

RECONSTRUCTION OF GENDER  
LAW VIA A CRITICAL DISCOURSE  
ANALYSIS OF TRANS AND 3<sup>rd</sup> WAVE  
FEMINIST NARRATIVES OF SEXUAL  
SUBJECTIVITY

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## Dedication

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## Abstract

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The factions and discourses of feminism and transgender are often perceived as reciprocally exclusive. Those taken to belong to subjectivities associated with each faction have frequently held this perception.<sup>1</sup> This exclusion may operate because each faction is only supposed to be associated with certain sexual subjectivities.<sup>2</sup> The possible alienation between transgender and feminism is the social problem that the researcher addressed, in order to consider what positive outcomes on the law, as it pertains to gender, may emerge from cooperation between the two factions. To assess this emancipatory potential, the researcher compared primary data in the form of online narratives ventured by a group of trans people with secondary data in the form of published texts identified as narratives of 3<sup>rd</sup> wave feminism.

3<sup>rd</sup> wave feminism, transgender theory and post-1970s trans narratives showed potential to align with the inclusive philosophy evident in ethics of care<sup>3</sup> while not foregoing focussed rights pertaining to certain ethnic, sexual and social subjectivities. The resulting postconventional ethics promised to facilitate a legal process that could benefit oppressed genders and that could recognise gender as genre and genealogy rather than as fixed essence. Images of fixed gender essence should give way to the transformation of trans and gender variant people from the 'Others' of heteronormativity to empowered others whose difference can be valued or, for those who wish to be accepted as men and women, whose similarity can be respected.

The research for this thesis found that value and respect for gender, based upon knowledge and not stereotype, can be facilitated by both by woman's inclusion-ist politics and by the care of maternal relations in order to reveal trans subjectivity and gender variance as legitimately whole subjectivities. This knowledge has revealed how oppressive elements of discourse such as

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<sup>1</sup> As discussed in chapter 2 s.4, chapter 3 s.1 and 3 and chapter 6 s.1.

<sup>2</sup> 'Sexual subjectivity' is taken by the researcher to mean the combination of an individual's sex, gender and sexuality.

<sup>3</sup> The researcher refers to ethics of care as a plural because of their adaptability to different circumstances. In 'Ethics and Feminist Research: Theory and Practice' Edwards and Mauthner, perhaps unintentionally, use both the plural and singular references to ethics and ethic of care (2002:22,23).

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silence/secretcy, infantilisation, interpellation, gatekeeping, separatism and heteronormativity have affected trans and gender variant people's ability to manifest a social voice.

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Hopefully, you'll never forget that there is a vast difference between theory and practice. there can also be an incredible difference between formal education and real life experiences. What you learn in class can be used in real life, providing you are adaptable to the situation, the individuals involved and then understand the individual's background thoroughly. (Kimana Feb 1st, 2006, in <Min and Max Transition Ages?>)



## CHAPTER 1: INTRODUCTION - BUILDING CONNECTIONS

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### Introduction

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The researcher wished to address the social problem of alienation between the factions of transgender and feminism, as described in section 1 of this chapter, by asking four key research questions. Firstly, the researcher wished to discover whether the factions of transgender and feminism are mutually exclusive. Then the researcher wished to know if a quest for the aetiology of gender variances should be pursued in order to explain any mutual exclusion. Then the researcher wished to question the utility of separatist discourses pertaining to gender. This would help to answer the fourth question of whether there is potential for an inclusive trans/3<sup>rd</sup> wave coalition that can escape from separatist or excluding discourses. These key questions were reformulated as four thesis aims, examined in turn in the following section.

### 1.1 Identifying Disconnections – Aims of the Research

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The research aims, derived from key research questions, came under four areas of enquiry identified to be of relevance to the research ethos: internecine exclusion, aetiology versus acceptance, separatist discourses and potential for a trans/3<sup>rd</sup> wave coalition. The research aims were engendered by literature reviews, assessment of the Transstudy, and by the researcher's personal philosophy.

#### 1.1.1 Challenge Internecine Exclusion

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The researcher sought to address any internecine exclusion between and within the factions of transgender and feminism to assess any potential to turn negative reverse discourses into positive reconstructing discourses.<sup>1</sup> Reverse discourses are taken to be a simple reversal of oppressive discourses that reverse the flow of oppressive power. Reconstructing discourses are more socially progressive phenomena that should operate less to oppress certain

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<sup>1</sup> The nature of reconstructing discourses is described in chapter 5 s. 6.

subjectivities, those who are 'Othered' by the discourse. The opportunity to reconstruct apparently common-sense discourse, such as heteronormativity, would come from the operation of exploiting chinks in its discursal armour, in the way thought possible by Michel Foucault (Prado, 2000:71).

Transgender and feminism might be described as movements, philosophies and/or collective subjectivities or as all three coming together to form a faction or social discourse. Mutual hostility has occurred between the factions when the ideology of one is perceived as contrary to the interests of the other.<sup>2</sup> This exclusion may operate because the factions are assumed by many, when influenced by some, to be associated with certain sexual subjectivities. For instance, Janice Raymond influentially argued that feminism belongs to women,

Women take on the self-definition of feminist and/or lesbian because that definition truly proceeds from not only the chromosomal fact of being born XX, but also from the whole history of what being born with those chromosomes means in this society. (1979:116)

Both Sheila Jeffreys and Germaine Greer reinforced a divide between feminism and transgender when maintaining that gender transition is a conservative gender-role reinforcing procedure, based upon bodily mutilation (Jeffreys, 2005:48,150, Greer, 2000:81,83). According to sociologist Sally Hines,

... in 1997, Sheila Jeffreys offered explicit support for Raymond's position in her article "Transgender: A Lesbian Feminist Perspective," which refuelled the feminist attack on transgender. (Hines, 2005:60)

Editor of *Trans/Forming Feminisms* Krista Scott-Dixon described how responses in a 2001 Canadian feminist magazine article were hostile to the notion of trans people's involvement with feminism,

Trans was positioned as something antithetical or irrelevant to or at least outside of feminism, and the notion that trans people could be feminists, feminists could be trans allies or that there could even be something called transfeminism has been poorly considered. (Scott-Dixon, 2006:23)

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<sup>2</sup> As discussed in chapter 2 s. 3, chapter 3 ss. 1 and 3 and chapter 6 s. 1.

Hines noted how, '*second wave feminism has been largely hostile to transgender practices (2005:57)*', perhaps referring to what we can now identify as a philosophically, rather than chronologically, based 2<sup>nd</sup> wave of feminism.

With regard to trans people's perception of feminism, as noted in chapter 6 section 1, Transstudy participant Monica described all feminists as political fanatics who only criticise, and who will bend the truth to suit their own cause (Monica, Mar 18th, 2005, in <Are there just feminine and masculine people now>). She narrated a particular dislike for trans-unfriendly feminists,

Kimana [another Transstudy participant], ... There is only one capacity in which I should wish to serve transphobic feminists, namely as their taxidermist. ... Nothing would give me more satisfaction than to leave the lot of them tastefully arranged in a glass case, all stuffed and mounted. (Monica Mar 9th, 2006, in <Transpregnancy>)

Participant Raelene came across as equally hostile to feminism but seemed at one point to be referring to pure social constructionist<sup>3</sup> feminism,

As for this feminist drivel - feminism grew on the back of John Money's assertion that gender is a function of Nurture. A theory that was wholly responsible for both the Reimer brothers taking their own lives. (Raelene Jan 19th, 2007, in <Some thoughts on non-trans gender-changers>)

Hines noted the common feelings of exclusion post-transition trans men and women gained from philosophical 2<sup>nd</sup> wave feminists, while those who may be identified as philosophically 3<sup>rd</sup> wave feminists, with a notable queer influence, were perceived as more inclusive,

In particular, both [trans men and women] draw on experiences of rejection from second wave feminism, while more positive stories are told about relationships with contemporary feminism as informed by queer ideology. (Hines, 2005:75)

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<sup>3</sup> The theories of Social construction posit that body, mind and society can all shape human subjectivity.

Exclusion has also occurred between sub-factions (or the perception of these) within each faction, hindering the possibility of forming a cohesive subjectivity based movement. For instance,

Queer theorists have shown how traditional lesbian and gay theory and politics have been (and often remain) exclusive towards those whose identities fall outside of that which is deemed to be “correct” or “fitting” ... (Hines, 2005:61)

Exclusion based on a social ordering of sexual and gendered practices appears as a frequent theme in trans men’s stories. (Hines, 2005:64)

This kind of ‘internecine’ exclusion is addressed in chapter 6 section 1, in relation to the situation of transitioning people on one hand and what some transitioning people have labelled as ‘transgenderists’ on the other. It also applied heavily in the lives of black women in the USA and UK who felt excluded from what they saw as the elitist discourse of 2<sup>nd</sup> wave feminism in the 1960s and 70s.

Reciprocal exclusion may severely hinder the development of both main factions since excluding large portions of the population from either will profoundly limit their potential for social change. Both transgender and 3<sup>rd</sup> wave feminism have been challenged as not being real movements or factions just as feminists and trans people have often been challenged as not being real women and men, sometimes, as we have seen, by those hailing from the other faction.<sup>4</sup> The researcher sought to present the realness of each faction and connected social subjectivities, partly by challenging the realness of discourses such as separatist feminism and heteronormativity.

Exclusions between and within transgender and feminism therefore became identified as the main social problem that the researcher wished to address. The researcher predicted that resolution of this problem would lead to positive outcomes for the law and society as they relate to sexual subjectivity. Philosophical and chronological 3<sup>rd</sup> wave texts promised to be critically engaging sources of data that could form a basis for comparison with narratives

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<sup>4</sup> As discussed in chapter 2 s. 3 and chapter 6 s. 1.

submitted by trans people within the primary data collection resource known as the Transstudy.

### 1.1.2 Promote Acceptance of Subjectivity rather than the Search for its Aetiology

The researcher sought to present the factions and related subjectivities of transgender and 3<sup>rd</sup> wave feminism as real in the sense that they exist as developing parts of society. The quest for aetiology of gender variant subjectivities was questioned and, following other 3<sup>rd</sup> wave philosophers such as Judith Butler, Carol Gilligan, Julia Kristeva, Susan Stryker, Sandy Stone and Stephen Whittle, it was proposed that it is a more fruitful and positive goal to concentrate on ways of accepting gender variance. As described in this subsection, ethics of care provide the potential to implement this acceptance.

Academic Jennifer Harding stated that trans subjectivity was pathologised by the imposed voice<sup>5</sup> of many medical and psycho-analytical practitioners in the early 20<sup>th</sup> century and was then described in the late 20<sup>th</sup> Century as 'Gender Dysphoria' at the expense of encouraging self-representations from trans people themselves (1998:10-12). This may have initiated the perception of trans people's difference to those with other gender variance. In the 1950s to 1970s, treatment for gender transitioning trans people moved from the area of intersex medicine<sup>6</sup> to being a sub-interest of psychiatry and many trans people accepted their classification into a mental health condition. This enabled access to hormonal treatment and surgery via the consent of psychiatrists and general practitioners, but also came about because some psychiatrists thought this classification to be true.<sup>7</sup> The label 'transsexualism' as a mental health disorder, first applied in the DSM III (1980), was later changed to 'Gender Identity Disorder' in DSM IV<sup>8</sup> (1980). Both gave the impression of trans

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<sup>5</sup> 'Voice is introduced as Gilligan's concept of differently gendered communication in chapter 7 s. 1.

<sup>6</sup> Psychiatrist John Randall and Psychologist Jack Kenna proposed gender variance to be a form of mental health disorder, as can be seen in the Transcript of the London Gender Dysphoria Conference, 1969 (held at the London School of Economics Library).

<sup>7</sup> Lynn Conway described how John Money theorised that transsexualism led to mental illness (Conway, 2000-2003).

<sup>8</sup> The full title of DSM V is: Diagnostic and Statistical Manual of Mental Disorders V (Date). It is the latest such manual designed to identify mental illnesses as discreet phenomena and is used worldwide. As Jane Ussher (1991:100) remarked, 'Madness is no longer the vaguely ethereal notion of the past, but a systematically organised collection of distinct syndromes which the authorities claim can be isolated and considered as independent entities.' Transsexualism was removed from DSM IV, meaning it is no longer



subjectivity as a failing of identity caused by the individual's psychological being, or as a phenomenon induced by family upbringing. All this 'imposed voice' led to denied choice<sup>9</sup> for trans people wishing to articulate themselves into subjectivity.

The personal life story adopted to help ensure smooth access to medical reassignment,<sup>10</sup> as noted by trans theorist Sandy Stone, became informally known as the 'plausible personal history', informed by 'The Obligatory Transsexual File' (1991:285). This was a carefully collected scrapbook of article clippings by each transitioning person, often collected over a lifetime of personal gendered behaviour. As Stone also discovered, reassignment specialists eventually realised that potential gender transitioners matched transition entry criteria proficiently because they were reading Sexologist Harry Benjamin's (1966) definitional criteria for 'transsexualism' in order to inform their own account of transitioning gender.

Developed narratives of sexual subjectivity emerging since the 1990s encouraged people to reinterpret trans subjectivity as healthy and functional, rather than as pathological. These narratives seem to have been partially explained by Michel Foucault who, in the 1970s, proposed that personal subjectivity, including sexual subjectivity, was negotiated in reciprocal relationships of power rather than being an essential element of the subject (1998[1978]:95-99), an idea later backed up in research by, for instance, Sociology Lecturer Tracey Lee (2001:2,37,111,118). Lee suggested that the medical profession retains the sway of power in relationships with transitioning people (54) but also suggested that trans men had found chinks in the power relationship in which they could provide their own input (64).<sup>11</sup> Foucault argued that power is never absolute since there is always the potential for its critics or those it oppresses to find and exploit its Achilles' heel or chinks in its discourse

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officially classed as a mental disorder. However, it was replaced by the category of 'gender identity disorder', continuing the subtle pathologisation of this subjectivity.

<sup>9</sup> 'Choice' is the theme topic of chapter 7 s. 3

<sup>10</sup> 'Reassignment' is taken to mean the physical aspects of gender transition.

<sup>11</sup> Jay Prosser suggested that both parties to such negotiation have input into the subsequent discourse produced (Lee, 2001:33,94).

armour.<sup>12</sup> In this way, new subjectivities could surface from social suppression once a concerted move had been made to narrate and negotiate them into discourse.

Similarly to Foucault, post-structuralist philosopher<sup>13</sup> Judith Butler theorised that social and self-definitions of sexual subjectivity, such as those described above, could lead to actual subjectivity and were definitions gained from discourses in the making (1999[1990]:173,174). Butler's argument was a challenge to conventional accounts of sexual subjectivity which maintained that this subjectivity is entirely located and developed within the individual and that sex, gender and sexuality all cause each other in a biologically and temporally fixed manner,

... "the body" is itself a construction ... Bodies cannot be said to have a signifiable existence prior to the mark of their gender ... Some feminist theorists claim that gender is "a relation," indeed a set of relations, and not an individual attribute. (Butler, 1999[1990]:13)

Butler's theory, and other social constructionist accounts of gender formation, can be used as a challenge to the image of gendered aetiology overtly and covertly provided by legal discourse. Instances of these applications of aetiology are discussed in chapter 4 section 2.

A contribution by Transstudy participant Clarette suggested that while people follow gendered scripts<sup>14</sup> in order to construct what is usually taken to be biologically given gender, as theorised by Butler, these scripts are not easily identifiable,

My point is more that scripts have not been immediately available even for those who do not wish to be known as trans people. Of course, large aspects of their developing scripts may be rather less available to those who steer clear of established social scripts, for whatever reason, but that should not be regarded as indicating that it is somehow easy to just adopt

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<sup>12</sup> See Prado (2000:71).

<sup>13</sup> It is perhaps inappropriate to define Butler too narrowly as she theorised about the in-process nature of all social labels.

<sup>14</sup> Clarette may have been referring to schemata. Schemata and scripts are introduced as a sub-component of the critical discourse analysis in chapter 5 sub-section 5.2.

"the other script" in the course of transitioning – or following transition.  
(Clarette Jun 17th, 2006, in <The Paper>)

Clarette suggested that the process of gendered script changing was not easy but acknowledged the existence of these scripts and the fact that they may be subverted through chinks in the armour of discourse. In chapter 8 sub-sections 3.1,2,4 and 5, thought is given to how schemata and scripts that produce essentialised gendered identities may be circumnavigated by those who do not fit at all into heteronormativity.

In 1967 ethnomethodologist Harold Garfinkel discovered that those who contravene taken for granted social behaviour and appearance, in social scripts and schemata, can reveal how social customs guide our lives. These customs are otherwise socially invisible because of their apparent normality and 'common sense' nature. Other social scientists followed Garfinkel's lead in order to '*uncover the unwritten rules by which all social actors guide their lives*' (Namaste, 1996:190). Ki Namaste described how social scientists, influenced by the Birmingham Centre for Cultural Studies, for instance in the work of Stuart Hall (1992), investigated relationships between lived experience and representation to show more fully how subjectivity is socially constructed from real-life interaction (1996:184).

In addressing a particular instance of the social construction of sexual subjectivity, Namaste (1996:188,197) criticised Butler's earlier work for providing interpretations of trans society not related to the actual lived conditions of trans people's lives (Butler later provided much support for trans subjectivity in *Undoing Gender*, 2004). Namaste argued that Butler overlooked the context of gender drag performance in favour of imposing her own theoretical definitions of how drag performativity stood as a challenge to gender stereotyping. Namaste also criticised Marjorie Garber for reading trans lives at an academic distance (189,194). Garber's interpretation of 'transvestite' as merely a metaphor for crisis of gender category shows how 'transvestite' is not discussed as a real life subjectivity. In this way Namaste and other progressive

gender theorists highlighted a need for open, evolving and inclusive discourse that took a look 'from within'<sup>15</sup> social subjectivities.

Contrasting with some of the humanities-based queer theory and feminist research that has philosophised at a distance from real trans lives, the disciplines of transgender theory and 3<sup>rd</sup> wave feminist theory have drawn from narrative produced by a range of subjectivities in order to reveal how personal and cultural constructions of subjectivity are negotiated across gender, ethnic and class lines. For instance, anthropology Professor Chilla Bulbeck revealed how these constructions form differently in other cultures through kin connections rather than via the nuclear family (1998:165).<sup>16</sup> Development of such negotiated constructions was boosted by the creation of forums for self-expression for gender variant people to discuss their ideas of subjectivity, for instance feminist consciousness-raising groups in the 2<sup>nd</sup> wave. In the case of trans people using IT technology, these developments have been characterised by intellectual and trans-activist Stephen Whittle (2002) as '*The Trans-Cyberian Mail Way*'.<sup>17</sup>

While the individual's own body will always affect an individual's perceptions of themselves and others, whether interacting online or face-to-face, Whittle claimed that people could avoid this influence to some extent by using their online voice to discuss their own perceptions of gendered essence.<sup>18</sup> People's feelings of trans subjectivity or gender variance often have to be concealed in non-cyberspatial life. The strategic concealing and revealing of their inner essence, often to protect themselves and others from abuse, regularly forms gender variant people into expert gender performers and negotiators and this is where they can be of great value in addressing rigid portrayals of gender in medicine, feminism and the law. Chapter 6 section 3 presents gender variant people as often being able to draw from their gender performative/negotiating

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<sup>15</sup> In s. 2 it is noted that Harry Benjamin criticised the looking at trans subjectivity 'from without' (1966:36).

<sup>16</sup> Narratives of gendered negotiation have also been discussed by Michel Foucault (Barbin and Foucault, 1980), Sandy Stone (1991), Leslie Feinberg (1996), Jay Prosser (1998), Harriette Andreadis, (1999) and Tracey Lee (2001) – see chapter 2 Introduction and ss. 1 and 3.

<sup>17</sup> This was the communicative route for trans people in early cyberspace forums.

<sup>18</sup> In chapter 5 section 1.2 there is a discussion of how computer-mediated-communication impacts upon presentation of sexual subjectivity.

experience in order to acquire and provide a 'whole' perspective of gendered existence.

A significant number of texts written by trans people since the 1970s have been autobiographical. This move towards 'narrative visibility' is what Cultural Studies Lecturer Jennifer Harding (1998:33-4) and other critical gender theorists advocated as a requirement for the establishment of subjectivity politics, or 'identity-in-process politics', providing the space for personal reinterpretation of gendered existence. Subjectivity politics became important for oppressed groups such as people of colour, women, gay people and then trans people, as a way of recognising subjectivity and subjectivity oppression. However, a side effect occurred for trans people from the 1980s onwards, when oppressed people were pigeon-holed into identity oppressed because of its very visibility, as pointed out by Transstudy participant Monica.<sup>19</sup> Nevertheless, subjectivity politics paved the way for oppressed people's recognition in discourses of medicine, law and, perhaps most crucially as explained in the last section of chapter 9, social life. Joining in the move to narrative visibility for the gender oppressed, philosophically 3<sup>rd</sup> wave feminists developed the production of anthologies from authors of a range of social ethnicities, as described in chapter 3 section 4.

### 1.1.3 Reveal Separatist Discourse

This third thesis aim involved the researcher's quest to determine whether transgender or feminism are or were separatist discourses, or whether it is the case that certain kinds of transgender and feminism are or have been separatist. Separatism is discourse that determines that only those of essentially defined identities can be a part of the discourse in question. Separatist discourses may be found in many different cultural and social locations, and may feature, for instance, in in law, medicine, transgender or feminism.

Trans people's move towards narrative visibility seemed to find philosophical, and often actual, support from philosophical 3<sup>rd</sup> wave feminism's apparent ethos

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<sup>19</sup> Monica Mar 11th, 2005, in <respected in your workplace> and Jun 15th, 2006, in <How do you believe you will you age?> – see chapter 7 s. 2.

of inclusion for various social standpoints.<sup>20</sup> This ethos of inclusion and consideration of real lives was largely inspired by women of colour's<sup>21</sup> efforts to have their experiences and lives acknowledged by philosophically 2<sup>nd</sup> wave feminists. As bell hooks (small initials) noted, feminist waves one and two were/are much more concerned with women forming identity based feminist groups to focus on single issues of common oppression (1984:44,62). [H]ooks suggested that 'solidarity' replace this 'support' since for her solidarity meant progress through radically critical, but non-competitive, engagement with a panorama of feminist issues and feminist-friendly subjectivities rather than being a kind of victim support only for those perceived to be proper feminist subjects (63,64).<sup>22</sup> This seemed to mirror the kind of solidarity called for by critical theorist Jurgen Habermas,

Justice concerns the equal freedom of unique and self-determining individuals, while solidarity concerns the welfare of consociates who are ultimately linked in an intersubjectively shared form of life ... (Benhabib, 1992:190).

Here we can see solidarity paralleling legal and feminist theorist Carol Gilligan's interpretation of ethics of care<sup>23</sup> in their (theoretically at least) non-discriminatory procedure.

Unlike an inclusive 3<sup>rd</sup> wave ethos or solidarity, some feminist commentary has been openly exclusionary towards trans subjectivities and transgender philosophy. For instance, in the 1970s Janice Raymond claimed that 'transsexuals' colluded with medical experts to produce narratives of 'sex

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<sup>20</sup> In contrast to separatist difference feminism's hostility to trans subjectivity – see chapter 2 s. 3, chapter 3 ss. 1 and 2, chapter 6 ss. 3 and 4.

<sup>21</sup> Rebecca Hurdis considered that, '*the term "women of colour" seems broadly inviting and inclusive while "Asian American" feels rigid and exclusive*' (2002:285).

<sup>22</sup> White middle class feminist academics had appropriated feminism to focus on issues of relevance to their own interests such as sexual liberation, lesbian identities, and anti-male critiques forgetting completely the lot of poor women of colour– hence the formation of Southall Black Sisters in London).

<sup>23</sup> Gilligan's ethics of care is introduced below in sub-section 1.3, and is discussed in chapter 4 s. 5. The researcher decided to refer to 'ethics' of care rather than 'ethic' of care (Gilligan herself refers to the singular) to follow Foucault, who, as noticed by Diamond and Quinby, '*... assaults the notion of a single ethic*' (Diamond and Quinby, 1988:xv).

changing' that bolstered the patriarchal gender divide by associating sex with cultural gender referents,<sup>24</sup>

"The Transsexual Empire" is ultimately a medical empire, based on a patriarchal medical model. This medical model has provided a "sacred canopy" of legitimations for transsexual treatment and surgery. In the name of therapy, it has medicalised moral and social questions of sex-role oppression, thereby erasing their deepest meaning. (1979:119)

... it might seem that what men really envy is women's biological ability to procreate. Transsexuals illustrate one way in which men do this, by acquiring the artefacts of female biology. Even though they cannot give birth, they acquire the organs that are representative of this female power. (107)

Raymond's theory didn't thoroughly investigate trans people's motives for working in conjunction with medical experts to produce scripts of transitioning subjectivity.

Raymond accused male-to-female trans people of touring the 'Otherness'<sup>25</sup> of womanhood since she believed that they did not give up their masculinist privilege when living en femme. With a small initial letter 'other' simply means 'different'. Feminists, such as Simone de Beauvoir, bell hooks and others, adopted 'Other' with a capital 'O' to indicate oppressed subjectivities which serve to provide a mirror image of an advantaged subjectivity, in order to reflect the advantaged subject's apparent superiority (de Beauvoir, 1949:16). A classic example of oppressed 'Other' is the gender of woman relying on the projected agency it finds in the form of the advantaged 'Subject' gender of man.

Raymond theorised that women would remain the 'Others' of male-to-female trans people when they infiltrated all levels of women's society in order to obtain dominant positions, like cuckoo chicks being placed in nests (1979:104). Ironically, because of its anti-trans stance, Raymond's *The Transsexual Empire*

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<sup>24</sup> As described in chapter 2 s. 3.

<sup>25</sup> 'Tourist of Otherness' is a term adapted from bell hooks' critique of part-time voyeurs of social ethnicities, as hooks thought Western subjects were when visiting exotic people and locations, '...the longing of whites to inhabit, if only for a time, the world of the Other' (1992:28).

inspired many trans people to initiate the process of writing themselves into theory and practice (Stryker and Whittle, 2006:131).

Raymond neglected to observe that patriarchal sympathisers seem to require the company of natal female women so that they might have what de Beauvoir theorised as ‘Others’<sup>26</sup> with whom to reflect their own ‘superiority’. Raymond did not accept that there is scope for people to find chinks in the armour of gender-based socialisation. She claimed that everyone, including intersexed people, is soon brought into one or other of the gender folds and cannot escape the effects of their gender-based rearing (1979).

A number of trans people such as Carol Riddell, Sandy Stone, Gordene Mackenzie, Judith Halberstam, Jacob Hale, Susan Stryker, Kate Bornstein and Stephen Whittle seem to have contradicted the dualistic operation of patriarchal heteronormativity by, consciously or unconsciously, espousing or supporting a 3<sup>rd</sup> wave philosophy (subjectivity inclusive). They did so by providing living embodiment of, cerebral passion for and activism in the name of a genuinely ‘postdifferent’<sup>27</sup> gender mix.

Another critical reading of trans subjectivity was provided by Bernice Hausman, but one which was more constructive for the transgender cause.<sup>28</sup> When reviewing transgender autobiographies of the 1930s to early 1980s, Hausman noticed the influence of medical models, and heteronormative discourses, of trans subjectivity,

What I find latent in these texts is not the possibility of an “authentic” account of the transsexual, nor a particularly subversive story about sexuality, but the idea of the transsexual subject as an engineered subject. (Hausman, 1995:147)

Hausman’s theory concurred with Sandy Stone’s ‘Posttranssexual Manifesto’ by suggesting that these narratives were largely guided by a medical model of

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<sup>26</sup> See chapter 4 section 3 for a discussion of the term, ‘Other’.

<sup>27</sup> ‘Postdifference’ is introduced in chapter 5 s. 4 and discussed in chapter 8 sub-section 3.1 and chapter 9 s. 3.

<sup>28</sup> Described more fully in chapter 2 s. 3.



heteronormative reassignment (1995:143). Stone had described how trans people would reinforce the model by colluding with physicians,

... candidates for surgery were evaluated on the basis of their performance in the gender of choice. The criteria constituted a fully acculturated, consensual definition of gender, and at the site of their enactment we can locate an actual instance of the apparatus of production of gender. (Stone, 1991:291)

Hausman saw this model of transition as a closure of text, relegating more subversive readings of transgender, such as Stone's and Anne Bolin's, to the margins of heteronormativity. This may be seen as the revealing of a medical separatist discourse, where only those who fit into the heteronormative schema will be accepted for physical reassignment treatments. Like Stone, Hausman wondered whether there were more valid transgender narratives to be found than the reassignment-friendly tomes acceptable for publication at the time.

Other feminists ventured interpretations of trans subjectivity, but again usually at a 'silent and secret'<sup>29</sup> distance from trans people themselves, suggesting the need for a more inclusive, and less separatist, approach. For instance, according to Ahmed (1998:106,107), the transvestite's use of items such as feminine clothes, make-up and games, are more likely to promote a conservative gender role than to play, '... *with the commutability of the signs of sex*', as Jean Baudrillard thought to be the case in *The Transparency of Evil* (1990:20). Ahmed still felt able to say this despite (several years earlier) Annie Woodhouse and Marjorie Garber having argued that, although transvestism displays stereotyped gender signs, it can also be construed as a disruption of gender referents because of its transgendering essence (Garber, 1997:147, Woodhouse, 1989:420). Woodhouse experienced a considerable advantage over many humanities-based feminists and queer theorists in that she was actively researching and socialising with a group of transvestites for over a year. Garber's approach was not one of a feminist theorist or social scientist as such, but as Professor of Esoteric Literature.

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<sup>29</sup> See chapter 2 s. 1 for a discussion of Foucault's concept of silence and secrecy.

#### 1.1.4 Assess the Potential for a Transgender/3<sup>rd</sup> Wave Feminist Coalition

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Following on from the first three thesis aims, the researcher sought to consider what positive outcomes on the law and society may emerge from cooperation between the factions of transgender and 3<sup>rd</sup> wave feminism. Ethics of care showed potential to challenge the 'Othering' that can result from separatist discourse by identifying genealogical similarities rather than essentialised differences. Genealogy challenges imposed aetiologies by revealing socially constructed correspondences between subjectivities. Trans and 3<sup>rd</sup> wave people showed potential to have a philosophical overview that combined traditionally heterogendered perspectives to provide a 'whole' ethical and philosophical perspective.

Accounts that essentialised gendered difference, that associated trans subjectivities with oppressive masculinism, and those written at a subjective distance from real lives, needed to be challenged. This challenge came in the form of several interpretations of sexual subjectivity emerging from a chronological and philosophical 3<sup>rd</sup> wave feminist perspective, following on from philosophically queer and 3<sup>rd</sup> wave insights into gender construction provided by inclusive theorists such as Foucault, Butler, Julia Kristeva and Gilligan. These 3<sup>rd</sup> wave insights included those from Anna Marie Cox, et al (1997), Jeannine Delombard (1995, see chapter 3 section 2), Emi Koyama (2003), Andrew Shail (2004), Alison Stone (2004, see chapter 3 section 1) and Greg Tate (1995, see chapter 8 section 3).

In challenging feminist essentialisation of womanly identity, Emi Koyama claimed that there are '*... as many ways of being a woman as there are women ...*' (2003:246), rallying against the idea of feminists as a kind of reverse Stepford Wives, all having to follow the same radical separatist agenda and code of appearance. Koyama mentioned that the trans woman's experience of 'Othering' gave her the potential for empathy with other groups of women subtly excluded from the category woman (249). This is particularly pertinent to discourses of femininity, society and law that subtly exclude, and therefore cast

as different,<sup>30</sup> people from the category 'woman', for instance feminists, lesbians, financially poor women, sex workers, trans women and 'third world' women.

In order to avoid the problem of essentialising womanhood, feminist philosopher Alison Stone conceived of 'women' as a genealogy, adapting a concept generated by Foucault to the situation of women,<sup>31</sup> and mentioning that,

... all cultural constructions of femininity re-interpret pre-existing constructions and thereby compose a history of overlapping chains of interpretation, within which all women are situated. (2004:85)

This statement hints at the way language within discourse iterates gender representations and presentations with the effect of moving them on with the times. Genealogy is defined by shared experience rather than shared identity (90), and derives from experiences of subjectivity in the past while moulding itself anew from the effects of subjectivity in the present (91). 3<sup>rd</sup> wave feminist theorists characteristically perceive identity as 'subjectivity' or identity-in-process, in the sense of genealogy. They understand that subjectivities are nothing if not paradoxical and contradictory as evidenced by changes in definitions of subjectivity over time and between cultures. Nevertheless, 3<sup>rd</sup> wave theorists typically consider that subjectivities are real at any one point in time and that this has real consequences for the way they are received by wider society, and that these consequences necessitate the resource of subjectivity based politics.

Feminists' and trans people's interactions with the law have often been problematic because of essentialised notions of who is properly a man or a woman, and because of the various rights and duties that are assumed to accompany each gender. These interactions have also characteristically taken considerable time to bear fruit,

'... law is notoriously slow to make change and is known to be well behind social change in general' (Holmes, 2006:112).

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<sup>30</sup> The concept of gendered difference is addressed in chapter 3 s. 1, chapter 5 s. 3, chapter 6 s. 3, chapter 8 s. 3 and chapter 9 s. 3. There is an important difference between separatist difference (exclusion of difference) and inclusive difference (inclusion of difference).

<sup>31</sup> Foucault, Michel (1991 [1971]).

Ethics of care<sup>32</sup> have been applied by gender variant people wishing to challenge heteronormative law in order to show how natal females and males can have gender that contradicts what is expected from their original appearance, but that this is not detrimental to society. That the character of both transitioning and gender variant subjectivities has been given consideration in these challenges is supported by Namaste's claim that,

Once we acknowledge the energies transsexuals have invested in repealing legislation which enforces a compulsory sex/gender system, it is impossible to reduce transsexual identities to those which enact an "uncritical miming of the hegemonic". (Namaste, 1996:189)

Ethics of care contrast with traditional Western industrial ethical operation by standing as a challenge to universal standards, rules, and the apparent impartiality administered by an ethic of justice, or what Foucault called 'the code',

... we should not be surprised to find that in certain moralities the main emphasis is placed on the code, on its systematicity, its richness, its capacity to adjust to every possible case and to embrace every area of behaviour. With moralities of this type, the important thing is to focus on the instances of authority that enforce the code ... . (Foucault, 1986[1984]:29)

Ethics of care also queries the need to pass<sup>33</sup> into certain forms of identity. Instead, these ethics rely on closer examination of personal and community relationships in order to examine the particular case of the individual. Ethics of care are useful to the investigation of the circumstances of trans people and feminists since their individual gendering and its effect on their legal interactions is often far from being a straightforward matter. Carol Gilligan linked ethics of care with women's inter-relationships but did not maintain that it was only women who could employ, or benefit from, this kind of ethical interaction,<sup>34</sup>

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<sup>32</sup> Gilligan's concept of ethics of care is described in chapter 4 s. 5 and chapter 8 s. 3.

<sup>33</sup> 'Passing' is the theme topic of chapter 7 s. 2.

<sup>34</sup> As discussed in chapter 4 s. 5.

... it is hardly convincing that Gilligan thought that the styles of moral reasoning she identified in her research and the preferences of women to reason more frequently in one style rather than in another reflected some ontological and universal essence called “femaleness”. The problem of gender difference is much more complicated in her work, and ultimately rests with the ahistoricity of the cognitive-developmental framework within which Gilligan – at least initially – set out her research. (Benhabib,1992:192)

Philosophical 3<sup>rd</sup> wave thinking, like Gilligan’s, is, theoretically at least, open to input from and consideration of all ethnic, sexual and social subjectivities<sup>35</sup> so can, in theory, be particularly associated with ethics of care. In a similarly inclusive mode, Whittle supported the investigation of, and inclusion for, a wide range of trans subjectivities and interests instead of calling for a narrow focus on the claim for all trans people to be reassigned surgically and hormonally into heteronormative identity (2002:81,90,189-194). A similarly socially inclusive philosophy was espoused in the narratives of some Transstudy participants, for example from Raelene,<sup>36</sup>

Each and everyone of us is a unique individual, and should be treated as such. There is no one size that fits all. (Nov 11th, 2005, in <What advice to a Newbie>)

Such inclusive philosophies may initiate a move from representations of trans people as medically-defined stereotypes and feminists as biologically-defined stereotypes towards their recognition as fully individual people who are often noticeably able to respect the individuality of others in turn, as argued in chapter 6 section 3. This kind of inclusive philosophy bodes well for a coalition between trans and 3<sup>rd</sup> wave factions.

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<sup>35</sup> As theorised by Heywood and Drake (1997:8).

<sup>36</sup> Another example from Raelene (Jan 19th, 2007, in <Some thoughts on non-trans gender-changers>) is to be found in chapter 7 s. 2.

## 1.2 Building Connections – Investigating the Social Problem

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A feminist ethic of care begins with connection, theorized as primary and seen as fundamental in human life. People live in connection with one another; human lives are interwoven in a myriad of subtle and not so subtle ways. (Gilligan, 1995:122)

As mentioned in the above section, of some humanities-based queer theory and feminist research, and according to sociologists of transgender, such as Richard Ekins (1997:26), Namaste (2000:40,51-53) and Whittle (1999:9), there has been too much study of trans subjectivity as a theoretical phenomenon at the expense of research into the lived experience of trans people. Harry Benjamin, as early as 1966, noticed that many commentators theorised trans subjectivity ‘from without’, seemingly referring to theorising by non-trans (as in his own case) or non-trans-friendly people,

(Virginia) Prince has made valuable contributions “from within,” while most other writers on the subject (including the present one), decidedly approach the subject “from without”. (Benjamin, 1966:36)

This study attempted to redress this omission by adopting interactive and reflexive research such as the ‘looking with’ the trans subject recommended by Namaste (1996:189-90). The researcher later suggests that ‘looking with’ might be enhanced with the influence of maternal relations encompassing ethics of care, introduced in chapter 3 section 3, discussed in chapter 8 section 3 and recommended in chapter 9 section 1.

A way of ‘looking with’ the trans subject is to empathise with and gain inside knowledge of his, her or hir social world. Martha Cooper and Caroline Blair (2002) noticed how Foucault recommended a kind of self-reflexive standpoint epistemology as the optimum means to investigate personal narratives,

Foucault suggested that it should be those most closely involved in a domain of practice or inquiry who address the problems of truth, power, and conduct in that arena. (2002:527)

This seems to be an ethics of investigation aligning closely with ethics of care,

Clearly despising those communicative postures that are aimed at winning, eliminating an opponent, or even defining an interlocutor as an opponent, Foucault propounded a communicative stance that respects the Other ...' (527)

Perhaps those 'most closely involved' can include those empathic with the research community or those with significant knowledge of this community as well as those with similar sexual subjectivities. If so, Foucault's ethical philosophy could enable those who are not conventionally seen as trans to investigate trans subjectivity and theory, just as it could involve male-embodied subjects with feminist research. The researcher was not sure whether he held legitimate trans or feminist subjectivity. It was perhaps the empathy with trans and feminist subjectivities that enabled this new trans/feminist study.

The possession of a passionate or personally political<sup>37</sup> stance in order to undertake research should not be read as a negative hindrance to objective research. It can act as a spur to engender in-depth, creative and relevant research and can reveal the effects of the researcher's subjectivity on research. This researcher aimed to provide a reflexive account of his social/academic standpoint to Transstudy participants and thesis readers, in order to avoid presenting the research as a completely objective 'view from nowhere'. The term 'view from nowhere' was devised by Thomas Nagel in 1986 and was given a feminist application by Sandra Harding in 1991,

It is necessary to avoid the "view from nowhere" stance of conventional Western epistemology while refusing to embrace the exhalation of the spontaneous consciousness of our experiences ...<sup>38</sup> (1991:311)

Thomas Kuhn (1962) described the spirit of the term as often coming in the form of the traditional operation of conventional scientific method where the attainment, and presentation, of detached objectivity with regard to the subject matter of one's research is recommended as exemplary and achievable. However, such a 'tabula rasa' of personal input into research is in fact

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<sup>37</sup> Political subjectivity is discussed in chapter 3 s. 1 and chapter 6 s. 2.

<sup>38</sup> The last part of this rather elaborate quote seems to mean refusing to submit to the eradication of the consciousness of our experiences.

impossible to possess and implement, and can easily lead to false objectivity because that very objectivity is not under scrutiny. The benefits of a possessing and articulating the converse view from a personal 'somewhere' are extolled in chapter 7 section 1.

Gilligan described what she perceived as a patriarchal view or 'voice'<sup>39</sup> from nowhere compared with a relational voice from somewhere,

Hearing the difference between a patriarchal voice and a relational voice means hearing separations which have sounded natural or beneficial as disconnections which are psychologically and politically harmful. Within a relational framework, the separate self sounds like an artefact of an outmoded order: a disembodied voice speaking as if from nowhere. (Spring 1995:125)

To obtain involvement with the research community in order to investigate their 'view' or 'voice', the main data collection source for the research became a body of narratives submitted by trans people, known as the Transstudy. Analysis of the research data involved examining the narratives through a feminist inspired critical discourse analysis via the investigation of narrative and its role in reproducing or subverting social discourse. The critical discourse analyst views language not as a mirror of experience, but as more of a distorting mirror, which produces a 'reflection' of discourse that changes slightly every time it is used.

Whittle pointed out that discourse analysis does not involve reliance on a fixed analytic method since it is by nature a self-reflexively evolving phenomenon,

To discuss discourse is to set out on a voyage of discovery, as 'there is no analytic method'. 'Doing' discourse analysis and justifying it as scientific method all too often presents the researcher with the dawning realisation that 'each step rests on a bedrock of "intuition" and "presentation"' (Potter and Wetherall, in Parker, 1992:5) and it becomes important to recognise the limitations of what it is possible to accomplish. (2002:42)

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<sup>39</sup> See chapter 4 s. 5, chapter 6 ss. 1 and 2, and chapter 7 s. 1 for explanations of Gilligan's concept of 'voice'.



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## 1.3 Conclusion

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This chapter highlights how problems emerged when feminism and transgender, as social factions or collective subjectivities, sometimes evaded, vilified or negated each other's philosophy and subjectivities. Particularly, separatist feminist theorists have portrayed the factions as consisting of mutually incompatible aims and subjectivities. This portrayal has worked to the detriment of both factions because literature reviews and data analysis (as found in chapters 2 to 8) suggest that trans people's and feminists' shared knowledge deriving from gender oppression can bolster one another's causes, for instance in order to inform law as it pertains to gender, as is suggested in chapter 9 sub-section 1.2.

Sub-section 1.1 identified the main aim of the thesis to be formation of a challenge to internecine exclusion between and within each faction by reconstructing the discourses associated with both. Exclusion deriving from each faction seemed to be associated with their link to certain sexual subjectivities and misunderstandings deriving from the effects of these links. Both factions have been portrayed as unreal by elements of the other faction and by other hostile groups. Queer inspired philosophical 3<sup>rd</sup> wave feminism promised to be an inclusive social discourse that would provide a substantial challenge to mutual exclusions.

The second aim of the thesis was to portray transgender and 3<sup>rd</sup> wave feminist factions and subjectivities as real in a sociological, rather than biological interpretation, as described in sub-section 1.2. The imposed diagnostic voice of official experts led to denied choice of subjectivity for many gender variant people. Social constructionists following on from Foucault introduced perspectives of subjectivity as negotiated, even potentially by those in weak positions of power. These perspectives eventually enabled challenges to medical and legal aetiologies of sexual subjectivity. Namaste theorised that it was necessary to take a look 'from within' in order to accept personal definitions from those otherwise seen as the objects of medical and legal determinations. Narrative produced by gender variant people has worked to reveal such definitions. Gender variant people often have enhanced insight into social construction from having to concentrate on the performativity of sexual

subjectivity. Acceptance of gender variance can lead to oppression if it becomes more visible but the alternative is to be discussed into or out of existence by others.

The third aim, outlined in sub-section 1.3, was to discover whether transgender and feminism are separatist discourses, or whether certain sub-factions within them are separatist. [B]ell hooks' model of social relations, 'solidarity', promised to replace any essentialist exclusivity in order to facilitate understanding between gender variant people. Philosophical 3<sup>rd</sup> wave feminists' stated identification with those 'Othered' from heteronormativity promised to engender this solidarity.<sup>40</sup> Trans subjectivities have notably been essentialised by separatist feminists theorising from a distance. Feminist separatist theory maintaining that trans people follow a heteronormative schema has been contradicted by such people coming 'out' as gender variant and by espousing inclusion for a range of gender variant subjectivities.

As described in sub-section 1.4, interpretations of gender as deriving from 'genealogy' promise to provide a way of linking transgender and 3<sup>rd</sup> wave feminist subjectivities through genealogical similarities. Philosophical 3<sup>rd</sup> wave feminism expanded upon the queer project to challenge the essentialisation of sexual and philosophical subjectivities. The notion of genealogical similarities allowed empathy between those 'Othered' from apparently disparate discourses. These similarities derived from a perspective of individual essence as subjectivity, a continually forming construction formed in negotiations with the society within which the individual finds him, her or herself. Carol Gilligan identified ethics of care as the optimum way to reduce stereotypes and to support silenced subjectivities. Using these ethics, genealogical overlaps between sexual subjectivities can be revealed, clearing the pathway for potential coalitional union based on equity, the possibility for which formed the fourth thesis aim.

The second part of this chapter suggested that much theorising of trans subjectivity has, historically, been applied from 'without', whether at a physical,

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<sup>40</sup> For instance, by feminist or feminist-friendly writers such as Julia Kristeva (1993), Gloria Anzaldúa (1983), bell hooks (1984), Judith Butler (2004), Rebecca Walker (1995), Leslie Heywood and Jennifer Drake (1997) and Alison Stone (2004) – all referred to in chapter 3.

social or subjective distance from trans people. It seems clear that someone with empathy for a social community can research that community, particularly if subjectivity is accepted to derive from, and to connect via, genealogy. Any such empathic alliance can be revealed via inclusive research so that the researcher's 'view from somewhere' can be revealed for its influence on the research and as a positive way of facilitating the voices of research participants. Critical discourse analysis is perhaps by definition in-process, like subjectivities, and therefore further aligns with a 3<sup>rd</sup> wave challenge to the validity of fixed metanarratives and essentialist investigations and interpretations of subjectivity.

In chapter 2 a series of literature reviews commences to investigate key themes that have shaped discourses of trans subjectivity, 3<sup>rd</sup> wave philosophy and the law as it relates to gender. Analysis chapters 6 to 8 are formed from themes initiated by the literature reviews and participant narratives. Chapter 9 is formed from three ultimate recommendations themes deriving from literature reviews and analysis chapters.

## Terminology

In this research 'trans' is used as an umbrella<sup>41</sup> term for the main subjects of this study because it is generally taken to include all those who voluntarily or involuntarily transgress heteronormative codes of sexual identity, whether this be people who transition gender or those who do not. 'Trans woman' and 'trans man' are used, for identification purposes, to describe the transitioned gender of those previously known (in science) as 'transsexual men' and 'transsexual women'. This means a person previously known as a transsexual woman is now referred to as a trans man, recognising their personal trans subjectivity, and/or the gender in which they would prefer to live.<sup>42</sup> In this study 'transgender' generally refers to non-transitioning trans subjectivity or to trans

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<sup>41</sup> In the context of this thesis, the word 'umbrella' is taken to mean, 'covering or accounting for all individuals or individuals in a certain identified grouping'.

<sup>42</sup> The terms trans people, trans man and trans woman were coined in 1996 by Christine Burns and Stephen Whittle, when asked by the MPs Lynn Jones and Evan Harris, for simple words to describe the community of trans people in a simple way. (in conversation with Prof. Stephen Whittle, Manchester Metropolitan University, Dec. 2005)

philosophy. Whittle linked 'transgender' to trans subjectivity that doesn't necessarily involve medical reassignment,

Transsexualism is currently being redefined to come under an umbrella term transgenderism, a larger group which is no longer medically defined... . (Whittle,1998:46)

People who wish to be identified as different to heteronormative sometimes adopt 'Sie' and 'hir' as pronouns. They may wish to self-represent as having no gendering or a much more individually focussed gendering. 'Heteronormativity' refers to the idea that there are only two possible genders, that these are 'man' and 'woman' and that these are developed in the womb and cannot be transitioned later. 'Non-trans' is used by the researcher and others to indicate those who are apparently fully heteronormative in respect to their own gendering.

'Gender variant' is used to indicate those whose gender has been perceived to be different to heteronormativity, including feminists, gays, lesbians and trans people. It is also a term introduced by Press for Change in their negotiations with the Equality Bill Committee, as a potential replacement for 'gender reassignment'. 'Gender oppressed' is intended to mean those whose preferred gendering has been a target for heteronormative abuse. 'Sexual subjectivity' is taken by the researcher to mean the combination of an individual's:

- natal birth sex, e.g. whether they are born with testes or ovaries, or something else which might indicate an intersex condition,
- sexual orientation, i.e. an attraction to a person or people who maintain certain gender performance(s),
- gender, meaning the way that a person's sexually subjective behaviour, appearance and language are formed, performed and negotiated in order to manifest as an outwardly recognisable type of sexual being.
- Sexuality, or what a person prefers to do as regards the process of having sex.

'Identity' is taken to mean fixed biological or personality traits while 'subjectivity' is taken to mean identity-in-process. 'Realised gender' is intended to refer to gender that is psychologically and socially achieved by the individual.

Throughout the thesis, the concept of ‘waves’, originally introduced to identify chronological periods of feminist activity, is developed to apply also to philosophical features in the development of transgender philosophy and law. For instance, in chapter 4, the term is applied to describe waves of gender legislation that the researcher contends are comparable to the philosophical development of feminist waves one to three. The difference between chronological and philosophical waves is described at the start of chapter 3 section 3.

### Format of Transstudy Quotes

All quotes from the Transstudy, and Transstudy topic titles, have been quoted verbatim in this thesis with no spelling or grammar amendments, therefore ‘(sic)’ is not deployed in Transstudy quotes. This was done to preserve the character of each participant’s narratives and to avoid imposing any meaning upon their quoted text. The researcher sometimes inserts explanatory notes in square brackets into a quote. Titles of Transstudy topics accompanying Transstudy quotes are put inside chevron symbols. Transstudy references take the following form with name of participant first, the date that the narrative was posted, and the topic title: (Monica Mar 11th, 2005, in <respected in your workplace>). Sometimes reference is made to ‘TransEquality’ legal cases. This refers to legal cases with which Press for Change has been involved. Pseudonyms have been allocated to all Transstudy participants and individuals from TransEquality cases.

## CHAPTER 2: EXPLAINING TRANS LIVES - SILENCE AND SECRECY

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### Introduction

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Theory ventured by sexologists and psychoanalysts, built up in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, for instance by Krafft Ebing (1893) and Magnus Hirschfeld (1991[1910]) through to John Money and Richard Green (1969), was eventually found lacking as an explanation of trans subjectivity by many trans people themselves, whereas autobiography offered to provide perspectives from real trans lives. Literary and trans theorist Jay Prosser described the feeling of unnameable identity encountered by many trans people, before the period when they began to be asked for first person accounts of their own trans experience (1998:5). Like Sandy Stone, Prosser suggested that narrating trans subjectivity is a necessary precursor to its full realisation in social and bodily form (5). As described in chapter 1 sections 1.1 and 1.3, Janice Raymond and Bernice Hausman portrayed trans people as products and perpetrators of medical discourse,<sup>1</sup>

What we witness in the transsexual context is a number of medical specialities combining to create transsexuals – urologists, gynecologists, endocrinologists, plastic surgeons, and the like. (Raymond,1979:xv)

... transsexuals' investment in the idea that identity resides in the body's tissues, regardless of the fact that the official medical story of transsexualism treats the body as contingent to the mind's identifications ... is, of course, made manifest in the demand for "sex change," since demanding to be made into the other sex suggests that "being" at the level of the mind (gender) is not enough. (Hausman, 1998:148)

As a result of the increasing production of personal narratives, trans people are not any longer, and perhaps never totally were, if one takes into account

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<sup>1</sup> Also see the quote from Hausman in chapter 1, s. 1.1.

Foucault's notion of the potential to find chinks in the armour of power relations, these kinds of products and perpetrators.<sup>2</sup>

Following is a brief introduction to the personal narratives, in the form of published biographies and autobiographies that have been drawn upon to inform this chapter and some of the content of following chapters. Some references to autobiographers Lili Elbe, Robert Allen, Christine Jorgensen, Jan Morris, April Ashley, Mark Rees, Max Wolf Valerio and Dhillon Khosla in the thesis have used their first names as their books dealt with sensitive issues of a personal nature and the researcher wished to portray them as participants of a kind.

Niels Hoyer's *Man into Woman* (1933) was the first published account of a particular individual's reassignment. The book provides insight into the psychological life of its protagonist, Lili Elbe, formerly the Danish artist known as Einar Mogens Wegener (Hirschfeld, 1926:67,451-455). In *But for the Grace* (1954), Robert Allen, who claimed his physical transition from female to male in his late 30s and early 40s was due to natural processes, provided a moving tale of the battle for psychological survival when all around him seemed to be fundamentally different. *Christine Jorgensen: A Personal Autobiography* (1967) describes how, in 1950, after finding clues to the 'real her' in endocrinological reports and literature, Christine embarked for Denmark on the quest for the physical realisation of her true self, via the newly emerging phenomenon of reassignment surgery. This sea crossing became a personal metaphor for crossing the borders of gender, bringing escape from what she called the 'half-life' of her earlier days (1967:101).<sup>3</sup> Georgina Turtle, who says that she never self-identified as trans, claimed that she was born intersexed in 1923 but was raised as a boy and spent her early adult life as a man (1963). In her mid-30s, she began a complex process of transition to womanhood. Turtle wrote a study of people she claimed were 50 'O-men' and 'O-women' (gender variant women and men respectively) in 1963, though the taxonomic system she used was one of her own invention that has not been supported by evidence.

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<sup>2</sup> See chapter 1 s. 2.

<sup>3</sup> Chapter 6 s. 3 proposes that trans people reveal, and often experience, gender as a whole, rather than half, experience.

