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# Trans-ending women's rights: The politics of trans-inclusion in the age of gender

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## Synopsis

Despite the 1970s' radical feminist critique of transsexualism, transgenderism and its international movement has rapidly expanded its fight for acceptance and rights for trans-people. In particular, trans-women are currently claiming their right to participate, and be included in, women-only events, organizations, and service provisions. This paper will argue that the protection of gender is imperative to the goals of trans-activists and their supporters. As a result, the movement to insist on, through human rights law, the right of trans-women to access women-only organizations could be seen as a part of an effort to grant gender categories absolute social authority. Specifically, I will be addressing one of the latest studies in "trans-inclusion," the *Trans Inclusion Policy Manual for Women's Organisations* (2002). I will argue that this focus on gender undermines feminist campaigns to challenge gender oppression, and the importance of women-only spaces to this project.

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## Introduction

The prevalence of anti-discrimination legal proceedings filed by self-defined "trans-women"<sup>1</sup> has prompted an increasingly contested question in modern sexual politics — what does transsexualism actually "transcend"? It seems that in spite of the 1970s' radical feminist critique of transsexualism (Raymond, 1979/1994b), the phenomena of transsexualism and sex-reassignment surgery (SRS) have proliferated considerably.<sup>2</sup> This increase has, through sheer magnitude, given birth to a broad-based, international movement that is rapidly expanding its fight for acceptance and rights for trans-people. In particular, trans-women are currently claiming their right to participate in, and access the assistance of, women-only events, organizations, and service provisions.

While trans-activists have argued that the plight of trans-women and "non-trans" women is inseparable, and thus necessitates the inclusion of trans-women as "real" women, many feminists are wary of, or resist, such change. Feminist scepticism has, in many cases, been founded upon the notion that trans-women have a deep investment in defending femininity, and consequently, represent the antithesis to feminist social change. Thus, in spite of the claims of trans-activists, some feminists (Jeffreys, 1997b; Raymond, 1979/1994b) do not support the "right" of trans-women to be feminine.

In this paper, I will argue that whereas radical feminist campaigns have sought to break down gender categories, and thus, free women from gender oppression, the protection of gender is imperative to the goals of trans-activists and their supporters. As a

result, for international trans-activist — the movement to insist on, through legal and human rights mechanisms, the right of trans-women to access women's organizations, could be seen as a part of an attempt to shore up gender roles. In particular, I will be addressing one of the latest studies in "trans-inclusion," undertaken by the Canada-based, Trans-Alliance Society and sponsored by the British Columbia Human Rights Commission. The *Trans Inclusion Policy Manual for Women's Organizations* (Darke & Cope, 2002) presents the inclusion of trans-women in women's organizations as paramount to the dignity of trans-women. Authors Julie Darke and Allison Cope argue that the expression of gender should be understood as a human right, and thus, the right of men to identify as women should be protected through "gender identity" anti-discrimination legislation.

### **Trans-inclusion policy: "Creating inclusive and accessible organizations"**

The concept of trans-inclusion in women's organizations is relatively new. In this sense, the *Trans Inclusion Policy Manual* (TIPM) has surfaced at a crucial time for trans-activism. Over the last five years, women's associations have been placed under growing pressure to accept trans-women into all levels of their organizations. Preoperative and post-operative trans-women have begun to seek legal redress for their "exclusion" from women-only collectives and service provision (Darke & Cope, 2002, p. 56–61).<sup>3</sup> More recently in October 2003, the Australian WOMAN Network, a transsexual lobby group, successfully applied to revoke an exemption from equal opportunity laws which had previously allowed Lesfest, a national lesbian festival, to advertise for women-born lesbians to attend or work at the seven-day conference (Martin, 2003).<sup>4</sup> As this example demonstrates, trans-women increasingly view human rights law as a potential panacea for "gender identity" discrimination.

The TIPM can be understood as one of the most recent attempts to continue this tradition of insisting on the "inclusion" of trans-women into women's organizations. The manual was written to "assist women's services, including transition houses, sexu-

al assault centres and women's centres" (Darke & Cope, 2002, p. 1), but it could be used to apply to any women-only group. A great deal of the controversy over trans-inclusion has been generated by gender debates between feminists and trans-activists and their supporters. This section will briefly explore the evolution of "gender" as a theoretical and analytical concept, and how it is understood by feminists and trans-activists. Next, I will then address the TIPM, and expose the contradiction over whether gender can indeed be considered a socially constructed category for trans-women. What becomes strikingly apparent from this analysis is that, paradoxically, the conception of gender as a biological fact is critical to trans-activists' vision of trans-women as a stigmatized, minority group. Trans-activists' claims that they are excluded on the basis of their marginalized status serves to further undermine what radical feminists view as the fundamental differences between women and trans-women.

### **Sex and gender: En-gendering social change**

The concept of gender has attracted a significant amount of scholarly attention. Although "gender" had already been used as a grammatical term, it was adopted by feminist scholars in the 1970s to describe and analyse sexual difference. "Gender" allowed "scholars to theorize masculinity and femininity as social constructions, separate from — if, in some sense, related to — anatomical sex" (Rubin, 1975; Shoemaker & Vincent, 1998, p. 1). In contrast to sex, gender, as sociologist Ann Oakley pointed out in 1972, "is a matter of culture: it refers to the social classification into "masculine" and "feminine" (Oakley, 1972, p.16). The sex/gender system, as a consequence, was perceived as a restrictive system for categorizing a hierarchy of sex and behavior.

