use to describe their lives. Their language, as reported in published case studies and autobiographies, often is striking and suggestive; it repays interpretive effort and provides a resource for the project of constructing a phenomenology of self-transformations. In treating what transsexuals have said and written about themselves with something of the care (though not the skill) of an experienced exegete or critic, I believe I can supplement (not displace) the insights of the clinician, who (so far as I can tell) rarely seems to explore or even to notice transsexuals' choice of language.⁶ Further, in steering close to what transsexuals say, I am trying to avoid heavy dependence on abstract concepts of uncertain or contested meaning, such as "self," "identity," "autonomy," "syndrome,"

6. Researchers and therapists sometimes have good reasons to discredit or at least to look behind what their subjects or patients say. Memories of childhood, for example, may be stated in a way that reflects the distorting effect of present motivations and needs. Individuals who present themselves to mental health professionals in an effort to win their support and approval for sex-reassignment surgery may have an additional incentive to choose language likely to trigger a favorable response. Katherine Williams et al., *Patterns of Sexual Identity Development: A Preliminary Report on the 'Tomboy'*, 1 RES. COMMUNITY MENTAL HEALTH 103, 109-110 (1979). In offering interpretations of what transsexuals say, I am attempting to take these concerns seriously. Without seeing, talking with, or having a lengthy therapeutic relationship with the people whose

“disorder,” or “personality,” at least at the phenomenological stage of the work.

Second, I will sort out various accounts of concepts such as “transformation” and “preference” that must be attended to in the larger enterprise of working out a view of “human nature as self-transformability,” as well as concepts such as “being a transsexual” and “having transsexualism” that are central to the case study. The conceptual analysis is clearly related to the phenomenology; the overall task is one of locating phenomena that are well-understood as self-transformations of a certain kind, and that (so understood) should be given a certain moral interpretation.

Finally, the method is comparative; my goal is to explore transsexualism precisely as a case study in a larger human phenomenon. Thus I will try to reveal points of comparison and contrast between a person’s way of choosing or living out his or her identity as man or woman and other consequential transformations in personal and social life, such as vocational changes, marriage and divorce, immigration, the founding of states, and the revolutionary transformation of societies. Especially by drawing out the comparisons between adoption of transsexual identities and a number of transformative events in religious life—including conversion, calling, covenant, the opening of the canon, and ritual circumcision—I will try to show in what ways and with what limits self-transformation might be recognized as elemental to human existence.

The first Part of the Article offers an account of the concept of transsexual. The main purpose of this section, apart from acquainting the reader with relevant facts about transsexuals and theories of transsexualism, is to introduce what I will call transsexuals’ “gender projects,” the pursuits that form the subject of the case study.

Part II considers the role of stories about transformations, especially tales of bodily metamorphoses, in the phenomenology of gender projects. On the one hand, the existence of such stories, our readiness to believe that they have something significant to teach us about human nature, and the prominence of these stories in constellating the experiences of transsexuals or at least reports of such experiences, suggests that they form an important part of what we can learn about self-transformability from coming to terms with the lives of transsexuals. But on the other

lives I discuss here, I can offer interpretations that are at best tentative and one-dimensional. Still, by giving a close examination to the written word—something not always possible in the oral culture of interviews and therapy—I hope to harvest insights of the kind that literary techniques enable.

hand, the function of these stories as mediators of experience raises questions about the nature and status of the experiences, intentions, and actions to be examined here. With a view toward obtaining a clearer resolution of the role of interpretation and narrative in the shaping of morally relevant features of self-transformability, I draw a comparison between the attitude of a transsexual toward his or her canonical gender or body, and the posture of believers who would open the canon of Scripture by the addition of new texts or the subtraction of old ones, and in the course of so doing must face up to the question of whether this virtuosic act of revisionism is required or prohibited by the faith.

The three middle Parts of the Article formulate ethical ideas relevant to self-transformability generally and apply those ideas to the gender projects of transsexuals. Part III concerns the ethics of abandonment, Part IV discusses the ethics of transgression, and Part V addresses the ethics of inauthenticity.

Of the ethical ideas treated in these Parts, my only claim to originality lies in my formulation and application of the ethics of abandonment in Part III. The guiding idea in that section is that self-transformation involves leaving something behind or letting something go, and that this release may take many forms, among them a morally problematic abandonment of goods or values that lay a claim to our constancy. I sketch a phenomenology of abandonment in terms of repudiation, unfaithfulness, and betrayal, and employ that phenomenology in investigating a transsexual's moral relation, if any, to his or her gender of assignment and body.

Problems of transgression and inauthenticity, worked through in Parts IV and V, are less intrinsically related to self-transformability than are problems of abandonment. The idea underlying the discussion of transgression is that a person engaged in a self-transformative project may "go too far" and transgress boundaries to the moral space of human persons.

Even if the self-transformer neither abandons claiming values nor transgresses moral limits, he or she may still carry out his or her self-transformative project in a way that fails to live up to what might be regarded as the spirit or inner genius of self-transformability, namely the thorough acceptance of responsibility for who one is and becomes. This is the topic of the Part on inauthenticity.

These three Parts raise many questions about gender projects but offer few answers. There is no categorical holding at any point that

transsexuals and their conduct either are or are not immoral. Throughout, however, I offer interpretations that suggest that the way that many transsexuals live out their gender, or in it, is no worse than the way in which the rest of us do so. In particular, I am concerned to make sense out of respects in which the gender projects of transsexuals are not unnatural. There is a sense in which abandonments, and perhaps also transgressions, are unnatural acts. I suggest, roughly, that transsexuals are no more unnatural than, say, converts or immigrants, and that sex-reassignment surgery is no more unnatural than celibacy or the practice of ritual circumcision.

In the Part on inauthenticity, the argument runs the other way. There I am concerned to show that certain respects in which transsexualism is natural are not inconsistent with regarding transsexuals as genuine and perhaps even normative, if not precisely admirable, self-transformers. My guiding idea is that notions of self-transformability that involve a gulf between existential heroism and phony essentialism are misguided. Even a person who regards herself as a woman trapped in a man's body⁷ may be involved in a creative gender project that should not be dismissed as merely imitative.

The final section of the Article, Part VI, addresses themes of self and embodiment that are presented more saliently by the case study in transsexualism than by other examples of self-transformability. I draw a contrast between a transsexual's faith in the renewal or renovation of the body and the skeptic's doubt and disgust, criticize ways of regarding sex-reassignment surgery as involving the body in an abusive simulation, and identify both creative and uncreative aspects of using the body as a metaphor.

For the most part, the Article employs the case study in transsexualism to explore human nature as self-transformability indirectly, through formulations of and responses to moral criticisms of transsexualism, rather than directly. A more direct approach to the problem would be to offer an account of self-transformability as an ideal, and to show how transsexuals either live up to that ideal or fail to do so. Yet it is difficult to formulate conceptions of self-transformability that are broad enough

7. Throughout this Article, I will use female pronouns in referring to male-to-female transsexuals and male pronouns in referring to female-to-male transsexuals, whether or not the transsexual in question is planning or has completed sex-reassignment surgery. I will also speak of "former" and "achieved" genders; for example, a male-to-female transsexual's former gender is her male gender, and her achieved gender is her female gender. I choose these terms for clarity of reference and to express my respect for the representations people offer of their inmost selves, and not to foreclose inquiry into what precisely has been "achieved" in any individual case.

to encompass the several structures of human existence and the full range of human striving, and at the same time sufficiently specific and substantial to provide direction to conduct or character. Rather than face this difficulty, which is shared by all normative conceptions of human nature, I have chosen the indirect route.

I. THE CONCEPT OF TRANSEXUAL

The concept of the transsexual, and the related diagnostic concept, "transsexualism," are elusive and contested, and I will offer in this section an account of the meaning of these ideas. In a rough way, however, the project to be undertaken here can be stated in advance of that account. In these rough terms, the question is whether a person whose gender-identity differs from his or her biological gender and who may be condemned or spurned by some as deviant, unnatural, or mentally ill, should instead be celebrated as a kind of existential hero who takes personal responsibility for the choice of his or her gender. The latter alternative is an extreme position as well as a simplistic and over-generalized one, but in its extremism it manages to convey the shift in perspective that comes with the idea that we are most human when we transform aspects of our self that are usually taken for granted or regarded as given.

By a "transsexual" I mean a person who, while cognizant of his or her biological gender, believes that he or she in some deeper sense is *really* of the other gender, or who takes as one of his or her overriding goals in life the aim of being in or of (or at least living in) the other gender. Certain features of this account should be stressed at the outset.

(1) The criteria for the concept "transsexual" do not include "a person who has undergone sex-change surgery," or, as it is called in the scientific literature, "sex-reassignment surgery."⁸ Nor must a person be

8. The psychological literature uses the appropriately scientific-sounding "sex-reassignment surgery" to denote what is more commonly called the "sex-change operation." The latter expression is flawed either because it begs the question of what sex (gender) is (Why should rearranging some flesh here and there amount to a change of gender?) or because it advertises more than it can deliver (surgery cannot provide reproductively functional organs of the other sex; more modestly, most post-operative female-to-male transsexuals are not supplied with a functional neo-penis). Yet the more grandiose caption "sex-reassignment surgery" is flawed in that it makes a basic category mistake. Gender assignment is a social fact; one's "gender of assignment" is the gender assigned one at birth. Surgery at most changes certain physical features; these changes may in turn carry both psychological and social effects, but the surgery itself does not change one's social classification.

For ease of exposition I will ordinarily refer to "sex-reassignment surgery" as if it were a discrete and unitary event, but in actuality most sex reassignment surgeries involve two or more separate operations over a span of two or more years. For brief but recent descriptions of the surgeries, see ROBERT STOLLER, *PRESENTATIONS OF GENDER* 153 (1985); JOHN MONEY, *GAY, STRAIGHT,*

actively seeking such surgery, or even want it or approve of it, in order to be a transsexual.⁹ It is possible, of course, for most or all of the entities

AND IN-BETWEEN: THE SEXOLOGY OF EROTIC ORIENTATION 88-92 (1988). For an older but more detailed description of the surgeries, see TRANSSEXUALISM AND SEX REASSIGNMENT 313-81 (R. Green and J. Money eds., 1969).

9. In this respect, my account of the concept differs from the account given by certain psychiatrists. Person and Ovesey, for example, state, "We will define transsexualism as the wish in biologically normal persons for hormonal and surgical sex reassignment." Ethel Person & Lionel Ovesey, *The Transsexual Syndrome in Males, Part One: Primary Transsexualism*, 28 AM. J. PSYCHOTHERAPY 4 (1974) [hereinafter Person & Ovesey, *Part I*]. This strikes me as somewhat akin to defining toothache as the wish for dentistry. Cf. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 74 (3d ed. 1987) (A persistent desire to rid oneself of one's physical sex characteristics and to acquire those of the other sex is a necessary but not sufficient condition for transsexualism. See *infra* note 24.). Still, such a definition of transsexualism could be justified if it were warranted clinically: if (1) persons meeting my criteria were so heterogeneous as to present no common condition and were responsive to no common treatment, and (2) persons actually wishing for surgery constituted a class of persons who tend to respond well to a common treatment. I suspect that (1) is the case (persons meeting my transsexual criteria are heterogeneous and unresponsive to a common treatment) and that (2) is not the case (persons who satisfy the criterion of wanting surgery likewise are heterogeneous and are unresponsive to a common treatment). See STOLLER, *supra* note 8, at 161.

Person and Ovesey recognize that there is no effective psychological treatment for transsexualism as they define it: "The rationale for hormonal and surgical sex reassignment rests on the assumption that there is no efficacious mode of psychologic intervention in the adult transsexual." Ethel Person & Lionel Ovesey, *The Transsexual Syndrome in Males: Part Two, Secondary Transsexualism*, 28 AM. J. PSYCHOTHERAPY 174, 189 (1974) [hereinafter Person & Ovesey, *Part II*]. In other words, surgery should be available to patients not because they desire it but because it is ordinarily difficult to eliminate this desire through therapy. While they regard transsexualism as a disorder and wish for a cure through psychotherapy, Person and Ovesey recognize that if the patient views the therapist as judgmental, therapy is bound to be unsuccessful. Thus they state that psychotherapy for the transsexual should be based on "an open contract in which it is acknowledged that the patient may eventually choose sex reassignment." *Id.* at 190. In short, Person and Ovesey ground this "contract" not on the patient's responsible freedom to choose his or her bodily expression of gender identity, but on the goal of maximizing the effectiveness of a therapeutic intervention designed to heal or assuage a disorder.

Like many other researchers, Person and Ovesey are skeptical about the benefits of sex-reassignment surgery in most cases. *Id.* at 189-92. For a discussion of studies of the effectiveness of sex-reassignment surgery, see RICHARD DOCTER, TRANSVESTITES AND TRANSSEXUALS 68-70 (1988); Leslie Lothstein, *Sex Reassignment Surgery: Historical, Bioethical, and Theoretical Issues*, 139 AM. J. PSYCHIATRY 417 (1982). Such studies face not only the usual methodological problems but also the difficult conceptual task of defining what counts as "benefit" or "effectiveness." Since many therapists discount or discredit the desire for surgery, they likewise discount or discredit their patients' post-surgical claims of increased happiness. DOCTER, *supra*, at 68.

There is some evidence that surgery benefits some subtypes of transsexuals more than others. G. Kockott & E.-M. Fahrner, *Male-to-Female and Female-to-Male Transsexuals: A Comparison*, 17 ARCHIVES SEXUAL BEHAV. 539 (1988); James Beatrice, *A Psychological Comparison of Heterosexuals, Transvestites, Preoperative Transsexuals, and Postoperative Transsexuals*, 173 J. NERVOUS MENTAL DISEASE 358 (1985); Sandra Johnson & D. Daniel Hunt, *The Relationship of Male Transsexual Typology to Psychosocial Adjustment*, 19 ARCHIVES SEXUAL BEHAV. 349 (1990). These findings offer some support for the conclusions that those who want to be of the other gender, or who seek surgery, are a quite heterogeneous group, and that it is bootless to choose as one's definition of "transsexualism" the set of criteria that best predicts effectiveness of a therapy such as surgery.

who fall into class *X* according to the criteria for *X* to exhibit some trait *Y*, even though *Y* is not a criterion for *X*. Thus, most people have stomachs, even though having a stomach is not a criterion for being a person. Similarly, it is possible that most people who are transsexuals want surgery. There are, however, at least some counterexamples.¹⁰ Neither the absolute number of transsexuals who do not want surgery nor their number in comparison with the number of transsexuals who do want surgery can be known,¹¹ because transsexuals who do not want surgery are unlikely to come before mental health professionals. It must also be kept in mind, however, that sex-reassignment surgery is only the last medical intervention that transsexuals sometimes seek. Hormonal treatments and, for male-to-female transsexuals, electrolysis to reduce visible hair, are typical precursors to surgery; and it seems plausible that the percentage of transsexuals who want, plan, and obtain these procedures is higher than the percentage seeking surgery. Still, even if the percentage is very high, seeking such procedures is not a criterion for being a transsexual (in the sense specified above). At best the fact that a person wants to undergo such procedures supplies some evidence, of uncertain reliability, that the criteria are met in an individual case.

Conversely, not all people who have undergone sex-reassignment surgery are necessarily transsexuals.¹² For example, a person who

10. What the patient (and often the doctor) does not realize is that it is perfectly possible to change names, legal identification, passport, bank accounts, credit cards, diplomas and other documents and *be* a woman without having sex surgery. I speak from personal, first-hand experience here because that is just what I did six and one-half years ago. It is possible to shift one's identity into the head and away from the genitals and if this is accomplished, surgery is superfluous because it does nothing for the individual except to enable her to sleep with a male.

Virginia Prince, *Transsexuals and Pseudotranssexuals*, 7 ARCHIVES SEXUAL BEHAV. 263, 268-69 (1978).

11. International Gender Education, an agency in Boston, provided the following statistics in a communication to the University of Southern California Law Library: (1) In the United States, there are an estimated one hundred sixty thousand persons involved in the pursuit of sex-reassignment surgery; (2) those seeking the surgery are approximately evenly divided between biological males and biological females; (3) however, it is estimated that only between seventeen hundred and two thousand sex-reassignment surgeries occur each year in the United States, with an unknown number provided (to Americans and others) in other countries. Richard Docter estimates that there were six to ten thousand postoperative transsexuals in the United States as of 1988, DOCTER, *supra* note 9, at 26; Leslie Lothstein offered as a "conservative estimate" that as of 1983 there were ten thousand transsexuals in the United States. LESLIE LOTHSTEIN, *FEMALE-TO-MALE TRANSSEXUALISM: HISTORICAL, CLINICAL, AND THEORETICAL ISSUES* 294 (1983). The American Psychiatric Association estimates the incidence of transsexualism under its definition, *see infra* note 24, as one per thirty thousand males and one per one hundred thousand females. AM. PSYCHIATRIC ASS'N, *supra* note 9, at 74-75.

12. See discussion of the "pseudotranssexual" or "nontranssexual seeking sex reassignment" in STOLLER, *supra* note 8, at 20 n.4, and sources there cited.

underwent the surgery in order to punish himself or herself, or to satisfy sexual curiosity, would not be a transsexual. Obviously, however, these goals and motives cannot be clearly sorted out one from the other, and apart from recognizing that the surgery is not a sufficient condition for being a transsexual, it would be a mistake to think that no interpretive problems arise in describing people who have had (or who are planning) the surgery.

(2) Transsexuals are not anatomical hermaphrodites. Indeed, in order to reject one's biological gender, one must have one to reject. Since the concept of "biological gender" is a multicriteria concept—including chromosomal, gonadal, reproductive-functional, hormonal, and genital-anatomical criteria¹³—problem cases arise in which a person who is male under one criterion is female under another.¹⁴ In extreme cases of criterial incongruity, a person may not have a biological gender in any straightforward sense. Whether such a person can be a transsexual—can take the "other" gender as his or her own, when there truly is no "other"—is a question I will leave unexplored here.

(3) On my account of the concept of transsexual, what has come to be called "sexual preference" plays no criterial role. For example, a person who is biologically male is on my account a transsexual if she deeply regards herself as "really a woman" or if she takes as one of her overriding goals in life being or living as a woman, whether her sexual preferences are for men, women, both, or neither.¹⁵ Empirically, there are

13. For a more complete list and discussion of gender criteria, see John Money, *Sin, Sickness, or Status? Homosexual Gender Identity and Psychoneuroendocrinology*, 42 AM. PSYCHOLOGIST 384, 389 (1987); MONEY, *supra* note 8, at 28-29.

14. See discussions of intersexuality in Money, *supra* note 13, at 386; STOLLER, *supra* note 8, at 22-23.

Indeed, problem cases arise under some of these criteria taken individually. For example, while chromosomal females are 46XX and chromosomal males are 46XY, there are intermediate cases in which individuals have some but not all of the genetic material needed to be 46XX. See Daniel Federman, *Mapping the X-Chromosome*, 317 NEW ENG. J. MED. 161 (1987).

15. I am assuming here a certain degree of independence between "who one is" and "who one wants." This independence is not only conceptual but, on standard psychological theories of gender formation, psychological as well. See *infra* note 57 (discussing the concept of "core gender identity"). A person's gender identity as boy or girl ("who one is") is thought to be formed at a much earlier age than a person's sexual preference or object-choice. Thus a biological male who reports that she is a woman and whose report accurately states her core gender identity thereby makes no claims about who he or she wants sexually. Yet some people may be more certain of their object-choice than of their own gender identity. And of these people, some may be equally certain—if only for reasons of social morality—that they are heterosexual. A person in the latter class might, in effect, deduce his or her gender identity from these two premises—object-choice and heterosexuality—taken together. For example, a Chinese male-to-female transsexual, the first case involving sex-reassignment surgery to be reported from the People's Republic of China, stated that she had the sexual desires of a woman and wanted to marry a man, and that she could not do this while she still

instances of transsexuals, including post-surgical transsexuals, whose preference is for partners of the achieved gender, and there are also instances of transsexuals whose preference is for partners of the former gender.¹⁶

(4) A transsexual is not an androgyne, understood as a person who believes himself/herself to be both man and woman and who celebrates this fact as a kind of wholeness. Of course, androgyny in its own right offers an interesting case study of human nature as self-transformability.¹⁷ And it is possible that a person could aspire to be an androgyne not in the ordinary way, that is male and female at one and the same time, but in a sequential way, ordering life so that one is male in one phase and female in another. Such a person might be regarded as a transsexual; but my account stresses that what defines a transsexual is not aspiration to meta-genderal wholeness but yearning to be of one sex, the opposite of one's biological sex.

(5) The most difficult feature of the concept of transsexual is a problem shared with other concepts of "medical conditions" or "diagnoses" such as "alcoholic" or "depressed." In working out an account of all such concepts, one must choose between an account that derives criteria from phenomenology and an account that derives criteria from a scientific theory about the causes of the phenomena. For example, is it a sufficient condition for being "depressed" that one has persistent feelings of sadness and an overall tone of melancholy in one's life, or is it necessary that one be suffering from a certain kind of chemical imbalance or lack of ego strength? In striving to get at the real nature of a condition or situation, science offers reforming conceptions. So it is with scientific

had a penis, as this would be homosexual and therefore wrong. Fang-Fu Ruan & Vern Bullough, *The First Case of Transsexual Surgery in Mainland China*, 25 J. SEX RES. 546, 547 (1988). For this person, gender was not independent from but closely related to and even dependent on sexual preference, coupled with certain social aspirations and ethical or cultural beliefs. Many contemporary Americans, by contrast, whose attitudes toward marriage or homosexuality might be quite different from those of the Chinese transsexual described in the case study, may feel that their gender identity does not bind them to any sexual preference, and vice versa.

16. Of the possible permutations, the one that seems least common is female-to-male transsexuals whose preference is for male partners. Eli Coleman & Walter Bockting, "Heterosexual" Prior to Sex Reassignment—"Homosexual" Afterwards: A Case Study of a Female-to-Male Transsexual," 1 J. PSYCH. HUM. SEXUALITY 69, 69-70 (1988).

17. See CAROLYN HEILBRUN, TOWARD A RECOGNITION OF ANDROGYNY (1982).

theories about people who deeply believe that they are of the other gender, or who aspire to be so. At present, those theories are of two main kinds.¹⁸

First, there are the biological theories, which speculate that transsexualism is a condition caused by limbic system abnormalities or pre- or postnatal hormonal deficiencies.¹⁹ Second, there are the psychological theories, which stress ways in which gender role and gender identity are learned in the early years of life, and the completion or frustration of epigenetic stages of psychosexual and gender development.²⁰

It is not difficult to identify pressures that lead to the reformation of a concept such that it comes to include among its conditions certain scientific/etiological criteria. On the one hand, doctors and psychologists whose job it is to identify and cure diseases are engaged in a project that is furthered by offering a scientific reformulation of a concept. For example, if prescribing a certain medication improves the condition of some sad people (those who are "depressed") but not others, it is helpful to work with a concept of "depressed" that picks out those who have the chemical condition that the medication corrects. On the other hand, people sometimes feel better about themselves if they can say of themselves that they "are" *X* or "have" *X*; that they aren't just sad but "depressed," that they don't just use alcohol in a certain way but that they "are alcoholics." Both of these pressures confront the concept of transsexual. Both the specialist and the patient may want to conceive of

18. Mina Dulcan & Peter Lee, *Transsexualism in the Adolescent Girl*, 23 J. AM. ACAD. CHILD PSYCHIATRY 354, 355 (1984).

Some scientific theories offer an explanation for the existence of a characteristic in a population, and perhaps even for the statistical incidence of the characteristic, but do not try to explain why certain individuals in the population and not others exhibit this characteristic. For example, the existence of suicide in a population might be explained by reference to anomie, rapid social change, or some other variable that does not do a good job of explaining why certain individuals rather than others commit suicide. The incidence of suicide in a population might be predicted with some accuracy on the basis of the percentage of youths in the population, although this does not explain why any individual commits suicide. Similarly, the phenomenon of transsexualism in modern society might be laid at the door of society's gender stereotypes, which lead people to be uncomfortable with themselves and to choose one of two well-defined packages of traits. JANICE G. RAYMOND, *THE TRANSEXUAL EMPIRE: THE MAKING OF THE SHE-MALE* 16 (1979). Such an explanation does not try to show what is distinctive about those few individuals who are led by social gender-stereotypes to adopt a cross-gender identity. The biological and psychological theories referred to in the text offer individuated explanations.