A set of later autobiographies includes *Conundrum*, opened by Jan Morris recalling the feeling of being born into the wrong body at 3 to 4 years old (1974:11). This feeling prevailed throughout her young life, notably in 1953 when in the company of a masculine group of men undertaking the then very masculine endeavour of conquering Everest. Jan felt that, 'Once more on Everest I was the outsider (81)', despite her possession of a healthy functional male body. In *April Ashley's Odyssey* (1982), April recounted how she underwent risky reassignment surgery in Casablanca while leading a colourful life as a cabaret performer. Her life story involved being subject to a legal precedent in the English courts that would shroud trans people's lives, not just in the UK but in many other countries, for the next 30 years. The decision in the case of *Corbett v Corbett/Ashley* [1970], a divorce case which, instead, became the annulment of April's marriage to Arthur Corbett as if it never had existed, 'cleansed'<sup>4</sup> trans subjectivity from society, resulting in many trans people wondering about the legitimacy of their gender.<sup>5</sup> In *Dear Sir or Madam*, Mark Rees from Tunbridge Wells gave his own self-definition of gendered being, another instance of increasing opportunity for trans people to provide narratives that expand our notions of gendered subjectivity,

... I regarded myself as male, cursed with a female body ... I didn't want to be seen as a woman, either feminine or butch. (1996:14)

Mark's battle to gain recognition for his preferred gender culminated in a hearing at the European Court of Human Rights. As noted in his Press for Change profile, although this meant losing any opportunities to pass as male, it instead gave him the opportunity to fight for trans people's right to pass as themselves in a gendered sense.<sup>6</sup>

Still more recent autobiographies provide alternative reflections on gender transition. For example, in *The Testosterone Files* (2006) Max Wolf Valerio relates how he seemed to have generally had a good time in his early life, a quantum shift away from the experiences of Mark Rees (1996:17) and Robert

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<sup>4</sup> See chapter 8 s. 1 for an explanation of the concept of 'social cleansing'.

<sup>5</sup> Such feelings of legitimacy were addressed by Whittle (2006c) and are discussed in chapter 2 s. 3 and chapter 6 s. 1.

<sup>6</sup> <http://www.pfc.org.uk/node/1025> - now unavailable.



Allen (1954:10,31,33,41),<sup>7</sup> who were regular targets for harassment. However, when entering puberty, Max's feelings of difference to girls caused him confusion when he could not use his body as would a boy of his age. In *Both Sides Now* (2006), Dhillon Khosla described how growing up into manhood provided him with insights into both gendered positions, allowing him to find himself as a healthily rounded gendered being.<sup>8</sup>

This chapter is organised into three themes that emerged from reviews of the above autobiographies, from Transstudy narratives, from a selection of literature addressing the phenomenon of trans subjectivity and from links to feminist issues. These themes link to issues of difference, real lives and 'looking with' introduced in chapter 1, and to aspects pertinent to philosophical 3<sup>rd</sup> wave feminism and gender law discussed in chapters 3 to 9.

## 2.1 Silence and Secrecy

A barrier to gender variant people's 'finding of themselves'<sup>9</sup> through narrative and discourse can be extrapolated from a theme to be found in *The Will to Knowledge* by Michel Foucault. Foucault described how, following the 'age of repression' that commenced in the seventeenth century, the Victorian era imposed 'taboo, non-existence and silence' on sexualities and gendered behaviours classed as deviant (Foucault, 1998[1978]:4-5). However, Foucault theorised that what was to be silenced (alternative sexualities and genders) had first to be named in order for them then to be identified for silencing, and that such naming paradoxically led to the flourishing of sexual discourses within a culture of heteronormative repression.<sup>10</sup> Foucault traced the development of the age of sexual and gender discourses from early monastic settings, to a burgeoning in the eighteenth century, reaching its apotheosis in the Victorian era (18, 20). As the new outpatient clinics of 'modern' psychiatry became a new type of 'confessional', a new age of confessional sexuality and gender seems

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<sup>7</sup> As described in s. 2 of this chapter.

<sup>8</sup> The trans experience as a 'whole' experience of gender is proposed in chapter 6 s. 3.

<sup>9</sup> A term used throughout the thesis to mean people's discovery of their own inner subjectivity.

<sup>10</sup> From the sumptuary laws of King Edward III, through 17th century raids on Molly Houses (Norton, 1992), defining 'normality' is still often the aim of those in positions of definitional power, for instance in Ken Zucker and Susan Bradley's work with young trans people (1996).

to have erupted in the 18<sup>th</sup> to 19<sup>th</sup> Century, manifesting what Foucault observed rather dismissively as, '*the only civilisation in which officials are paid to listen to all and sundry impart the secrets of their sex*' (7). Modern confessional media took up the baton of defining sexualities that deviate from the norm, silencing the voices of individuals beneath the stereotypes,

... much of our savoir, our knowledge, is, has always been, in some way, mediated, derived not from direct acquaintance with facts or with events but from hearsay, from friends, from books, from magazines, from newspapers, from the radio, from films, from television, from CDs, from the internet ... Thus reality can be interpreted through the media: patients' expectations of (and disappointments about) their therapy were partly based on media representations ... (Solange, 2005:35)

The Victorian vehicle of sexuality/gender repression became scientific discourse, operated via 'political, economic and technical incitement' and informed by medicine, then psychiatry and sexology (1998[1978]:23). Foucault's interpretation of 'discourse' could include language, body language, living spaces, dress codes and any number of cultural conventions. Scientific discourse introduced the new ideology of rationality and largely replaced religion, which was losing its power as what Marxist philosopher Louis Althusser might have identified as 'ideological state apparatus' (1970:127-193),<sup>11</sup> or what Foucault identified as a power relationship, power being for Foucault that which reaches beyond the state and its apparatus (Prado, 2000:78). The result was sexuality/gender prescribed by the establishment rather than originated by the individual. One could only have only one of the sexuality/genders from those on offer, which were heteronormative within gender norms, and that one sexuality/gender was to define one's being.<sup>12</sup>

It should be noted that Foucault's notion of power, experienced for instance via the operation of silence and secrecy, was not the application of conscious and deliberate domination. As Professor of Philosophy Carlos Prado pointed out,

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<sup>11</sup> ISAs include the family, media, religion and education. The structure of these social institutions engenders the individual's self-image, values and identifications, without the imposing of force.

<sup>12</sup> See chapter 4 s. 2 and chapter 7 s. 3 for a discussion of the limited choice of sexual subjectivities available in the industrial West.

power theorised by Foucault is produced from a long history of interconnected events and relationships and is therefore impersonal in its accumulated form (2000:56,68). For instance, in discussing the evolution of the 'carceral' (prisoner internment) system, Prado pointed out that, 'the system's effects are very different from the intended effects that prompted its development (2000:65).

Between the lines of the new scientific discourse were ethereal essences that Foucault deduced to be 'silences'. These were the flip side of things actually said, manifesting in language designed to conceal (Foucault, 1998[1978]:24). Closely delineated conditions, under which sexuality/gender and alternatives to heteronormativity were discussed, in order to channel sexual practice into reproduction and gender into societal institutions such as the family unit, gave rise to the second part of what Foucault revealed as the culture of sexual and gender taboo, namely 'secrecy' (1998[1978]:34). Foucault proposed that secrecy was designed to allure people into discussing what was silenced as a result of its prohibited essence. Sexuality/gender was something that needed to be identified as dark and dangerous so that adults would feel the need to gossip about it, in order that its deviant manifestations could be socially shunned via alienation within discourse.

Examples of the iron grasp of silence and secrecy can be found in literature. We can deduce that homosexuality was still not a proudly held feature in the late 1950s from Richard Hauser's 1962, post-Wolfenden account of the fear of stigma experienced by gay men and lesbian women, which in turn derived from the 'secrets' surrounding their sexual subjectivity. Hauser castigated this as a, '*... stupid cloak of secrecy ...*' (1962), preventing those who were homosexuals from discussing the possibility of a homosexual existence for themselves. The 'cloak', but no so stupidly, could also be kept in place by female spouses of gay men who tried their hardest to protect their family and lifestyle from the onslaught of prejudice. Hauser attempted to remove the 'cloak' to some extent by giving narrative voice to select homosexual subjects. Unfortunately, he lessened the possibility of subjectivity for transvestites, drag artists and cross-dressers by labelling them and their sexual subjectivity as, 'false transvestist'. He considered these people likely to be childlike exhibitionists who wished to be

women, contributing to the infantilisation of trans-like subjectivities as discussed in section 2 below (1962:78-79).

In 'Theorising Early Modern Lesbianisms' (1999), Harriette Andreadis propounded the theory that in the sixteenth and seventeenth centuries the boundaries between female heterosexuality and what we now call lesbian identity had not been demarcated. This led to a different kind of silence and secrecy that was owned by those discussed, where women's same-sex erotics could flourish covertly (O'Farrell and Vallone, 1999:3,6). Andreadis theorised that the deliberate hiding of lesbian erotics by those involved was a strategy to evade drawing attention to their desires (1999:131). Her term for the silence and secrecy surrounding same-sex erotics was, 'an erotics of unnamings' (125). She claimed that such erotics were evident in some women's literature of the time, and argued that these works evidenced a kind of underground subversive reworking of patriarchal literary conventions (130,40).<sup>13</sup> However, she considered that female same-sex relations became easier to suppress at a time when increasingly revealing narratives of gender brought them out into the open, in the dawn of the Enlightenment era (128). Although it seems that the erotics of unnamings allowed a peaceful existence for its subjects, the researcher contends that it disallowed the possibility of proudly leaving the closet and declaring one's sexual subjectivity as personally political, a social statement assessed in chapter 6 section 2 and chapter 7 section 3, under the theme of 'passing'.

Andreadis cited Michael McKeon's (1995) proposition that the compartmentalisation of human identity and gendered contribution culminated in the patriarchy of the eighteenth and nineteenth centuries (1999:132). Areas of work were allocated to one sex and normative discourses of gender roles ensured that everyone was prominently segregated to one half of the gendered divide. In this new age of bipolar gendering, only those genders/sexualities given a name came to be accepted as legitimate (140). As argued by Foucault, it appears that what might be called a 'politics of naming' in the eighteenth and

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<sup>13</sup> In mainstream literature of the time, female same-sex relations were imagined as safely external to conventional culture by attributing them to the classical world or to mythical and far away countries (1999:127-8).

nineteenth centuries developed to create control through labelling and pathologisation of what were deemed to be undesirable identities. An example can be found in the form of Case 99 (1893:203-215) in Krafft-Ebing's *Psychopathia Sexualis*, named as a case of 'acquired homo-sexuality' following from the subject's self-description,

General Feeling: I feel like a woman in man's form; and even though I often am sensible of the man's form, yet it is always in a feminine sense. ... And all that means one alone can know who feels or has felt so. But the skin all over my body feels feminine; it receives all impressions, whether of touch, of warmth, or whether unfriendly, as feminine, and I have the sensations of a woman. (209)

Krafft-Ebing's case 131, named by him as an instance of 'gynandry', concerned Count Sandor Vey, a person we would probably now describe as a trans man. Krafft-Ebing noted of Sandor Vey that,

S's characteristic expressions – "God put love in my heart. If he created me so, and not otherwise, am I, then, guilty; or is it the eternal, incomprehensible way of fate?" – are really justified. (317)

These were the first medial accounts of what was to become the classic story of transsexual people as 'trapped' in wrongly sexed bodies and with gendered interests that contradicted their sexed embodiment, a trope investigated by Sandy Stone in *A Posttranssexual Manifesto* (1991:292). As with case 99, Krafft-Ebing recorded a history of patients' relatives with psychological dysfunctions, as if this logically led to the conditions of gender variance pertaining to his case subjects (1893:310). Assimilation of patients' sexual subjectivity into heteronormativity was expected to resolve the problems of people such as Case 99 and Sandor Vey.

'Passing', also referred to as 'living in stealth' in trans circles, is perceived by some as trans people as deferring to the 'politics of naming' but by many such people as an attempt to avoid being the victim of silent and secret discourse.<sup>14</sup> In 1996, trans activist Leslie Feinberg considered that passing facilitated

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<sup>14</sup> The effects of 'passing' are addressed in chapter 7 s. 2.

culturally imposed self-denial designed to ensure that the subject fits in with the dictates of establishment culture,

Passing means having to hide your identity in fear, in order to live. Being forced to pass is a recent historical development. It is passing that is a product of oppression. (1996:89)

Critical literary theorist Marjorie Garber thought that a masculinist operation of silence and secrecy attempted to impose passing by the diffusion into culture of a deviant subjectivity,

The “longing” for self-effacement and reabsorption is a domesticated and, I would suggest, finally once again a patriarchal or masculinist longing, which is transferred onto the figure of the transvestite in a gesture of denial or fending off. (Garber, 1997:75)

She felt this process occurred in deference to patriarchal and masculinist discourse. Garber argued that instead of succumbing to the bonds of heteronormativity through passing, the transvestite acts as a figure for desire, desire being that which escapes definition and disperses everywhere (1997:75). In Shakespeare’s *A Midsummer Night’s Dream*, Garber ascertained a correlation between the changeling and transvestite in their temporary and silent manifestation (1997:85). Garber then associated changeling and transvestite with the idea of the boy. The boy is ambiguously gendered, subject to impending change and the target for domination by those who have mastered the patriarchal order (1997:88,89,90). Boys are therefore society’s accepted ‘transvestites’ and he who continues to be dragged screaming into ‘grown-up’ society will be designated as ‘boy’ in order to socially eradicate him from manhood. This is an inspired reading of an operation of silence and secrecy but, however, does not deal with the day to day reality of life of someone labelled ‘transvestite’.

Despite the pernicious operation of silence and secrecy, some trans narratives reveal how trans people began to ‘find themselves’ by reading, and later producing, accounts of trans subjectivity. For instance, Lili Elbe seemed to find herself partly through reviewing scientific literature, rather like Christine Jorgensen did in the *New York Public Library* (1967:22), as the fictional

Stephen Gordon did in Sir Philip's private library in *The Well of Loneliness* (2005:ix,x,xiv,186), and as did Stephen Whittle at age eleven in a Manchester Library,

From eleven I got permission [to go to the adult section of the library] and would sit in the medicine and psychology section , frantically reading everything I could ... I spent so much time reading books and thinking, Somebody must have been born a girl and grown up to be a man. (Self & Gamble, 2000:52-53)

In 1951, when flying back to New York to meet her family after her gender reassignment with Dr Hamburger, Christine Jorgensen 'found herself' when reflecting that there were other 'Others', like herself, in the spectrum of sexual subjectivity (1967:170). Her quiet contemplation of the transition from GI to woman was the 'calm before the storm' of publicity awaiting her on the tarmac of New York International Airport. Despite her narrated feelings of horror and bewilderment at such public pandemonium, she later related a feeling that her new found fame had contributed somewhat to liberating others to feel that they could produce their own narratives of transition (178,179). The silent and secret editing of trans narratives had been contravened in such instances, and would start to lose its iron grip on the representation of trans subjectivity.

### 2.1.1 Leaving the Silence

Silence and secrecy has been evident in dominant narratives forming closed and static texts that continue in a loop of exclusion. Carol Gilligan noticed one such narrative as prevalent in accounts of psychological development by theorists such as Freud, Piaget and Kohlberg,

... the silence of women in the narrative of adult development distorts the conception of its stages and sequence. (1982:156)

In 'Queering Theory', legal academic Larry Cata Backer identified how the perfection of silent and secret domination of gender minorities serves to maintain dominant gender discourse as 'common-sense' and essential, and therefore as apparently 'not-discourse',

Our dominant heterosexualist culture has so refined the techniques of annexing the 'oppositional' discourse of its sexual minorities that it passes

virtually unnoticed and unopposed (Brown, 1996). Such discourse is, 'in every instance a function or extension of history, convention, and local practice' (Fish, 1984-5, p.439). Moreover, revolution is hard to hear, even among its practitioners (Fuss, 1991, p.6). (1998:189)

In 1992, Sandy Stone issued a clarion call for trans people to rise up and be heard rather than to be discussed into false existence by others. As discussed above and in chapter 7 section 2, this silence and secrecy was and is still frequently maintained when the trans person feels obliged to merge into the established gender order and to resist knowledge of their pre-transition history (1991:95). As mentioned in chapter 1 section 1, Stone revealed how in the 1950s-70s narratives of transsexualism worked effectively to obscure narratives of gender variance,

Besides the obvious complicity of these accounts in a Western, white male definition of performative gender, the authors also reinforce a binary, oppositional mode of gender identification. ... There is no territory between. (286)

Stone argued effectively that a notable number of trans people are just that, *trans* people and that, rather than hiding through passing as 'normal' man or woman, these individuals should be proud to proclaim the fact of their non-heteronormative trans subjectivity. Such a reclamation of subjectivity seems to mirror that urged by chronological 2<sup>nd</sup> wave feminist Simone de Beauvoir when calling for women to reassign their sexual subjectivity from object (losing oneself) to subject (finding oneself),

Indeed, along with the ethical urge of each individual to affirm his subjective existence, there is also the temptation to forgo liberty and become a thing. This is an auspicious road, for he who takes it – passive, lost, ruined – becomes henceforth the creature of another's will ... (1949:21)

## 2.2 Infantilisation and the 'Refusal to Grow Up'

As with males theorizing about women from the beginning of time, theorists of gender have seen transsexuals as possessing something less



than agency. As with “genetic” women, transsexuals are infantilized, considered too illogical or irresponsible to achieve true subjectivity ... . (Stone, 1991:294)

Deploying an authoritative ‘voice’, which would lead to silent and secret discussion of sexuality/gender, Freudian psychoanalysts considered that the client’s conscious narrative was not a reliable indicator of experience (Prosser, 1998:151). In the period from 1890 to 1905 Sigmund Freud constructed his manifesto on the psychosocial development of human sexuality, interpreting any gender variance as properly a temporary psychological step towards heteronormative sexuality (1962). He construed on-going gender variance as a failure to participate in the full process of sexual conditioning from infancy to adulthood. Neurosis resulted, he theorised, marked by an immature state of mind from failing to bridge the span from adolescence to mature heterosexuality (Foster, 1985[1956]:151).

In 1966 Harry Benjamin, Magnus Hirschfeld's protégée and the first doctor to open up a 'sex change' clinic in the USA, added transvestism to this state of infancy by suggesting that it may derive from, ‘*An immature or an infantile sexual constitution (fostered by a faulty upbringing) ...*’ (1966:37-38). It can be said that the infantilisation of gender variant people was thereby incorporated into developmental theory with a concomitant loss of their social ‘voice’.<sup>15</sup>

In 1979 Janice Raymond further shored up this interpretation of trans people as failed gendered selves, as people too sick and immature to make responsible decisions about their own gendered existences. Whittle, when later critiquing Raymond, noted how separatist feminist theory contributed to the idea that development into anything but a woman or man, as per the heteronormative model of gender development, was a sign of immaturity,

A failure of history means one is always a child, never a woman, a failure of performance means that the individual does not make the grade as a woman, and finally a failure of biology means that the individual is a man. (Whittle, 2005:159)

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<sup>15</sup> ‘Voice’ is used here in the sense of Gilligan’s idea of differently gendered access to social voice, described in chapter 7 s. 1.

Many confluences of trans subjectivity with immaturity come from culture. In section 1 above it was suggested that culture has associated transvestism with the image of the boy (Garber, 1997:88,89,90); something transient, not fully formed and not capable of involvement in grown-up discussion, an association that can work to oust gender variant people from 'grown-up' discourse. For instance, Garber identified J M Barrie's *Peter Pan* as a boy who never changed. Almost without exception, the pantomime and some film versions of *Peter Pan* required performance by women actors. Garber speculates that women have been seen by some as equivalent in status to boys since, like changelings and (male) transvestites, they are often portrayed to be too feminine and/or innocent to join the masculinist order (Garber, 1997:168).

Carol Gilligan speculated that women would always be viewed as immature when viewed through the prism of masculinity,

... as long as the categories by which development is assessed are derived from research on men, divergence from the masculine standard can only be seen as a failure of development. As a result, the thinking of women is often classified with that of children. (Gilligan, 1982:69-70)

Also, when reviewing Janet Lever's research on children's games, Gilligan suggested that maturity, at least in the industrial West, was and is taken to be a masculine feature,

Lever implies that, given the realities of adult life, if a girl does not want to be left dependent on men, she will have to learn to play like a boy. (1982:10)

In a later work, when commenting upon the custodial appropriation of women by masculinity, Gilligan noted that,

The neurobiologist Antonio Damasio tells us that we register our experience from moment to moment. In our bodies and our emotions, we pick up the music or "the feeling of what happens". When we fail to record these signals in our minds and thoughts, our thoughts become divorced from our experience and we can readily fall under the sway of false authority. (2011:33)

The riddle of femininity is in fact the riddle of femininity in patriarchy, which forces girls to choose between having a voice and having relationships. (2011:76)

The traumatised person, experiencing his or her own voice as ineffective, as powerless, adopts the voice that carries power and authority. (2011:88)

It seems that women and trans people have been expected to be seen and not heard in patriarchal culture. Like women, many trans people's moral development will also be seen as a divergence from the masculinist standard since it often evidences the kind of bi-gendered 'view from somewhere' described in chapter 6 section 3.

The lived condition of men's refusal to join the masculinist order was pathologised into a condition called the 'Peter Pan Syndrome' (PPS) by Psychologist Dr Dan Kiley, something he theorised that he had suffered from himself. Kiley delineated six symptoms of 'PPS': *'Irresponsibility, Anxiety, Loneliness, Sex Role Conflict, Narcissism, and Chauvinism'* (Kiley, 1983, cited in Garber, 1997:182). Although related to delinquent men refusing to take on adult roles, these symptoms reflect those suggested in the 1970s by Psychologist Leslie Lothstein as a way of identifying the characteristics of transsexuals,

Lothstein concluded that his ageing male transsexual patients were depressed, isolated, withdrawn, schizoid individuals with profound dependency conflicts. Furthermore, they were immature, narcissistic, egocentric and potentially 'explosive' ... (Walters and Ross, 1986:58)

These portrayals of immaturity worked to construct an image of trans subjectivity as unreal and infantile and often trans people's parents have been held to blame for this apparent route to immaturity. Similarly, Dr Kiley followed *The Peter Pan Syndrome* with *The Wendy Dilemma* which hypothesized that women, the 'Wendy's' who mother the men in their lives, can initiate and sustain the PPS in their male partners. Some women resisted this interpretation because it attributed blame for PPS purely to women (Thomas, 27 February 1996).

Pantomime<sup>16</sup> also offers representations of transvestism where the effeminate Captain Hook resembles pantomime dames (read male-to-female cross-dresser), and the female-to-male cross-dresser, in the form of Peter Pan, is a depthless character with spotless morals (Peter Ackroyd in Garber, 1997:176). Lack of complexity represented by the female-to-male pantomime transvestite mirrors Garber's portrayal of 'the boy' as an acceptable image of negated individuality ripe to be recruited into masculinity. On the other hand, Hook can be taken to manifest the loss of innocence associated with male transvestism. Garber highlighted Jacqueline Rose's insight that rather than being feminine, Peter Pan is bereft of sexuality and gender, a clean slate (Garber, 1997:177-8). Both characterizations are portrayed as outside the world of grown-up heteronormative gendering. In such representations, it seems that both types of trans subjectivity have to be assigned to the inferior (mostly feminine) half of the heteronormative divide, rather than standing as a legitimate and grown-up 'whole' gendering of their own.

Turning to the autobiographies and texts reviewed for this literature review, we can detect narrative portrayals of infantilisation endured by trans people. For instance, Robert Allen, the trans autobiographer whose gender transition to manhood was officially recognised in 1944, related an account of prejudice being mercilessly dished out to him for most of his young life, deriving from what his oppressors saw as a sexed individual not growing into the correct gender (1954:10). Exclusion started early in his life when experiencing the 'freemasonry' of the playground (31) and the '*... wound of knowing that I was absolutely alone ...*' (33). Describing the cruelty of children to those perceived to be different, Robert applied descriptive passages such as, '*... whipping a shroud from a terrifying corpse ...*' and '*... a dog trying to get away from a swarm of wasps*' (41). It seems that Robert was excluded from growing up with the other children by being demonised and banished from their activities.

If one's gendered feelings are stigmatised by society then Georgina Turtle, who transitioned to womanhood after self-diagnosing as intersexed, believed that the 'O-sexual' (gender variant) individual would impose a self-curfew on relations

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<sup>16</sup> Greer's portrayal of trans women as 'pantomime dames' is addressed in chapter 6 s. 3.

with others and that this would result in an inability to mature (1963:49). This move to immaturity seemed certain to badly affect libidinal life-force, leading to a kind of emotional castration. Turtle apparently found indications of a refusal to grow up in the tendency of some 'O-sexual' subjects not to marry, and in efforts to seek careers if 'O-women' (female-to-males or trans men). Despite Turtle's efforts to present the term 'immaturity' as a scientific term, this term still comes across as pejorative in her work. Perhaps what Turtle saw as trans people's 'refusal to grow up' might have been deliberate and healthy alternative life-styles rather than pathological dysfunction. Trans people may have been refugees from heteronormative adulthood rather than failed grown-ups.

On page 60 of *Over the Sex Border*, Turtle pointed to the pressure imposed upon male-to-females in their early lives to demonstrate masculinity in the years before accepting, or being able to accept, their trans selves. Despite their best efforts, many of these young 'O-men' experienced what would become a life-long experience of lack of esteem and recognition in spheres of social endeavour from family to school to the world of work. The school system developed a personality of self-blame within the young 'O-boy' as he failed to match the exploits of his peers. With the development of puberty, many 'O-boys' and 'O-girls' would endeavour to stay inside to hide away what for them were abhorrent sexual bodily developments and to avoid gender oppression (1963:63). This, Turtle says, continued into adult life where there was a, 'suppression of the normal social life' (82) and an isolation developing from the O-person's feelings of being misunderstood (56). However, George Brown's later theory of the 'Flight into Masculinity' contradicted this by suggesting that in some instances, men who later seek transition to womanhood can seek to prove their manhood in overt, open and extreme ways earlier on in life (2006[1998]).

Despite some informative insights, Turtle brandished the sweeping, and possibly infantilising, statement that,

Perhaps the greatest single difficulty in any attempt to assist transexualists and O-sexualists with their problem lies in their inability to accept facts. (1963:142)

She declared this even though recognising that facts and theory are subject to change (158-9). We could ask whose facts it was that Turtle wanted trans people to accept. Feminists have criticised the wielding of facts as if they are written in stone and are part of the common sense founded status quo, for instance Sandra Harding's work challenged traditional scientific assumptions that objectivity and truth are not influenced by the subjectivity of the researcher,

Objectivism results only in semi-science when it turns away from the task of critically identifying all those broad, historical social desires, interests, and the values that have shaped the agendas, contents, and results of the sciences as much as they shape the rest of human affairs. (Harding, 1991:143)

To insist that no judgments at all of cognitive adequacy can legitimately be made amounts to the same thing as to insist that knowledge can be produced only from "no place at all": that is, by someone who can be every place at once. (1991:153)

The facts and logic available at Turtle's time were of their time and largely followed the contemporary medical model and can be seen to represent an imposition of representational 'voice' upon trans people.

Mark Rees, the trans autobiographer from Tunbridge Wells who 'came out' to fight for recognition of transitioned subjectivity, didn't realise that he would lose his freedom for gender expression when entering puberty, a time when society expects the young person to start fulfilling their ascribed gender role (1996:6). Isolation proved to be his reward for not fulfilling the sexual scripts that were supposed to accompany adolescence (17). Mark noted how there was no recognition of body dysphoria or trans subjectivity in children and adolescents when he was growing up (8-9). He stated how, '*I was boyish because of being unconvinced of my physical sex*' (35). In a similar way, the young Stephen Whittle displayed a reluctance to enter conventional and natal-based heteronormativity as a child,

I felt that I was trapped in childhood, I was trapped but I didn't want to go forward, but that also felt like a trap, because, y'know, whether I liked it or not I was going to go forward ... (Self and Gamble, 2000)

Mark found that being forced into self-centeredness, from lack of opportunities to relate with others, meant that he could not grow-up and that others would direct the blame back at him (as victim of heteronormative scripts of maturity) for not being grown-up (180). Despite all this, Mark's trans subjectivity was consistent through childhood, adolescence and adulthood, challenging ideas of trans subjectivity as deriving from sexuality and teenage role confusion (74). He eventually found a description of something like his particular trans subjectivity in the form of a *Times* newspaper report at the 1969 London Gender Symposium,<sup>17</sup> an epiphany<sup>18</sup> like instance of 'finding himself' (75).

Judith/Jack Halberstam's own personal performance of female masculinity and her/his writing of the self through the academic narrative in *Female Masculinity* was operated by 'refusing to engage' with male masculinity, via the agency of his/her own self-definition,

Such affirmations begin by not subverting masculine power or taking up a position against masculine power but by turning a blind eye to conventional masculinities and refusing to engage. (1998:9)

A 'refusing to engage' cut short by murder was something Jacob Hale detected in the real life, rather than the life story appropriated by transgender activists, of Brandon Teena,

Three young people's self-determination and agency were ended by the murders John Lotter and Marvin Thomas Nissen committed. ... The function of naming as solidifying insertion into the social fabric is what drives transgender activists ... to insist that "Brandon Teena" and masculine pronouns as markers of transsexual or transgender configurations of this young person's identity are the only correct modes of representation. (1998:313, 317)

Hale considered that Brandon's kind of 'refusing to engage' inevitably lead to exclusion and to life in a gendered '*border zone*',

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<sup>17</sup> The precursor to the World Professional Association for Transgender Health (WPATH) International Symposiums on Transgender Health.

<sup>18</sup> See chapter 8 s. 4 for a discussion of the importance and nature of 'epiphanies' of finding the gendered self.

Border zone inhabitants infer reasonably that their lack of fixed location within categories is prohibited by the more firmly located, that such absence will be used as grounds for subjecting them to multiple indiscriminate erasures ... Indiscriminate erasure of a living border dweller's multiple complexities, ambiguities, inconsistencies, ambivalences, and border zone status hinders that subject's ability to build a self through which to live. (1998:319)

Addressing filmic narrative rebellion against dominant masculinity, Halberstam asked, '*... what's the point of being a rebel boy if you are going to grow up to be a man* (1998:5)?' Rebellion is not an easy thing, however, and Halberstam noted the general idea that, '*... female gender deviance is much more tolerated than male gender deviance*' (5), the former being understood as a healthy identification with powerful masculinity. However, Halberstam noted that girls' rebellion is dramatically challenged when they enter adolescence (6), noted above as being the case for Mark Rees when entering puberty. Masculinity when displayed by the adolescent female is characteristically viewed as immaturity, or resistance to adulthood, despite being viewed as maturity in males (6). It seems, as Halberstam points out, that tomboyism must be temporary to be acceptable (6), just like transvestism is portrayed as only healthy when temporary, for instance in the cross dressing of young boys, when it is seen as fun (often by the women of the family), or as Garber termed it, as a 'progress narrative'. Such a narrative was described by Garber as interpretation of identity or subjectivity as a temporary response to circumstances, for instance a false reading of trans subjectivity as temporary gender variance to pass as one gender in order to avoid detection as another (Garber, 1997:8,69,70).

As noted in the introduction to this chapter, autobiographer Max Wolf Valerio seemed to have generally had a good time in his early life, unlike Mark Rees and Robert Allen. However, when moving through adolescence, he discovered that something akin to tomboyism would not be a temporary affair in his life, unlike it had been for his mother and aunt. He contrasted his feelings to the tomboys he grew up with by claiming that,



I know without being able to articulate it that my feelings are different in dimension, in texture, in meaning. I know, somehow, deep down, that I will never grow out of it, and furthermore, I don't want to. (2006:42)

This caused him much frustration until he experienced an 'epiphany moment' of self-realisation when accidentally coming across a book on the subject of female-to-male reassignment. This was not a gloriously comforting and warm epiphany but was at least a sowing of the seeds of realising his real self. He became worried that 'women' who want to be men are 'unevolved', bringing to mind the type of criticisms of trans people as immature and sexually undeveloped discussed earlier in this section,

*... confused women who want to be men, women so maligned and self-hating, so unevolved as to think they are men. Unsophisticated, not exposed to feminism. Poor, old-fashioned, twisted-up bull daggers from some small town in pigfart nowhere who can't face the fact that they're actually dykes [Author's italics]. (2006:78)*

However, in later adulthood he underwent a belated process of growing up into his new manly body, when given the chance to adjust to all its startling new vagaries,

The energy I felt initially, so overwhelming, has quietened. I've grown into it. With time, as you become larger, more muscular, the energy begins to fill a space appropriate to its circumference. In other words, you grow up. (2006:328)

In narratives provided by Transstudy participants, a distancing from identification with the heteronormative growing up process and a perception of this process as an act was sometimes in evidence,

In later years I found it difficult to conceive of myself as either an adult (because adults seem to come in two types ;-)) or as having/being a definite gender. I was in hiding, to an extent. I did notice other people of my own age adopting gender-stratified roles. I have never felt able to completely do this, even as an act. I have generally suspected people of putting on a better act than me, rather than being the things they say they are. (Clarette Jan 4th, 2006, in <Min and Max Transition Ages?>)

Participant Monica looked to the future to see a time when the shackles of the heteronormative script for maturity, at least in the way that it precludes those who transition, might be unlocked,

I envisage a time, far into the future, when transsexual boys will be identified in childhood and then brought up from that moment as girls in the anticipation that they will grow up to be women and in the normal course of events become wives/partners and mothers. (Monica Feb 21st, 2006, in <Transpregnancy>)

As argued in chapter 9 sub-section 2.2, drawing from discussion in chapter 6 section 3, many trans people have emphasized the possibility of other maturities by embodying and espousing the complementarity of gendered positions in functional relationships.

### 2.3 Which Trans Identities are Real?

Feelings of non-identification with what is generally taken to be growing up into 'real' gender often make the gender variant person feel less a person than those who 'do' gender in what is taken to be the correct fashion, as illustrated in the last section. As well as trans people, women and feminists have been portrayed as child-like, causing them to question their own subjective validity, as further discussed in chapter 7 sub-section 1.3. This might explain the trans/3<sup>rd</sup> wave feminist empathy for others who have sometimes been designated as being outside the realms of 'real' humanity/adulthood such as gay people and oppressed ethnic groups. Examples of gender variant people's doubting their own gendered legitimacy are to be found throughout literary fiction, fact and gender variant narratives. For instance, believing that the validity of gendered identity lay in the matching of gender and anatomy with lifestyle, Venus Xtravaganza in the film *Paris is Burning* (1990) wanted to become a 'real' woman by gaining a vagina and middle class security (Prosser, 1998:48). In *The Well of Loneliness*, the childhood Stephen Gordon almost felt less real than her dolls because they fitted in with accepted gendering (Prosser, 1998:162).

Notions of gender reality in the Industrial West largely derive from the work of those nineteenth century sexologists who extrapolated from the dualised differences they detected in male and female anatomy and physiology. This

prompted a new 'discourse of feeling' making genders seem inherent (Glover and Kaplan, 2000:25). Seeing came to equate with believing in the new Western scientific paradigm and led to genitalia materialising as the prime indicator of sexual subjectivity, just as later, Ormrod L J used this prime indicator in the case of *Corbett*,

Ormrod devised a test based only on three factors; the chromosomal, the gonadal, and the genital features at the time of the birth of the individual concerned. (Whittle, 2007a:39)<sup>19</sup>

This meant that those who transgressed conventional notions of sex, gendering and/or sexuality became unreal gendered beings (Harding, 1998:31,33-4). This new sex and gender bipolarity influenced pre-operative trans people in the 1950s who adopted Karl Heinrich Ulrichs' 1860's notion of man or woman 'trapped in the wrong body' in order to be accepted to convert to the 'opposite' sex. Such self-representations certainly worked to obscure the possible realness of what is now (and previous to sexology) recognised by some as sexual subjectivity different to heteronormative.<sup>20</sup>

As well as for those working from medical, sexological or legal perspectives,<sup>21</sup> trans people have typically held illegitimate subjectivities according some feminist factions, who have contributed to imposing 'voice' upon trans people and transgender theory. For Bernice Hausman, as discussed previously in chapter 1 sub-section 1.1, transsexuals only achieved existence through medical discourse directed by medical practitioners, '*Hausman rejects the notion that we can read gender as an ideology without also considering it as a product of technological relations*' (Halberstam, 1998:160). This was a perception of gender transition forwarded by a trans-sceptical feminist but one that has some grounding in the way that trans subjectivity has been presented in the past. As also discussed in chapter 1 sub-section 1.1, according to Janice Raymond, trans people colluded with medical experts to produce a medical narrative of crossing sex, rather than a narrative of transitioning gender. In *The*

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<sup>19</sup> See chapter 4 sub-section 2.1.

<sup>20</sup> Chapter 4 s. 2 reveals how legislation worked to promote the heteronormative model of gendered 'reality'.

<sup>21</sup> See legal case summaries in chapter 4 ss. 2, 3 and 4.

*Transsexual Empire* she portrayed trans women as patriarchal infiltrators of women's spaces, gaining access to these sacred sites via the vehicle of what might be called the Trojan Woman (1979:104). Sheila Jeffreys differed from this perspective by seeing 'transsexual' surgery as the patriarchal control of otherwise deviant identity, rather than as 'transsexuals' actively having a hand in maintaining the patriarchal order (Whittle, 2002:45),

When such surgery became available in the 1950s, stories of having a woman's soul in a male body were interpreted as the criteria for diagnosing a new breed of person constructed by medical science, the transsexual. (2005:51)

Jeffreys also classed 'transsexual' surgery as self-mutilation rather than gender realisation,

I have suggested elsewhere that practices in which women, and some men, request others to cut up their bodies, as in cosmetic surgery, transsexual surgery, amputee identity disorder and other forms of sado-masochism, should be understood as self-mutilation by proxy. (2005:150)

Trans people have regularly been relegated to one 'half' of heteronormative gender by separatist feminists like Jeffreys, invariably to the wrong half for trans people who do identify as heteronormative.

When identifying what she saw as the '*transsexually constructed lesbian-feminist*', Raymond stated,

It is he [sic] who recognises that if female spirit, mind, creativity, and sexuality exist anywhere in a powerful way, it is here, among lesbian-feminists. (1979:108)

Raymond realised that this could be read as a compliment to trans women who identified as lesbian-feminists but seems to have intended it as indication of a desire to dominate lesbian-feminism. Raymond overlooked non-operative feminine trans people in her reading of trans subjectivity, perhaps because then nobody could imagine a 'sex change' without the 'change of sex'. Raymond stated that,

Women take on the self-definition of feminist and/or lesbian because that definition truly proceeds from not only the chromosomal fact of being born XX, but also from the whole history of what being born with those chromosomes means in this society. (1979:116)

However, it is patently evident that natal women can become patriachs fully imbued into masculinist hegemony,<sup>22</sup> defying this hypothesised influence of their XX chromosomes. This can happen when a woman perceives that she is better off actively promoting, and/or believes in, and/or has little choice but to join, a patriarchal society. This has been the case for the Sworn Virgins in Albania (National Geographic, 2011) and for women given advantageous, active or passive, positions in societal power culture such as Margaret Thatcher in the UK. The reality of aligning the ideology of feminism with a certain biological sex comes under question in these instances.<sup>23</sup> Raymond's essentialist alignment of ideology with gender is something quite different to the gendered relations of genre and genealogy described in chapters 1, 3, 4, 8 and 9.<sup>24</sup>

Other feminist readings of trans subjectivity have been fundamentally different to those outlined above but are nonetheless problematic for trans people. As discussed at the end of chapter 2 section 1, Marjorie Garber conflated one type of gender variance as a queerly postmodern kind of metaphoric essence, evoking a 'third term' in the form of the transvestite in *Vested Interests* (Garber, 1997:11,12,17). Garber's reading of transvestism was a useful challenge to the ghettoization of gender. However, trans people often reject the idea that trans subjectivity is purely metaphorical/ethereal essence<sup>25</sup> since this presentation of sexual subjectivity does not match their feelings and does not present trans subjectivity as something substantial in the eyes of medicine and the law.

In her landmark essay, 'The Empire Strikes Back: A Posttranssexual Manifesto' Sandy Stone portrayed trans subjectivity as subjectivity based in the gender

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<sup>22</sup> Hegemony, in Gramsci's use of the term, is described in chapter 5 sub-section 5.2.

<sup>23</sup> This alignment is criticised in chapter 8 s. 3 and chapter 9 s. 3 and recommended to be replaced by a 'postdifferent' perspective of sexual subjectivity.

<sup>24</sup> Chapter 1 sub-section 1.3, chapter 3 s. 1, chapter 4 s. 5, chapter 8 sub-section 3.2 and chapter 9 s. 2.

<sup>25</sup> As articulated by some of the Transstudy participants in chapter 6 s. 1.

borderlands rather than as a fixed part of human nature. Nevertheless, for Stone, trans subjectivity was identifiable and not necessarily just a temporary stage of transition from one sex to another. This combination of identifiable yet in-process subjectivity is rather like the interpretation of 'postmodern identity' ventured in chapter 3 section 1. Stone addressed the question; which came first, trans identity or the sex reassignment operation? The accounts of transition given by male-to-female trans people such as Lili Elbe (1933), Hedy Jo Star (1955) and Jan Morris (1974) can give the impression that it was the latter by providing romantic fairy-story narratives where the newly gendered person emerges as a butterfly from the cocoon after reassignment (Stone, 1991:280-81). These accounts of the 'newly-born' trans woman tended to offer the image of a 'Stepford Wives' representation of 1950s womanhood suddenly manifesting out of thin air (285),

... the authors also reinforce a binary, oppositional mode of gender identification. They go from being unambiguous men, albeit unhappy men, to unambiguous women. There is no territory between. Further, each constructs a specific narrative moment when their personal sexual identification changes from male to female. (Stone, 1991:286)

However, contradicting Sandy Stone's criticism of Jan Morris's account of reassignment as magical transition (Stone, 1991:280-81), Jan herself described how she did not undergo a sudden transformation of body, '*The process was infinitely slow and subtle ...*' (1974:117). When she writes that she, '*... went to say goodbye to myself in the mirror*', it was perhaps for dramatic effect, rather than thinking she was to undergo a complete change of self (129). Jan's feelings of mysticism and the promise of magical transformation in the aura of Casablanca are therefore perhaps narrative embellishment from a well-known descriptive writer, rather than an account of real expectations.

Challenges to the notion of trans subjectivity as a pathological condition that could be rectified by bringing the subject in line with heteronormativity via magical medical transformation appeared in the 1980s. According to Stone, Marie Mehl found that the trans person was no more susceptible to mental illness than members of the general population (Stone, 1991:292-3). Reports such as Mehl's engendered a revolution in trans people's self-representations

by opening up the opportunity for pre-operative trans people to venture less pathological and more individualistic personal narratives of sexual subjectivity. In an argument that human existence should be recognised as complex and subject to progressive change, rather than as fixed or subject to magical transformation, Stone cited Donna Haraway's idea of the spiritual Native American 'Coyote' (295). This was Haraway's metaphor for a healthy life that interacts with its environment. A trans person adopting the Coyote spirit would acknowledge their connection to the past and their connection to both the masculine and feminine, allowing room for gendered contradiction and 'wholeness' of gendered being.<sup>26</sup>

In contrast to the views of Raymond, Hausman and Jeffreys, Stone saw the possibility of the trans person to engender, 'new and unpredictable dissonances which implicate entire spectra of desire', suggesting that trans subjectivity had something to add to the state of heteronormativity (1991:296). In contrast to Prosser's grounding in somatic make-up, and Garber's transvestism as ethereal dispersal, Stone's trans person became a 'genre'.<sup>27</sup> Genre in this context meant a category of belonging with no set borders of definition but nevertheless 'embodied' as a living text,

I suggest constituting transsexuals not as a class or problematic "third gender", but rather as a *genre* – a set of embodied texts whose potential for *productive* disruption of structured sexualities and spectra of desire has yet to be explored. (1991:296)

Various interpretations or aetiological constructions of the reality of trans subjectivity can be gleaned from the autobiographies and texts assessed for the purposes of this chapter. Drawing from the dualised science of the time, Michael Dillon, the first female-to-male transitioning person in the UK to obtain treatment (in the 1940s), stated that, '*... either the body must be made to fit the mind, as we have said, or the mind be made to fit the body ...*' (1946:65). In attempting to account for the fact that some of what he called 'pseudo-

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<sup>26</sup> Gender as contradictory is discussed in chapter 3 s. 2, gender as 'whole' is discussed in chapter 3 s. 2, chapter 4 s. 4 and chapter 6 s. 3. Coyote spirit can be compared to the Lakota idea of coyote medicine, described by Kimana in chapter 6 s. 2.

<sup>27</sup> Genre as gendered relation is discussed in chapter 3 s. 1, chapter 4 s. 5, chapter 8 sub-section 3.2 and chapter 9 s. 2.

*hermaphroditic* individuals sought reassignment, and that some did not, he forwarded a social constructionist, if genetically based, aetiological explanation by speculating that,

Certain cells contain certain genes; certain genes will make for certain tendencies, but environment may have the final decision as to whether the tendencies become actual or not. (1946:71)

This resembles John Money's assertion that aetiology of gender was multifactorial, involving genitalia, upbringing and socialization, a view that has adhered until the present day in social constructionist accounts of gender (Conway, 2000-2003).

According to Christine Jorgensen, her Endocrinologist, a Dr Hamburger, claimed that there was no such thing as 'normal' male and femaleness and that most people are located somewhere on a continuum between these sexed polarities (1967:159). He recognised that Christine seemed to be existing in a body at polar odds with her preferred gender (165). Christine revealed her support for self-definition of sexual subjectivity, mentioning that, '*It seemed to me that the selection of sex determination should lie with the individual in an effort to live freely, so long as it was to no one else's disadvantage*' (196). In Denmark, Christine's reassignment doctors related her feelings of womanliness to her feminine hormonal activity (120) and this kind of aetiology is now thought by some to explain trans subjectivity.<sup>28</sup> In a letter to her family of June 8 1952 she remarked that, '*... the real me, not the physical one, has not changed*', in order to reassure her family that she was still who she had always been, suggesting she thought that it is the body that is processed in reassignment, rather than the self.

When commencing visits to a trans men's support group in adulthood, trans man autobiographer Dhillon Khosla noticed that the visitors presented a range of gendered and sexual dispositions, unlike any uniformity that might be expected from stereotypes of male identity. He observed of one visitor that,

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<sup>28</sup> As suggested by Havelock Ellis (1928:82), Harry Benjamin (1953:86-7), Melissa Hines (January 2004), Stephen Whittle, Richard Green and John Money (2002a:48) and Transstudy participant Monica (<Monica Apr 3rd, 2005, in Christian Institute vs the GRB>).



*'Both his vocal pitch and his mannerisms were extremely effeminate, and he made some allusion to his sexual interest in men'* (2006:8). It is now generally accepted by the trans community and a number of transition specialists that trans people as a whole evidence a spectrum of personalities, genders and sexualities and yet can still express a genuine desire for bodily reassignment. Dhillon himself inwardly rebelled at the idea of having to pass as stereotypically male in order to satisfy the demands of the real life experience (34). He experienced perceptual shifts with the 'shifting boundaries' that accompanied his change in gender role, providing him with potential to provide insights into both conventional gender roles, something the researcher posits as characteristic of trans people in chapter 6 section 3 (132,133).

## 2.4 Conclusion

As described in section 1 of this chapter, Foucault theorised that, in its efforts to identify those sexual subjectivities to be hidden and silenced, the Victorian era ironically engendered a flourishing of discourse around sexual subjectivity. However, discussion of sexual subjectivity was channelled into certain closely delineated narrative formats and forums. The resulting 'silence and secrecy' did nothing to open and evolve<sup>29</sup> discourse but imposed stereotypes from a distance instead of allowing its targets to find themselves through dialogic negotiation.<sup>30</sup> Scientific discourse took over the reins of gender definition in order to pathologise and consequently silence those who veered from the schema of heteronormativity. It took a long time before trans people acquired the agency to begin reclaiming their own sexual subjectivities from the gatekeepers of the new scientific metanarrative.

Sometimes genuine (as opposed to apparent) secrecy could work to protect gender variance from hostile attention in the manner of what Andreadis described as an 'erotics of unnamings' (1999:125). However, the advent of mass media heralded mass exposure of gender variance. A 'politics of naming' began to burgeon with positive and negative consequences for the subjects of

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<sup>29</sup> Open and evolving discourse is discussed as a feature of 3<sup>rd</sup> wave feminism in chapter 3 s. 4.

<sup>30</sup> See chapter 5 s. 5 for an explanation of dialogic negotiation and chapter 8 s. 4 for a discussion on the importance of trans people's 'finding of themselves'.

vociferous and open (as opposed to silent and secret) discourse. The media hijacked this open discourse to present cultural representations of trans subjectivity that relegated trans subjects to the realm of ethereal temporality and immature fantasy.

In section 2 it was found that theory or culture ascribed onto gender variant and trans subjectivity (imposed 'voice') has often resorted to infantilisation of the trans person. This has had the effect of denying gender variant people's contribution to 'grown-up' theory and society. Psychoanalysis, sexology and separatist feminism all contributed to the equating of trans subjectivity and gender variance with immature development where gender variant people were expected to be seen (researched) and not heard (philosophising).

Trans people have narrated experiences of exclusion in contexts of family, school, work and leisure and how they have then been blamed for not maturing as expected. A resulting 'refusal to grow up' would be attributed to trans subjects when society was blind to the trans subject's own particular gendered growing. Any gender variance displayed by a young person was expected to be a temporary affair, resolved during adolescence as part of their 'progress narrative' towards adulthood.

Section 3 suggested that expulsion from the heteronormative gender order (19<sup>th</sup> Century onwards) resulted in gender variant people gaining a fuller view of gender by looking at it from the outside in, with a more panoramic 'view from somewhere'. This often came after long periods of questioning their gendered legitimacy when so much cultural convention was shored up against them. However, trans-unfriendly feminist commentators had various theories of aetiology to impose upon trans subjectivity from a distance (Hausman, 1995:143,144,165-166, Raymond, 1979:104). Though not ideologically trans-unfriendly, Marjorie Garber portrayed trans subjectivity as metaphoric essence rather than something grounded in biological, psychological, or social essence (1997:11,12,17).

Narratives, theoretical and autobiographical, produced by trans people in the 80s began to reclaim the definition of trans subjectivity by portraying medical intervention as a way of aligning the body with inner gender rather than facilitating a transformation of gender. Stone's vision of trans subjectivity as

'genre' suggested that such narratives could extract trans subjectivity from the schema of heteronormativity (1991:296). Another challenge to the heteronormative schema came in the form of criticisms of what Garber identified as 'progress narratives', where transitioning gender is seen as a temporary utilitarian measure.

Various aetiologies for trans subjectivity were suggested in autobiographies, texts and narratives assessed for this chapter. Some autobiographers, including Christine Jorgensen and Jan Morris, prompted the idea that trans individuals should be consulted about their own trans essence. April Ashley considered that gendered realness did not follow from biological designation but came from being an individual. Through the experience of transitioning, Dhillon Khosla realised that people's perceptions<sup>31</sup> of another person's gendered reality were greatly swayed by physical appearance.

Chapter 3 of this study is influenced by themes of silence/secrecy, maturity and gendered/philosophical realness to pick up on the cross-over between 3<sup>rd</sup> wave and transgender perspectives of subjectivity, contradiction, narrative sharing and ownership of the means of definition.

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<sup>31</sup> The effect of perceptions of gendered subjectivity is addressed in chapter 4 sub-section 2.4 and chapter 9 sub-section 3.3.

## CHAPTER 3: THE 3RD WAVE – CAREER FEMINISM OR QUIET REVOLUTION?

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### Introduction

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This chapter investigates published narrative discussion of chronological and philosophical 3<sup>rd</sup> wave feminism. It theorises connections between a philosophical 3<sup>rd</sup> feminist wave with much transgender philosophy. The way that 3<sup>rd</sup> wave feminism is named and presented follows on from the analysis of a ‘politics of naming’ in chapter 2 section 1. The formation of the reality of 3<sup>rd</sup> wave feminism can also be compared with the discussion of the reality of gender variant subjectivity outlined in chapter 2 section 3.

### The 3<sup>rd</sup> Wave Feminists

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The philosophical 3<sup>rd</sup> wave of feminism seems to align with the 3<sup>rd</sup> phase of feminism identified by psychoanalytical philosopher Julia Kristeva in *New Maladies of the Soul*, where differences in subjectivity are respected and included rather than held in suspicion and excluded,

... the other is neither an evil being foreign to me nor a scapegoat from the outside, that is, of another sex, class, race, or nation. (1993:223)

Kristeva theorised that the fixing of the identity ‘woman’ in the 1<sup>st</sup> feminist wave was necessary since it brought about a clear identification of women’s exploitation in legal and material matters.<sup>1</sup> Her notion of a 2<sup>nd</sup> phase resembled the 2<sup>nd</sup> wave of feminism which began to identify differences inherent in the identity ‘woman’. However, her idea of a 3<sup>rd</sup> phase included the recommendation that differences should not be assimilated into dominant subjectivities like ‘women’ or ‘heteronormative’,

I am not simply alluding to bisexuality, which most often reveals a desire for totality, a desire for the eradication of difference. I am thinking more specifically of subduing the “fight to the finish” between rival groups, not in

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<sup>1</sup> This idea can be compared with the notion of a 1<sup>st</sup> wave of gender legislation based upon gender identity and single issues, as presented in chapter 4 s. 1.

hopes of reconciliation ... and not through a rejection of the other.  
(1993:222)

Support for Kristeva's difference inclusive 3<sup>rd</sup> phase/wave comes from chronological/philosophical 3<sup>rd</sup> wave feminists such as Alison Stone (2004) (see section 1 below), Seyla Benhabib (1992) (see chapter 4 section 5) and Rebecca Walker (1995:xxxvii) (see section 4 below) as well as from philosophical 3<sup>rd</sup> wavers from other chronological waves.