For radical feminists who wished to challenge the biological arguments that endorsed male violence (Jackson, 1982), this theoretical innovation was particularly useful. Radical feminists embraced this new analysis, viewing gender as a political class "into which human beings are placed in accordance with possession or nonpossession of a penis" (Jeffreys,

1993, p. 70).<sup>5</sup> Concordant with Simone de Beauvoir's earlier contention that "one was not born a woman, but becomes a woman" (De Beauvoir, 1952, p. 249), radical feminists theorized a separation between sex and the assumed behavior of women. Rather than a biological definition, womanhood is the *experience* of how living in and as a female body and the ways in which the possible capacities of the female body — childbearing and sexuality, to name a few — are constructed by patriarchy (Jeffreys, 1997b, p. 66). Accordingly, the concept of gender, and its relationship to sex, has permitted feminists to critique how perceptions of biological difference between the sexes have been politicized to substantiate male dominance and female subordination, and to create a system of male supremacy.

By contrast, trans-activists' dissatisfaction with their gender, and its role in promoting conventional sex roles, has led to a new position. The politics of transsexualism, particularly as a function of the transgender movement over the last fifteen years, purports to be new and progressive — what Janice Raymond terms, "sexuality's newest cutting edge" (Raymond, 1994a, p. 629). Trans-activists have increasingly employed a postmodern analysis to challenge the notion of an "innate" gender by creating a third category for themselves; a category they argue is beyond the stereotypical perception of womanhood (Bornstein, 1994). Consequently, trans-women theorists such as Gordene Olga MacKenzie have proposed that it is possible for transsexual males to live as women and females to live as men with or without hormones or SRS (MacKenzie, 1994, p. 1).

At the heart of trans-activists' claims to present a serious challenge to the dominant Western gender paradigm — the categorization of individuals with a vagina as women, and individuals with a penis as men — is a dependence on the deconstruction of the category of "woman." This seems understandable given that the trans-woman's goal of the "third gender" and SRS is dependent on the idea that men can be women. Nevertheless, in light of trans-activists' claims to be gender "revolutionaries," one would expect that trans-femininity and trans-masculinity would be constructed differently from that of non-trans-people. If indeed "there are many ways to be "woman" in this society" (Feinberg, 1996, p. 113), it is surprising, then, in light of the mutability

of sex and gender categories, why SRS, and the transsexuals' legal status as women,<sup>6</sup> remain a *sine qua non* of transsexual identity (Jeffreys, 2002, p. 137). Trans-activists' "transformation" from male to trans-woman demonstrates their loyalty to gender: without which their claims to embody the opposite sex would be invalidated.

It seems, then, that while trans-activists concede that the sex/gender system is the primary organizing category of power, their emphasis is on reproducing gender to present a continuum of social identities (Bornstein, 1998). Trans-woman Kate Bornstein argues in *Gender Outlaw: On Men, Women and the Rest of Us* that while, from birth, gender is documented by the state, enforced by the legal profession, sanctified by religion, as well as bought, sold and promoted by the media, the "key to doing away with gender is the ability to freely move into and out of existing genders and gender roles" (Bornstein, 1994, p. 122). Borrowing from the work of postmodern theorist, Judith Butler,<sup>7</sup> Bornstein presents gender "playing" as a form of subversion that mocks the power of gender to name and confine bodies. By appropriating postmodern concepts of gender "play," trans-women's loyalty to gender, and the manipulation of bodies to convey that devotion, is portrayed as politically progressive.

Clearly, the postmodern understanding of gender as a set of binary behaviors opposes the materialist feminist understanding of gender as a blueprint for the relationship between the dominators and the dominated. Moving "in and out" of gender, it has been argued, says little about the male normalization of femininity in spite of what women have suffered from its limitations, nor about the possibility that the female behavior of subordination is far from voluntary (Jeffreys, 1997b, p. 65). For women, their compliance with the expectations of femininity, such as cosmetic surgery and excessive dieting, is often at the expense of their safety and health. Radical lesbian feminist theorist, Sheila Jeffreys, has suggested that women's "economic and even physical survival can be dependent both on donning the accoutrements of femininity and performing the real material work associated with it, housework, sexual work, child care" (Jeffreys, 1997b, p. 65). In spite of these demonstrated material constraints, Bornstein assumes that masculinity and femininity are freely chosen, thus, in fact, disguising

the motivations and pain of individuals seeking transsexual surgery in the first place.

As a result of these less than convincing arguments which posit trans-women as “revolutionaries,” radical feminists have been highly sceptical about the possibilities for social transformation through transsexualism. What trans-activists describe as transgressive, according to U.S. radical feminist philosopher, Janice Raymond, “actually turns out to be conformity to sex roles once more, with many men flocking to hormones and surgery to attract other men as artificial, ultra-feminine women.” (Raymond, 1994a, p. 629). The “womanhood” of trans-women is, thus, dependent on both artificially manufactured hormones, as well as male assumptions that female genitalia and a feminine appearance wholly constitute the experience of womanhood. The experiences of womanhood under male supremacy, as radical feminists have come to understand it, are deemed irrelevant by essentialist definitions.