19. See STOLLER, *supra* note 8, at 160-61, and sources there cited; DOCTER, *supra* note 9, at 61-63. For a thorough presentation of the function of hormones in gender development and gender pathology, see MONEY, *supra* note 8, at 9-50.

20. DOCTER, *supra* note 9, at 64-68; Williams et al., *supra* note 6, at 105-07. Much of the psychological literature on transsexualism is written by psychoanalytically or psychodynamically oriented psychologists.

the transsexual as a person whose feelings or self-understandings (the features picked out by my account of the concept) are attributable to a certain *condition* or line of *causation*.²¹

I will distinguish, then, between “being a transsexual” and “having transsexualism.” “Being a transsexual,” on my account, just means that one believes that in a deep sense one really is of the other gender, or that one takes as an overriding life goal being or living in the other gender. “Having transsexualism” is a place-holder for having any condition or causal history that science offers as an explanation for feelings or self-understandings such as those included in my account of being a transsexual. Thus, when I say of a person that he or she is a transsexual, I am only making a claim about that person’s feelings, beliefs, aspirations, or self-understandings. When a person says of himself or herself, “I am a transsexual,” he or she may be making that kind of claim, or he or she may be making the claim that “I have transsexualism,” or he or she may be making both claims.²² Or he or she may be saying something intermediate: that he or she recognizes in his or her cross-gender identity or aspirations a condition shared by others, whether or not science is aware of the common causes of this condition or indeed whether or not such common causes actually exist.²³

On the basis of this account, I want to distinguish four aspects of self-transformation that can be traced in the life of a transsexual. These aspects are: (1) regarding oneself as of, or aspiring to be of, the other gender; (2) forming a sexual preference or sexual orientation; (3) pursuing (or not pursuing) sex-reassignment surgery; and (4) characterizing (or not characterizing) oneself as having transsexualism. The first, third, and fourth of these I will characterize as a transsexual’s “gender projects.” These gender projects form the subject of the case study. It is

21. The scientific and practical pressure exerted upon the concept of the transsexual is illustrated by evidence that suggests a high correlation between abnormal H-Y antigen response and both male-to-female and female-to-male transsexuals. LOTHSTEIN, *supra* note 11, at 177-79. Should the correlation be confirmed, linked to a causal theory, and ultimately yield a widely accepted “treatment” of transsexualism, it would be hard to resist a corresponding belief that what transsexualism “really is” is an H-Y antigen deficiency syndrome.

22. For an example of the ambiguity that sometimes inheres in a person’s characterization of herself as a transsexual, see *infra* note 147 and accompanying text.

23. Statements such as “I am an introvert” or “I am a Type A personality” might serve as examples of this intermediate kind of self-description. Unlike expressions such as “I am an athlete,” these intermediate self-descriptions point to a type, class, or condition that is understood to be shared by others and that reveals a certain coherence to the speaker’s attributes or traits. Unlike expressions such as “I have cholera,” the intermediate self-descriptions do not offer a causal explanation for the condition that the speaker shares with others.

important that the logical independence of the four issues (the three gender projects plus sexual orientation) be seen clearly. For example, believing that one is really of the other gender, or taking this as an overriding goal—the criteria for being a transsexual, on my account—logically entails nothing about one's sexual preference, one's view of surgery, or one's belief that one is a transsexual in the sense of having a condition called transsexualism, characterized by a certain etiology and prognosis. Of course, there may be empirical correlations and psychosocial explanations for them in the absence of relations of logical entailment.²⁴

For the moment, at least, I leave it an open question which, if any, of transsexual gender projects are well-characterized (for some people, some of the time) as *choices*, or in terms of choice.²⁵ Let us imagine, however, for the sake of illustration, a “transsexistentialist”: a person living out these gender projects in the manner we would expect of an existential hero. Such a person would make the following choices, in no particular order: whether to be (or aspire to be) of the nonassigned gender; whether to pursue sex-reassignment surgery; and whether to accept a view of himself or herself as “having transsexualism.” (Perhaps the existential hero could be counted on to reject “having transsexualism” as a kind of excuse or weakness.) The “transsexistentialist” would regard each of these choices as an independent site for responsible self-making.

24. For example, many of the people who present themselves to mental health professionals as transsexuals as I am using the term—that is, as either being or aspiring to be of the other gender—express a strong desire and even a demand for sex-reassignment surgery. One explanation for this might be that of the total population of transsexuals as I have defined them, one subset very likely to be seen by mental health professionals includes people who are trying to be approved for surgery, and who therefore need to be certified or approved for surgery by these professionals.

The American Psychiatric Association, in its most recent diagnostic manual, confuses matters by declaring transsexualism to be a gender identity disorder defined by two “essential features”: “a persistent discomfort and sense of inappropriateness about one's assigned sex” and a “persistent preoccupation . . . with getting rid of one's primary and secondary sex characteristics and acquiring the sex characteristics of the other sex.” AM. PSYCHIATRIC ASS'N, *supra* note 9, at 74. In effect, this makes “wanting surgery” a criterion for “having transsexualism.” It may be the case empirically either that there is a strong correlation between people who feel that their assigned sex is inappropriate and those who want to get rid of their sex characteristics and replace them with those of the other sex, or that whatever “treatments” are most conducive to “health” for persons who meet one of these descriptions are also most beneficial for persons who meet the other description, or that only persons who meet both descriptions are so benefited. My own view is one of skepticism that we know enough to sustain any of these positions. In the absence of reliable knowledge, it is better to be clear about things that are conceptually distinct. The way I would put it is that a person who decides that he or she “really is” the other gender, or who nourishes rather than suppresses yearnings to be in or of the other gender, does not in so doing choose to want to rid himself or herself of present anatomical features or to acquire new ones. Nor does a decision for the latter entail a decision for the former.

25. See *infra* notes 82-95 and accompanying text.

II. OPENING THE CANON

A transformation is a change, perhaps a particularly thorough or dramatic change. As it seems hardly worth disputing that change per se is neither good nor bad of itself but can only be evaluated within a context and in relation to a standard, so too the concept of transformation standing alone is so featureless that morality cannot get a grip on it. But as we address and even create the challenging changes of and in our lives, the concept of transformation does not stand alone for us. It both names and participates in a rich and ancient tradition that speaks to us, from our earliest children's stories to our most grave contemplations of death, of magical metamorphoses, conversions and callings, revolutions and redemptions.²⁶

It is not surprising that when British author Jan Morris, on the eve of the surgery that would rid her of the male things that she called "protuberances" and "superfluities,"²⁷ strolled through the streets of Casablanca and on to the cusp of gender, she should experience her transformation in terms made available to her by a literary tradition.

It really was like a visit to a wizard. I saw myself, as I walked that evening through those garish streets, as a figure of fairy tale, about to be transformed. Duck into swan? Scullion into bride? More magical than any such transformation, I answered myself: man into woman.²⁸

26. The leading normative conceptions of human nature stressed in recent ethics and legal scholarship include utilitarian, Lockean, and Kantian anthropologies. I suspect, however, that a thematic study of traditional children's literature would reveal that for every depiction of mutual gain through trade, appropriation of the natural world through labor, or adoption of a universal law as a maxim of action, there might be a dozen depictions of frogs turned into princes, paramours changed to beasts or trees, witches going about in the form of lovely maidens, and other enchantments. See OVID, *METAMORPHOSES* (Rolfe Humphries trans., 1955), in which the poet uses the theme of shape-change to present a compendium of classical myths. Of special significance to transsexual transformations are "Sithon/Who alternated being man and woman," *id.* at 90; the prophet Tiresias, whom magic had changed into a woman and back into a man, required by Jove and Juno to adjudicate their dispute over which sex gets greater pleasure from lovemaking, *id.* at 67; Caenis, loveliest maiden in Thessaly, who demands after having been raped by Neptune that Neptune turn her into a man, so that she will not be wronged in this way again; as a man, Caenis/Caeneus proves to be a centaur-vanquishing hero, *id.* at 290-91, 299-301; and, above all, the story of female-to-male Iphis, *id.* at 229-33 (Iphis, born female but raised as a male by her mother to save her from her father who had vowed to kill any other but a male child, falls in love with beautiful Ianthe and Ianthe with her; their impending marriage bodes frustration and ruin for them until the Egyptian goddess Isis intervenes, turning Iphis into a man and bringing the marriage of Iphis and Ianthe to blissful consummation.).

27. JAN MORRIS, *CONUNDRUM* 141, 49 (1974).

28. *Id.* at 136.

Were it not for stories, transformation might seem an almost algebraic abstraction, and Morris's transsexual yearnings might be of merely medical or psychiatric interest. But there is something in stories or in the way that we appropriate them that leads us to search in Morris's own story for a moral. As an author, Morris could not help but see that just as the substance or meaning of her own transformation, in her ownmost self, was a prolongation of stories, so what to her was life would to all others be a teaching story. "Many people," observes Morris at the close of her autobiography, "believe that what has happened to me reflects more than a rare predicament, but in some way illustrates *la condition humaine*, like a Dostoevsky story; and perhaps it does."²⁹

How paradoxical that "many people" should see in the life of a person so rare as a transsexual a figure for the human condition, or, as I will call it here, human nature. After all, there are many more people (aren't there?) who feel at home in their biological or assigned gender than there are transsexuals; why, then, isn't the majority a better indication of human nature? Perhaps a solution to the puzzle is suggested if we look closely at the way in which Morris understands that her life ("perhaps") "illustrates *la condition humaine*." She says that ("perhaps") her life illustrates "like a Dostoevsky story."³⁰ I take this to mean that precisely because her predicament is regarded as unusual, and perhaps also because she faced it with intelligence and seriousness, Morris's life has features that are appropriate to literature.

If "many people" approach Morris's life in the way that they might approach literature, with an appreciation for a good story and a readiness to be taught something about human nature, so too does Morris herself. She says of her liminal stroll through Casablanca, in the precincts of the clinic where her surgery would take place: "It really was like a visit to a wizard." Was it "really" like this? (What does it mean for an event in life to be "really," not a reenactment of something that has happened in a story, but really "like" such a happening?) Did Morris really have wizards, *The Ugly Duckling*, and *Cinderella* in mind as she walked the

29. *Id.* at 171.

30. It is unclear whether Morris means that she finds her life story comparable to a Dostoevsky story or whether other people ("many") have drawn this comparison. Suppose that others have made the general observation that they find her life illustrative of the human condition in much the same way as a story, and that Morris herself is responsible for the specific analogy to Dostoevsky. Why would Morris, a writer by profession, liken her life's illustrative power to a Dostoevsky story rather than, say, to a story by Hardy, Eliot, or Balzac? And which Dostoevsky story does she have in mind? Which of Dostoevsky's characters does she think she most resembles? Does she mean by this comparison to stress her final freedom and responsibility, or to insist that her moral fate is inevitable?

streets, or is this a device that works well (she thinks) to convey the less coherent thoughts and moods that occupied her then? If she actually was thinking of those stories at the time, who or what was responsible for the “fit” between these stories and her liminal condition?

Let us grant, *apropos* of wizards, swans, and scullions, that fairy tales are well-suited to transformative crises of physical and cultural metamorphosis. Viewed from one angle, they remind us of magic, teach us that all is not as it appears, and impart a sense of wonder: all appropriate to Morris’s gender project. Yet fairy tales also teach, often not too subtly either, the moral theme of natural duties transgressed in unnatural acts.³¹ There are those who would say that a transsexual is unnatural, or that his or her gender projects—especially if they involve, as Morris’s did, sex-reassignment surgery—are unnatural acts.³² Is there something in the reality of Morris’s experience that, honestly avowed, leads her to adopt the stories best suited to its cognition and expression; or has she chosen stories that bring out features that please her?

Throughout this Article, I will be concerned with the inner phenomena of transsexualism: with the weight and feel of the former gender and

31. A good example of such a tale is Hans Christian Andersen’s fairy tale, *The Girl Who Trod on a Loaf*. HANS CHRISTIAN ANDERSEN, *The Girl Who Trod on a Loaf*, in ANDERSEN’S FAIRY TALES 83 (E.V. Lucas & H.B. Paull trans., 1945). Little Inger, having been sent into service with a rich family, comes to scorn her own poor but loving parents. Sent by her patrons to visit her parents and to bring them a loaf of bread, she instead uses the loaf for a stepping stone to help her cross the marsh without soiling her pretty shoes. But the loaf sinks into the marsh, and with it Little Inger, who is tormented in the foul underground dwelling of the Marsh Wife. Finally redeemed by love, so that she might redeem herself through compensatory charity, she at last becomes a tern and soars above the sea.

32. Steve, a female-to-male transsexual, told a transsexual support-group: “Listen, our big problem is our parents. [M]y folks gave me up for dead when I told them. . . . [M]y mother screamed and yelled and my father told me I was unnatural and not to come home again.” DEBORAH FEINBLOOM, *TRANSVESTITES AND TRANSEXUALS* 156 (1976). Lothstein reported, “In one case with which I am familiar, the patient’s massive scars were probably the result of the surgeon’s unconscious sadism and wish to scar the patient for ‘going against nature.’” LOTHSTEIN, *supra* note 11, at 293. For some evidence that “going against nature” continues to be a moral formulation that makes sense to people and performs work in the justification of legal holdings and ethical appraisals of conduct and character, see *Bowers v. Hardwick*, 478 U.S. 186 (1986) (Burger, C.J., concurring) (reporting a traditional belief that homosexual sodomy is unnatural and concluding that this belief supports state laws prohibiting it).

To describe an activity, whether it be a sexual activity or a gender project, as unnatural is both to condemn it and to offer a reason in support of the condemnation. The supporting reason can be worked out in a number of ways. For example, to say that an activity is wrong because it is unnatural may be to point to its contravention of near-universal human practice or to its dysfunctional or nonadaptive consequences for the individual or for the species. *The Girl Who Trod on a Loaf*, ANDERSEN, *supra* note 31, takes a different approach. The notion there is that a girl who fails to love her parents or to care for them in their need is an “unnatural child” who fails to perform natural filial duties. I discuss these natural duties *infra* notes 35-36 and accompanying text.

the call of the achieved gender, with doubt, qualms, and anguish, as well as with hope and celebration, with feelings of loss and abandonment, accomplishment and constancy. Are these claims, values, callings, and feelings simply there for the transsexual, to be reproduced by the phenomenologist and moralist as faithfully as the transsexual's language allows? Or are these experiences thematized by stories, so that it matters whether it was Hans Christian Andersen or Dostoevsky who lent shape, meaning, and justification to the turnings of the spirit?

My guiding assumption is that feelings such as loss and abandonment, moods such as hope and celebration, and attitudes such as anguish, are modes or structures of human existence, encountered in enduring symbols and elevated in thought through narrative. While it is possible for a person to impress upon his or her experience a symbol or story that is alien to it or unhelpful in bringing out its moral features, there is nothing inherent in the process of making sense of the modes or structures of existence by means of the coalescing power of narrative that justifies us in regarding that process as necessarily ideological or distorting.

Even on this assumption, a time is bound to come to each of us when, facing in moral seriousness the obscure turnings of our spirit toward new faiths, lands, loves, or genders, we confront our freedom to add or subtract from the stories that will lift these changes of heart out of obscurity and into reliable meanings on which we can act. I do not speak here of the lesser interventions that are typically available to us: the many versions of any one story among which we may choose (the version with the happy or the sad ending?), the variety of interpretations to which each version is open (so that we may induce the story to lead in desirable directions). Beyond these ordinary interpretive moves lies the marginal hermeneutic appropriate to self-transformability: the "opening of the canon."

The whole point of a canon, it would seem, is that it is closed, or nearly so, if not in principle then in practice. Those who would reopen the canon of Scripture to delete from it certain old texts or above all to add new ones, are in that act of reopening virtually sealing their identity as heretics or schismatics. Yet Christianity is itself a monumental revision of the canon: the creation of a Scripture which not only supplements existing Scripture but at one and the same time consummates it and declares it to be "Old." And in addition to that most obvious and most successful of openings of the canon, history affords many other examples: Gnostic "Gospels," or the Talmudic creation of a second tier of authoritative texts, or the works of the Kabbalists. Within that framework, how

can one evaluate the reopening of the canon, an act which is so palpably a demonic betrayal or a holy inspiration, depending on one's vantage point? Correspondingly: Is the transsexual saved or damned for reopening the canon of his or her body or of his or her ancient and authoritative "gender"? Is the transsexual who achieves a reforming story of his or her infantile and childhood origins, through the struggle of psychoanalysis or marriage or underground communities of like-minded searchers, as much the author of a new Genesis as the Gnostic or Kabbalistic writer; and should such reworkings of the myth of origins be praised as bold and responsible creations, or lamented as revisionism, epigonism, ideology, or utopia?³³

In the therapeutic encounter, should a transsexual embrace "having transsexualism" as a life-story that brings more coherence to life's fragments than the alternatives? Does adopting such a narrative of one's life require that older stories about oneself be abandoned or revised, and are these old stories, worn so close to the heart, of true value, or have they become (like Gollum's ring) excessively "precious"? Is there something irretrievably unique about one's personal gender anguish, or should one let go of claims to uniqueness and accept that one's inmost struggles are instantiations of an (albeit rare) "condition" or "syndrome"?

Similar choices arise in relation to one's body. Its responses to touch, the skills and powers that long habit or discipline has vested in it, all of these things can be accepted or questioned. To the extent that a

33. Ronald Garet, *Comparative Normative Hermeneutics: Scripture, Literature, Constitution*, 58 S. CAL. L. REV. 35, 89-102 (1985); PAUL CANTOR, ROMANTIC MAN: CREATURE AND CREATOR (1984); Ronald Garet, *Natural Law and Creation Stories*, in RELIGION, MORALITY, AND THE LAW: NOMOS AT XXX, 218, 241-42, 248-51 (J. Roland Pennock & John Chapman eds., 1988) [hereinafter Garet, *Natural Law*].

Harold Bloom might celebrate a transsexual for performing a "strong reading," that is, a "misreading," of the text of his or her childhood gender identity. HAROLD BLOOM, KABBALAH AND CRITICISM 97, 125 (1983). Bloom makes his normative position regarding the revision of origin-myths clear when he says, "Time, history, freedom, and the authentic self are necessarily part of error or the swerve from origins, rather than part of the stasis of origins." *Id.* at 90. Three problems, however, may give us pause. Is it clear that identity, or (less grandiosely) one's memories of childhood, are texts that can be read or misread? (Is "reading" here an analogy or metaphor? How close or helpful a metaphor is it?) If memories of childhood gender-beliefs or gender-feelings are indeed texts, and subject to readings and misreadings of various kinds, how are we to know whether another person's—or indeed our own—readings are "misreadings"? (How are we to establish the text, that we might distinguish a reading of it from a misreading?) Finally, if the relevant childhood memories are indeed texts and are indeed subjected to "strong misreadings" by a transsexual, should such "belated creativity," *id.* at 73, simply be celebrated, or should one approach it with misgivings? Knowing, for example, how dictatorships and empires establish themselves on a footing of "strong misreading" of the myths of origin, perhaps we should be hesitant to encourage—in others or in ourselves—a comparable inclination to revisionism.

person's body is a record or archive of his or her promises, commitments, losses, hopes, and anguishes, he or she must decide how far and in what respects to adopt conservative or revolutionary stances to the personal history locked into nerve or muscle.³⁴

In all of these ways, gender seems at first to be composed of ancient features of the self, older than any choices that one can recall making. Should one pay these features the respect of not looking too closely into them? Should one trust the appearances, or should one make bold to dig beneath them, knowing that once one begins to excavate, the surface phenomena can never be experienced with the same naiveté?

III. ABANDONMENT

The self-transformer necessarily leaves something or someone behind. The person who is from one perspective an immigrant, a symbol of hopeful struggle toward the future, is from another perspective an emigrant, someone who leaves his or her homeland behind. The religious convert, or so the Bible stresses, is one who must break old loyalties to family. In this Part, I will sketch some features of the ethics of abandonment. It is the burden of such an ethics to consider the claim upon us of the things we leave behind, and so to address one of the main features of self-transformability. As applied to transsexuals, the questions posed by the ethics of abandonment include these. In accepting or fostering a sense of himself or herself as of the nonassigned gender, does a transsexual abandon something that lays a claim to constancy? Are our bodies committed to our keeping, and if so, does a person who chooses to undergo sex-reassignment surgery betray that commission? Or might a transsexual's gender project be a form of faithfulness?

In the first section, I offer an explication of abandonment in terms of unfaithfulness, repudiation, and betrayal, and illustrate these concepts by reference to interpersonal familial duties of a male-to-female transsexual who has a wife and children. I then ask whether these same concepts are applicable to such a person's relation to her own body and gender of assignment: whether her gender projects can or should be thought of as abandonments.

34. Rolfing, or deep structural massage, is a controversial technique which its practitioners claim can release a person from the grip of anxieties, defenses, and blockages that have become locked into the muscle masses. In experiencing the painful manipulation of these tissues during massage, a person is said to be able to recognize and let go of nonadaptive defenses, much as the analysand is supposed to do in the course of psychotherapy. IDA P. ROLF, *ROLFING: THE INTEGRATION OF HUMAN STRUCTURES* (1977).

The second section presents a thought experiment designed to apply the ethics of abandonment to a variety of changes that one might effect in one's life. The purpose of the thought experiment is to help identify any moral qualms that a person might have in leaving behind his or her gender of assignment or endowment of sexual organs, scruples that would distinguish transsexual gender projects morally from other transitions such as divorce or career changes. The experiment offers a way of thinking about the question of whether there is anything especially unnatural in a moral sense about these gender projects.

In the third section, I return to the language that some transsexuals have used to describe their sense of what they are achieving and what they are leaving behind in carrying out their gender projects. At issue is the question of whether these transsexuals understand themselves to be leaving behind or realizing (or both) a value that lays claim to them. I pursue the question of whether the transsexuals whose language I discuss can be said to have chosen their gender, or to have acknowledged a gender reality that is always "already there" for them. To the extent that the latter is the case, the problem arises of how something that was not chosen can lay a claim against abandonment or justify the abandonment of something else.

To explore in greater depth the idea that a calling to be faithful to a good that in a sense one did not choose can justify the leaving behind of ties ordinarily seen as binding, the following section takes up Biblical accounts of conversion and compares conversion to transsexual gender projects.

The final section indicates a limited sense in which transsexual gender projects can be considered as preferences within a preference-utilitarian scheme for assessing these projects. The section concludes by considering and largely rejecting some natural-law ways of evaluating transsexuals' gender projects as abandonments of a certain kind: repudiations of intrinsic goods.

A. THE ETHICS OF ABANDONMENT

The immigrant offers a vivid picture of self-transformation in the life of the human person. Coming first into view is the dramatic power of the story of the immigration, a story that descendants turn to again and again in awe and respect, and with a never-satisfied desire for insight and understanding. No detail of the homeland that was left behind, the reasons for the leaving and for the choosing of the adoptive country, the

hardships encountered, the hope maintained, seems too minute or particular to be recalled and scrutinized and tested for its possibly universal significance. Stories of immigration exemplify self-transformability in that the details that make each story unique deserve careful attention, even as these differing stories are approached from a common angle of respect and something close to admiration. The tendency to view such stories with respect, and with faith that they have something to teach, is bolstered by culturally celebrated narratives of redemptive entries into the land: the Pilgrims into New England, the Israelites into the promised land. A serious moral analysis of any one person's immigration, however, must look at these standard narratives of redemptive immigrations with a critical eye and must make distinctions these narratives sometimes do not. What drove a person to leave his or her home, what the leaving and the coming meant to him or her, who was left behind (and to what fate)—all of these questions and more seem relevant to the morality of the act of immigration, as they do to human self-transformability generally. And yet the background wish to view such sea-changes with special respect, as especially potent in their significance for human life, survives the recognition of the relevance of detail. The story of the immigrant, in which we come to recognize something of our humanity, seems normative in a way that is resistant to morality's fine-grained examination.