Difference inclusion may be identified as the prominent feature of a philosophical 3<sup>rd</sup> wave but the chronological 3<sup>rd</sup> wave (early 1990s to present) acknowledges and has had to address social and cultural events not pertaining in the previous two waves (Friedlin, 26/05/02, Jouve, 2004:199, Chakraborty, 2004:211). Globalisation, a different kind of gulf between rich and poor, environmental issues and new social subjectivities all call for a feminism that considers who are the real victims of organised masculinist exploitation on a larger scale and a different organisational basis. The 3<sup>rd</sup> wave considers these effects of modern life while drawing from developments made in other chronological and philosophical feminist waves to form what is arguably an identifiably new feminism. However, as discussed in section 4 below, it can be contended that 3<sup>rd</sup> wave feminism shouldn't have to present itself as different to the first two waves just for the sake of innovation or novelty. This contention mirrors the way that some contemporary trans narrators have endeavoured to understand the effects of trans subjectivity rather than pursue a quest for an aetiology, as outlined in chapter 8 sub-section 3.2 and chapter 9 sub-section 2.1.<sup>2</sup>

Nevertheless, as Rebecca Walker speculated of the new generation of feminist writers,

They change the face of feminism as each new generation will, bringing a different set of experiences to draw from, an entirely different set of reference points, and a whole new set of questions. (1995:xxxiv)

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<sup>2</sup> Attempts by theorists and trans people to find the holy grail of trans aetiology were highlighted in chapter 2 s. 3.

Whether these new writers are '3<sup>rd</sup> wave' is an area for speculation, since few feminists self-describe as '3<sup>rd</sup> wave feminist'. This may be because feminists prefer to investigate rather than administer labels and are still investigating the nature and validity of the label, '3<sup>rd</sup> wave feminism'. Below are four suggested areas of emphasis that together suggest the nature of 3<sup>rd</sup> wave philosophy, a philosophy-in-process that relates to, and holds potential to empower, trans subjectivity and transgender theory in their interactions with the law.

### 3.1 'Personally Political Postmodern Identity'

During the 1960s and 70s, feminism was very much influenced by social construction theory. This opened up the nature/nurture debate with regard to gender and also became of prime importance to trans people searching for explanations of their trans subjectivity (Whittle, 2005:159). However, social construction theory, the theory that subjectivity is developed from influences other than, or as well as, inherent features (Burr, 2003:104,106), was a double-edged sword when adopted as an explanation of the development of gender. Some people read this explanation as an argument that people should or could be socialised into or out of what were deemed to be unacceptable subjectivities, providing an image of gender variance and trans subjectivity as temporary or curable, with heteronormativity as the acceptable norm.

Identity is, for social constructionists, more accurately described as 'subjectivity' or identity-in-process. Foucault conceived of subjectivity as deriving from power, knowledge and other social influences,

... we believe that there is a strong account [in Foucault's thought] of the self in relation to *practices* and thus *culture* that emphasises both active and passive elements of the shaping of subjectivity – both self-constitution and cultural/discursive shaping of individuals as two aspects of the making of subjects. (Belsey and Peters, 2007:176)

Social constructionists suggest that subjectivity is affected by,

The particular representations of selfhood, the particular ways of accounting for ourselves, that are available to us in our culture. (Burr, 2003:139)

In a passage of text indicating the emergence, in theoretical developments from psychoanalysis to postmodernism, of the notion of the subject as subject-in-process, feminist academic Sara Ahmed stated that,

... the psychoanalytic dis-placement of the Cartesian subject through the articulation of a concept of the unconscious provided the condition of possibility for a postmodern understanding of the subject and sexual difference as radically indeterminate and unstable. (1995:17)

Although veering into the realms of what might be called 'sociobabble', this statement challenged the notion, developed from sexology and early psychoanalysis, that we can pin down the aetiology and predict the development of sexual subjectivity. Similar to Garber, as described in chapter 2 sections 2 and 3, Jean Baudrillard proposed that the 'transvestite' or 'transsexual' challenges this pinning down by uprooting sexual signs and signified objects and phenomena that are supposed to apply to one gender only (1993[1990]:20,24). It was not apparent whether this was a positive, negative or neutral reading of transvestism/transsexualism. Ahmed agreed that a transfer of signifiers occurs but saw the transvestist subject adopting all the stereotyped signs/signifieds of the feminine subject under patriarchy, reproducing such signs uncritically and thereby supporting gender dualism (1995:19). Transvestism free of any personal politics, or social critique, is perhaps a 'postmodern identity' because it transgresses boundaries of gender and yet is perhaps identifiable as a type of gendering. However, as Ahmed suggests, it is not necessarily a personally *politically* postmodern identity, an identity based upon personally political beliefs.<sup>3</sup>

It seems that philosophical 3<sup>rd</sup> wave theorists would not wish for everyone to possess a postmodern non-identity, free from personal politics, but would also not expect people to have to uncritically belong to gender ascribed to them at birth. Watson and Whittle provided a similar argument to Ahmed by considering that, '*As such, dissident genders are not of themselves subversive but recreate norms through the repetition of them*' (2005:201). The gender norms that

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<sup>3</sup> The possibility and desirability of deliberately chosen political subjectivity, and/or subjectivity as deriving from politics, is addressed in chapter 6 s. 2 and chapter 7 s. 2.

Ahmed saw the transvestite recreating can only be subverted if transvestism is visible in society, whether in the form of unconventional gender appearance or visible in narrative accounts of transvestism and its relation to heteronormativity.

Professor of English and feminist theorist Rita Felski (1994:566) described how Derrida, Deleuze and Baudrillard all wished to challenge automatic ascribing of gender, an ascription that starts at birth, and she described how, '*... feminists are in turn increasingly appealing to metaphors of transvestism to describe the mutability and plasticity of the sexed body*'. Despite the openness of some feminists to such 'postmodern identity', otherwise identifiable as 'identity-in-process' or 'subjectivity', Felski (1994:572) highlighted the fact that, '*... transgenderism remains a necessarily ambiguous figure for feminist theorists.*' As we have seen, this ambiguity was demonstrated by Ahmed in her questioning of how far transvestism can act as liberating trope and lifestyle.<sup>4</sup> The notion of multiple and shifting identities is also often vigorously questioned by trans people opposed to the concepts of identity-in-process and/or gender created from political stance or being used to champion a political stance, as addressed in chapter 6 section 2.

Ahmed (1995:20) discussed political scientist Arthur Kroker and political theorist David Cook's perspective on the potential anomie engendered by postmodern non-identity. Kroker and Cook argued that dualistic gender might well be challenged by the gender androgyny to be found in much postmodern capitalist ideology but it is done so in a way that works just to emphasise gender as a manufactured and superficial item. It can be seen that 3<sup>rd</sup> wave feminism is sometimes conflated with postfeminism because of its links with apparently capitalist ventures such as popular culture, 'cyberidentity' and girl power. What is meant to be an empowering way of challenging ascribed gender through the micro-politics of everyday representations becomes confused with a postfeminist reinforcement of aggressive, acquisitive or overly feminine identity. A movement of 3<sup>rd</sup> wave feminism's own<sup>5</sup> combines and empathises with

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<sup>4</sup> Ambiguity was replaced by hostility for feminists such as Janice Raymond and Germaine Greer, as discussed in chapter 2 s. 3 and chapter 6 s. 3.

<sup>5</sup> Recommended in chapter 7 s. 2.



inclusive and different 'voices', such as those of other feminist waves, trans people and ethnic minorities, in order to challenge this errant conflation.

Rather than non-identity, postmodern identity represents a concept of identity that can be chosen or moulded to some extent, turning it into 'subjectivity'. Subjectivity promised to be a means to evade the barriers to inclusion that stymied 2<sup>nd</sup> wave attempts to make feminism difference friendly. Women of colour felt particularly disinherited from the 2<sup>nd</sup> wave of feminism,

In 1989 Angela Davis, interviewed for *Feminist Review*, concluded that the overwhelming majority of black women had felt no connection with the 1970s feminist movement. ... the 'double jeopardy' of black women was masked within a feminist 'sisterhood' articulated largely by white, middle class, heterosexual women. Increasingly, then, the charges of racism and heterosexism were leveled within feminism itself. (Gamble, 2001:32 and 33)

### 3.1.1 Subjectivity as Genre and Genealogy

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In order to address the conundrum of the differences in subjectivity to be found within 'women' and 'trans people' as social groupings, some feminist and transgender theorists tried to interpret subjectivity in a different way. This would involve retaining subjectivity for the purposes of identity politics but would evade criticism of essentialising people from very different backgrounds under one homogenizing banner. These theorists might be construed to be philosophically 3<sup>rd</sup> wave (feminist and/or transgenderist) and include Kristeva, hooks, Butler, Haraway, Stone, Whittle, Stryker and Feinberg.

Combatting the effects of identity essentialism, as addressed in chapter 6, but allowing a definable subjective space for subjectivity politics, may be facilitated by the concepts of genre and genealogy, developed by difference-friendly feminists and trans theorists.<sup>6</sup> As discussed in chapter 2 section 3, Sandy Stone envisioned trans people as a 'genre' in order to rehabilitate them from medical pathology imposed by reassignment specialists (1991:296). Preceding

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<sup>6</sup> Genre and genealogy also facilitate the application of postconventional ethics, discussed in chapter 4 s. 5, chapter 8 s. 3 and chapter 9 sub-section 1.3, with focus on rights guided by investigation of individual circumstances.

this was Foucault's notion of genealogy, briefly introduced by the researcher in the Transstudy,

The idea of genealogy has been construed by Michel Foucault as an alternative way of looking at history. He said that what we perceive as history is a patchwork of recordings that may or may not involve the truth. Identities are to a large extent man-made, and sometimes even woman-made, as we negotiate their meaning through history. So Foucault might admit that he himself was a genealogy, an identity made up of what has been discussed and written about him over his life-span. (The Researcher May 5th, in <Being Un-PC oops>)

According to Foucault himself,

The purpose of history, guided by genealogy, is not to discover the roots of our identity but to commit itself to its dissipation. (Foucault, 1977:162)

Similar attempts to revise identity as subjectivity came from trans theorist Stephen Whittle (2002a:82) and 3<sup>rd</sup> wave theorist Alison Stone (2004) who revised trans people as a 'genre' and women as a 'genealogy' respectively, and from Professor of Gender and Women's Studies Susan Stryker who visualised trans subjectivity as subjectivity-in-process formed from abject exclusion,

Transgender rage is the subjective experience of being compelled to transgress what Judith Butler has referred to as the highly gendered regulatory schemata that determine the viability of bodies, of being compelled to enter a "domain of abjected bodies, a field of deformation" that in its unlivability encompasses and constitutes the realm of legitimate subjectivity. ... Transgender rage furnishes a means for disidentification with compulsorily assigned subject positions. It makes the transition from one gendered subject position to another possible by using the impossibility of complete subjective foreclosure to organise an outside force as an inside drive, and visa versa. (2006[1994]:253)

In a similar way, and quoting the work of Hart (1992), Professor of Law Carl Stychin described the shared 'Otherness' that can evolve from rage to produce a new kindred of the oppressed,

Furthermore, the urgency and anger felt by many around HIV and Aids also fuelled the rise of a more radical, uncompromising politics: ‘... rage rather than mere acceptance, rejection of a flawed tolerance rather than demands for integration, such were the tenor and tone of the times (Hart, 1992).’ (Stychin, 1995:144)

Whittle claimed that a trans community had emerged and that it classed itself as a genre in the way described by Sandy Stone (2002a:82). He observed how, in ‘The Empire Strikes Back’ (1991) Stone interpreted trans people as ‘embodied texts’ who could challenge fixed texts delineating sexual identity offered by wider society. Whittle stated that, ‘*Arguably essentialist, trans-theory does not, however, avoid social construction in that it recognises the artefacts of gender and sex that render them specific to any given social situation*’ (2002a:82).

These concepts of gender opened a space for gender variant and trans people to choose to realise their preferred gendered subjectivity without having to rely on biological evidence, as argued should be the case in chapter 7 section 3.

Following Butler, Alison Stone conceived of women as a social, rather than biological, group, realising that women as a category have been subject to ‘*overlapping chains of interpretation*’ that sometimes suggested ‘*fictitious commonalities*’ such as those that blighted the 2<sup>nd</sup> wave (2004:86,89). Such fictitious commonalities were also theorised by Professor of Women’s Studies Ednie Kaeh Garrison,

... the “second wave” when feminism became synonymous with “women’s issues”. Chandra Mohanty has called this slippage the “feminist osmosis thesis” – the assumption that women are feminists by virtue of their experiences as women. (2005:241)

Stone’s remedy for fictitious commonalities was to conceive of women as a coalitional group, related by, ‘*overlaps and indirect connections within women’s historical and cultural experience*’ (2004:90) and ‘*infinitely varying while entangled together historically*’ (92). Genealogy therefore seems to be 3<sup>rd</sup> wave in operation for Stone, drawing meanings from pre-existing forms (or waves) in order to reconstruct present ones when,

... each appropriation of existing standards concerning femininity effects a more or less subtle modification of their meaning with reference to changing contexts, power relationships, and histories. (91)

Using genre and genealogy, trans people and women can be classifiable, for the purpose of subjectivity politics, but in a different way to traditionally ascribed categorization which has been used to keep trans people and women in 'their place'. This place has worked to the long-term detriment of trans people and women since it is a place mostly determined by patriarchs operating from strong positions of power in politics, law, medicine and the family. However, philosophically 2<sup>nd</sup> wave feminism itself inadvertently used the essentialisation of identity to exclude women of certain social ethnicities and more deliberately used it to send trans people back to their natal sexes, for instance by Raymond, Greer, Hausman, Jeffreys and Catherine Millot. Hopefully, the (theoretically at least) positively difference-inclusive project of 3<sup>rd</sup> wave feminism will avoid what Transstudy participant Monica saw as a dysfunctional progression of feminist waves,

What concerns me about Feminism, Ed, is this. ... First wave feminism seemed to consider us M2Fs as their 'sisters'. ... Second wave feminism regarded us as fakes and 'pantomime dames'. ... Third Wave Feminism thinks we should be poured into their melting pot and stirred. ... For all one knows, Fourth Wave Feminism will probably want us to be some kind of third and fourth sexes and Fifth Wave Feminism might want us to be burned at the stake. (Monica Jun 18th, 2006, in <Trans and Feminist Theories>)

Although Monica is right to be wary (amongst other things) of a postmodernist/postfeminist gender 'melting pot', this is not the stated project of 3<sup>rd</sup> wave feminism. It is rather a commitment to freedom of expression, movement, speech and social connections that can engender an energetic allegiance to the feminist cause where feminism becomes a politically postmodern identity of its own, rather than a collection of people related by biological embodiment or social status. It is the allegiance to feminism and a range of 'in-process' but identifiable subjectivities that makes 3<sup>rd</sup> wave feminism a cohesive alternative to the threat of the anomie that might emerge from

postmodernist feminism. 3<sup>rd</sup> wave philosophy (feminist or transgender) is theory ready to incorporate change and promises to expand the feminist propensity for the absorption of philosophical perspectives in an eclectically magpie-like endeavour.

### 3.2 Contradiction

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The concept of postmodern identity seems at first to be a contradictory pairing of terms. Assistant Professors of Gender Studies Leslie L Heywood and Jennifer Drake emphasised how the increasingly complex history of feminism has led 3<sup>rd</sup> wave feminists to accept contradiction, or what appears to be contradiction, as an inherent feature of a 3<sup>rd</sup> wave perspective (1997:2). They view this feminism as a complex hybrid born from other waves and a multitude of subjectivities, leading to a more rounded or whole<sup>7</sup> feminist subjectivity. They describe how this hybridity can act as a healthy adaption to the various complex oppressions facing feminists today. They also see how no feminist is free from susceptibility to become an oppressor themselves because of the Matryoshka-like nature of oppressions within oppressions, described as internecine conflict in the introduction to chapter 1, that can develop from the slightest lapse into self-assurance. Identifying this kind of oppression is the first step towards eliminating it, and this is what 3<sup>rd</sup> wave feminists attempt to do through reflexive activism and theoretical work.

Heywood and Drake placed American rock musician/subversive feminist/gay rights champion Courtney Love and American singer-songwriter/AIDS campaigner Me'Shell NdegéOcello as contradictory characters, hypothesizing them as progeny of 3<sup>rd</sup> wave feminist 'parentage' (1997:4-6). Love and NdegéOcello seem to be more down-to-earth characters than convention following 'conservative feminists', a feature that seems to match the characteristic 'in-touch-with-the-real-world' tendency of many trans activists and theoreticians. Heywood and Drake refer to this characteristic as 'lived messiness' and this type of living is no doubt familiar to those alienated by the apparent social 'cleanliness' of conservative-functionalist discourse. Another 3<sup>rd</sup>

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<sup>7</sup> In the sense of the word used in chapter 6 s. 3 in relation to complex subjectivity.

wave anthology editorial pairing, Rory Dicker and Alison Piepmeier also detected the 3<sup>rd</sup> wave's acknowledgement of gendered complexity,

One way that the third wave distinguishes itself from the second wave is through its emphasis on paradox, conflict, multiplicity, and messiness. This generation's feminism is often informed by postmodern, poststructuralist theories of identity; as a result, we are able to see the constructed nature of identity as well as the way in which gender may be a performance that can be manipulated and politically altered as it is performed. (Dicker and Piepmeier, 2003:16)

Hopefully, 3<sup>rd</sup> wave feminists perceive parallels between complex womanly subjectivity and those subjectivities we have come to describe as gender variant and trans, in the way formulated as 'genre' and 'genealogy'.<sup>8</sup> Trans subjectivities serve to highlight sexual subjectivity as apparently contradictory since these subjectivities deny the apparent essential connection of anatomy and possibly physiology to gender and sexuality. As discussed in chapter 2 section 3, this interpretation of sexual subjectivity has been strongly contested by feminists such as Raymond, Hausman and Millet who only see contradiction as revealing the non-reality of trans subjectivities.

A narrated example of the identification of, and implementation of, 'lived messiness' was provided by Jeannine Delombard (1995:23,24) in 3<sup>rd</sup> wave anthology *To Be Real*. By choosing to become identifiably femme, Delombard 'transed' her parents' efforts to reverse the heteronormative gender roles expected of themselves and their children. This might seem like a rebellion back into conformity but it is apparent that gender roles were still being imposed upon the young Delombard, and this is what she rebelled against by deploying her right to choice<sup>9</sup> of gendered presentation. Her gender became something of personal value because it was fought for and carefully philosophised.

Delombard described how, circa 1985, the 'lesbian sex wars' revealed the 'lived messiness' of sexual subjectivity in dealing with efforts to define the essence of

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<sup>8</sup> Genre and genealogy are explained in chapter 1 s. 1.2, chapter 2 s. 3, chapter 3 s. 1, chapter 4 s. 5, chapter 8 sub-section 3.4 and chapter 9 s. 2.

<sup>9</sup> Choice pertaining to preferred gender is addressed in chapter 7 s. 2.

lesbianism (1995:24,27,28,29). Lesbians seemed to be asking themselves, '*Should one operate erotics of the same and/or erotics of the Other?*' In 1995 the lesbian community experienced a butch-femme renaissance, which called into question the actual interpretation of 'butch' and 'femme', as notably addressed by Judith Halberstam (1998). Some lesbians stood fast in the face of resurrecting dualisms, something they saw as a heteronormative enterprise. However, like Halberstam, Delombard claimed that butch-femme actually flouted the constricting dualisms of heteronormativity by complicating straight masculinity and femininity. Delombard claimed that, '*Far from simplifying our relationship, butch-femme layers it with a tantalizing intricacy and a highly erotic contradictoriness*' (1995:31). Alternative gendering such as butch/femme may not so easily create oppressed 'Other' genders as has occurred in heteronormative society because of the complexity they bring to the apparent obviousness of gender. In allowing for subjectivities like butch-femme and vanilla lesbianisms to coexist side by side, Lecturer in Modern and Contemporary Literature Stacy Gillis and Lecturer in English Literature Rebecca Munford (2004:168) declared that, '*... as will be shown, 3<sup>rd</sup> wave feminist politics allow for both equality and difference*'. This positive, inclusive and understanding approach to difference is presented as 'postdifference' in chapter 8 sub-section 3.5 and chapter 9 section 3.

What is in reality the 'lived messiness' of theory and ideology? We can cite Felski, who outlined the contradiction inherent in naming a contemporary postmodern 'era',

... one might speak of not the death of grand narratives but the proliferation of them, as ever more subordinate groups identify themselves as historical actors in the public domain'. (1994:569,570)

The lived messiness of the 3<sup>rd</sup> wave may manifest in the way that it is theorised by some to exist without 'boundaries', unlike most metanarratives,

Often what we accept as a sign of "purity" is the ability to mark out boundaries ... Since I believe in impurity (pollution, mixtures, mestizas), working to make the boundaries of third wave feminism clear and distinct is particularly unsatisfying. (Garrison, 2005:253)

If 3<sup>rd</sup> wave feminists cannot escape metanarratives, they can at least be aware of their proliferation, and refer instead to 'theoretical narratives that are not one', to paraphrase a phrase by Luce Irigaray (1985),<sup>10</sup> in order to announce theories' spread and their complex essence. Metanarratives are always contingent for 3<sup>rd</sup> wave feminists, meaning that, as Foucault speculated, truth can never be arrived at once and for all but we can gain brief glimpses of some of its aspects by attempting communication via dialogic negotiation.<sup>11</sup> Lived messiness inevitably involves, but accurately describes, the untidy nature of theories and human conditions despite being sometimes uncomfortably unfixed as Leon from the Transstudy considered,

Yeah...they [feminist and trans academics] keep changing their collective academic/medical minds. ...its all very annoying. (Leon Jun 15th, 2006, in <Trans and Feminist Theories>)

Challenging the researcher's alignment of feminism with transgender, Leon didn't associate feminism with trans subjectivity and transgender philosophy, describing the two as incompatible or contradictory,

She [Germaine Greer] is like the Scottish weather..just wait 5 minutes and she will chnage her mind..just like all so called feminists !..its an evolving thing, as women chnage their goal posts. .a very female thing \*laughing\*... Trans people dont change their goal posts they just exist and have tried to simply BE. with the wonderful Press for change guys always pushing for our rights to exist....its SO COMPLETLEY DIFFERENT ...feminism isnt at all linked to being trans. ..belive me Ed I know I AM TRANS. (Leon Jun 26th, 2006, in <Trans and Feminist Theories>)

However, Leon was perhaps unaware of the rigidity of much philosophical 2<sup>nd</sup> wave ethos, notably espoused by Greer herself in her dismissal of trans subjectivity as unreal. Feminism, just like any other human philosophy or discourse, involves people from different philosophical and personally political backgrounds and so cannot be accurately stereotyped as a metanarrative, or as

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<sup>10</sup> Irigaray presented the female gender as, 'this sex which is not one'.

<sup>11</sup> 'Dialogic negotiation' is a component of the critical discourse analysis framework, as discussed in chapter 5 s. 5.



postmodern, without invoking confusing contradictions. Philosophical 3<sup>rd</sup> wave feminists/transgenderists perhaps wish to be part of a feminism-in-progress rather than a feminism-in-stasis characteristic of some philosophically 2<sup>nd</sup> wave ideology.

Feminist theory and philosophy has been classed as inferior to positivistic and (so called) objective research because of its reliance on reflexivity.<sup>12</sup> In a comment upon the way that Gilligan's research challenged that produced by a positivistic approach, feminist sociologist and academic Carol Smart pointed out how the impact of Gilligan's work,

... has been felt very widely inside and outside the USA because of its power to validate the 'feminine' and to give meaning to that which is constantly dismissed as irrational, illogical, and inconsistent. (1989:72)

Gilligan notably described how women introduce apparently contradictory complexity to gendered experience,

The failure to see the different reality of women's lives and to hear the differences in their voices stems in part from the assumption that there is a single mode of social experience and interpretation. (Gilligan, 1982:173)

She also described how the morality of responsibility, characteristically displayed by women, introduced the confusion of complexity into the masculine moral world,

At the same time, it becomes clear why, from a male perspective, a morality of responsibility appears inconclusive and diffuse, given its insistent contextual relativism. (Gilligan, 1982:22)

Trans people can be seen to add even more gendered complexity, as discussed in chapter 6 section 3, but this can be interpreted as providing useful insights into the constructed essence of gendered experience.

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<sup>12</sup> Reflexivity has been described as, 'To be reflexive, in terms of a work of anthropology, is to insist that anthropologists systematically and rigorously reveal their methodology and themselves as the instrument of data generation' (From: <http://www.california.com/~rathbone/lexicon.htm>).

### 3.3 Inter-Wave Philosophy and Maternal Relations

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An element of the postmodern affects the way that philosophical 3<sup>rd</sup> wavers perceive feminism as identifiable in 'waves'. These are not fixedly identifiable metanarrative waves but, as described by Delombard (1995:21), they 'trans' the normal concept of waves as separate movements, contradicting the expectation that they are discreet. These waves are sometimes chronologically related to feminist movements but can alternatively be described as philosophies that can span all of feminist history and can be linked to feminists from or between any chronological wave. Professor of Women's Studies Ednie Kaeh Garrison likened the waves of feminism to radio waves where such waves,

... can be used to communicate information in the form of ideas, words, narrative, consciousness, knowledge. (Garrison, Ednie Kaeh, 2005:243)

Garrison also compared the ebb and flow of feminist waves to tidal waves, theorising that feminist waves return to previous chronological waves in order to manifest as hybrid forces composed of previous feminist ambulations. [B]ell hooks seemed to align with this inclusive wave metaphor when perceiving feminism to be formed from a potpourri of social and theoretical inclusion (Gamble, 2001:53).

The 'lived messiness' of combining elements of all feminist waves makes for more of a whole feminist experience that can sit comfortably with social subjectivities not usually associated with feminism. 3<sup>rd</sup> wave feminism appears to embrace such social and theoretical inclusiveness when not rejecting previous feminist philosophy and figureheads.<sup>13</sup> Methodological procedure in more inclusive feminisms has involved researchers communing closely with the real lives of those living in the research community, for example in the ethnographic work of (chronologically 2<sup>nd</sup> wave) Anne Oakley in 1975.

For Heywood and Drake, 3<sup>rd</sup> wave feminism appears to be a community-orientated wave, in a similar vein to the feminism promoted by Delombard (1995:21), Garrison (2004) and hooks (1997:1,8). The communal combining of feminisms suggested by these theorists might be described as a kind of inter-

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<sup>13</sup> However, the concept of having famous names in feminism is treated with caution by 3<sup>rd</sup> wave feminists since this can emulate conventional academic reification of certain human beings.

wave philosophy. Feminists including Heywood and Drake attribute the initiation of the 3<sup>rd</sup> wave to the community orientated efforts of women of colour in the 1980s. Like many women of colour themselves, the philosophical 3<sup>rd</sup> wave could be described as invisibilised<sup>14</sup> and therefore ‘unnamed’ and unnumbered until the 1990s. Heywood and Drake described how feminism of colour brought to our attention the coloured neutrality of whiteness where a ‘community of no community’<sup>15</sup> often exists, just as has often been the case with regard to capitalism and masculinism (1997:10). The ‘community of no community’ needs to hide its true nature since in reality it operates as a community of domination and ideological state apparatuses. An inclusive community, self-critical and personally political with a ‘view from somewhere’, might stem from 3<sup>rd</sup> wave feminism and could act to include ‘Othered’ subjectivities and those portrayed as gendered ‘immigrants and refugees’, as suggested in chapter 8 section 2. Heywood and Drake proposed that, *‘Communities today have to be imagined on different bases than that of the separatism of identity politics, bases such as what hooks called a “commonality of feeling”*’ (1997:17).

Professor of Gender and English Studies Astrid Henry also pointed to the pioneering work on the formation of the 3<sup>rd</sup> wave concept by women and feminists of colour. This work is notably found in contributions to *The 3rd Wave: Feminist Perspectives on Racism*. This anthology might be described as a ‘ghostly anthology’, since according to Garrison, *‘Although this book never materialized, the desire for it is such that people do speak as though it exists’* (2005:249). In this feminist anthology, which was of fundamental influence to the 3<sup>rd</sup> wave even though unpublished, Lisa Albrecht described how 3<sup>rd</sup> wavers did not assign women from different generations to different feminist waves but drew from their particular experiences to highlight feminism’s need to concentrate on including wrongfully excluded others into its philosophy and

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<sup>14</sup> This is one of the terms, including ‘infantilisation’, deployed by Neil Thompson to describe the application of debilitating social treatment to oppressed subjectivity groups (1998:82-83).

<sup>15</sup> Providing a falsely objective ‘view from nowhere’, as described in chapter 1 s. 2 and chapter 7 subsection 1.2.

movements. Henry described this anti-exclusionary operation of 'womanist'<sup>16</sup> writers/activists,

[T]he contradictory character of the 3<sup>rd</sup> wave emerged not from the generational divides between second wavers and their daughters, but from critiques by Cherrie Moraga, Gloria Anzaldúa, bell hooks, Chela Sandoval, Audre Lorde, Maxine Hong Kingston and many other feminists of colour who called for a "new subjectivity" in what was, up to that point, white, middle class, first world feminism. These are the discourses that shaped, and must continue to shape, 3<sup>rd</sup> wave agendas in the years to come. (2004:32)

Womanism, with its situation in tailor made, non-hierarchical<sup>17</sup> relations and non-'Othering' (Moraga 1983:32), and adaptation to the socio-political environment,<sup>18</sup> aligns with the mores of the ethics of care and fits in under the broader category of maternal relations, described below, and in chapter 8 section 3. It may indicate the original form of 3<sup>rd</sup> wave feminism, which may have existed from the dawn of humanity and in an unnamed fashion, long before the other two waves which have been based in modern and postmodern society. Although not a collective wave in the modern sense, this wave would have formed collective relations through extended families.

Some feminists have examined inter-wave philosophy and community orientation by applying the metaphor of 'maternal relations'. Julia Kristeva thought that, '*The time may have come, in fact, to celebrate the multiplicity of female perspectives and preoccupations*' (1992[1979]:206). From a psychoanalytical perspective, Kristeva theorised that maternal relations are psychologically buried in the development from pre-mirror to symbolic developmental stages, as described in chapter 5 section 4. Such ties are repressed in the name of forming structured hierarchies that provide security in the form of separate identity formation and subject positioning within one's

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<sup>16</sup> 'Womanism' is also described in chapter 5 s. 5 and chapter 8 s. 3.

<sup>17</sup> The womanists that Alice Walker grew up with were not concerned with making a name for themselves although being very gifted (Walker, 1984:231-331). Patel applied a 'womanist' perspective to hierarchical oppression in the family (1997:262).

<sup>18</sup> For instance when the *Southall Black Sisters* and *Brent Asian Women's Refuge* provided respite from violence and persecution (1997:256).

native society. The potential for a perhaps more feminine networking of kinship relations is lost in community development directed by the resulting symbolic communication. However, ghostly traces of the maternal relationship usually remain in the psyche and cause us to yearn for the deep understanding gained from this primary bond,

... the psyche represents the bond between the speaking being and the other, a bond that endows it with a therapeutic and moral value. (1992[1979]:206)

'Sisterhood' was bell hooks' preferred descriptor of inter-feminist bonds. Feminists now generally accept that many differences exist between women, and this was recognised by hooks in 1984 who suggested that the solidarity of Sisterhood was needed because, '*There can be no mass-based feminist movement to end sexist oppression without a united front ...*' (1984:44). [H]ooks contrasted Sisterhood to the idea of '*shared victimization*' emphasised by bourgeois 2<sup>nd</sup> wavers. This shared victimization came to resemble the exclusionary operation of patriarchy, albeit with the creation of select 'women's clubs' rather than 'old boys' networks'. Privileged feminists came to resemble beneficent colonial philanthropists who would tolerate token inputs from women of colour if they did not threaten to compromise the relatively comfortable position of white middle class feminist enclaves. The result was a kind of social cleansing of women who didn't fit in with bourgeois subjectivity.

The reality of maternal relations between feminist generations sometimes seems different to the utopian vision provided by philosophical 3<sup>rd</sup> wave theorists such as those mentioned in the previous three paragraphs. Professor of Philosophy Gillian Howie and Professor of English Ashley Tauchert addressed inter-wave relations between feminists and remarked that,

Unfortunately, because patriarchy is built upon the symbolic and real severance of productive matrilinear relations, the generational transitions within the feminist tradition are inherently fraught and conflict is

aggravated by increasingly competitive conditions within, and without, the academy.<sup>19</sup> (2004:45)

Any of the metaphorical mother/daughter feminist conflicts investigated by Astrid Henry in *Not My Mother's Sister* (2004) may derive from confusion imposed by such patriarchal manoeuvres. Feminists try to compete in a masculinist and patriarchal environment while attempting to maintain links with less hierarchical feminist networks that span generations and/or personal politics. For instance, some 2<sup>nd</sup> wavers have identified what they see as, '... *the transition from a movement based on the "we" to today's sea of disparate "I's"* (Friedlin, 26/05/02), in revealing what they see as a kind of postfeminist 'I want it all and I'm going to get it' feminism. Professor of Psychology and Women's Studies Phyllis Chesler' interpreted the instigators of the 2<sup>nd</sup> wave as a band of 'sisters' rather than daughters, arguing that 'sisterhood' helped free 2<sup>nd</sup> wavers from the fetters of metaphorical motherhood in order to gain current feminist agency and communion (Henry, 2004:9).<sup>20</sup> This seems different to the sisterhood envisaged by hooks where women are sisters with women from other ethnicities and feminist waves (1984:43-65).

In 'Genealogies and Generations', Gillis, Howie and Munford (2004:177) suggested that 3<sup>rd</sup> wave feminism might be reinforcing a 'generational account of feminism', seeming to conflate it with postfeminism. The chronological 3<sup>rd</sup> wave may provide this account whereas the philosophical 3<sup>rd</sup> wave does not. However, 3<sup>rd</sup> wave feminists might consider that, though many of them do exist in a different generational period, they can have their own theoretical spaces whilst not needing to sever connections with feminist 'mothers' or 'older sisters'. They can recognise that philosophical 3<sup>rd</sup> wavers have often lived and worked before, in and between chronological 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> wave periods. Perhaps progressive feminists can empathise with the spirit of each wave, accepting that each previous chronological wave was functional in its time and that feminism needs to move with the times. Feminists of any chronological or philosophical wave, and any sexual subjectivity, would then not be automatically essentialised

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<sup>19</sup> A sentiment pertinent to the discussion of the 'academic theory production mill', 'academic schemata' and 'academic exercise' in chapter 3 s. 4, and chapter 9 sub-section 1.1 and 1.3.

<sup>20</sup> 'Agency' and 'communion', as influences on subjectivity, are discussed in chapter 5, sub-section 5.3.

out of any other wave membership, a situation compared to a 'third generation' by Kristeva,

The meaning I am attributing to the word "generation" suggests less a chronology than a signifying space, a mental space that is at once corporeal and desirous. ... For this third generation, which I strongly support (which I am imagining?) the dichotomy between man and women as an opposition of two rival entities is *a problem for metaphysics*. (Kristeva, 1993:222)

The handing down of knowledge from feminist generation to feminist generation is a way of avoiding reinventing the wheel, of having to rediscover all previous feminist insights anew. Zita stated that, '*To me the most pressing task for the feminisms of our time, both inside and outside academe, is this cross-generational moment ...*', outlining the necessity for cross-generational relations (Summer 1997:1). Cross-generational relations can ensure, as Felski thought, that many histories written by women and postcolonial peoples which, '*... seek to contest and transform our view of the past by discovering its exclusions, oppressions, and hidden triumphs, to rewrite and extend, rather than to negate, history*', are not buried forever in some dusty library (1994:571).

If trans people can benefit from and contribute to maternal relations, for instance through the medium of shared narratives, then they may escape their position as passive receivers of scientific discourse handed down to them from psycho-medical experts, legislation handed down by the legal fraternity, and stereotyping representations handed down by separatist 'heteronormatives'. As described in chapter 2 section 2, chapter 4 section 4 and chapter 7 section 1, this has occurred to some extent with the emergence of trans theory, philosophy, narratives and legal activism produced by trans people who may be just as '3<sup>rd</sup> wave' as any of the 3<sup>rd</sup> wave feminists mentioned so far. Narrative through maternal relations may unite all those who belong to the 'kindred' of those who do not fit, in the sense ventured in Gloria Anzaldúa's description of those on the 'Other' side of borders separating privilege from oppression (1983:209).

### 3.4 The 3<sup>rd</sup> Wave: An Open and Evolving Discourse?

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Howie and Tauchert (2004:42,45) described how academic feminism emerging in higher education of the late 1960s in the USA and Britain<sup>21</sup> roped feminists into following a new schema of feminism to satisfy the demands of a livelihood in academia, as described in section 3. This was a kind of career feminism that initiated taboos against deviation from the bourgeois feminist script. Such a constrictive schema deterred a potentially feminist-friendly Kristina Sheryl Wong (2003) from associating with feminism in early adult life, and initially subdued the young Rebecca Walker by asking her to live up to forebodingly high standards. Wong is a third generation Chinese/English theatre performer who has addressed the situation of Asian/American Women. Walker, daughter of Alice Walker, the African-American author of *The Color Purple*, is a feminist writer who worked to create empowerment through activism for young women and is said to have been a founder of the concept of a 3<sup>rd</sup> wave of feminism.

Wong noticed how academic feminism was additionally deterring since much of it applied so much convoluted jargon that it excluded those from outside of the humanities based academic fold (2003:296). Heywood and Drake (1997:7) referred to Walker's theorising in 3<sup>rd</sup> wave anthology *To Be Real* in order to describe how, for Walker, 3<sup>rd</sup> wave feminism seemed to flout the feminist academic schema in being forgiving of transgressions against the new academic feminist 'law'. Here was a chance of redemption for those who erred from the feminist path by having the wrong type of social subjectivity or social and narrative presentation (1995:xxxvii).

Howie and Tauchert saw a link between 'commercial logic' and what might be described as the academic theory production mill where a constant search for theoretical novelty must be married to the neat insertion of research into academic formula (2004:45). This paralleled the way that products in postmodern capitalist society must fit a formula while appearing to be novel, from the three minute pop single to a new brand of motor-car as the latest variant of tinned 'freedom'. In consequence, academic feminism has partly

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<sup>21</sup> A process described by Richardson and Robinson (1993:4).



become a clique for those with insider knowledge, who can theorise in the right way in order to perpetuate the clique,

... as Gayatri Spivak suggests, feminist criticism too, like all form of critique, "is complicitous with the institution within which it seeks its space," and must recognise this to be a force for change. (Edelstein, 1993:198)

However, criticism of chronological 3<sup>rd</sup> wave feminism as a self-perpetuating clique may overlook the fact that feminists in the 1980s and 90s were under pressure to produce feminist work as scholarly endeavour in order to justify the existence of Women's Studies departments when faced with the kind of institutionalised academic elitism and scepticism identified by Marysia Zalewski (April 2003:118). Battling such elitism was again a burden for feminist academics in the late 2000s and will undoubtedly be so in the 2010s.

The 'academisation' of Women's Studies led to accusations of chronological 2<sup>nd</sup> and 3<sup>rd</sup> wavers being career, rather than ideological, feminists (Howie and Tauchert, 2004:42,45). However, many philosophical 3<sup>rd</sup> wavers, and notably women of colour, were responsible for highlighting the failing of career feminism when it is operated in the interests of the privileged elite. Howie and Tauchert described how awareness of the potential exclusion of 'Other' voices, emerging in the late 70s within feminist minorities, kindled an interest in alternative narratives of feminism (2004:42).

The 3<sup>rd</sup> wave may take this opportunity to run with the baton of inclusive feminism, passed over from ethnic and social feminist minorities. The aim is a re-radicalisation of feminism, as opposed to the de-radicalisation that sometimes accompanied feminism's acceptance into the academy (Spencer 2004:11-12). Calls for re-radicalisation are evident in a number of philosophical 3<sup>rd</sup> wave narratives (which often include trans writing), where controversial topics are addressed and/or language is accessible and down-to-earth and not full of theoretical 'gymnastics'. Re-radicalisation also seems to have been called for by Kristeva as a way of initiating social change,

I agree with Kristeva that changing artistic and representational practices can enable as well as reflect sociopolitical changes. Without *speaking* – and hearing – differently, we cannot *be* differently. (Edelstein, 1993:204)

Henry (2004:31) noticed the proliferation of representatives, or 'voices from somewhere',<sup>22</sup> from various social demographics, such as age, ethnicity and class, in 3<sup>rd</sup> wave feminist anthologies such as *Listen Up* (1995), edited by Barbara Findlen and *To Be Real* (1995), edited by Rebecca Walker. The same could be said of the more recent *Colonize This!* (2002), edited by Daisy Hernandez and Bushra Rehman. Philosophical 3<sup>rd</sup> wavers attempting to widen the target congregation for feminism have been, from the mid-1990s onwards, reintroducing an actively political element to feminism by including criticism from those of various social standpoints (Henry, 2004:31). This kind of inclusive critical analysis also features to some extent in *Catching a Wave* (2003), edited by Rory Dicker and Alison Piepmeier, and *3<sup>rd</sup> Wave Agenda* (1997), edited by Heywood and Drake. Philosophically 3<sup>rd</sup> wave emphasis on inclusive writing also featured in chronologically 2<sup>nd</sup> wave anthologies/collective writings addressing the phenomenon of the 2<sup>nd</sup> wave, such as *This Bridge Called My Back* (1983), edited by Cherry Moraga and Gloria Anzaldúa, and 'The Combahee River Collective Statement' (1986). Paula Austin, coming from a disadvantaged background, described a feeling of inclusion into the ethos of *This Bridge Called My Back*,

... I was a poor Black girl, living in someone else's apartment in an all-white neighborhood, where my family was seen as "the help". ... It [This Bridge Called My Back] was the first time I saw in print something I could identify with, the intersection of history, culture, oppression and identity. (Austin, 2002:161)

*Sisterhood Is Powerful* (1970), the renowned radical anthology edited by Robin Morgan, concentrated mainly on chronologically 2<sup>nd</sup> wave developments but did address women of colours' issues and prostitution, making for a more inclusive read. Anthologies *Third Wave Feminism* (2004), *Different Wavelengths* (2005) and *No Permanent Waves* (2010) are collections of contributions mainly provided by the academic elite who critically address the phenomenon of the 3<sup>rd</sup> wave. *No Permanent Waves* includes discussion of hip-hop feminism, religion, and sex work, which are not characteristic of academic anthologies. However,

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<sup>22</sup> An adaption of Gilligan's theory of 'voice' and the 'view from somewhere'.

non-academic texts are effectively excluded from these publications. Although not an anthology, *Manifesta*, by Jennifer Baumgardner and Amy Richards, came under criticism as elitist text by Rebecca Hurdis in *Colonize This!*,

This book markets itself as being the text for the third wave of feminism ... Instead, I found the specific history of white (privileged) women. (Hurdis, 2002:286)

With regard to trans anthologies, *Reclaiming Genders* (1999), edited by Kate More and Stephen Whittle challenges the traditional gender dualism and features input from writers of different backgrounds with different approaches to the concept of trans subjectivity. *Trans/Forming Feminisms* (2006), edited by Krista Scott-Dixon has an inclusive slant for gender variance and challenges the validity of gender heteronormativity as common-sense discourse. Emphasis on points of view from a broad range of social and philosophical backgrounds and perspectives features in trans anthology *The Transgender Studies Reader* edited by Susan Stryker and Stephen Whittle (2006).

Unfortunately, re-radicalisation and accessible narratives may contribute to less funding and support for feminist-based study from academic institutions, if seen to flout a conventional academic schema. So whereas,

Social liberalism and women in the academy in late 1960s and 1970s ... challenged forms and content of academic disciplines and subjects [and] contested [the] knowledge base, particularly in the social sciences and humanities, (David, 2003),

The 1980s and 90s brought in,

Introduction of market forces into public services, including Higher Education, ... expansion [of] not students from [the] working class but expanding middle class families ... and ... new measures of control, through financial resources and fiscal management. (David, 2003)

These measures meant that,

Feminism has been indoctrinated into the academy through the discipline of women's studies. It has moved out of the social and political spaces from where it emerged. Women's studies have collapsed the diversity that

was part of the feminist movement into a discipline that has become a homogenous generality. For women in the third wave then, one needs to have the academic training of women's studies to be an "accredited feminist". (Hurdis, 2002:288)

Adding to fears about the mainstreaming of academic feminism, Professor of Diplomacy and World Affairs Laura Hebert commented that, '*Frustration has been voiced by some feminists that the poststructuralist deconstruction of the subject undermined the potential for political action*' (March 2007:34). This deconstruction, philosophized about in academic humanities departments and perhaps taken up in the theory and subjectivity of individual queer-inspired academics, brings to mind an 'erotics of unnamings' but with no positive results for its subjects. However, networking between those from various oppressed social, ethnic and gendered subjectivities is perhaps leading to reconstruction of mainstream feminism's 'Others' (those with negatively dualised difference) to 'others' (those with empowered difference). Reconstruction is perhaps deconstruction with a personally political purpose and is further introduced as a concept in chapter 5 section 6 and chapter 6 section 1.

How are philosophical 3<sup>rd</sup> wavers reconstructing the discourse of feminism? The 3<sup>rd</sup> wave, as it currently stands, appears not to be political in the same way as the 2<sup>nd</sup> wave in the 1960s (Henry, 2004:35). There is no mass demonstration and less direct action, but there is perhaps rather a quiet revolution working on many fronts simultaneously, or focussing on multi-issues, as described and listed by Jennifer L Pozner (2003:37-44). These include women as war correspondents, the ethics of global trade, demonisation of mothers on benefits and continuing threats to women's reproductive rights. This multi-issue activism is reminiscent of the 'neighbourhood/community politics and 'micro-politics' discussed in chapter 8 section 3. Women's activism has characteristically been quieter than men's as academic and ecofeminist Irene Diamond and academic Lee Quinby pointed out,

Because so much of women's political activity occurs at the local level and stems from their involvement in the sustenance of life, they often manifest an ethic of activism that confronts domination without the smashing and terror so characteristic of masculinist revolutionary action. (1988:xvii)

Because of activity at the local level, this politics allows the focussed application of ethics of care.<sup>23</sup>

Multi-issue activism brings to mind the way that English literature academic Gill Frith used 'quilting' as a metaphor for the activities that womanists have engaged in in order to make their silences speak,

Since its inception, Black feminist criticism has questioned the distinction between 'high' and 'low' forms of art. Alice Walker (1984) echoes and extends Barbara Smith's emphasis on communal activity, to argue that the Black female creative tradition includes quilting, gardening and singing the blues. Diane Bogus (1990) takes the argument a stage further by identifying the 'Queen B' – the female blues singer who bonds with women – as a recurrent figure in Black women's writing, including Shug Avery in Walker's *The Colour Purple* (1982). Charlotte Pierce-Baker (1990) takes up the quilting metaphor and applies it to the literary curriculum. Demonstrating the connections between Jane Eyre and Harriet Jacobs' slave narrative, *Incidents in the Life of a Slave Girl* (1861; reprinted 1988), she argues that studying two rebellious, 'confessional' texts together creates a 'quilting of voices' which highlights the similarities and differences between two women from very different backgrounds. (Frith, 1993:169)

As well as micro-politics/issues, the notion of quilting seems to tie in with the meaning of Foucault's version of history and subjectivity as mosaics of genealogies, as described in sub-section 1.1 of this chapter, and with Bornstein's perception of gender variance as a patchwork of subjectivities (Whittle, 1998:48), described in chapter 8 sub-section 3.4. To describe history in 'Nietzsche, Genealogy, History' (1971), Foucault uses terms such as, '*... singularity of events (76) ... numberless beginnings (81) ... series of interpretations (86) ... countless lost events (89)*'.

Is the quiet revolution of 3<sup>rd</sup> wave feminism different to other revolutions because of its multi-issue and multi-subjective approach and because of its

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<sup>23</sup> Ethics of care are introduced in chapter 1 s. 1 and chapter 4 s. 5.

quietness? If so, is this because it is not attempting to replace one hegemony or metanarrative with another? This replacement of metanarratives is something that queer legal theorist Backer warns is the tendency to occur when 'revolutionspeak' takes over an up and coming faction's rhetoric (1998: 190,191). Backer described how the very act of essentialising a group identity can work to make the new group identity as much an essentialising phenomenon as the dominant identity has already been (1998:193). This may well have operated in the development of separatist gender philosophies. Queer, and queer-friendly philosophies such as 3<sup>rd</sup> wave feminism, theoretically work to at least be aware that this essentialising can occur.

However, the quietness of the 3<sup>rd</sup> wave may be, as Henry argued, because today's young women are typically much more cynical about their prospects of gaining the power to effect social change than were their 2<sup>nd</sup> wave sisters in the 1960s (2004:37). There is a feeling that there is little chance of inspiring the kind of organised and cohesive feminist activism prevalent at that time. Henry also pointed out how Kate Roiphe identified an apathy inspired by confusion in identifying what is now the 'enemy' for feminism (2004:38,39). This enemy, as discussed in section 3 regarding bourgeois feminism, can sometimes be found within feminism itself rather than more obviously located in oppressive masculinism.

### 3.5 Conclusion

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The first section of this chapter addressed the connection of philosophical 3<sup>rd</sup> wave feminism to 'postmodern identity' which differs to both modernist fixed identity and postmodern non-identity. It derives from the theory that subjectivities will be subject to social construction over the lifetime of the subject but that discreet subjectivity can be identified at any one time, enabling the possibility of subjectivity politics. Postmodern identity or subjectivity equates with genre and genealogy which, when combined with a personal politics can allow the law to understand that those who passionately fulfil a gender role, rather than just being ascribed to a certain gender at birth, should be accepted into that gender for all social and legal purposes.

In the second section it was suggested that the 3<sup>rd</sup> wave is particularly geared to recognise contradictions inherent to subjectivities, including the subjectivities of feminism and gender variance. These subjectivities have conventionally been determined through metanarratives such as separatist feminism, biology and/or psychoanalysis. Recognition of contradiction can reveal the complexity or 'lived messiness' of sexual/social subjectivity and can lead to empathy with those from different sexually and ethnically subjective locations, engendering a subjective 'view from somewhere'. 'Lived messiness' addresses the intricacy of gendered existence and works to include those from variant genders that are otherwise taken to be unreal. It may follow that an understanding of subjectivity can only be approached by reference to the individual, rather than to the identity blueprint.

The third section suggested unveiling the patriarchal and/or gender separatist 'community of no community' in order to highlight philosophical 3<sup>rd</sup> wave feminists' and trans people's need for cohesive community relations. [B]ell hooks suggested a 'Sisterhood' based upon a "commonality of feeling" which evades the hierarchy and generational divide that can adhere to actual or metaphorical mother/daughter feminist relations (1984:43-65). [H]ooks also suggested a response positive to subjective differences in order to reach out to alienated 'Others'. Feminists of colour in general have indicated the congruence of organic, rather than linear, relations with an inclusive feminist ethos and have formed an organically structured discourse known as 'maternal relations' deriving from womanist communication (Lorde, 1984:49,117).<sup>24</sup>

In the fourth section it was found that contradictory views of the 3<sup>rd</sup> wave as conservative and career-based on one hand, and as radical and evolving on the other, can be gained from reviewing different accounts about and by 3<sup>rd</sup> wave feminists. Despite the practical activism of 2<sup>nd</sup> wave feminists, the academic theory production mill threatened to permeate feminism with almost as much hierarchical academic discourse as has sometimes infiltrated more traditional disciplines, and to cordon off feminism as the preserve of the academically

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<sup>24</sup> Pragna Patel provided an account of organic relations in action when *Southall Black Sisters* formed, 'alliances and coalitions within and across the minority and majority divides' (1997:256). Gloria Anzaldúa conceived of such relations as bridges and not ladders (1983:236), as anti-dualistic (1999:7,59,69), and as relations through choice (1999:9).

privileged (Golumbia, Summer 1997:101,106,108). However, a measure of increase in access to academic narrative for people of varied class, gender and ethnicity has meant that voices from diverse subjectivities with diverse means of narrative presentation are now sometimes included into feminist discussion. The reformation of feminism itself is perhaps most passionately being informed by previously excluded 'Others' and by those choosing to reform or question their own bodily and social subjectivities. The kindred of those who do not fit are perhaps forming a community populated by citizens of difference.

In chapter 4 the idea of philosophical waves is applied to the development of law as it pertains to gender in Western industrialised society. These philosophical waves relate to the social and philosophical subjectivity of their adherents, rather than to chronological, biological and status related identities. The 'lived messiness' of gendered subjectivity can be addressed by postconventional ethics, sisterhood and agency/communion.<sup>25</sup> This could lead to inclusion into legal discourse for gender variant people in order to allow them some measure of ownership of, and involvement with, this discourse.

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<sup>25</sup> Agency and Communion are described in chapter 5 sub-s 5.3.





## CHAPTER 4: LEGAL LITERATURE REVIEW - THE VIEW FROM SOMEWHERE

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### Introduction

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This chapter focuses on how gender variant people, including women,<sup>1</sup> feminists and trans people, have been inspired to shape the law as social discourse. It is suggested that the law pertaining to gender has developed through three philosophical waves of its own, which parallel the philosophical feminist waves and manifest as a more inclusive discourse in the form of a philosophical 3<sup>rd</sup> wave. The concept of postconventional ethics is discussed in section 4 in order to link it with the idea of a philosophical 3<sup>rd</sup> wave of gender legislation. Gilligan's concept of postconventional ethics involves allying ethics of care, (recognition that subjectivities are individually formed), with an ethic of justice (recognition and protection of subjective categories) (Gilligan, 1982:23,53,72,73,99,100).

The chapter's sub-heading 'The View from Somewhere' is intended to bring to mind the reflexive contemplation of subjectivity notable as a feature of the philosophical 3<sup>rd</sup> wave. This was described earlier in chapter 1, section 2, and is discussed later in chapter 7 section 1, as a view of society from the outside in, gained by the oppressed societal 'Other'. This idea might also be seen as an extension of psychoanalyst Jacques Lacan's 'mirror stage' of human development, first introduced in 1936, but developed by him in the 1950s and 1960s as a social, more than psychological, phenomenon. In the 50s and 60s he theorised that, rather than gaining an image of self from an actual mirror, infants grow up developing different images of themselves derived from impressions about, and then mimicry of, the people, community and the environment with which they interact.<sup>2</sup> Trans people's own self-images are, by definition, notably complex and therefore contradict many of the perceptions applied to them by people who have only seen gender in the heteronormative

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<sup>1</sup> Many women have held and many hold gender that is variant to masculine gendering, which has traditionally secured a place in Western industrial society as the superior or neutral/default type of gendering.