Furthermore, the documented experience of trans-people contradicts the postmodern argument that posits “transitions” as a challenge to gender stereotypes. Inspired by his son’s “transition,” Frank Lewins, in his Australian study on transsexualism, similarly challenged trans-activists’ aspiration to a “third gender.” Lewins concluded in his study of fifty-five transsexuals that “there were no sexual revolutionaries” (Lewins, 1995, p. 135). Regardless of their sexuality, they all saw themselves as women and “stressed the importance of having a woman’s body and looking like women, and of being regarded as women by their partners and the wider society” (Lewins, 1995, p. 135). Nevertheless, despite the conformity of transsexuals to traditional sex roles,<sup>8</sup> it has been the radical feminist theoretical approach to gender — labeled “feminist fundamentalism” by Pat Califia (Califia, 1997, p. 86–92) — which has been perceived by transsexual and transgender supporters as conservative (MacKenzie, 1994; Prosser, 1998; Riddell, 1996; Rubin, 1992, 1993).

Evidently, what separates trans-activists from radical feminists, particularly in their conceptualization of “rights,” is the insistence of the former that gender should be privileged despite its limitations and the harm it inflicts on women. Trans-activists undermine the challenge feminists have launched against the notion that we need gender at all, reinforcing, once

again, the idea the one’s gender is determined by one’s body. While gender as a category of analysis enables feminists to have a clearer understanding of the history of women’s powerlessness, radical feminists would argue that a future in which women are free can not be realized without destroying gender (Jeffreys, 1993, 1997b, 2002; Mantilla, 2000; Raymond, 1979/1994b).

### Understanding gender in trans-inclusion policy

I have argued so far that the trans-activist approach to gender is largely ambivalent. The “rights” of trans-women, based on the assumption that being identified as a woman is paramount to their dignity, is clearly antagonistic to an understanding of women’s rights to be free from gender oppression. TIPM, it seems, exhibits the same uncertainty over whether gender is indeed socially constructed. Despite the authors’ initial claims that the mere existence of trans-people is evidence alone of how gender is socially constructed, it becomes apparent that Darke and Cope are unwilling to abandon the authority of “science.” In their introduction, Darke and Cope present their examination of gender as a continuation of the project that has long been “at the heart of feminism”:

It has helped us to understand what was long suspected: that gender is largely a social construct, influenced by racism, heterosexism and other forms of oppression, and designed to reinforce men’s positions of power over women. The examination of gender in this manual carries this feminist tradition a step further, breaking down both gender and sex, and forcing us to question entrenched assumptions. The experiences, needs and rights of trans people flow from the reconceptualization of gender and sex. (Darke & Cope, 2002, p. 4)

Subsequently, Darke and Cope suggest that the binary system of gender “cannot accommodate people who defy categorization, either biologically or socially” (Darke & Cope, 2002, p. 18). Using the paradigm of trans- and intersex women to support the analysis of what the authors claim are the five

elements of gender — sex, identity, presentation, roles, and experiences — Darke and Cope contend that the organization of gender around the body is fundamentally flawed.

In terms of a shared ideological analysis of gender with feminists, this is where trans-activists and their supporters depart from the former. When gender is based on physical attributes, Darke and Cope suggest that “*naturally occurring variations* become stigmatized (emphasis mine)” (Darke & Cope, 2002, p. 25). Using the example of facial hair, Darke and Cope problematize the sex–gender binary — the assumption that individuals with facial hair are male — by arguing that while it is permissible that “non-trans” women would seek electrolysis to remove facial hair, trans-women in search of similar treatment are met with disapproval. By using women as a feasible category for comparison, the presence of facial hair on trans-women is presented as a natural deviation from a trans-woman’s femininity.

The problematic, yet politically constructed, relationship between gender and physical attributes and appearance has been convincingly demonstrated by feminists who have, throughout history, refused to appropriate femininity (Jackson, 1994; Jeffreys, 1997a). Nevertheless, two issues emerge from the authors’ hypothesis of Darke and Cope. Firstly, in spite of viewing the relationship between the body and gender as restrictive, they continue to reduce femininity to a biological category. This is crucial if the presence of facial hair on trans-women is to be conceptualized as a *natural variation*, and thus, a problem that requires an antidote. Secondly, by focusing on the denial of electrolysis to trans-women, the authors simultaneously overlook, and contribute to, the stigmatization of “gender rebels.” Instead of challenging a social system whose treatment of “gender rebels” is punitive, the emphasis is on superseding “variation” in order to eliminate the shame. The extent to which the sexual politics of Darke and Cope are conservative, I think, says a great deal about the expectations for “non-trans” men and women who find themselves at odds with the social pressures on “correct” gender behavior.

The next section of the manual, *Gender and the Brain*, elucidates the full extent to which trans-activists rely on biological assertions of gender. According to the theories of brain sex study, the brain supposedly undergoes a “hormone wash” during a crucial stage in

fetal development. An abundance of testosterone will create a “boy” brain, while a lack of testosterone will ensure a “girl” brain. This theory, as Darke and Cope highlight, allows for the possibility of a “male” brain to be situated in a female body, and a female brain to be located in a male body, thus, as they put it, “making trans people natural in that sense” (Darke & Cope, 2002, p. 26).

In spite of suggesting that the relationship between behavior and biology is irrevocably more complex than scientific evidence would have us believe, Darke and Cope avoid a critique of biological reductionism. Instead, the authors concede that it is “understandable” that “many trans people (like gays and lesbians) find this type of theory appealing” (Darke & Cope, 2002, p. 26). I would argue that this confession is at the heart of the ideological contradiction of trans-activism. Trans-activists are aware that there is “something comforting about knowing that you are what you are because nature intended it” (Darke & Cope, 2002, p. 26), and as such, have a deep investment in maintaining the credibility of essentialist frameworks. An essentialist theory of gender asserts the legitimacy of trans-women’s subjectivity and their “right” to be feminine, and thus, does not demand that they confront the reasons why the experience of gender confusion is unbearable.

