INTRODUCTION

The argument of this book is that increased visibility and interest in transgender issues and politics have contributed to a definitional rupture with regard to sex and gender. By *definitional rupture* I mean a dispute or series of disputes that cannot be resolved simply or neutrally by reference to a dictionary or authoritative source, but only by considering the process of defining itself—how and why do we define words? Who should have the power to define? What values and interests are advanced by competing definitions?¹

Though cultural understandings of what it means to be a woman or a man have gone through times of reconsideration and debate, it is arguably the case that at no other point in recent history have the definitions of “woman” and “man,” “male” and “female,” “masculine” and “feminine,” been more up for grabs than the present. To resolve these definitional controversies, we need to consider carefully the political, practical, and ethical dimensions of the act of defining.

Despite the fact that transgender history is far from new (Meyerowitz 2002; Stryker 2017), the visibility and salience of transgender issues has increased dramatically in the 21st century (Billard 2019, 165). The result is a clash over how one defines sex and gender. On one end of the spectrum, those who can be described as *biological determinists* argue that biological sex determines one’s gender and thus both are evident at birth or earlier, and that one’s medical designation should determine a host of legal and societal constraints based on one’s assigned sex. On the other end of the spectrum, those who might be called *autonomous nominalists* or advocates of “self-identification” or “first-person authority” contend that gender identity is independent of biology and is a purely personal decision and, as such, should be respected and never regulated or discriminated against.²

These two opposing ways to define sex/gender have become highly politicized, first with the Trump administration and now with conservative state legislatures pushing a biological determinist approach wherever possible, while the Biden

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administration, the Democratic-controlled House of Representatives, and more liberal state legislatures have championed self-identification.

Though I have simplified the extreme positions, it is worth noting that advocates on either end of the spectrum might invoke the phrase “a boy is a boy” or “a girl is a girl.” The biological determinist means that biology is destiny and thus immutable; whereas the nominalist is advocating that we respect a person’s self-identification and not qualify it, for example, with the “trans” prefix. That people with such disparate starting points would make similar pronouncements while meaning very different things suggests a definitional rupture that cannot be resolved simply or neutrally but only by considering the process of defining itself.

If asked how I think sex and gender should be defined, my answer is that it depends on the context in which the question is posed. My goal in this book is not to offer a single, definitive answer, but rather to advocate a definitional *process* that takes seriously the political, practical, and ethical dimensions of the act of defining. In the final chapter, I describe the need for purpose-oriented definitions, and offer “levels of scrutiny” that are adapted from different levels of scrutiny found in U.S. constitutional law, in order to unpack the idea of context-specific standards or criteria for definitions of sex/gender. To preview the book’s overall argument: The purposes of definition, and the values and interests that competing definitions or definitional criteria advance, vary considerably by context. While self-identification or first-person authority should be *presumptive* whenever and wherever possible, I conclude that there are rare contexts in which something more than a potentially ephemeral self-identification is justifiable. As will become clear, the further that definitional criteria move away from self-identification (such as requiring gender reassignment surgery), the more compelling the justification for segregation by sex needs to be.

Defining “transgender”

“Cisgender” refers to people whose sense of gender corresponds to their assigned sex at birth. “Transgender” describes people whose sense of gender does not correspond to their assigned sex at birth, and they wish to transition socially and sometimes medically to live and express their gender.³ As the National Center for Transgender Equality notes, “Gender expression is how a person presents their gender on the outside, often through behavior, clothing, hairstyle, voice or body characteristics” (2016b; see also Parsa & Katz-Wise 2021).

We learn the meaning of words that denote categories by seeing or hearing other language-users (initially, parents and caregivers) demonstrate how to use the word with respect to clear examples, which can be described as *prototypical exemplars*. Thus, most people learn the word “transgender” in reference to people who have both socially and medically transitioned, such as Caitlyn Jenner, Renée Richards, or Chaz Bono. Social transitioning typically includes a change of name, pronouns, clothing, and hairstyle. Medical transitioning can include hormone treatments and

surgery. In prototypical cases, the decision to transition is a response to a strongly felt discomfort with one's assigned gender, known as gender dysphoria. As we will see, some regulatory definitions of men and women require a diagnosis of gender dysphoria as a necessary attribute for a transgender person to "count" as a woman or man in a particular context (such as the U.S. military).

For the purposes of this book, I focus on the prototypical understanding of transgender as someone who a) experienced gender dysphoria and b) transitioned socially and often medically. That focus certainly is *not* intended to deny the word to people who do not share both attributes, but rather to identify and illumine the issues facing transgender people who navigate very specific contexts that have been segregated by sex, such as single-sex schools, bathrooms, sports, and prisons.