<sup>2</sup> See Nobus (1999:119,120).

'mirror'. These self-images also challenge notions of psychoanalytical development that predict gendered development deriving only from one's natal sex, challenges also taken up by Julia Kristeva who, like Lacan, reconstructed the idea of psychoanalytic development as more of a socially-based process. Professor of English Marilyn Edelstein noted the influence of subjective development on the development of society,

I agree with Kristeva "that there can be no socio-political transformation without a transformation of subjects: in other words, in our relationship to social constraints, to pleasure, and more deeply, to language". (1993:202)

Law has independently developed to cater for an apparently bi-gendered world. However, transgender theory and philosophical 3<sup>rd</sup> wave feminism have shown gendered subjectivity to be a complex and varied issue. Only if legal discourse is aware of itself as in-process will it better be able to accommodate gender as subjectivity. It will consequently be able to reform those parts of black letter law, whether in the UK or elsewhere, where principles of law are taken to be well defined and free from doubt, alteration or challenge in relation to two, and only two, genders,

... in that it depends on things that are specific, concrete and clearly defined, the law has often served to regulate and control how rights, responsibilities and identities are understood. (Scott-Dixon, 2006:27)

#### 4.1 The Philosophical 1st Wave of Gender Law: Radical Struggles for Single Issue Legislation

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Early gender legislation and rights were hard fought for and these fights were necessarily based upon identity group cohesion because it was these identities which were originally chosen by oppressors for suppression. Women, gays, lesbians and trans people had to gain a collective voice before they could begin to articulate ideas about addressing the deep roots of social oppression. What 1<sup>st</sup> wave feminists were doing was very radical at the time even though, when their activism is perceived in isolation from the on-going feminist movement, it seems that these women were attempting to fit in with patriarchal society. Feminist Academic Imelda Whelehan warned that combatting prejudice in a purely identity related based way would not ultimately work when, 'an "ideology

*of gender” is constantly perpetuating the “reality” and “naturalness” of inequitable sexual and racial divisions’ (1995:60). Even so, as Whelehan said of liberal feminism, the feminist 1<sup>st</sup> wave’s, ‘... fight for equality created the conditions whereby dissenting feminist stances could emerge’ (1995:42). Criticisms levelled by the researcher at the feminist 1<sup>st</sup> wave and 1<sup>st</sup> wave gender legislation lobbying is criticism of using the same lobbying methods today, if the aim is the progression to a fully gender inclusive society.*

The first gender legislation might be construed as the culmination of a gender legislative ‘1<sup>st</sup> wave’ because it was focused upon single issues such as, from the early 19<sup>th</sup> century: divorce, women's property, women's right not to be beaten by their husbands, and by the early 20<sup>th</sup> century: the right to suffrage involving the Pankhursts and many others. These events had the effect of promoting gender equality through assimilation, rather than providing any attempt to portray the sexes as equally valued. Chronological 2<sup>nd</sup> wave legal milestones such as pay, employment, education and services were still of a philosophically 1<sup>st</sup> wave nature because they still dealt with single issues, rather than involving an examination of deep rooted socio-legal discourse. This focus relates to bell hooks’ criticism about single issue focus as noted in chapter 1 section 1 and is an issue picked up by Carol Smart when addressing the effectiveness of attempting to instigate change through legal means only,

... [Catherine] MacKinnon concedes a great deal to law. She argues that it is law that can legitimize women’s aims, without which they remain unrecognized. Yet I doubt that law does this. ... There are other ways of challenging popular consciousness other than through law, even though law may on occasions provide a catalyst. But it is also mistaken to imply that once legitimized by law, women’s claims will not be de-legitimised by law at a later stage. (Smart, 1989:81)

#### 4.1.1 The Equal Pay Act 1970 and The Sex Discrimination Act 1975

In Britain chronological 1<sup>st</sup> and 2<sup>nd</sup> wave feminists’ activism and lobbying led to two key acts that would pave the way for further gender equality legislation. The Equal Pay Act 1970 forbade unequal allocation of pay and conditions to men and women for undertaking the same or similar work. However, this Act did not provide for those wishing to claim for equal pay with someone of their

own legal sex, as a trans person may wish to do. 2<sup>nd</sup> wave feminists in the UK were instrumental in the development of The Sex Discrimination Act 1975 (SDA), which became the major sex and gender discrimination legislation for a period of over 35 years. Later it would be repeatedly amended, but initially the Act also just dealt with the protected categories of men and women. In their original form, neither Act provided special recognition or protection for trans subjectivity or gender variance. Only after amendment by the Sex Discrimination (Gender Reassignment) Regulations 1999, did the SDA formally protect people who 'intended to undergo, or who are undergoing or who have undergone gender reassignment'<sup>3</sup> from discrimination on the grounds of gender.

Although gains first had to be made by lobbying and protesting for single issue matters, the acts could not address social life in a comprehensive way (Whittle, 2002:13). The Acts were still largely based on a masculinist perception of equality with the result that being equal to others could sometimes mean being equally dysfunctional or equally miserable. For instance, the SDA was held to be working if, for example, an employer who dismissed a trans woman also said they would dismiss a trans man, ie genders of transition were being treated equally, but in effect equally badly. The limitation of the ability of equality to solve societal disparities was suggested by a participant in Carol Gilligan's college student study,

People have real emotional needs to be attached to something, and equality doesn't give you attachment. Equality fractures society and places on every person the burden of standing on his own two feet. (1982:167)

Gilligan hinted how the ethics of care can act to investigate exactly whose equality it is that is promoted by the ethic of justice,

The morality of rights is predicated on equality and centered on the understanding of fairness, while the ethic of responsibility relies on the

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<sup>3</sup> Following the attorney General's advice in the case of P v. S and Cornwall County Council, [1996] European Court of Justice, Case C-13/94, [1996] IRLR 347.

concept of equity, the recognition of differences in need. (Gilligan, 1982:164)

The reflection in law of the structural dominance of masculinism was notably observed by Susan Atkins and Brenda Hale in *Women and the Law* (1984:1,2,4,182,183,185). The book theorised that gender was a deep-rooted division in society and that this division was reflected in the law,

If the way in which society is structured pre-empts women's equal participation in the law-making process and in the distribution of benefits in society, they are not being accorded equal citizenship. (Atkins and Hale, 1984:183)

After the Sex Discrimination (Gender Reassignment) Regulations 1999, Whittle et al noticed that the updated SDA defined 'transsexual' and 'gender reassignment' in restricted ways that did not include all the gender variant people who needed this Act's protection (2006:80). Only those trans people involved with the (physical) reassignment process were offered recognition and protection. Other gender variant people and those who transitioned by social means only (through choice or lack of opportunity) were therefore excluded. Much more socially inclusive legislation was required for these people. Atkins and Hogget remarked that, '*Since 1970 we have seen radical changes in the laws affecting the separate spheres of men and women*' (1984:4). The next section considers to what extent this was successful in addressing the social roots of gender oppression.

## 4.2 The Philosophical 2nd Wave of Gender Law: Any Gender You Want as Long as it's Heteronormative

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What might be identified as the 2<sup>nd</sup> wave of gender legislation initiated from the findings that there were differences inherent in the identity 'woman' (Kristeva, 1992[1979]:222-4) and that transitioning people were different to their birth-attributed gender. However, genders for many feminists and legal specialists were still identity, rather than subjectivity, based so there was no recognition of gender as genre and genealogy. As noted in chapter 3 section 1, Alison Stone considered that gender as inherent identity led to the perception of 'fictitious commonalities' (2004:86,89) and earlier, Sandy Stone had considered that,

Under the binary phallocratic founding myth by which Western bodies and subjects are authorized, only one body per gendered subject is “right”.  
(Stone, 1991:297)

The possibility of bodily sex as a personal choice or as a developed phenomenon, rather than an essential attribute, is not a new concept but was prevalent in the days of Pliny the Elder (c.23AD-79AD) and, in his society, was based upon the sexual activity of the individual concerned. According to Whittle and Turner (2007:3.3), the legal assignment of people to one sex or the other derived from the introduction of property laws in the industrial West and the definition of sex for the purposes of law has been a legal morass ever since, in the rare instances when it has been addressed. More and more indicators and aetiologies of biological sex have been suggested and have added to the confusion over how to properly define sex, gender and sexuality.

In the modern legal case of *John A C Forbes-Sempill v The Hon Ewan Forbes-Sempill* (1967),<sup>4</sup> one can see the dualism of sex was enforced and no ground was given to the idea that sex and gender are irrelevant to relationships. However, the judge, Lord Hunter, recognized that sex was a ‘spectrum’ (Whittle and Turner, 2007:4.4), that Ewan was phenotypically male (could penetrate his wife) and that overwhelming evidence revealed Ewan as psychologically male (Whittle and Turner, 2007:4.4). This case was contrary to all others, until 2003, in allowing for the latter two determinants of sexual subjectivity.

However, the case preceded the very important case of *Corbett* in supporting the idea that biological evidence could and should establish to which side of the sexed divide a person belongs. Such aetiologically founded biological determination would lead to Lord Justice Ormrod presenting trans woman April Ashley primarily as the member of a sex, the male sex, rather than as a gendered woman or as an individual with individually developed gender. When British law did come round to providing recognition for a person’s own, but legally sanctioned, interpretation of their gender, with the implementation of the

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<sup>4</sup> John Forbes-Sempill v The Hon Ewan Forbes-Sempill (1967) unreported, Scottish Court of Administration.

Gender Recognition Act 2004 (GRA 2004) and Equality Act 2010 (EA 2010), again, this recognition only extended as far as the two conventional genders.

#### 4.2.1 Corbett v Corbett [1970] 2 All ER 33

April Ashley, a cabaret performer in the 1950s, underwent gender reassignment in 1960 in Casablanca under Dr Georges Burou. She married the Hon Arthur Corbett in 1963 but the marriage was annulled in 1970 on the grounds that April had been born male, in a landmark legal case known as *Corbett v Corbett/Ashley*.<sup>5</sup> The judge Ormrod L J, who had a medical background, considered that sex was determinable by limited medical testing of the body, testing which was not actually undertaken on April (Whittle, 2007a:39). April's gender and/or psychological sex and her interpretation of these, were not considered relevant to the definition of her sexual subjectivity, even though Ormrod used gender, rather than sex, terms in referring to marriage as '*... essentially a relationship between man and woman*' (Whittle, 2002:8).<sup>6</sup> This assumption ensured that a heteronormative and biologically based sex dualism determined sexual subjectivity and prevailed in British law long after this case was decided (Harding, 2007:16).

*Corbett* had the effect of bringing in universal case law prohibiting the marriage of those people that selected medical experts considered to be of the same sex. While portraying April as male for the purposes of *Corbett*, her case actually went on to have the effect of marking trans people as different to either male or female by forcing them to reveal any history of transition when producing documents such as their birth certificate. Trans people were consequently denied any possibility of passing as their preferred gender.

Whittle later argued that sex or gender should not inevitably determine choice of marriage partners (2007:41), which it continued to do with the passing of the GRA 2004 in 2004. The UK government's refusal to allow same-sex marriage can cause anxiety for trans people who are happily married pre-transition.<sup>7</sup>

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<sup>5</sup> *Corbett v Corbett* [1970] 2 All ER 33.

<sup>6</sup> Such a view of marriage as only possible between man and woman was also taken by Sir Mark Potter in his ruling in *Wilkinson v Kitsinger*, as described in the next section.

<sup>7</sup> For instance, Pieta Schofield was in a marriage for 22 years and faced the prospect of having this annulled if she gained a GRC (Schofield, 24 June 2009).



When Whittle asked, 'Does not being a man make me a woman, or does not being a woman make me a man?', (2002:5) we could ask why the individual should not have the choice to be either, none or another gender? This could be a positive gendered outcome if the law did not continue to segregate access to marriage by gender.<sup>8</sup>

Echoing the earlier experience of Herculine Barbin,<sup>9</sup> it seems that April Ashley did not have much of a say in, or input into, the determination of her own sexual subjectivity. She had not called for the divorce and there was no organisation like Press for Change to provide her with practical and moral support at the time. If it was accepted that trans people undergo 'gender confirmation treatment', a phrase that Whittle (2002:7) followed Harry Benjamin in adopting in preference to 'sex change', then April's self-representation of gendering would have stood much more chance of being accepted as authentic.

Despite Psychiatrist Martin Roth being involved in the determination of April's sexual subjectivity, Ormrod dismissed the importance of psychological sex in *Corbett* (Fallowell and Ashley, 1982:207,214). April's case revealed that there was no precedent in English law to determine how an individual's sex should be defined. She speculated that the case worked to create a third sex, the representatives of which were excluded from marriage altogether, whether this be marriage to women or men (227). She also ventured that, '*... marriage is not a biological relationship* (229)', expanding this sentiment to state that, '*I do not see that it makes sense to treat marriage as something entirely separate from the currents of social life of which in fact it is one of the key components*' (229). The court ruling ensured that the axe fell on any determination of sex and gender by psychological or social criteria for many decades. The personal effect on April was an annihilation of her self-worth; something that shattered her concentration by challenging her thought process (222). Rejection led to profound loneliness, provoked by thoughtless verbal taunts by the ignorant and hostile.

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<sup>8</sup> De Vos argued that this kind of segregation mirrors that found in the Apartheid system (de Vos, 2007:45) – see sub-section 2.3 below.

<sup>9</sup> See sub-section 2.5 below.

When addressing the general process of the law, April related a feeling that, ‘... *because it is so cold and impersonal a force, out of fear one catches at anything which will give it some human aspect*’ (210). She seemed to provide a narrative desire for ethics of care to replace a distant and essentialising ethic of justice. She also suggested that, ‘*If we were always and only to refer back to first causes, then civilization could never happen at all* (228)’, seeming to criticize the law’s overlooking of the effects of the social construction of gender. No one knows exactly what of sexual subjectivity is natal and what can develop with time, but awareness of this subjectivity as a process seems to provide much more comprehensive insight into individual gendering. As well as portraying the gendered individual as a subject-in-process, April suggested that the legal concept of ‘transsexualism’ was similarly ‘in-process’,

As Christine Jorgensen’s lawyer, Robert Sherman said: “The legal entity of changing sex is only now evolving. It will take twenty years before it is established”. (230)

Much later, Whittle and Turner observed that, ‘... *significant changes to various parts of English law have recently been changed to ensure its gender neutrality*’ (2007:3.1). This development, showing legislation-in-process affected by many years of legal trans-activism, may make progress towards ensuring that gender variant people are not relegated to the margins of acceptable gender and its associated rights. In the case of trans people, this can be done by respecting them as men or women but also by realising that they have to take a special route to realising their gender, just as in the case of April Ashley. It can also be done by recognising and respecting some gender variant people’s gender as different to heteronormativity. Chapter 6 section 3 puts forward the argument that gender variance and trans subjectivity are ‘whole’ or fully developed and valid ways to be gendered.

A step towards acceptance of a wider range of trans subjectivities as legally valid was made in judgments of the New Zealand case of *Attorney-General v Otahuhu Family Court*,<sup>10</sup> but still not in relation to the context of marriage (Sharpe, 2006:628). In this case Judge Ellis emphasized the recognition of

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<sup>10</sup> New Zealand Attorney-General v Family Court at Otahuhu [1995] NZ Fam LR 57.

social and psychological subjectivity in the definition of sexual subjectivity and the lack of socially adverse effects that transitioned gender has for society in general. However, Law Lecturer Andrew Sharpe deduced that Ellis J's focus on social and psychological subjectivity involved an expectation that such subjectivity be congruent with heterosexual relations. Sharpe argued that latent homophobia in the law was here made transparent since rulings in previous cases had masked such homophobia by referring to the importance of bodies that function together sexually, a legal focus identified by Sharpe as 'functionality', rather than implying that certain bodies are sexually compatible by gender alone (Sharpe, 2006:629). Nevertheless, the case helped initiate the move to including (albeit heteronormative) trans subjectivity into society, a move later bolstered by cases like *Goodwin, 'I'* and *L v Lithuania*, as explained at the end of this section.

Legal academic Ruthann Robson also noted how, in the US case of *MT v JT*, heteronormativity 'Othered' alternative gendered partnerships from marriage by focussing upon sexual capacity in marriage (2006:300). Robson considered that this focus on functionality was based on a conservative '*concept of normalcy*' (2006:301). More positively for trans people, functionality has been taken up by trans advocates as a potential way to define parenthood by focussing upon what people actually do as parents. This application of functionality can be found in Whittle's focus on parenting behaviour as described in sub-section 4.2, and trans legal advocate Taylor Flynn's use of the similar term 'substantive analysis' to examine court determinations of family relationships,

Transgender family law decisions reflect society's almost fetishistic attitude toward trans individuals, evident in the courts' reductionist tendency to replace substantive analysis (whether Michael is a good parent) with a relentless focus on sexual anatomy (whether Michael has a penis). (Flynn, 2006:33)

#### 4.2.2 The Gender Recognition Act 2004

In gender law following Corbett in the UK, sex was construed to be an essential feature of human existence that automatically produced heteronormative sexual identities. Sex as an essential feature encouraged separatist views of gender.

Theorists working from stances akin to postmodernism and queer theory, such as Judith Butler and Michel Foucault, questioned the perception of gender as ghost in a sexed machine, as if the two were disconnected (Cowan, 2005:71). Psychoanalytical feminists also suggested that sex and gender are connected, but some, such as Kristeva, theorised that this does not mean that the connection is immutable.

Even when the determination of gender by sex assigned at birth was addressed, the law generally still strove to portray sex as an essential feature (72). Senior Lecturer in Criminal Law and Medical Jurisprudence Sharon Cowan saw the roots of this essentialising operation deriving from something akin to Sharpe's concept of the law's homophobia,<sup>11</sup> *'Because post-operative transsexual people are, literally "made to fit" within existing sex and gender structures, they are no longer a threat to the heteronormative order (72)'*. Did the introduction of the GRA 2004 in Britain change the legal perspective of sexual subjectivity?

35 years after the ruling in *Corbett*, The GRA 2004 in Britain allowed trans people full legal recognition of their preferred gender. To some extent, this Act recognised gender as linked to self-perception. When enough documentary support for the preferred gender is deemed to have been submitted, the Act provides recognition of preferred gendered status, and takes this to have existed from birth. The Act does not require that applicants for Gender Recognition Certificates undergo or promise to undergo reconstructive surgery (Whittle, 2007:36). However, applicants do have to convince the Gender Recognition Panel that they are or have been subject to bodily dysphoria and they do have to live in a heteronormative gender role for two years<sup>12</sup> (the Real Life Experience) and convince the Panel that they will continue to do so indefinitely. The requirement is to self-represent as man or woman, rather than as gender variant. The Act still doesn't allow for perspectives such as that held by Christine Jorgensen's Endocrinologist, who claimed that there is no such

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<sup>11</sup> As outlined in chapter 4 sub-section 2.1.

<sup>12</sup> From [www.pfc.org.uk](http://www.pfc.org.uk) – Gender Recognition Act FAQs.

thing as 'normal' maleness and femaleness and that most people are located somewhere on a sexed continuum (1967:159).

Another drawback of the GRA 2004 for some trans people, harking back to the heteronormative appropriation of marriage emphasised by *Corbett*, is its requirement that an already married partner should divorce before gaining a Gender Recognition Certificate (Whittle, 2007:37). This means that marriage is still gender related in Britain and one can only choose a marriage partner from the opposite heteronormative gendering. The situation in the USA is much the same, for instance Transstudy participant Kimana had to reveal and pass as her natal sex for the purpose of marriage to her female partner. Kimana commented, '*It just proves that our government doesn't understand that people fall in love with people, NOT specific genders or sexes*' (Dec 9th, 2005, in <Trans Marriage>). Requirement that a trans person divorce after years of marriage may dissolve, or at least interrupt and re-define, an entirely functional relationship.

Professor of Political Science Paisley Currah described how, in addressing the validity of a transitioned person's marriage, the court in the Texas, US case of *Littleton v Prange* drew from 'common-sense' religious discourse to inform 'common-sense' gender discourse in order to deduce that the defendant, Christie Lee Littleton was a male (Currah, 2009:248). Conversely, Whittle and Turner (2007:8.2) described how, in *House of Lords* debates on the content of the GRA 2004, the fertility expert/medical doctor Lord Winston pointed out the infinite complexity of defining biological sex, ultimately interpreting the enterprise as a futile endeavour.<sup>13</sup> Whittle and Turner (2007:8.7) argued that such inputs to the GRA 2004, and its reinterpretation of biological sex as being the same as gender, meant that the Act 'performed' sexual subjectivity, in the sense of the on-going negotiation and production of gender theorised by Judith Butler.

However, Cowan proposed that legal operation still performed covertly to maintain the sex/gender distinction. This was despite recent legislation,

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<sup>13</sup> Promotion of acceptance of gender variance, versus the search for aetiology, is also discussed in the conclusion to chapter 2, chapter 6 s. 4, chapter 8 sub-section 3.2 and chapter 9 sub-section 2.1.

including the GRA 2004, which purported the view that gender determines sex, and despite advances in gender recognition made in Goodwin, ‘... *it remains the case that legal reasoning does nothing to challenge the distinction between sex and gender or the biological and therefore ‘natural’ basis of that distinction* (2005:73).’ As discussed in ‘That Woman is a Woman’ (2004), Cowan saw the heteronormativity of UK law continuing in the Bellinger case.

Although the GRA eliminated the demand that transition can only be possible with surgery, the GR Panel still demands attendance of a legal and a medical expert who may well be guided by traditional and conservative professional discourses in assessment of gendered subjectivity (76). Cowan suggested that the GRA was designed to accept gender, leaving sex as unchallenged, supporting the view of sex as essential, as a common-sense feature that everybody understands (78-79,92). In effect, the heteronormative order prevails as transitioning people are expected to assimilate into heteronormativity for the purposes of gender recognition, with little opportunity to articulate their own views about the matter.

Cowan described how, differing to legal debate in the UK, recent Canadian law has investigated the construction of gender as a result of discussing law in discrimination contexts (69). Reviewing the Canadian legal situation from the 1990s onwards, Cowan believed that more exploration of gender issues occurs in discrimination cases than in marriage cases because, ‘... *there is less at stake, heteronormatively speaking* (81-footnote)’. For instance, instead of determining aetiology of sex in *Mamela v Vancouver Lesbian Connection*, the court treated Mamela as belonging to the wider category of transsexual (83). In such instances, Cowan argued that,

The court thereby accepts self-identity and avoids messy debates over sex/gender criteria. It does not however provide clear guidelines as to what exactly is a transsexual person, and whether it is or should be completely a matter of self-definition. (84)

In a less positive case for gender variant people, Cowan described how, in the case of *Nixon v Vancouver Rape Relief Society*, VRRS saw no possibility for an individual to escape the influence of perceived gender via ‘social and lived experience’ (85). The VRRS argument was based on gender rather than

essential sex but was so deterministic of gender, states Cowan, that gender was completely essentialised (86). The court and VRRS had the ultimate say in whether Nixon was a woman for the purposes of the case (87). The voice of the transitioning person was denied, lending them no possibility for choice of inclusion into womanhood. Cowan concluded that, for the law, reality of gender depends on the situation. She noted how the feminist concept of rape has tended to work from a separatist discourse of sexual subjectivity, hence the difficulty for trans people to be accepted to provide support (89).

Nevertheless, sensitive negotiations of womanhood such as those addressed in *NvVRRS* require sensitive claims to inclusion by transitioning women. The kind of dialogic negotiation described in chapter 5 sub-section 5.2 is of great use in these instances,

... even when one is pronounced legally a woman, there may be situations where living as, working as and being a woman is also dependent on careful negotiations with the surrounding community. (90)

#### 4.2.3 The Civil Partnership Act 2004

British trans people who wish to reengage in a formal relationship with their original partner after transition are afforded this opportunity via *The Civil Partnership Act 2004*. However, as pointed out by South-African constitutional law scholar Pierre de Vos, civil partnerships suffer in comparison to marriage because marriage is based largely on its 'symbolic impact' (2007:47). Marriage is still recognised as being 'the real thing' by many, since many people have grown up being imbued with romantic ideas of this social union. Marriage also often provides superior partnering benefits to those afforded by civil partnership (Whittle, 2007:41). All gay/lesbian/same-sex people, in most nations, find themselves 'cleansed' from marriage for no socially functional reason other than maintenance of the heteronormative status quo.

De Vos concluded that marriage and civil unions in South Africa came to resemble apartheid segregation of whites from blacks, while draft legislation pronounced, in rather *Animal Farm*-like manner, the recognition of same-sex relationships as 'separate but equal' (de Vos, 2007:45). This was, according to de Vos, a covert attempt to segregate homosexuals into civil partnerships, in order to placate those who could not bear the thought of non-heterosexual

marriage. People were again being stereotyped as gender/sexualities before being classed as individuals with the ethic of universalism trumping ethics of care. Under pressure from LGBTI activists, the South African Constitutional Court eventually implemented the *Civil Union Act* that allowed people a choice of civil union or marriage. However, de Vos considered that access to marriage for same-sex people in South Africa is still restricted in subtle ways even if it may now appear to be open to all (2007:50).

This comparison of partnership segregation with apartheid is discussed by legal queer theorists Tucker Culbertson and Jack Jackson in 'Proper Objects, Different Subjects and Juridical Horizons in Radical Legal Critique', who take up Andrew Sullivan's observation that, on the surface, same-sex marriage in San Francisco and Massachusetts challenged the social exclusion of gays and lesbians,

... prohibitions against, or facial differentiations of, same-sex marriage create the unjust "sense of being 'separate but equal'" (Sullivan, 2004:A21). It [same-sex marriage] is thus the death of homosexual apartheid in the United States ... .' (140)

However, these authors interpreted the inclusion of gays and lesbians into marriage as a hailing into heteronormativity, an assimilation and integration producing equality rather than equity between genders. This apparent equalising didn't really address the social roots of oppression (140). The authors argue that much gender variance is still excluded from the premier type of loving relation as only 'named' genders can marry and other relationships are perceived as inferior 'Others' of marriage (141),

... while there may be formal legal equality emerging between self-identified heterosexual and homosexual married couples, there continues to exist a regime of inequality between such couples and everyone else, coupled or not. (144)

Culbertson and Jackson theorised assimilation into marriage as acceptance into an apparently 'common-sense' and 'natural' discourse,

... the aim here is not to argue against Engel's or Marx's theorising of gender; rather, it is to highlight a left tradition of radical critique of the



institution of marriage, a critique that historicizes the institution and thus politicizes it: once denaturalized, it cannot be expelled into civil society beyond the reach of political interrogation. (141)

The authors note Fineman's observation that it was feminists who originally identified marriage as a locus of hidden oppression (142). However, feminists aligned with gay and lesbian integrationists who celebrate same-sex marriage perhaps thought that gays and lesbians might seek to change the more detrimental aspects of marriage from within.

### 4.3 'Othering'

From discussion in the two previous sub-sections it can be seen that some gender variant people have often been more 'Other' to heteronormativity in the law when it pertains to gender than trans people who undertake a fully heteronormative gender transition. However, it can also be seen that transitioning people have also been significantly 'Other' in this way. Whittle noticed how 'Othering' had for a long time occurred to women in the eyes of the law; they became 'Other' to men or 'not-men' in the heteronormative structure of sexual subjectivity (2002:14). 'Woman' was not a stand-alone 'whole' gendering in this hegemonic<sup>14</sup> set-up but relied upon the gender of man for its own definition.

As seen in the cases of *Corbett* and *Wilkinson v Kitzinger*, 'Othering' has been carried out by the law applying categories while not actually defining those categories. People are perceived to belong to the categories of either man or woman so that the law can discriminate indirectly against those who do not. An instance of such indirect discrimination was identified by Stychin where, in the US case of *Bowes v Hardwick*, the seemingly category free law against sodomy really targeted gay relations (1995:149). Sodomy and gay relations are associated by most so the effect was a curfew on such relations. This kind of 'definitional incoherence' marked a negative use of queering so that the law could avoid defining gender variant subjectivities.

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<sup>14</sup> Gramsci believed that hegemony notably manifested as skewed symbiotic social relations balanced in favour of a dominant groups such as the bourgeoisie, capitalism, the integral state, civil society or the ruling class (Bocock, 1986:27,28,29,32,33,35,36).

In 'Foucault's Monsters, the Abnormal Individual and the Challenge of English Law' (2007) Sharpe dealt with the metaphor of 'monster' as a way of identifying how some people have been identified as 'Other' in French and English law. He found that the 'monster' was that which contravened common-sense schemata such as those found in discourses of law, medicine and heteronormativity. Although the term 'monster' is not used in Western industrial society to identify anyone but serious criminals any more, the concept still underlies the effect of some stated and unstated categorisations. The process of silent and secret negotiation may reproduce the unstated categorisations. French philosopher Georges Canguilhem, according to Sharpe, theorised that the most feared kind of monster was that which is formed from living flesh,

Indeed, for Canguilhem, "[t]he qualification of monster must be reserved for organic beings." The term monster is another name for hybridity or "otherness within sameness," and typically refers to a creature that is both, and simultaneously, human and non-human. (Sharpe, 2007:385)

Sharpe described how, for Canguilhem, that which transgresses the law is also monstrous but that science helped reduce superstitious views of irregular bodies as monstrous,

Canguilhem is led to the conclusion that today "life is poor in monsters." For with the development of science a view of body irregularities as having a monstrous cause could no longer be sustained.

While deformity or disability "may well be something that upsets the natural order" it does not lead to the designation monster because "it has a place in civil or canon law ... ". (386)

This may be because disability is often visible difference and the formal and informal search for aetiology regularly demands visibility in some respect. For Foucault the monster confounded legal classification and aetiology. This confusion of classification can be seen in the case of *Corbett* and many legal trans cases that followed around the world. Sharpe noted that Foucault drew from Canguilhem's theory to posit that the abnormal individual in modern society has invisible difference, as opposed to an irregular body,

... the monstrosity of the abnormal individual lies in interiority or psyche.  
... Foucault's genealogy of the abnormal individual serves to foreground a shift from the body to the soul as the object of legal concern. ... the abnormal individual's monstrosity is of an invisible kind. (388)

Foucault's move to conceive of the monster as deriving from invisible difference seems to tie in with the modern situation of gender variant people. In most cases, gender variant and/or pre-operative trans people seem to have no observable different external or internal biology.

Sharpe's main proposal is that a different branch of genealogy led to a different development of the category 'monster' in English law than in French law in the modern era. Here the 'monster' became the 'unnatural' body, rather than 'invisible' difference, where, '*... monsters became increasingly fantastic over time*' (394). Despite this difference in categorisation, as Sharpe pointed out, Foucault demonstrated how genealogy created categories from previous categories, whether in French or English law (390). Therefore, 'monsters' were developed through genealogy, rather than defined from biological analysis, albeit in different genealogical directions in French and English law.

Since the concept of gender transition was developed, gender variant and trans people have been legally perceived as 'Other', and therefore as monstrous in an unstated way, to heteronormativity. This is only ameliorated to some extent if they seek to assimilate fully into heteronormativity. They are often still socially *perceived*<sup>15</sup> as 'Other', even with full transition and reassignment. Recuperation into heteronormativity has been imposed upon trans people for much of history and in many cultures. This was famously the case for Herculine Barbin, a hermaphrodite living in 19<sup>th</sup> Century France, who was forced to choose one heteronormative sex or the other, rather than the socially unacceptable subjectivity of being something other to the two. Michel Foucault noted how, in Herculine's time,

... hermaphrodites were free to decide for themselves if they wished to go on being of the sex which had been assigned to them, or if they preferred

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<sup>15</sup> The legal concept of perception, in relation to gender difference, is addressed below in this sub-section and in chapter 9 sub-section 3.3.

the other. The only imperative was that they should not change it again but keep the sex they had then declared until the end of their lives ... . (Barbin and Foucault, 1980:viii)

It was no longer up to the individual to decide which sex he wished to belong to, juridically or socially. Rather, it was up to the expert to say which sex nature had chosen for him and to which society must consequently ask him to adhere. (Barbin and Foucault, 1980:ix)

Although looking at his case retrospectively, we can deduce that Herculine was probably intersex or hermaphrodite. Being based on a Roman law system, the French legal system required Herculine to be one gender and one sex only. As Herculine was in love with a woman, she agreed to become a man despite his misgivings. As Hercule, she left his home town and went to Paris where shortly afterwards she committed suicide when she could not form a consistent image of herself as a gendered being, largely because of the inappropriateness of his gendered upbringing (Barbin and Foucault, 1980:xi, Whittle and Turner, 2007b:3.7).

Gender variant people can still often find themselves identified as 'Other' to heteronormativity without being protected by any legal status as 'Other'. This can even happen to someone possessing a Gender Recognition Certificate, as happened when a *TransEquality* case client found that people who are on the Gender Recognition Register can be traced by others using the differential between their original birth certificate and their new one. In such a case it would seem that Article 8 of the Human Rights Act 1998 (HRA 1998) and possibly s. 22 of the GRA 2004 are flouted. However, 'Othering' more often happens when other people decide for themselves that a person is gender variant or trans, identified by gender variant people as 'reading' or as a failure to 'pass'; a phenomenon described in the Equality Act 2010 as 'perception' with regard to transitioning people.<sup>16</sup>

Those who have gendering that seems to fall outside of accepted heteronormativity will be targets for abuse from many sections of the

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<sup>16</sup> Perception is delineated in the EA at EA 2010 (c.15) Pt.2, Ch.2 (4).

community, sometimes even including the subtle complicity of public authorities. Trans subjectivities seem unreal or deviant to many and so will be pilloried for their apparent flouting of social mores. This abuse can be covertly socially sanctioned for years until perpetrators get bored or victims are forced to move from jobs or homes or families. Although the EA 2010 affords protection for those who can demonstrate that they have been perceived to be 'Other', in the sense of being read as having the protected characteristic of 'gender reassignment', this can come too late for the harassed trans person.

In the legal cases of *Goodwin* and *I* (2002)<sup>17</sup> the European Court of Human Rights (ECtHR) recognised that transition is a far from easy process for the transitioning subject and considered that the aetiology of trans subjectivity could not be fully determined. Therefore, this court proposed that trans people's gendered subjectivity should be recognised before and during transition, and not just afterwards, in order to recognise people's genuine efforts to transition and to support inclusion for transitioning subjectivity rather than to pursue a so far futile quest for its aetiology. Because of trans people's concerted efforts to realise their preferred gender, the ECtHR determined that trans people should not be treated as inferior 'Others' to heteronormativity and that their preferred gendering should be given full recognition in law. The ECtHR also determined that, in the case of *Goodwin*, transitioning people held real gendering for the purposes of marriage, even if this gendering did not consist of proven biological difference to others with the same natal sex, and even if a marriage partner could not procreate.

However, those who are deemed not to fit a heteronormative schema, despite often making efforts to do so, still often succumb to social 'Othering'. In 'The Lesbian Mother: Questions of Gender and Sexual Identity' Legal Lecturer Sarah Beresford dealt with the issue of to what extent lesbians are perceived to hold real gendering for the purposes of being accepted as mothers. She argued that lesbians should be perceived as grown up by the law; just as able to take on the mantle of responsibility as the young women in Gilligan's Abortion Study.

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<sup>17</sup> *Goodwin, Christine v UK Government*, Application No 28957/95 (1995) ECHR; *I v UK Government*, Application No 25608/94 (1994) ECHR.

Moran et al describe how Beresford provided an ethics of care like investigation of the legal and actual category of 'woman',

... her detailed analysis of case law and the reality of law in practice serves to reveal a divergence, or 'gap', between the constructions, expressions and representations of women's self-identity and those that are imposed upon them by law. (1998:4)

Beresford noted that,

... the law's concept of lesbian identity cannot be easily reconciled with the diversity of women's experiences and sexual identities. Lesbian mothers are forced to inhabit a 'legal body' not of their own making and construction. (1998:57)

This legal body is simply that of the 'woman', where woman is again expected to be the stereotyped 'Other' of man. This body derives from a history of woman as property of the husband with no legal voice within marriage (58). It is a body with a history of being expected to be seen (as heteronormatively attractive) and not heard, leading to consequences such as lesbianism remaining unnamed,

Lesbian identities and experiences, have a long cultural history, although much of that history remains undocumented, concealed or invisible ... . (59)

For the lesbian to be a 'mother', she has to 'mimic' the construction of 'woman' as heterosexual. As 'motherhood' is understood in terms of heterocentric normativity, the sexuality of motherhood is rendered invisible. (1998:60)

The heteronormative monopoly of motherhood engenders a heteronormative monopoly in care, because heteronormative mothers are seen to be society's main carers. This subsequently creates a cultural barrier to potential inclusion into, and involvement with ethics of care for those with other sexual subjectivities. In a similar argument to the one put forward in *X, Y and Z* by Whittle, Beresford asked why a parent cannot be primarily defined as such by their relationship to their children; by what they do rather than what they are,

As a mother, a woman is further constructed according to the distinction 'married' or 'unmarried', which in turn are made to signify respectively 'good mother' and 'bad mother'. Here we have categories of mother which are defined not in terms of the relationship between the child and the mother, but by reference to the marital status of the mother ... . (1998:61)

What is important is not necessarily what sexual identity is 'better' than another, but the quality of parenting. (1998:64)

We can deduce from Beresford's arguments that lesbians are better off, at least as part of a short-term strategy, appearing and behaving in a heteronormative way, just as has been the case for transitioning people until quite recent times.<sup>18</sup> We are all taken to intuitively know how to behave in such a way; we are all expected to be 'in' on the heteronormative schema. Judith Butler saw that this was also an assumption inherent in DSM gender classification (2006:289). Just like gender variant people, including trans people and the intersexes, lesbians were, and to some extent still are, expected to pass and not be political; not to have a voice.

As Beresford indicated, those in positions of high discursive power allocate the terms on which gender variant people can enter society, an administration of authority which Whittle identified as,

... the hegemonic processes of government that continue to set the boundaries within which normalisation and absorption into society are allowed for 'outsiders'. (1998:42)

In 'Gemeinschaftsfremden' Whittle addressed how compulsory pre-operative sterilisation 'socially cleansed' trans people from biological parenthood and from ownership of their bodies in some societies (1998). This was an extreme incidence of the 'Othering' of trans people from heteronormativity. If a society couldn't prevent trans parenting for trans people by biological means, for instance by sterilisation, then it seems that it would attempt to prevent it by social means, as in the case of X, Y & Z. Until trans-authored texts like *Respect and Equality* by Whittle started to emerge, few who were subject to discourses

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<sup>18</sup> As outlined in chapter 2 s. 3 and chapter 8 ss. 1 and 2.

of heteronormativity and gender transition had sufficient voice to stand a chance of modifying these discourses.

Professor of Sociology Morgan Holmes identified a more positive allocation of terms in which gender variant people can enter society than those described by Beresford and Whittle. Holmes described how, on the surface at least, the 1999 ruling of the Constitutional Court in Bogotá, addressing the gendered position of an intersexed child, provided recognition of intersex as a sexual subjectivity of its own, while not following this with a demand for rehabilitation into heteronormativity for the child concerned (2006:102). This court decision followed legal developments identified by Holmes where children who could articulate themselves could gain some measure of agency in self-definition of gender (104). The Bogotá court determined that children are not born with the autonomy needed for ability to choose, but can develop some measure of this feature (111).

Holmes described how, previously in Columbia, gender reassignment surgery was previously imposed on intersex children without their consent (105). Just as for most trans children and those involved in their transition, heteronormativity was the goal for all parties concerned, except possibly for the children involved. Just as was the case for Herculine Barbin, social acculturation meant that only heteronormative genders were real and normal and that both in one body was not acceptable. Holmes aligned with later legal developments arguing that intersex conditions are not necessarily pathological and that most intersex people, from the commencement of adulthood onwards, can give informed consent for treatment (107).

However, Holmes theorised that, in contemporary industrial, including legal, culture, one cannot be a whole person without falling in line with the heterogendered dualism of complimentary 'Subject'/'Other',

For Marianne Valverde, the heterosexism of everyday assumption appears quite clearly in the cliché that "opposites attract." The essentialist notion that sexual pairing through opposition is the only appropriate mode has enormous practical and ideological consequences. (Holmes, 2006:110)



Single people, homosexuals and bisexuals are under suspicion and are often perceived to be inferior because of their flouting of this dualism.

Nevertheless, in a similar way to the Florida court's consideration of the best interests of the child in the *Kantaras* case, as described by Flynn (2006:45), the Bogotá court moved towards more of a focus on the well-being of the child and less on the upholding of social institutions (111). Holmes described how, for Barbin in seventeenth century France, allocation of gender was the preserve of the legal establishment (111). In the Bogotá case, the court debated whether, if the child wishes to define itself as 'other' in a gender variant or intersexed senses, it had the right to do so. Nevertheless, this right to definition transpired to still be subject to certain family circumstances (112) and reassignment could still sometimes be applied to a new born infant (113:top).

In assessing the Bogotá case, Holmes displayed a kind of postdifferent ethic when calling for a focus on valuing difference, or 'otherness' (small 'o'), rather than searching for aetiology,

... it is worth asking why so many conditions are medicalised and why we seek to "normalise" them when we might just as easily seek to value them. (1998:118)

This and the previous chapter sections demonstrated how a philosophical or gender normative 2<sup>nd</sup> wave of case law and gender legislation eventually implemented advances in the recognition of trans people's preferred gender, but only for heteronormative identity, rather than for non-transitioning gender variant subjectivity. From *Corbett* until the implementation of legislation such as the GRA 2004, transitioning people had been 'Othered' from marriage, parenting and social life by having a legal definition of sexual subjectivity supposedly based upon biological sex imposed upon them. The next two sections describe the move towards legal self-definition for trans people, mirroring the 3<sup>rd</sup> wave emphasis on articulation of subjective difference.

## 4.4 Agency and Communion: Trans People's Involvement in the Legislative Process

Chapter 5 sub-section 5.3 introduces 'agency' and 'communion' as components of the critical discourse analysis tailor-made for this study. Since the mid-1970s trans people have liaised with one another in order to increase both for trans people facing the complexity of the law. For instance, after working with organisations such as The Gender Trust and the Beaumont Society, Whittle coordinated the FTM Network from 1989 until November 2007. In 1992 he founded Press for Change with Mark Rees, actress Myka Scott and airline pilot Krystyna Sheffield. This section introduces key legal cases which, often in conjunction with the trans help groups such as those mentioned, engendered trans people's active involvement with the legal definition of, and protection for, trans subjectivity.

### 4.4.1 *P v S and Cornwall County Council, Case C-13/94 [1996] IRLR 347, ECJ*

In 1996 the transgender lobby group Press for Change played a key part in supporting activist 'P' against her former manager, 'S', and employers Cornwall County Council (*P v S & CCC*).<sup>19</sup> Employers could henceforth not dismiss an employee in Britain simply because the employee underwent reassignment. As mentioned in Press for Change case notes,

Trans people might still have no job security today had a training manager from Cornwall ['P'] not responded to her dismissal by taking her employers all the way to the European Court of Justice in 1995.<sup>20</sup>

Workplace discrimination against trans people was commonplace until *P v S & CCC*, and some employers discriminated equally (badly) against trans men and trans women.<sup>21</sup>

Whittle and Turner observed that *P v S & CCC* was based on the definition of gender, not sex, and that several discrimination cases influenced by *P v S & CCC* have consequently not relied on surgical status of the trans individual as evidence of their sexual subjectivity (2007:7.3). The GRA 2004, as noted in

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<sup>19</sup> *P v S and Cornwall County Council, Case C-13/94 [1996] IRLR 347, ECJ.*

<sup>20</sup> From: <http://www.PressforChange.org.uk/node/1025>.

<sup>21</sup> As discussed in relation to use of the SDA in sub-section 1.1 of this chapter.

sub-section 2.2 above, has formalised this ruling by eliminating physical reassignment as a necessary condition of belonging to one's 'acquired' gender. Both because of the individualised focus of Press for Change, and the interpretation of gender gained from 'P' herself, trans activists and legal participants had begun the imbuing of legal processes with the notion that an individual-orientated approach is needed in addressing the issue of personal sexual subjectivity.

#### 4.4.2 X, Y and Z v UK [1997] 24 EHRR 143, ECHR

Sometimes a trans person could find themselves as both lobbyist for anti-discriminatory law and the subject of such law. This was the case for 'X' when even a cursory glance at the family life of petitioners 'X,Y & Z' revealed a happily functional family. 'X' (Stephen Whittle) fulfilled every interpretation of the definition of fatherhood except for the then societally and legally required one that he should be of the correct medically defined and determined sex. In a later interview 'X' asked,

What is a father? ... In law we do not have a definition of a man, only a series of ascribed roles. Every other male parent of a child by donor insemination is allowed to register himself as the father of the child. (Grice, 22 March 1997)

In the case of X, Y & Z,<sup>22</sup> people disputing 'X's' right to be a father cited danger to the family being of primary concern.<sup>23</sup> What they really seem to have meant is danger to the concept of the 'nuclear family', a term introduced by Anthropologist George Murdock in 1947, traditionally meaning a family where parents are uncomplicatedly heterosexual. As evidenced by the discussion of marriage in section 2 above, legal definitions of gender have been linked to the protection of the idea of the nuclear family as social structure. For instance, one can transition gender but one must transition into a heteronormative sexual subjectivity in order to enter the realm of marriage or to be recognised as a

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<sup>22</sup> X, Y and Z v UK (1997) 24 EHRR 143, ECHR.

<sup>23</sup> For instance, see Don Horrocks' challenge put to Whittle in the BBC television debate programme, 'Newsnight' (2002) (see Friday, 12 July, 2002, 16:04 GMT 17:04 UK, <http://news.bbc.co.uk>). Horrocks neglected to mention the small incidence of families splitting up because of the gender reassignment of one partner compared to the number of families splitting up because of other reasons.

father. Journalist Jane Czyzelska's review of trans man Thomas Beatie's giving birth to a baby girl highlights the fact that prejudice aimed at trans people is often to do with their trans status rather than their functioning as parents or family members,

Undoubtedly however it is prejudice about Beatie's perceived gender transgression that lies at the root of the objections to his decision to give birth, and not the wellbeing of their child, that is of concern. (Czyzelska, Sunday July 6, 2008)

The ECtHR argued that the failure of UK law to recognise the relationship between 'X and Y' as that of husband and wife did not constitute a failure to respect family life. This left out any consideration of X's right to define his own identity, and his long established and accepted social role as father. Also, the social benefits that the family would accrue if 'X' were defined as the father and was permitted to marry 'Y' were denied. The court could have facilitated 'X's' legal recognition as father when considering Article 8 of the European Convention of Human Rights which states that, '*Everyone has a right to respect for his private and family life, his home and his correspondence, ...*'.

Dissenting Judges Casadevall, Russo and Makarczyk seemed to acknowledge the hard work that 'X and Y' had put into creating the optimum conditions for their family to flourish. Judge Vilhjalmsson reasoned that the issue was not about 'X's' biological connection to the child but was rather about his classification as a male and a man since other non-biologically related men had been classified as fathers to their family's children. Judge Foighal emphasised the European government's agreement to implement a duty to take special care of oppressed individuals and Judge Gotchev considered the case from the point of view of the child involved, rather than from that of those who have a stereotypical view of a family. All these dissenting judges' opinions promised hope that trans people would have their personal circumstances taken into account in similar future cases, in the manner of investigative ethics of care, rather than simply by means of examining their attributed social identity.

Transstudy participants Monica and Sadie addressed the <Trans Parenting> topic question of, 'What sexual subjectivity is the best one to present to one's children?' They suggested that the optimum such subjectivity would be the

most genuine one, whether it fitted in with the requirements of the nuclear family or not (Jul 18th, 2005, Jul 19th, 2005 and Jul 21st, 2005). Here we find narrative support for the consideration of the individual's interpretation of their own sexual subjectivity and parenting status, and the actuality of a parent's relationship with their children.

The nuclear family is not inherently functional or dysfunctional, but parents should have the choice of whether to form such a family and to describe it as such. Supporting this option for choice of family structure, Women's Studies/English Professor Imelda Whelehan explained how family was an important locus of social cohesion for black feminists even though radical and socialist feminists had severely criticised the social institution of the nuclear family,

... black feminists were faced with the reality that the family forms they experienced were more often than not the only cushion against systematic racism in the public sphere ... . (1995:114)

Whittle extended the wish to eliminate gender stereotyping of families and parenting to a desire to eliminate gender stereotyping of child development. He visualised this evolution of parenting/child development as a reconstructive project,

The International Bill of Gender Rights promotes a vision of the world in which child-bearing and child-rearing are by and about the development of people rather than by and about the development of men and women. This vision is symbolic of the reconstructive project of the new trans community; going beyond the deconstructive enterprise of modernity. (1998:53)

Legal/queer theorist Adam P Romero detected a similarly reconstructive project, in the way that Professor of Law Martha Albertson Fineman wished to establish the concept of a queer family structure,

Fineman would cast aside the current concentration on marriage and, more generally, the sexual connection as the core familial relationship. Instead, Fineman would completely re-orient society's concern for family so as to revolve around the caretaker-dependent relationship, regardless

of who is the caretaker and who is the dependent. Fineman's vision is queer in a particularly interesting way because it does not involve, let alone require – as queer projects often do – an affirmation of sexuality; indeed, Fineman urges an utter refiguring of our understanding of familial intimacy – drained of sexuality and focussed on care and dependency. (Romero, 2009:194)

In a similar way to Whittle, Fineman, and Beresford (1998:61),<sup>24</sup> Flynn addressed the question of whether parenthood should be defined by what one does rather than what one is taken to be, mentioning that,

... the depth and intensity of a parent's bond in no way depend on a person's route to parenthood ... . (Flynn, 2006:42)

In the US case of Suzanne Daly, Flynn noted how the Nevada Supreme Court ruled that Daly had terminated her status of parenthood simply through undertaking gender transition (42-43). However, if it is taken that she terminated fatherhood it doesn't logically follow that she had terminated parenthood. This case demonstrated that the discourse of parenting was still very gendered, just like the discourse of marriage.

The Florida Court of Appeal provided a more empathic response to the situation of Michael in the legal case *Kantaros* (45). Even though it invalidated Michael's marriage because of his gender transition, the court admitted that it had not considered the parent-child bond and the best interests of the child involved. Flynn considered that the doctrine of estoppel has the potential to be deployed in this legal case, so that the court can consider the reality of the parent-child bond rather than defaulting to the apparently prime factors of biological or heteronormative kinship.

Some US courts have moved on to recognise the concept of functional or de facto parenthood and there is, albeit a narrow, possibility that this could be applied to trans parents' situation,

Some courts have used the doctrine of functional parenthood, also known as "de facto" parenthood, to grant varying degrees of continuing contact

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<sup>24</sup> As described in section 3 of this chapter.

with a child to persons who have established a parentlike relationship with the child ... . (2006:46)

Flynn provided an example of this process,

Both courts [the highest in Massachusetts and New Jersey] examined the quality and depth of the nonbiological parent's relationship with the child to determine whether she [a lesbian parent] should be extended parenting rights. (46)

Flynn pointed out that only visitation rights are given to functional parents in many US jurisdictions, but that full parenting rights have been extended to such parents in Massachusetts and New Jersey (46).

#### 4.4.3 Bellinger v Bellinger [2003] 2 All ER 593

In the case of *Bellinger v Bellinger* [2003],<sup>25</sup> Mr Justice Johnson refused the application made by Elizabeth Bellinger to gain recognition that her marriage was valid. The Attorney-General decided that she had never been legally female. Johnson J ruled that no definition of female had been provided by parliament but this factor was used against Mrs Bellinger, rather than in her favour. As in the situation of 'X', Bellinger's definition of her own sexual subjectivity was not accepted. In the final ruling no account was taken of the effect of feminising hormones on psychological sex, or of the discovery that the three indicators of sex relied upon in *Corbett* could change to some extent after physical reassignment.

In 'That Woman is a Woman' (2004), Cowan pointed out that the *Goodwin* judgment marked a departure from the legal attempt to define transsexuality via biological aetiology (2004:80). However, the House of Lords in *Bellinger* seemed to cling to gender distinctions between male and female because the issue of marriage was at stake (81), as theorised to be the case in *Attorney-General v Otahuhu Family Court (AGvOFC)* by Sharpe.<sup>26</sup> This connection of

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<sup>25</sup> *Bellinger v Bellinger* [2003] UKHL 21, [2003] All ER (D) 178 (Apr).

<sup>26</sup> See chapter 4 sub-section 2.1.

law with heteronormativity continued in the production of the GRA 2004 and EA 2010 in the form of providing 'gender reassignment' as a protected category,<sup>27</sup>

The Gender Recognition Bill, while reforming some of the worst aspects of UK law on transsexuality, seems nevertheless to perpetuate the fear of contamination of (heterosexual) marriage. It also relies on medical (though non-surgical) determinations of 'successful' reassignment. (90).

Gender variant people retained a lack of agency, with panels of heteronormative people defining their subjective existence. Biology was still used as the common-sense indicator of real sexual subjectivity with sex being perceived as more real than gender (83). Cowan described how, in *Bellinger*, the law continued efforts to determine the aetiology of sexual subjectivity, '*The Law Lords in Bellinger continue the legal quest for the Holy Grail – the truth of sex* (83).'

Heteronormative discourse emphasises essentialised differences and so protracts the idea of separate spheres for men and women, and this discourse is, as we have seen, prevalent in discussions of marriage in law (83). In *Bellinger* Lord Hope saw no possibility of anyone contravening the ascribed barrier of biological sex, mentioning that, '*... A complete change of sex, is, strictly speaking, unachievable* (84).' It will remain unachievable if trans sympathisers who try to make inroads for acceptance of self-description, and for the formation of aetiologies-in-process, rather than concentrating on the search for aetiology, are not involved in discourses of gender variance, feminism, medicine and the law.