### **The oppressed and the oppressive: The construction of trans-women as a minority group**

The underlying momentum of the TIPM manual is to use trans-women’s status as a marginalized group to explain their rejection from groups that base their collective philosophy on being opposed to oppression. By positioning trans-women as a minority group, trans-activists seek to normalize their “right” to gender, despite the fact that gender is not chosen, and that women are never offered the option of opting out of femininity. This tension between a trans-woman’s “right” to femininity, and the systemic marginalization that results from being feminine in society, is neither addressed nor resolved. Instead, Darke and Cope persevere in interpreting this conflict as grounds for trans-inclusion.

Throughout the manual, trans-women are compared to intersex<sup>9</sup> women. This appears supportable given



that both trans- and intersex women have been profoundly stigmatized, and thus, rendered vulnerable to violence. Perhaps for this reason, trans-activist and lesbian/gay groups have been supportive of intersex political activism, largely “because they see similarities in the medicalization of these various identities as a form of social control” (Chase, 1998, p. 200). According to Cheryl Chase, intersex activist and founder of the Intersex Society of North America (ISNA), transsexuals in particular “empathize with our struggle to assert agency within a medical discourse that works to affect the ability to exercise informed consent about what happens to one’s own body” (Chase, 1998, p. 200). Darke and Cope draw upon this alliance, arguing that for both trans- and intersex women, “the list of female and male characteristics are not mutually exclusive by definition” (Darke & Cope, 2002, p. 24). Just as a trans-woman’s gender does not align with the male sex, intersex children are often socialized in a manner that coincides with their surgically constructed genital arrangement.

Nevertheless, the alliance between trans- and intersex women is tenuous at best. Chase (1998) presents a compelling argument for ending the surgeries on intersex children that destroy functioning genital and urinary tissue in order to make the child’s anatomical sex seem more “normal.” Thus, if indeed there were consensus between trans- and intersex activists about the role of medical intervention in regulating normative gender and sex, and the way in which it silences “gender rebels,” it is tested when transactivists fail to problematize transsexuals’ “right” to SRS.<sup>10</sup> Despite research on intersexuality that suggests technical difficulties with SRS, the implication of the claim that trans-women are “real” women is that SRS does provide the solution for individuals whose subjectivity is grounded in another gender.

The authors similarly draw a comparison with the political activism of another group — feminists. By inferring a relationship with the feminist struggle against gender roles, the authors, once again, present trans-women as part of an analogous progressive movement. Feminists, in Darke and Cope’s view, are not “strangers to the need for self-definition.” As they see it:

As women began to claim the right to dress in clothes of their choosing, work in male-dominated

jobs, and control their reproduction, they were constantly told by mainstream society that they were not ‘real’ women. Anti-feminist men and women felt entitled to define for women the category of woman. However, women refused to be defined by others, knowing that real women wear overalls and dresses; have hairy and shaved legs; ride bicycles and motorcycles; and desire other women and men. Women embraced their diversity and reclaimed those characteristics considered to be stereotypically masculine (such as assertiveness and self-sufficiency) as well as feminine (such as nurturance and compassion). (Darke & Cope, 2002, p. 9)

In spite of the authors’ attempt to link trans-activism with a broader political movement, the comparison between feminist and trans-women activism is unsustainable. The feminist project, in refusing to adhere to conventional standards of femininity, was not based on the desire to appropriate masculinity or “pass” as men. In fact, the influence of postmodernism on gender theory renders the feminist project to explode gender by refusing to behave according to its laws “not just ill-conceived but impossible” (Jeffreys, 1993, p. 82). Given the lengths trans-women go to in order to have their “right” to be recognized as “real” women acknowledged, and thus, present femininity as appealing, the goals of feminists and trans-women are antithetical. What motivates the authors’ contrast is, of course, the assertion that feminists have resorted to anti-feminist arguments in order to “justify installing the lock” on “feminism’s door” (Darke & Cope, 2002, p. 10) and in doing so, have been unduly influential in determining how “woman” is defined. Thus, Darke and Cope intend to place trans-women as the “deserving” minority by exerting pressure upon feminists to incorporate and embrace trans-women into women-only space.

### **“Gender identity” discrimination: The new human right to gender**

It comes as no surprise then that as a consequence of trans-women’s identification as “real” women, some trans-women are seeking entry to women-only spaces. In this section, I will address in more detail

the controversy over women-only spaces that has emerged from recent trans-activism. Feminist objections to allowing trans-women into women-only space have frequently been construed as “transphobia.” The fact that women’s refusal to tolerate trans-women’s appropriation of femininity is constructed as a phobia suggests that trans-women perceive gender as crucial to their identity. The perceived presence of transphobia regarding women-only space is strategically manipulated in trans-activists’ campaign to get “gender identity” discrimination recognized as a human rights violation. As a result, the right of women to autonomous space is perceived as an unwarranted barrier to the legitimacy of trans-women’s “gender identity.”