Clinics to which transsexuals come in quest of sex-reassignment surgery constitute an Ellis Island of gender immigration. To these clinics gender immigrants come, as immigrants have always come, animated as much by personal hopes as by impersonal forces of social change and upheaval. But while Liberty's arm lifts her lamp beside the golden door in poetic principle if not in historical reality, welcoming those who would make the transoceanic transition, there is not even this measure of symbolic solace for transsexuals, the wretched refuse of society's gender classifications. No comparable public symbolism mitigates or condemns the rejection and even revulsion that transsexuals often face.

Both the immigrant and the convert meet with very different reactions, depending, as it were, on whether they are coming or going. Officially, the immigrant and the convert to one's own religion may be welcomed, even if the reality lags behind due to nativism or suspicion about motives or sincerity. But the emigrant and the convert to a different faith may be regarded as morally flawed: unfaithful, disloyal, perhaps even treasonous. Transsexuals, by contrast, are widely viewed with hostility or distaste whether they are entering or leaving one's own gender.

It is not my goal to take the measure of this social response to transsexuals, with its peculiar mixture of repugnance and fascination. Nor shall I offer explanations for it, although perhaps explanations can be sought in such directions as the possibility that people feel threatened in their own gender identity and sexual orientation by people who trespass across the usual classifications. Especially for feminists and others who have faced up to the political realities of gender with resolve and dedication, transsexuals may prove offensive for the opposite reason: they are seen precisely as reinforcers of existing gender stereotypes and as new enemies of women's autonomy, privacy, and community. The question to be pursued here is whether there is a moral basis for disapproval of the gender projects of transsexuals: the projects of being in or of the nonassigned gender, or aspiring to be so, or regarding oneself as "having transsexualism," or seeking and undergoing sex-reassignment surgery.

Let us begin with moral questions that might arise when transsexual gender projects meet resistance within marriage or run afoul of traditional parental expectations. Is a father, say, behaving responsibly toward her children, if she follows the path toward womanhood that seems to her to be true and right for herself? And if her wife objects to her following this path, above all if it leads to surgery, is the husband failing in her marital obligations if she chooses to have the surgery performed? These questions have been explored from a variety of perspectives,³⁵ and I do not intend here either to comment on answers that have been given or to provide my own answers. Instead, taking first the topic of responsibility toward children and then the issue of marital obligations, I will introduce certain moral conceptions so that I might then apply them to the less-well-explored terrain of a person's responsibility (if any) to his or her own gender identity or body.

A traditional view of a father's responsibilities toward his children might include the following features.³⁶ On this traditional view, once they come into existence, children are regarded as presenting to their father a unique good, a value that lays claim to him, which he can discern and on which he can act. Second, a father owes natural duties toward his children. He ought to love and care for them just in virtue of his special relation to them. As the words "love" and "care" suggest,

35. Stephen Toulmin et al., *Marriage, Morality, and Sex-Change Surgery: Four Traditions in Case Ethics*, 11 HASTINGS CENTER REP. 8 (1981).

36. I am content to set out these standard features without testing, honing, or questioning them, or generalizing from paternal to parental obligations. My aim here is not to analyze familiar aspects of special interpersonal relations but to ready them for application to the intrapersonal character of self-transformation.

this duty extends both outwardly, to the giving of effective support and nurture, and inwardly, to attitudes of special affection and concern. Finally, this duty, or at least its outward extension, is ratified and strengthened by obligations that a father incurs, especially if he undertakes or agrees to father children, or leads children to rely on his being their father.

Each of these three aspects of a father's moral relation to his children is subject to a form of moral failure that I will characterize generally as an *abandonment*. First, a father who turns away from his children may be *repudiating* a good, although in special circumstances this may not be so. (A father who leaves the home and resolves never to make contact with his children again may be *embracing* the paternal good that lays claim to him if, say, he is a hunted revolutionary whose presence in his children's lives would threaten them with death.) Second, the kind of natural duty that a father owes to his children, or a child to his or her parents, is one that requires *faithfulness*. Faithfulness suggests not only loyalty but also a certain basis for loyalty in a relationship and in the worthwhileness of the object. Faithfulness likewise suggests both the outward extension of the loyalty required, the actual acts of faith, and also its inward extension, the dedication or trust one brings to the relationship. Finally, when a person undertakes to become a father, accepting the commission of fatherhood, he is bound by an obligation to care for the children committed to his charge. I will call this undertaking a *commitment* or a *commission*, and I will call the abandonment of those committed to his charge a *betrayal*.

The ethics of abandonment can be worked out in more or less stringent versions. I will not attempt here to formulate such versions or to decide which of them seems most plausible. Instead I will assume that there are circumstances that might (partially at least) excuse abandonments, but I will not offer an account of those circumstances. Similarly, I assume that a person may or even must at times choose among evils, and that abandonments might be justified if the only alternatives to them are worse. (Perhaps under such circumstances we should not even speak of abandonments.) Contemporary views of a father's moral relation to his children are at least somewhat permissive in that fathers are allowed not only to exit their children's lives (so long as, under certain conditions, child care payments are made), but to do so with little social denunciation or even disapproval.

Even if the traditional ethics of abandonment are not widely entertained today, or are not applied in their most stringent possible formulation to the case of a father's moral relation to his children, there is still a sense that a man who fathers children and then turns away from them for light or selfish reasons has done something bad. Desertion is understood as abandonment. If that is so, then we can inquire how far a father's decision to undergo sex-reassignment surgery is morally analogous to desertion. We can ask whether a father, in adopting a cross-gender identity or in choosing to undergo sex-reassignment surgery, is repudiating a good or value that inheres in being a father to her children, is being unfaithful to her children, and is betraying those committed to her charge. Whether reasons for surgery are "light or selfish" may prove hard to decide.

Comparable questions may be asked about a husband's transsexual choices or conduct in relation to her wife. Is a husband who decides to undergo sex-reassignment surgery, despite the objections of her wife, repudiating a good or value that inheres in her marriage and that lays claim to her? Is she being unfaithful to her wife? Is she betraying a person to whom she has made vows and who, in virtue of those vows, is committed or entrusted to her "having and holding"?

I do not raise these questions in order to supply answers, and especially not answers meant to apply categorically to all father-child relationships or to all marriages. For example, the question of whether a husband betrays her wife in electing to undergo surgery may depend on what vows were made, what obligations have been incurred over time, and just what "objections" are entered (and with what basis and force) against the proposed surgery. My present aim is only to transfer these features of the values that lay claim to us in interpersonal relations to the intrapersonal context of a person's own gender identity and troubled embodiment. Having characterized certain familiar duties or obligations in terms of claiming values whose claim upon us can be met or unmet in various ways, I want to ask whether comparable duties or obligations (and corresponding breaches or violations thereof) arise in the self-transformation itself, analyzed as a domain of personal moral life.

I want also to pose a second question. A dilemma confronts a person who believes herself to be a woman or aspires to be so but who is married to a woman who wants her to be a man, and who has children who must be taken into account. Surely any moral assessment of this dilemma would be incomplete if it did not assay the moral quality of these transsexual aspirations. Do these aspirations count only for

whatever pleasure they would promote (or pain they would assuage) in the transsexual's life, or do they weigh in on some other scale as well? I will assume for the present, without looking closely into the matter, that a transsexual can say more on behalf of her gender project than that it would (she thinks) make her better off. I assume that values such as personhood, creativity, self-mastery, and self-worth may also be at stake in such a project. On this assumption, even if the husband's decision to have surgery is a repudiation, an unfaithfulness, and a betrayal, there may still be something to be said for the decision, even if it finally seems wrong.

I make this assumption in order to bring into focus a somewhat different way of assaying the value of the transsexual project. What I want to know is whether this project, this letting go of who one thinks one really never was in order to become who one thinks one really is, can itself be regarded as a moral response to values that lay a claim. Might a person be repudiating that which is a good for her, and which lays claim to her, if she abandons her project of being and becoming a woman? If she understands herself to be truly a woman, might she be unfaithful to herself or to her nature if she decides against declaring and actualizing this truth? Is there something committed to her charge that she would be betraying if she were to accommodate herself to the pressures—among them morally substantial ones, perhaps—to just flat-out be the man she has always appeared to be?

Giving an affirmative answer to these questions is a way of making sense of the idea that self-transformation is natural in a morally meaningful sense. To be sure, even if one person's gender does lay claim to him or her in any of these ways, it does not follow that everyone's does. And even if everyone's did, that would not establish that self-transformation in any broad or general sense is incumbent upon us as human persons. The possibility worth exploring is the more modest one: that sometimes we may need to make palpable and consequential changes in our lives in order to be true to our nature. Of course, the opposite result also must be entertained as a possibility: namely that in the course of making these changes a person is repudiating, betraying, and being unfaithful to that nature.

The whole notion of having a nature, of course, is widely and properly regarded with skepticism, at least when that notion is intended in a moral way. We recall that historically, the notion of having a nature was made to do a large share of ideological work, supporting (or giving the appearance of supporting) both chattel slavery and the inequality of men

and women in society. It is worth asking, however, in an age that has learned to be wary of nature as a moral concept, whether views of nature's moral significance persist that are worth retaining. In particular, we might ask whether we implicitly make use of a notion of nature as that which lays claim to us and is subject to our repudiation, infidelity, or betrayal.

I will pose this question preliminarily in the form of a thought experiment, before looking into transsexuals' self-descriptions.

B. SELF-TRANSFORMABILITY AND ABANDONMENT:
A THOUGHT EXPERIMENT

Carrying out a thought experiment in which hypothetical changes in one's life are explored, so as to elicit inward reactions ranging from delight to repugnance, may be no more than an exercise in conservatism. After all, given that each of us already has a situated life with its own history and trajectory, what is alluring and what is not is bound to have some relation to our present interests. Still, so long as the limits of the device are kept in mind, it may be worthwhile to ask which prospective changes bother us and in what way, especially if patterns of response tend to emerge.

The thought experiment proceeds along two dimensions. The first dimension consists of an array of possible changes in one's life. These changes include emigrating from one's native country (with or without renunciation of citizenship), converting to a new religion, changing jobs, changing professions, breaking up with a long-time friend or lover, getting a divorce, and perhaps many other salient changes in life. Regarding oneself as of the nonassigned gender, or aspiring to be so, or pursuing sex-reassignment surgery, should be included in this array. Obviously, it is not possible to offer any decisive criteria for what should be on this list and what should not. Perhaps it is enough to notice that all of these changes lend themselves to sharp transitions, accompanied often by a sense of crisis or panic as personal identity is placed in issue. Further, in each case there is at least the possibility of abandonment, since there is something preexistent that is to be left behind. Thus, the question of whether a change such as falling in love ought to be on the list may depend on whether it seems that there is something anterior—one's privacy, solitude, or loneliness perhaps—that one is giving up in the course of the change.

The second dimension of the thought experiment sorts out different ways in which a person can be alive to these life-changes as personal

possibilities. These ways can be thought of as responses to a range of questions. One question, a fairly "safe" one even for a person generally averse to changes in life, asks whether one is happy in one's job, profession, religion, gender, et cetera. This way of posing the question barely gestures in the direction of a change. Or it is possible to render a change more visible to the mind's eye, by asking whether one would like to make a change in one's job, profession, et cetera. Or the change may be made even more palpable: Would you like to be a talk-show host rather than a law professor? And more specific: Would you prefer to be living with *X* rather than with your present spouse or lover, *Y*? Ultimately, it is possible to pose the question in such a way that it asks for a performative declaration rather than an expression of preference. Obviously, the latter is much more safe than the former. It is one thing to say in the safety of contemplation what one would like to be or do, and another to declare oneself and in that way set out on the project.

A person carrying out the thought experiment may experience a number of reactions as various changes arrayed on the first dimension are entertained in the ways, some of them more speculative, others more practical, arrayed along the second dimension. For example, one reaction might be, "That doesn't appeal to me." Another is, "That interests me, but I have doubts about it." For example, I might be interested in giving up my job as a law professor and working instead as a talk-show host but have doubts about whether I would be good at interviewing guests or about whether I would be able to support myself or my family. A third possibility is, "That appeals to me, but I have qualms about it." "Qualms" names a loose collection of worries and reservations that includes ethical scruples about abandonment, and a great deal more besides. A person's qualms about pursuing a divorce, for example, might include presentiments of great personal loss. A person who grieves proleptically over a loss that lies up ahead is experiencing a different qualm, I think, than a person who feels claimed by a good and for that reason is forewarned that turning from it is a form of abandonment. What makes abandonment and loss different from one another, and how one might interpret one's qualms so as to distinguish the two, are clearly very difficult questions. It is also difficult to distinguish presentiments of abandonment from internalized social voices speaking disapprovingly of one's yearnings or plans. For example, a person may hear "alarm bells" go off internally at the thought of taking steps to convert from Judaism to Catholicism or to get a divorce, but whether those alarm bells are presentiments of abandonment or the scolding tones of internalized parental disapproval, or both, may be hard to sort out.

How might one's response to questions about transsexual gender projects—especially when those questions are of the more practical sort—compare to equally practical questions about other changes on the list? Is one more likely to experience qualms, and not just lack of interest, in experimenting with the thought of carrying out transsexual gender projects than in experimenting with other projected changes? Are those qualms about transsexual gender projects anticipations of personal loss, or the ringing of internalized alarm bells, or do they take the form of presentiments of abandonment? If practical questions about transsexual projects evoke the morally serious kinds of qualms, then surely there is some cause to retain the concept of natural endowments as a moral idea. For if the accident of one's birth as biologically male or female can form the basis of values that lay a claim and the abandonment of which, even counterfactually, can give rise to moral qualms, then the notion (roughly) that nature can obligate is not as dead as we might otherwise think.³⁷

C. GENDER AS A CLAIMING VALUE

If non-transsexuals alone experienced such qualms, the result might be written off as an artifact of the conservatism of the thought experiment. But perhaps some transsexuals have presentiments of abandonment and must wrestle with the deep issue of whether these claims are to be honored as genuine goods or struggled against as tokens of social expectations. For example, L.S., a female-to-male transsexual, reports: "I have kept a diary since 1964 (age 13), and, on reading back, I find early mention of my wish to be a boy and my interest in homosexuals. I knew this was 'wrong.'"³⁸

Before she made the decision for surgery that transported her into her own transformative fairy tale in Casablanca, Jan Morris addressed the themes of continuity, betrayal, and nature, in the course of inducing feminizing changes in her body through hormonal and other means:

37. Among the difficulties we face in thinking this through is the fact that what we have mental and emotional access to, what we feel that we would be giving up and gaining in the course of gender projects, is not nature per se but nature transformed by culture. The gender whose soft glow we appreciate in ourselves, if such appreciation exists, is not the primitive grain of natural sand but the sphere accreted around it by repeated applications of society's nacreous coatings.

38. Coleman & Bockting, *supra* note 16, at 72 (quoting L.S.). Perhaps the diary itself would help answer two questions. First, what does L.S. mean by "wrong," carefully guarded by scare-quotes? (Does L.S. mean only that he knew that these "interests" were socially disfavored, or did he also inwardly feel some compunctions about his "wish"?) Second, how distinct for adolescent L.S. were his "wish" (to be a boy) and his "interest" (in homosexuals)?

All I wanted was liberation, or reconciliation—to live as myself, to clothe myself in a more proper body, and achieve Identity at last. I would not hurry. First I would discover if it were feasible. Slowly, carefully, with infinite precaution against betrayal, I began the chemical experiments by which I would lose many of my male characteristics, and acquire some of the female; then, if all went well, several years later I would take the last step, and have the change completed by surgery.

To myself I had been woman all along, and I was not going to change the truth of me, only discard the falsity. But I *was* about to change my form and apparency—my status too, perhaps my place among my peers, my attitudes no doubt, the reactions I would evoke, my reputation, my manner of life, my prospects, my emotions, possibly my abilities. I was about to adapt my body from a male conformation to a female, and I would shift my public role altogether, from the role of a man to the role of a woman. It is one of the most drastic of all human changes, unknown until our own times, and even now experienced by very few; but it seemed only natural to me, and I embarked upon it only with a sense of thankfulness, like a lost traveler finding the right road at last.³⁹

These “experiments” in bodily change are presented not as abandonments, but as realizations of “the truth of me,” for “I had been a woman all along,” and these changes which “seemed only natural to me” will enable her “to live as myself,” “achieve Identity at last,” and find “the right road” like a lost traveler. The changes to the body are “experiments” indeed, but not in the Romantic or Faustian sense; Morris is no Dr. Frankenstein, breaking down the barriers that separate life from death (or women from men), or preferring transcendent knowledge to loving human relationships.⁴⁰ Morris is not her body; instead, her body is something that she, Morris, can “adapt,” can choose like a proper suit of clothing. Even the consequent and expected changes, the different social responses and (what seems so drastic to us) the changed emotions and the possibly changed abilities, are seen not as abyssal losses or gains to the self but as secondary effects that do not threaten “the truth of me.” And yet these experiments are conducted “with infinite precaution

39. MORRIS, *supra* note 27, at 104.

40. See *infra* text accompanying notes 96-114 (discussing Romantic objections to certain extreme forms of human creativity).

against betrayal.” We are left to guess who or what was in danger of being betrayed, and to whom.⁴¹

This intermediate period in the course of a gender project, when “experiments” in bodily change are underway, must be particularly subject to the conflicting attractions of the former and achieved genders. The term “experiment” aptly conveys the delicacy of this intermediate position; the former gender cannot safely be left behind before the new or real gender is fully achieved. Of course, it is possible to simplify the situation through schemes of thought that negate the former gender, so that it does not exist to exert gravitational force upon the self. Morris leans in this direction: “To myself I had been woman all along, and I was not going to change the truth of me, only discard the falsity.” Even a falsity, however, once it colors habits or expectations, resists being discarded; and although, in principle, this resistance must be distinguished from the qualms and presentiments of abandonment associated with claiming values, in practice no degree of scrupulosity is sufficient to insure that one can tell the difference.

Another approach to reducing the tension or dissonance of competing genders is to see oneself not as “experimenting” but instead as “quitting.” A person who has “had it” with a marriage or a job might put an end to the relationship by announcing, “I quit.” This approach favors a view of the terminated relationships as enterprises to be judged according to the measure of how well they are “working,” as in: “This just isn’t working; I quit.” Once relationships are expected to “work,” those which do not are discredited or devalued. Thus, a person who quits her gender because it doesn’t “work” for her has taken a view of the former gender that, like Morris’s notion of its “falsity,” sets it up as the sort of thing that cannot assert a claiming value.

The tensions of intermediacy might also be thematized in terms of relief: the kind of relief one feels in finally being able to take off a mask. The satisfactions that loom ahead in the achieved gender may seem all the greater while the miseries of the former gender are still there to be felt. Or, to the immoralist who must experience a pleasure as perverse in

41. Morris’s “precaution against betrayal” might mean an effort on her part to avoid divulging (betraying) what was still, at that time, her secret. But she had deeper concerns that might be read as qualms about abandonment.

Perhaps I depended upon that very clash between sex and gender, so that to tamper with it would be gambling with my very personality! Perhaps it was a condition of my gifts! Perhaps, if I sometimes thought I was no more than a living parable of the times, to change myself would be to abort the truth—to abort, in a double sense, reality itself?

MORRIS, *supra* note 27, at 50.

order to fully savor it, the attractions of the new gender may be dependent on continued awareness that one is repudiating the claims of the old.

For many, sadly, the whole tonal quality of one's relation to one's gender, as fact and as possibility, may be dominated by feelings of shame. A person overwhelmed by shame toward his or her gendered body has both a relation to that body and a characteristic way of trying to conceal it⁴² or turn away from it. It would not be a cause for surprise as much as for sadness if a female-to-male transsexual were to share feelings expressed by Renata, reported in an early case study of hysteria.

When I looked at the shape of my body I was ashamed of being a woman. I wondered what men really thought about women—I was humiliated being a woman and annoyed to feel anyone looking at me. Being fat seemed to me particularly humiliating because the shape of my body seemed even more to blame. I really didn't want anyone to be able to distinguish the female outline of my body beneath my clothes.⁴³

Renata "is so appalled by the thought of her own body becoming fat that she gets up in the night and tightly straps herself into her corset to prevent her body swelling up in the night."⁴⁴ Compare Renee Richards (Richard Raskind), who as a youth detested her male organs and bound them to her body with wire and masking tape.⁴⁵

There are no doubt many other ways in which one's assigned and aspired genders address one another during the awkward period (in those for whom such a period can be said to exist) in which the one is not yet "former" and the other not yet "achieved." Whether a person's gender project is or is not an abandonment may depend on how this intermediacy is lived out. Rather than attempt a more complete inventory of the ways in which the claims of the genders weigh in against one another, I now turn to the mystery of how the achieved gender acquires whatever claiming value it has.

42. The story of Adam and Eve, who as created are unashamed of their nakedness but who, in hiding from God, also hide their sexual organs with fig-leaf aprons, is surely one of the most important narrative resources for thematizing this shame. Genesis 2:25, 3:7. (Throughout this Article, all citations to and quotations from the Bible are to the Revised Standard Version unless otherwise stated.)

43. L. Schnyder, *Le Cas de Renata: Contribution a l'etude de l'hysterie*, 12 ARCHIVES DE PSYCHOLOGIE 201, 218 (1912), *quoted in* PETER STALLYBRASS & ALLON WHITE, *THE POLITICS AND POETICS OF TRANSGRESSION* 184 (1986).

44. Schnyder, *supra* note 43, at 218, *quoted in* STALLYBRASS & WHITE, *supra* note 43, at 184-85.

85. To her analyst she repeatedly uttered the formula: "Woman-Shame-Fat." *Id.*

45. See *infra* text accompanying note 132.

One way to formulate the problem is to distinguish between two ways in which a transsexual could come upon his or her achieved gender. One way is to encounter this gender as a simple fact of one's life, comparable to the way in which most people describe themselves. A male-to-female transsexual, no less than a non-transsexual woman, might say, "No matter how far back I go, I have always been female. I can't recall any time in my life when I wasn't." A second way in which a transsexual might encounter her achieved gender is to choose it in the way in which one chooses, say, to be an engineer.

The nature and source of the achieved gender's claiming value seem mysterious on either version. The first version generates the puzzle of how something one did not choose can give rise to moral claims.⁴⁶ The second version gives rise to a different problem. Let us assume that on the gender-choice account, choosing a gender is indeed more like choosing a profession than choosing a shirt. (If the latter, there is no more creation of a claiming value than in the no-choice account, for a person who does not like the chosen shirt can always return it, give it to someone else, or buy a new one without moral qualms other than those connected with frugality.) If the choice of a gender, like the choice of a profession, involves the making of commitments, then it is not hard to see how claims arise. But does gender, like a profession, lay a claim to *be* chosen? A person who chooses to be an engineer may do so with the purpose of developing expertise to build a safer or more productive world. A career in medicine may lay claim to be chosen because of the value of healing the sick. But what comparable claim is entered by the gender one chooses?

Rather than solve these problems, I wish to dissolve them by denying that the two versions I have given of encountering the achieved gender, the no-choice account and the choice account, exhaust the universe of possibilities. I discuss below the idiom that many transsexuals use to describe their situation and that arguably adopts the no-choice view: "I am a man trapped in a woman's body" (or vice versa).⁴⁷ Here I want to

46. I do not mean that moral claims can result only from deliberate choice. Counterexamples abound. It is often thought that principles of corrective justice give rise to moral claims when one injures another negligently or at least recklessly; obligations may be incurred through the reasonable reliance of others or through one's own tacit consent. Further, it is plausible to regard goods or worthwhile ends as independent of or prior to choice. On this view, if friendship or knowledge are good things, worth pursuing, this is not because my choice makes them so; rather, I choose to pursue them because they are good. Yet on the surface of things, at least, it is not clear that the "call" of the achieved gender has much in common with either unintentionally created obligations or the intrinsic goods that are prior to choice.

47. See *infra* notes 115-44 and accompanying text.

consider how choice (or something like it) operates in the gender projects of at least some transsexuals, and to consider the implications for the ethics of abandonment of the senses in which one's aspirational gender and the good it instantiates may be prior to choice.