Cowan described how the concept of choice of gendered essence, as outlined in chapter 7 section 3, was not extended to Mrs Bellinger and consequently no truck was given to the concept that choice might eventually engender real sexual subjectivity, or might at least reveal hidden sexual subjectivity,

... much reference is made throughout the case to biology and reproduction, with Lord Nicholls following in a similar vein by stating clearly that one cannot choose one's sex: "... self-definition is not acceptable. That

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<sup>27</sup> As discussed in chapter 4 sub-section 5.1.



would make nonsense of the underlying biological basis of the distinction". (2004:84-85)

Also, resistance to the concept of in-process subjectivity, addressed in chapter 6 section 4, could be detected in the decisions deriving from *Bellinger*. According to Cowan,

The judges felt compelled to come to a definite conclusion about Mrs Bellinger's sex for the purposes of marriage and decided that she is not a woman. This result demonstrates a fear of unclear boundaries, especially in the area of sex, and mirrors a similar kind of resistance to intermediate categories and unclear sex boundaries in *Goodwin*. (85-86)

Cowan noted an increasing potential for the voice of the gender variant subject to be heard in the discourse of law, '*... recent cases such as Goodwin and W v W have at least recognised the importance of gender and self-perception rather than relying on birth bodies as the basis for determining sexual identity (86)*'. However, this has still only been within the purview of a heteronormative paradigm,

The trouble is that, as Sandland (2003) has suggested, recognising gender rather than emphasising sex does not necessarily involve eschewing binary and inflexible ideas about what it is to be male/female. (86)

In *Bellinger*, Lord Hope suggested same-sex marriage as a way of allowing trans people to marry. However, Cowan believed, this treated the Bellingers as still not real in their acquired gender and perceived Mrs Bellinger as a homosexual masquerading as the other gender. Mrs Bellinger remained as otherness within sameness, as a monstrous 'Other' to be repelled from sacred heteronormative institutions.

More positively for trans people, in reviewing *Bellinger* in 2003, Lord Nicholls added significant new determinants of sex to those ventured by Ormrod. These four became: '*... the internal sex organs other than the gonads, hormonal patterns and secondary sexual characteristics, style of upbringing and living, and self perception (Whittle, 2007:40)*'. The latter two determinants are of crucial importance to this study since they relate to the idea of subjectivity as

identity-in-process. These two factors depend upon several years' life experience and also relate to Foucault's idea of subjectivity formed from interaction<sup>28</sup> (1998 [1978]:101) or what McAdams called 'agency' and 'communion' (2001).<sup>29</sup>

Mr and Mrs Bellinger actually lost their case significantly because, '*... it would have been legally reprehensible to recognise the marriage of someone who had technically committed perjury at its time in order to obtain it*' (Whittle, 2007:40). The House of Lords decided that in other circumstances a parliamentary process should determine sex for the purposes of marriage while referring to a new seven-point determinant guide, rendering the sex-determinant decision in *Corbett* obsolete. This had the effect of making the then British marriage law incompatible with articles 8 and 12 of the British HRA 1998 since it could not recognise the preferred gender of transitioned people. In this instance, the law was 'in-process' in recognising new interpretations of sexual subjectivity, even though it tended to present such subjectivity as a constant.

#### 4.5 The Philosophical 3rd Wave of Gender Law: Postconventional Ethics?

Drawing from Gilligan's developmental theory (1982), it seems that morality can manifest in different ways by different genders. Morality deriving from men seems more likely to derive from agency and morality deriving from women seems more likely to derive from communion. Nevertheless, according to the social constructionist perspective (including that of Gilligan herself),<sup>30</sup> genders are significantly socially created,

No claims are made about the origins of the [gendered] differences described or their distribution in a wider population, across cultures, or through time. Clearly, these differences arise in a social context where factors of social status and power combine with reproductive biology to shape the experience of males and females and the relations between the sexes. (Gilligan, 1982:2)

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<sup>28</sup> Known by Foucault as reciprocal elucidation (Diamond and Quinby, 1988:xi) – see chapter 5 s. 5.

<sup>29</sup> As described in chapter 5 sub-section 5.3.

<sup>30</sup> Described in chapter 3 s. 1.

The evolution of gender law into an inclusive law-in-process could lessen the propensity to covertly segregate gender by moral judgment and ethics, thereby reducing the propensity to create self-fulfilling prophecies in the form of people with gender-dictated moral development. This section expands upon chapter 1 section 1's introduction to Gilligan's concept of ethics of care, to discuss how she tried to expand its ethical efficacy by imagining a postconventional ethics drawing from gendered moralities traditionally displayed differently by men and women.

Ethics of care seem particularly relevant to the social situation of trans people when relying upon the law, as is evident in the legal cases reviewed in sections 2 and 3 above. These cases demonstrate that the only way to gain accurate insight into trans people's sexual subjectivity and its effects is to investigate the individual's self-definition and the way that their gender manifests in real life. Ethics of care is necessary when more idiosyncratic interpretations of sexual subjectivities are required, as has clearly been the case in trans related legal cases.

The law may perceive gender but gender also perceives the law, especially when deploying a 'view from somewhere' gained from gender exclusion. For instance, Lady Brenda Hale, member of the Supreme Court, and Mavis Maclean, joint Director of the Oxford Centre for Family Law and Policy,

... were working mothers in the 70s, when they were among a group of academics who looked at law for the first time in the context of society and how the laws impacted on women's lives. (Dyer, 9 January 2004)

The womanly gendering of Hale and Maclean seems to have played a significant part in how they perceived the law. Hale didn't call for women to become equal to men but to become full citizens in their own right. Also, she seemed to embody Gilligan's ethics of care in the way that she could empathise with a legal client as an individual and not as a stereotype. Hale provided the leading judgment in the case of *A v West Yorkshire Police*<sup>31</sup> in the House of Lords, 2004. In effect she rewrote the Sex Discrimination (Gender

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<sup>31</sup> *A v Chief Constable of West Yorkshire Police* [2004] UKHL 21.

Reassignment) Regulations 1999, by removing restrictions on body searching, with the effect of opening up the Policing profession for people who have transitioned gender.

How do the ethics of care theorised by Gilligan and (for example) put into practice by Hale relate to 3<sup>rd</sup> wave feminism? Jacqueline Zita attributed to 3<sup>rd</sup> wave feminists, '*... our ever persistent call for freedom and social justice*' (Summer 1997:6). This seems different to freedom from care for others and the belief that everyone should fend for themselves. It resembles Foucault's call for an ethics opposed to dictatorial power, whether emanating from '*religion, science, or political oppression*' (Diamond and Quinby, 1988:xv). Foucault thought that ethics evolved from a non-deliberate but plural endeavour,<sup>32</sup> involving the input of different people and theories/ideologies, and revealed how this had worked when ethics were focused on issues of sexuality, definitions of illness and relations of authority.<sup>33</sup>

However, some feminists noticed that Foucault neglected to address the effect of gender on ethics, overlooking the full importance of how gender 'genealogy' could challenge gender hegemony. In answer to this, an ethical focus on gender was developed by feminists, and notable among these was Carol Gilligan. Like Kristeva in *Women's Time* (1993:211,212,213), Gilligan revealed how language is subject to gendered influence and exposed how women have been side-lined from participation in the construction of influential social narrative, losing their social voice when socially constructed as having infantile moral codes (1982:68-70),

The developmental ordering of these two points of view [masculine/feminine] has been to consider the masculine as more adequate than the feminine and thus as replacing the feminine when the individual moves towards maturity. (Gilligan, 1982:69)

At the interior of this psychosymbolic structure [Western Christian civilization], women feel rejected from language and the social bond, in which they discover neither the effects nor the meanings of the

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<sup>32</sup> As described by Diamond and Quinby (1988:xv).

<sup>33</sup> See Prado (2000:53-84) with reference to Foucault (1975) *Discipline and Punish*.

relationships they enjoy with nature, their bodies, their children's bodies, another woman, or a man. The accompanying frustration, which is also experienced by some men, is the quintessence of the new feminist ideology. (Kristeva, 1993:213)

If feminist waves are more than chronological, (generationally based) it is arguable that we can associate Gilligan's perspective on ethics of care with the 3<sup>rd</sup> wave. Gilligan theorised that genuine freedom and social justice could only be achieved through a case-by-case consideration of individual circumstances, matching the 3<sup>rd</sup> wave call for consideration of the special subjective situation of the individual and the idea that maternal relations should involve relationships that are mutually beneficial and where the social backgrounds of all parties are given respect and attention. While criticised for providing the image of an essentialist connection between gender and ethical perception, Gilligan actually theorised that each individual's ethical procedure is likely to be determined by the way that social discourse has shaped their gender, rather than from the influence of naturally given gender. Her perspective is convergent with 3<sup>rd</sup> wave support for the idea of socially constructed subjectivity that is nonetheless valid and real at any point in time; gender as genre and genealogy rather than as fixed essence,

Listening to women's voices clarified the ethic of care, not because care is essentially associated with women or part of women's nature, but because women for a combination of psychological and political reasons voiced relational qualities that were otherwise unspoken or dismissed as inconsequential. (Gilligan, Spring 1995:123)

Cressida J Heyes, a self-identified 3<sup>rd</sup> wave feminist, dismissed the notion that Gilligan provided an essentialist connection between women and ethics of care, especially in her work following *In a Different Voice* (Summer 1997:146). This connection is also disputed by Seyla Benhabib who maintained that although Gilligan did not explain the social construction of gender, she did point out that she perceived gender to be significantly socially constructed (1992:191). A social constructionist would not associate trans women rather than trans men with ethics of care, just as Gilligan didn't theorise that ethics of care was inherent to women, but he/she could say that trans people generally may have

an enhanced insight into how gender can affect one's relationship to moral issues.

This enhanced insight was suggested by Whittle in relation to several areas of life, work and leisure (8 July 2007), and is developed as an argument in chapter 6 section 3. Many trans people will have lived in both gendered roles so they will have special insight into their effects. Some transitioned people, like Leon in <How do you believe you will you age?> (Jul 15th, 2006), will argue that they have only ever actually been one gender but they will still often have initially had to conform to the wrong gender, and will consequently have picked up insights into how the 'other' gender thinks. For instance, Leon's narrative below echoes some of the insights into gendered thinking elicited in *In a Different Voice*,

Re how women and men think, well yes its VERY different, I can vouch for that, and thats why I know I am a man....although I would say that I also know that men are more sensitive than women, who THINK they are, as women are more emotional, but not sensitive. With men life is very direct, women its thought about more on an emotional level, its far more complex. (Leon Jul 11th, 2006, in <How do you believe you will you age?>)

In arguing that Gilligan's moral developmental theory does not suggest transparently understandable gendered identities Benhabib mentioned that,

We do not have to think of "coherent identities" along the lines of the sameness of physical objects. We can think of coherence as a narrative unity. (1992:198)

This was a concept of dialogically negotiated subjectivity similar to Alison Stone's interpretation of women as a 'genealogy' (2004).<sup>34</sup> Benhabib called ethics of care a, 'dialogic model of ethics', meaning that its ethical procedure is always in-process and that it is dependent on genders-in-process (1992:197). The dialogic model always involves the input of both inquirer and subject of inquiry, ensuring that the latter has the opportunity to present their image of self. Dialogic negotiation can be detected in accounts of trans support groups guiding trans people involved with the law through legal mazes and precedents.

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<sup>34</sup> As discussed in chapter 3 s. 1 and chapter 9 s. 2.

Law makers have depended upon an image of impartiality or neutrality in order to administer an apparently neutral ethic of justice,

Where MacKinnon is most persuasive in her work on feminist jurisprudence is in her critique of law as a universal, objective system of adjudication. It is here that she comes closest to Gilligan in the recognition that law's neutrality is in fact the expression of gendered interests. (Smart, 1989:80)

This 'stiff upper lipped' neutrality mirrors the social construction of manhood, the immovable pillar not to be bothered by the emotionally and communally based moral procedure applied by women. Gilligan sought to uncover this hiding of gender under neutrality by recommending women champion ethics of care, where women can consider society's 'Others' as subjects with agency and legitimate 'voice' whilst, just as crucially, considering themselves in the same way. Gilligan revealed how this kind of self-agency was characteristically alien to women at the time of her abortion study,<sup>35</sup>

While her [research participant Judy] judgment clearly exists, it is not expressed, at least not in public. (1982:80)

[research participant Denise] sees the issue as one of "strength," and she struggles to free herself from the powerlessness of her own dependence ... (1982:81)

Although critical of what passed as a gender neutral ethic of justice, in later work Gilligan developed a belief in a possible and necessary complementarity of the ethics of care and an ethic of justice,

Raelene's response of Nov 11th, 2005, where she posits that each individual case for SRS needs individual care, seems to mirror Carol Gilligan's notion of a 'responsibility orientation' to morality where the moral focus is on caring for others. However, Gilligan suggests a final stage in moral development called the 'postconventional stage' where those guided by the responsibility orientation acknowledge the impact of unequal treatment, the effects of which are combatted by a 'justice

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<sup>35</sup> Referred to as 'selflessness' in a later article by Gilligan – see chapter 6 s. 3.

orientation', similar to that for which Monica seems to call. It is the combination of these two bipolarised orientations that form a hybrid postconventional ethics. (The Researcher Nov 13th, 2005, in <What advice to a Newbie>)

Benhabib speculated that Gilligan's postconventional project was not intended to wholly replace the ethic of justice with ethics of care,

Many of her formulations rather suggest that she would like to see the ethics of justice complemented by an ethical orientation to care. (1992:180)

She further maintained that,

Questions of care are moral issues and can also be dealt with from within a universalist standpoint. Such a universalism supplies the constraints within which the morality of care must operate. (187)

The ethic of justice can put a safeguard in place to prevent ethics of care descending into the anarchy of total favouritism for in-groups or family, something Benhabib pointed out as characteristic of Mafia law (187,188).

Despite their recommendation of an involvement of the ethic of justice, it seems that neither Gilligan nor Benhabib would agree with Jürgen Habermas, who deemed that ethics of care issues should be located on the margins of ethical theory with an ethic of justice located firmly in the centre (183,186). Benhabib countered Habermas's view by arguing that,

... the moral issues which preoccupy us most and which touch us most deeply derive not from problems of justice in the economy and the polity, but precisely from the quality of our relations with others in the "spheres of kinship, love, friendship, and sex". (184)

Such moral issues can be detected in the description of legal cases in chapter 4 sub-sections 2, 3 and 4, and as emerged as issues in 2<sup>nd</sup> wave philosophy.

In a move that aligns with the project of postconventional ethics, Professor in the Ethics and Politics of Care Selma Sevenhuijsen called for a reconstruction of justice in order to make it part of ethics of care. Sevenhuijsen believed that justice can also take account of '*situations and consequences*' and can be



construed of as a process rather than fixed rules (Edwards and Mauthner, 2002:23).

Gilligan's postconventional ethics is designed to involve ethics of care as one side of a coin backed with the ethic of justice, comparable to subjectivity politics complemented by identity-in-process (subjectivity), as discussed in chapter 3 section 1. Both of these moral social constructs would satisfy the 3<sup>rd</sup> wave call for appreciation of subjectivity as a process and inclusion for recognised difference. However, the input of ethics of care is vital in revealing what is arguably a particularly feminist ethos,

... namely that we are children before we are adults, and that the nurture, care and responsibility of others is essential for us to develop into morally competent, self-sufficient individuals. (188-9)

Gilligan argued that the compromise position of postconventional ethics completes this move to moral maturity,

While an ethic of justice proceeds from the premise of equality – that everyone should be treated the same – an ethic of care rests on the premise of nonviolence – that no one should be hurt. In the representation of maturity, both perspectives converge in the realisation that just as inequality adversely affects both parties in an unequal relationship, so too violence is destructive for everyone involved. This dialogue between fairness and care not only provides a better understanding of relations between the sexes but also gives rise to a more comprehensive portrayal of adult work and family relationships. (Gilligan, 1982:174)

Just as ethics of care should not be an equally oppressive mode of ethics to the worst instances of the ethic of justice, it should also not be the ethic of justices' unequal 'Other'. Postconventional ethics may reduce these risks by balancing one mode of ethics against the other and may also be the way to ensure that ethics of care are integrated into mainstream ethical practice.

#### 4.5.1 The Equality Act 2010

What kind of legislation could satisfy the seemingly contradictory coupling of ethics of care with the ethic of justice? Does the EA 2010 move towards this utopian state of affairs? The EA 2010 was partly designed to revise the

Equality Act 2006 (EA 2006) in order to replace most previous British gender legislation by simplifying it, standardising much of its content and updating its scope (Government Equalities Office, 2011). The Act was to bring all aspects of the UK's anti-discrimination law and equality law under one roof, alongside the UK's European obligations under the Equality Directives. It was proposed that the Act be presented in easily accessible language, for instance the government considered what definition of 'gender reassignment' would be most accurate and understandable (Dean, 8 July 2008). The EA 2010 resembled the EU Commission's proposal of a single anti-discriminatory directive that would recognise and protect seven separate strands of,

1. race and ethnicity
2. religion and belief
3. sex (including marriage or civil partnership)
4. age
5. disability
6. sexual orientation (also including marriage or civil partnership)
7. gender reassignment

According to criminologist Martin Moerings, the Dutch General Equal Treatment Act (1994) was similar to the EA in providing responsibility for certain protected categories within general rights. However, this Act was only applied to working relations and religion was excluded (1998:133).

The EA 2010 re-introduced the Public Sector Gender Equality Duty, initially part of the EA 2006. The Duty requires public-sector and public-funded bodies and their employees to implement an onus of care in the way that their policies, programmes and services affect people belonging to the seven strands, promising a significant move towards addressing direct and indirect discrimination.<sup>36</sup> The Government and EHRC commenced working with public bodies in order to ensure that the Duty could be effectively implemented when considering the size, resources and responsibilities of organisations affected. It was intended that this Duty should not be implemented in too bureaucratic

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<sup>36</sup> It was noted in s. 2 that the SDA did not adequately address the roots of discrimination, something which an 'onus of care' may move towards doing.

(incomprehensible and complex) a manner, again offering the promise of access to the law for non-legal people, whether implementing, or affected by, the Duty.

The EA 2010 does seem to represent a leap in the evolutionary scale of legal ethics pertaining to oppressed subjectivities by requiring proactive provision for equality and increased access to areas of public life for previously excluded 'Others'. However, like the GRA 2004, the Act retains a definition of trans subjectivity that seems to exclude those not transitioning into a heteronormative gender, negating inclusion for their different 'voices'. According to the Act itself, one has to be, 'intending to undergo, undergoing or having undergone gender reassignment', which means a transition from one heteronormative gender to another even though not necessarily involving medical reassignment,

The Equality Act 2006 (EA) mentions individuals who have proposed, commenced or completed gender reassignment as a group which falls within the remit of the new Commission for Equality and Human Rights (EA 2006 1, 10 (2d)). Again there is no express mention of transgender or gender variant people other than those individuals who fit the statutory legal definition, which clearly is intended to only afford protection to the small sub group of transsexual people who seek medical supervision for gender reassignment. (Whittle, Turner and Al-Alami, 20 December 2006:34)

Only after extensive protest from Press For Change and other activist groups was there included, in Part 1 Chapter 2 S. 7 of the explanatory notes to the EA 2010 on its parliamentary website,<sup>37</sup> a description of 'gender reassignment' as other than a medical process. This section changes the definition of 'gender reassignment' to be found in the amended SDA 1975 by, '*no longer requiring a person to be under medical supervision to come within the section*'. Even so, this protected category is still called 'gender reassignment', providing an interpretation of the subjectivity as a transfer from one heteronormative sexual subjectivity to another. Paragraph 41 of these explanatory notes even refers to

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<sup>37</sup> These can be seen at <http://www.legislation.gov.uk/ukpga/2010/15/notes/division/2/2/1/4>.

'a process to change his or her sex' and 'a transsexual person' as pertaining to those with the protected characteristic.

Returning to the claim by the Government Equalities Office that the EA 2010 will be more accessible (non-exclusionary through using clear language) than previous gender legislation, employers and the British Chamber of Commerce have expressed concerns about the increasing burden of paperwork and management that the act will entail. The government has countered this by stating that the new legislation will make the law clearer for organisations and that there will be a greater opportunity for the inclusion of those from diverse subjectivities who can add experience and talent to these organisations (Kornacki, 1 Oct 2010). It seems that employers will have to be proactive in establishing fair opportunities and access for employees and clients but that this will pay off in the benefits deriving from inclusion based on a postdifferent<sup>38</sup> attitude to subjective difference, engendered by the EA 2010 and its Gender Equality Duty.

However, a client of Press for Change's TransEquality advice service presented a challenge to the potential inclusiveness of the EA 2010,

... we are now worse off with the so called single Equality Law (with all its exemptions on single sex facilities, services and jobs) than we were without it as the SDA and GRA 2004 had made our rights quite clear. Whilst the GRA 2004 wasn't perfect, this was as a result of the ban on gay marriage, but it did lay down our rights, but the SEA has reversed many.  
(Anonymous Quote)

This seems to be an exaggeration since the EA 2010 has generally opened up social inclusion for trans people. However, exemptions to provision of access to separate and single sex services (SSEs) to those who have transitioned do exist and such backtracks to inclusion may be shrouded by an obfuscation of trans people's rights through wording that provides inadequate clarity on who is included and protected in which circumstances.

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<sup>38</sup> See chapter 5 s. 4, chapter 8 sub-section 3.1 and chapter 9 s. 3 for an explanation of 'postdifference'.

Otherwise, clarity of wording can lead to exclusion. For instance, in reporting an interview with Lib Dem Equality Spokeswoman Lynne Featherstone and Labour Equality Minister Maria Eagle, feminist political/gender commentator and transitioned woman Jane Fae commented upon EA 2010 wording used to refer to trans subjectivity,

Ms Featherstone complained that civil servants – and the Attorney General – had tended to push protections to make gender reassignment the “protected characteristic” when the debate should be about identity. Ms Eagle accepted that. (Fae, 16 April 2010)

The use of ‘gender reassignment’ is a precise use of wording, used to identify those included in the protected characteristic. The Attorney General may have wanted to apply this term because it applies to many fewer people than would, for instance, the term, ‘gender variance’, thereby making the law more manageable for those who have to put it into practice but greatly lessening the amount of people for whom the protected characteristic would have to cater. This means that the characteristic protected is a process of gender transition, rather than a trans subjectivity, allowing the Government to avoid official recognition of trans subjectivity. As discussed above in this sub-section, those not wishing to commit themselves to ‘gender reassignment’ will wonder if they are protected or not. It seems that non-heteronormative trans people are, deliberately or otherwise, not being ‘hailed’<sup>39</sup> into the protected characteristic of ‘gender reassignment’.

More wording obfuscation manifests in the justification for exclusion of trans people from certain SSEs. The EA 2010 requires that exclusions are based upon, ‘a proportionate means of achieving a legitimate aim’.<sup>40</sup> This wording leaves open the interpretation of ‘proportionate’ and ‘legitimate’, interpretation that could take up much legal time in cases brought before the courts. If a service provider can demonstrate that exclusion of trans people is a proportionate way to achieve a legitimate aim then trans people with Gender Recognition Certificates could find themselves excluded from services catering

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<sup>39</sup> See chapter 5 s. 5 and chapter 7 s. 1 for a discussion of hailing.

<sup>40</sup> EB, Schedule 3, Pt 7 Equality, Ch 28, s. 1 – Gender Reassignment.

for people with the same legal gender. According to PFC Vice President, Angela Clayton,

The concept of "proportionate" and "legitimate aim" are far from simple concepts. It is Press For Change's view that in order to constitute a legitimate aim the objective must be something fundamental to the purpose of the organisation. ... The word proportionate would mean that the action must be both appropriate AND necessary in order to meet a specified aim. That specified aim must not be to discriminate against the trans person, because that could not be a legitimate aim, since the intention of the law is to prevent discrimination against trans people. (Clayton, 8 December 2007)

This wording also means that trans people will be marked as differently 'Other' in the provision of some single sex services and so are not, as according to the GRA 2004, of their 'acquired' gender for all purposes after all.

Chapter 9 sub-section 1.2 focuses upon how the EA 2010 can combine ethics of care with the ethic of justice so that one does not become the inferior 'Other' of its partner. This can only occur if the new onus of care really does work to eliminate direct and indirect discrimination by addressing the social roots of difference-phobias, rather than just to recognise subjective difference. This onus of care must be able to recognise previously invisibilised difference such as gender variance as well as provide 'umbrella' standardization of equality protection.

## 4.6 Conclusion

In section 1 the advances made in single issue legislation and gender equality, suggested to be a philosophical 1<sup>st</sup> wave of gender legislation, are seen to have been radical and progressive in their time and to have engendered subsequent advances in gender law. However, it is argued that a new approach to the formation of gender law was needed in order to create a gender inclusive society instead of continuing to support heteronormative hegemony. This required replacing the emphasis on gender equality and single issue lobbying with a focus on gender equity and the social roots of difference-phobias.

In section 2 it was found that what might be called a 2<sup>nd</sup> wave of gender legislation culminated in the recognition of difference in gender, for instance the trans person's different route to gender, but only provided recognition of gendered heteronormativity and for transition from one heteronormative gender to another. Before this Ormrod's ruling in *Corbett* had the effect of marking trans people as 'Other' to heteronormativity in the eyes of the law. Since *Corbett* many trans people have fought to gain legal acceptance of their gender as whole<sup>41</sup> and consistent. Legislation subsequent to *Corbett* marked a slow progress towards recognition of transitioned gender but genders falling outside the remit of heteronormativity were invisibilised by medicine and the law, with the subtly coerced cooperation of trans people themselves (Stone, 1991). This meant that social expectations attached to each gender remained intact and that, for instance, it was still hard to conceive of a natal female-bodied person becoming a father.

According to Cowan, the GRA 2004 'performed' sexual subjectivity but still preserved heteronormative discourse. Canadian law has investigated the construction of gender by focussing on gender in discrimination cases, rather than the aetiology of sex for the purposes of marriage. However, in the Canadian case of *NvVRRS*, *VRRS* essentialised gender with the effect that gender was imposed onto Nixon, denying her choice of gendered representation. Cowan concluded that, for the law, the reality of gender depends on the situation.

Maintaining the heteronormative institution of marriage marked special attempts by the establishment to maintain heteronormativity in law, whether by sexed, gendered or sexual means, ensuring that those perceived to be same-sex couples were marked as 'Other' to this gender convention (Sharpe, 2006, de Vos, 2007 and Harding, 2007).<sup>42</sup> Culbertson and Jackson noted that gays and lesbians in San Francisco and Massachusetts generally ceased feeling 'separate but equal' with the implementation of same-sex marriage. However,

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<sup>41</sup> 'Whole' in the sense introduced in chapter 6 s. 3 where trans subjectivity is interpreted as just as genuine, healthy and developed as heteronormative subjectivity.

<sup>42</sup> In sub-section 2.1 the *Corbett* and *Bellinger* cases were seen to determine marriage as a union between sexes. Also, in this section, it was seen that the case of *Attorney-General v Otahuhu Family Court* supported marriage as a heterosexual union (Sharpe, 2006:628).

they asked if this was a hailing into heteronormativity rather than establishing respect and equity for all gender variant people.

Section 3 described how the law has 'Othered' gender variant people from categories of man and woman while not defining these categories. Sharpe theorised that anything which defied common-sense schemata, and that which was 'otherness within sameness', or human yet non-human, was portrayed overtly, then covertly, as 'monster' in English and French legal discourse. In both discourses, genealogy modified what was perceived as 'monster' over time. This unstated genealogy hid under the guise of common sense and ahistorical discourse. The concept, and consequent revealing, of genealogy provides hope that categories can be reconstructed by gender variant people in order to produce categories influenced by gender variant people themselves so that they may attain human rights and social voice in modern society.

Beresford described how lesbians' otherness within sameness has been expected to remain unnamed in modern society. To eliminate the 'Othering' of 'out' lesbianism from mothering, Beresford called for parenting to be based upon what parents do, rather than what they are perceived to be, in a similar manner to Whittle, Beresford and Fineman. Holmes identified more potential for social inclusion for gender variance in the case of the Bogotá Court and its provision of agency in self-definition for an intersex child. However, like Sharpe and Beresford, Holmes perceived that the heteronormative 'Subject/Other' dualism still prevailed despite deliberations on the existence of gender variance and intersex by the Court. It remained the case that the difference that heteronormativity celebrates is not general difference but is prescriptively dualised difference.

Section 4 described how the involvement of trans and gender variant people with their own legal cases and those of others has eased the introduction of what might be called a 3<sup>rd</sup> wave of gender legislation, where difference can be respected and recognised rather than automatically assimilated into the norm. Beginning with *P v S & CCC*, trans people's involvement with case law allowed them to present trans people as individuals different to their ascribed natal gender, individuals whose 'view from somewhere' presented a valid account of gender variance, or a gender variant history. In *X, Y & Z*, 'X' challenged the



definition of fatherhood to bring it more in line with a subjectivity formed from belonging to the genre and genealogy of fatherhood rather than from the fact of having XY chromosomes. Flynn also believed that a parent should be defined by what they do, rather than by their ascribed identity. Like Whittle, Beresford and Fineman, Flynn discovered that the discourse of parenting was still highly gendered, just like the legal discourse of marriage.

In the case of *Bellinger*, as noted by Cowan, the issue of marriage was at stake, just as in *AGvOFC*. Consequently, Mrs Bellinger's self-definition of gender was not accepted when the law continued to seek the 'Holy Grail' of the truth of sex. No truck was given to the concept of subjectivity-in-process and Mrs Bellinger was not seen as real in her acquired gender. The law eventually became in-process to some extent on this matter when a seven point sex determinant guide was introduced.

Section 4 described how trans legal activists contributed to the slow transformation of trans people from 'Others' of heteronormativity to empowered others whose difference could be valued or, for those who wish to be accepted as men and women, whose choice of similarity can be respected.

In section 5 it is noted how there has been a shift in transgender philosophy from a focus on certain defined issues and identity (1<sup>st</sup> wave philosophy) to inclusion of a broad range of issues and subjectivities pertaining to trans people's claims to legal protection (Whittle, 2002:81). However, Whittle warned that, '*The lesson that must be learnt is that legal recognition of a "sex change" will not automatically provide protection in the workplace (or other parts of life, for that matter)*' (2002:106). This perspective is complemented by Harding's warning that, '*... the relationship between social change and legal change is a complex one ...*' (2007:19). A 3<sup>rd</sup> wave of gender law might address oppressive discourse with a postconventional ethical approach that provides gender variant people with rights to equality protection, while involving a focus on the individual that allows appreciation of their particular social circumstances. It may combine traditionally gendered moralities in order to evolve them into a moral maturity.

The Equality Act 2010 was assessed to determine how far it might go towards a postconventional ethics. The EA 2010 does provide for specific protected

strands (ethics of care) within universalizing equality legislation (ethic of justice). This Act is intended by the government to increase inclusion for trans people by using accessible language that will boost access and agency for trans people. However, simplification of language may actually create social exclusion through not describing exactly which trans people are protected, and in what ways. Some newly created exclusions from employment via genuine occupational qualifications and from some separate and single sex services will not serve to position trans people as having legitimate sexual subjectivities. Crucially, the schema of heteronormativity is upheld by referring to trans people's protected characteristic as 'gender reassignment', thereby excluding some gender variant people from protection and recognition.

Before the analysis of themes identified in chapters 2 to 4 and the formation of new themes is undertaken in chapters 6 to 8, chapter 5 summarises how the methodology was formulated and points out the importance of narratives to this study. The methodology derived from the key components of a 3<sup>rd</sup> wave (trans, feminist and legal) philosophy as identified in chapters 2 to 4. These components might be summarised as voice, alternative maturity, alternative reality (from chapter 2), subjectivity, contradiction, maternal relations, accessible discourse (from chapter 3) and difference inclusion from sections 3 and 4 in this chapter.



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## CHAPTER 5: METHODOLOGY – DIALOGIC NEGOTIATION

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### Introduction

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The researcher wished to investigate how feminist and trans factions might combine to reduce stigma attached to those with oppressed sexual subjectivities, so that they may gain access, agency and voice in social discourses such as culture, medicine and the law. The resulting research was driven by a non-separatist or difference inclusive feminist ethos and was structured by a critical discourse analysis framework, both informed by themes developed in chapters 2 to 4. This ethos/methodology was thought to be appropriate in view of the subject of study (gender and discourse) and the researcher's personally political standpoint (inclusive feminist).

The primary research data for this research came in the form of personal narratives of trans subjectivity elicited by members of a confidential internet discussion site, known as the Transstudy, set up exclusively for this study. The researcher decided that collection of primary narratives from 3<sup>rd</sup> wave feminists would be unrealistic in terms of time and practical resources, having already carried out extensive analysis of narratives in the Transstudy, as explained further in sub-section 1.2. Instead, published narratives produced by those involved with 3<sup>rd</sup> wave feminism, as introduced in chapter 3, were considered sufficiently relevant to form a basis for comparison with the primary data and literature review content.

### 5.1 The Mechanics of Setting up and Maintaining the Transstudy

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#### 5.1.1 Ethical Set up and Procedure

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##### *Ethical Approach – Qualitative Research*

Blaxter et al considered that, '*... those with social justice concerns will include the very topic of the research as part of their ethical framework (2001:161)*'. The research questions, dealing with issues of cooperation between transgender and feminist factions, aetiology of gender variance, utility of separatist discourse and potential for an inclusive trans/3<sup>rd</sup> wave feminist coalition, were intended to be ones that addressed ethical issues.

Qualitative research allows in depth investigation of social justice concerns. Also of concern to such research is the utility of ethical procedure set out in advance by an ethical committee. Edwards and Mauthner addressed the effect of this on ethics as an on-going process,

It [an ethics committee code of practice] also implies that all the ethical issues involved in a research project can be determined at the start of the project being carried out, that any potential harm may be offset by research participants' stated willingness, and that an ethics committee sanctioned project is by definition an ethical one. The aim appears to be to avoid ethical dilemmas through asserting formalistic principles, rather than providing guidance on how to deal with them. (2002:18)

The researcher considered that the MMU ethical policy was required for the protection of all parties concerned but was aware, and in tune with, the notion of ethics as an on-going process. Clandinin and Connelly identified a methodological ethics-in-process with regard to the span of the research process,

They [ethics] are not dealt with once and for all, as might seem to happen, when ethical review forms are filled out and university approval is sought for our inquiries. Ethical matters shift and change as we move through an inquiry. (2000:170)

However, these authors also warn that ethics-in-process are subject to any official initial stipulations of ethical approval and this may restrict any negotiations of ethics during the research process (170). In explaining ethics-in-process, Edwards and Mauthner provide the example of Benhabib's recommended ethical methodology,

She argues that ethics is about concrete rather than generalised situations, in which relations of care belong at the centre rather than the margins. What is moral and ethical is arrived at through an active and situationally contingent exchange of experiences, perspectives and ideas across differences ... . (2002:25)

It could be said that this research employed ethics of care (in-process) based in use of an informal format, using contextual reasoning in analysis, in having a

narrative basis, and in seeking to establish connections between participants. These are care elements that may be found in a table adapted by Edwards and Mauthner from Feder Kittay's medical/health model of care/justice (2002:22).

Stanley and Wise outlined a feminist ethic for researcher relations with participants in *Breaking out Again: Feminist Ontology and Epistemology*,

... insistence that the 'objects' of research are also subjects in their own right as much as researchers are subjects of theirs (and objects of other people's); acceptance that the researcher is on the same critical plane as those she researches and not somehow intellectually superior; and, most fundamental of all, no opinion, belief or other construction of events and persons, no matter from whom this derives, should be taken as a representation of 'reality' ... . (1993:200)

In Stanley and Wise's research paradigm participants turn from objects to subjects and have a voice to contribute to the research. The researcher involved himself as a fellow participant in the Transstudy in order to strive for such a paradigm.

In commenting upon ethics in qualitative research, Ribbens and Edwards warned of the potential danger for the overlooking of the voice of those 'Othered' by the particular research methodology used,

Ambiguity thus arises when we seek simultaneously to serve an academic audience while also remaining faithful to forms of knowledge gained in domestic, personal and intimate settings. ... There is danger that the voices of particular groups, or particular forms of knowledge, may be drowned out, systematically silenced or misunderstood as research and researchers engage with dominant academic and public concerns and discourses. (1997:2)

In efforts to address issues of 'Othering' within the research, the researcher, for instance, commented upon spiritual knowledge ventured by participant Kimana and participants addressed issues of exclusion in the <Hidden trans men> and <Black Trans> topic thread contributions. Ribbens and Edwards picked up on how Smith (1987) and DeVault (1990, 1994) suggest how researchers,

... build more on what we share with our interviewees on a personal level than on disciplinary concepts – although DeVault also warns that we need to be sensitive to differences ... . (1997:2)

Researchers adopting an inclusive research methodology need to remain sensitive to differences but not to avoid them when they are identified as this avoidance ensures that ‘separate spheres’ established by essentialising discourses will always remain in place. As Ribbens and Edwards interpreted in the work of Narayan, this was,

... the notion of a perspectival view of knowledge (that is, that who you are, and where you are situated, does make a difference to the knowledge you produce), but that we then have to assess the best ways of seeking to communicate this knowledge to someone else, situated differently. (Ribbens and Edwards, 1997:4)

#### *Confidentiality and Anonymity*

The research involved in-depth analysis of people’s representations of sexual subjectivity. Therefore, confidentiality was considered crucial and was maintained by ensuring the anonymity of participants by setting passwords and usernames for access to the Transstudy site and by offering participants the opportunity to use pseudonyms within the site. All participants were referred to by pseudonyms in the final drafts of the thesis. Research was not carried out via email since this is a medium open to infiltration by outside parties, for instance as according to Blaxter et al (2001:158,60).

Although participants' identities or subjectivities were kept confidential in the course of this research, their expressions of self were respected as individually and socially meaningful. It was not the case that '*... something precious to them is treated as merely an instance of a class*' (Becker, 1964:273, cited in Hammersley and Atkinson, 1994:271).

#### 5.1.2 The Research Population Sample

##### *Recruitment*

Participants were introduced to the Transstudy when contacted by the research supervisor. The supervisor sent out details of the study via email to trans people registered on his UK based online lists - about 2500 people. Over fifty of

these people requested and were given usernames and passwords. Six became regular contributors to the Transstudy site. Thus, the regular research population was small, as is the case in many qualitative analyses, making it difficult and inappropriate to generalise from information in the narratives elicited. However, instead of reliability, analysis of participants' narratives instead offered some measure of validity with regard to the presentation of gender in narrative.

According to Blaxter et al,

Research ethics are about being clear about the nature of the agreement you have entered into with your research subjects or contacts. This is why contracts can be a useful device. ... It involves reaching agreements about the uses of the data, and how the analysis will be reported and disseminated. (2001:158)

For the purposes of this study, the Information Sheet,<sup>1</sup> offered to anyone agreeing to take part in the research, acted as a contract. It informed participants about: the purpose of the study; their decision on whether to take part; the advantages of taking part; ensuring their confidentiality; the use to which the research will be put; who was involved in the organisation of the research; and who reviewed the study. As recommended by Blaxter et al (158), the contract referred to informed consent and the reporting and dissemination of the data. This information sheet was informed by Whittle's, 'Policy: Ethical Research in the School of Law' (19/12/2002:12-19).

#### *Authenticity - Researcher/Participant Interactions*

Interpretive and poststructural research has challenged the notion that any form of communication can provide authentic representations of identity or subjectivity. Sandra Harding (1991) adopted similar research perspectives in order to reveal how feminist researchers have challenged the supposedly objective stance of much positivist research in its claim to depict images of the real world. Harding theorised that discussion seeking to find out which of either value-neutral objectivity or judgmental relativism was the route to accurate

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<sup>1</sup> A copy of this is in the appendix.



research outcomes was a red herring debate. This kind of debate led to researchers polarising themselves into aligning with one or other approach, when both are fundamentally flawed. To resolve this issue, Harding adapted the 'master's tool' of objectivity by combining it with historical/sociological relativism in order to bring forth the 'strong objectivity' that strives for academic rigour while investigating its own cultural grounding via self-reflexive methodology (1991).

Although positivist objectivism has operated to propound the possibility of attaining reliable research data from human subjects in controlled scientific conditions, it has often worked to neglect consideration of sociological influences that shape the responses a participant might be disposed to elicit (Harding, 1991:143). Such sociological influences will have shaped the beings-in-process who populate any research forum, and this suggests that valid research findings on complex sociological issues cannot be gained from human participants until the researcher has at least some knowledge of participants' life-histories and the background of the social phenomena under investigation.

The quest for such empathic knowledge of participants is not, in the case of much feminist research, an attempt to colonise or assimilate their subjectivities, but rather is the endeavour to represent subjectivity in the way that the participant chooses to present it. This narrowing of the social distance, or lowering of the social boundary, between researcher and participant promises to engender more accurate narrative accounts as a relationship of trust emerges between the two parties.

Cressida J Heyes noticed how 'Between Voice and Silence' by Taylor, Gilligan and Sullivan (1995) involved a much different ethnic and social strata research population than studies cited in *In a Different Voice* by Gilligan (1982). The girls interviewed by Gilligan and colleagues in the later publication consisted of a diverse ethnic range of working-class or poor backgrounds (Heyes, Summer 1997:151). Nevertheless, Heyes noted that the researchers' own social backgrounds and interview techniques could have skewed the research results even though she mentions that, '*Gilligan is far less cavalier than many other feminist researchers about identification, trust, and rapport between feminist interviewer and female participant* (156)'. Heyes described how the girls

interviewed may have formed resistances to the research because of their perception of the incongruity between their and the interviewers' social positioning. The Transstudy worked to some extent to evade these problems of researcher/participant influence by avoiding visual clues to social positioning and in involving participants in discussions with each other rather than just between researcher and participant (156).

Unstructured or open-ended topics formed the component parts of part of the Transstudy. Such topics may have engendered new perspectives and insights not gained from more structured interactions, as found by Helen Lopata (1980) in research involving widows, and may have lead to a '*... re-examination of the assumption that more valid knowledge is produced when information is elicited in a format framed by the researcher's point of view*' (Cook and Fonow, 1990:76). The research was designed to offer potential for empowerment through self-discovery by involving participants in the research process.

#### *Authenticity – Computer-Mediated-Communication*

The last 16 years have seen a major change in the trans community. The growth of home computer use in the 1990s, and the encouragement of many trans women at the forefront of information technology and internet development was to be crucial in the development of a new, geographically spread but no longer isolated, trans community. (Whittle, 1998)

The research data collection operated via the medium of computer-mediated-communication (CMC), at an internet site built by a contact of the supervisor's. Consideration of whether CMC, the research format for the Transstudy, impacts on sexual subjectivity, and how such communication is affected by sexual subjectivity, had to be given when deciding whether to use this facility as the research gathering tool.

From a practical perspective, CMC offers advantages over face-to-face (FTF) interactions. Because CMC responses are written down and are thereby incorporated into the Transstudy site, the difficulties often experienced in recording and transcribing verbal interactions are overcome. Also, sociodemographic and demographic barriers to involvement in research can be

surmounted to some extent because of the opportunity to communicate from a distance and not in the presence of a social group. Examples of such barriers are age, ethnicity, class, geographical location, culture and the presentation of sexual subjectivity itself, some of which were addressed by participant Kimana,

As Sherman Alexi, a Spokane playwright and poet said, "The internet almost makes up for the smallpox blankets." (Smallpox blankets, blankets used by US troops that died of smallpox and sent to the reservations in hopes that disease would kill us off, a known historical fact. ... I think he's right. I've been in touch with people from all over the world with it. It's a good way to teach others about our culture and the real history you don't find in books. It also allows us to learn, make new friends and even join in forums such as this, even way from way out on the prairie like Pine Ridge or the North Woods of Wisconsin or Alaska. Lalalala! (Kimana Jul 20th, 2006, in <Post-GRS people's sexuality>)

From a social perspective, a website can act as an intimate community and people's feelings of belonging must be taken into account,

I know exactly where my spiritual home is. Amongst the members of my website. I've met a good few in real life, I live with one of them, and my new girlfriend is also one of the members. So NuttycaTS isn't just my spiritual home, it's also my social home. Actually, it's the only real home I have, have ever had. And when I authorise new members I feel very much like I'm inviting them into my home. When we get problems and people leave I take it personally. I know they don't mean for me to take it personally, but I do. I can't help it. (Ariel Nov 5th, 2005, in <Transpeople and their cultural 'home'>)

As noted by Prosser (1998:ch3), published autobiography inevitably involves attempts to impose logic and linearity on personal narratives of trans subjectivity. Therefore, the Transstudy site was designed to adopt a more accurate way to capture the essence of the development of subjectivity and self-image via the assessment of written 'conversation'. This more immediate form of communication may, through being more spontaneous, have engendered narratives less subject to deliberate manipulation.

Some critics maintain that the natural behaviour or natural responses of CMC participants cannot be directly observed,

The lack of non-verbal and social clues makes it more difficult for the researcher to monitor how interviewees are responding to questions about sensitive issues. (Blaxter et al, 2001:160)

These critics can be answered by pointing out that the same can be the case for much FTF interaction. For instance, if an FTF interview is not part of an ongoing series of communication with the participant there is much less chance of attaining what Max Weber (1864-1920) called *verstehen*, or empathic understanding. Such understanding can be achieved in both FTF interaction and CMC if there are sufficient interactions between researcher and participant. When such an interactional relationship is established trust between researcher and participant evolves and consequently can lead to more open and detailed responses. Extensive communication of this kind also allows 'cross-examining' via comparison of a number of responses in order to check out the consistency of participant responses (Hammersley and Atkinson, 1994:154).

The immediate nature of FTF interactions can lead subjects to provide answers that they expect a certain interviewer to want, or to present the self in a certain modified way to evade judgment from a directly present researcher (Mann and Stewart, 2000:209). This can also occur in CMC, but probably not to such an extent because of physical distance between researcher and participant. Because of this kind of expectancy responding, and because participants will want to self-present in ways not necessarily conducive with their actual gender or gender-in-process, representations presented in CMC or FTF interactions may therefore be taken to refer to personas, rather than actual people, persona being the character that one presents to the world. This research was intended to reveal narrative truths, rather than truths of actual subjectivity, where projected images of self inform narrative truths of self-representation.

It is possible that participants might choose to present misleading images of self, something not too difficult to achieve, at least initially, via CMC (see Turkle, 1995:228). However, as Mann and Stewart discovered, extended narrative interaction usually leads to an accurate presentation of self-image via various narrative actions (2000). Studies have revealed that online self-presentation is

usually rooted in a subject's real-life self-image (Wallace, 1999, in Mann and Stewart, 2000:208). Mann and Stewart remarked that '*... it is seen to be difficult to sustain a persona which is quite divorced from the "real" self (2000:210)*'. Bennett concurred with this notion by remarking that, '*... it is difficult to sustain untruths when involved in long-term, intensive interactions (1998, in Mann and Stewart, 2000:214)*'.

Feminist academic Stacey Gillis (2004:185) noted that, '*The Internet is thus vaunted [by 3<sup>rd</sup> wave theorists] as the global consciousness-raising tool which the first and second waves lacked*', but argued that cyberfeminism, with regard to subverting gender, is actually failing to attain this lofty status. Gillis maintained that, according to Kira Hall, online interactions can intensify presentation and presence of real gender (189,190), just as Mann and Stewart maintained. Although CMC is not apparently a way to evade the influence of gender, in the Transstudy this may have been a positive aspect in providing a forum to give voice to participants' otherwise muted gendered representations.

### 5.1.3 The Afterlife of the Transstudy

#### *Dissemination of the Research Results*

The research took the final form of a thesis, to be placed in the MMU university library. It may later be transformed into published material. The thesis will not be available on-line on the world-wide web or in CD-ROM format. Blaxter et al noted Hack's (1997) warning that research participants may be surprised by the amount of intimate detail that can transpire from unstructured or open-ended topics (Blaxter et al, 2001:157). Therefore, quoted participants will be given a pdf copy of the thesis to approve of, and to provide feedback on, for publishing matters.

#### *Closure Email for Participants*

The closure email, copied into the appendix, thanked participants for their contributions, advised of the use of pseudonyms and asked participants to ask any questions they might have about the thesis. This email also informed participants that they would be able to view the thesis as a pdf document before publication since, as Blaxter et al point out, '*... the readers of [a] report might be shocked at just how much intimate detail is included (2001:157)*'.

Participants were asked to say if they feel that any of their quotes, or the analysis of their quotes, break anonymity. If so, the quotes will be removed from the thesis. Participants were informed that their contributions can be found by using a computer search function to search for their pseudonyms in the pdf document. Interviewees' copyright pertaining to their written words gathered in the research process will have to be considered before publication (Edwards and Mauthner, 2002:17).

#### 5.1.4 Absence of a Self-Identified 3<sup>rd</sup> Wave Feminists Primary Study

A similar data gathering process to the Transstudy in order to obtain narratives from self-identified 3<sup>rd</sup> wave feminists proved too difficult to embark upon for the following reasons.

The researcher had access to an extensive list of subscribers to PFC and FTM online mailing lists for trans people, provided by the supervisor. The researcher decided to make use of this resource rather than having to find and approach self-identified 3<sup>rd</sup> wave feminists with no such resource immediately available. The Transstudy eventually took up so much time, and was of such a scale, that there was not enough time left to undertake primary research with 3<sup>rd</sup> wave feminists.

The researcher predicted that he would have faced problems with undertaking personal research with natal non-gender-transitioned females, probably forming the majority of self-identified 3<sup>rd</sup> wave feminists. This is because natal females may well have been more reluctant to communicate about personal issues with a natal male. The research ethos and subject matter required a considerable amount of personal input.

With hindsight, the researcher could have set up a more limited Transstudy to give time to investigate the potential for, and hopefully set up, a similar study for self-identified 3<sup>rd</sup> wave feminists, after devising a well thought-out strategy for researching with such people in a sensitive way. The researcher is very keen to carry out primary research with 3<sup>rd</sup> wave feminists in further research, if this should prove possible and practical. With several years' worth of experience in feminist research now, the researcher hopes that he may be accepted to do such research with those who may be identified as female, male and/or gender variant 3<sup>rd</sup> wave feminists in the future.

## 5.2 Philosophical Methodology – 3<sup>rd</sup> Wave Feminism as a Queer Feminist Theoretical Framework

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Due to similarities between the thesis theoretical framework and queer theory, the researcher included the following critical explanation of the reasons for prioritising a 3<sup>rd</sup> wave feminist framework. Queer theory aligned closely with the chosen framework, for instance in drawing from the social constructionist based theories of Foucault and Butler. This alignment was also evident in use of Stryker's metaphor of 'transgender rage', described in chapter 3 sub-section 1.1, where a social space for those 'Othered' from gendered society can create a site for respect for their subjectivities as on-going constructs (2006[1994]:253). If the philosophical 2<sup>nd</sup> wave was or is an equality seeking project it seems that the 3<sup>rd</sup> wave seeks equity, meaning fairness and respect for difference rather than equivalence and assimilation. This move to gender inclusion was no doubt inspired by queer theory's ethos of gender equity, albeit with queer's more intensive focus on dismantling '*... stable categories*' (Fineman, 2009:5).

### 5.2.1 Introducing Queer Theory

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In the 1980s, queer theory challenged categorisations of gender by questioning the subject's necessary location on only one side of sexual dualisms and the very existence of such dualisms. Jay Prosser compared this challenge to the camp creation of a 'third space', a metaphor devised by Scott Long (1998:25). This space forms a transgendered standpoint position where the gender outsider can see gender dualism for what it is by virtue of seeing it as a whole, from without. Judith Butler seemed to write *Gender Trouble* from such a standpoint in order to argue that sexual categorisation is an effect of culture rather than its cause (Prosser, 1998:26). Her theory therefore challenged the idea of gender as '*... primary and foundational*' (31). Queer theory has thus had a profound effect upon representations of sexual identities or subjectivities. Such representations have opposed medical, legal and binary coded definitions of gender/sexuality. Professor of Law Janet Halley linked queer theory to the project to support gender variance rather than definitively to explain it,

I would now say that queer work will be more interested, descriptively and normatively, in practices than identities, in performativity than essences, and in mobility than stabilities. (2009:28)

Queer representations have also often involved a politically subversive side, which has been characterised, as 'gender fuck' by Stephen Whittle. This phrase indicates, in a rather direct manner, queer theory's implementation of theoretical, literary and activity-based means of challenge to the still ubiquitous gender heteronormativity of many societies (Whittle, 1996:202).

The queer scene provided a theoretical and practical escape route from what is seen by some as the heteronormative tyranny of gender by theorising that men and women were not doomed to fulfil lives rutted in the (significantly often wrong) tracks of ascribed sexual subjectivity. However, post-1974, trans people were ironically accused by some queer feminists of upholding the structures of heterogender by wishing to reassign as simply man or woman (Whittle, 2005:161). Converseley, Whittle argued that queer theory has sometimes privileged certain genderings (those involving same-sex desire), and therefore has failed to fully escape the economy of gender (1996:202, 2002:67).

Although presenting gender in an entirely new way, queer theory has thus been steered by its roots, described by Whittle as '*... medico-legal discussions of sexual pathologies*' (1996:197). Queer's contemporary-modern manifestation is linked to modern sexual identities (rather than subjectivities) that share a genesis in the definitions of inverted identities offered by sexology and the reinterpretations of such identities as erroneous social development by the psychoanalytic movement. Despite this link to certain genders and sexualities, Whittle perceived queer theory as '*... one of the greatest threats to the conceptual basis of modernist thought there has ever been*' (1996:200).

A failing of queer theory is that it does not tend to provide for all those who need identity labels with which to locate themselves socially and to provide a foundation for their subjectivity. It is of questionable use for those who wish for acknowledgment of what they perceive as oppressions deriving from the lived reality of their gender. A more appealing theoretical movement for such people is offered by transgender studies, and by 3<sup>rd</sup> wave feminism. Those championing trans theory/studies/practice found that Whittle's 'gender fuck'



effect could often be transposed to their discipline/activity without a complete loss of subjective positioning. In transgender studies, 'gender fuck' has been expanded and revised in what Whittle calls, '*... not just deconstruction but also reconstruction' in order to allot more validity to those sexes/genders/sexualities that appear real to those who experience them* (Whittle, 1996:204). Reconstruction can move on from deconstruction by involving political, critical and feminist aspects rather than being a purely philosophical exercise.