### **Ain’t I a woman? The debate of women-only space**

For decades, women-only space has played a crucial role in feminist activism (Hoagland, 1988; Penelope, 1992; Shugar, 1995). The formation of women-only refuges and crisis centers was a logical conclusion for feminists who had glimpsed, during the 1970s, the extent and seriousness of wife-battery and domestic violence. Pioneering works such as *Battered Wives* by US feminist activist Del Martin, dispelled the popular belief that violence against women in the home was a “private concern,” suggesting instead that woman-battery has its roots in historical attitudes toward women, and the institutions of marriage and the economy (Martin, 1976, p. xiv). The creation of women-only housing during the refuge movement in Australia legitimated claims that women escaping from domestic violence were suffering from a different form of structural inequality than that of the chronically homeless. Domestic violence refuges emerged from recognition that women-only space was crucial to the special needs of women escaping violence in the home (Johnson, 1981, p. 3). Women created autonomous spaces that could not only provide safety, but a source of creativity as well. For radical feminists, the discourse of separation from men attempted to envision and create a community dedicated to “the destruction of patriarchal society through (though not always exclusively so) the practice of separatism itself” (Shugar, 1995, p. xv). While

the motivations toward seeking out and establishing women-only space were evidently varied, it was undoubtedly a mainspring of early feminist strategies towards a new system of social organization.

However, women-only space, or separatism,<sup>11</sup> has been largely perceived with scepticism and anger. In her much cited essay, “On Separatism and Power,” lesbian separatist Marilyn Frye points out that as a result of male parasitism — men subsisting on the exploitation of women’s strength, energy, inspiration and nurturance — women-only groups “seem to be great things for causing controversy and confrontation” (Frye, 1983, p. 103). Frye argues that this is because separatism, in its various modes and forms, is a fundamental challenge to the gendered structure of power. The exclusion of men from certain spaces not only deprives them of privileges, such as the sense of inclusion, but is a means of controlling access, and “hence, an assumption of power” (Frye, 1983, p. 104). The structure of space — who is included and excluded — becomes visibly politicized.

Consequently, trans-women’s demands to be included in women-only space have been greeted with opposition by feminists who believe “such a change will undermine women’s services’ and space (Darke & Cope, 2002, p. 1). This opposition is understandable given that, as the authors point out, trans-women wish to be included because of “their right to be recognized for who they are” (Darke & Cope, 2002, p. 1): It is not an attempt to challenge gender oppression, and thus, the reasons why women-only space was created. For some radical feminists, the notion that trans-women would assume that they may enter women-only space demonstrates the inability of trans-women to empathize with women’s experiences. Radical feminist theorist Karla Mantilla, in her response to the entry of preoperative trans-women into the Michigan Womyn’s Music Festival in the April 2000 issue of *Off Our Backs*, argued that if male-to-constructed female transsexuals had any comprehension of what it is to be a woman in patriarchy, “they would have understood what a horrific violation it would be for a woman to be confronted with a strange naked biological male, penis and all, when she herself is unclothed and vulnerable” (Mantilla, 2000, p. 7).

What is not acknowledged by some trans-women appropriating women’s space is that the legacy of male dominance and power is not erased by changing one’s

gender or sex. Writing on the Michigan festival, radical feminist theorist Charlotte Croson maintains that attempts by members of the trans-community to enter women-only spaces “exhibit the transgender movement’s unstated assumption of the intractability of male power and female powerlessness” (Croson, 2001, p. 7). The fact that trans-women can be recognized as women demonstrates that men have the power to define what “woman” is, and that women are powerless to define their sex outside of male definitions. Thus, as Janice Raymond has eloquently argued, the loss of male genitalia, or the external appearance of maleness, “does not mean that they [transsexuals] have lost their ability to penetrate women — women’s mind, women’s space, women’s sexuality” (Raymond, 1979/1994b, p. 104). The appropriation of femininity does not challenge the lessons of male supremacy that decree that all men have the right to be included into every space.<sup>12</sup> Women have learnt that there is no such “right” for the group whose powerlessness, more often than not, means a violent and enforced form of exclusion.

Some transsexuals and transgenders, like trans-woman theorist Kate Bornstein, support the right of women to have their space (Bornstein, 1994, p. 43). Nevertheless, Bornstein’s view is a minority one in a growing move to open women-only spaces to trans-women. Trans-activist and writer, Leslie Feinberg, has suggested that the way forward to transliberation is the inclusion of “transsexual sisters” in women-only space. Feinberg claims that as activists who have helped build the women’s movement, trans-women “want to be welcomed into women’s space for the same reason every woman does — to feel safe” (Feinberg, 1996, p. 117). Thus, women-only space should be opened to anyone who is self-identified as woman. Fear of gender variance, according to Feinberg, cannot “deceptively cloak itself as a women’s safety issue” (Feinberg, 1996, p. 116).

### **Feminism and transphobia**

A consequence of this debate over space is that feminists who have attempted to challenge the entry of trans-women into women-only space have been labeled “transphobic” by the trans-community. For Darke and Cope, this is such a serious issue that they dedicate a section of their manual to a discussion of the “trans-

phobia” of “non-trans” feminists. Darke and Cope argue that “dominant Western feminists have typically excluded trans-people,” accusing them of “mocking — if not undermining — women’s struggles by perpetuating what was thought to be conventional femininity” (Darke & Cope, 2002, p. 8). For these authors, feminist “policing” of the political boundaries of “woman” typifies transphobic behavior — what they define as the “irrational fear and loathing of people who transgress conventional gender and sex rules in the binary system” (Darke & Cope, 2002, p. 111).