I enter this topic with an assumption that might be captured in the apothegm that some things we choose, and some things choose us. A person who is born in a male or female body is like a person who is born and reared in an Orthodox or observant Roman Catholic family in the sense that a central feature of personal identity was not "chosen," at least in the sense of "selecting from a menu." This is not to deny that gender or religious identities may be chosen through the marginal, somewhat covert, and incremental events that together lead us to speak of "tacit consent." What was never chosen from a neutral position, in a great "big bang" of choice and promise, may be slowly and almost invisibly chosen in the course of the daily round of external and internal dealings. Yet the existence of tacit consent, to one's gender or one's faith, should not blind us to the fact that the depth and intensity of our anguish over abandonment is by no means directly proportional to the quality or the quantity of choosing that goes into a relationship, identity, or commitment. Most of us did not choose our nationality or citizenship, for example, in the same sense or even to the same extent that we have chosen our club memberships; yet a serious contemplation of changing citizenship might well evoke a sharper presentiment of abandonment than a serious contemplation of changing lesser yet better-chosen memberships.⁴⁸ If "having a gender" teaches us any part of what it means to "have a nature," this is because it reveals to us how that which we never chose (our assigned gender, our achieved gender, or both) has yet the power to claim us, and to evoke the anguish of abandonment.

Yet there are asymmetries in the three comparison points: gender, ascriptive faith, and citizenship. For many, renouncing one's native religion is not only a *kind* of unfaithfulness; it is the *normative* unfaithfulness, the figure for all infidelities. It is the abandonment against which the faith warns. By contrast, renouncing one's citizenship in country *X* and naturalizing as a citizen of country *Y*, while perhaps experienced as a kind of abandonment, is not yet treason, which is the definitive betrayal of citizenship. Those whose gender is exited by the transsexual presumably do not feel comparably betrayed by this act. Whether renouncing one's gender of assignment is more like conversion, naturalization, or

48. MICHAEL WALZER, OBLIGATIONS: ESSAYS ON DISOBEDIENCE, WAR, AND CITIZENSHIP 10 (1970).

treason may depend on what "having a gender" actually means to a particular person.

Paula, for example, a post-surgical male-to-female transsexual, does not describe her female gender as a fate that is prior to choice: "I have considered my female identity as a goal rather than a given (however far back I seem to trace it)."⁴⁹ Phil/Helen, who says "I want to be accepted as a man who wants to be a woman," very much sees her female gender identity as a goal, even an ideal, and not as a *fait accompli*.⁵⁰ It is not enough for her to be accepted socially as a woman, an acceptance that rests on the assumption that gender simply inheres in or attaches to the person; since her deepest identity is as a *man who wants to be a woman*, acceptance means validation of that goal or desire. Jan Morris reports that as far back into her life-history as she can see, her identity was always bound up with a "riddle" or "enigma" of gender, a puzzle that provides the title, *Conundrum*, for her autobiography. Yet she can recall a specific time and setting in her life, in the cathedral school of Christ Church College in Oxford, in which "[t]he bright-lit circle around the choir stalls became as it were my own, and it was there more than anywhere else that I molded my conundrum into an intent."⁵¹ In this marvelously suggestive passage, Morris brings her transsexual identity out of the mysterious darkness of the sanctum and into a clearing of light; she makes this clearing her own space, and in that space fashions her own identity. And the content of this appropriating self is creative in the way that a sculptor molds the clay (or, as in Genesis 2:7, God molds Adam from the soil): "I molded my conundrum into an intent." The conundrum, like the clearing of light, is owned; it is not the self, but the substance of which the self takes charge and accepts responsibility. The intent to be a woman is not decreed by childish emotions, family dynamics, or hormones; it is a product of the creative self.

By contrast, when Morris describes her much later and more palpable act of self-molding, the undergoing of sex-reassignment surgery, her language is different.

It was true that a grand sense of euphoria now overcame me, in the fulfillment of my life's desire, so that I almost began to forget the old miseries and conflicts. I knew for certain that I had done the right thing. It was inevitable and it was deeply satisfying—like a sentence

49. FEINBLOOM, *supra* note 32, at 151.

50. *Id.* at 199.

51. MORRIS, *supra* note 27, at 18.

which, defying its own subordinate clauses, reaches a classical conclusion in the end.⁵²

The happy and gratifying transformation of the body is described as "inevitable,"⁵³ as though it did not depend on an "intent" which the self had "molded" out of the clayey conundrum. Yet the inevitability is doubly qualified, once by honest reporting of the feelings and again by the syntax of the report. The euphoria and fulfillment do not eclipse "the old miseries and conflicts," which are still recalled, and which continue to play their part in the meaning of a life in the way that the subordinate clauses function, albeit transcended, in the meaning of the sentence that achieves a classical ending. These rich associations to old unhappinesses, which bracket the brief and bald claim "I knew for certain that I had done the right thing," do not so much falsify that claim as endow it with a certain irony.

The post-surgical euphoria motivates or is motivated by a newly creative misreading of what went before. Compare what Morris has to say about an earlier phase, prior to surgery, in which she had adopted women's clothes and the full-time identity of a woman.

[I]t is true that though that double world of mine offered hazards and humiliations of its own, still it was full of fascination. It suggested to me not the solution, but more the dissolving of my conundrum. The riddle seemed to be falling into its separate parts, ready to be reassembled in a better light.⁵⁴

Here Morris presents herself not as taking a step which is apodictic, inevitable, and complete, but instead as subjecting herself to a Wittgensteinian *Sprachkritik*, dissolving her conundrum and reposing it anew, or bringing it once again into the clearing of "better light."⁵⁵

52. *Id.* at 145-46.

53. Morris also describes this "inevitability" in more concrete terms: "Powers beyond my control had brought me to room 5 at the clinic in Casablanca, and I could not have run away then even if I had wished to." *Id.* at 139.

54. *Id.* at 121.

55. As her book nears its conclusion, Morris once again gestures vividly toward inevitability, this time in connection with the overall course of her life. Here—perhaps not surprisingly—inevitability is proclaimed in dialectical reaction to equally extreme metaphors of autonomy shoved her way. Some people

wrongly suppose that I have chosen my own path. They think I have been doubly free. They quote to me W. E. Henley: "I am the master of my fate: / I am the captain of my soul," when they should be quoting Cecil Day Lewis: "We came because our open eyes / Could see no other way."

Id. at 167. In addition to illustrating a kind of *lex talionis* for maudlin poetry, this passage reveals how very difficult it is to pack the fragile phenomena of gender transformation in metaphors that neither shield them from view altogether nor fully expose them to psychiatric, ideological, or apologetic breakage.

These self-reports exhibit wrinkles of responsibility and voluntarism, and complex foldings of the self, that psychological doctrine sometimes seems bent on hammering into a flat determinism. One psychologist, for example, has this to say about "the female transsexual's identity":

[I]t must be clarified that she does not choose such an identity. The consolidation of a female transsexual identity is obligatory and must be viewed as a desperate attempt by these women to provide a sense of wholeness and intactness to their impaired self-systems. The quest for sex-reassignment surgery is no more than a fantasied solution of perfection and a desperate attempt to provide self-cohesion.⁵⁶

Such claims are special cases of a general view, widely although not universally shared, that a person's "core gender identity" is formed very early in life, perhaps by age three, and is fixed and unalterable by age five or six.⁵⁷ Reflecting this view of gender development, contemporary psychological theory distinguishes two kinds of transsexuals. "Primary transsexuals" are defined as persons of one biological gender who in early

56. LOTHSTEIN, *supra* note 11, at 244. It is unclear whether what Dr. Lothstein sees as "obligatory" (a strong if ambiguous word) for the female transsexual is her identity as a woman or her identity as a transsexual. The waters are further muddied by the reference in the last sentence of the quotation to "[t]he quest for sex-reassignment surgery," which is not a defining element of a female identity and is not a sufficient condition for transsexualism even on the American Psychiatric Association's account of it. See *supra* note 24. But the deepest muddle lies in the fact that Dr. Lothstein wants to hold together two seemingly incompatible positions: that the transsexual does not choose her identity (it is obligatory) and that at the same time it is a "desperate attempt." Perhaps what is meant is that the "desperate attempt" is unconscious. Very good; but if there can be unconscious attempts, why can there not also be unconscious choices?

The view of gender identity quoted in the text parallels a view that some take of the separate question, distinguished *supra* notes 15-16 and accompanying text, of sexual preference. One of the most influential of the gender researchers has this to say: "In the human species, a person does not prefer to be homosexual instead of heterosexual, nor to be bisexual instead of monosexual. *Sexual preference* is a moral and political term. . . . The concept of voluntary choice is as much in error here as in its application to handedness or to native language." Money, *supra* note 13, at 385.

57. This position is taken by Stoller. Robert Stoller, *The Male Transsexual as "Experiment"*, 54 INT. J. PSYCHOANALYSIS 215, 217 (1973). The claim that "core gender identity" is fixed and unalterable in early childhood has been challenged by evidence that some people who were assigned to the female gender at birth, on the basis of apparent female genitalia, who were actually males with a rare hormonal deficiency, were able to become males socially and to accept themselves as such once hormonal changes supervening in puberty rendered these persons unmistakably male. Julianne Imperato-McGinley et al., *Androgens and the Evolution of Male-Gender Identity Among Male Pseudohermaphrodites with 5-Alpha-Reductase Deficiency*, 300 NEW ENG. J. MED. 1233 (1979). The authors state that "[t]hese subjects are a testimonial to the maleability of human beings in the acquisition of gender identity. . . . [They] appear to challenge both the theory of the immutability of gender identity after three to four years of age and the sex of rearing as the major factor in determining male-gender identity." *Id.* at 1236. Imperato-McGinley's conclusions are contested in Money, *supra* note 13, at 397 (The population of Dominican hermaphrodites on which Imperato-McGinley based her conclusions had a distinctive social classification; because these people were identified socially as sexually unusual, it was possible for them to adopt a new gender identity when the hormonally-induced changes occurred.).

childhood form an unalterable "core gender identity" just as everyone else does, except that this core identity is that of the other gender. "Secondary transsexuals" are persons whose core gender identity is the same as that of their biological gender but who decide later in life (after the core gender identity is fixed) that they are "really" of the other gender and should look and act accordingly. These "secondary transsexuals" usually arrive at their beliefs and aspirations after a career as a transvestite or homosexual.⁵⁸ Those employing the distinction sometimes regard the secondary transsexual's self-understanding and quest for sex-reassignment surgery as a kind of mystification to which the evaluating psychoanalyst ought not fall prey and on the basis of which surgery is ordinarily contraindicated.⁵⁹ Since some researchers believe that primary transsexualism does not occur in biological females, whose cross-gender aspirations are instead regarded as a by-product of an underlying lesbianism,⁶⁰ the effect is to make it more difficult for biological females than for biological males to be approved for surgery.

The distinction between primary and secondary transsexualism has been challenged as an edifice built on a misreading of patients' experience of their gender identity that edits out evidence of gender mutability.

The idea that such motivation [to live in or of the other gender] is unremitting and irreversible has come to be one of the myths of transsexualism. In clinical settings serving so-called transsexuals, it is common to see such individuals change their minds and their behavior. The attitudes and values communicated in such settings, together with role models and mentor relationships, probably play a critical part in such decision-making.⁶¹

What matters here is the strikingly explicit recognition of gender identity in terms of "decision-making." I take up below⁶² the element of role-modeling and group-membership in transsexual commitments.

58. For expositions of the distinction between primary and secondary transsexuals, see STOLLER, *supra* note 8, at 19-22; DOCTER, *supra* note 9, at 24-27. The American Psychiatric Association does not recognize this distinction as a formal subclassification of transsexual types, although some of the individuals classified as "secondary transsexuals" by those who employ this schema might be subsumed in its rubric of *Gender Identity Disorder of Adolescence or Adulthood, Non-transsexual Type*. AM. PSYCHIATRIC ASS'N, *supra* note 9, at 76.

59. Person & Ovesey, *Part II*, *supra* note 9, at 174, 191-92; STOLLER, *supra* note 8, at 160-61.

60. Person & Ovesey, *Part I*, *supra* note 9, at 6; DOCTER, *supra* note 9, at 67.

61. DOCTER, *supra* note 9, at 26.

62. See *infra* notes 145-73 and accompanying text.

D. CONVERSION AND FAITHFULNESS

Religious conversions may be among the most dramatic, intense, and consequential changes that a person can undergo in the course of a life. The Bible employs devices such as spatial departure or leave-taking and the divinely ordained change of names to express transformative aspects of religious conversion or the response to God's calling. In this section, I will explore conversion as an example of a transformation in which, to pursue the good that beckons ahead, one must leave old attachments behind. I will bring out points of comparison between conversion and transsexualism.

Perhaps because the deepest, most personal, and consequential changes brought about by a religious vocation are least visible *ex ante* and least amenable to direct description, the heeding of the call is presented metaphorically (or perhaps synecdochically) in terms of geography, migration, or travel. Yahweh's call to Abram is the figure for the religious geography of the calling in Judaism, Christianity, and Islam. " 'Bring yourself out of your birthplace,' Yahweh said to Abram, 'out of your father's house, your homeland—to a land I will bring you to see.' . . . Now Abram comes out, follows Yahweh's words to him."⁶³ The spatial metaphor makes visible one aspect of the transformative character of the calling: Abram is to "bring himself out," Yahweh "will bring" him, and so he "comes out" and "follows."

Figuration of the calling as a leaving-behind of a familiar place to follow God into another place stresses the abandoning of old commitments. This is made especially clear in the King James and Revised Standard Versions, which present Abram as asked by Yahweh to leave his "country" and his "kindred" as well as his father's house. These are not just spatial movements but painful leavings-behind of lands and relationships that press claims to fidelity.

In the Gospel stories, Simon Peter and his brother Andrew leave their fishing nets behind when called by Jesus; James and his brother John leave their nets and their father. Leaving one's father so suddenly, leaving him perhaps without help in casting and pulling the nets, surely is both emotionally and morally problematic, and is meant to appear so;

63. Genesis 12:1 and 12:4, in David Rosenberg's translation of the Yahwist or J source of the Hebrew Bible. DAVID ROSENBERG & HAROLD BLOOM, *THE BOOK OF J* 74 (1990).

the text does not conceal but instead stresses the magnitude of the departure.⁶⁴

The Gospel does not take us into the heart of any of these hearers of the call, and so we are unable to improve on the power of our unaided empathy to reenact their struggle to maintain fidelity and integrity in the face of old and new commitments. We cannot gauge how far our admiration for their openness to transformative departure should be qualified by reservations about their readiness to unlink themselves from love's special relationships. Perhaps we have reason to believe that those who would give up these relationships for the sake of something apparently higher or more pure might also abandon this higher good.⁶⁵

The analogy between Biblical accounts of conversion and transsexuals' gender projects might be understood in many ways. Perhaps both conversion and transsexualism intersect similar structures of human existence and therefore raise similar issues of abandonment. Or, given the power of Biblical narratives to shape western experience and its interpretation, perhaps both transsexuals and those who come in contact with them are influenced in their understanding of the transsexual phenomenon by ancient stories of conversion, much as Jan Morris thematized her surgery through canonical fairy tales. Or the analogy can be seen as frivolous juxtaposition at best or blasphemy at worst. Yet the topics seem to be thematically interrelated in the New Testament. Here are the arguments by means of which just one chapter of the Gospel of Matthew, a chapter that begins with the rejection of divorce and ends with the justification of leaving the parental family to follow the faith, with a mysterious teaching about eunuchs in between, ties together the themes of gender, conversion, fidelity, and abandonment:

(1) Gender is not a contingent feature of human persons; instead, we are endowed with either a male or a female gender "from the beginning" (prestige of origins), in virtue of the *imago dei* (this endowment deserves respect).⁶⁶

64. Matthew 4:18. Matthew also stresses Jesus' contrast between discipleship and familial loyalty in 10:37 and 19:27-30. See also Luke 10:59-62; cf. Luke 18:28-30.

65. The drama of the Passion directs our attention to the ironic distance between Peter's standing as disciple and foundation of the church and his betrayal of Jesus not one but three times on the evening of His condemnation. Matthew 26:30-75.

66. To the Pharisees' question concerning the lawfulness of divorce, Jesus answers: "Have you not read that he who made them from the beginning made them male and female and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one'? [Genesis 1:27, 2:24.] So they are no longer two but one. What therefore God has joined together, let no man put asunder." Matthew 19:4-6. The *imago dei* passage in Genesis reads: "So

(2) This gender endowment is so significant that it explains or justifies the child's leaving the home to marry a person of the opposite sex.⁶⁷ The reunion of male and female so achieved may share in the prestige of the community of male and female in the Creator God. Thus the child's leaving of the parental home for the purpose of marriage is not an abandonment, or if it is an abandonment, it is justified by the institution of marriage.

(3) The same significance of the gender endowment explains and justifies the permanence of marriage and the unlawfulness of divorce. God joins the married couple, just as God makes the spouses male or female "from the beginning." Thus, divorce is an abandonment, or at least a transgression.⁶⁸

(4) Conversion to the faith, or discipleship, not only justifies but requires the leaving of the parental home. Thus discipleship is not an abandonment, or at least it justifies abandonment.⁶⁹ In this respect it is like marriage, which is in turn explained as a function of differing gender endowments. (Further, from Jesus' mission springs not peace, but division of the home.)⁷⁰

(5) Nonetheless there is a way in which we can be faithful disciples, or at least pursue salvation, by overcoming our natural gender endowment or at least one dimension of it: as "eunuchs who have made themselves eunuchs for the sake of the kingdom of heaven."⁷¹

Whatever one thinks of these thematic associations, it is surely unsurprising that some transsexuals—especially those who are married and who face the dissolution of their marriage and, possibly, estrangement from their children—are acutely aware of the issue of gender identity as a problem of conflicting loyalties. Frank, fifty-three years old, with five children, wants to remain with his wife of twenty-five years:

He would like to stay with her, but he has a gnawing and recurring feeling that he must, before it is too late, have a chance at being a

God created man in his own image, in the image of God he created him; male and female he created them." Genesis 1:27.

67. Genesis 1:27.

68. *Id.*

69. See *supra* note 61; Luke 14:26. Cf. Luke 10:59-62 ("To another he said, 'Follow me.' But he said, 'Lord, let me first go and bury my father.' But he said to him, 'Leave the dead to bury their own dead; but as for you, go and proclaim the Kingdom of God.' Another said, 'I will follow you, Lord; but let me first say farewell to those at my home.' Jesus said to him, 'No one who puts his hand to the plow and looks back is fit for the kingdom of God.'").

70. Luke 12:51-53.

71. Matthew 19:12. See *infra* note 87-89 (discussing deliberate nonprocreation).

woman. His loyalty to family, job, and friends have kept him this long . . . he still wants to move slowly but there is increasing urgency.⁷²

One of the most suggestive parallels between adoption of a cross-gender identity and religious conversion as striking transformations of the self is the role sometimes played by name-changes in both cases. I will consider here what name-changes reveal about conversion as a transformative event or experience.⁷³

The Bible draws attention to the depth or magnitude of the conversion experience by signalling, through the device of the change of name, that the patriarch, convert, disciple, or apostle has acquired a new identity in the course of following the religious vocation. Because the change of names marks, perhaps, a more completed or at least more tested transformation of identity than the act of spatial departure, the change of names does not occur immediately upon the abandonment by the convert of his old home. Jesus gives Simon the name Peter (*Petros* in Greek), to tell him that he will be the rock (*petra*) on which the Church will be built, when Peter passes the cognitive and spiritual test of naming Jesus as the Christ.⁷⁴ We are first told that Saul is called Paul, "filled with the Holy Spirit," not when the light of heaven flashes around him and he prostrates himself on the road to Damascus, but only when his apostleship, his committed activity on behalf of the faith, has begun.⁷⁵

The figure for these transformative renamings, again, is Abram. Yahweh endows Abram ("exalted father") with the new name of Abraham ("father of a multitude") not when Yahweh calls him forth from his homeland, but when the covenant between them is created. "Behold, my covenant is with you, and you shall be the father of a multitude of nations. No longer shall your name be Abram, but your name shall be

72. FEINBLOOM, *supra* note 32, at 154.

73. I compare below the role that ritual circumcision plays in religious membership to the significance of surgery for transsexuals. See *infra* notes 152-65 and accompanying text.

74. Matthew 16:13-20.

75. Acts 9:1-6, 13:9. It should be noted that the Bible does not take names as formalities or mere labels. Many illustrations of this proposition could be given, but the central instance of the Bible's seriousness about names is surely the approach it takes to the name of God. On the one hand, the name of God as given in the Tetragrammaton is sacred and unpronounceable. On the other hand, the name of God is the central or at least the frontal object of faith and commitment. Thus, immediately following the account of Saul's hierophany on the road to Damascus, and shortly before the naming of Saul as Paul, the Lord describes Saul as "a chosen instrument of mine to carry *my name* before the Gentiles and kings and the sons of Israel; for I will show him how much he must suffer *for the sake of my name*." Acts 9:15-16. Similarly, the nineteenth chapter of the Gospel of Matthew, discussed *supra*, text accompanying notes 63-68, has this as its penultimate verse: "And every one who has left houses or brothers or sisters or father or mother or children or lands, *for my name's sake*, will receive a hundredfold, and inherit eternal life." Matthew 19:29 (emphasis added).

Abraham, for I have made you the father of a multitude of nations.”⁷⁶ That the renaming takes place at this point is consistent not only with the turn that the narrative takes—the magical impregnation of ancient Sarai, so that she can become the mother of the “multitude,” and Abraham its father⁷⁷—but with the placing of a higher valuation on the affirmative undertaking of covenantal and legal relationships than on the more negative act of severing the natural bonds that tied the chosen ones to their lands and families of origin.

The corresponding renaming of a male-to-female transsexual, say, would take place not when the “summons” of female gender identity is first heard, or first answered, but instead when great and binding undertakings are sealed, as when surgery is chosen, calendared, or actually completed.⁷⁸ Indeed, it would be possible to shape the surgery into a rite of passage, a transformative ordeal which, when successfully negotiated by the initiate, culminates in the assignment to him or her of a new name.⁷⁹ The difficult phenomenological question raised by such a ceremonial is whether it should be seen as acknowledging and expressing a personal transformation which is in some sense already subjectively there in the identity and psyche of the patient,⁸⁰ or instead as effecting a

76. Genesis 17:4-5.

77. Genesis 17:15.

78. For examples of transsexuals who have adopted cross-genderal name changes, see Vamik Volkan & As'ad Masri, *The Development of Female Transsexualism*, 43 AM. J. PSYCHOTHERAPY 92, 98 (1989) (Carla/Carlos); DOCTER, *supra* note 9, at 23 (Everett/Angela); MORRIS, *supra* note 27, at 121-22 (James/Jane); FEINBLOOM, *supra* note 32, at 189-222 (Phil/Helen); LOTHSTEIN, *supra* note 11, at 95-104 (Barbara/Brian); and *id.* at 110-23 (Randi/Randy). It would be interesting to study transsexualism from the vantage-point of name-change to learn which transsexuals first call themselves by their new names (or are so identified by others) at each of four transitional times: (1) when the transgenderal summons is first heard; (2) when the person first begins to experiment with living in the other gender, and name-change thus has practical value; (3) when adoption of the achieved identity seems subjectively complete; and (4) when sex-reassignment surgery is completed. Name change is also one of the nodal points at which lawyers, rather than psychiatrists or surgeons, mediate self-transformation; correspondingly, it would be possible to disassociate the ceremonies of name-change from medical events.

79. On the assignment of new names and new social identities to initiates in rites of passage, see ARNOLD VAN GENNEP, *THE RITES OF PASSAGE* 62-64 (1960).