### 5.2.2 Discussing Connections between Queer Theory and Feminism

Negative internecine conflations describing each other's factions have been manufactured by queer theory against feminism and vice versa, in a similar way to those arising between transgender and feminism, as described in chapter 1 sub-section 1.1, to the detriment of dialogic negotiations,

For too long, feminism has been caricatured – in part by Halley – as being primarily a politics of anti-sex moralism, and queer theory has been conversely cast – not by Halley – as being nothing but an uncritical celebration of sex. (Romero, 2009:197)

As described in the next sub-section, Romero theorised that there have been more connections than disconnections between the two factions. Fineman mentioned three major connections between much of feminism and queer theory: subversive elements, interdisciplinary perspectives and political ethos (2009:1). Philosophical 3<sup>rd</sup> wave feminism seems particularly related to queer theory because of its socially constructive approach to gender, its radical element, its interdisciplinary ethos and intersectionality theory. Intersectionality theory seems to mark the particularly inclusive overlap between 3<sup>rd</sup> wave feminism and queer theory and seems to owe a large debt to those womanist philosophers who demonstrated that lived experience and social subjectivities could combine to produce complex social standpoints.

In 'Toward a Queer Legal Theory', Stychin described how queer theory has highlighted categorical thinking in law and the 'in-process' nature of categories that otherwise seem non-temporal and cross-cultural (1995:148),

Queerness in part suggests an unwillingness to fix differences in any ultimate literality. Rather, queer favours a strategically articulated commonality forged from differently located subject positions. (1995:141)

This bodes well for links between queer theory and the notions of genre and genealogy, and postdifference, as described in chapter 8 sub-sections 3.4 and 3.5. Romero gave a similar interpretation in 'Methodological Descriptions: "Feminist" and "Queer" Legal Theories',

A queer theoretical move might emphasize the historical contingency and further the incoherence of social constructions, such as the polarization and compartmentalization of men from women, male from female, masculinity from femininity, or heterosexual from homosexual. (2009:190)

For Stychin, the law is just as much in-process as are subjectivities in a queer perspective,

... law as a locus of struggle can be dynamic, unstable, and unpredictable. I will suggest that law and legal reasoning can inadvertently contribute to the development of a 'queer' political stance and identity. In this regard, legal discourse often inscribes sexuality in a queer fashion and, in the process, legal reasoning itself becomes a queer phenomenon. (140)

Stychin considered that, rather than forming gender hierarchies and adopting the 'liberal assimilation' of subjectivity that marked what might be called a philosophical 2<sup>nd</sup> wave of the lesbian and gay movement, queer theory developed a suspicion of definitions and labels (144). In this way queer tied in with the concept of formation of subjectivity through genre and genealogy, described in chapter 1 sub-section 1.2 and chapter 8 sub-section 3.4, where all subjectivities and their labels are taken to be 'in-process'. This concept is a major feature of 3<sup>rd</sup> wave thinking, as described in chapter 3 section 1.

It seems that a genealogy of subjectivity is needed to allow gendered, ethnic and social 'Others' to connect with the oppressed factions of queer and feminism. Culbertson and Jackson view queer and feminism as complex and as built from a, 'multiplicity of differences' and that recognising this can point, '*... us to an exit from, and indictment of, this imagined queer-feminist divide* (138)'. Chapter 3 of this research described how 3<sup>rd</sup> wave feminism notably recognises

such complexity and contradiction in subjectivities and movements. Similarly to Holmes (2006:112), Culbertson and Jackson note how the law is characteristically slow to recognise these differences-in-process, and that this slowness consequently causes the 'Othering' of many gender variant people from social institutions and legal protection (139).

In the face of unnamed oppressions and oppressors, rather than losing subjectivity in liberal assimilation, queer theorists found that a strategic essentialism was required based upon personally political subjectivity and Stychin recognised the need for this by stating that, '*The strategy is to both assert categories as meaningful and strategically important, while avoiding closure in their definition* (155).' However, despite queer's attempts to dismantle essentialist categories and to avoid giving in to liberal assimilation, the influence of lesbian and gay subjectivities in queer theory may have decreased inclusivity for all gender variant people into queer discourse. Stychin considered that,

... lesbian and gay politics has often seemed in practice less inclusive of difference than in stated theory. ... The focus on sexual categories thus slides easily into a one-dimensional view of 'otherness', which frequently has obliterated the complexity of the matrices of oppression in which subjects operate. (142)

This one dimensional view of 'otherness', or even of other gender variance as 'Other', led to the formation of hierarchies between gender variant subjectivities, seeming to mirror those to be found in heteronormativity (143), although Halberstam (1998) criticised easy readings of such hierarchies, as described in chapter 3 section 2.

In 'Proper Objects, Different Subjects and Juridical Horizons in Radical Legal Critique', Culbertson and Jackson's description of, '*... the dense attraction and tragic conscription of radical critical movement to fixed and unitary identitarian politics and juridical liberal discourses*' (2009:136) seems applicable to the philosophical 2<sup>nd</sup> wave of feminism, as described in chapter 2 section 3. Culbertson and Jackson argued that queer and feminism have come to be associated with particular essentialised identities and this has caused rifts between the two factions,

... apparent queer-feminist rifts are, we think, often the result of improperly fixed or unitary imaginations of identity that construe sexual difference, differences, and sexual subordination as the discrete and insular, fixed and unified, outsider's ground upon which feminist or queer critics may apprehend subordination, articulate critique, and move for insurgent re-imaginings. (137)

Culbertson and Jackson described how Matryoshka-like dualisms within dualisms are formed when oppressed subjectivities essentialise themselves with the effect of maintaining inside/outside binaries,

Thus, getting the queer outside feminism – like getting the feminine outside patriarchy, or the homosexual outside heteronormativity – subtends even as it claims to subvert the inside/outside logic of fixed and unitary difference and differences, thereby excluding those racial, economic, national and other Others who are never really in or out of this inside/outside framework. (138)

This contention aligns with that made in chapter 1 section 1 where it was argued that transgender and feminism have been blighted by exclusionary elements from within and from without. These elements perceive that only certain essential social identities can be properly associated with gender transition and feminism. It could be that transgender and feminism are sometimes biased towards their own hierarchically placed essentialised identities, for example 'transsexual' and 'woman', as suggested in chapter 1 section 1. This bias would be just as contradictory as the queer situation if transgender and feminism are supposed to be free from the fetters of essentialising gender. It seems that contradiction must at least be contradiction-in-process and recognised contradiction if it is to potentially be inclusive for excluded or as yet unnamed subjectivities. 3<sup>rd</sup> wave feminism has focussed upon the positive effects of identifying and accepting contradiction where no rational explanations are forthcoming, as described in chapter 3 section 2.

Halley theorised that queer theory's divergence from equality and rights based legal reform indicated an acceptance of the contradictory nature of sexual subjectivity,

Why does that logic sound “queer”? I think it’s because it is sex-positive, shame/abjection affirmative, irrationalist, and capable of seeing the paradoxical, fractured and/or “flipped” capacities in M, F, desire and power. Surely approaching questions of sexual politics or sexual regulation with that logic would lead us strongly away from the equality-is-freedom, victim’s-truth model of legal reform that has become Catharine MacKinnon’s, and would alienate us quite completely from the legal moralism that characterises cultural feminism. (2009:25)

Both 3<sup>rd</sup> wave feminist and queer factions seem capable of recognising the possibility of contradiction in their own philosophical projects, as well as recognising contradiction in other social discourses. Halley provides an example of a potential contradiction that would need to be identified by inclusive social constructionist philosophies,

[Queer work] ... will tend to affirm mobility over fixity, though this tendency always leads a queer theoretic project to contradict its anti-identitarian aspirations by turning mobility itself into a new, highly regulatory identity or a model for all fixities to envy. (2009:28)

Both queer theory and inclusive feminism have identified the kind of structural thinking identified by feminist legal academic Ann Scales, which, ‘... *tends to become second nature and as such thwarts evolution by discouraging human efforts to be and do better* ... (2009:396)’. This type of thought includes the common-sense and essentialising discourses that curb creative thinking. Such discourses might be associated with religion, medicine (biological and psychological), the law, or even feminism and queer theory. They may work to cement people into identity by proffering what are taken to be universal aetiologies of human development.

### 5.2.33<sup>rd</sup> Wave Feminism as Theoretical Framework

According to Fineman, Culbertson and Jackson, ‘... *insist upon the impossibility of a simple choosing of sides in the alleged divide of “feminist versus queer”* (2009:113)’, in a similar way to Romero (2009). The researcher concurred with this belief but wished to identify particularly with the feminism that might be called the philosophical 3<sup>rd</sup> wave for the reasons set out below.

The researcher wished to investigate heteronormativity as a separatist discourse that may lie at the root of subordination of feminine or feminised subjectivity. According to feminist social construction theory, this kind of subjectivity formed by processes such as those identified in chapter 2, ie silence and secrecy, infantilisation and manipulations of reality. All gender variant subjectivities would seem to have incurred this social emasculation. Since feminism has focussed on the negative feminisation, including infantilisation and silencing, of some sexual subjectivities, this investigation seemed to require a particularly feminist theoretical framework. Romero noted that, '*Much queer politics and queer theory is therefore suspicious of identity politics, which tend to categorise and simplify experience* (2009:190-191)'. However, subjectivity politics is necessary for the personally political project of 3<sup>rd</sup> wave feminism in order to reveal silent and secretly formed and imposed gender variant 'identities', and to reveal the preferred subjectivities of silenced gender variant people.

Gilligan concentrated upon negative feminisation in *In a Different Voice*. Although this may have seemed to be an essentialisation of women as the 'weaker sex', her ethics of care espoused investigation of individual subjectivities and circumstances, an ethical procedure key to queer practice. This procedure revealed that womanly gendering was in-process, as explained in chapter 4 section 5. In a feminist gesture, Gilligan paid tribute to the history of womanly relations in *In a Different Voice*, something characteristic of the philosophical 3<sup>rd</sup> wave, as described in chapter 3 section 3.

Another example of how 3<sup>rd</sup> wave feminist philosophy pays tribute to womanly relations is given by queer legal theorist Mary Becker in 'Care and Feminists'. Becker described how Professor of Law Katherine Franke perceived the emphasis on care in legal feminism as having built up an image of 'dependency and danger' pertaining to women's lives (2009:160). Franke considered that, because of this, women should not be culturally tied to care in the form of biological motherhood (161). However, Becker argued that special recognition need not essentialise those who are categorised including those categorised as mothers (163). Feminist research has revealed the way that women have developed ethics of care through mothering type relations, and identifying those

who have contributed in this way as 'women' or 'mothers' at least pays tribute to their special link to ethics of care. The 'reproductive work', traditionally carried out by women, is for Becker a feature of a society that tends to its social roots in order to produce the 'public good' of a new generation (2009:177).

#### 5.2.4 Taking a Break from Non-Feminism

In 'Queer Theory by Men', Halley addressed the need she felt to 'take a break from feminism' (2009:15). This referred to the kinds of feminism perceived by her to be prevalent in the contemporary USA, rather than what Halley necessarily recognised as feminism. However, Halley didn't identify anything like a queer feminism as existing in this scenario, just recording three main types of feminism: 'M/F' (distinction between male and female), 'M>F' (male as oppressively dominant of female) and 'carrying a brief for F' (eulogising of the female) feminisms (2009:5).

Halley described how, in early theory, Catherine MacKinnon promoted the concept of M/F feminism by theorising that the gendered separation inherent in the M/F dualism was induced by institutionalised heteronormativity. For MacKinnon, the state and the law were gendered male, '*... in the sense that they fully recapitulated male ontological and epistemological powers and were in a sense therefore fully dependent on female subordination to be what they were*' (Halley, 2009:12). By suggesting the existence of such overarching social hegemonies, Halley theorised that MacKinnon and many feminist and gay rights campaigners narrated themselves into 'Otherness' or victim status (14). According to Halley, cultural and radical feminism therefore emanated 'subordination-theory structuralism', where subordination of the female was embedded into the structure of society (20).

Halley considered that a queer perspective of law and subjectivities as in-process and not inescapably oppressive was provided by queer theorists such as Duncan Kennedy (21). Kennedy, following on from feminist social construction theory developed from Foucault's postmodern theory of sexuality, suggested the complexity of individual and structural subjectivities, a complexity which might allow,

... the persistence of resistance, compromise and opportunism as strategies for negotiating the regime, rather than buying into it without

reserve, so that the image of a fully rationalised, totalitarian gender system seems paranoid. (Kennedy, ...:157, quoted in Halley, 2009:21)

This kind of philosophical perspective would allow her to take a philosophical break from what she perceived that feminism and gay rights had become in the US.

It is perhaps the case that only some people have the choice to take a break from the kinds of feminism described by Halley, and that this does not include those with subjectivities not characteristically included into these more separatist types of feminism. It may happen that some of those with non-natal-female genders may wish to take a break from non-feminism. This will sometimes be more of a 'staycation' than a break, if the person concerned has already actually held and espoused a feminist-inspired philosophical ethos. It may actually involve a wish for immigration into feminism, rather than a temporary visit, if the chosen feminism is seen as different to the separatist feminism Halley described as inherent in the 2000s US. This was the situation the researcher felt himself to be within when deciding which theoretical framework to adopt for the thesis.

In assessing Halley's desire to take a break from feminism, Romero considered that,

... it is not necessary to take a break from feminism, as Halley argues, to be critical of or to work beyond feminist projects, as Halley desires. As I explain, the construction of Halley's point mistakenly presumes the existence of a readily identifiable body of consistent thought called "feminism" from which to take a break. Indeed, in order for Halley's articulation to work, she must ignore or label otherwise feminist efforts that have similar views about sexuality to her own. (2009:179)

... many of the projects Halley attempts to characterise as diverging or fully breaking from feminism, such as Judith Butler's *Gender Trouble* (1999), are self-identified as and arguably are feminist efforts. (2009:182)

Judith Butler saw the possibility for cooperation between feminism and queer theory. But this, Butler thought, should be carried out via the critically dialogic endeavour of what might be called a contradiction coalition where each side



must allow for, but also to question, contradictions coming from the other side in order to challenge the imposition and expectation of metanarrative (Fineman, 2009:6). For reasons identified in chapter 3 section 3, the 3<sup>rd</sup> wave of feminism seems notably contradiction aware and friendly.

It seems that the interpretation of 'feminism' is what it is that is at stake in this debate, and that feminists and queer theorists always need to highlight the consequences and value of providing a set definition of either faction. Romero asked whether it is, '*... dilutive of feminist and queer political mobilizations to suggest that we cannot substantively define feminism and queer theory (2009:197)*'. However, it may be this very lack of definition that leads to commitment for some if they see the factions as a way to escape suffocating social metanarratives, whether provided by medicine, the law or other social superstructures.

Romero provided an interpretation of a feminist theoretical framework as an open entity that seems to align with the interpretations of 3<sup>rd</sup> wave feminism provided in chapter 3 of this thesis,

... many feminists embrace the idea that no one theory could ever provide a complete explanation; these feminists eschew totalising "grand theory" and instead opt for "middle-range theory" grounded in everyday experience ... . (2009:185)

This kind of feminism involves theory in-process that doesn't seek to simply reverse the power relationship set up by masculinism. It is not necessary to take a break from this kind of feminism, or to be barred from its shores, if it is inherently self-critical and open to input from other inclusive philosophies.

We can just as readily conceive of taking a break from queer theory, as from feminism. This may be useful when considering that both are named discourses that acquire connotations from those names. However, Romero suggests we can critique those connotations without having to take time off from either faction if we recognise that, '*... a general or foundational differentiation between queer theory and feminism is neither possible nor desirable (2009:190)*'. Romero considered that feminism and queer theory have overlaps, '*I do not mean to posit ... that feminism and queer theory are distinct*

*and segregated arenas of thought* (2009:180).' This quote provides more support to a perspective of feminism and queer as genres with complex connections to each other. A break taken, or not taken, from either philosophical discourse is best explained, as the researcher has sought to do in this section, in order to add to the 'in-process' development of both. As noted in chapter 7, section 4, people should have the power to choose to identify with either faction without each faction having to be automatically foregone or subsumed into the other.

### 5.3 Why Narratives?

Unless you immerse yourself in a lifestyle or people for MANY years you cant really learn much, you think you have but you simply cant. When I read Anthropological and Tibetology pepers I laugh my head of, and especially the translations of sacred texts. ..they get so much WRONG. (Leon Jul 23rd, 2006, in <How do you believe you will you age?>)

You're right about fully understanding our Ways. They can't be more than touched on in a classroom, even with four year degrees in "Indian Studies" or "Native American Culuture". I mean, give it a break. How can four years of classroom study make one fully understand the Ways of a People? (Kimana Aug 9th, 2006, in <Post-GRS people's sexuality>)

Carol Gilligan similarly argued that the only way to gain insight into women's lives was to listen to their own voices in order to gain the kind of 'view from within' described in chapter 1 section 1,

Among the most pressing items on the agenda for research on adult development is the need to delineate *in women's own terms* the experience of their adult life. (1982:173)

People's own narrative accounts allow them to fashion stories about their experiences and passions in order to, consciously or unconsciously, position their social subjectivity. It is these stories that are identified by sociological researchers as spoken or written narratives. As noted by narrative analyst Catherine Riessman, these stories are partly infused into the subject by the

culture he or she is brought up in and manifest in the form of personal narratives,

... culture “speaks itself” through an individual’s story. Narratives speak in terms that seem natural, but we can analyse how culturally and historically contingent these terms are ... (1995:5)

Cues or input from, and the presence of, others shape the amount or type of information we elicit in the narrative, leading to a yet more distorted version of the original event or experience, as noted by Tracey Lee in her research investigating trans men's interactions with medical specialists (2001:56,95-96,100). The narrative is then subject to the interpretation of the reader who will be similarly infused with cultural location.

Feminist research has notably suggested a link between language and identity formation, and most feminist researchers are likely to agree with the idea that ‘you are what you speak’. This is the result of language forming and reproducing our societies, and consequently the individuals within, and then reflecting society when it is used. Identification of what Freelance Writer and Academic Mary Talbot (1998:14) called ‘language-as-mirror’ allows those of us who need to, to subvert, if only slowly, the operation of ‘language-as-reproductive’ by applying a critical approach to everyday language. This can be done by examining what is reflected in what is in actuality a distorted ‘mirror’,<sup>2</sup> as a way to challenge its seeming inevitability or ‘common sense’ operation. Social construction theorists taking a critical look at discourse have portrayed sexual subjectivity as subject to constant Chinese-Whisper like iteration of meaning, producing a distortion in the ‘mirror’ of language, and then a distortion in the construction of the subject, each time this occurs (Burr, 1995:51,53,62).

Critical discourse analysts such as Norman Fairclough (1989, 2003), Ruth Wodak (2003), Teun A van Dijk (2008) and Mary Talbot (2003) have drawn from investigations of ideology and power relations by critical theorists such as Marx (1867), Gramsci (1971), Althusser (1970,1971), Foucault (1978) and Judith Butler (1989). In this way they have revealed that apparently self-evident

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<sup>2</sup> This is similar to Lacan’s idea of personal development affected by what we see in the ‘social mirror’, described in the introduction to chapter 4.

or common sense discourses, facilitated by language and similar to the 'view from nowhere' described in chapter 1 section 2, in reality change over time depending upon who can influence relationships of power that produce the discourse in question. Foucault theorised that changes to discourse depend upon, '*... a multiplicity of points of resistance*', that these points of resistance traverse, '*... social stratifications and individual unities*', and that changes could happen when silence and secrecy loosen the holds of power and provide for, '*... relatively obscure areas of tolerance*' (Foucault, 1998[1978]:95,96,101). These changes can eventually form a 'reverse discourse' such as that pertaining to homosexuality in the nineteenth century (101), or such as occurred during the 1980s AIDS pandemic. In this instance visibility of homosexuality led to increasing 'naming' where gay men re-appropriated their naming once again to reconstruct it in a positive or confident way, leaving imposed silence and secrecy or what Stychin called a 'liberal assimilationist' paradigm (1995:152).

The idea of sexual subjectivity as a process or social construction enabled the researcher to address what Mary Talbot, following on from work by Simone de Beauvoir (1974) and Monique Wittig (1992), identified as 'social essentialism'. This is the suggestion that subjectivity is restricted to pre-given categories and that everyone can accurately be allocated to certain categories by others,

In some writing on language and gender there is a tendency to treat the psycho-social categories of masculine and feminine as bi-polar. This is particularly true of work on distinct interactional styles of men and women ... Such studies put essentialism out through the front door, only to let it in again at the back. That is to say, they do away with biological essentialism, just to replace it with a kind of social essentialism, which is just as bad. (Talbot, 1998:13)

This was a criticism levelled at Gilligan, as discussed in chapter 4 section 5, but can be seen as invalid on closer reading of her work. Social essentialism can be found in many narrative schemas<sup>3</sup> of dualism. We tend to use dualistic language (e.g. man/woman, white/black, sane/mad, straight/gay) all the time, leading us away from properly examining difference and coercing us into

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<sup>3</sup> A description of schemata/scripts is provided in sub-section 3.2 below.

maintaining images of stereotypical 'Others'. Escape from dualistic schemata might be facilitated by what womanist writer and poet Audre Lorde saw as cross-difference cooperation,

Within the interdependence of mutual (nondominant) differences lies that security which enables us to descend into the chaos of knowledge and return with true visions of our future, along with the concomitant power to effect those changes which can bring that future into being. Difference is that raw and powerful connection from which our personal power is forged. (1984:112)

This is the inclusive approach to difference characteristic of philosophical 3<sup>rd</sup> wave trans and feminist theory, rather than the exclusionary approach inherent to separatist masculinism and feminism.

Challenges to the essential categories of heteronormative gender have come from trans narratives, for instance in the autobiographies of Georgina Turtle, Roberta Cowell and Jan Morris, where the definition of who has real gendering with regard to the naming of sexual subjectivity came under scrutiny. More recently, in a narrative of gender transition reported by Will Self, Stephen Whittle described the confusion he endured as he wrought out self and social recognition for the sexual subjectivity that he seemed to have belonged to all along. Whittle described himself as originally a, '*male bisexual trapped inside a female body!*' (Self and Gamble, 2000:54). This is a good example of an individual's self-insight into the complexity of his own sexual subjectivity, engendered by the narrative format, and was perhaps designed to be a bit ironically complex in order to make a statement about what trans people know about the complexity of gender. Trans subjectivities are nowadays generally much more socially acceptable and recognised than in the 1970s when Whittle transitioned, significantly, but not always,<sup>4</sup> because of trans people's access to self-expression. Examples of such expression include that of Nadia Almada in television reality show *Big Brother*, but it is debatable as to what extent her appearances were a positive forum for trans expression.

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<sup>4</sup> Trans expression can identify trans people as targets for oppression.

A critic might ask what it is that narratives can tell us about the wider world when they seem to be so consistently formed from idiosyncratic perceptions. The answer lies in the fact that narrative responses, when compared and contrasted with other narratives, can indicate how language moulds subjectivities (Talbot, 1998:14) and vice versa. Although personal narratives cannot be taken to constitute the truth, in the sense demanded by positivistic methodology, they still offer useful comparisons of people's perceptions, as suggested by Transstudy participant Leon, who wrote,

You really cant understand the subject unless you truley are a proper scientist and note down everything the subjects tell you, and then dont try and interprate these facts to much as it will just be your own opinion and not the actual reality from a trans persons life and understanding. Just keep asking questions and try and do like Kinsey did and give the real info from real lives. (Leon Jun 15th, 2006, in <Trans and Feminist Theories>)

In further defence of researching personal narratives, as described in subsection 1.2, it has been claimed that deliberately false subjectivity is generally difficult to maintain over extended narrative interaction (Mann and Stewart, 2000:212, 214).<sup>5</sup> This is a disadvantage when searching for a forum free from the influence of gender, but is an advantage when providing a space for people's real selves to permeate narrative formats.

As a component of qualitative research, narratives also tend to offer more of a whole narrative picture of a participant's self than that offered by positivistic research. As the researcher noted in the Transstudy,

Although providing identification for certain types of psychological suffering, information gained from the MMPI [Minnesota Multiphasic Personality Index] alone seems to fit people into previously designated personality categories, something that will always diminish the picture of the individual's whole subjective essence. (The Researcher May 3rd, 2006, in <What Causes Trans Subjectivity?>)

Narratives notably work to reveal:

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<sup>5</sup> The researcher proposed this argument to participants in a post of Apr 30th, 2006 in the topic thread, <Your Narrative Self>.

- instances of personal dissonance with society and culture
- accounts of the occurrence of personal epiphanies
- the occasion of personal trauma

Catherine Riessman observed how women interviewed by Ginsberg (1989) narrated all three of these catalytic experiences when relating the challenges of motherhood (Riessman, 1993:26). Similarly, catalytic experiences are of particular relevance to study of the trans subject who is likely to encounter threats to the self, through contradiction of self and self-presentation by others as well as through bodily dysphoria (the miss-matching of significant parts of the physical body to bodily/psychic subjectivity). Examples of the use of such experience in narrative are given in chapter 8, section 4. Dissonance, epiphanies and trauma have also traditionally been of pertinence to feminist investigations into the development of sexual subjectivity, initiated in consciousness-raising and coalesced into developmental accounts informed by psychoanalysis or social constructionism. Such investigations gave voice to the philosophical 3<sup>rd</sup> wave in its project to transform hidden personal inequalities and oppression into openly political agendas.

#### 5.4 Semanalysis Deriving from the Semiotic

In *Desire in Language: A Semiotic Approach to Literature and Art* (1969, translated 1980), Julia Kristeva combined semiotics, the study of languages as sign systems that produce meaning, and psychoanalysis, into 'semanalysis' or 'analytical semiology', adding a critical, political and reflexive endeavour<sup>6</sup> in order to draw social meanings from the signifying process, following the example set by Karl Marx. Semanalysis involved all three components of critical discourse analysis, namely, analysis, critique and deconstruction,

Semanalysis, as I tried to define it and put it to work in Σημειωτική, meets that requirement to describe the signifying phenomenon, or signifying phenomena, while analyzing, criticizing, and dissolving "phenomenon", "meaning," and "signifier". (Kristeva, 1980[1969:vii])

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<sup>6</sup> As noted by Toril Moi in Kristeva (1986b:74).

Semanalysis inspired the reading of narratives as sign systems linked to the personalities and social subjectivities of those who produce them, to reveal language as in-process or evolving,

The intent of Julia Kristeva's semanalysis is to reveal the dynamics of the signifying process [signifiante]. The expression "engendering the formula" aptly illustrates the motile nature of the "signifier-emerging as text" ... (Prud'homme and Légaré, 2006)

[Semanalysis involves] an insertion of subjectivity into matters of language and meaning ... (Kristeva, 1980[1969:viii])

Semanalysis introduced a critical dimension via its use of social theories to investigate language<sup>7</sup> and employed reflexivity (consideration of inputs into meaning/signifying) in order to investigate communication,

Semanalysis, in order to avoid the necrophilia of other theories of language, must always question its own presuppositions and uncover, record, and deny its own ideological gestures. (Oliver, 1998, referring to *Séméiotikè*, 1969:78-79)

In this way Kristeva's analytical version of semiotics was designed to manifest as an open and evolving narrative of its own,

Semiotic practice breaks with the teleological vision of a science that is subordinated to a philosophical system and consequently even destined itself to become a system. Without becoming a system, the site of semiotics, where models and theories are developed, is a place of dispute and self-questioning, a 'circle' that remains open. (Kristeva, 1986:78)

Semanalysis expanded this critical function to explain how the speaking or writing subject, influenced by their semiotic mode of communication, can take part in a project of narrative subversion.<sup>8</sup> This mode of communication may have influenced those trans narrators who applied what might be called

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<sup>7</sup> See Kristeva (1986:80).

<sup>8</sup> Kristeva explained how this was particularly evident in the work of Céline, Artaud and Joyce (Humm, 1992:212). Wright uses the words 'meaning deforming', 'subvert' (1992:194), 'undermine', 'destabilise', 'disruptive' (195) and 'ruptures' (196) to describe how the Kristeva theorised that the subject can transform language in *Revolution in Poetic Language*. Toril Moi remarked how, 'semanalysis nevertheless ceaselessly subverts and transforms the meaning of the terms it appropriates' (1986b:74).



'narrative messiness' in order to revise the concept of sexual subjectivity.<sup>9</sup> When considering narratives from Clarette and Kimana, the researcher deemed that their sometimes poetic and non-conformist language could be obscure but that it might derive from a different agenda-base than what he came to identify as the often considerably more obscure academic 'sociobabble', or the 'verbally hygienic' language of medical reassignment, black letter law and elitist academia. The former types of narrative perhaps work to be inclusive of different readerships because of their grounding in real lives, passion and spirituality rather than medical/legal/academic privilege. Their basis in 'narrative messiness' contrasts with the unnatural 'cleanliness' of texts made to fit a certain formal schema. 'Narrative messiness' may act as a conduit for the inclusion of gender varied voices into discourse. It may also, as in the words of Kristeva, work to,

... demystify the idea that the community of language is a universal, all-inclusive, and equalizing tool. (Kristeva, 1993:223)

Gender varied voices have to a large extent been silenced by exclusionary discourse such as gatekeeping imposed by professional discourses that control access to subjectivity, for instance via legal recognition or medical remedy. Gatekeeping involves 'verbal hygiene' in order to control any deviance from rules of language that gatekeepers deem to be right and proper.

Kristeva visualised semanalysis as an escape from the closed system of much traditional science which presents its findings as self-contained and self-evident while relying on a 'common sense' schema (Kristeva, 1986:78,79). This departure from closed systems of definition was similar to Foucault's idea of the dialogic (not self-contained) subversion of discourse or 'reciprocal elucidation' (Diamond and Quinby, 1988:xi), a communicative technique described in subsection 3.2 of this chapter.<sup>10</sup> The examination of 'circular' narratives of science via critical/political/radical investigation would, according to Kristeva, produce a

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<sup>9</sup> Kate Bornstein applied this kind of textual subversion by involving her own life into her text in chapters 13 and 14 of *Gender Outlaw* (1994), by suggesting how truth is channelled in different communicative forums and formats (157), by perceiving trans subjectivity as genre (144-145), and by addressing the lives of gender outsiders (159). In *Stone Butch Blues* (1993) Leslie Feinberg narrates the application of a 'messy' life to the production of a whole new perspective on gender.

<sup>10</sup> For instance, the rejection of '*forms of identity to which we are tied*', as noted by O'Leary (2002:15).

new model or 'structure', which comes with its own new meaning (1986:79). This new structure may have been the kind of investigative model recommended by Whelehan when calling for an examination of the link between communication and subjectivity,

... what is needed is a more wide ranging study of language which links modes of speech as well as writing to women's multifarious and possibly conflicting social identities, in a much broader based interrogation of the means by which meaning is socially and culturally, as well as linguistically, embedded. (Whelehan, 1995:77)

Kristeva discussed how Marx portrayed the capitalist system as a historically and demographically contextual model of discourse that produced a particular model of social relations (1986:80-83). She expanded Marx's critical investigation of discourse by involving Freud's ideas of the influence that desire has upon language, a semiotic desire that precedes the articulation of signifiers (names) and signified (named) in symbolic language. This is desire that, according to Kristeva, derives from the bodily bond between mother and child. The semiotic bubbles away under the surface of the symbolic and manifests in symbolic communication as rhythmic articulation, tonal presentation and body language. The semiotic seems to be maternal relations<sup>11</sup> in the form of language in its relation to the maternal bond and alternative types of communication. Semiotic communication is superseded, but not replaced, by the symbolic when the child enters the world of spoken and written language, and manifests as a duality of language,

[Kristeva] reveals a convergence with Lacan's linking of language to the unconscious. Lacan referred to the dual planes on which language operates ... that duality is such as to make it possible for semanalysis to be a critique of meaning (assuming that is part of a fixed, symbolic system). (Roudiez, 1980[1969]:4)

Kristeva posited that the primary relation of child to maternal figure informs the child's semiotic/symbolic presentation of narrative in later life. She believed that

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<sup>11</sup> Maternal relations are discussed and analysed in chapter 3 s. 3 and chapter 8 s. 3.

once the individual is born, the maternal function, and consequently the development of the semiotic, just like Carol Gilligan's ethics of care as interpreted by Benhabib,<sup>12</sup> can be fulfilled by a person of any sexual subjectivity (Oliver, 1998). This association of parental function with gender has relevance to legal cases such as *X, Y and Z*, where the complexity of associating gender with parenting was revealed. The mantle of subjective moulding, initially provided by the primary body to body relationship, is taken up by relationships with significant others out in society, indicating for Kristeva that the subject is always one 'in-process', and not just formed by a pre-defined and finite early psycho-social process.

It appears that the semiotic cannot be accurately articulated because it is subject to the way that humans have developed their means of communication, i.e. the logocentric<sup>13</sup> constraints of spoken and written language known as the symbolic. Toril Moi called such attempts to articulate the non-articulable, '... *the paradox of semiotics*' (1986:75). However, Kristeva did not believe that the inaccessibility of the semiotic means all attempts at understanding or assessing its effects should be abandoned. She believed that attention to the semiotic can lead to 'intertextuality', her psychoanalytic term for the remodelling of an old discourse into something new via the merging of parts of old sign systems with new (Roudiez, 1980[1969]:15). Kristeva believed that such a process ultimately formed human subjectivity, through the influence of discourse, rather than such subjectivity being constructed from a deterministic psychoanalytical process. This parallels the way that Gilligan did not see the gendered subject as wholly determined by biological sex.<sup>14</sup> Culture, history, the unconscious, societal ties and the body all influence discourses forming the subject. Within this study, the spirit of semanalysis (critical, political, reflexive, open system, dialogic) was drawn upon in order to form a tailor-made critical discourse analysis framework, described in the next section, and was applied throughout the chapters in order to take a critical and personally political perspective to discourses evident as relevant to the research. Semanalysis is employed in the thesis in the critique

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<sup>12</sup> Benhabib (1992:191) - see chapter 4 s. 5.

<sup>13</sup> A Western cultural way of understanding that privileges language over alternative means of communication.

<sup>14</sup> See Benhabib's argument in chapter 4 s. 5.

of apparently neutral or 'common sense' discourses such as gender heteronormativity, in the focus on maternal relations as inter-wave philosophy and communicative technique, in the perception of gender variance as a whole experience of gender, and in the proposition of gender as a process.

## 5.5 Construction of the Critical Discourse Analysis Framework

This critical discourse analysis framework acted as an investigative template for the analysis in Chapters 6 to 8. The component parts of this framework are not in reality rigidly discrete but influence, interact and shape each other with the eventual effect of moulding discourses and shaping subjectivity, if given the communicative space to do so. This may happen unintentionally or intentionally, and which of these it may be is very hard to discern from any record of communicative interaction. Nevertheless, identification of dialogic features, such as the four chosen for the framework, and indicating how they operate, seems to enhance our understanding of discourse.

In line with Whittle's reading of critical discourse analysis, as outlined in chapter 1 section 2 (2002:42), it became evident that only a tailor-made framework would be appropriate for an individual research project since only then would the framework address issues of relevance to literature review themes and research data. However, the researcher considered it acceptable to build up the framework by drawing from models of critical discourse analysis designed by theorists in this field. The main theorists sourced were: Tuen van Dijk (2001), Norman Fairclough (2003), Ian Parker (2005), Catherine Riessman (1993), and Margaret Wetherell, et al (2001). Below is a description of the critical discourse analysis framework, describing how each component may reveal discourses-in-process.

### 5.5.1 Access

Access to social structures or communities, for those with certain subjectivities, can operate in an exclusionary or inclusive manner, through the use of particular discourse. Access can rely on knowledge of means of communication, proximity to means of communication, social contacts,

specialist knowledge and entry into subjectivity.<sup>15</sup> Legal/medical academic Petra Wilson identified points of interaction that affect access to the law,

... one can begin to see the common threads found in the studies of access to law and unmet legal need: financial factors; knowledge and understanding of the institutions and organizations; personal, popular and idiosyncratic beliefs; and institutional factors. (1998:114)

Critical discourse analyst van Dijk (2001:303) described how exclusionary control of access (a form of gatekeeping),<sup>16</sup> by 'elite participants', such as entry to feminism as discussed in chapter 3 section 4, or access to narrative via 'verbal hygiene',<sup>17</sup> can act to negatively discriminate by preventing non-elite participants from shaping discourse.

In considering access for Transstudy participants, the researcher had to consider who might be 'Othered' or excluded from the website, as discussed in sub-section 1.1 of this chapter. This may have occurred, for instance, as a result of language used within the site or in language used in the adverts placed for recruitment to the site. It is notable that there was a comparative lack of contributions from trans men, for reasons not indisputably apparent to the researcher. On realising that some social groups, such as trans men, ethnicities and certain class groupings, may have been excluded from the site, the researcher decided to post up Transstudy topics entitled <Hidden Trans men?> and <Who might be the Others of the Transstudy?>, to at least initiate awareness and discussion of those possibly excluded.

A number of participants were not actively involved with sociological gender studies and so were sometimes unfamiliar with sociological definitions of trans subjectivity and the relation of these to areas of debate such as feminism and social constructionism. However, many participants had extensive experience of medical/practical/social gender transition issues and most had experienced prolonged access to medical and/or psychotherapeutic treatment regimes, engendering their access to transition/reassignment debate. At least six of the

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<sup>15</sup> Discussion of 'hailing' as access to social structures or subjectivity is provided in chapter 5 s. 5 (subjectivity) and chapter 7 s. 1.

<sup>16</sup> See chapter 7 s. 2 for interpretation of 'gatekeeping'.

<sup>17</sup> A term administered by Ian Parker and described in chapter 7 s. 2 (2005:101).

regular participants had professional occupations, perhaps further increasing their access to and willingness to participate in the Transstudy site, it being a written/computer based exercise. Some participants complained that language used by the researcher was sometimes obscurely socio-academic, something the researcher came to class as 'sociobabble'. The researcher came to place a major focus on re-drafting the thesis chapters in the attempt to make them more readable in an attempt to satisfy philosophical 3<sup>rd</sup> wave mores of accessibility and non-elitism.

### 5.5.2 Dialogic Negotiation

A process of mutual negotiation through various means of communication can lead to access to, or exclusion from, social structures and communities, depending upon who participates in the negotiation and their position in power relationships. This negotiation is a reciprocal, on-going and evolving feature of human interaction,

The relationships between the subject and the other, between the subject and itself, between the semiotic and the symbolic are all dialogic, in Kristevan theory. (Edelstein, 1993:200)

It follows that in any interchange between people, there is a constant monitoring of the 'definition of the situation' that each participant is struggling to bring off. (Burr, 2003:114)

According to Bakhtin, 'dialogic' communication could occur in any written, visual, body or spoken language (Bakhtin and Emerson, 1984:42). Dialogic communication as negotiation may be cooperative through acquiescence or agreement, or non-cooperative through resistance. An individual's experience of social contexts, access and subjectivity will derive from and influence their use of certain features of negotiation with some features being unknown to them or inaccessible. Mutual negotiation can serve to maintain dominant discourses and hegemonic relationships by emphasising and repeating their features through written, visual, body and spoken language. However, it can also challenge such discourses or distort 'language-as-mirror'<sup>18</sup> when people

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<sup>18</sup> As discussed in chapter 5 s. 3.

develop sufficient need to find an alternative to discourses that oppress them.<sup>19</sup> In this instance it resembles the 'dialogic model of ethics' championed by Seyla Benhabib and portrayed by her as a to-ing and fro-ing tennis ball-like negotiation between two parties.<sup>20</sup>

As described in section 4 of this chapter, Inclusive dialogic negotiation can be facilitated by a process identified by Foucault as 'reciprocal elucidation' involving non-hierarchical reciprocity of dialogue in which differences are respected and the rights of individuals participating are taken to be central to discussion (Diamond and Quinby, 1988:ix),

In the serious play of questions and answers, in the work of reciprocal elucidation, the rights of each person are in some sense immanent in the discussion. (Foucault, in interview with Paul Rabinow, May 1984)

Such negotiation seems to be a pivotal feature of the open and evolving discourse characteristic of a philosophical 3<sup>rd</sup> wave, for instance in the critical engagement through solidarity championed by bell hooks.<sup>21</sup> It also links in with the mores of the ethics of care, valued by those interested in more traditionally feminine forms of communication where relationships are negotiated rather than asserted.

Iris Marion Young thought that 'symmetrical reciprocity' provided too much of an image of uncomplicated equal communication with others that overlooked rather than respected differences (Edwards and Mauthner, 2002:26). She suggested the term 'asymmetrical reciprocity' instead as a way to properly describe communication between individuals. Edwards and Mauthner seemed to follow this train of thought when they considered that, '*... conflict, disagreement and ambivalence*' will occur in the research environment and that it is better to recognise these power imbalances than to try to deny them (2002:27). Asymmetrical reciprocity therefore seems more aligned with reciprocal elucidation.

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<sup>19</sup> Designated as the initiation of reverse discourses by Foucault, see chapter 1 s. 1 - (1998 [1978]:95-99) and chapter 5 s. 6.

<sup>20</sup> This element of dialogic negotiation was introduced in chapter 4 s. 5.

<sup>21</sup> [H]ooks' concept of 'solidarity' was discussed in chapter 1 sub-section 1.1.

## **Resistance or Acquiescence**

Power relations are always prevalent in negotiation and manifest as resistance or acquiescence. Neither resistance or acquiescence are intrinsically positive or negative, they are ways of working with or against certain discourses. As described in the paragraphs above, dialogic interaction may serve to keep power relations intact, or may pose a challenge to such relations. A resulting discourse may manifest as an 'ideological force' (Parker, 2005:92). Ideologies connected to the ideas of resistance and acquiescence in discourse may broadly be referred to respectively as 'social conflict' and 'functionalism'. Social conflict ideologies see social relations as problematic in some way while functionalist ideologies see them as basically benign and designed to be in the interests of everyone. Social Psychologist Vivien Burr theorised a greater prevalence of conflict than functionalism in the negotiation of subjectivity,

The process of constructing and negotiating our own identities will therefore often be ridden by conflict, as we struggle to claim or resist the images available to us through discourse. (Burr, 2003:110)

One way of investigating conflicting or functional social power relationships is to look at the way that some groups, whether intentionally or not, control the action and cognition of others. This will often occur through consensual arrangements similar to what Marxist Philosopher Louis Althusser identified as 'ideological state apparatuses', where elite agenda setting ensures that ideology is kept intact without overt coercion (1971). Such consensual relationships have been maintained by what Marxist Philosopher Antonio Gramsci referred to as 'hegemony', a bond between individuals and groups of different social status in a mutually binding relationship of power (Gramsci, 1971). This usually manifests as 'acquiescence' to dominant discourses on the part of groups with lower social status. Subtle dominance, initiated by 'hailing' the subject into the discourse, is required to make the hegemonic relationship seem naturally given or as common sense. Dominance in a hegemonic relationship cannot usually remain total, as Foucault theorised, and therefore can sometimes be contested



in a process of active resistance that may lead to a modified, or even transformed, discourse.<sup>22</sup>

### **Schemata and Scripts**

Discourse can be revealed in the form of narrative schemata as noted by van Dijk,

Let us give some well-known examples of discourse schemata. Stories, for instance, have a narrative schema ... Everyday conversations also have schemata. ... Scientific discourse, such as journal articles or lectures, may also have a conventional form, which often features an argumentative schema ... Psychological articles may even have a fixed, normative form ... In this way, many discourse types in our culture have a more-or-less fixed schematic organisation. Language users learn such schemata during socialization, although for some schemata, such as those used in professional discourse, special training may be required. (1988:49)

Schemata and scripts often seem to be conflated but a schema, in the psychological sense introduced by Frederic Bartlett in 1932, is a framework of knowledge about a theme of personal relevance that is psychologically stored by the individual subject and is often shared by those in the subject's social (not necessarily geographical) community,

Within cognitive psychology, a schema can be thought of as an abstract cognitive plan that serves as a guide for interpreting information and solving problems. Thus we may have a linguistic schema for understanding a sentence, or a cultural schema for interpreting a myth. (Young, et al, 2006:7)

Schemata guide our interpretation and comprehension of events and experiences. Scripts, on the other hand, consist of a set and sequence of behaviours learnt to be appropriate for a certain situation and will often support a personal or social schema,

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<sup>22</sup> A process briefly described in chapter 1 s. 1 and expanded upon in chapter 5 s. 6.

We also learn a variety of sexual scripts, or unspoken mental plans that guide our sexual behavior. (Coon, 2000:369)

Schema-like memories for events (called scripts) influence how we remember events. A script for a restaurant might include information about food, waitrons, paying the bill and so on. (Train, 2007:176)

Sexologists John Gagnon and William Simon described human sexuality as a script; for them sexuality arose from the individual's interaction with social discourse rather than from biological essence or instinct,

We created script theory in an attempt to have a device to describe how people go about doing sex socially, and to demonstrate the importance of social elements in the doing of the sexual. (2005[1973]:312)

Here their interpretation of 'script' seems to mean 'schema' as sexuality seems to be a complex cognitive plan. Both schemata and scripts save time that would be spent working out from scratch how to act in similar situations. Following schemata and scripts is not usually deliberate or conscious, but both can affect the content of an individual's narrative and the way that they interact with discourse. Schemata and scripts are often so ingrained and rehearsed that individuals tend to perceive their own as natural or common sense. The dialogic negotiation inherent to communication with ethics of care offers potential for the unearthing and subversion of oppressive schemata and scripts.

In this study, chapter 2 section 1 addresses the schema of silence and secrecy. Chapter 7 section 2 focuses on schemata and scripts of passing and chapter 7 section 3 looks at the potential for choice of gendered schemata/scripts. Chapter 8 section 2 considers schemata of subjective belonging and chapter 8 section 3 suggests a way of challenging oppressive schemata/scripts via ethics of care.

### 5.5.3 Subjectivity

This critical discourse analysis component was designed to prompt consideration of what it is that identifies the narrator as a subject, how it is that the narrator chooses to identify him/her/hirself as a subject and how subjectivity is formed. The subjects of this research were, in a sense, 'narrative subjects' since they were known to the researcher through their written narratives. A

subject is the conglomeration of the individual's self-presentation, experience and characteristics. These elements can work to inscribe background, ethnicity, class and gender into individual narratives in subtle ways. An individual may enact subjectivity by conforming to, resisting or subverting the identity schemata that are apparent in his/her/hir native culture and society. These reactions to schemata may hint at ideas of subjectivity that are favoured or not by certain narrative subjects. Subjectivity may derive from social position and role, social contacts, specialist knowledge, dialogic power position and status (all as perceived by the self and by others).

According to Althusser (1971), it was possible to theorise how the individual was 'hailed' by certain ideologies, by a process he called 'interpellation'. Hailing is a key aspect in the attainment and maintaining of subjectivity. Althusser described the process of interpellation:

I shall then suggest that ideology 'acts' or 'functions' in such a way that it 'recruits' subjects among the individuals (it recruits them all), or 'transforms' the individuals into subjects (it transforms them all) by that very precise operation which I have called interpellation or hailing, and which can be imagined along the lines of the most commonplace everyday police (or other) hailing: 'Hey, you there!' (1971:174-5)

Hailing involves a call to join an ideology which the individual can accept or refuse, depending on their upbringing, personal beliefs and will power, similar to acquiescence or resistance in dialogic negotiation. For instance, media representations can 'hail' certain audiences by using keywords in the 'language' of the target audience.<sup>23</sup> Interpellation can be negative inclusion if it blinkers those being included to all those excluded and it can lock the subject within a certain type of discourse,

If we accept or are unable to resist a particular subject position we are then locked into the system of rights, speaking rights and obligations that are carried with that position. (Burr, 2003:111)

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<sup>23</sup> As described by Watson and Whittle (2005:191).

It is apparent that the opposite of hailing can occur for the alienated individual. Here the ideology calls out, "Hey, not you", to leave the alienated subject in no doubt of their excluded status. This line of thinking prompted the researcher's inclusion of the <Who might be the Others of the Transstudy?> and <Hey You!> topical questions.

According to narrative psychologist Dan P McAdams, individuals may gain subjectivity through agency, meaning their positioning in power relationships through experience of acceptance, achievement and access, and/or through communion, referring to relations of love and intimacy (McAdams, 2001). Both can derive from a positive 'hailing' experience. Agency is an emphasis of the individual and communion emphasises relations with others, bringing to mind comparisons of the ethic of justice (individual rights) with ethics of care (responsibility and communication with others), symbolic with semiotic language and paternal with maternal relations.

### **Agency**

Although discourses can seemingly lock people into subjectivity, Burr echoed Foucault (1998[1978]:95-99)<sup>24</sup> by describing how people can gain enough agency to be able to remould those discourses through concerted actions (2003:113). Individuals are therefore not, according to social constructionists, blank paper waiting passively to be written upon by discourse. A person may develop an irresistible compulsion to become other to their attributed identity and will look for the 'chink in the armour' or the Achilles heels of discourses, grand narratives or power structures, for instance to form a pocket of resistance to mainstream 'silent and secret' and common sense discourse.<sup>25</sup> They might well identify with Burr's speculation that,

Some subject positions are more temporary or even fleeting and therefore who we are is constantly in flux, always dependent upon the changing flow of positions we negotiate within social interaction. (2003:120)

Challenging entrenched discourses has often transpired to be an arduous endeavour, but for some there seems little other choice if they are to adequately

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<sup>24</sup> See s. 1.2.

<sup>25</sup> See Foucault (1978:95-97).

express their inner selves. Agency is essential to the notion that individuals can contribute to societal change through identifying and then reforming social discourses. The overall title of Chapters 6 to 8, 'Reconstructing Discourses', is based on this belief in individual and group action. This chapter is designed to reveal potential agency-forming discourses<sup>26</sup> tools that can facilitate the metamorphosis of incapacity into empowerment for gender variant people.

Often, attempts will be made to dismantle an individual's agency, if it is evident that they are a threat to the dominant ideology. For instance, this has happened to feminists and trans people via the subtle technique of infantilisation,<sup>27</sup> in the ways set out in chapter 2 section 2 and chapter 7 section 1. Foucault made a point of criticizing excessive or domineering agency, for instance by dismissing his own attributed roles as 'expert or prophet or truth teller' (Cooper and Blair, 2002: 519). It seems that he wished for people to acquire agency via dialogic negotiation, rather than through dominance of others.

### **Communion**

McAdams' idea of communion is very akin to the idea of maternal relations, as discussed in chapter 3 section 3, chapter 8 section 3 and chapter 9 section 1. It is more about dialogic negotiation and communicative bonding than establishing the self. Communion also seems to be inherent to the idea of womanism, as articulated poetically by American author and poet Alice Walker with reference to communion between generations,

And so our mothers and grandmothers have, more often than not anonymously, handed on the creative spark, the seed of the flower they themselves never hoped to see: or like a sealed letter they could not plainly read. (1983:240)

It is also evident in the work of younger women of colour writers such as Pragna Patel who suggested alliances to combat oppression of women (1997:257,258) and that subjective differences lead to strengths,

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<sup>26</sup> This term is used by critical discourse analyst Fairclough as an adjective for discourse (2003:208:top).

<sup>27</sup> For instance, see Whittle (2006:195) for comments on Janice Raymond's infantilisation of the transsexual.

Women Against Fundamentalism, with its heterogenous composition of women from a variety of religious backgrounds, is an example of the new direction in which coalition feminist politics is developing. In WAF recognizing our differences gives us strength, and a better understanding of the complexities involved in resisting racism, sexism and fundamentalism. (Patel, 1997: 267)

While not wishing to take on the label '3<sup>rd</sup> wave', Kimberley Springer perceived young women of colour's communion-like relations as relations building (2002:1072,1074-75,1078), as a link with feminist foremothers (1060,1079), and as links with generations through song (1078). Womanism is characterised as a non-hierarchical, organic and non-separatist way of communicating that works to give voice to hidden societal subjectivity, including that of the woman of colour, and multiple oppressions (Moraga, 1983:32, Lorde, 1984:49,117). Communion is not necessarily more desirable for trans subjectivity and feminism than agency but is something that can temper the excesses of domineering agency.

#### 5.5.4 Discourse

Discourses are formed from all the previous components of the framework and many others that are outside the scope of this research. Discourses encompass the whole system of social representation involving language (written, spoken and body), art, culture, narrative, appearance, behaviour and customs, and anything which can be discussed as 'text'. Discourse communities bind those who adhere wittingly or not to the mores of the discourse, and exclude those who do not. As well as possibly being an ideology, feminism can be a discourse, but for inclusive feminism it must be recognised and promoted as ideology-in-process or discourse-in-process otherwise it is bound to permanently exclude some gendered, ethnic or other social subjectivities.

Examples of discourses relevant to this research include those of transgender, feminism, law, ethics, medicine and politics. However, there will be other discourses at work, maybe unidentified by anyone, affecting and combining mixtures of known discourses. At any one time a selection of discourses are at

work producing what seem to be fixed biological and social identities, providing us with an image of which identities/subjectivities are real and which are not,

For each of us, then, a multitude of discourses is constantly at work constructing and producing our identity. Our identity therefore originates not from inside the person, but from the social realm, a realm where people swim in a sea of language and other signs, a sea that is invisible to us because it is the very medium of our existence as social beings. (Burr, 2003:108-109)

Foucault notably delineated how the discourse of homosexuality, partly because of its formalisation and therefore visibility, could be reversed to some extent by gay-friendly people who transformed this discourse from silent and secret to articulated and open (1998 [1978]:101).

Examples of how discourses manifest in our day-to-day lives are suggested by the following definitions,

the organisation of language into certain kinds of social bond. (Parker, 2005:88)

... as (a) representing some particular part of the world, and (b) representing it from a particular perspective. (Fairclough, 2003:129)

the network of circulation of texts, meant both as material, institutional events and as symbolic or “invisible” effects. (Braidotti, 1994:260)

a language or system of representation that has developed socially in order to make and circulate a coherent set of meanings about an important topic area. (Fiske, 1987)

An example of discourse being revealed can be seen in Whittle’s discussion of anti-trans feminism, particularly his analysis of Janice Raymond’s *The Transsexual Empire*, which revealed a dictatorial discourse of radical separatism (Whittle, 2006b:196-7).<sup>28</sup> Raymond facilitated this discourse by stereotyping women and trans people firmly into fixed social types. The

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<sup>28</sup> Other instances of trans-unfriendly feminist separatism are addressed in chapter 2 s. 3 in regard to Raymond and Jeffreys, chapter 3 s. 2 (Greer, Hausman, Millot and Raymond), chapter 6 s.3 (Greer) and chapter 6 s. 4 (Raymond).

discourse propounded that biology is destiny while eschewing any consideration of gender as natural or nurtured and that gender may be hidden by inappropriate sexing of the body.