Interestingly, Darke and Cope contend that beneath the feminist political and intellectual deconstruction of gender, there is a “bedrock of essentialism: the belief that somehow women were more moral, peace-loving and egalitarian than men.” This essentialism, according to Darke and Cope, has been “openly celebrated by cultural feminists and secretly embraced by others.” They cite Janice Raymond as the best example of “vehement anti-trans” feminism (Darke & Cope, 2002, p. 10). In addition to accusing Raymond of reducing the definition of sex and gender to chromosomes, Darke and Cope also critique the feminist assertion that trans-women are not women because they have been socialized as men. While it is “reasonable” to ask if trans- and non-trans-women could have any common experiences, these questions are based on “assumptions, rather than trans-women’s experience.” There is “tremendous variability” in gender socialization, such that while one can “talk generally about female socialization, we cannot predict, with any certainty, the attitudes or skills of a particular woman” (Darke & Cope, 2002, p. 13). Thus, while Darke and Cope concede that the experiences of trans- and non-trans-women “must differ enormously” (Darke & Cope, 2002, p. 14), they subvert any collective history of how Western societies have viewed women’s biology as inferior to that of men.

While Darke and Cope exhibit disdain for “this age of identity politics” (Darke & Cope, 2002, p. 9), TIPM nevertheless expresses a political agenda: the desire to include trans-liberation as part of the women’s movement. The authors contribute to the perception of transsexualism as progressive:

While trans and intersex women have needs that could be met by women’s organizations, so do these organizations need what trans and intersex



women have to offer. . . trans and intersex women bring unique skills, coping strategies and perspectives from which conventionally socialized women may benefit. Trans and intersex women's experiences and insights into gender and sex-based oppression can deepen our understanding of gender oppression and enhance services for all women. (Darke & Cope, 2002, p. 44)

This perception of trans-women as gender “experts,” however, does not correspond with the way in which most trans-women view femininity. Denaë Doyle, an American trans-woman “femininity coach,” asserts that while working as a “feminine image consultant for both genetic women and transgendered women, I have developed techniques to project a more convincing feminine image.” While Doyle sees it as essential that men who dress as women should not “stereotype femininity,” the key to being a “convincing” woman is “combining one's inner feelings with one's outer appearance, allowing one's self to be softer, kinder, perhaps even vulnerable at times, while also being more nurturing and loving” (Doyle, 2002). Given this conventional understanding of what it means to experience femininity in male supremacy, it is hardly surprising that some women do not perceive the insights of trans-women to be particularly relevant to their lives.

In addition to alleging that “non-trans” women's understanding of their oppression can be enhanced by trans-women, Darke and Cope advance the opinion that the oppression of trans-women is a concern for all women. What makes this argument particularly powerful is the authors' appeal to anti-racist movements of the past. Darke and Cope suggest that while some argue that the oppression of trans-women is not a woman's issue:

. . . we should not forget that, not so long ago, some white feminists argued that racism was not a women's issue either. Women of colour have always known that racism and sexism are intimately linked and that neither can be addressed in isolation. Sexism and transphobia are also interlocking and transphobia may be one of sexism's most powerful tools. The oppression of women is grounded in the presumption of two distinct

genders: the clearer the distinctions, the better. And like lesbian-baiting, transphobic harassment is meant to threaten everyone — to keep us all in line. (Darke & Cope, 2002, p. 16)

Here again, Darke and Cope contrast the experiences of trans-women with those of a minority group. The harassment of lesbians is compared to that of trans-women, despite the fact that the former is grounded in the challenge that lesbianism presents to male sexual access and privilege, not the reiteration of it. Nonetheless, according to the authors' views, the liberation of women acquires the added objective of liberating trans-women. Thus, a woman's right to live free from the assumption that she must be heterosexual, bear healthy children and support her husband at the likely cost of her own career, also requires that she fight for the “right” of trans-women to accrue femininity and hence undermine many of the feminist ideas that emerged during the 1970s in the United States (Koedt, Levine, & Rapone, 1973). By positioning the entry of trans-women into women-only groups and services as the precondition for women's liberation, Darke and Cope point out that the success of women's liberation will require more than “just” women.

### **Transcending the “feminist police” — “gender identity” as a human right**

In light of the “exclusion” of trans-women from women-only groups and service providers, Darke and Cope look to human rights legislation to precipitate trans-inclusion. More specifically, the authors seek to include “gender identity” as a prohibited ground for discrimination. For preoperative or nonoperative trans-women, this is of particular relevance. Currently, in British Columbia, trans-women who have undergone transsexual surgery can apply to the Division of Vital Statistics to change the sex recorded on their birth certificate (Darke & Cope, 2002, p. 47). While prejudice against postoperative trans-women is defined as discrimination on the grounds of sex, preoperative trans-women status is not legally recognized. While Darke and Cope consider the prohibition of sex and/or race discrimination under the Human Rights

Code as “an essential part of a person’s identity or a fundamental choice affecting a person’s life,” they wish to see “gender identity” afforded the same legal protection (Darke & Cope, 2002, p. 52). This argument does not correspond to the postmodern claims about “playing” with gender, nor the radical feminist project to eliminate women’s oppression by getting rid of gender altogether.

Indeed, what we seem to be witnessing is the resurfacing of earlier ideas about protecting gender as a human right. The International Bill of Gender Rights (IBGR) was first drafted and adopted by the International Conference on Transgender Law and Employment Policy (ICTLEP) in Texas in 1993. Although IBGR was, and is not, legally binding, the conference members intended that it would “liberate and empower humankind in ways and to an extent beyond the reach of legislators, judges, officials and diplomats’ (*International Bill of Gender Rights, n.d.*). The IBGR, among other ideas, promoted the “right” to define and express one’s gender identity, and consequently, the “right of access to gendered space.” Likewise, in May 2001, at the first national conference on gender, Riki Wilchins, Executive Director of GenderPAC — originally created as an advocacy groups for transgender rights — declared that “gender rights are not a personal problem, but are the civil rights issue of our time” (Mantilla, 2001, p. 6). TIPM, it seems, takes these “rights” a step further so that they may hold groups legally accountable for failing to acknowledge these “rights.”