80. Jan Morris described her post-surgical ecstasy in these terms: “I had a new body. . . . I felt above all deliciously *clean*. . . . [W]e felt pure and true.” MORRIS, *supra* note 27, at 141, 143-44. Janice, a male-to-female transsexual, says of sex-reassignment surgery: “There is a beautiful, romantic and wish-fulfilling quality to it. Maybe that feeling wouldn’t be so strong if it were not forbidden and so expensive. It’s very hard to achieve this for a poor person.” DOCTER, *supra* note 9, at 28 (quoting Janice). Janice seems to me to strike the right note; she sees the social structuring of the surgery—its forbidden quality, the fact that it is difficult to arrange and unavailable for those without means—as contributing to the *strength* of the “beautiful, romantic, and wish-fulfilling” qualities of the surgery, and not as but-for causes of those feelings or of pretending that those feelings exist. Similarly, while the barriers to transsexual identity in general are many and great, the claim that

change that would otherwise not occur.⁸¹ Even if (for at least some transsexuals) the latter is the better interpretation, such a ceremony might go some distance toward undoing the countless injuries or indignities inflicted upon these transsexuals by previous gender rituals that they have had to endure. A woman who had to line up with the boys in elementary school, and fill the role of a boy at high school dances and in boys' locker rooms, cannot unmake these discordant and painful facts; but if the social idiom is available to her, she can declare her achieved gender in a language that performs it and in a voice that stills the echoes of those old disharmonies.

E. PREFERENCE AND REPUDIATION

Describing a transsexual's gender project in terms of a "preference" for the achieved gender both characterizes that choice in a way that makes it seem a familiar sort of thing (after all, all of us have preferences) and packages it for ready handling by a familiar ethical theory (preference-utilitarianism). To the extent that a transsexual can be said to "prefer" a gender, that preference can then be taken into account either hypothetically by the moralist or practically through a mechanism (like the market) that measures revealed preferences and moves to satisfy them. For example, a person who has been informed of the cost and pain involved in sex-reassignment surgery and who nonetheless still wants it and makes plans to bring it about can meaningfully be said to prefer to have the surgery rather than forego the pain and cost. If the market can produce this surgical service at a price that the consumer or his or her insurer is willing to pay, then the liberty and welfare values underlying the institution of the market and the principle of mutual gain through

transsexualism only seems like a salient or significant self-transformation *because* of those barriers seems to me to be too strong. I would say rather that the ordeal and the quest give shape and added value to meanings and longings already extant though inchoate. Surely, the fact that Jan and Janice can experience such feelings of transcendent renovation and beauty in—of all places—*hospital wards* or clinics, with their drab, sterile, or tawdry atmosphere, evinces a gulf of some kind between the inner life of the patient and the social scene in which that life is lived. But that gulf is not unbridgeable. A fact about Janice, and one which I cannot help but see as a sad fact, is that, at the age of seven, she had tried to pull off her penis. *Id.* at 27. Had she succeeded—were the operation physically accessible to the unmediated individual—this dismemberment could not have meant to her what it could mean as a socially structured procedure, with its serious design, its demand for pledging and planning, and the participation of experts.

81. These alternatives, of course, are not mutually exclusive. The ritual of saying grace before meals, for example, is neither a purely social event signifying that a meal is about to commence, nor an accommodation of wholly personal feelings of prayerful gratitude, but both of these plus something intermediate: creation of a socially fitting time for the expression of prayer and the joint behavior of the commensals as a communal unit of religious action.

trade would validate (*prima facie*) the surgical transaction. This *prima facie* conclusion might be withdrawn if the consumer's preference for surgery were formed coercively, or if the market price for surgery for any reason did not require the parties to the transaction to internalize its social costs. If, through market imperfections, the price for sex-reassignment surgery did not reflect the social costs of transsexualism, whatever they might be, one could conclude that the social practice of permitting these transactions at that price is a bad practice and that a transsexual and his or her physicians who strike the deal at that price are guilty of participating in this practice. But even this result, assuming whatever facts are necessary to support it, would not entitle us to say that there is anything wrong with the transsexual's preference for surgery as such. What is wrong is the impersonal or regulatory failure to signal to the transsexual and the other parties to the transaction the full extent of its social costs.⁸²

So far I have accepted the characterization of the desire for surgery as a preference and have traced some normative implications that might follow from that characterization on certain factual assumptions. I have indicated how these normative implications might differ from those flowing from the ethics of abandonment, even in the event that both the ethics of abandonment and preference-utilitarianism were to agree that this preference should not be accommodated. I now want to ask the more basic question of whether a transsexual can be said to have a preference for his or her achieved gender.

Suppose that a biological male experiences a female gender as basically decreed by fate: neither chosen nor self-created, but antecedent to even the earliest memories.⁸³ This way of thinking about a transsexual's gender makes it seem very comparable to a non-transsexual's gender. Does a non-transsexual have a preference for a gender? While I do not have a final answer to this question, I do want to stress how odd it sounds. Can we be said to "prefer" something that we do not experience ourselves as preferring; something which instead is just *there*?

As a comparison point, ask: Does *everyone* have a "sexual preference," or only those people who are alive to the charms of both sexes and who like one set of charms more than the other? Does a person for whom (consciously, at least) a given gender has no attractions *prefer* the other gender? However we answer these questions, my own view is that

82. See *infra* notes 96-114 and accompanying text for a further account of the distinction between abandonment and impersonal wrongs.

83. See *infra* notes 115-44 and accompanying text for a discussion of "trapped transsexuals".

it is far more artificial to speak of a gender preference than to talk of a sexual preference. In the latter case, at least, desires play such a salient part in the phenomenology that the language of preference appears appropriate, at least as a description of certain attractions.⁸⁴ But there is at least an apparent difference between what one is and what one wants. This difference is visible in a male-to-female transsexual, for example, who says that she *is* a woman and that she *wants* men.

Of course, the male-to-female transsexual in question may go on to say not only that she is a woman and that she wants men, but that she wants men in a heterosexual way and not in a homosexual way. She wants a man to make love to her as a woman and to value her as a woman in their lovemaking.⁸⁵ The exponent of the vocabulary of preferences can then say that the content of the transsexual's identity, what she *is*, can be expressed quite satisfactorily in terms of what she *wants*. When this transsexual says who she is (a woman), this can be translated without distortion or remainder into statements such as: I prefer to be viewed as a woman by my co-workers, I prefer to be made love to as a woman by a man, I prefer to be valued and admired for my feminine qualities, and so forth.

Yet, who is the "I" who has all of these preferences? Perhaps the very coherence and plausibility of preference-based worldviews and their attached ethics rests upon imputing to the expressed preference an agent who entertains it. If it is *as a woman* that a person wants everything she wants or manifests her preferences in transactions, then *that* person does not "prefer" being a woman, at least not in the same sense that *she* prefers the things that she prefers. Perhaps one can speak of a different person, a meta-person who prefers to be a woman; the first-order person then prefers the things that she prefers. I do not say that this is wrong, only that it is counterintuitive. The "self" or "identity" that seems to be there for us in the projects we undertake disappears in a potentially infinite regress of meta-persons.

The ethics of abandonment offer one way of understanding why and how the self is "already there" for us in our projects. The self is there for us in the sense that it is addressed by values that lay a claim. One is a self because one is called to constancy. This way of thinking about the self

84. The viewing public understood what was meant by "Gentlemen Prefer Blondes," but would have had a harder time comprehending just what might have been meant by "Gentlemen Prefer Women." There might have been some quibbling about the choice of verbs.

85. Phil/Helen says: "When I look at a real girl a fantasy overtakes me. 'How wonderful it would be to be her,' 'to be wanted as a woman,' 'to be taken to bed as a woman,' 'to be a companion as a woman.'" FEINBLOOM, *supra* note 32, at 203 (quoting Phil/Helen).

has much in common with certain theological and psychological perspectives that hold that we are selves, and can recognize ourselves to be such, because we are addressed by love.⁸⁶ Even if the love is unconditional, there is still a certain sense in which it claims us; it deserves a response. The ethics of abandonment share with these theological and psychological perspectives a vantage-point toward the self which is opposite to that of the preference perspective. The preference perspective keeps positing an agent that addresses the world by preferring things in it; if that agent is itself a preference, then there must be another subject lurking behind it for which it itself is a preference. The opposite view stresses the way in which the self is addressed by the world, the way in which life's good things lay a claim or deserve a response.

Aristotelian and Thomistic natural law theory constitute perhaps the most influential and considered way of working out the ethical implications of the latter view. According to an important contemporary reformulation of natural law tradition, human nature can be defined as that which it is rational for human persons to pursue as intrinsically worthwhile.⁸⁷ Practical reasoning discerns that some things, like friendship and knowledge, are worth having for their own sakes (although they may also be instrumentally worthwhile in relation to other ends). The intelligibility of these worthwhile ends or goods, their value discernible to reason, is an important cognitivist account of the way in which they lay claim to us.

Corresponding to this natural law account of the way in which we are claimed by goods or values is a natural law account of that portion of the ethics of abandonment that I am calling repudiation.⁸⁸ Repudiation understood in this way is the irrational and destructive turning away from ends that reason discerns to be intrinsically worth pursuing and realizing in active projects. A person who repudiates such a good is not violating an external ethical norm; he or she is not like the hapless consumer described above, who unwittingly makes a purchase in the marketplace that would not take place if its true costs were reflected in the purchase price, as they would be if the proper regulations were in place.

86. "[L]ove builds up," 1 Corinthians 8:1-3. For a discussion of what love builds, see SOREN KIERKEGAARD, *WORKS OF LOVE* 202-12 (Howard & Edna Hong trans., 1962). "We love, because he first loved us," 1 John 4:7-12, 4:19. For a psychological account of how identity and trust are enabled by parental love, see ERIK ERIKSON, *IDENTITY: YOUTH AND CRISIS* 82, 96-97 (1968).

87. JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 19, 34-36, 50 n.II.1, 81 (1980) [hereinafter FINNIS, *NATURAL LAW*]; JOHN FINNIS, *FUNDAMENTALS OF ETHICS* 10-17 (1983) [hereinafter FINNIS, *FUNDAMENTALS*].

88. See *supra* page 144.

Nor is he or she transgressing any other extrinsic standard or moral side-constraint. Instead, the person is *spurning* a good. In order to spurn a good, its attraction must first be felt, so that that attraction can be passed by in favor of something else.⁸⁹ *Repudiating* a good, as understood by the natural law theory under discussion here, depends upon that good's having a certain *kind* of attraction. The specific attraction of the intrinsically worthwhile ends is their intelligibility to reason as intrinsically worthwhile. Thus, repudiation is the spurning of an end or value whose good is intelligible to reason. On this view, is it a repudiation either to regard one's gender as other than one's biological or assigned gender, or to elect to undergo sex-reassignment surgery?⁹⁰ I think not.

A view of one's gender as different from that biologically assigned to one does not amount to spurning any of the things most intrinsically worthwhile: values such as life itself, friendship and love, and beauty.⁹¹ Indeed, a transsexual could regard his or her gender project as steering a course away from feelings of ugliness, unloveableness, and desolation, out of a proper regard for the intrinsic values of beauty, loving sociability, and life. Of course the question of just which values and ends are being affirmed in any act or choice depends for its answer on the resolution of difficult problems of interpretation. But if the practical reasoning theory of natural and unnatural conduct assumes that those problems generally can be solved, then there is no reason to suppose that it will turn out that transsexual gender choices must always or even usually involve the rejection of life's intrinsic values.⁹²

The practical reasoning theory can build a somewhat better case on behalf of the wrongfulness and unnaturalness of electing sex-reassignment surgery. The necessary premise is that procreation is one of the

89. A distinction should be drawn between two ways of turning away from a possibility or invitation: *spurning*, in which the attraction of the invitation must be felt even though the invitation itself is finally rejected, and *recoiling*, in which unmixed feelings of revulsion or repugnance motivate the rejection.

90. See Donald Levy, *Perversion and the Unnatural as Moral Categories*, 90 ETHICS 191 (1980); David Richards, *Book Review*, 93 ETHICS 169 (1982) (review of FINNIS, NATURAL LAW, *supra* note 87).

91. John Finnis identifies seven basic forms of human good, or ends discernible to practical reason as intrinsically worthwhile. These goods are life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion. FINNIS, NATURAL LAW, *supra* note 87, at 85-92.

92. The issue is in some respects parallel to the question of whether in embracing homosexuality, or engaging in homosexual lovemaking, a person repudiates what practical reason identifies as intrinsically worthwhile ends or basic human goods. That question has been debated in the exchange between John Finnis and David Richards. Compare John Finnis, *Legal Enforcement of "Duties to Oneself": Kant v. Neo-Kantians*, 87 COLUM. L. REV. 433 (1987) with David Richards, *Kantian Ethics and the Harm Principle: A Reply to John Finnis*, 87 COLUM. L. REV. 457 (1987).

intrinsic values or primary goods that cannot be flat-out rejected in life.⁹³ If procreation is such a value, then the transsexual who elects sex-reassignment surgery is rejecting it, since both biological sexes lose their reproductive capability in the course of the surgery.⁹⁴ To this argument the transsexual can make three rejoinders, each fairly powerful. First, the choice of surgery is not a decision against procreation per se: not a spurning of procreation as a thing good in itself. Many transsexuals would give a great deal to be able to procreate with their post-operative bodies.⁹⁵ Procreative incapacity is only a side-effect of the surgery, not something which is being rejected as a thing worthwhile in itself. It could hardly be said, for example, that a man who falls in love with and marries a woman who, as is known to both, cannot conceive and bear children, is rejecting the good of procreation. Second, it does not seem that procreation is the kind of good which cannot be rejected as such in the course of a life. For Roman Catholic priests or religious who take

93. While Finnis acknowledges that "it is tempting to treat procreation as a distinct, irreducibly basic value," he finally sees procreation as one aspect of the basic value of life. FINNIS, *NATURAL LAW*, *supra* note 87, at 86. He also concludes that "as a human action, pursuit and realization of value, sexual intercourse may be play, and/or expression of love or friendship, and/or an effort to procreate." *Id.* at 86-87.

94. As the exposition of Matthew 19, *supra* notes 66-71 and accompanying text suggests, there is some Scriptural approval for "eunuchs who have made themselves eunuchs for the sake of the kingdom of heaven." Matthew 19:12. Further, the well-known teaching that if your eye or hand or any other "member" causes you to sin, you should (if only as a last resort) "cut it off and throw it away," Matthew 5:27-30, has potential (if particularly gruesome) application in this context. Nonetheless, the tradition has looked far more favorably upon individuals who have chosen to forego sexual intercourse than on those who have castrated themselves. Indeed, Deuteronomy specifically consigns *castrati*, of whatever sort, to perdition: "He whose testicles are crushed or whose male member is cut off shall not enter the assembly of the Lord." Deuteronomy 23:1. This text has been cited by *posekim* asked to decide whether Jewish law permits sex-reassignment surgery and whether a post-surgical transsexual can convert to Judaism. See Central Conference of American Rabbis Committee on Responsa, *Reform Responsum: Conversion and Marriage after Transsexual Surgery*, 38 J. REFORM JUDAISM 69 (1991).

Christian cults advocating or practicing castration, such as the Skoptzy cult, have been declared heterodox and suppressed. See CATHERINE MILLOT, *HORSEXE* 85-94 (1990). Still, it is difficult for a religion whose central imagery and faith commitments include the Crucifixion to dismiss this as merely 'morbid. Instead, if the decision not to procreate is not itself illicit, the basis for rejecting voluntary or ritual castration might be found in the New Testament's teaching that the body is a commission entrusted to us rather than property fully subject to our disposal. See 1 Corinthians 6:9-20. "What? know ye not that your body is the temple of the Holy Ghost which is in you, which ye have of God, and ye are not your own? For ye are bought with a price: therefore glorify God in your body, and in your spirit, which are God's." 1 Corinthians 6:19-20 (King James).

95. At his support-group meeting, Steve, a female-to-male transsexual, sits next to his girlfriend, Phyllis, and offers support and reassurance to another female-to-male transsexual, Ralph. "Look, Ralph, I know it is hard but it is worth sticking. I'm the luckiest guy to have Phyllis. We've been together three years and are hoping after some legalities, maybe to get married. We could adopt kids, or maybe do some of that artificial insemination." FEINBLOOM, *supra* 32, at 156 (quoting Steve).

vows of celibacy, non-procreativity may not be a mere side-effect. It may be central to a commitment, and it may be entertained as a good, or at least as part of a regimen productive of good. Even if the vow of celibacy should not be interpreted as taking non-procreativity per se as a good, it illustrates the proposition that some intrinsic goods and vocations may be so important that they can justify a decision to turn away from an activity which in most contexts is one of the intrinsic values of human life. Finally, it may be argued, with some force, that procreation is not as such one of the intrinsic values or goods, but is simply one of the means which can be pursued in the course of a rational and responsible plan of life that values all intrinsic goods. One person, for example, can treasure and pursue the goods of love and sociability through faithful friendships or caring for the poor, while another may secure it through procreation and the family.

IV. TRANSGRESSION

Abandonment is primarily a temporal idea. For there to be abandonment, there must first be an awareness of a good, an aliveness to its claim to constancy, so that exploration of alternative prospects elicits presentiments of abandonment. For good or for ill, something is left behind as one grows and changes. But, as the example of immigration and of the calling forth of Abraham and the disciples shows, the leaving behind can also be represented spatially.

In conceiving of transgression, this situation is reversed. Spatial notions become central; for to transgress is to pass beyond the boundaries, to "go too far" in the sense of exceeding these boundaries. This is not the only way of giving moral life to the spatial notion of boundaries. The notions of trespass and invasion are spatial ways of making out the idea of a violation of rights. They share with transgression the concept of a boundary-crossing.⁹⁶ But while a transgression is a movement beyond the bounds that ought to hem one in, a trespass or invasion is a crossing into someone else's space, hence a breaking of bounds that ought to keep one out. The difference between transgression and trespass may loom larger in some contexts than others.

At the extreme, transgression, unlike abandonment, bears no inner connection to self-transformability. In evaluating the conduct of two ax-murderers, assuming premeditation in both cases, it does not seem to matter much that one of them had engaged in violence for a long time

96. ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* 57 (1974).

while the other came to violence more recently, out of a personal decision to stop being a wimp. Both individuals have simply transgressed the limits to human moral action. I will assume, *pace* Nietzsche, that a self-transformer is bound by the same moral constraints that are applicable to all human conduct; one needs no special ethics of self-transformability to hold that self-transformers should not lie, cheat, or steal.

Setting aside, then, the domain of wrongs that lies beyond the most obvious and universal limits to action, the idea of transgression presents some of the same issues surrounding self-transformability and transsexualism as does the ethics of abandonment. However, it does so more impersonally, by which I mean that transgression is a way of thinking of wrong that stresses not the calling or beckoning of goods or projects, the way that they "sing" to the moral agent, but instead the fixed bounds that we sometimes cross willy-nilly. Going beyond the limits marked by these fixed bounds constitutes, like abandonment, one way of conceiving of "the unnatural" and rendering that idea applicable to self-transformability.

Transgression as unnatural self-transformability is a major theme of what might loosely be termed Romantic admonitory tales, a genre that includes Mary Shelley's *Frankenstein*⁹⁷ and Nathaniel Hawthorne's short stories *The Birthmark*⁹⁸ and *Rappacini's Daughter*.⁹⁹ Central to the Romantic admonitory tale is the idea that while human striving for transcendence and creativity is noble and perhaps even the highest human good (thus self-transformability is normative), this same excellence becomes demonic when it aspires to supplant the role of the Creator or to achieve complete dominion over nature. Humankind should neither emulate the Demiurge in making a new material Creation¹⁰⁰ nor aspire to achieve the Gnostic's or alchemist's goal of transcending the natural world to achieve a higher spirituality.¹⁰¹ In all three of the stories mentioned above, science is especially vulnerable to these forms of

97. MARY SHELLEY, *FRANKENSTEIN* (University of California Press ed. 1984).

98. NATHANIEL HAWTHORNE, *The Birthmark*, in NATHANIEL HAWTHORNE'S TALES 118 (Norton ed. 1987).

99. NATHANIEL HAWTHORNE, *Rappacini's Daughter*, in NATHANIEL HAWTHORNE'S TALES, *supra* note 98, at 204.

100. HANS JONAS, *THE GNOSTIC RELIGION* 43-44 (2d ed. 1963); CANTOR, *supra* note 33, at x-xi, 103-32.

101. JONAS, *supra* note 100, at 44-46; CANTOR, *supra* note 33, at 130; ETHAN HITCHCOCK, *REMARKS UPON ALCHEMY AND THE ALCHEMISTS* iv-v (1857).

The Romantic admonitory tale offers variations on one of the defining themes of western religion: the sovereignty of God. It is not the place of the human person to bring the natural order into the final state of perfection for which it is divinely destined. Biblically, this theme is repeated in many ways, including one of special relevance to the theme of transformability: God's promise to

hubris. And the scientist's perfectionist strivings are at their most demonic when they turn away from and destroy the sympathies of soul and the satisfactions of romantic friendship that are available to men and women in ordinary social life. As Hawthorne tells us in *Rappacini's Daughter*, we should learn to live "within the limits of ordinary nature."¹⁰²

I do not find in the case studies of transsexualism anything that corresponds to the repudiation of ordinary love or to a demonic desire to perfect it beyond all reasonable earthly limitations. Many people adopt their transsexual identities, and even seek out sex-reassignment surgery, precisely so that the ordinary happinesses and fulfillments available to most people will be available to them.¹⁰³

I suggested that, as applied to self-transformability, transgression and abandonment are divergent perspectives on similar data or problems. The divergence may be wider or narrower; and in the case of the Romantic critique of transgression, depending on where the emphasis is placed, the perspectives may come close to coinciding. If the scientist who destroys this-worldly love in the course of pursuing knowledge, power, and perfection is alive to the calling of love here below and is sensible to

bring about the thorough renovation or renewal of all things. "For behold, I create new heavens and a new earth," Isaiah 65:17; "Behold, I am doing a new thing; now it springs forth, do you not perceive it?" Isaiah 43:19; "And he who sat upon the throne said, 'Behold, I make all things new,' " Revelations 21:5; "Therefore, if any one is in Christ, he is a new creation; the old has passed away, behold, the new has come," 2 Corinthians 5:17. The definitive sin of failing to recognize human creatureliness and attempting to assume God's mantle is a transgression that can also be conceived as a trespass: an invasion of God's sovereignty.

102. HAWTHORNE, *supra* note 98, at 208. Of course, the Romantic interpretation of "the limits of ordinary nature" is but one among many that have proved influential. Another is the teleological conception of the organism. The idea that procreation is a good, *see supra* notes 93-95 and accompanying text, sometimes gets worked out in a teleological way. On this view, transsexual gender projects might be condemned on the ground that they frustrate the natural function of the sexual organs, or that they deviate from the ordinary course of human development toward a "core gender identity" that corresponds to biological gender. I do not consider such teleological objections to transsexualism in this Article. They have no force, it seems to me, apart from conceptions of the good such as those already treated in the discussion of repudiation, *supra* notes 89-95 and accompanying text. Whether or not I am right about this, it may be worth noting that teleological conceptions of nature's moral significance are not spatial conceptions in the sense developed in this section. Their guiding idea is that of natural flourishing, a notion that, like abandonment, lends itself to temporal depictions. Or if flourishing is imaged spatio-temporally, as in the progressive growth and development of a tree, the spatial notion that corresponds to moral prohibition is not that of a boundary exceeded (transgression) but that of retarded growth.

103. It is worth asking, however, whether such domestic or even banal aspirations capture the full flavor and nuance of transsexual identities; and it is even more worth exploring how one might recognize real-world examples both of the demonic transformations condemned by the Romantics and of the humane transformations celebrated in literature, art, and philosophy. I am unable to pursue these matters here.

claims of promises made and commissions undertaken, the impersonal vice of transgression can be reworked into the more personal vice of abandonment.

The same is true of a second way of working out transgressive self-transformability: through the idea of abomination. Abominations, as interpreted by Mary Douglas, are things that do not "conform to the class to which they belong."¹⁰⁴ Things that do not conform to their class challenge and exceed boundaries, but not in the same way that transgressions do. Only actions can be transgressions (although contemplated actions might also transgress); the corresponding spatial notion is one of a boundary that is crossed. But abominations may be things; for example, as Douglas interprets the dietary laws of Leviticus, certain animals are described there as abominations because they either chew the cud but do not divide the hoof, or divide the hoof but do not chew the cud, thus violating the standard class of ruminants, which have both characteristics.¹⁰⁵ To *act* in a certain way in relation to an abomination—for example, to eat it—becomes a transgression. The abomination itself crosses or exceeds only a classificatory or conceptual boundary; the transgression crosses or exceeds a limit to action.