## 5.6 Creation of the Reconstructing Discourses

There are always such wars driven by the interpretation of words. People are so invested in their descriptions of themselves, the descriptions bestowed upon them by others. The less conducive the description the more 'other' the other becomes. (O'Keefe, Fri, May 30, 2008 10:09 am)

3<sup>rd</sup> wave feminism's efforts to be guided by narratives rather than metanarratives<sup>29</sup> might be conducive to the formation of what Foucault proposed to be 'reverse discourses' (1998 [1978]:101). Like the gay-friendly people challenging the discourse of homosexuality in the mid-20<sup>th</sup> century, 3<sup>rd</sup> wave theorists call for restructuring of narratives of gender in order to accommodate the complexity of sexual subjectivity. These are attempts to reverse scripted operation of discourses in order to replace them with 'discourses-in-process'. However, the term 'reverse discourses' suggests a mere reversal of the conventional so perhaps a more accurate label of the progressive subversion of discourse is needed as suggested by Diamond and Quinby,

We should also recall, however, that the power of a reverse discourse is precarious. As the eruption of the second wave of feminism in our period suggests, over the course of the century many tenets of nineteenth-century feminism have been appropriated into operations of disciplinary power – hence the need for a new wave. (Diamond and Quinby, 1988:xiii)

2<sup>nd</sup> wave feminists' development of cooperative consciousness-raising ironically ensured that feminism did not sufficiently challenge oppressive discourses, including its own oppression of feminist 'Others'. The philosophical 3<sup>rd</sup> wave

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<sup>29</sup> 3<sup>rd</sup> wave feminist theory has been a kind of anti-theory, opposed to attempts to produce monolithic and self-sufficient ideas or general principles. 3<sup>rd</sup> wave feminists have presented such attempts as 'grand narratives' or 'metanarratives' and have tried to avoid the solidification of feminism into its own metanarrative (Edelstein, 1993:198,199). This form of feminism is associated with the attempt to establish intellectual, political and relationship ethics rather than intellectual, political and relationship control.



goes further, offering potential to turn reverse discourses into fully active and empowering reconstructing discourses, discourses that are self-reflexively critical and subject to on-going modification. It is important to identify what might be a reverse discourse and what might be a reconstructing one. For instance, many people still think that feminism is a reverse discourse where feminists simply want to reverse the positions of men and women so that women have dominance in social power.

Whittle suggested the reconstruction of postmodern research methodology into a personally political theoretical and activist movement (2006a:xii:bot). He recommended that this be, '*... not just deconstruction but also reconstruction*' (2002:69). This idea of reconstruction emphasises the involvement of personal politics, passion for research and a consideration of society's 'Others'<sup>30</sup> and should heed Derrida's recommendation to re-interpret and iterate narratives in a caring fashion<sup>31</sup> via deconstruction. It also aligns with the personally political project of a *critical* or radically questioning discourse analysis (Whittle, 2006a:xii). This caring type of analysis was described to Transstudy participants by the researcher,

Regarding deconstructing sentences and reconstructing them, I do it all of the time, but not as a conscience effort. I've done it for years and find language outrageously funny. (Kimana Dec 10th, 2005, in <Personalityism>)

A 'conscience', as well as conscious effort is required by deconstructionists, and (most) feminists, as a way to lovingly deconstruct texts, rather than the attempt to demolish them. (The Researcher Dec 14th, 2005, in <Personalityism>)

Below is a summary of the processes that lead to the formation of the three Reconstructing Discourses (RDs) that form chapters 6 to 8, and the themes of which they are composed:

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<sup>30</sup> Caputo saw Derrida's deconstruction as, '*Preparing for the incoming of the other, which is what constitutes a radical democracy – that is what deconstruction is*' (1997:44).

<sup>31</sup> Caputo described how, '*... deconstruction is respect, respect for the other, a respectful, responsible affirmation of the other, a way if not to efface at least to delimit the narcissism of the self (which is, quite literally, a tautology) and to make some space to let the other be*' (1997:44).

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### 5.6.1 The Analysis

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#### **1st Process**

A list of themes was derived from the Transstudy narratives. These themes were created when reading through the topic threads and by considering links to themes that came to compose the literature review chapters. Both sets of themes would proceed to modify each other in a dialogic process.

Topics concerning definition of identity

Topics discussing identity as a process

Topics addressing power in representation

Topics relating to theory and real lives

Topics concerning inequalities and discrimination

Topics asking about participants' own lives

#### **2nd Process**

The three overarching RDs were derived from considering themes elicited from the themes in the 1<sup>st</sup> process and were designed to address questions like:

##### **Identity Essentialism to Subjectivity-in-Process**

Who is seen to belong or not to belong to trans and feminist subjectivity? Who is seen as a subject (real person) and who as an object (stereotype)? Is sexual subjectivity seen as related to personal politics? Do participants feel that their gender is a whole experience of sexual subjectivity? Do participants write about fluidity in roles and relationships that could indicate openness to fluidity in sexual subjectivity?

##### **Closed and Static to Open and Evolving Narratives**

What agency do participants seem to have in defining sexual subjectivity? Do participants feel pressurised to, or apparently wish to, pass into heteronormative gender? What support is given for choice in self-definition and from whom? Do participants feel that they are part of any subjectivity-based movement?

##### **Exclusion to Inclusion**

Is consideration given to 'insider and outsider' perspectives in Transstudy narratives? Can 'maternal relations' and ethics of care be related to trans and

3<sup>rd</sup> wave feminist subjectivities? What are trans people and 3<sup>rd</sup> wave feminists' connections to moral development and procedure? What narrative formats or forums have allowed gender oppressed people to find their gendered selves?

### **3rd Process**

Themes from the 1<sup>st</sup> process were clustered under the RDs formed in the 2<sup>nd</sup> process. These themes were subject to revision, restructuring and order sequencing throughout the writing-up process. The final list of reconstructing discourses and main themes can be seen in the Contents for chapters 6 to 8.

## **5.7 Conclusion**

Sub-section 1.1 outlined how the research questions were developed to address ethical issues. The research process involved an informal format, contextual reasoning, a narrative basis and forming of connections between participants in order to establish an ethics of care-in-process. The researcher involved himself in Transstudy narrative as a fellow participant in order to try to become as much of a research subject as they. Some consideration was given to how people from some social ethnicities might be 'Othered' from the Transstudy by developing topics, and providing analysis, on likely instances of exclusion, for instance in chapter 6 section 1, and chapter 8 sections 1 and 2.

Sub-section 1.2 described how a small research population yielded valid, rather than reliable information about the presentation of gender in narrative. Authenticity of research data deriving from researcher/participant Interactions was striven for by implementing 'strong objectivity' in order to narrow the social distance between researcher and participants. The Transstudy may have avoided some problems of researcher/participant influence because of its use of open-ended questions, topics and discussion, leading to answers with more depth and insight.

CMC was found to have some practical advantages over FTF communication. However, an advantage with regard to research authenticity was of more significance in offering potential for more spontaneous text than can be found in published autobiography, via the intimate community of the online forum. The temporal and dimensional extent of the Transstudy provided time to establish rapport with participants and enough material to use for the purposes of

comparison and contrast. Such extended interactions tend to yield accurate self-images, or authenticity of representation, according to Mann and Stewart. This is not positive for the project of subverting oppressive gender, as found by Gillis, but is positive for revealing gendered self-images.

In addressing the afterlife of the Transstudy and thesis in sub-section 1.3, the researcher considered implications of publication. He decided to offer the participants the opportunity to review the thesis before publication to check for anonymity and the amount of personal detail included. A closure email was sent to participants to thank them for their contributions while informing them that they will have the chance to review the thesis as a pdf document. The Transstudy will be closed down but participants can contact the researcher by email, if they wish to remain in touch. None of this email content will be used in the thesis, unless given prior approval by the participant, and then will be accompanied by their pseudonym, rather than actual name.

Section 2 explains similarities between the thesis theoretical framework and queer theory and the reasons for choosing a 3<sup>rd</sup> wave feminism framework as a priority. Sub-section 2.1 describes how queer theory created a third gendered space allowing a perspective on 'common-sense' gender. As well as challenging notions of gender as primary and foundational, queer theory involved subversion in order to challenge heteronormativity. However, queer theory does not seem to have sufficiently addressed subjectivity politics and the lived reality of gender for the purposes of this study. Subjectivity politics and lived realities can prompt efforts to achieve the reconstruction of real-life sexual subjectivity.

Sub-section 2.2 noted more connections than disconnections between queer and philosophical 3<sup>rd</sup> wave feminism despite negative internecine conflations exchanged between queer theory and feminism. Intersectionality marks the overlap of inclusivity theoretically inherent to queer and 3<sup>rd</sup> wave feminism. Queer engendered the concept of the in-process nature of gender categories and categories of social discourse such as the law. It championed the idea of subjectivity as genealogically formed while still allowing strategic essentialism.

However, Stychin noted that queer's alignment with lesbian and gay subjectivities was hard to escape, just as transgender and feminism have often

been allied to certain essentialised identities. Culbertson and Jackson noted that these alignments caused rifts between queer and feminism, similar to those identified between transgender and feminism as discussed in chapter 1 section 1. Halley theoretically lessened queer's tie to essential identities by construing queer as contradiction aware with regard to the complexity of gender, just as is notable of theorised 3<sup>rd</sup> wave feminism. Both challenge structural thinking in its formation and results.

As stated in sub-section 2.3, the researcher wished to identify in particular with 3<sup>rd</sup> wave feminism, rather than stand in opposition to queer theory. Feminism has particularly addressed social emasculation and 3<sup>rd</sup> wave feminism uses subjectivity politics, as opposed to identity politics, to challenge identities imposed upon the gender oppressed. Ethics of care, as espoused by philosophical 3<sup>rd</sup> wave feminist Gilligan, expose negative feminisation. Like Gilligan, other 3<sup>rd</sup> wavers wish to pay particular respect to the history of womanist-type relations, such as those formed by ethics of care. Becker argued that special recognition of womanly relations need not essentialise those categorised as carrying out these relations, just as Beresford challenged the essentialisation of mothering as only done by heterosexual women.

Sub-section 2.4 identifies how Halley seems to have wished to take a break from separatist feminisms, rather than from all feminism. She usefully pointed out that MacKinnon and others inadvertently essentialised the M/F dualism in their version of feminism. She saw the queer perspective of law and subjectivities as in-process marking it out as different to essentialist feminism. Romero argued that Halley need not take a break since she had already done so by staying at a different kind of feminism. This may be a feminism resembling the 3<sup>rd</sup> wave, which, together with queer theory, provides opportunities for holidays at home in either faction because of their commitment to change and variety. The lack of set definitions and labels accompanying each faction may inspire a commitment for some, including the researcher. Those not included into separatist feminism, like the researcher, may wish to take a break from, or to emigrate from, not queer theory but from separatist or non-feminism.

Section 3 of this chapter opens by suggesting that, 'you are what you speak', or that language forms our ideas of identity which, for social constructionists, is actually an on-going construct formed by interactive communication known as subjectivity. Acceptance of subjectivity as socially constructed can open the way for gender variant individuals to be involved with the defining of sexual subjectivity. In the latter half of the 20<sup>th</sup> century, language in the form of life narratives from gender variant people has tended to feature catalytic experiences that have allowed the narrator to transcend clinical or stereotyping definitions of sexual subjectivity by introducing the narrator as a real person with a real voice.

In section 4 there is a description of how Kristeva's idea of semanalysis as analytic technique promised the chance of an epistemological break from closed systems of gender definition. Overly clinical, complex, or 'verbally hygienic',<sup>32</sup> language may derive from a predominance of symbolic language. A feeling for alternative modes of communication, when the more feminine form of the semiotic seeps through cracks in the symbolic mantle, can encourage understanding of subjectivity and subjective development via ethics of care, characteristic of the maternal relations described in chapter 3 section 3 and chapter 8 section 3.

Section 5 described how the critical discourse analysis framework was designed as a background template for the analysis in chapters 6 to 8. Critical discourse analysis theorists' guidance, combined with attention to themes in the literature reviews and RDs, was used to develop a specific research framework for the Transstudy, in an attempt to reveal power structures in gender(ed) discourse. Discourses, which otherwise may remain unrecognized, can be revealed through critical research, to ensure the unheard voices of those oppressed by those discourses can be heard. The critical discourse analysis framework allowed 'subjectivity', the third component of the analysis, to reveal how gender oppressed people are different to stereotyped research objects or fixed identities.

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<sup>32</sup> This expression, introduced by Ian Parker, is discussed in chapter 7 s. 2.

By establishing an on-going process of critical discourse analysis it is possible to develop something constructive, and in construction. Personal politics, passion for research communities and a consideration of real lives turn reconstruction into something more than theoretical deconstruction or the reversal of discourse. Section 6 described how the reconstructing discourses and their themes were formed in an interactively informing process between literature reviews, primary research data and RD themes.

In Chapter 6, the first part of the analysis of the Transstudy and 3<sup>rd</sup> Wave feminist analysis, themes concerned with the reality and value of replacing essentialised identity with 'identity-in-process', or subjectivity, are introduced and assessed.

## CHAPTER 6: IDENTITY ESSENTIALISM TO SUBJECTIVITY-IN-PROCESS – THE WHOLE TRANS PERSON

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### Introduction

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One dilemma familiar to feminists, and one that affects most people's lives, is the deliberate or inadvertent human temptation to side with one part of a dualism be it radical/conservative, mind/body, white/black, justice/care or other socially ingrained dualisms.<sup>1</sup> Dualisms are apparent in the titles of the three reconstructing discourses and are critically examined in chapters 6 to 8 in order to highlight the social conflict that they produce. Legal theorist Lara Karaian addressed the essentialism/constructionism dualism by recommending that essentialism be investigated rather than vilified,

[Diana] Fuss argues that Western feminism has fostered, "a certain paranoia around the perceived threat of essentialism" and that this has created an essence/constructionist binarism which feminist and queer theorists have argued is an equally simplistic framework. ... According to Fuss, "the radicality or conservatism of essentialism depends, to a significant degree, on who is utilizing it, how it is deployed, and where its effects are concentrated". (Karaian, 2006:184)

This chapter addresses identity essentialism which has been strategically useful in its time, for instance when early feminism used the label 'woman' to highlight the particular social position of women in order to gain advances towards economic and political parity, with reliance on the law to back these up.<sup>2</sup> It has also been useful for those trans people who had to, and still have to, manifest recognisably gendered behaviour and presentation in order to be accepted for reassignment treatment.

However, feminists of the 2<sup>nd</sup> and 3<sup>rd</sup> waves found that fixing into identity could stifle attempts to reconstruct stereotyping identities. Essentialism became evident as a problem area for feminists in the chronological 2<sup>nd</sup> wave when

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<sup>1</sup> Dualisms are described as a location of social essentialism in chapter 5 s. 3.

<sup>2</sup> The type of strategic essentialism described in chapter 4 s. 1.



having to confront what gender activist and lecturer Gordene Mackenzie termed the, '... *horizontal hostilities directed against one another, instead of the real oppressors*' (1999:211), where women with oppressed subjectivities struggled to reach the plateau of 'woman' inhabited by white middle class feminists (Austin, 2005:167). Many 2<sup>nd</sup> wave feminists came to the conclusion that they would not want to be equal if it meant becoming equally oppressive as masculinists by doing down their black/lesbian/disabled/financially poor sisters. Philosophical 3<sup>rd</sup> wavers looked to post-structural views of sexual subjectivity as a way to initiate the move away from fixed identity to fluid subjectivity that would allow connection with different subjectivities. An example of this kind of reinterpretation can be seen in Alison Stone's reconstruction of 'woman' as a genealogy, rather than as an identity (2004).<sup>3</sup>

Sometimes people are essentialised into identity allocated by others. For instance, chapter 4 section 5 addressed Cressida Heyes' argument that Carol Gilligan was essentialised as philosophically 2<sup>nd</sup> wave and gender essentialist by some feminist reviewers (Summer 1997:146). In a similar essentialising move, participant Monica defined feminists as political fanatics who only wished to respond to their opponents in reactionary fashion,

Feminists always, always, always, always have a political agenda. They will deliberately misrepresent anything or make any allegation or portrayal if by doing so they will boost their cause. ... All they do is criticise. (Mar 18th, 2005, in <Are there just feminine and masculine people now>)

Kimana presented a challenge to this kind of metonymic ascription, or essentialising of subjectivities into group identity, by suggesting that trans subjectivity is not the whole of what a person who transitions actually is,

These are a few of the facets in my life, each showing a different part of the person that I am. I guess what I'm saying is that all people are like a finely cut diamond having several facets to it and each facet wonderful in it's own beauty, but they are only a part of the whole gem. (Kimana V Jun 8th, 2006, in <Your Narrative Self>)

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<sup>3</sup> As introduced in chapter 1 s. 1 and discussed in chapter 3 s. 1. Genealogy is further discussed in chapter 4 s. 5 and chapter 9 s. 2.

Clarette narrated the exclusion that can emanate from the cul-de-sac of fixed identity essentialism,

It seems to me that any assertion of status ... the more essentialist especially ... tends to promote division. One reason why I prefer not to “do” status, I suppose. Gender status in particular is not a good basis for allocating power. (Clarette Feb 7th, 2006, in <Are there just feminine and masculine people now>)

In light of the above comments, the chapter title became, ‘Identity Essentialism to Subjectivity-in-Process’ to mark the required move away from identity (if not subjectivity) essentialism by those holding a 3<sup>rd</sup> wave philosophy. As well as addressing identity essentialism, 3<sup>rd</sup> wave feminists need to be careful that they do not essentialise the 3<sup>rd</sup> wave into its own philosophical box, or metanarrative.<sup>4</sup> The philosophical 3<sup>rd</sup> wave is by definition in-process and, at least theoretically, does not form islands of identity and ideology. This is why attempts to define the 3<sup>rd</sup> wave might deprive it of its ‘essential’ subjective undefinability.

## 6.1 Which Gender Variant Subjectivities are Real?

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Professor of Philosophy Carlos Prado explained that, according to Michel Foucault,

The subject’s “conscious or self-knowledge” is an imposed one, but the individual experiences it as what he or she is ... (Prado, 2000:61-62)

This experience of self-knowledge comes into play when both trans people and feminists have to battle with criticisms of their respective subjectivities.<sup>5</sup> As described in the introduction to chapter 1, within trans and feminist factions suspicion is sometimes targeted by those of one trans or feminist subjectivity towards those of another. For instance, Monica enquired as to the realness of

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<sup>4</sup> As discussed in chapter 3 s. 2.

<sup>5</sup> For instance, Jan Morris, April Ashley and Mark Rees (chapter 2), 3<sup>rd</sup> wave feminists and women of colour (chapter 3), April Ashley, Herculine Barbin, TransEquality clients and Goodwin and ‘I’, Stephen Whittle (‘X’), P of *P V S & CCC*, Elizabeth Bellinger, Wilkinson and Kitzinger (chapter 4).

the Lakota Wioptula, in Kimana's community, as a trans subjectivity in <Are we all transvestites now?>,<sup>6</sup>

I would only regard them as trans if they wanted to acquire male physical characteristics and dispose of their female ones. (Feb 2nd, 2007)

Similarly, some separatist feminist theorists have questioned the authenticity of transitioned gender and the ability of trans people to be genuine feminists.<sup>7</sup> Monica expressed a concern that this suspicion is often held by those involved in women's groups, curbing trans women's access to these social forums,

The fact is that women who join women's groups are seeking fellowship from other women. This is because other women will share the same life pressures most of which are caused by relationships with men. The last thing they want at a women's group is a man; and to these women trans women are just men dressed up. (Monica Mar 18th, in <Trans-friendly social groups?>)

In the <Some thoughts on non-trans gender-changers> topic thread Raelene took pains to suggest a difference between transsexuals and transgendered people, mentioning that, '*Transgendered is a life-style choice. Transsexual is a psychological compulsion*' (Jan 19th, 2007). She focused attention on '*muddying the waters*' in regard to legal and medical transition issues that can occur when transsexuals are associated with the apparently more nebulous and indefinable 'transgender',

Legal rights for transsexuals are a substantive issue in countries where they are lumped together with those who claim to be transgendered. (Jan 19th, 2007, in <Some thoughts on non-trans gender-changers>)

Here difference is portrayed as an obstacle to trans rights rather than as a strength. Raelene also expressed a resentment of those she perceived as temporary visitors to trans subjectivity,

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<sup>6</sup> The Wioptula is a woman warrior who lives as a man within the Native American Lakota community which is part of a confederation of seven related Sioux tribes.

<sup>7</sup> Chapters 2 s. 3, 3 s. 2, 6 s. 3 and 4 address separatist feminist views of trans subjectivity.

There is far too much pain in being transsexual to want to be associated with those who just want to pretend. (Raelene Oct 22nd, 2005, in <Transgender Movement?>)

Muddying the waters for trans people by those classed as transgender was also addressed by Leon,

Its a bit better now, but you have to really look and be your gender, those you "play" at it or transgender people confuse peoples image of a transsexual medical problem. (Nov 29th, 2006, in <Some thoughts on Trans Acceptance and Freedom>)

Leon also expressed the view that transgender is too wide an umbrella term to do justice to the particular sexual subjectivity of the trans person previously known as transsexual (May 31st, 2006, in <Title of the Transstudy>). He further suggested that feminists and 'transgenderists' wish to remain in a state of anonymous and queer-like gender indefinability,

Modern feminists and transgenderists dont want to be defined...transfolks do as the gender they actually ARE....thats with SRS or not depending how bad the dender dysphoria is between there bodies and minds. (Leon Jun 26th, 2006, in <Trans and Feminist Theories>)

Subjectivity that falls foul of the requirements of heteronormativity, as transgender does for Raelene and Leon, will often be seen as unreal. This was found to be the case with separatist feminist perceptions of trans subjectivity, as addressed in chapter 2, section 3. Some people in the wider community will openly ridicule those whose gender or gendered behaviour appears unreal, as occurred in a *TransEquality* case dealing with harassment of someone labelled by neighbours as 'transvestite'. The respondent was identified as such by rumours based upon flimsy evidence. Harassment (unwarranted words or actions that tend to upset, distress or insult another person) and victimization (being targeted for complaining about harassment) resulted and were covertly supported by the reluctance of public authorities to intervene. This type of abuse can carry on for years with the targets being alienated by both community and state.

In the <Too womanly to be a woman?> topic thread participants discussed whether it is necessary for an individual to have a female body in order to be a real woman. Participant Alyssa expressed the idea that one could live in a certain gender without bodily reassignment into the sex associated with that gender (Aug 14th, 2006). However, Monica saw womanly gender and the female body as linked together in the minds of most trans women (Aug 10th, 2006). Later in the topic, the researcher pointed out that potential reassigning people have to live in their preferred gender for a significant period if the Real Life Experience (RLE) is required and that this backs up the idea that preferred, or real, gender precedes bodily reassignment because of the commitment involved (The Researcher Aug 15th, 2006).

The Scottish RLE was depicted by Leon (Aug 16th, 2006) as more individually focused, perhaps evidencing more acceptance of people's self-representations which may be a surer way of understanding gender hidden by sexual anatomy. The Equality Act 2010 (EA 2010) also moved towards such an understanding by requiring that trans people without Gender Recognition Certificates, and who have not physically reassigned, be treated as their preferred gender. The Gender Recognition Act 2004 (GRA 2004) also extended recognition of gendered reality to the preferred gender of trans people. However, legal recognition of preferred gender in these acts is only afforded if trans people are committed to transitioning from one heteronormative gendering to the other.<sup>8</sup>

Participant Ariel seemed to align with Clarette and the researcher in thinking that real trans subjectivity can include sexual subjectivities other to those found on either side of the heteronormative dualism (e.g. Oct 25th, 2005, in <Who might be the 'Others' of the Transstudy?>). The debate about who is and isn't a real trans person extends to such people and also to trans people who wish to undergo transition but without physical reassignment. It also extends to those who wish for reassignment but have to remain pre-operative for practical or medical reasons.

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<sup>8</sup> As explained in chapter 4 s. 2.

In chapter 2 section 3 it was noted that, like autobiographer Dhillon Khosla (2006:34), participant Shannon had to negotiate definitional hurdles with regard to being accepted as a real man,

... amongst FTMs a frequent question is "What is a man anyway?". A lot of us have come up against the attitude, even from professionals, that in the absence of a genuine penis we can never be 'real' men. (Shannon Apr 7th, 2005, in <Male=man, female=woman?>)

Chapter 4 sub-sections 2, 3 and 4 addressed such questions attending to the reality of trans subjectivities within the legal establishment, showing how these questions have extended to the status of trans people as parents and marriage partners. For instance, Stephen Whittle discovered that reality as a parent could only be realised in a gendered way in the legal case of X, Y & Z. Whittle's exclusion from fatherhood was later mirrored in the case of the pregnant man, trans man Thomas Beatie (Czyzselska, Sunday July 6, 2008).<sup>9</sup> In both cases motherhood and fatherhood still depended upon being defined as one half of the heteronormative duality, with no cross-over permitted. However, trans people's, and people with trans-like personalities, experience of both gender roles may serve to make them more, not less, functional in important social roles such as partnering and parenting, allowing them to create a 'real' family experience.

In a similar way to Whittle, Beresford, Fineman and Flynn}, Kimana addressed the notion of the reality of the family unit by questioning its seemingly inevitable relation to biological relationship,

Fortunately for me, and others, I searched out my Lakota family and the Tiospia<sup>10</sup> is spread throughout other Nations into a fair sized Tiospia. Now, I have more brothers, sisters, aunties, uncles, nieces and nephews than I dreamt possible. I have three adult children, grandchildren, one great-granddaughter and even a Kokum (Cree for grandmother). I'm closer to

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<sup>9</sup> See chapter 4 s. 4.

<sup>10</sup> Tiospia is defined by Kimana as, 'an extended family of aunts, uncles, cousins and adopted family members) their community and Nation, when needed, without having a need for title or status. They are chosen by the people, unless it's a hereditary thing, as in some tribes or Nations.' (Kimana Jan 2nd, 2006, in <Different cultural aspects of being trans>)

them than my biological family. (The Researcher, quoting Kimana, Oct 25th, 2006, in <Trans Partners>)

For Kimana the reality of subjectivity derived largely from the spirit world which seemed to provide her with much needed relief from the physical world (May 13th, 2006, in <Dreams and Trans Subjectivity>). Although Kimana's version of subjective reality challenges that held by many in the industrial West, there is no one who can say conclusively that the spiritual world does not exist. A more earthy version of this world is perhaps provided by the context of computer-mediated-communication (CMC) which, as described in chapter 5 sub-section 1.2 has opened up opportunities for trans people to represent themselves, subject to what boundaries might be imposed by psychological development and bodily influence, as they would most wish to be recognised, rather than how they have been labelled by society,<sup>11</sup>

The virtual self, the point of communication in cyberspace, has created a space in which an actual self, the trans person with a trans identity, is to be recognised. (Whittle, 2002:82)

Many trans people have first-hand experience of living as virtually gendered (by others, rather than by themselves in a context such as cyberspace) in face-to-face communication, when often trying their best to fit in with heteronormativity. Their real gendering lies below the gendered schema, which they feel compelled to portray until such time as the need to transition is all-consuming and practically possible. Trans people therefore often relate to the need to role play gender in a safe environment, for instance online, since they are much more aware of sexual subjectivity, or at least its representation, as a social construction that requires practice to achieve (Whittle, 2002:83). If this awareness could be extended to portray trans and feminist subjectivities as, at least to some extent, socially constructed, then trans and feminist factions may be more open to understanding that differences can be found within each group subjectivity,

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<sup>11</sup> As discussed in chapter 1 s. 2 and chapter 5 s. 3.

Passing beyond metanarratives of identity and of gender allows for embracing of difference and a proliferation of possible subject-positions and gender performances. (Edelstein, 1993:198)

## 6.2 Political Subjectivity?

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... it's generally easy to distance yourself from a dominant grouping, but not easy from a dominated grouping. (Clarette Apr 11th, 2006, in <Black Trans>)

It seems that Clarette is right when consideration is given to some groups' propensity to reject subjectivities that do not comply with a strict identity definition and to keep subjectivities corralled into identity stereotypes. If subjectivities are going to be rejected or dominated, those with such subjectivities will need to articulate their difference in order to reveal the domination at work. This articulation is a political expression of subjectivity.

Transstudy participants often balked at the idea of sexual subjectivity deriving from or even being used as a base from which to express personal politics. For instance, Monica wished to blend into womanhood in an unremarkable way and did not see her sexual subjectivity as deriving from a personal political stance (Mar 31st, 2005, in <Are there just feminine and masculine people now>). Leon stated that,

I dont want to be visible and OUT I want intergration as a man and be allowed to live as such. (Aug 24th, 2006, in <Too womanly to be a woman?>)

For many trans people gendered utopia would involve full acceptance into their preferred gender, with no need to be labelled as trans anything. They would simply be men or women who had been involved in the process of transition, not passing as their preferred gender but being real members of that gender.

Some participants expressed discomfort with the researcher's stated identification with political subjectivity and portrayed it as a kind of luxury subjectivity in comparison with what they perceived to be the innate and compulsively driving force of trans subjectivity requiring physical reassignment. Similarly, and aligning with views noted in section 1 above, some Transstudy



narratives suggested that trans subjectivities not requiring physical reassignment are a kind of 'trans by stealth' that is frivolous and deceitful,

I have a label..yes Transsexual due to the GIC procedures, its on my medical notes ! but I want to be allowed to live as who I am NOW without fuss or banner waving or doing anything outrageous etc...transgenderists who miss behave amake life very difficult for us all. (Leon Aug 26th, 2006, in <Too womanly to be a woman?>)

Cowan noted that the legal case of, '*Goodwin recommends that transsexual people be recognised by UK law in their post-operative sex, that is, as men or women, not simply as a discrete rights claiming group (88)*'. From statements such as the preceding quotes it can be seen that many trans people do not wish to belong to a category distinct from men or women. For those that may, they would like to be consulted about the construction and application of such a category. If the constructions and applications of any of these rights claiming groups is not recognised then gender variant people will always be defined by their ascribed biological sex.

Are 'transgenderists' fakes and troublemakers? Can such subjectivities, if they are sexual subjectivities in their own right, be reconceived as oppressed subjectivities that may contribute to the transgender movement in some way? Perhaps this is only possible if people with these subjectivities reveal something about their gendered experience, presenting a 'view from somewhere'<sup>12</sup> in the spirit of dialogic negotiation.<sup>13</sup> This would make the subjectivity personally political to some extent and therefore potentially recognisable in society and in law. However, 'out and proud' political transgenering is quite a different thing in theory, or in an online discussion site, compared to in real life practice. For instance, Monica, in <How do you believe you will you age?> commented that,

Sorry. I know it is unfashionable to say this, (in this day and age of being 'out and proud') but there is just no substitute for stealth. I know I can't

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<sup>12</sup> See chapter 1 s. 2 and chapter 7 s. 1 for an explanation of the 'views from nowhere and somewhere'.

<sup>13</sup> This articulation and openness of transgender subjectivity was called for by the researcher in response to Ahmed's criticism of the transvestite's mimicry of heteronormativity in chapter 3 s.1.

have my total stealth back again, but at least I can have surgery that will enable me to have a reduced radar signature. (Monica, Jun 16th, 2006)

This radar signature can attract any type of discriminatory abuse. However, it might be that participants inadvertently manifested a narrative radar signature via a kind of 'voice coaching', similar to the process of gender socialization described by Carol Gilligan in *In a Different Voice*. This radar signature works in a personally political way even though the individual emitting it may not wish to be overtly personally political. Gilligan theorised that men and women's 'different voices', meaning personal communication emanating from differently gendered standpoints, are produced by this kind of coaching, rather than having the voices originally instilled into them by their different biological status (Heyes, Summer 1997:147).

Trans people, mainly male-to-female reassigning people, often undertake literal voice coaching to develop a voice that matches a reassigned body. But, just like all men and women, trans people will go through a lifetime of social voice coaching reflecting a lifetime of gendered conditioning from self and others. When the trans person transitions, voice coaching is re-learned to a significant extent and consequently the trans person has an awareness of 'voice' as a social construct. Voice coaching manifests in trans people's narratives in the form of insights into both heteronormative gendered experiences, engendering the kind of whole experience of gender theorised in section 3 below.<sup>14</sup> Clarette suggested that voice coaching into a new gender role is not an easy process,

My point is more that scripts have not been immediately available even for those who do not wish to be known as trans people. Of course, large aspects of their developing scripts may be rather less available to those who steer clear of established social scripts, for whatever reason, but that should not be regarded as indicating that it is somehow easy to just adopt "the other script" in the course of transitioning – or following transition. (Jun 17th, 2006, in <The Paper>)

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<sup>14</sup> For instance in accounts by Jamison Green (2004:43), Whittle (8 July 2007), and Kimana (Nov 19th, 2005, in <What we are = what we do?>),

The aetiology of men's and women's ethics, philosophies and feelings is not proven but it seems that trans people, often veterans of both types of 'voice coaching', can provide lucid perceptions of differences to be found and this is a manifestation of their personally political subjectivity. One of Sally Hines' research subjects referred to this kind of cross-gender intuition, '*William contrasts reflexive understandings of gender amongst trans people with a perceived lack of gendered awareness in nontrans people*' (2005:68). Autobiographer Max Wolf Valerio provided such perceptions/understandings with aplomb, for instance on page 309 of his autobiography, a passage that comes across as a trans man's insight into what he perceived as emotionally driven women's communication,

Women's arguments now often appear to me to be informed more by emotion than by logic (or at least by as much emotion as logic). One transman, Rocky, summed it up like this: Men think about their feelings and women feel their thoughts. ... On oestrogen every object had an emotional weight. A specific emotional substance, a gravity that pulled feeling into it. The world had an infusion of feeling – tender, sentimental, subtle and deep. (2006:309)

Such perceptions seem to relate to the trans person's mythical status as 'trickster' or person who can mirror gender from both sides of the heteronormative gender divide (Valerio, 2006:326).<sup>15</sup> Such a notion of 'trickster' is described by Kimana as the proper and controlled use of 'coyote medicine',

Coyote is the Trickster, so it causes all kinds of situations that make you reactive, not proactive in your thoughts words, and actions. I know a lot of people carrying Coyote medicine, not all Native or Traditional. ... There are two ways to deal with having Coyote Medicine. One is to allow it to take over and your life is chaotic, uncontrolled even if you think it's controlled, but makes things VERY interesting for you and those around you. The other is to use it, not let it use you. Coyote Medicine can be used

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<sup>15</sup> This mythology is notably prevalent in Kimana's native culture and is a trait emitted by Kimana herself – (see s. 6.3).

for the humor and to lessen tensions in awkward situations or just to make people think. (Kimana Dec 28th, 2005, in <Abilities and aptitudes>)

Voice coaching, or even controlled 'Coyote Medicine' can inform political gendering but is it the case that people in the industrial West are now living in a 'post-out'<sup>16</sup> society, where nobody needs to join a subjectivity based movement of their own? 'Post-out' means that no-one should face the prospect of having to 'out' their sexual subjectivity because all sexual subjectivities are safely 'out' already. However, there are certainly gender variant people who are still the target of very real perceived identity-based oppression, as the researcher discovered when working for Press for Change's TransEquality project for two years.

In support of the notion of a 'post-out' society, Stychin called for a type of out-in-process, as a challenge to passing, '*... coming out evokes the idea of bounded space and it implies that the self is engaged in a simple 'one off' movement from a constrained sphere into a broader public realm (1995:143).*' This brings to mind the kind of 'passing' required by the Real Life Test, perhaps less so since it became known as the Real Life Experience, and the accounts of magical gender transformations identified by Sandy Stone, as discussed in chapter section .

Heteronormative people are assumed to be 'out' all their lives but it is usually much easier for most people to be out as heteronormative than out as gender variant. Epiphanies of the sort described in chapter 8 section 4, where the subject might be described as coming out to themselves, should be joyous and open to sharing with others, as suggested in chapter 8 sub-section 3.2, not to be accompanied by fear of exposing oneself as alien. Coming out should also be a choice, not a compulsion set by friendly or unfriendly sources.

'Post-out' might resemble the concept of 'erotics of unnamings' outlined by the researcher in chapter 2 section 1 but Clarette, in <The Paper> Transstudy topic, suggested that even though unnamed, subjectivity still exerts a political influence through use of language,

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<sup>16</sup> A term suggested to the researcher by the researcher's Masters Supervisor, Claudia Castañeda in 2000.

Politics exists whether or not the terms of debate are defined. Politics exists in the form of appearance, manners and actions, even without language. ... We have to be wary of how words are used if we are to successfully exist in a linguistic culture, and when these are words used in a specifically political context, it is even more necessary to be wary of them. Those who forget the past are condemned to repeat its mistakes. (Jun 17th, 2006)

However, Monica provided narrative support for the value of 'unnaming' in ensuring a quiet life,

Years ago, post-op gender reassignees would have nothing to do with pre-op gender reassignees and neither would have anything to do with transvestites or any other transgender grouping. ... However, a rapprochement took place between all these categories so that they could join forces to fight for civil rights. The civil rights have been largely achieved, but to me this has been a pyrrhic victory. These lovely new civil rights have been obtained at the cost of something I valued much more, namely my invisibility and anonymity. (Aug 26th, 2006, in <Too womanly to be a woman?>)

Although the non-articulation of gender in 'erotics of unnaming' can ensure a quiet life, free from the threat of harassment and discrimination, perhaps it is also a way of deferring to the discourse of heteronormativity by blending in. A denial of the (pre-transition, transitioning or gender variant) past through 'passing'<sup>17</sup> is involved in this process which can strike the inclusive mind as being an unnatural way to live one's life. Communicative bonding with 'similarly' different others will be foregone in the life of the person gone stealth, a neglect of their very valuable life experience that could be passed on to other gender oppressed people.

To conform or not to conform to heteronormativity perhaps depends on the perception of likelihood of reward. For a trans person there might be the reward of fitting in and accruing the social benefits that adhere to heteronormativity.

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<sup>17</sup> See chapter 7 s. 2 for a discussion of 'passing'.

Conversely, others will have mustered a portfolio of life experience which informs them that they will never fit in, or that they do not wish to, so there are no further reasons or personal ethics motivating them to join the status quo.<sup>18</sup>

Answering the researcher, Alyssa narrated an alignment with the value of fitting in with heteronormative hegemony,

Society is governed by it's 'mores' and to make it out there you really need to conform to the requirements of chosen gender whether or not it is a particularly desirable nuisance. ... If you do conform to them [the mores], you are basically living in peace with the world, your not fighting and people are content with you. (Jul 26th, 2005, in <Gender Identity, question on transforming personality>)

Alyssa seemed to feel that the interpolative call of 'Hey, you there', hailing people into heteronormativity, could be directed towards transitioning people. It is perhaps the case that, if political gendering alienated trans people who took it up from those who did not, it would not be understanding of many trans people's needs to assimilate into heteronormativity.

Stephen Whittle's wife Sarah Rutherford remarked that,

To those who do not know the truth of our situation, we present ourselves as boringly conventional. We are white, heterosexual and middle class. Not only are Stephen and I conformist by nature, we've been together 18 years. (Rutherford, 23 April 1997)

However, even if the Whittles are, at least outwardly, conformist it does not mean that they cannot take part in political gendering. For instance, their personally political stance involved a legal battle to form a family whose father had a different type of gendered history to the natal heteronormative. Others can perceive a person's gendering as political or not depending upon which presentation and behaviour is classed as political, and which is not. For instance, Currah highlighted how the US First Amendment does not protect the right to free expressive activity if that activity involves cross-gendered dress and presentation. Gender expression is not classed as political expression so it

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<sup>18</sup> Such people are not 'hailed' into conventional discourse, as discussed in chapter 5 s. 5 and chapter 7 s. 1.

does not come under the veil of legal protection in the US (2006:19,20). However, the reality is that we are all politically gendered to some extent, depending on who is representing our gender and what position they have in the balance of representational power.

### 6.3 The Whole Trans Person

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So we get hung up on whether or not the size of the bed nucleus of the stria terminalis under the influence of hormones is the defining point of gender identity, and other such issues. Which I suspect is reductionist. It is easy to forget the whole being in the process of analytical division. But did we know what the whole being was in the first place? Or is there such a thing? ... "Premodern" cultures of course do/did not always think that shape was necessarily representative of being either, so there are stories of shapeshifters ... wolves in sheeps' clothing and so on. (Clarette Feb 18, 06, in <some cultural aspects of shapeshifting>)

Shapeshifting, in the sense portrayed by Clarette, might be interpreted to involve challenging ascribed identity with feelings of inner subjectivity in order to mould one's behaviour or even subjectivity into something more personally acceptable. This may be familiar to those feminists and trans people who have felt the need to review their given sexual identity. Can shapeshifting as a concept tie in with the acceptance of trans subjectivities, or subjectivities realised through transition, as genuine and 'whole' subjectivities? One of the Transstudy topics was entitled <The Whole Trans person>, in response to Germaine Greer's invective against trans women, and to some extent trans men, in her 1999 book, *The Whole Woman*. Greer's dismissal of trans subjectivities came across as very similar to what she identified as masculinist annulment of 'woman' as a healthy and self-sufficient subjectivity. The researcher asked participants to consider whether trans subjectivities are 'whole' identities of their own, and not counterfeit versions of conventional

gender, as portrayed by Greer.<sup>19</sup> The researcher wished to see what interpretations of 'whole' participants might venture.

After reviewing literature and Transstudy narratives, the researcher speculated that trans subjectivities are in fact more whole, in one perspective, than heteronormative sexual subjectivities since they often seem to derive from experience of the whole spectrum of human gender (Apr 9th, 2006, in <The Whole Trans person>); trans people have been 'voice coached' in the language of both genders. Trans people rarely see themselves as actually having been both heteronormative genders, but will often allude to experiences deriving from others' perceptions of them when they were pre-transition. As trans educator and speaker Jamison Green remarked,

When I come out now it is to note that my experience is different from that of other men because I spent forty years in a female body; not that I used to be a woman, but that I have a bit more knowledge about what a woman experiences than do other men. (2004:43)

Whittle also claimed that trans subjectivities can manifest more of a whole experience of gendered subjectivity because of their basis in lives spent on both sides of the gender role divide. He pointed out that, '*... after all we are simply men and women of a trans history, and we have a particular expertise in spotting the difference between men's and women's lives*' (8 July 2007). Kimana in the Transstudy site narratively supported this kind of 'view from somewhere',

Being a trans person has afforded us to experience things in ways others can only speculate about. We've been given the wonderful gift of understanding both the male and female aspects. I feel that it allows us to have twice as much experience as those that aren't trans. (Kimana Nov 19th, 2005, in <What we are = what we do?>)

This kind of examination of gender is suggested to be a quality of lesbian and gay existence according to Stychin. Often having a theoretical and experiential history involving the analysis of the nature of gender, lesbians and gays are

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<sup>19</sup> See Greer (1999: 'Pantomime Dames').



particularly open to the idea of negotiating the parameters and composition of gender variance,

The boundaries of lesbian and gay sexuality thus are contested and continually crossed. ... for lesbians and gay men, it is perhaps relatively easy to recognise that categories have no natural or essential character. (143-144)

In 'Foucault's Monsters' (2007) Sharpe described how Foucault identified the confusion in law, from the Middle Ages to modern times, when presented with abnormal bodies of any description,

... human/animal creatures, conjoined twins and hermaphrodites can be viewed as problematizing a variety of legal questions concerning baptism, marriage and inheritance, as well as challenging core legal distinctions between man and animal, male and female, and the idea of the proper legal subject as a single embodied mind. (Sharpe, 2007:387)

Gender variant people may well still be perceived as having something like two minds, because of their gendered experiences, but this may be an advantage if viewed in an inclusive rather than separatist way.

Participant Sadie suggested that it is the realisation, or the psychological and social achievement, of gender that makes one feel whole,

I don't think that simply being transgendered makes you more human, but can confirm that being comfortable with your gender and all that it entails is one of the most humanising things of all, really. ... That may suggest that being caught in the mire of gender confusion makes you less human; I think there is some truth in that. (Sadie Jun 28th, 2005, in <Extremely open question>)

Even though Sadie's narrative conflicts with the idea of transgendered experience as more of a functionally whole gendered perspective, her narrative could be drawn upon to suggest that some trans people need transition in order to feel 'whole'.

Greer postulated that '*The transsexual is identified as such solely on his/her own script*' (2000:74), but suggested that this was a personal fancy rather than

something born of desperate need. Clarette speculated that trans people have had to build up a conscious script (maybe more accurately 'schema') of gender subjectivity not because of a personal whim but because, as noted in section 2 of this chapter, industrial Western society did not originally provide this for them,

In a culture in which trans people generally are not acknowledged as a legitimate part of the community ... which as many of us are aware is not unusual ;- ) ... there is no socially legitimised "script" available. Thus inevitably, when we find that we are what we are, not what someone else decided we were, we are automatically identifying ourselves on our own script. And where the process of transition from socially assigned gender to personally perceived gender is not accepted as legitimate, again, inevitably, people are working with their own script. So in a sense, GG was not wrong, only describing the way things were. ... In many places, of course, she was out of date. Publicly available "scripts" have emerged, with varying degrees of acceptance, for both transitioning and non-transitioning trans identities, in many cultures where none existed before. (Clarette Apr 10th, in <The Whole Trans person>)

This conscious fashioning of schemata for trans subjectivity (which often includes the process of learning a new gender role) is a derivation of the schemata for 'man' and 'woman' that have been moulded over the centuries and within cultures. Perhaps new schemata for gender variant subjectivities will also emerge, or have existed in an unnamed way already. In 'The Transgender Rights Imaginary' Currah suggested that the state does not associate non-transitioning transgender or gender variant people's gender with any available gender schema, whether these people wish to do so nor not,

... transgender people are much less likely to have their gender acknowledged by the state and affirmed by the ideological apparatuses that reproduce hegemonic gender arrangements. (2009:253)

Both Greer and Janice Raymond overlooked the social constructionist idea that it is all people who are scripted into gendering, or into non-gendering. It seems that there is no social space left for gender variant people when they are castigated by some for emulating heteronormative schemata (notably separatist feminists) and castigated by others (notably reassigning trans people) when

they do not. Many trans people are willing 'immigrants' to heteronormativity but are vilified for being so just as they are vilified by others for not belonging to heteronormativity before transition. Such dilemma of rejection was put into stark relief in a murder case where trans woman Kellie Telesford was criticised by a Ms Greenberg for not following the masculine script by fighting back her attacker like a man,

While we are referring to her as a female out of courtesy because that is how she wanted to be known. She was nevertheless a male with a man's strength and you would have thought that she, as a victim, would have fought her attacker but there was no signs. (Quoted by Dean, 5 August 2008)

Clarette's narrative in <The Whole Trans person> manifests a suspicion of equating any subjectivity with Greer's sense of 'wholeness' or whole heteronormativity, with Clarette preferring to describe her own identity as 'hole'. She presented wholeness as the danger of cementing subjectivity into a certain schema; the danger of identity becoming obsession. This perception of wholeness (not 'holeness') brings to mind 'wholesome' portrayals of man and woman in the nuclear family, prevalent in 1950s USA and notably criticised by Betty Friedan in *The Feminine Mystique* (1963). Kimana (Apr 22nd, 2006) contributed to the whole/hole debate by describing the Native American concept of the spiritual person as 'hollow bones' where spirituality has a free flow through the person open to such communication. Perceptions of trans subjectivity as 'hole' portray it as open to ideas of diversity, for instance via communication, subjectivity-in-process and spirituality. This seems to fit in well with the inclusive concept of maternal relations, suggested as inherent to 3<sup>rd</sup> wave mentality in chapter 3 section 3 and chapter 8 section 3.

As well as trans as spiritual 'hole', trans as 'whole' in its experience of the span of gender is also narratively supported by Kimana who considered that her experience of man and womanhood stood her in good stead when partaking in men's and women's ceremonies, when counselling, and when generally interacting with men and women. At one military reunion for Vietnam veterans, Kimana described how, '*It was fun going from a genteel woman to "Wild Bill" the Pathfinder to a flirty woman and back to being genteel within a minute*'.

portraying the 'view from somewhere' common to many a trans subject in a light-hearted way (Apr 24th, 2006). This view was narratively portrayed as intuition and as a 'scourge', perhaps of heteronormativity, in *The Well of Loneliness* by Radclyffe Hall,

The eye of youth is very observant. Youth has its moments of keen intuition, even normal youth – but the intuition of those who stand mid-way between the sexes, is so ruthless, so poignant, so accurate, so deadly, as to be in the nature of an added scourge ... . (Hall, 1982[1928]:81)

Kimana also warned of the danger of presenting the worst aspects of gender to be found at the poles of heteronormative gendering (Apr 30th, 2006, in <The Whole Trans person>). The researcher also did so by using the expression 'oppressive femininity' to identify women's (and sometimes even men's) use of femininely polarised behaviour, a way of constructing woman as the 'Other'<sup>20</sup> of man. Presentation of such behaviour as deriving from an essential essence does, it seems, pigeon-hole people into gendering and really moulds them into 'half a person' to paraphrase the title of a song addressing gender ostracism by indie rock group *The Smiths*. The researcher's interpretation of the lyrics, guided by the kind of character that seems to inhabit all Smiths' songs, is that Morrissey's character felt estranged from establishment discourses such as manhood and so wanted to rebel against them by having fantasies such as checking into a YWCA. He felt like half a person (not wholly manly) when people with heteronormative genders may be the real half subjectivities. British law supports this scripting into 'halfness' by allowing people to choose, 'any gendering they want, as long as it is heteronormative'.<sup>21</sup>

After being victim of oppressive heteronormativity, autobiographer Mark Rees described how, as he increasingly found himself through transition, his and other people's spotlights were taken off his own gendering and he found that he could invest more time in discovering others through deeper relationships (1996:115). He used the metaphor of evolution from a shadow to a full person to describe his feeling of becoming real (123), mirroring comments, quoted in

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<sup>20</sup> See chapter 1 s. 1 and chapter 4 sub-section 2.4 for explanations of the term, 'Other'.

<sup>21</sup> Chapter 4 s. 2 contains examples of this gender dualisation in action.

chapter 2 section 3, on the experience of ghostly unreality by Jan Morris (1974:14-15,24,31,106-107). Mark commented that, '*Wholeness, I decided, was unobtainable if one was not being true to oneself* (1996:179).

It became clear from participants' responses and from reviews of *The Whole Woman* that texts such as Greer's marginalise trans subjectivity. Greer donned the role of protector of 'women' as marginalised identity. This stance, and her polemic against trans people, seem ironic when trans men are often classed, by trans-unfriendly people, as natal women and when trans women strive in so many ways to live life as a full woman. Her stance also seems ironic when many a time gender variant people are considered as neither man nor woman and are therefore 'Othered' from social life, just as women have generally been in the past. Gilligan explained how gendering into womanhood has traditionally meant becoming someone with a less than whole social experience,

Girl's initiation into womanhood has often meant an initiation into a kind of selflessness, which is associated with care and connection but also with a loss of psychological vitality and courage. To become selfless means to lose relationship or to lose one's voice in relationships. This loss of relationship leads to a muting of voice, leaving inner feelings of sadness and isolation. (1995:124)

Kristeva questioned even the word 'woman' as being sufficient to encompass the complexity or whole spectrum of womanhood,

Kristeva's works have prompted widespread criticism from feminists. She has been accused of anti-feminism because of her refusal of the category of woman, which involves, she believes, an essentialism and singularity that belie the subject's complex constitution. (Wright, 1992:199)

Imelda Whelehan highlighted the perception of women as whole beings only when they were connected with the nuclear family,

The women's role is most often theoretically obliterated beneath considerations of status and husband's occupation, even though it could be powerfully argued that it is the woman's role which guarantees the existence of the familial form. (1995:17)

Whelehan portrays an image of woman like a queen on the chess board, very powerful and crucial to social institutions but only allowed to move in a certain way and within a certain area of the social arena. Women are still often seen as less than whole if not connected to a family and have to be prepared to sacrifice themselves for the good of the 'king'.

Contrasting with texts such as Greer's, some Transstudy narratives and contributions to trans anthologies seem to tie in with philosophical 3<sup>rd</sup> wave thinking's general move towards embracing 'Otherness' in general through visualising subjectivity in a similar way to Clarette's idea of the 'hole' (with a 'h') and Kimana's 'hollow bones' that allow a conduit for the flow of empathic communication. Perhaps this is the reality of people's wholeness; the connection that they make with others and the fluidity of their subjectivity.

#### 6.4 Identity as a Process: Subjectivity

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Raymond vigorously criticised the idea that certain subjectivities should or could be created without an initial type of biological aetiology that she saw as transparently identifiable,

One should be able to make choices about who one wants to be. But should one be able to make any choice? Should a white person attempt to become black, for example? The question is a moral one, which asks about the rightness of the choice, not the possibility of it. Should persons be able to make the choices that disguise certain facets of our existence from others who have a right to know ... (1979:116)

She did not conceive of anyone from other biological aetiologies having the potential or the moral right to become whole women. Conversely, Foucault maintained that the idea of permanently identifiable identity is a mirage that leads people to an oasis of deceptive essentialism or totalizing theory (Diamond and Quinby, 1988:xiv). Foucault focused on the concept of the soul to argue that the self is not a singularity, a self-sufficient Cartesian ego overlaid with beliefs and intentions and the sole source of deliberate action. Foucault wanted to show that the self is a construct (Prado, 2000:57).

Foucault theorised that images of normativity were, if non-deliberately, created and that they exponentially increased in production through introduction of mass social regulation from the 17<sup>th</sup> Century onwards. Prado pointed out how, in *Discipline and Punish*, Foucault theorised the production of the image of a normal person as a result of numerous reforms to the treatment of prisoners, with the resulting penal programme of rehabilitation from deviant to normal (2000:60). In many ways images of normality proved functional but in others they worked to exclude certain people from subjectivity. Images of normality would set into concrete common sense images of gender.