By presenting gender as an inalienable “right,” the objections of women-only collective members, and the women seeking those groups and services, are effectively suppressed. From the outset, Darke and Cope acknowledge that there may be “barriers” to trans-inclusive policy development, although “analysing the origins” can enable groups and organizations to “figure out how to overcome them” (Darke & Cope, 2002, p. 67). The first three barriers cited — discriminatory attitudes toward trans-women, differences in the socialization of females and males, and transphobia — suggest that from the beginning, the most significant obstacle to policy formulation is the reluctance of women collective members and service users. In reply to the problem of “transphobia” in women’s organizations, Darke and Cope emphasize the need to work on building consensus among women employees and volunteers. Despite this, “consensus does not mean

that every member of the organization must be in complete agreement with every nuance of the policy”:

Absolute agreement may not be realistic and some members may remain adamant in their opposition. Some individuals may not be prepared to move ahead with the organization and that must be recognized as a part of this process. While our comfort level with something new often needs time to catch up, a lack of familiarity must not be allowed to stall progressive changes. If you wait to eliminate everyone’s biases before putting pen to paper, you would never get a policy written. (Darke & Cope, 2002, p. 71)

Evidently, consensus over whether men should be permitted to join women-only groups and organizations is not as imperative as finding a solution that will suit trans-women. Darke and Cope respond in a similar manner to the feminist supposition that women need access to women-only groups and services in order to “escape abusive, desperate situations.” Darke and Cope argue that, despite the call for sensitivity:

We know that being abused, or being in need of any service, does not give one license to discriminate against others on the basis of any other characteristic, such as ability, race or sexual orientation. (Darke & Cope, 2002, p. 68)

Human rights philosophy, according to Darke and Cope, does not recognize “that the comfort (or discomfort) of others is not a legitimate reason to exclude someone from services or from full participation in society.” Discrimination “cannot be used to create a comfortable environment for one part of the population, at the expense of another” (Darke & Cope, 2002, p. 68). The authors reduce the concept of woman-only space to an issue of “comfort,” thus suggesting that this is an issue of women’s selfishness rather than necessity.

I have been arguing that in spite of Darke and Cope’s intention to present women’s rights and trans-women’s rights as synonymous, not only is the construction of women’s oppression different to that of trans-women, but their rights are often in direct competition. The TIPM is an example of how, in situations where the “rights” of one group compete

with women's rights, the rights of women are invariably the first to be compromised. Over the past decade, Australian feminist legal theorist, Hillary Charlesworth, has consistently pointed out that the concept of "rights" was developed to reflect men's experience and as a result, women's rights to dignity and security have been understood as less valuable than those of men (Charlesworth, 1995). What seems to be implicit in the policy visions of the TIPM is that, measured against the needs of trans-women, the provision of woman-centered services for women is of lesser importance. In a section that addresses frequently asked questions, Darke and Cope offer a solution to a woman resident refusing to share accommodation with a trans-woman:

Consider how you would deal with the situation if a resident wanted to switch bedrooms because she wasn't comfortable sharing with a lesbian, or a woman of colour, or an Aboriginal woman. *This situation is no different.* We assume that you would not allow a resident to move because of prejudice. If you did, a powerful message would be sent to all women in your organization. If a resident would rather leave than sleep in the same room as a lesbian, a trans-woman or old woman, then that is her choice (emphasis mine). (Darke & Cope, 2002, p. 87)

This is problematic for two reasons. Firstly, Darke and Cope evade the reasons why women require emergency accommodation — they have often suffered from male violence. Forcing women to share much-needed accommodation with men is not an appropriate or useful framework for service providers who work with domestic violence victims. Secondly, the situation between trans-women and lesbians, women of color and Aboriginal women *is* different. Whereas race discrimination occurs as a result of the White supremacist system that has systematically oppressed men and women of color, "trans-exclusion" is predicated on the conservation of women's right to safe space in male supremacy rather than the oppression of trans-women by women. Racial solidarity, furthermore, is never subject to similar arguments regarding their "exclusion" of nonindigenous or White people who "feel," or wish to become, indigenous, or men and women of color. Such an assertion would be considered absurd and offensive, yet it seems that the issue of women's

right to autonomy is not accorded the same gravity. "Non-trans-women" are perceived as the source of trans-women's predicament — the individuals situated between trans-women and their rights — overshadowing the way in which the sex/gender system is the precondition for such misery.

The solution Darke and Cope offer is that it is better for "transphobic" women to leave. This says a great deal about the priorities of "trans inclusive policy" — that is, the rights and concerns of trans-women are absolute. The TIPM states clearly that in the formation of appropriate accommodation for trans-women, particularly in regard to private shower and change areas, "the dignity of the person is a primary factor and segregation is not appropriate." Thus, because the acceptance of trans-women into women-only facilities is about recognition of their female gender, designing a separate space for trans-women, according to the authors, is "not suitable" (Darke & Cope, 2002, p. 55). Evidently, a trans-woman's right to woman-only facilities is perceived as more important than a woman's right to space that does not privilege men.