As a conception of the unnatural, the guiding idea of abomination is that everything has its place and that things that are out of place are dirt that threatens good order with pollution. Thus, the idea of abomination works an extraordinary melding of cognitive ordering with emotive reaction; for behind the revulsion with which the abomination is met lies an elaborate classificatory scheme and an application of it to specific things or facts.¹⁰⁶ Revulsion is to abomination as qualms are to abandonment.

Perhaps some of the feelings of disgust or distaste that non-transsexuals sometimes have about transsexuals can be interpreted as revulsion corresponding to a perceived abomination.¹⁰⁷ But unless a person practically considering transsexual gender projects feels such a revulsion, there is no inner or personal moral sentiment corresponding to the qualms or presentiments that are central to the ethics of abandonment. I have not discerned, in the case studies, evidence that transsexuals sense that their

104. Mary Douglas, *The Abominations of Leviticus*, in *PURITY AND DANGER* 41, 53 (Vail-Balou Press ed. 1980).

105. *Id.* at 54-55; see Deuteronomy 14:6-8; Leviticus 11:3-8.

106. JEFFREY STOUT, *ETHICS AFTER BABEL: THE LANGUAGES OF MORALS AND THEIR DISCONTENTS* 145-62 (1988) Stout employs the concept of transgression in defining an abomination as "a transgressor across boundaries that guard cosmic and social order." *Id.* at 150.

107. A different explanation for this disgust, in terms of imitation, is considered *infra* notes 186-93 and accompanying text.

projects effect problematic classificatory boundary-crossings of the sort whose emotive correlate is revulsion. Whatever revulsion some transsexuals feel might be elicited by and directed toward their own sex organs or sex characteristics, as if the pre-surgical body were itself an abomination, and the undergoing of surgery a ritual scouring of the body to make it holy and clean.

A distinction might also be drawn between the ethics of abomination and a moral concern for the impact of "sports," deviants, or new discoveries on existing conceptual systems.¹⁰⁸ It is true that the emergence of the phenomenon of transsexualism and the development of sex-reassignment surgery challenge ordinary or existing concepts. The fact that transsexuals are male on some gender criteria and female on others brings home to us the criterial vagueness of the concept of gender: the fact that we lack a way of stating the concept gender in terms of necessary and sufficient conditions.¹⁰⁹ Corresponding to this problem are some normative difficulties, such as the question of whether fairness requires or prohibits that a male-to-female transsexual tennis player be permitted to play in the women's rounds of professional competition.¹¹⁰ If advances in medical technology made it possible for a post-surgical transsexual to be fertile in the achieved gender, or if, more spectacularly, a male-to-female transsexual could impregnate herself using sperm stored from her former male organs, the "open texture"¹¹¹ of the concept of gender would be exposed. The emergence of new empirical realities would exceed the reach of a concept whose development matched older factual patterns. A similar possibility is illustrated by Kurt Vonnegut's report that there are "no fewer than *seven* sexes on Earth, each essential to reproduction."¹¹² Notice, however, that the discovery that there are

108. Shapiro, *Fragmenting*, *supra* note 5, at 331.

109. See *supra* notes 13-14 and accompanying text.

110. See RENEE RICHARDS, *SECOND SERVE* 312-25 (1983).

111. The "open texture" of a concept is its inability to foreclose the possible discovery or invention of new things that call into question the concept's sense or proper application. Michael Moore, *The Semantics of Judging*, 54 S. CAL. L. REV. 151, 200-02 (1981).

112. There were five sexes on Tralfamadore, each of them performing a step necessary in the creation of a new individual. They looked identical to Billy—because their sex differences were all in the fourth dimension.

One of the biggest moral bombshells handed to Billy by the Tralfamadorians, incidentally, had to do with sex on Earth. They said their flying-saucer crews had identified no fewer than *seven* sexes on Earth, each essential to reproduction. Again: Billy couldn't possibly imagine what five of those seven sexes had to do with the making of a baby, since they were sexually active only in the fourth dimension.

The Tralfamadorians tried to give Billy clues that would help him imagine sex in the invisible dimension. They told him that there could be no Earthling babies without male homosexuals. There *could* be babies without female homosexuals. There couldn't be babies without women over sixty-five years old. There *could* be babies without men over

more genders than just male and female does not necessarily evoke feelings of revulsion, and that genders other than male and female are not necessarily abominations.¹¹³

At the extreme, conceptual impacts may be one among many forms of unintended, systemic consequences of personal choices. Viewed in this light, conceptual impacts of transsexual gender projects are akin to the welfare effects briefly noted above.¹¹⁴ They are a part of the total package of consequences for which a person, or more plausibly a scheme of social regulation, might be held accountable. As such they are quite impersonal. By contrast, a person who commits a transgression by acting in a prohibited way *vis-à-vis* an abomination—by eating it, say, or becoming it—crosses a limit that nature, through the conceptual system that makes sense of it, reveals to us and admonishes us to respect.

V. INAUTHENTICITY

In this Part, I will consider the idea that transsexualism, far from being a kind of self-transformative heroism, is in fact a strong example of inauthenticity. I will consider three things that might be seen as diminishing the image of the transsexual as a responsible chooser and maker of a fundamental identity. First, I will offer some possible interpretations of the idiom introduced above: the transsexual's self-description as a "man trapped in a woman's body" or vice versa. Second, I will ask what the significance might be of the fact that some transsexuals can be seen as "joiners" or even as "conformists": people who do not make up their own identity for themselves but try to fit into a social group. Finally, I will ask whether the homelife of the transsexual, a life which is sometimes sad and filled with unenviable pressures, should be seen as exerting

sixty-five. There couldn't be babies without other babies who had lived an hour or less after birth. And so on.

It was all gibberish to Billy.

KURT VONNEGUT, *SLAUGHTERHOUSE-FIVE, OR THE CHILDREN'S CRUSADE* 114 (1968).

113. Two contrary forecasts might be made of the impact of transsexualism on our gender ideas. One forecast is nicely summed up in the popular expression "gender-bender," a term that captures what happens to gender distinctions as a function of unisex dress or hairstyles and other cultural developments that "bend" gender ideas and classifications. The opposite forecast, made by some feminist critics of transsexualism, predicts that social gender classifications will harden as a function of the way in which transsexuals represent themselves to self and others as stereotypical men or women. See *infra* note 139; text accompanying notes 197-98. I am not sure which is the better view, or whether the two are really incompatible. My aim in summarizing these views of gender-classification impacts here is just to distinguish worries (or hopes) about such impacts from attitudes of revulsion toward abominations.

114. See *supra* text accompanying note 82.

a causal influence over identity that is inconsistent with viewing the transsexual as a self-transformative hero.

A. THE "TRAPPED TRANSSEXUAL"

A transsexual who says that he is trapped in a woman's body is surely not going out of his way to draw attention to his own responsibility for his identity. My own view, however, is that it would be as great a mistake to appraise "trapped" transsexuals (by which I mean transsexuals who use this idiom to describe their situation) as inauthentic essentialists as it would to celebrate the whole class of transsexuals as existential heroes. The root of the problem lies in the fact that existentialism is better-suited for the heroic mode than for the bathetic. Consider this heroic proclamation by Sartre:

Man is all the time outside of himself: it is in projecting and losing himself beyond himself that he makes man to exist; and, on the other hand, it is by pursuing transcendent aims that he himself is able to exist. Since man is thus self-surpassing, and can grasp objects only in relation to his self-surpassing, he is himself the heart and center of his transcendence. . . . This relation of transcendence as constitutive of man . . . [is] existential humanism.¹¹⁵

Sartre says this with his chest thrust out, as it were, and his steely gaze fixed on our inevitable and glorious, if recondite, "self-surpassing." Now consider the self-surpassing of Carla/Carlos, who "between the age of six and nine . . . prayed that Santa would bring her a 'weenie'."¹¹⁶ On reading of Carla/Carlos' longing we would laugh if we did not want to cry. It is in its incongruities that this bathetic wish seems "constitutive of man." God is, according to the great tradition, the hearer of our prayers; Carla/Carlos prays to Santa. A child is supposed to ask Santa for a doll or a puppy or skates; Carla/Carlos asks for a penis. The penis for which Carla/Carlos yearns is not the mighty Phallus or the sacred Lingam, but the humble "weenie."¹¹⁷ It is by "pursuing transcendental aims" that we create ourselves; it is our nature to be "self-surpassing"; but Carla/Carlos exposes the ironic incongruity between these heroic pretensions and the sweet, sad facts of our lives.

115. Jean-Paul Sartre, *Existentialism is a Humanism*, in *EXISTENTIALISM FROM DOSTOEVSKY TO SARTRE* 310 (Walter Kaufmann ed., 1956).

116. Volkan & Masri, *supra* note 78, at 98.

117. Humble but dangerous. As a teenager, Carla/Carlos shared with a girlfriend both caresses and a faith in the weenie's presence. "Both girls spoke of the illusory penis as 'the killer'." *Id.* at 99. It is as if, to compensate for the absent penis, the gods made Carla/Carlos a gifted ironist.

For Agatha, a male-to-female transsexual, as perhaps for other transsexuals, it seems more accurate to associate the authentic with the natural than to regard them as opposites or competitors:

Living full time as a woman is more important than ever to me because I must find myself. . . . I've always been playing a role. . . . I've had to be two individuals and I don't want to have to play a role ever again. [At age thirteen, she met a girl named Agatha whom she wanted to be.] At present, when I am dressed as Agatha I am able to be my real self, to put aside the male self who has always felt conflict and discomfort. I can express my authentic, genuine, real self which is that of being a woman. It is natural for me to do this. I am much more comfortable, much happier, and without conflict and tension than I've ever felt as a man.¹¹⁸

Apparently Agatha sees no incompatibility between the existential imperative, "I must find myself," and the affirmation that she has a "real self" that she is straightforwardly "able to be."¹¹⁹ Where others might search for their "authentic, genuine, real self" in a land beyond comfort and happiness, in a stark realm of freedom, Agatha says that "it is natural for me" to be a woman and to express that identity.

Similarly, Jan Morris is ambivalent about whether, in being a woman, she is following nature or conquering it. In her youthful career as a male journalist, Morris participated in a grand adventure that was understood, then as now, as a symbol of the triumph of the human spirit over nature's greatest barriers: the first successful assault on Mt. Everest. On the Himalayan heights Morris rejoiced in the fitness of her male body; and from these heights she sped, winning the race to be the first to report to the waiting world the news that Everest had been climbed. Yet she did not find the adventure, or at least the convenient rationalizations for it, fully satisfying. In an effort to endow the expedition's achievement with formal meaning, one of the expeditionaries had quoted G.K. Chesterton:

I think the immense act has something about it human and excusable; and when I endeavor to analyze the reason of this feeling I find it to lie, not in the fact that the thing was big or bold or successful, but in the

118. DOCTER, *supra* note 9, at 30 (quoting Agatha). We may wonder whether Agatha's description of herself in terms of "tension," "conflict," and levels of "comfort" echoes her therapist's idiom, and, if so, whether this description is her best, most honest attempt to convey what draws her to femaleness.

119. Compare Jan Morris's cryptic confession that "[p]laying a part has always come naturally to me." MORRIS, *supra* note 27, at 132.

fact that the thing was perfectly useless to everybody, including the person who did it.¹²⁰

Surely, had it suited the interpretation she placed upon her "conundrum," Morris could have adopted Chesterton's account of the "immense act" as a vindication of her own "immense act" of gender-creativity. But Morris reports her disapproval of Chesterton's dictum: "[T]his elusive prize, this snatching at air, this nothingness, left me dissatisfied, as I think it would leave most women. Nothing had been discovered, nothing made, nothing improved."¹²¹ In other words, the embrace of glorious inutility (Sartre's "useless passion"¹²²) is rejected as a male obsession, unattractive to the female.

In accepting a gender-based account of her own reaction to the mystique of Everest-conquest, Morris comes close to the "essentialism" sometimes condemned by contemporary feminists.¹²³ For example, Morris quotes approvingly C.S. Lewis's affirmation that

[g]ender is a reality, and a more fundamental reality than sex. Sex is, in fact, merely the adaptation to organic life of a fundamental polarity which divides all created beings. Female sex is simply one of the things that have feminine gender; there are many others, and Masculine and Feminine meet us on planes of reality where male and female would be simply meaningless.¹²⁴

Thus the overall picture is that of a person who feels herself to be a woman, who rejects a certain way of making sense out of the conquest of nature, and who justifies or at least explains that rejection by an appeal to something that comes naturally to her: the femininity in which she participates. One could almost say that Morris, in adopting an apparently feminine reaction, was living a life according to nature. And yet this is surely paradoxical, since Morris had to defeat her own organs as surely as Edmund Hilary had to surmount Everest. As Morris acknowledges in the course of explaining her misgivings in accepting a commission to write a book about the Cascade Mountains, "[I] was by no means a lover of *all* Nature's works."¹²⁵

The question of whether a transsexual's gender projects express a love of nature or a surmounting of it is raised in a somewhat different

120. *Id.* at 84.

121. *Id.*

122. "Man is a useless passion." SARTRE, *supra* note 2, at 784.

123. See, e.g., ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988).

124. MORRIS, *supra* note 27, at 25 (quoting C.S. LEWIS).

125. *Id.* at 123.

fashion by the idiom of being "trapped" in the wrong biological gender. On the one hand, to say that one is "trapped" in the wrong gender implies that one has a right or true gender: the gender that is (part of) one's nature. But on the other hand, widespread use of the idiom by transsexuals seeking to describe their condition and to justify their aspirations suggests that, in expression at least, the yearning to live a natural life is mediated by rather conventional verbal or conceptual formulae.

The language that transsexuals use to describe their nature or condition should be canvassed not only on the theory that it reveals the inmost personal identity of the speaker but also on the theory that it does not. In our present medical organization of sex-switches, psychiatrists are the guardians of the gates of sex-reassignment surgery.¹²⁶ A person who is very unhappy living out the role of man or woman and who wants to undergo sex-reassignment surgery probably will say to the mental-health professionals whatever is most likely to lead to surgery. The psychiatrists, to be sure, have their doubts about the "trapped" formula, as we will see.¹²⁷ Talk of being "trapped" in the wrong body is hardly a magic word that opens up the gates, but it is easy to understand why a person might feel that she has a better chance of being approved for surgery if she dramatizes features of her plight that she is inclined to regard as beyond her control. Furthermore, to the extent that the public is inclined to be less judgmental or more protective toward people whose traits are seen as natural or immutable than toward people who are seen as responsible for their "condition," it may be in the interests of transsexuals to stress that their gender was decreed by a cruel fate.¹²⁸

In this connection, it is relevant to point out that people who identify themselves as transsexuals can be seen as (and may see themselves as) members of a distinct social group.¹²⁹ A person who cross-dresses may discover a community of transsexuals, persons also cross-dressing and (perhaps) taking hormones and saving up money for sex-reassignment surgery. The discovery of such communities may shape a transsexual's gender project as a choice for membership. In the course of acquiring membership in transsexual circles, and in the process of learning such useful things as which doctors will supply which hormones and how to

126. When such guardians cannot be fooled, sometimes they may be avoided altogether. See Person & Ovesey, *Part II*, *supra* note 9, at 190.

127. See *infra* notes 174-77 and accompanying text.

128. See generally Janet Halley, *The Politics of the Closet: Toward Equal Protection for Gay, Lesbian, and Bisexual Identities*, 36 UCLA L. REV. 915 (1989).

129. This topic will be taken up further *infra* notes 145-51 and accompanying text.

press the right mental health buttons, a person may slip into the available idiom about being "trapped in the wrong body."¹³⁰

The imagery of being "trapped in the wrong body" is suggestive, and should be paid the tribute of interpretation,¹³¹ not just used to categorize transsexuals as essentialists or written off as a product of the transsexual's self-interests or environment.

For most of us, our selves are characterized by a kind of incommensurability between who we think we really are and the images we see reflected back to us in the glass of daily life. Yet not every incommensurability of this kind is well-described in the metaphor of being "trapped in the wrong body." The metaphor seems to work better or to be more suitable in some contexts than others. For example, even though people are right-handed or left-handed or ambidextrous (just as they are male or female or androgynous), it is unlikely that many people have bemoaned their lot as a "left-hander trapped in a right-hander's body." Nor does the phrase "a Jew trapped in a Catholic's body" make sense as a statement of personal identity or as a description of a person's most definitive anguish. By contrast, in the late 1960s and early 1970s, a period in which some African-Americans stressed their separateness from majority society, I saw pale-skinned college students with some black ancestry struggling to be accepted as members of black social circles. This situation shares with that of the transsexual the experiencing of the body as a physical impediment to living life the way it should be lived according to one's own lights. Yet I am not sure that the word "trapped" expresses this gulf as it is or was experienced by the light-skinned African-American.

"Trapped" suggests imprisonment and draws a contrast between an exterior or outside that is free and an inside that is unfree. The pre-surgical transsexual who cross-dresses may experience just this dichotomy between the external appearance and the hidden anatomical reality. In her youth, for example, Renee Richards (Richard Raskind) wore women's clothes and achieved a satisfying feminine appearance while

130. Virginia Prince says that statements such as "I am a woman trapped in a man's body" are "the catechism of those seeking surgery." "The statements are made on the theory that if they worked before for someone else they might likely work again for the speaker." Prince, *supra* note 10, at 264.

131. "The stereotyped transsexual description is, 'I feel like a woman trapped in a man's body.' OK—that is so and right, but it still doesn't communicate what it feels like to a man who doesn't feel that way and to a woman who would find it a very difficult circumstance to imagine." FEINBLOOM, *supra* note 32, at 197 (quoting Phil/Helen).

detesting the sight of her own male organs and concealing them by binding them up with wire and masking tape.¹³²

It would be a mistake to neglect the power of the "trap" as a symbol to capture the most vivid, tactile, corporeal, even gross aspect of the transsexual experience: the self-mutilation involved in the sex-reassignment surgery.¹³³ The image of being "trapped" might liken a "trapped" transsexual to an animal caught in a hunter's trap, worrying and gnawing at the limb clamped in the steel jaw, pursuing life and freedom at the cost of self-amputation.¹³⁴ To quote again from the autobiography of Jan Morris:

[I]f I were trapped in that cage again nothing would keep me from my goal, however fearful its prospect, however hopeless the odds. I would search the earth for surgeons, I would bribe barbers or abortionists, I would take a knife and do it myself, without fear, without qualms, without a second thought.¹³⁵

The opening lines of William Blake's *The Little Black Boy* (one of the *Songs of Innocence*) present, on the surface at least, the reverse of the racial-passing phenomenon to which I have already alluded. Yet the poem opens up depths beneath the state of "being in the wrong body" and suggests ironies that may be applicable to transsexual aspirations.

My mother bore me in the southern wild,
And I am black, but O! my soul is white,
White as an angel is the English child:
But I am black as if bereav'd of light.

My mother taught me underneath a tree
And sitting down before the heat of day,
She took me on her lap and kissed me,
And pointing to the east began to say.

Look on the rising sun: there God does live

132. RICHARDS, *supra* note 110, at 56-57.

133. This interpretation of the idiom of the "trap" follows Victor Turner's suggestion that symbols draw some of their power from their capacity to unite abstract ideas to visceral images that may carry organic associations. VICTOR TURNER, *THE FOREST OF SYMBOLS: ASPECTS OF NDEMBU RITUAL* 28-29 (1967).

134. This very visceral reading of the idiom of the "trap" explores only one of several interpretive paths. Another interpretation might regard a trap as a kind of cage, an enclosure that prevents the transsexual from moving freely toward happiness. Or the trap might be understood as a matrix; the transsexual might yearn for release in the way that David awaited release at Michelangelo's hands from a block of Carrara marble.

135. MORRIS, *supra* note 27, at 169. I take it that these words, though from the heart, are sped along on the wings of rhetoric; and I am no more inclined to take at face value Morris's vow to "take a knife and do it myself" (though self-castration has been done, by transsexuals as well as others) than the affirmation that "the truth" about her was that she was a woman, *c'est tout*.

And gives his light, and gives his heat away.
And flowers and trees and beasts and men receive
Comfort in morning joy in the noon day.

And we are put on earth a little space,
That we may learn to bear the beams of love.
And these black bodies and this sun-burnt face
Is but a cloud, and like a shady grove.

For when our souls have learn'd the heat to bear
The cloud will vanish we shall hear his voice,
Saying: come out from the grove my love & care,
And round my golden tent like lambs rejoice.

Thus did my mother say and kissed me.
And thus I say to little English boy.
When I from black and he from white cloud free,
And round the tent of God like lambs we joy:

I'll shade him from the heat till he can bear,
To lean in joy upon our fathers knee.
And then I'll stand and stroke his silver hair,
And be like him and he will then love me.¹³⁶

The poem opens with, in effect, a white child trapped in a black body. Whiteness is seen as the standard, the normative state of the soul; and the body is experienced as an impediment or falsity, as understood in Gnostic doctrine.¹³⁷ But the black boy's mother teaches him that the body has a spiritual function: it shields the soul from God's beams of love, which are so bright and intense that a direct encounter with them would be fatal.¹³⁸ In this respect, the black boy's body is even superior to the white boy's; and the black boy will even shade the white boy from the heat of God's love. The relationship of white exploitation of blacks, culminating in slavery and the slave trade, is inverted; now the black boy is superior to the white and uses that superiority to protect instead of to exploit. In envisioning this new relationship, the black boy imagines that he will stroke the silver hair of the white boy, "And be like him and he will then love me." The only heaven that the black boy can imagine, on the basis of his mother's loving mystification of race, is one in which he is finally enabled to get close enough to the superior other (the white boy) to stroke him, and to be loved, not for what he is (a black boy with a

136. WILLIAM BLAKE, *The Little Black Boy*, in SONGS OF INNOCENCE AND OF EXPERIENCE (REPRODUCTION) 9-10 (1967).

137. JONAS, *supra* note 100, at 44.

138. Cf. Exodus 19:21, 24:17 (the danger of being blinded by God's intense radiance).

loving heart and pure soul), but for "being like" the white boy, whose love is then a form of narcissism.

Blake's stance toward the yearnings of the black boy is at once empathetic and ironic. The anguish and longing of the black boy are real and yet oriented by the social order toward a very imperfect vision of what freedom from the body's contingencies actually means. The black boy is caught, one might say, in a stereotype. Perhaps this holds true for the transsexual as well, especially for the transsexual who understands himself or herself to be "trapped" in a wrong-sex body. Perhaps being trapped in the wrong body is one manifestation of the condition of being trapped in a stereotype.¹³⁹

As the little black boy was enfolded by his mother's loving mystifications of race, so transsexuals may (like the rest of us) be enfolded by early childhood in loving mystifications of gender. A transsexual caught in such mystifications may be unable to see the irony in his or her own most passionate and intimate yearnings. Consider Mickey, a biological male who grew up believing that men are "tough, aggressive, and cold."¹⁴⁰ If Mickey had had a more subtle or inclusive picture of men, he might have found a place for himself within that picture; but he found it easier to accept the stereotype and change his own gender-identity than to accept himself as a man within an enlarged or revised view of masculinity. Indeed, when Mickey joined a church, and discovered that "men in the church were perceived as being warm and caring without losing masculinity" and that "one is not required to be a female to be kind and loving," he began to accept himself as a man.¹⁴¹ Perhaps another route to a similar destination would have been for Mickey to make the discovery that not all women are "warm and caring" or "kind and loving," a revision of his female stereotype that might have urged him to take more direct responsibility for the character and virtues to which he aspired.

To look upon one's gender yearnings ironically is to smile inwardly at the way in which one's most intense and defining hopes for emancipation are actually caught in a web or trap of social design. The little black boy could not make this wry and rueful smile as he entertained his poignant vision of redemption and acceptance; neither can many transsexuals, perhaps, and neither can the rest of us. But even if it were possible for a

139. "[T]he male-to-constructed-female goes from one stereotype to the other. . . . [A] superficial, artifactual, and socially and surgically constructed change is what takes place rather than a deep intrinsic change that encourages existential development." RAYMOND, *supra* note 18, at 3.