The transgender phenomenon is related but conceptually distinct from the larger cultural phenomenon of *gender variance*. Some people identify as gender nonconformist, genderqueer, nonbinary, or other terms that challenge the traditional binary language of gender. For the most part, I will not be focusing on gender variance. Again, this is not meant in any way to marginalize the experience of nonbinary people or gender nonconformists, but is designed to maintain focus specifically on the regulatory definitions based on the binary of male and female.

An example of how the vocabulary of describing gender is, itself, fluid is how the actor and comedian Eddie Izzard has self-identified over the years. As a stand-up comedian, Izzard often wore women's clothing and self-described (at the time) as a transvestite, straight, and (tongue in cheek) as a "male lesbian." In the Emmy-winning show, *Dress to Kill*, Izzard talks about the category of transvestites to point out that it could include people ranging from "weirdo" transvestites to "executive" transvestites, and as a category distinct from drag queens (2002). Research I conducted with colleagues Peter Gregg and Dean Hewes found that watching *Dress to Kill* not only helped to educate viewers about the category of transvestites but also reduced negative attitudes held toward the group (Schiappa, Gregg, & Hewes 2005).

Since that time, Izzard has self-identified as transgender (Ruby 2016). Izzard and others embrace what has been depicted as the Transgender Umbrella⁴ that subsumes a wide variety of categories including "any individual who crosses over or challenges their society's traditional gender roles and/or expressions" (Mays & Hill 2014).

Initially, the labels "nonbinary" or "gender nonconformist" would be more precise (from my standpoint), since Izzard said "I identify somewhat boy-ish and somewhat girl-ish. I identify both but I fancy women" (Ruby 2016). More recently, however, Izzard has stated that she prefers "she/hers" pronouns and "at the moment, Izzard is self-identifying as a trans woman" (Hattenstone 2021). To be clear, Eddie Izzard can self-identify any way Eddie Izzard wants to self-identify. I make a distinction between transgender and nonbinary because it matters for how regulatory definitions function in sex-segregated contexts. Thus, when I use the word "transgender" in this book I am using it in the more limited, prototypical sense stipulated earlier.

FIGURE 0.1 The Transgender Umbrella

Source: Graphic courtesy of the GENDER book (thegenderbook.com)

The objective of this book is a narrow one—to raise the question of how regulatory definitions of sex/gender should be thought about at a time I describe as the Transgender Exigency. There are other transgender issues that are important but go beyond the scope of this book, such as “At what age should children be able to make decisions about medical transitioning?” I set aside this particular question in part to keep the current project manageable, and in part because there are questions involving developmental psychology that I do not feel confident about handling.⁵ I also do not address the issues of “desistance” or “detransitioning”—when a person who has begun or even completed social and medical transitioning to a different gender and later changes their mind. Important issues, to be sure, but for now I want to maintain a specific focus on regulatory definitions.

In Chapter 3, I recount some of the awful statistics of how transgender people in the United States are frequently treated. As a nation, we need to do better. It is my hope that this book can contribute to the ongoing national dialogue to articulate and enhance the rights of transgender people.

Notes

- 1 Academic colleagues in philosophy tell me that my work here bears a relationship to work described as conceptual ethics and conceptual engineering. I agree that there is an affinity,

but must set aside for another day the task of integrating the growing literature in that area with my previous and current work on definitional practices (Schiappa 2003). See: Burgess, Cappelen, and Plunkett (2020), Cappelen (2018), and Cull (2020).

- 2 Brubaker describes the two approaches as *essentialist* versus *voluntarist* (2016).
- 3 In *Transgender: A Reference Handbook*, Aaron Devor and Ardel Haefele-Thomas stipulate that “**Transgender** or **trans** are both umbrella terms used to describe a range of people who share the feature of not feeling that the sex and gender assignments made for them at birth were correct” (2019, 8). See also Rawson and Williams (2014).
- 4 There are a number of graphic representations of the Transgender Umbrella, the earliest of which can be found as Appendix E to the San Francisco Human Rights Commission’s *Investigation Into Discrimination Against Transgendered People* (Green 1994, 68).
- 5 For a thoughtful history of transgender children, see Gill-Peterson (2018). Also, though I do not write here about age-related issues of transition, it is clear that legislation such as that passed by the Arkansas legislature to ban any and all medical treatment for those under the age of 18 is not supported by sound medical science, as noted by the American Medical Association (2021).