## Conclusion

I have argued in this article that the strategies pursued by trans-activists over recent years indicate not only the growing importance of gender in social organization, but also, the willingness of trans-activists to use human rights mechanisms to protect their "right" to gender. This, I believe, has consequences for trans- and "non-trans" people alike. Indeed, the idea that gender can be protected as a human right might suggest that the possibilities for women and men to challenge their appropriation of femininity and masculinity, and thus, the dynamics of subordination and dominance, will be limited. In particular, the work of radical feminists in establishing a connection between violence against women and the social construction of masculinity has been valuable to the feminist vision of a future without gender. The notion that men can compromise a woman's right to women-only space, and indeed, that "gender" is something can be appropriated at will, will only dilute these goals.

The attention given to trans-women in the TIPM is timely indeed. The discrimination they face from

family, friends, co-workers, and the broader society is very real, and thus, it is crucial that transsexuals are accorded the right to dignity and safety. However, it is also of paramount importance that the specific rights of trans-women should not be granted at the expense of women. Trans-inclusion in women's events, organizations, and service provisions runs counter to the interests of those for and by whom women-only spaces were established to protect. Women's rights and transsexual rights, I have argued, are not synonymous because the construction of women's oppression is vastly different from that of transsexuals. Thus, a resolution to this political problem does not lie in the "trans-inclusion" of trans-women into women-only spaces, but perhaps in the formation of separate autonomous spaces for trans-women by trans-women themselves. Such a solution could recognize the right of trans-women to safe space, but not compromise the reality of women's oppression.

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### Endnotes

<sup>1</sup> I have used inverted commas here because one of the assumptions of this paper is that both preoperative and postoperative "trans-women" are not women at all. For the purposes of readability, I have only made this grammatical distinction at the beginning of this piece. It is worth remembering, however, that the term itself is somewhat confusing in its application: While I have found it useful to denote the differences between women and male-to-constructed-female individuals, individuals seeking to be recognized as real women, rather than transsexuals, have also appropriated it.

<sup>2</sup> While there has been an increase in the number of female-to-constructed-male "transitions" over the past 20 years, it is outside the parameters of this study. (See *Devor, 1997; Halberstam, 1998; Jeffreys, 1997b, 2002; Lothstein, 1983; O'Hartigan, 1999; Rubin, 1992.*)

<sup>3</sup> The controversy can perhaps be dated back to 1999. In Vancouver, the Vancouver Lesbian Connection was forced to close after a preoperative trans-woman filed a complaint after being banned from its drop-in centre. The Human Rights Tribunal ruled that these actions constituted discrimination and that his sex was the

basis for this negative treatment. The organization was ordered to pay \$3000 for injury to his dignity. TIPM also lists several other human rights decisions.

<sup>4</sup> For more information on the initial exemption grant in September 2003 (see *Victorian Government Gazette, 2003, p. 2387*) (Application No.: A296/2003). The exemption was revoked because the organizers had failed to notify the tribunal about a complaint.

<sup>5</sup> Monique Wittig takes this further by arguing that what a materialist analysis does by interpretation, a lesbian society accomplishes practically: not only does the refusal to become, or remain, heterosexual, challenge "woman" as a natural category, it is a refusal of the role of "woman" as well. See *Wittig, 1992, p. 13.*

<sup>6</sup> Male-to-constructed-female transsexual spokesperson, and retrospective critic of SRS, Terri Webb, notes that many transsexuals' demand amendments to their birth certificate after surgery has been performed. See *Webb, 1996.*

<sup>7</sup> Judith Butler has been amongst some of the respected theorists of postmodern theory that present transgender practices as progressive. Butler's concept of "gender performance" supports her claim that transgender practices are central to the feminist project of subverting heteronormativity. By appropriating and performing gender, the transgender subject destabilizes and mocks the gender system on which the organization of heterosexuality is founded. Gender performance, however, is not necessarily a conscious act. While drag epitomizes the progressive potential of gender performativity, Butler's argument could be interpreting as positioning all individuals living outside of gender norms as "transgender." See *Butler (1993).*

<sup>8</sup> Some trans-activist theorists have conceded that some aspects of the transsexual "transition" are problematic. See *Bolin, 1994; Ekins & King, 1996; Hausman, 1995.* See also the work of feminist social scientist, *Eichler (1980).*

<sup>9</sup> Following surgery, an intersex woman is a person born with ambiguous genitalia or chromosomal anomalies who has been surgically altered to become anatomically female after birth. Intersex women are raised in accordance with their societal gender identity and role which concedes with their "female" body.

<sup>10</sup> For a useful critique of the most up-to-date transgender theory, see *Hausman (2001).*

<sup>11</sup> While it is common for theorists, feminist and non-feminist, to collapse the distinction between "women-only space" and "separatism," radical feminist theorist Susan Hawthorne distinguished the two terms. "Women-only space" is a separatist practice, yet it is more ephemeral and "not as effective as more radical separatism since a lot of time and energy continues to be expended on supporting men, male values and patriarchal institutions" (p. 315). Separatism, as a consequence, is perceived as more absolute. Where authors make no distinction, I have used both terms. (See *Hawthorne, 1991.*)

<sup>12</sup> See *Hale, n.d.* Interestingly, Hale has argued that the work of trans-women which engages in "angry, detailed criticism" of feminist critiques of transgender theory should be viewed as a "gift" and as "praise" as "there must be something we value about you to bother to engage you." This is a good example of the resilience of the behaviour of male dominance as the author is clearly engaged in portraying the criticism of women as a benevolent impetus for women to "improve."



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