140. Elsie Shore, *The Former Transsexual: A Case Study*, 13 ARCHIVES SEXUAL BEHAV. 277, 283 (1984).

141. *Id.* at 281.

transsexual to achieve ironic distance from his or her own yearnings, the social ironies would remain. The power and plausibility of Blake's poem derive in large measure from the poet's recognition that even a possible heightening of personal consciousness offers no real way out of a repressive social order. Correspondingly, we should recognize that even a person whose gender aspirations are not as narrowly stereotyped as Mickey's may feel the social teeth of the gender trap.

Consider Ruth, a male-to-female transsexual and active feminist, who says: "I want to be a woman, not a fashion plate, not a kitten but a good strong active female."¹⁴² To the extent that what attracts Ruth to womanhood is not a stereotype of the woman as "fashion plate" or "kitten," she is already free of entrapment by gender stereotype. Yet the power of social gender classifications and related political forces still restricts her freedom; she has been asked to withdraw from a women's center.

I was told that I couldn't do counseling and give birth control and abortion information . . . that I didn't know how women felt. Damn it, I was working hard, really trying, sharing, being open. Do you have to be a junkie to work with addicts? a prostitute to work with hustlers? to have cancer to successfully treat cancer patients? What are they so afraid of? I'm committed as a woman, to freedom, for women. They keep saying being a transsexual is different from being a woman, but I don't want to be a transsexual forever.¹⁴³

Perhaps the most insidious work done by the trap is the way in which it might taint or contain the kind of commitment that Ruth wants to make and understands herself to be making. Some feminist writers have condemned such transsexualism as "another patriarchal ruse," in which

"transsexually constructed lesbian-feminists": . . . personify the male phantasy of intimacy with women—a truly mental form of rape which, over and above female appearances, only serves to reinforce their ineradicable virility. This form of intrusion seems to aim at an insidious mode of control over women, in the manner of eunuchs guarding the seraglio.¹⁴⁴

142. FEINBLOOM, *supra* note 32, at 159 (quoting Ruth).

143. *Id.* Compare Debbie, a male-to-female transsexual who, when asked a question about women's liberation, answered: "Darling, I've waited thirty years to put on a bra. I'm surely not going to throw it away or burn it now." *Id.* at 176 (quoting Debbie).

144. MILLOT, *supra* note 94, at 16; RAYMOND, *supra* note 18, at 99-119.

Among the men who deeply believe themselves to be women and who aspire to live as women, and who see in this commitment a real identification with the struggles and needs of women, some may be animated by such "insidious" aims; and, if so, the trap has caught them in the social inequality of gender even as they try to change their own personal gender identity. Surely, however, not all male-to-female transsexuals are animated by these motives or purposes. Yet it may testify to the strength of the trap, and to the hurtful power of its mordant ironies, that those whose projects enable them to escape the gravitational force of their own socially-decreed gender may actually increase the pull that that force exerts on those left behind.

B. THE SIGNIFICANCE OF MEMBERSHIP

1. *Being and Becoming a Transsexual*

If in order to transform ourselves in ways fundamental to our identity we needed to invent our achieved identity, few of us could be self-transformers, since few of us are truly inventive. It is enough for most of those who have a religious conversion experience, for example, to convert to an existing faith and to join an existing community.¹⁴⁵ Similarly, while some transsexuals might be inventing or creating new genders that never existed before, most transsexual gender projects could be interpreted as efforts to "join" an existing gender, to become a "member" of it, or at least to be accepted as a member.

Gender, however, is more of a grouping or classification than it is a group, at least in certain senses relevant to the formation of group identity. Gender is too remote and diffuse a grouping to perform the function either of admitting new members or expelling old ones. So for some transsexuals, smaller groups or communities of gender pilgrims play an important role in defining and transmitting attitudes and ideas central to gender identity. Randi/Randy, for example, came to a better appreciation of his male identity when he ran away from home and became involved in gay communities; he gained support for his transsexual and

145. For the convert, the "horizontal" dimension of becoming a member of a new association—the church, both as a universal institution and as a particular congregation—is closely bound up with the more "vertical" dimension, the commitments being made to God and the new relationship with God that is being established or sought. It would be foolish to criticize the convert for joining a church and myopic to celebrate the individual who undergoes his or her religious crises alone and in silence over the individual whose crises deeply involve the existence of communities of faith. Similarly, the fact that discovering a community of transsexuals and wanting to be a part of the life of that community is a part of an individual's deciding that he or she is a transsexual should not lead to a downgrading of the self-transformative character of the transsexual identity.

sex-change aspirations when he came into contact with transsexual culture and roomed with other transsexuals.¹⁴⁶ The same kind of understanding came to Janice through a role-model: "At about 19, I saw Canary Conn (a transsexual) on TV and I came to idolize her. She's responsible for me being a transsexual today as much as anybody."¹⁴⁷ Popularization of transsexualism through tabloids and talk shows has lead one researcher (herself a male-to-female transsexual) to complain that "sex reassignment surgery is a communicable disease."¹⁴⁸ Should we look askance at the transsexuals who "learn" to be transsexuals from mentors, role-models, popular culture, or communal subcultures, and look more favorably upon transsexuals whose course of struggle and self-definition is more individualistic? I think that this would be an undesirable and unrealistic consequence of adopting a view of transsexuals as existential heroes.

146. LOTHSTEIN, *supra* note 11, at 119. Lothstein's conclusions may need to be taken at something less than face value: "While the whole area of the initiation of young teenagers into transsexualism by deviant sexual subgroups has been virtually ignored, every gender clinician knows how powerful a force that is in the consolidation and crystalization of a transsexual identity." *Id.* at 131.

It is important to distinguish the issue of whether joining a group *causes* a person to be *X* (joining the college debate club causes a person to be a law professor) from the question of whether joining a group is a *criterion* for being *X* (joining the Rotary Club is a criterion for being a Rotarian). One need not embrace any group in order to count as a transsexual as I have set out the concept, *see supra* text accompanying notes 8-24, except perhaps in the weak sense in which "living in the other gender" might be construed as "joining" the other gender. There are some identities, such as "being a Christian" in the evangelical sense of the phrase, that one can have only if one makes a certain kind of acknowledgment or avowal. A full evangelical account of "being a Christian" might include these criteria as necessary and jointly sufficient: (1) accepting Jesus Christ as one's Lord and Savior, and (2) avowing this acceptance, with both (1) and (2) to be evidenced by joining and participating in a practicing faith community. I think that "being a Christian" so construed is quite different from "being a transsexual," since for the latter, no avowal is necessary (one need only regard oneself as of the other gender or aspire to live in the other gender) and neither is it necessary to substantiate or manifest this identity through membership in a community. In practical terms, however, it may be difficult for people to hold on to the most elusive, threatened, and unspeakable identities without "coming out of the closet" (avowal plus substantiation/manifestation); and for political reasons some groups accordingly press reforming accounts of the underlying concept, contending that avowal and membership are indeed criterial. *See* Halley, *supra* note 128, at 946-63.

147. DOCTER, *supra* note 9, at 27 (quoting Janice). What does Janice mean by "being a transsexual" here? Does she mean that Canary Conn is responsible for her (Janice's) sense of herself as a woman, or for her recognition that she "had transsexualism," or for her ability to accept her wishes and feelings rather than fight them? Docter notes that in several cases, "the impact of the social role-modeling presented by the transsexual mentor seemed to be paralleled by major reversals in gender identity and by demands for sex reassignment." *Id.* at 75.

148. Prince, *supra* note 10, at 271. On the other hand, the incidence of transsexualism in remote areas of China, protected to a large extent from these cultural suggestions, has suggested to some researchers that "transsexualism is not an iatrogenic diagnosis, as some would state, but probably exists independently of western newspaper publicity." Fang Fu Ruan & Bullough, *supra* note 15, at 547.

Most of us can and do *describe* ourselves in terms of the various communities of which we are a part. The sociologist Georg Simmel, for example, speaks of individuals as lying at the intersection of a number of social circles;¹⁴⁹ a person may describe himself as being a Catholic plumber who is married and has three children, lives in San Diego and goes sailing on the weekends with members of a sailing club. The individual who can say, "I'm a male-to-female transsexual who works as a showgirl but someday would like to meet a nice man and settle down in the suburbs"¹⁵⁰ depends no more and no less than the Catholic plumber on communal identities for self-definition or at least self-report.¹⁵¹ It is reasonable to want personal identity to be something deeper and more valuable than this, but it is unreasonable to demand a more intimate and independent mode of self-expression from the transsexual showgirl than from the Catholic plumber.

2. *Circumcising the Member*

The theme of membership, like that of abandonment, raises the analogy between transsexualism and conversion. I showed above¹⁵² how Biblical narrative celebrates rather than deplores the leaving-behind of family for faith, and sketched the argument structure of a single Gospel chapter, Matthew 19, that relates this differential estimate of departures to a view of gender and its claims. I explained the convert's name-change as a symbol of the convert's transformation. Here I return to the convert's name-change and relate the undertaking of new commitments—for which the Biblical concept is that of the Covenant—to genital surgery. Again, lest this be regarded as blasphemy or merely as frivolous juxtaposition, let us take a look at Scriptural logic. Here is the action of the seventeenth chapter of Genesis:

149. GEORG SIMMEL, *The Web of Group-Affiliations*, in *CONFLICT AND THE WEB OF GROUP-AFFILIATIONS* 215 (Kurt Wolff & Reinhard Bendix trans., 1955).

150. Compare Yvonne, expressing her outrage over society's treatment of transsexuals such as herself and insisting that "transsexual is a political problem": "The damn trouble with transsexuals is that half these people want to be stereotyped women in ranch houses and the other half want to be showgirls, and none of them want to make waves. The consciousness that needs to be raised first is that of transsexuals." FEINBLOOM, *supra* note 32, at 160-61 (quoting Yvonne).

151.

Many transsexuals desire to join "middle-class America." They share with "usual" men and women a common fantasy (from television, movies, books, and magazines) of peace, tranquility, and togetherness in a beautifully furnished home, two cars in the garage, and sparkling laundry. Indeed, if one is concerned about "passing," about being recognized as a true male or female, it is far safer to ensconce oneself in a colonial house, bake pies, wear traditional clothing, and participate in gender-stereotyped activities.

Id. at 163-64.

152. See *supra* notes 63-81 and accompanying text.

(1) Yahweh appears to Abram and declares that He will make His covenant with him.¹⁵³

(2) The covenant is made with Abram; he will be the father of a multitude, who will also participate in the covenant; accordingly, Abram is henceforth to be Abraham; Abraham and his descendants are to possess Canaan forever, and Yahweh will be their God.¹⁵⁴

(3) The content of the covenant, as well as its sign, is revealed: every male among Abraham's family and descendants "shall be circumcised in the flesh of your foreskins"; the scope and timing of the procedure is detailed; those who go uncircumcised shall be "cut off" from their people.¹⁵⁵

(4) Yahweh promises, despite Abraham's incredulity, to enable ninety-year-old Sarai (henceforth Sarah) to become pregnant and give birth to a son, Isaac, with whom Yahweh will also establish the covenant.¹⁵⁶

(5) Yahweh ceases speaking and withdraws; Abraham circumcises himself, his son Ishmael, and all other males born in the household or bought.¹⁵⁷

Like circumcision, sex-reassignment surgery is an extraordinary act that creates membership, or at least symbolic membership, through dismemberment, real or symbolic. Like circumcision, sex-reassignment surgery can serve as a bodily correlate to the change in name, both of them symbolizing and enacting a transformed identity. Both procedures are susceptible to a kind of medical rationalization that makes them "safe" by replacing their dangerous associations and motivations with an approved and rational project for enhancing health or personal hygiene. There are, of course, differences, including the fact that sex-reassignment surgery is a more radical and technically sophisticated procedure than male circumcision as carried out in ancient Israel and in Judaism. Further, apart from Abraham and his family, and the occasional convert, circumcision is not something elected by the male subjected to it; it is not chosen or aspired to, like sex-reassignment surgery.

Circumcision's power stems from its success, as a ritual symbol, in uniting dangerous, bloody, even gross images and actions to a more pure

153. Genesis 17:1-2.

154. Genesis 17:3-9.

155. Genesis 17:10-14.

156. Genesis 17:15-17, 19.

157. Genesis 17:22-23.

ideal:¹⁵⁸ in this case an ideal of covenantal dedication, membership in the elect, and salvific personal transformation. But in addition to its susceptibility to medical or allegorical rationalization, discussed above,¹⁵⁹ circumcision's very bipolarity as a ritual symbol—its union of the grossly physical and the spiritual ideal—tends to subvert itself. The equilibrium between the physical and the spiritual is disrupted by priestly, prophetic, and Christian efforts to demote the physical act of circumcision and elevate the spiritual and legal commitment of which the physical act becomes a mere token (and a not altogether felicitous one at that). The Deuteronomist, for example, enjoins Israel to “[c]ircumcise therefore the foreskin of your heart, and be no longer stubborn.”¹⁶⁰ Likewise, the prophet Jeremiah relays God's threat to “punish all those who are circumcised but yet uncircumcised,” including “the house of Israel [which] is uncircumcised in heart.”¹⁶¹ This disequilibrating of the physical and spiritual or moral aspects of circumcision invites the outright revisionism expressed in Paul's Christian affirmation that “real circumcision is a matter of the heart.”¹⁶²

To a generation more accustomed to troping “the windmills of your mind” or “the bright elusive butterfly of love,” “the foreskin of your heart” may not seem a happy turn of phrase. Its meaning, however, lies in its association with one of the central “natural law” themes of the Bible: the law of God “written in the heart.” This idea, which I have discussed elsewhere,¹⁶³ elaborates the covenant as a command of God which is imprinted on our very nature and is therefore available for us to hear or to read, much as we hear the voice of conscience and feel presentiments of abandonment. For the law of God to be written in the heart, the heart's protective shield, its “foreskin” so to speak, must be stripped away.

Further driving the disequibration of the corporeal and spiritual poles of circumcision as ritual symbol was the fact that in the ancient Near East, male circumcision was a widespread practice that did not suffice to single out Israel as a nation, let alone as the chosen people.¹⁶⁴ So it made sense to stress that what really singled out the elect was not the

158. TURNER, *supra* note 133, at 28-29. See also text accompanying notes 133-35 (presenting a bloody, corporeal image of the trap).

159. Douglas, *supra* note 104, at 46-48.

160. Deuteronomy 10:16.

161. Jeremiah 9:25.

162. Romans 2:29.

163. Garet, *Natural Law*, *supra* note 33, at 221.

164. Stanley Gevirtz, *Circumcision in the Biblical Period*, in *BERIT MILA IN THE REFORM CONTEXT* 93-103 (Lewis Barth ed., 1990).

outer token but the inner "circumcision of the heart," all the while retaining male circumcision as a primary requirement of membership in the cultic community. Similarly, today's transsexual who regards surgery as the definitive act of membership in the true gender wants to see these outward changes as tokens or recognitions of abiding inner realities. But the sophisticated transsexual, or at least the attending psychologists, know that surgery is not a sufficient condition for full membership in the true gender: that those not "really" women will not thereby be made women, and that some of those who take on these outward emblems of salvation are "really" not transsexuals but radical transvestites or individuals suffering from severe personality problems.¹⁶⁵

3. *Saying "I Am a Transsexual"*

Some of the most daring, committed, and self-defining choices that we make are in fact incomprehensible apart from membership. A person who becomes a labor activist or involved in a political movement is making a commitment to concrete human associations. While non-transsexuals may *want* to think of transsexuals as lonely sentinels on the outlands of sexuality and self-identity, it may be helpful to realize that we do not impose this expectation on other people who, in a sense, "take their life into their hands" and shape it according to a vocation or calling.

What, then, is a person embracing or affirming when she says: "I am a transsexual"?¹⁶⁶ As a thought experiment, consider what a person could say, want, or be, a century or a century and a half ago. A person could feel uncomfortable in his or her gender of assignment and feel disgust at the sight of his or her own sexual organs. A person could cross-dress; a man, for example, could say to himself, if appropriate, "I am the kind of man who finds wearing women's clothes to be comfortable and natural."¹⁶⁷ A biological male could say, "I really am a woman," and

165. See *supra* notes 9, 12 & 58.

166. The male-to-female transsexual who declares, "I am a transsexual," may be describing herself not only (or not exactly) as a woman but as a 'certain kind of woman'; namely, one who has had to struggle to achieve womanhood. There is something especially affecting about a person who can say (despite physiology and social identity) not only "I am a woman" but "I am a woman of a certain kind." Consider Sharon, a male-to-female transsexual:

I guess you could call me asexual right now. I would like to be a fully functioning female . . . with a man, I think, but I am open to the other too. I know some transsexuals hustle but *I'm not that kind of woman* . . . I'd rather scrub floors. You have to have a pretty low self-image to be on the streets, and I'm not there yet.

FEINBLOOM, *supra* note 32, at 165 (quoting Sharon) (emphasis added).

167. Similarly, while a man could not make the affirmation "I am a transvestite" before 1910, when the term was invented, LOTHSTEIN, *supra* note 11, at 54-55, he could still say to himself, "I am the kind of man who finds wearing women's clothes exciting."

choose to live as a woman. He could say, "I want to have sex with men, but not as a homosexual,"¹⁶⁸ or "I want to have sex with women, but not as a heterosexual."¹⁶⁹ For example, H.W.F., a biological male, was quoted in an 1897 article on *Psychical Hermaphroditism* as declaring that "I seem to be a female in a perfectly formed male body," and "I seemed to have the strongest possible desire to be a girl, and used to wonder if by some peculiar magic I might not be transformed."¹⁷⁰ H.W.F. could not call himself a transsexual; the term itself was not coined until 1923, and not popularized until the 1950s and 1960s.¹⁷¹ He had no community to join, no social classification (other than as deviant, sinful, or homosexual) in which to feel at home. He could yearn for transformation by magic but not plan for it by saving up money and convincing the mental health professionals. And above all he could feel guilty, feel that his yearning to be a girl was a transgression related to his "habit of self-abuse."¹⁷²

Before the advent of sex-reassignment surgery, a person could not say, "I am a transsexual," and mean by that declaration to include himself or herself in the class of persons for whom such surgery is "healthy" or "proper". That is to say, such a person could not affirm that he or she "has transsexualism." If he or she sought out castration or some other form of sexual self-mutilation, he or she would have at hand no ready classificatory scheme that could distinguish such dangerous and provocative acts from masturbation, fetishism, or any other disapproved or perverted behavior. The modern transsexual can say to herself, "I don't want the mutilation per se; I want to be able to be and to do certain things for which surgery is a necessary means." This could neither be

168. Helen, in her middle age, laboring with care and seriousness to slough off the skin of Phil: I would like to have a man make love to me, but I am frightened that he would find me to be male physically and this would make him unhappy. I would want him instead to be satisfied in finding me sexually responsive as a woman. This I know is a very high goal, and very very distant—almost in the world of fantasy, but I do report it as being thought of. Relationships in the gay world are no good because the man is enjoying himself because I am male.

FEINBLOOM, *supra* note 32, at 195 (quoting Helen). Helen also says: "When I look at a real girl a fantasy overtakes me. 'How wonderful it would be to be her,' 'to be wanted as a woman,' 'to be taken to bed as a woman,' 'to be a companion as a woman.'" *Id.* at 203.

169. The term "homosexuality" was not coined until 1869, MONEY, *supra* note 8, at 9, but surely the invention of that word was less responsible for shaping or even producing the behavior, status, or desires it names than was the later term "transsexualism" in relation to what it names.

170. Vern Bullough, *A Nineteenth-Century Transsexual*, 16 ARCHIVES SEXUAL BEHAV. 81, 82 (1987).

171. *Id.* at 81.

172. *Id.* at 82.

said nor meant until a certain social identity and a certain medical practice became available.¹⁷³

Today a person can hardly explore alternative gender identities or self-understandings, however tentatively and imaginatively, without sensing that his or her privacy is being invaded by social classifications: that transsexualism is peering over one shoulder and homosexuality over another. Yet it is my own view that this does not represent a serious danger to authentic experience. While aspirations or interactions sometimes seem impersonal in proportion to the degree to which they are scripted, this is not always the case. Indeed, a special quality of exuberance or of intimacy, ordinarily associated with the least mediated expressions of one's unique personality, sometimes also attaches to highly socialized encounters. The romantic excitement of a first kiss is not dampened by the lovers' awareness that what they are doing places them in an ancient tradition; nor is there any duplicity or inauthenticity in treasuring the kiss both for what is special about the lover and for what all lovers—oneself now included—have in common. If kissing is at once a celebration of what is special and of what is conventional, so is the tentative exploration of private gender possibilities in terms of ordinary public classifications.

C. THE MATRIX OF PRESSURE AND UNHAPPINESS

I alluded at the outset of this section to a final respect in which the adoption of a transsexual identity or the election of sex-reassignment surgery does not conform to the image of the existential hero making his or her "leap of faith." The case studies that I have read are filled with accounts of home lives that are truly awful: children beaten or raped by parents or step-parents, parents treating their own children as doll-like devices with which to address their own gender conflicts and sexual traumas. The etiological role of family dynamics in the early years of childhood is stressed in the case studies,¹⁷⁴ both by those who see these dynamics as structuring the course of instinctual drives and triggering or

173. The truly creative person, however, surely could imagine such surgery long before it became widely available. Freud's famous patient, Schreber, in describing an event in his extraordinary life, stated: "From this moment I had undoubtedly understood that, whether I liked it or no, emasculation was an absolute imperative of the universal order of things, and that, in my search for a reasonable compromise, the idea of being changed into a woman was the only solution left open to me." MILLOT, *supra* note 94, at 27. This quotation is also stunning in its imputation of the gender-switch, not to a free personal choice, but to "an absolute imperative of the universal order of things."

174. For example: "Janice may have been a victim of unstable and rejecting parents and of complete abandonment by the father. The physical abuse delivered by her mother might have added to feelings of basic insecurity and to the mobilization of separation anxiety." DOCTER, *supra* note 9,

inhibiting epigenetic progress, and by those whose perspective is more behaviorist.¹⁷⁵ Although the underlying theories differ, and even against a backdrop of uncertainty about the ultimate issues of causation, the authors of the case studies basically converge upon the theme of an unsatisfying and destructive family life.¹⁷⁶ Consider, as an example, this diagnosis of Barbara/Brian, a female-to-male transsexual, by a psychologist whose perspective is Freudian.

It is compelling to view the intergenerational family dynamics as playing a crucial role in the formation of Barbara's gender identity conflicts. Indeed, it was within the family context of two generations of child abuse, chaotic sexuality, and gender identity pathology, that Barbara failed to develop a female core gender identity. From birth, Barbara experienced a continual assault upon her gender identity and role development. Her mother wished for a boy, hated girl children, and communicated to Barbara that only as a boy would mother love and accept her. Moreover, mother surrounded herself with men, who crushed Barbara's female gender development and encouraged her to develop as a boy, the stepfather even going so far as to give her a male name and introduce her as 'my son'. Barbara was not provided the

at 28. The problem of why such a tiny percentage of persons who grow up in such unhappy and abusive homes ultimately become transsexuals remains unsolved.

175. For an exposition of the difference between the psychodynamic and social learning theories of gender identity formation, see Williams et al., *supra* note 6, at 105-07.

176. Robert Stoller, for example, offers this scenario for the family etiology of what he regards as the extreme femininity of the male-to-female transsexual:

A chronically depressed, bisexual woman, who considers herself without value, marries a distant and passive man. If she gives birth to a beautiful son, she has in her arms the cure to her lifelong hopelessness. Without her husband present either to interfere or to serve as a model for the boy's masculinity, she holds her perfect child in an endless embrace. As a result the child does not adequately learn where his own body ends and hers begins, at least in regard to a sense of maleness and femaleness.

Stoller, *supra* note 57, at 215. Stoller sums up succinctly: "His femininity derives from the way he is handled by his mother, who has wished him to be her beautiful, graceful, idealized, feminized phallus." *Id.* at 218.

The family scenario responsible for producing female-to-male transsexuals has been described as follows:

A physically normal baby girl is perceived as not 'feminine' or cuddly by the parents. The feminine mother is emotionally removed during this child's infancy, most often by severe depression. The masculine father supports neither his wife nor his daughter, but encourages the daughter to take care of the mother and to be a 'buddy' to him. [Theorists have also identified such factors as] the influence of a male-derivative name, a stable warm father, an unpleasant or emotionally unavailable mother, and the reinforcement of rough and tumble play . . . ; a family pattern of identification with a masculine but abusive father, and a protective attitude toward a weak, emotionally unavailable mother . . . ; a disturbed mother-child relationship . . . ; family violence . . . ; a reversed oedipal situation . . . ; deep unconscious conflicts . . . ; unresolved separation anxiety . . . ; parental loss . . . ; parental preference for a boy . . . ; constitutional factors in the child.

Dulcan & Lee, *supra* note 18, at 355 (citations omitted).

More succinct is the view of Docter: "[T]he etiology of transsexualism is unknown." DOCTER, *supra* note 9, at 57.

proper milieu in which to form an appropriate female core gender identity. Indeed, there seemed to be a family conspiracy to masculinize Barbara. The result was that she had a disposition for gender diffusion and gender dysphoria which was exacerbated by stressors throughout her life cycle.¹⁷⁷

This diagnosis, despite its jargon and perhaps inflated claims, expresses something that I think must be taken very seriously. It is hardly implausible to say that if a girl is brought up to be a boy, is rewarded for being a boy and put down for being a girl, it is "natural" for her to want to be a boy. And if wanting to be a boy is too dangerous a state to be in—too dangerous a desire to acknowledge to oneself or others—one can hardly blame a person for saying, not "I want to be a boy," but "I *am* a boy."

Like the language of simply "being" the other sex (or being "trapped"), and like the phenomenon of membership in a transsexual community (or "buying into" a transsexual group-identity), the fact that a person's upbringing explains his or her adoption of a transsexual identity is only superficially inconsistent with choosing to be the opposite gender in an authentic and committed way. It is easy enough to conjure up the image of someone reared in a normal or even specially advantaged household, reading Nietzsche at a tender age and deciding to switch genders (imagine the decision reached with Wagner blaring on the stereo) in order to qualify for admission to the *übermenschen*.¹⁷⁸ But is such a self-transformer any more real, or such a self-transformative decision any more genuine, than one made by Patricia, who as a child was raped by her brother and four of his friends?¹⁷⁹ To answer in the affirmative is to denigrate the pain and suffering which is, for most people most of the time, the matrix of their transformations.

The fact that the great social revolutions of modernity emerged from a matrix of suffering—the Russian Revolution's relation to czarism and to the catastrophic sufferings of the Great War is an example—does not detract from their human significance but if anything elevates them above the plane of ordinary politics. A revolution is no less a collective self-transformation because the people who made it did not do so in a playful access of arbitrary self-definition. We might even go so far as to

177. LOTHSTEIN, *supra* note 11, at 105.

178. Compare the Leopold/Loeb trial, in which it was part of the prosecution's theory that Nathan Leopold committed murder in order to live up to his picture of himself as a Nietzschean *übermensch*. FAMOUS AMERICAN JURY SPEECHES 1061 (Frederick C. Hicks ed., 1925). Similarly in Gotha, Germany, the defense argued that Walter Fischer killed his fiancée in order to fulfill the philosophies of Nietzsche and Schopenhauer. SANDER L. GILMAN, DIFFERENCE AND PATHOLOGY: STEREOTYPES OF SEXUALITY, RACE, AND MADNESS 61-64 (1985).

179. LOTHSTEIN, *supra* note 11, at 136.

withhold the label of revolution from a social event that could *not* be explained as a way of dealing with or responding to antecedent pressures and interests. A person who adopts a transsexual identity in response to otherwise unbearable pressures stemming from childhood is no less a genuine self-transformer than a society that erupts in revolution.

The example of revolution also suggests that a self-transformation is not always successful, or that, more precisely, what counts as success is thoroughly open to debate. Most of the great revolutions of modernity stand condemned by the very aspirations that their leaders articulated. Similarly, I would guess that the psychiatrists who are skeptical of the power of the transsexual identity or of sex-reassignment surgery to address the unhappinesses and struggles and failures of the patient have much reason to be skeptical.

Finally, throughout the Christian tradition can be found many versions of the belief that only the person who stands in real need of spiritual comfort, growth, or righteousness can be touched by grace or by the Gospel message.¹⁸⁰ Christ's saving love is not the sort of thing that can be understood by someone who simply decides, in a cool moment, that he "is a Christian." Instead, it comes as a drink of water to someone who is dying of thirst. This analogy may suggest that the neediness or even the despair of the person who bears deep wounds from her childhood years is not at all inconsistent with regarding a decision explained by that neediness as a self-transformation that deserves a certain respect.

VI. EMBODIMENT AND METAPHOR

"And you will make this flesh of mine, which has endured all this, to rise up."¹⁸¹

180. See Matthew 5:3, 5:6 (blessing "the poor in spirit" and "those who hunger and thirst for righteousness"); John 7:37 ("If any one thirst, let him come to me and drink"). For a description of Dietrich Bonhoeffer's distinction between "cheap grace" and "costly grace" ("[c]ostly grace is the gospel which must be *sought* again and again, the gift which must be *asked* for, the door at which a man must *knock*"), see DIETRICH BONHOEFFER, *THE COST OF DISCIPLESHIP* 47 (1963) (emphasis in original).

181. *The Letter of the Church of Rome to the Church of Corinth, Commonly Called Clement's First Letter*, in *EARLY CHURCH FATHERS* 56 (Cyril Richardson ed. & trans., 1970). In this passage, Clement expresses his faith and hope in the resurrection of the body. Although he attributes the passage to Job (the editor cites Job 19:26), Clement is in large measure superimposing his belief upon the text. To support the doctrine of the resurrection of the body, Clement not only misreads Scripture, but goes outside the canon altogether, relying on the pagan legend of the periodic death and rebirth of the Phoenix. *Id.* at 55-56. Thus we are again reminded of the way in which the opening or renewing of the body echoes the opening of the canon. See *supra* text accompanying notes 27-34. The faith that looks beyond the body's material limitation in death also looks beyond the canonical limitations of the text.

Some transsexuals have insisted that their projects and aspirations transcend the merely physical. "That my inchoate yearnings, born from wind and sunshine, music and imagination—that my conundrum might simply be a matter of penis or vagina, testicle or womb, seems to me still a contradiction in terms, for it concerned not my apparatus, but my *self*."¹⁸² Yet her "inchoate yearnings" led Jan Morris to hormones and surgery, to a completion crafted in the medium of the body.¹⁸³

Such projects involve the body fundamentally and perhaps to a greater extent than many other examples of self-transformability. If transsexualism illumines the self-transformability that inheres in and even defines existence, it does so by giving us new light in which to see the familiar yet mysterious fact that personal life is embodied life.

Whatever one concludes about the morality of gender projects, I think it fair to say that it takes a certain faith, a rare faith, to undergo drastic and painful elective surgery in the hope of qualitative change in one's life. Like the believer who looks forward in faith and hope to the resurrection of the body,¹⁸⁴ so a person struggles toward sex-reassignment surgery in faith that "this flesh of mine, which has endured all this," will "rise up." This fervent expectation and yearning for a bodily renewal, in which the suffering flesh is transformed in order to bring home a redeemed life, evokes admiration and doubt in equal measure. On the one hand, faith and hope are virtues, at least from a theological perspective. A person who manages, in spite of all, to hope that the body can arise purified and renewed, either from the grave or from the lesser death of reassignment surgery, deserves respect for his or her faith. Yet this respect is intelligible only against a background of doubt. How *can* changes to the body effect changes to the self, or vindications of personal truths? Why *must* the body change if what is sought or expected is a new being or identity, or at least one that (in Jan Morris's words) has discarded "falsity"?¹⁸⁵

182. MORRIS, *supra* note 27, at 21-22.

183. Moreover, Morris does not say that her project does *not* involve the body, but only that it is not "simply a matter" of the body. This would suggest that the project involves the body and more. Yet Morris concludes by drawing a contrast between body and "*self*," as if the two were distinct. *Id.*

184. For a humane and lucid account of the faith in the resurrection of the body, see C.S. LEWIS, *Miracles of the New Creation*, in MIRACLES 143-63 (1947). What Lewis says of the resurrection of the body is equally applicable to transsexual gender projects: "A new Nature is being not merely made but made out of an old one. We live amid all the anomalies, inconveniences, hopes, and excitements of a house that is being rebuilt. Something is being pulled down and something going up in its place." *Id.* at 155.

185. See *supra* text accompanying note 39.

Both the faith and the doubt express a similar perception, but in different moods. The common perception is that there is a certain discrepancy or incongruity: between body and redemption in the case of the idea of the resurrection of the body; between body and gender in the case of the surgical project. This is not to say that the discrepancy is proof that transsexual gender projects involving the body are misguided. But there is something immediately jarring or incongruous in looking to a specifically *bodily* transmutation as the site of reality, identity, or authenticity. I want to hold on to this incongruity, to explore it in this Part, all the while leaving open the possibility that faith's posture toward this incongruity is tenable, honorable, or even commanding.

I will begin with a modern instance of doubt. In rejecting a male-to-female transsexual's claim that in firing her, her employer had violated Title VII's prohibition against discrimination on the basis of sex, the Court of Appeals for the Seventh Circuit described the plaintiff not as a woman, but as "a biological male who takes female hormones, cross-dresses, and has surgically altered parts of her body to make it appear to be female."¹⁸⁶ The Court expressed doubt "that a woman can be so easily created from what remains of a man."¹⁸⁷ In these words, more than a trace is to be found, if not of disgust, then at least of distaste.

But there is also something else in the Court's attitude: a guarding of gender not so much against illusion or misplaced agency as against what is perceived as cheap imitation. The body of the plaintiff only "appear[s] to be female," but actually it is not so easy to make a woman "from what remains of a man." The substitution of an imitation for the real thing is seen as destructive, and the court recoils from this.

The court's view of the plaintiff as an imitation woman can be weighed in the balance of evidence and argument and found to be either true or false. But doing so requires finding a way out of the semantic problems of gender: the criterial vagueness of the concept, and its "open texture."¹⁸⁸ It is not my task here to offer an interpretation of the goals

186. *Ulane v. Eastern Airlines*, 742 F.2d 1081, 1086 (1984). The Court explained its choice of pronouns: "Since Ulane considers herself to be female and appears in public as female, we will use feminine pronouns in referring to her." *Id.* at 1081 n.2.

187. *Id.* at 1086. *Cf.* Genesis 2:21-23 (God creates Eve from Adam's rib).

188. See *supra* notes 13-14, 109-12 and accompanying text. These are problems for the enterprise of deciding whether the plaintiff is a man or a woman. They should be distinguished from the problem of ambiguity, the semantic problem in the statute that rendered its application to employer discrimination against transsexuals unclear. Title VII's prohibition against employer discrimination on the basis of "sex" is ambiguous in that it does not specify which items on the following list of defendant conduct are prohibited: discriminating against an employee on the basis of his or her (1) sexual performance (refusing to have sex with the boss), (2) sexual orientation, (3) male or female

of Title VII, or of the law in general, that might point toward a resolution of these semantic and conceptual problems. On the contrary: I assume here that whether or not such a resolution is possible, it does not now exist. I assume, in other words, that we do not know whether, all things considered, a person such as the plaintiff is a man or a woman. And so the postures of faith and doubt become indispensable, because these postures are all we have—even if, for the time being, they are infelicitous, in the sense that while both can be acted on, neither stands vindicated within the horizon of present knowledge.

My position, then, is that while using the medium of the body to test or to enact one's hopes for truth, integrity of the self, and consummation strikes a discordant note and is in some sense absurd, this only gives faith and doubt their breathing room, and does not adjudicate between them. But if we cannot say which is right, we can still sift through formulations of the transsexual's incongruity, testing them for subtlety and fit. I believe that when tested in this way, the concept of imitation does not capture the incongruity. Nor does the moral idea that corresponds to imitation, namely the recognition of abusive simulation as a harm to personal integrity, capture the ethical status of absurd adventures in embodiment.

What might it mean to say of the plaintiff that he is only an imitation woman, and not the real thing? In default of a set of necessary and sufficient conditions that qualifies someone as a woman, we have a set of analogies called into being by the curious features of transsexualism and sex-reassignment surgery. These analogies look in a number of directions: to cosmetic surgery, to masturbation, and to the use of hallucinogenic drugs. Each of these potential analogues can be seen as a kind of imitation. Further, each of these imitations can be regarded as wrong: not so much detrimental to society as contrary to personal integrity. They can be understood as violations of what I will call the "no-substitution" principle, which holds that "appearances are not to be substituted for reality."¹⁸⁹ But none of the analogies looks very deeply into the gender projects that make transsexualism an interesting case study in self-

gender, or (4) apparent failure to conform straightforwardly to either the male or female gender. The court found that the statute's ambiguous term did not include (4). *Ulane*, 742 F.2d at 1084.

189. John Finnis, *Personal Integrity, Sexual Morality and Responsible Parenthood*, 1 *ANTHROPOS: RIVISTA DI STUDI SULLA PERSONA E LA FAMIGLIA* 43, 45 (1985). In content and application, the no-substitution principle suffers from two difficulties, at least when brought to bear upon surgical gender projects. First, if we are uncertain about the "reality" of gender, then we are under a certain embarrassment when it comes to detecting and denouncing "appearances" as substitutes for that reality. Second, even where a reality seems uncontroversial, as with a bodily organ, the question of which substitutions for that organ should be condemned as contrary to personal integrity remains

transformability and a resource for the investigation of the mysteries of personal embodiment.

There is a superficial resemblance between a transsexual's bodily gender projects and a cosmetic surgery such as breast augmentation. Perhaps if a woman who pursues breast augmentation is guilty of an abusive simulation, then a man or a woman who chooses to undergo the more radical procedures of sex-reassignment surgery is guilty a fortiori. But the analogy is flawed at both ends. I do not think that we can say with any confidence that a breast augmentation, as opposed to false teeth or a nose job, or the drinking of diet sodas to achieve a trimmer figure, is an imitation in violation of the no-substitution principle.¹⁹⁰ Indeed, I do not think that the principle is applicable to the substitution of *things* (prosthetics for flesh, saccharine for sugar) but only to the substitution of *goods* or values, or courses of conduct (buying a term paper rather than researching and writing one oneself). And even if breast augmentation were an abusive simulation, it would not follow that sex-reassignment surgery is also, at least in every case. While many of those pursuing both procedures may be striving to approximate as best they can an ideal whose applicability is simply a given, at least some transsexuals seeking sex-reassignment surgery are choosing, in the course of their gender project, the very goals and standards by which they wish to be judged. Consider, for example, a biological male who has cross-dressed privately for much of his life but who is known to all of his friends and co-workers as a male. This man, Phil, struggles hard to create more opportunities for the female persona, Helen. At some point, invisible to all, it is Helen who is trying to retire Phil. Helen finally manages to get a job, to save up money for surgery. Phil is finally retired.¹⁹¹ The displacement of Phil and the emergence of Helen is not so much enhancement of ability to meet previously defined goals as it is a commitment to one set of goals over others.

Instead of regarding sex-reassignment surgery as producing an imitation in the way that cosmetic surgery produces an imitation, one might say that the choice of such surgery stands in the same relation as masturbation to the appropriate use of one's gendered body: to participate in the

open. For example, recognizing as we do the reality of the human hand, are we to condemn as harmful to integrity the substitution of a prosthetic appearance?

190. See Shapiro, *Technology*, *supra* note 5.

191. FEINBLOOM, *supra* note 32, at 188-222.

“conjugal good.”¹⁹² The guiding idea behind this assessment of masturbation as an abusive simulation is that a loving and committed partnership, open to procreation and responsible parenting, is a good whose worthwhileness is apparent; and that masturbation is a choice against this good and for a set of private experiences that simulate but do not match it. Again, however, I think that the analogy breaks down at both ends and therefore fails to make sense out of the characterization of transsexual incongruity as abusive simulation. For while masturbation might look from the angle of conjugal partnership like a substitution of private experience for the active good of conducting that partnership, there is no reason to insist upon that angle of view. From the vantage point of another intelligible good, the composition of poetry that will afford beauty, pleasure, and understanding to a readership, all sexuality is relativized; passion, love, and even self-stimulation may serve inspiration and invoke the muse. Thus it is a mistake to condemn an *activity* as an abusive simulation, since the activity is invested in different *practices* or projects, and since some of these investments have a value of their own. But even if there were no practice that could invest masturbation with value, even if masturbation were “essentially”¹⁹³ a substitution of gratifying experiences for valuable action, it would not seem convincing or even helpful to say that these “essential” features are shared by sexual projects such as homosexual or extramarital sex, or gender projects such as those involved in transsexualism. For these projects may (I do not say they must) be pursuits of goods as genuine as any others: partnership, fellowship, mutually supportive love for the building of life.

Similar objections render implausible any suggestion that what makes transsexual embodiment imitative is the acceptance of delusive enjoyments over real ones. This is one of several criticisms sometimes launched against the use of hallucinogenic drugs. There would be some merit to the comparison and to the critique it enables if, say, a male-to-female transsexual pursued surgery only for the thrill of feeling like a woman. While this might color the projects of some transsexuals, some of the time, I do not think it represents these projects fairly. For what many transsexuals are after is neither the thrill of experiencing the other

192. Finnis, *supra* note 189, at 50-51. “In masturbation, one’s bodily activity is not serving the transmission of human life; nor is it expressing a choice to communicate with another person; those choices and their carrying out are only simulated.” *Id.* at 47. Finnis writes confidently of the “essential features” of masturbation, which he associates with the “intrinsic character of casual, promiscuous acts of fornication, adultery or homosexual sex.” *Id.* In other words, masturbation is not the pursuit of a genuine good but a simulation, and other forms of illicit sex share this basic character.

193. *Id.*

gender nor even the more praiseworthy aim of experiencing the other gender so as to enlarge one's sympathies, but *being* in or of the other gender, the non-assigned gender. What is wanted is to live, work, love, learn: all of the activities that are worthwhile, all carried out as an integral self.

In summary, some of the intuitions and analogies that offer to make sense out of the perception that transsexual embodiment is an imitation are flawed and do not support the conclusion that this form of embodiment is an abusive simulation. Other analogies, of course, might be drawn, and the ones that I have considered could be viewed perhaps in different ways. My aim here is not to demonstrate that there is nothing wrong with transsexual embodiment but only to show that what is most jarring and incongruous about the project toward such embodiment is not well-described as imitation or simulation. It is not as if an exposé of imitation vindicates doubt as a posture toward this incongruity, or punctures faith.

I find the incongruity of transsexual embodiment to be not so much mimetic as metaphorical. After millennia of experience of the fact of embodiment, taking the relation between our selves and our bodies to be at once familiar and fascinating, open and mysterious, transsexualism has become one of the ways in which we address the self metaphorically, through the body.¹⁹⁴ A man who wants to be a woman has ready to hand a substance that can be shaped in analogy, at least, to the desired transformation. A man who wants to be a woman has no way of knowing—no more so than a woman, and possibly less—what it means to be a woman, what it is to be a woman. And so he can be forgiven, if that is the right word, for doing what he can with and to his body. If the bodily transformation will not give him a woman's self, it will at least give him a ready metaphor for a woman's self.¹⁹⁵

194. The creation of metaphor, and living in a world made and constantly remade by metaphor, is surely one of the most pervasive dimensions of human self-transformability. Thus a man who says she is a woman, and in so saying vaults into a new world of gender, speaks no more (and no less) strangely than the poet: "*To be different, to be elsewhere*, is a superb definition of the motive for metaphor, for the life-affirming deep motive of all poetry." BLOOM, *supra* note 33, at 52 (emphasis in original). Compare Wallace Stevens: "Desiring the exhilaration of changes: / The motive for metaphor . . ." WALLACE STEVENS, *The Motive for Metaphor*, in *THE PALM AT THE END OF THE MIND* 240 (1967). Yet to trope life as metaphor is itself not metaphor but synecdoche; poetry is but a part of life, and at that—even for those of us who write and read it—not the part in which one's moral seriousness is most at issue. See Ronald Garet, *Meaning and Ending*, 96 YALE L.J. 1801, 1816-24 (1987).

195. Compare Paula, a post-surgical male-to-female transsexual:

I feel myself to be female very deeply, and wish to live so and be so. Yet I make this statement without denying my past, and without rejecting my own uniqueness which must

We use our bodies—our bearing and posture, our choice of clothing and the way in which we wear it, our hairstyle, our ornamentation, and even the flesh itself—to represent ourselves as available or unavailable, for what and to whom;¹⁹⁶ as chthonic or heavenly; as receptive or expulsive or even as repulsive. Even the act of cloaking the body so that it cannot represent certain possibilities when encountered in public—as with a *chador* or veil—expresses and is meant to express a message. These bodily representations do not seem abusive as such; their moral status depends on the message they convey.

But the use of the body as a *figure* for gender may raise special issues and is particularly subject to the Hegelian paradox that “representation can exceed what it represents: and do so through representing it.”¹⁹⁷ The film or pop stars, for example, who represent Man and Woman to us and for us in popular culture, are in every way larger than life. In order to “stand for” a gender, they “exceed” that gender. This paradox is especially acute for a transsexual. For a male-to-female transsexual to *be indiscernible from* a woman, she need only share in a weak family resemblance. Yet when she *represents herself as* a woman, to herself and to others, using her body to make the performative declaration, “I am a woman,” she becomes not an instance but a figure of womankind; and so she “exceeds what she represents,” or, in the eyes of her critics, indulges in and reinforces stereotypes.¹⁹⁸

give me a somewhat different sense of gender than that of any male or female who has not been through my dilemma.

FEINBLOOM, *supra* note 32, at 151 (quoting Paula).

196. Piercing offers a case study in how the availability of the body as a metaphor or medium for self-transformation is governed or at least shaped by social codes. In our culture, a man can do something at least moderately risky with and to his identity, or at least to his social identity, by wearing an earring in a pierced ear. Our code of ornamentation (with some exceptions) makes the wearing of such earrings by women so conventional and almost unnoticed that the activity cannot carry the same self-defining or transformative meanings. At the same time, however, a kind of code has grown up around men's earrings; according to this code, a man who wears a ring in his left ear is signifying his heterosexuality and a man who wears a ring in his right ear is signifying his homosexuality. Craig Fisher, *Piercing Questions*, L.A. TIMES MAG., Feb. 24, 1991, at 30. To the extent that such a code becomes established, it has much the same effect on men that the code of jewelry and ornamentation has on women; it deprives them of the opportunity to use this device to try out something truly creative and unique to the self. The effort to transform the self by transforming the ear collapses; the ear devolves into a semaphor.

197. BLOOM, *supra* note 33, at 75 (quoting Hegel).

198. In this respect, it is unclear how far transsexual figuration differs from breast augmentation surgery, discussed *supra* text accompanying notes 190-91, in its consequences for the language of gender. Both the male-to-female transsexual and the woman undergoing breast augmentation surgery may be reinforcing the body or the shape of the body as a figure for womanhood. Making a figure for themselves, they produce a figure of speech.

Neither metaphor nor figuration as representational postures of the transsexual body seem to me to deserve rebuke as abusive simulations. They are not private, furtive, or masturbatory imitations of some exogenous good, but statements, in a public language, of who one is.¹⁹⁹

Transsexuals hold out the same hopes for their bodies that other people do but are harder pressed than most to prove that those hopes have a basis in reality. They want to let go of what is false and unimportant and cling to the truth about themselves. In this, again, they are like all of us, even to the point of not being able to prove which is the truth and which the falsity. Prompted by strange stirrings, beckoned by magical metamorphoses, transsexuals tell us their familiar tale of human possibility. From within and without they are moved by the same voices as the rest of us, coaxing our death-bound bodies into love and life.

199. Or at least they put a person in a position to make such statements. They get Helen onto the dance floor as a woman, but they do not tell her how to move when the music begins. Rather than criticize the way we use the body to signify gender, we might simply notice how much is left up to individual bodily expressiveness.

Yet the use of the body to make such statements, through the way one dances or walks, or wears clothes, or styles one's hair, slides imperceptibly into a more aesthetic mode of embodiment in which one treats the body as a kind of canvas on which one paints beautiful images rather than as the self's material existence. There is more to life than being beautiful or strong, however much such imagery gives satisfaction to artist and audience alike. Surely a transsexual who spends long hours preening or grooming understands this as well as anyone else.