The Transstudy seemed to become a hotbed of discussion on the subject of identity versus subjectivity.<sup>22</sup> Most participants were keen to self-define, and consequently be socially defined, as originally man or woman rather than as trans or as having a subjectivity-in-process,

I am a woman, I don't need to work at being so anymore, I've completed my journey - Now I just be. (Alyssa Aug 12th, 2007, in <Moving on and the losses that accrue>)

I dont say I am trans, dont need to as I am not "trans" as a thing I am a man. (Leon Jun 28th, 2006, in <WWho do you feel after the SRS ?>)

Few participants interpreted transitional gender subjectivity as involving any kind of difference to heteronormativity. Exceptions were found in narratives ventured by Kimana and Clarette,

I try not to think of myself as anything in particular, and find it unnecessary. (Clarette Oct 21st, 2005, in <NHS safeguards>)

Although I am a woman in my mind...most of the time, I still have enough masculinity to do things I need to on rare occasions. ... It's that Balance that allows me to attend and partake in Women's Ceremonies, yet do the same for Male Ceremoies without being disputed. Having Balance also allows me the ability to counsel couples or individuals in personal relationships. After all, I know both sides and can explain how a man feels

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<sup>22</sup> The concept of subjectivity is introduced in chapter 1 s. 1 and forms one of the critical discourse analysis framework components as described in chapter 5 s. 5.

to a woman and do the same for a man regarding women. (Kimana V Apr 24th, 2006, in <The Whole Transperson>)

Some social constructionist trans theorists have suggested that gender subjectivity is an on-going process of nurture rather than a given or reassigned nature. For instance, a variant of gender nurture identified by US Air Force Psychiatrist George Brown seems to involve some pre-transition trans women's 'flight into hyper-masculinity' (Brown, 2006[1988]) and the flight out of it into the quest for womanly gendering. Such gendered reversals were dramatically related by Monica, Kimana and Raelene, when writing about their own lives (October and Nov 2006, in <Being Trans : A blessing or a curse>). It is not known whether femininity was initially repressed in these instances, or whether masculinity was overdone in early years and needed to be compensated, or whether there was some other explanation. However, an essentialist interpretation, not influenced by ethics of care, would have fixed these three participants as overtly masculine and manly when looking at their early lives.

Fixing of identity can also happen after transition depending upon what labels of transitioned subjectivity are applied. Terms such as 'correct'<sup>23</sup> and 'inner'<sup>24</sup> suggest identity while 'acquired'<sup>25</sup>, 'preferred'<sup>26</sup> and 'realignment'<sup>27</sup> suggest subjectivity. Whittle's use of the term 'preferred' might indicate an idea of gender as chosen, at least as a choice of realising (achieving) or presenting the gender. No-one knows for sure whether gender is essential or in-process, as was highlighted in the review of gender cases and legislation in chapter 4 section 2, so none of these labels can be classed as definitive. In the absence of this certainty, as discussed in section 1, the researcher argues for acceptance of trans subjectivity rather than a focus on the quest for aetiology. This proposition has been put forward by some trans narrators (see chapter 8 sub-section 3.2) and is summarised in chapter 9 sub-section 2.1. It was also, according to Professor of Philosophy Timothy O'Leary, recommended as the most useful way to conceive of the self by Foucault,

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<sup>23</sup> Sadie (Apr 27th, 2005, in <How long to be 'out' as pre-op?>).

<sup>24</sup> The Researcher (Dec 31st, 2006, in <Some thoughts on Trans Acceptance and Freedom>).

<sup>25</sup> Whittle, et al (2007:77).

<sup>26</sup> Whittle, et al (2007:2,10,12) and Alyssa (May 16th, 2005, in <How long to be 'out' as pre-op?>).

<sup>27</sup> Alyssa (Oct 4th, 2005, in <NHS safeguards>).



What does matter for Foucault is that we should change our modes of relation to the self. This relation should not be conceived, in Sartrean terms, as either authentic or inauthentic: rather, it should be conceived as a 'creative activity' (OGE, 351). The self is not a foundation, a source or a starting point: it is an end, a task, a work which, although constantly worked, is never completed. (O'Leary, 2002:5)

Leon suggested that often, and noticeably in the past, the existence of trans subjectivity has only become apparent to the trans person when they enter adulthood (Mar 30th, 2006, in <Min and Max Transition Ages?>). Drafting of the EA 2010 involved trans lobbyists attempting to facilitate some representation of trans subjectivity in childhood without prematurely applying the label, of 'gender reassignment'.<sup>28</sup> The lobbyists' suggested term, 'gender variant', would allow young people to find their gendered selves while providing some recognition of variance in their daily (including school) lives.<sup>29</sup> Younger people could be then introduced to the concept of trans subjectivity without immediately having their identification as trans associated with illness and the need for transition or cure. It seems that a similar kind of transition assessment for minors occurs in Lakota culture but with an added spiritual element, as related by Kimana in <Different cultural aspects of being trans> Jan 8th, 2006,

Throughout their childhood and adolescence, children are encouraged to ask questions and experience a lot of different things on their own, providing it hurts no one. Should a boy wish to dress in a dress or blouse and skirt, maybe try on make-up, this isn't discouraged. Should a boy of ten or so ask to be addressed in the feminine and wish to express as a girl in attire or light make-up for over a month, s/he is brought to a Winkte or Medicineman to be counseled. ... Often, the Winkte will arrange for an Inipi (Sweat Lodge sweatlodge), if they don't have their own altar. This is where the child and Elder ask the Spirits for a sign from the Spirit World to show if this child is Winkte. If so, training for the role is pursued. If not,

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<sup>28</sup> For instance in the Public Bill Committee 2nd Meeting, Afternoon 02/06/2009, Question 73.

<sup>29</sup> Described in chapter 9 sub-section 2.4 as providing 'choice' in representation for younger people.

then the child can just be accepted as going through an experimental phase of gender exploration.

Alyssa represented the idea of transition as a process of revealing rather than one of creation, '*... I would probably make the point that I'm not more feminine, just more able to express it*' (Nov 24th, 2005, in <How are we perceived?>). This seems similar to Raelene's narrated view of transition as a process that reveals the inner subjectivity of 'woman',

I see transitioning as very much a temporary thing. It's a process of moving from one state to another. And having completed the process, one is no longer transitioning nor for that matter is one still transsexual. ... [Raelene preferred] Trans as an adjective that seeks to indicate a different history to other women. Thus a short woman, a tall woman, a married woman, a single woman, a trans woman. But most definitely a woman. (Raelene Dec 31st, 2006, in <Some thoughts on Trans Acceptance and Freedom>)

A postconventional ethical perspective would recognise this realised subjectivity by providing named recognition of the subjectivity, via an ethic of justice, and recognition of how the subjectivity has been achieved by the individual, via ethics of care.

Feminist commentator Catherine Orr examined the formation of feminist subjectivity through new discursive forums by addressing the involvement of dialogic negotiation in the process of portraying subjectivity (Summer 1997:3). Similarly, Tracey Lee deduced that there was more going on than trans men's acquiescence to medical scripts in the formation of female-to-male subjectivity. Even though the trans men were in a less powerful position in their relationships with transition specialists, Lee theorised that they nevertheless retained the potential and will to challenge transition discourse (2001:14,15,166). Professor of English Marilyn Edelstein considered that, '*Kristeva has always explored the subject's dialogic relations with itself ...*' (1993:196)', suggesting that only one person is needed for a dialogic investigation of gendered being.

If it is accepted that there is substance to the argument that subjectivity is a process, the implications of such a process in real life require consideration.

Kimana suggested that life is by definition a process and that an inclusive approach to change can ensure the survival of a community,

I'll give you another think to thought about. Everything that doesn't change/grow will eventually die. ... Humans are like this. If they refuse to allow new ideas or changes, they too become stagnant and begin to decay. ... if they don't evolve with changes around them, they die off and become extinct. (Kimana Nov 29th, 2005 - 1:24 AM, in <What we are = what we do?>)

## 6.5 Conclusion

Section 1 of this chapter described how feminist and transgender (as opposed to transitioned) subjectivities have been portrayed as 'muddying the waters' of gender by some Transstudy participants, whether from the type of gender theory espoused by those belonging to these subjectivities or by the apparent nature of the subjectivities involved.<sup>30</sup> Muddying the waters can lead to the danger that trans subjectivities are perceived as unreal, for instance by legal or medical establishments. Trans people involved with legal lobbying have picked up on the fact that the clear water of gender definition equals protection when, for instance, Press for Change contributed to the drafting of the EA 2010 and the EHRC Codes of Practice.

Definition equals reality in conventional culture but, as has been the case for trans subjectivity in its involvement with the law, 3<sup>rd</sup> wave thinkers realise that defining subjectivity precisely is an almost impossible and potentially misleading endeavour. 3<sup>rd</sup> wave thinkers (particularly trans or feminist) forward the notion that it is a better use of time to extol the functionality of gender variance or the positive effects of 3<sup>rd</sup> wave theory-in-process. This parallels the argument put forward by some trans and feminist people that it is a more fruitful use of time to support and learn from gender variance than it is to try and define it precisely.<sup>31</sup>

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<sup>30</sup> For instance in criticism ventured by Raelene (Jan 19th, 2007, in <Some thoughts on non-trans gender-changers>) and Leon (Nov 29th, 2006, in <Some thoughts on Trans Acceptance and Freedom>).

<sup>31</sup> For instance see Morris, 1975 [1974]:153, Sadie Mar 21st, 2005, in <Is it helpful to pathologise transgendered subjectivity?> and 'I' (2002) Para 70, all in chapter 4 s. 2 and Whittle, (2002:86,121) in chapter 8 sub-section 3.2.

Section 2 outlined how participants displayed a general antipathy to the notion of political subjectivity ventured by the researcher since it struck them as luxury, unreal or troublesome compared to an all-pervading need to transition.<sup>32</sup> However, Clarette expressed the inevitability of political subjectivity<sup>33</sup> and this subjectivity is arguably often revealed in narratives such as the autobiographies reviewed for chapter 2, and those from the Transstudy.<sup>34</sup> Sometimes, the gendered 'voice coaching' of the trans individual will reveal a personally political 'view from somewhere'. Being politically out and proud is not easy because of the societal stigma attached to oppressed gender, and an 'erotics of unnamings' can lead to the quiet life. Nevertheless, this may be a life of hiding and subjective stagnation and there may come a time when oppressors apply political subjectivity to the gender variant individual whether they are 'out' or not, if they perceive the individual as different.

As with section 1, section 3 dealt with trans subjectivities as something other than counterfeit versions of heteronormative sexual subjectivities. Trans people's experience of both sides of heteronormative gender suggests that trans people actually acquire more of a whole gendered experience. Trans people's experience of the span of human gender roles is respected in Kimana's culture as 'hollow bones' or as a conduit for gendered insight. Germaine Greer's construction of the natal 'whole woman' assists to produce societal 'Others', many of whom are ironically keen to follow scripts of heteronormative gendering, if only given the choice to do so. All people are scripted into gendering but trans people often, as noted by participant Clarette, have to derive their own scripts for gendered living because they are ostracized from conventional society.<sup>35</sup>

Section 4 identified how, if most participants accepted subjectivity (identity-in-process) as a concept, it was perceived as a temporary state on the road to the end state of being man or woman. Such views align with the traditional

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<sup>32</sup> As suggested by Leon (Aug 26th, 2006, in <Too womanly to be a woman?>) and Alyssa (Jul 26th, 2005, in <Gender Identity, question on transforming personality>).

<sup>33</sup> Clarette (Jun 17th, 2006, in <The Paper>) – see section 2.

<sup>34</sup> For instance, Mark Rees when outing his transitioned 'voice', Kate Bornstein (1994:158) and Leslie Feinberg (1996:ch10).

<sup>35</sup> As an example, chapter 2 s. 2 and chapter 7 s. 1 look at how trans people have sometimes had to develop their own scripts for growing up.

discourse of gender transition in Western industrial society. This discourse acts as a progress narrative<sup>36</sup> of transformation from one heteronormative gender to another, verified by medicine and the law. Kimana provided an exception to this discourse by narrating gender as more of an on-going process, with reference to Lakota child development.<sup>37</sup> Clarette suggested challenges to the static discourse of heteronormativity by considering that one may not wish to view oneself as gendered at all and that some people could exist within either female or male bodies.<sup>38</sup>

Labels applied to the concept of gender transition can reveal perceptions of gender as essential or 'in-process'. 'In-process' labelling such as 'gender variant'<sup>39</sup> can act as recognition of trans subjectivity while not labelling the individual as ill or as presently in need of medical intervention. The as yet futile quest for gender aetiology can give way to the promotion of gender acceptance if labels applied to gender transition suggest subjectivity as a process that nevertheless produces recognisable subjectivities. Kimana's metaphor of the 'stream of life' helps to indicate how trans subjectivity is a part of the healthy adaptation that forms, rather than threatens, the human condition.<sup>40</sup> Recognition of subjectivity formed from a self-chosen social or physical process can indicate a dedication to that very subjectivity.

The first three sections of chapter 7 introduce themes that address how gender variant people have been essentialised into 'Otherness', or how they are expected to blend into heteronormativity. The final section discusses how gender variant people can challenge these two types of essentialism by forming a cohesive, but not dictatorial, gender 'movement of movement' where the movement itself is subject to reflexive criticism to ensure that it remains 'in-process'.

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<sup>36</sup> See Garber's idea of the progress narrative in chapter 2 s. 3 (1997:8,69,70).

<sup>37</sup> Kimana V (Apr 22nd, 2006, in <Black Trans> and Nov 19th, 2005, in <What we are = what we do?>).

<sup>38</sup> Clarette (Oct 21st, 2005, in <NHS safeguards> and Jan 4th, 2006, in <Min and Max Transition Ages?>).

<sup>39</sup> As lobbied for in Question 73, Public Bill Committee 2nd Meeting (Afternoon 02/06/2009), see s. 4 and chapter 9 sub-section 2.4.

<sup>40</sup> Kimana (Nov 29th, 2005, in <What we are = what we do?>).

## CHAPTER 7: CLOSED AND STATIC TEXTS TO OPEN AND EVOLVING NARRATIVES – ARTICULATION AND OPENNESS

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### Introduction

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The narrative development evident in trans activist and author Leslie Feinberg's *Stone Butch Blues* works to reveal what seems to be a realistic account of the trans person's often rocky road to gendered self-realisation. Jay Prosser discussed how key themes in the book such as 'shame', bodily 'home', identity located in 'transition' and the novel as 'trans- or intergeneric space' reveal protagonist Jess Goldberg's finding of her own gendered self through processes of trial, error and negotiation with friends and foes (1998:179,185,187,189,191). In the <What we are = what we do?> topic thread the researcher suggested that the Transstudy may act as a similarly 'trans-generic space' to contribute to developing discourses of trans subjectivity through dialogic negotiation (Dec 14th, 2005).

Feminist authors Sue Stanley and Liz Wise criticised the distancing of ideological theorising from social life and experience which they believed to be the only major influences on human interaction (1993:192). Investigating gendered life and experience, evident in fictional narratives like *Stone Butch Blues* or in real-life narrative, can be facilitated by working from the four themes in this chapter. These themes promote discussion of how and whether sexual subjectivity and its related discourses are closed and static or open and evolving phenomena. This chapter also investigates how 3<sup>rd</sup> wave texts, trans autobiographies and participants' narratives can challenge silence and secrecy and oppressive gatekeeping in discourse.

### 7.1 Voice

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[Normi] Noel finds that one voice,<sup>1</sup> speaking in a particular emotional register, can stop the emotional vibrations in a group of people so that the environment in the room becomes deadened or flat. When this happens,

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<sup>1</sup> Carol Gilligan's concepts of 'voice' and 'different voices' were introduced in chapter 4 s. 5, and chapter 6 ss. 1 and 2.

she observes, it looks like silence but in fact the feelings and thoughts – the psychological energy – often move into the place they can still live, and vibrate in silence, in the inner sense, until it becomes possible to bring them back into the world. (Gilligan, 1995:121)

Forums and formats need to be provided for the interpretations that individuals apply to their own sexual subjectivity. If not, people tend to be allocated to a particular type of gendering when their understanding of their own gender may be quite different. As noted in Chapter 2 introduction and section 1, and chapter 8 section 1, there has been a general invisibility of trans narratives and philosophy until quite recent times. Self-presentations of sexual subjectivity by gender variant subjects were included into Krafft-Ebing's *Psychopathia Sexualis* (1893), Havelock Ellis's *Sexual Inversion* (1896), Magnus Hirschfeld's *Transvestites: The Erotic Drive To Cross-Dress* (1910), Sandy Stone's 'The Empire Strikes Back: A Posttranssexual Manifesto' (1991) and Leslie Feinberg's *Transgender Warriors* (1996). However, autobiographical trans narratives only came to prominence in the industrial West in the 1990s.

Voices conflicting with the traditional narrative schema laid out between transition practitioner and trans client, especially before the advent of inclusive trans theory/writing, have often been, if inadvertently, silenced by the medical community. Lack of self-representations from trans people within establishment discourse can be linked to the oppression of silence and secrecy and/or to collusion involved in passing for reassignment, as notably theorised by Sandy Stone (1991:95).<sup>2</sup> In the medical setting the consultant/patient relationship often seems to manifest as an unspoken 'expert/layperson' hierarchical dualism. For instance, some consultants will only recommend reassignment surgery for those promising post-operative heterosexuality, revealing a conflation of gender with sexuality.<sup>3</sup> However, the voice of medical specialists and legal representatives empathic with the trans community can also be muted

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<sup>2</sup> As described in chapter 2 sub-section 1.1.

<sup>3</sup> Anne Bolin found that psychiatric consultants had an expectation that clients seeking reassignment treatments would promise (post-operative) heterosexuality (Namaste, 1996:193). Using an analysis of historical contexts, Bolin discovered that, just like people not seeking reassignment, these subjects possessed a range of personal sexualities. Gender was also conflated with heterosexuality in the legal case of the New Zealand case of Attorney-General v Otahuhu Family Court as explained by Sharpe – see chapter 4 sub-section 2.1.

as can be seen to apply to dissenting medical specialists and judges from the *Corbett v Corbett* case to the recent case of Dr Russell Reid.<sup>4</sup>

In law, silencing of self-representations operates when the trans person has to align with gender-universalising legislation, an alignment overlooking the observation that, in the opinion of legal scholar Catharine MacKinnon, ‘... *articulation of the voice of the victim is crucial because laws about victimisation are typically made by people with power ...*’ (Quoted in Benhabib, 1992:195). As described in chapter 4 section 4, trans voices excluded by the law have been emphasised and developed by pressure groups formed by trans people for trans people.

A closer look at trans people’s self-representations of gendered subjectivity, engendered by listening to trans people and trans-friendly theorists, reveals that not all trans people speak in exactly the same ‘voice’. For instance, as can be seen in the <Hidden Trans men> topic, Dhillon Khosla experiences of men’s groups (2006:8),<sup>5</sup> and in Tracey Lee’s research, trans men have different perspectives and experiences to people with other genders and to other trans men. Lee found that her research participants accounted for their sexual subjectivity in differing ways so that a metanarrative describing trans men’s aetiology could not be formed (2001:169). One of Lee’s participants, Eric, decided to negotiate his transition through reconstructing the usual script for female-to-male transition and included what Lee identifies as a classic trans sub-plot of non-conformity in his transition narrative (118,121). These narratives challenge the essentialising of trans existence, notably carried out by separatist feminists. Narratives from Lee’s participants Mark, Eric and Ben diverge from the narrative script of always knowing one was gender incongruent or trapped in the wrong body (131), although elsewhere there is a ‘habitual narrative genre’, employing a trope of ‘knowing all along’ (138).

In commenting on the lack of trans men’s input into some trans discussion forums, the research supervisor suggested that trans men are perhaps used to feminine communication or informal organic discussion, perhaps deriving from

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<sup>4</sup> The Russell Reid case is discussed by Raelene in the Transstudy, (Oct 8th, 2006, in <What should a modern Real Life Experience involve?>).

<sup>5</sup> As outlined in chapter 2 s. 3.



their female-gendered upbringing. They are generally not in favour of having to give structured responses in answer to set questions. This may be an example of communication 'in a different voice', to adopt Gilligan's expression. Writing with assertive opinions and stand-alone statements is perhaps more of a mode of communication instilled into those brought up as male. However, even though working from set questions, it might be said that the Transstudy subverted this mode of communication to some extent by encouraging free discussion and branching off from the topic being addressed.

Seyla Benhabib pointed out that Gilligan called her original work on ethics of care, 'In a Different Voice', rather than 'In a Woman's Voice' (1992:191). This is significant for 3<sup>rd</sup> wave and/or transgender theory because both rely on the promotion of 'different voices', such as those of trans men, in order to achieve strength through diversity and in order to support voices traditionally silenced by masculinist discourse. In chapter 4 section 5 it was argued that Gilligan's work on moral judgment and ethics identified differences in gender socialisation rather than deriving from immutable differences in sex. Benhabib reminded us that postmodernist feminists have disputed the strict divide between sex and gender where sex is seen as primary and given and gender is perceived as secondary and socialised (192). Both aspects of sexual subjectivity emerge as separately identifiable phenomena but both can be constructed from social interaction even if this is a process spanning many generations. With this approach to subjective difference, 'different voices' can be learnt by people with different sexual subjectivities meaning that they are not forever separated by immutable difference.

### 7.1.1 Hailing/Interpellation

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Acquiring social agency via the gaining of 'voice' may emerge from the kind of entry into subjectivity theorised by Marxist Philosopher Louis Althusser as 'hailing' or 'interpellation' (1971).<sup>6</sup> However, subjectivity gained through joining the 'club' of a particular social group is often gained at the expense of lost other subjectivity/ies. For instance, entry into patriarchy will entail a loss of connection with maternal relations and, as noted by educational language

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<sup>6</sup> A concept introduced in chapter 5 s. 5.

specialist Alecia Youngblood Jackson, entry into womanhood will often entail a loss of connection to manhood (2004:677).<sup>7</sup> Also, taking up the mantle of 'academic researcher' as a subjectivity can mean alienation from 'research participant' as a subjectivity. These are differentiations that form an unbalanced power relationship between subject (the other) and object (the 'Other'). Ignorance of the unfairness of unbalanced power relationships is bliss until knowledge arrives and when this happens, the power relationship will be subject to challenges by those unsettled by the status quo (Foucault, 1998[1978]).<sup>8</sup> In the case of gender discrimination, such challenges have been made by trans people taking recourse to the law to challenge power relationships that define trans subjectivity, as described in chapter 4 section 4.

Sara Ahmed theorised that hailing may, 'miss its mark', when those not hailed think that they have been and when those hailed believe that they have not been (Summer 1995:24). The process of hailing may also include reverse hailing as outlined in chapter 5 section 5. An instance of reverse hailing or a call of, 'Hey, not you', was narrated by Raelene In the <Hey You!> topic thread, when relating her rejection by a lesbian group for not, in their interpretation, being a woman-born-woman,

I have definitely had a "Hey not you" from an older lesbian group. There is a group called Older Dykes who have monthly Sunday lunches. I e-mailed them as to whether trans women were welcome. The reply was "no way". ... "Women born women" groups cause a fair bit of grief to the trans community down here. (Nov 1st, 2006)

It is possible to relate Kimana's preferred mode of communication, outlined by her in <Abilities and aptitudes>, as face-to-face and with knowledge of those involved in the communication, to the philosophical 3<sup>rd</sup> wave's alleged propensity to include different voices and communication methods into feminist debate, as outlined in chapter 3 section 3. Kimana narrated an alignment with the 3<sup>rd</sup> wave endeavour to get to know the individual that one wishes to 'hail', rather than basing choice of who to hail on who seems to display which social,

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<sup>7</sup> Not so much for trans people 'voice coached' into both dualised genderings.

<sup>8</sup> Noted in reference to the reversed discourse of homosexuality by Foucault (1998[1978]:101).

ethnic or biological characteristics. Voice and facial features are part of teaching in Kimana's society,

In other words, it's important to know who is doing the Teaching and it helps to hear their voice and observe their facial features during the Teaching, because nuances can come into play and affect the meanings. (Kimana Feb 9th, 2006, in <Abilities and aptitudes>)

### 7.1.2 Standpoint Epistemology/ View from Somewhere

Reverse hailing can eventually endow the subject with a standpoint epistemology or insightful social viewpoint formed from their exclusion, as suggested by Foucault of those rejected from mainstream discourse (1998[1978]:100,101). Many of those holding an oppressed epistemology are not blind to the ideology of oppression, as are many of those within the ideology, since the dominant ideology is a threat to their existence. The alienated subject develops a 'view from somewhere', as opposed to the kind of 'view from nowhere' discussed in chapter 1 section 2. However, social work theorist Neil Thompson highlighted how 'marginalisation', 'invisibilisation' and 'infantilisation' all operate to silence a 'view from somewhere' by attempting to eliminate it from discourse (1998:81-83). The researcher sometimes detected a common 'view from somewhere' that potentially bonded members of the Transstudy site,

All the Transstudy participants have responded with sensitivity to the issue of labelling others. Perhaps we wouldn't mind being labelled as people with a certain 'standpoint epistemology'? (The Researcher Mar 19th, 2006, in <Immigrants and Refugees?>)

According to Foucault, power imbalances between subjects, such as between those with a 'view from somewhere' and those with a 'view from nowhere', could be remedied by non-judgmental interaction in communication (Cooper, et al, 2002:520).<sup>9</sup> Although it is important to approach such communication with an open mind, a researcher attempting such interaction should remember that they can never really be a 'Modest Witness' with a 'view from nowhere'. Donna

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<sup>9</sup> Referred to by Foucault as 'reciprocal elucidation' – see chapter 5 sub-section 5.2.

Haraway (1997:23) introduced the concept of the Modest Witness in discussing the supposedly distant and objective approach taken to research by modernist European male scientists.<sup>10</sup> Such witnesses portrayed a professional position outside ideology whilst in fact being heavily imbued in their own privileged ideological positioning.

If, as Jackson (2004:676) theorised, a person recognises their social location instead of denying it, then that person can use the focused knowledge or admittedly 'partial perspective' emanating from this social positioning to provide special insights, just as suggested in chapter 6 section 3 about gender variant people's special insights into gender. Stephen Whittle noticed this kind of self-aware perspective as prevalent amongst trans people, and recommended its recognition and articulation by the trans person themselves,

... the trans person's history and knowledge of the world is so different from that of "men born men" or "women born women". Yet the responsibility to recognise and articulate that position is no one else's but the self's. (2006a:xiv:bot)

Such articulation manifests as the kind of political subjectivity discussed in chapter 6 section 2. Marxist Philosopher Antonio Gramsci thought that revolutionary intellectuals, those who give voice to their communities, should originate from within, rather than from outside, the working class, if they were to build an ideology sympathetic to working class interests (Bocock, 1986:36-37). As noted by Robert Bocock, Gramsci suggested that only when intellectual leaders form a bond of,

... 'organic cohesion in which feeling-passion becomes understanding and thence knowledge (not mechanically but in a way that is alive)', that, 'then and only then is the relationship one of representation'. (Gramsci, 1971:418)

In the trans community, such a 'view from somewhere' leading to intellectual leadership deriving from the working class has been personified by Leslie Feinberg. Belief in such empathic intellectual relations could be reapplied in

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<sup>10</sup> The Modest Witness resembles the expert applying weak objectivity, as described by Harding. See chapter 2 section 2.

order to recommend that researchers make concerted efforts to identify or empathise with their chosen research community. However, a researcher must no more look for unadulterated perspectives in participants' narratives than s/he should look for such in his/her own. This is because, as Catherine Riessman (1993:15) observed, all those involved with producing narratives operate with a 'view from somewhere' (there is really no such thing as the 'view from nowhere', only a non-self-aware or denied 'view from somewhere').

### 7.1.3 Refusal to Grow Up

One of the most pernicious threats to articulation of any view from anywhere faced by the trans person comes in the form of infantilisation, as discussed in chapter 2 section 2. Some would prefer that trans people are seen (for the spectacle) but not heard since, once gaining a voice, they tend to upset the heteronormative applecart which demands certain schemata of behaviour from adult men and women. Infantilisation has even emanated from apparently trans-friendly sources, for instance when Harry Benjamin belittled trans people by theorising that,

An immature or an infantile sexual constitution (fostered by a faulty upbringing) may have something to do with the cause of transvestism ... . The often infantile and completely self-centered attitude of many transvestites and transsexuals is occasionally and strikingly illustrated, together with a deeply disturbed, unrealistic, frustrated frame of mind which is the more outspoken, the more the writer inclines toward transsexualism. (Benjamin, 1966:38)

This kind of personality stereotyping brings to mind that allocated to women and lesbians in Victorian times,<sup>11</sup>

As an 'angel in the house', woman has been credited with natural goodness, an innate allegiance to 'a law of kindness'. But this same description extols her as 'infantile, weak, mindless creature' in constant need of male supervision and protection ... the alleged angel was an

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<sup>11</sup> According to Jane Ussher, to be a woman is to be classed as the psychic inferior of men, "Madness" acts as a signifier which positions women as ill, as outside, as pathological, as somehow second rate - the second sex' (Ussher, 1991:11).

image that all Victorian women were supposed to internalize. (Noddings, 1989:59, cited in Ussher, 1991:86)

In a society [Victorian] that not only perceived women as childlike, irrational, and sexually unstable but also rendered them legally powerless and economically marginal, it is not surprising that they should have formed the greater part of the residual categories of deviance from which doctors drew a lucrative practice and the asylums much of their population. (Showalter, Elaine, 1985[1987]:73)

Most psychoanalytic theorists either sincerely misunderstand or severely condemn lesbianism. ... all agree, it is maladaptive, regressive, and infantile ... . (Chesler, 1997[1972]:210)

In <How do you believe you will you age?> Monica, Leon and Kimana hinted at how trans people are likely to live longer and happier lives if they transition since only then are they fully self-realised, and can 'find themselves' sufficiently to be able to grow up. This is similar to the way in which Gilligan found that women could find themselves through ethics of care when relinquishing their ties to 'selflessness' in the name of womanhood,

... Jenny, another student in the college study ... articulates a morality of selflessness and self-sacrificing behavior, exemplified by her mother who represents her ideal. (1982:136)

This relational ethic [ethics of care] transcends the age-old opposition between selfishness and selflessness, which have been the staples of moral discourse. (1982:xix)

As noted in chapter 2 section 2, autobiographer Mark Rees noted that he remained 'boyish' when unable to realise his physical sex as a male adolescent (1996). For Judith/Jack Halberstam there was no point in growing up into an unsuitable kind of masculinity so s/he adopted tomboyism as a resistance technique to the imposition of masculinity (1998). These accounts of hindrance to development resemble a narrative description provided by Raelene,

For me, as an male-to-female transsexual none of my female emotional needs were ever met prior to my acceptance of their legitimacy. And my emotional growth and maturity were severely stunted leading to what could

be described as long-term emotional abuse. (Raelene Oct 22nd, 2005, in <What we are = what we do?>)

Sandy Stone helped to recuperate trans people into maturity, and to consequent social voice, by describing them as 'socially mature' (Whittle, 2005:163) and Monica looked forward to a healthy developmental outcome for trans people when a proper means of gender attribution was established society-wide,

I envisage a time, far into the future, when transsexual boys will be identified in childhood and then brought up from that moment as girls in the anticipation that they will grow up to be women and in the normal course of events become wives/partners and mothers. (Monica Feb 21st, 2006, in <Transpregnancy>)

The application of the label 'gender variant' to children showing trans characteristics, as described in chapter 6 section 4, would allow these children to find their gendering without being straight jacketed into a gender that can only cause them developmental confusion. The proper attribution of gender, engendered by considering the trans individual's own interpretation of their gendering, may allow trans people to acquire, and maybe change for the better, what Monica described as the 'thick veneer of civilisation',

In regard to having to become a woman, I think S de B [Simone de Beauvoir] was wrong. If small baby is lost in the jungle and brought up by some other species, (as has been known to happen, albeit rarely,) a boy baby will still grow up to be a man and a girl baby a woman. The only attribute that will be completely lacking will be the thick veneer of civilisation. (Mar 19th, 2005, in <Can feminism include input from and inclusion for born males?>)

Some members of one oppressed faction, feminists, would sometimes infantilise another, trans people, in order to act as gatekeepers to subjectivity, for instance when Raymond called trans people 'sick and immature' (1979, see chapter 2 section 2) and when Greer conflated trans women with pantomime

dames (1999, see chapter 6 section 3). This process of internecine<sup>12</sup> hostility has sometimes been reversed when trans people infantilised feminist narrative,

I think terms like 'Women born women' are divisive and bigoted. Also factually incorrect - surely they mean women born girl? And people using the term 'womyn' - grow up. Get a life. (Sadie Jun 4th, 2005, in <Camp Trans 2005>)

[moved from below] Sometimes trans people have infantilised other trans people by portraying trans subjectivity as an immature outcome. Georgina Turtle did so in *Over the Sex Border* when equating 'O-sexuals' gender inappropriate behaviour with immaturity (1963, see chapter 2 section 2). She also mentioned that, '*... immaturity is a word to be found exclusively in psychiatrists' reports*' (96), while conflating male-to-female transvestism with transsexualism. However, sometimes immature presentation and behaviour is a simple practical mistake by trans people trying to learn a new gender schema. For instance, as noted by Monica in <Too womanly to be a woman?>, the new male-to-female reassignee can come across as immaturely feminine by overzealous use of feminine paraphernalia (Jul 27th, 2006).

Feminists have also been subject to association with immaturity by other feminists<sup>13</sup> and this has stunted their access to discourse. For instance, contemporary 'Girlie' culture has been represented as infantilisation by theorists identified as 2<sup>nd</sup> wave feminists by English Literature Lecturer Rebecca Munford, such as Margaret Marshment in *Introducing Women's Studies* and by Germaine Greer in *The Whole Woman* (Munford, 2004:142,144,149). Munford described how Girlie culture was a philosophical 3<sup>rd</sup> wave move designed to challenge heteronormativity, rather than adulthood, when adult women adopt signifiers from their childhood (148).

Surface readings of Carol Gilligan's work criticised it for portraying women's difference as essentialised.<sup>14</sup> Such criticism can be dismissed when it is realised that Gilligan strove to represent women's particular voice as a

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<sup>12</sup> In this case within the community of the gender oppressed.

<sup>13</sup> See Astrid Henry (2004:50).

<sup>14</sup> For instance, Naomi Weisstein in 'Power, Resistance and Science' (Winter 1997).



socialised one rather than emanating from a purely natural essence, as described in chapter 4 section 5. When reviewing narratives from her own research participants, Gilligan realised that women had traditionally abdicated responsibility for moral decision making in order to comply with the image of woman as caring, and to avoid hurting others through having to pass judgement (1982:74). However, this prevented them from being able to 'grow up' into the world of mature responsibility. A similar abdication of responsibility from involvement was expected of trans people presenting for reassignment until trans people began to gain a social voice in order to have some input into the negotiation of their transition. Just like Gilligan, Becker identified the dilemmas that arise when people take up the mantle of responsibility when rejecting their gilded cage of dependency,

... there are no solutions without down sides. Nor are there solutions which are guaranteed to work without any risk of unexpected consequences or of backfiring to harm those who were supposed to be helped. (2009:170)

These dilemmas were also recognised by Halley who lent support to the argument that an ethics of care involves responsibility and that responsibility has to be accompanied by the knowledge that any decision will have positive and negative consequences,

We might have to decide without knowing that our understanding of the situation is right, without knowing how our decision will play out, and even convinced that, in a system in which any decision will transfer some social goods from, say, women to men or men to women, there is no decision that we could possibly make that will not hurt vast numbers of real, actual people ... . (2009:26)

The gaining of social voice will be accompanied by such dilemmas but the alternative is to be always infantilised and consequently silenced. Experience of 'hailing', a 'view from somewhere' and 'refusal to grow up' can all increase or decrease the trans person's societal access to voice, whether it be via their own agency/communion or that of others. The trans person will therefore, like women excluded from feminism in the chronological 2<sup>nd</sup> wave, often seek avenues other than the conventional to articulate their experiences.

## 7.2 Passing

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Initially, I thought the way to achieve status was to blend into society and cover our tracks. But one spends one's life waiting for the truth to emerge. (Rutherford, 23 April 1997)

Still, transsexuals know that silence can be an extremely high price to pay for acceptance. (Stone, 1991:299)

Although a proliferation of different voices is commendable for gender inclusiveness, it is understandable that many trans people should seek to 'pass'<sup>15</sup> into heteronormative gendering. Maintaining or presenting non-heteronormative subjectivity means developing a whole new gender schema, will almost certainly open the individual to ridicule and abuse, and will make it difficult to be accepted for specialist transition and reassignment help should this be required. Undermining the heteronormative gender schema is such a formidable prospect that it would be the stuff of nightmares for most people. Chapter 4 section 2 highlighted how the law has often expected transitioning people to pass as heteronormative in every way including physically.<sup>16</sup> Legal and social penalties for not passing into gender schemata have been severe and have led to trans people being marginalised within heteronormative or even trans communities (Whittle, 2002:86). Even for those trans people keen to pass as heteronormative, transition to the preferred gender can be an uphill struggle when much of societal approbation is based upon perception and not substance,

Whilst we fix the world, however, there's no denying that a trans woman who passes well will have a very different life experience from one who doesn't. (Burns, Christine, 20 June 2007)

People form opinions about others within a couple of seconds and visual appearance plays an inordinately large part in how you are perceived. (If it looks like a duck and it quacks like a duck, then its a duck)! Every tiny hint

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<sup>15</sup> 'Passing' means doing what one can to assimilate into the codes of appearance and behaviour required by a gender with a related gender schema approved by society in general.

<sup>16</sup> For instance, in this section it was noted that the dualism of sex was upheld as necessary to marriage in *John A.C Forbes-Sempill v The Hon. Ewan Forbes-Sempill* and was definable by biological evidence.

of masculinity moves you nearer to the 'one man drag show' category. (Monica Jun 15th, 2006, in <How do you believe you will you age?>)

Stychin noted that Eve Kosofsky Sedgwick's idea of putting queer into practice was for the individual to declare themselves as queer, thereby refusing to pass as heteronormative (146). This kind of self-representation is positive for choice but quite risky in many social scenarios and Stychin recognised that categorisations will still be imposed by others in the community, '*... categories continue to be invested with social meaning and, as a result of categorisation, different subjects experience a different material reality (147)*'. Trans people and feminists have been the direct recipients of the effects of perception and often, quite understandably, wish to pass into heteronormativity.

This desire to pass can derive from the fact that many people are still brought up to accept that man and woman are the only conceivable genders and that one does not choose which of these to belong. Transstudy participants tended to indicate the power of heteronormative gender schemata by regularly relating a desire on behalf of themselves or other trans people to pass,

most people I know are "stealth" and would never tell anyone they were trans unless they were intimate with them...although maybe thats more a transman thing..? (Leon Aug 4th, 2006, in <Being Trans : A blessing or a curse>)

... clothes are there to keep the weather off, first and foremost. Right? ... The identities we present may be there to keep social weather off, first and foremost... . (Clarette Jun 4th, 2006, in <Your Narrative Self>)

Participant Ariel suggested that the requirement for a trans person to pass seamlessly into heteronormative gender schemata is being challenged within medical communities after many years of demanding very scripted presentations of gender,

The old paradigm is dying, Dr (Eli) Coleman said. The notion of two sexes, the clear distinctions between cross dressers, transvestites, transsexuals. And, most interestingly, the need to be assured that individual will complete the sex reassignment process, the importance of "passing", and,

believe it or not, the encouraging 'unnecessary' voice lessons and surgery. (Ariel Oct 25th, 2005, in <Who might be the 'Others' of the Transstudy?>)

However, Whittle criticised those managing trans people's RLE for continuing to what might be called 'heteronormalise' the transitioning experience more than necessary,

However, I believe the RLT, or as I (and the WPATH SoC) would prefer it was called, the RLE (experience), is still fundamentally flawed in many clinical practices. It's practice often focus's the patient's mind on PASSING the test, whether by; 'passing', or, more likely, by persuading themselves that they are passing, or by pretending they are passing — or as the French psychoanalyst Collete Chiland might say for the majority; by deluding themselves or by an illusion of themselves. ... it should involve discussing whether the patient felt fully informed, whether genital surgery was appropriate for them at this stage, and of course such time as when the patient thought it was appropriate for them. It would not be about whether the practitioner, nor when the practitioner, thought it was appropriate for the patient. (Whittle, 10 September 2008)

Here Whittle argued for active involvement of trans people in the negotiation of access to reassignment treatments. This would engender a deeper understanding of the person on the inside rather than the gender presentation that shows on the outside. Consideration must also be given to the fact that some pass more easily than others. Transition seems to have allowed Raelene to pass as herself rather than as her gender ascribed at birth,

I am extremely contented just being me these days. For the vast bulk of my life there has been two opposing forces at work - 1) to meet societies expectations of me and 2) to fulfill my own needs. Now they are as one. (Raelene Sep 30th, 2006, in <Being Trans : A blessing or a curse>)

Post-op, psychologically it has been unbelievable. Before there was always a sense of having something to hide, now no-way. ... now I am ME in capital letters. Now I go out in shorts and a tee shirt, or a ballgown. There is no sense of unease, I smile a lot more. (Raelene Dec 6th, 2006, in <Post-Op experiences>)

As discussed in chapter 6 section 3 and section 1 of this chapter, the trans person augurs well when openly manifesting their enhanced insight into the human condition from having inhabited both traditional gender roles, enabling us all, through drawing upon their narrated experience, to find ourselves more fully through knowledge of gender,

In essence, using the analogy given in Dr John Gray's book "Men are from Mars, Women are from Venus" a trans person learns to speak both martian and venusian at they end of their journey. :) (Alyssa Aug 15th, 2006, in <Being Trans: A blessing or a curse>)

This narrated experience can mould our subjectivities in the way suggested by Sandy Stone, in an eloquent suggestion for an alternative to passing,

In the transsexual as text we may find the potential to map the refigured body onto conventional gender discourse and thereby disrupt it, to take advantage of the dissonances created by such a juxtaposition to fragment and reconstitute the elements of gender in new and unexpected geometries. (Stone, 1991:296)

### 7.3 Choice

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In "A Vindication of the Rights of Women," [Mary Wollstonecraft in 1792] argues that liberty, rather than leading to licence, is "the mother of virtue," ... (Gilligan, 1982:129)

The essence of moral decision is the exercise of choice and the willingness to accept responsibility for that choice. (67)

I believe that gender (self-) identification – both for transgendered and non-transgendered individuals – should not be categorized and should be a voluntary decision for everyone. (Pershai, 2006:51)

In 'Undiagnosing Gender' Judith Butler described how a politics of naming leads gender variant people to having to be named as 'Other' to heteronormativity before any recognition of their suffering can occur, and before they can be shepherded into normality. Physical reassignment treatments are necessary for some gender variant people in order to realise their autonomy and maintain their power of choice in terms of which gender to live. However, the diagnosis

that leads to these treatments is still largely heteronormative based and, as noticed by Butler, still often acts as a subtle diagnosis of homosexuality (2006:277). To increase autonomy of choice, Butler called for diagnosis of 'gender dysphoria' to be replaced by something like Jacob Hale's recommendation to treat the transitioning person as a client rather than as a pathological patient (281).

Reassignment treatments still do not guarantee a state of passing, partly because the transitioner has still been pathologised by diagnosis and, whenever this is revealed, it can lead to discrimination or harassment (285). Butler argued that heteronormativity begets the need for exact diagnosis of gender function or dysfunction which in turn begets the need for gender variant people to pass as heteronormative,

The only way to secure the means by which to start this transformation is by learning how to present yourself in a discourse that is not yours, a discourse that effaces you in the act of representing you, a discourse that denies the language you might want to use to describe who you are ... . (288)

The possibility of 'social dysphoria' is not perceived by the heteronormative diagnostic schema so it is taken that it is gender variance that has to be cleansed from society, rather than gender normativity that has to be examined,

... the [DSM] diagnosis does not ask whether there is a problem with the gender norms that it takes as fixed and intransigent, whether these norms produce distress and discomfort, whether they impede one's ability to function ... . (291)

... it seems that the only unhappiness is one created by an internal desire, not by the fact that there is no social support for such [gender variant] children, that the adults to whom they express their unhappiness are diagnosing and pathologizing them, that the norm of gender frames the conversation in which the expression of unhappiness takes place. (2006:294)

A 'Judith Butler Real Life Experience', leading to any kind of diagnosis, would be much more open to variation of gender presentation and expression, judging

by her interpretation of gendered behaviour, for instance that found in children's doll play,

... the DSM assumes that the doll you play with is the one you want to be. But maybe you want to be her friend, her rival, her lover. Maybe you want all this at once. Maybe you do some switching with her. (2006:293)

Butler's examination of childhood gender play concluded that many children play as if they perceive that gender can be created or improvised (294).

In addressing the issue of imposed definitions of sexual subjectivity, Currah noticed how, in the 2000s US, the legal community would deploy the term 'transgender' in order to privilege a type of identity over gender expression with the effect that,

... identity-based claims remain more juridically intelligible in the way they link identities to bodies, and so often produce better results. (2006:13)

This came to effect in the US 2001 case of Nikki Youngblood, who lost her case through not being classed as 'transgender',

... Youngblood's advocates were not able to describe her long history of gender nonconformity as a medical condition or even as an identity, as Doe's attorneys had done, respectively, with their reliance on Doe's GID diagnosis and her "transgender status." (10)

Such instances explained why, with regard to identity-based or conduct-based claims,

... in cases that could be articulated either way, transgender rights advocates often rely on more seemingly fixed categories such as transgender or gender identity than on concepts apparently less anchored to identity categories, such as gender expression. (13)

Currah noted how, in the US and UK, this eventually meant that basing equality claims on what one chooses to do, or how one behaves, rather than how one is defined, became non-existent practice (14). Choice based subjectivity was seen as unreal compared to essence based subjectivity. According to Flynn, this essentialised definition of gendered being in the US conflicts with the US constitution, which focuses upon individual freedom of choice,

The determination of legal sex should be considered within the context of our constitutional values – values that reflect a deep suspicion of governmental intrusion on individual rights. ... the right to self-determination of sexual identity. ... would attempt not only to reclaim a rights-protecting view of the Constitution but also envisions a world free of our current investment in policing a boundary between (or among) the sexes. (2006:34)

Contradicting the resort to identity-based claims in courts of the 2000s US, in supporting the potential for choice in representation of sexual subjectivity in courtroom situations, Flynn argued that acceptance of gender representations would be simpler than the determination of legal sex in each individual case,<sup>17</sup>

Reliance on gender identity to determine legal sex is straightforward. It would obviate the need for an individualized, complex inquiry for each person. Instead, recognition of gender identity would provide the law with a consistent, relatively simple approach that accords with (although does not necessarily require) medically accepted standards. (Flynn, 2006:35)

The 'complex inquiry' Flynn refers to is inquiry into sex, rather than gender. Determinations of gender will be more open to self and social representations-in-process than what is still often perceived to be the common-sense essence of sex.

In addressing self-representations and self-empowerment, Gloria Steinem, from the 2<sup>nd</sup> chronological feminist wave, but speaking as a 3<sup>rd</sup> wave philosopher, considered that, '*The greatest gift we can give one another is the power to make a choice. The power to choose is even more important than the choices we make*' (1995:xxvi). However, Gilligan theorised that women had become used to an abdication of choice deriving from their upbringing which told them not to rock the social boat by venturing opinions of their own,

The strategies of withholding and denial that women have employed in the politics of sexual relations appear similar to their evasion or withholding of judgment in the moral realm. (Gilligan, 1982:68)

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<sup>17</sup> There have been many examples of court confusion when determining sex for the purposes of establishing sexual subjectivity, as discussed in this section and the next.



Many trans people displayed a similar kind of deference to masculine authority when presenting for transition treatment in the 1950s to 80s, as argued by Sandy Stone (1991). Gilligan discovered that her female research participants could only make a move towards maturity when realizing they could choose to care for themselves as well as for others, and that this choice would often increase their ability to care for others,

... in order to care for another, one must first be able to care responsibly for oneself. (Gilligan, 1982:76)

Care then becomes a universal injunction, a self-chosen ethic which, freed from its conventional interpretation, leads to a recasting of the dilemma in a way that allows the assumption of responsibility for choice. (90)

Choice seemed to be absent as a significant aspect of early life for Rebecca Walker, after the advent of chronological 2<sup>nd</sup> wave feminism. Walker narrated growing up with a code of feminist living that stifled the life out of any feminist spontaneity and critical self-insight (1995:xxix-xxx). She described how 2<sup>nd</sup> wave feminists' collaboration in building up a prescriptive model of feminism led to the image of a formidable ideal that was impossible to live up to in reality. Feminists of Walker's generation came to feel anxious about living up to this model but Walker didn't want to 'pass' as an identikit feminist.

Similar to Walker, at college, Kristina Sheryl Wong (2003) felt constricted by the demands of a seemingly prescriptive feminist lifestyle. This led Wong to conclude that support for genuine self-expression should be a central tenet of 3<sup>rd</sup> wave feminism. In *Catching a Wave* she remarked that, '*Third wave feminism is about embracing individual experience and making personal stories political*' (2003:295). She noted that prescriptive feminism was particularly severe for women from social groupings other than the white middle class because the philosophical 2<sup>nd</sup> wave had the power to define feminist agendas in much of the late 20<sup>th</sup> century.

Kimana from the Transstudy related a similar feeling of social suffocation to Walker and Wong when trying to satisfy the societal values that pertained to her post-reassignment gender role,

One of the most difficult aspects of my transition has truly been the dominant society's "moral values" that they try so hard to force on others'. (Jan 11th, 2007, in <What was the most difficult aspect of your transition?>)

Astrid Henry hinted at the importance of choice in becoming feminist (2004:7). Like Walker and Wong, she considered that if feminism is seen as the birth right of modern women, something inherited from their feminist 'mothers', feminism then becomes an essential and inevitable feature,<sup>18</sup> rather than a passionate choice. Yet, those whose appearance has 'Othered' them from feminism have often made it a passionate choice. This was true for those women of colour who carried out feminist causes while not feeling included. Nikki Sullivan pointed out that '*... the political potential of a practice that is not seemingly self-consciously undertaken for transgressive purposes*' (2006:556) can still have political potential, as it did for those women of colour. The conscious choice of such a practice, rather than its association with certain subjectivities, seems to have potential that is more political since it is driven by passionate intent. A passionate feminist subjectivity would derive from choice of feminism as a genre and from a genre of subjectivity,<sup>19</sup> rather than from feminism as a metanarrative and from biological sex.

The choice to self-define, rather than choice of which gender to actually possess, was defended by Alyssa, for instance in <How are we perceived?>, Dec 16th, 2005, '*... I do mind being classed as 'trans' but such is inevitable at this stage in my transition, I much prefer and always will prefer to be known as a Woman and not trans.*' The choice to self-define was also supported by Sadie in <Male=man, female=woman?>,

I will normally go by how someone presents themselves: if they present as distinctly one gender, I would treat them as such. ... If someone tells me that they are not the same sex as they appear then I would also accept that at face value. (Mar 21st, 2005)

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<sup>18</sup> In chapter 2 s. 3 it was seen how Janice Raymond conflated the possession of XX chromosomes with feminist subjectivity (1979:135).

<sup>19</sup> See chapter 2 s. 3, chapter 3 s. 1, chapter 8 sub-section 3.2 and chapter 9 s. 2 for an explanation of 'genre'.

Kimana presented an alternatively cultured perspective on gender to suggest that society can function where choice can mean choice of which gender to actually possess, involving a process of finding oneself through gender, and where this gender is not perceived as inferior to gender as natal-given or essential,

Another historical/cultural lesson...maybe two. Prior to the White people coming to the Americas, with their notions of male and female roles, we had no defined gender roles as such. Granted there were Winkte and Wioptula, but they were accept as personal preferences of the individuals involved. People were not ostrasized or shunned for expressing gender preferences. (Kimana Nov 25th, 2005, in <Omnisexual, bisexual, trisexual>)

Whittle and Turner pointed out that,

... the Gender Recognition Act offers those transsexual people who do identify as men or women, the right to be legally recognised as such even if one is a woman with a penis or a man with a vagina. (2007:8.8)

This meant that the individual could be liberated from sexual subjectivity which seemed to derive from biology, if they so desired. The gender of transition would be man or woman, but biology could be ambiguous and sexuality could be hetero or homo-normative. In this way the GRA 2004 provided some measure of legal protection from the effects of attributed gender labeling that stigmatised any signs of gender variance. In addressing stigmatisation caused by labelling, Vivien Burr considered that,

Such a recognition [of stigmatization] can be beneficial in itself, by relocating problems away from an intra-psychic domain and into a societal one. For example, 'depression' is a term which locates problems within the internal psychology of the individual. ... But in re-casting the problem at a social level rather than at the level of the individual a different analysis emerges. Such an analysis may suggest that the woman sees herself as oppressed rather than depressed. (2003:122)

Assessing people's personal interpretations in this way will make their choices in self-representation much easier to understand and will make it possible to

understand that society can be dysphoric, rather than the transitioning individual. Participant Raelene noted the move towards this type of interpretation within the British NHS,

The Department of Health has today published the following Press Release:

People with mental health problems will have more choice over their treatment under new guidance published by the Department of Health today.

More choice in mental health will give people:

Power to choose their own path through services and keep control over their lives; Preferences to choose how, when, where and what treatments they receive; Personalised services organised around their lifestyles. (Raelene Nov 6th, 2006, in <What should a modern Real Life Experience involve?>)

Choices in the management of their own gender transition for trans people are hypothetically part of this new choice panoply, but with very few Gender Identity Clinics, and the major clinic operating alongside the centre of gender reassignment surgeries in London, this is very unlikely in practice.

#### 7.4 'A Movement of Their Own'?

Both [Lib Dem MP Lynne Featherstone and Equality Minister Maria Eagle] felt that the trans community have a hard time, coming in for more discrimination than other minorities. Ms Eagle commented that the "learning disabled and trans individuals tend to suffer more overt prejudice from the rest of society than other groups at present". ... Both, in slightly different ways, put this down to the fact that the trans community were less well organised, less coherent in their demands than other minority groups. (Fae, 16 April 2010)

Within the trans community and amongst contemporary feminists, there has been discussion addressing the value of, and the existence of, movements that are specific to each faction, and the right to choose whether to belong to such movements. Challenges to the exact nature or existence of such movements

have been made within each faction. For instance, Transstudy participant Sadie suggested that there was a trans *community* rather than a trans *movement*,

I'd agree with Clarette and the [Monica] one here - yes there is a transgender community, in the same way as there is a community of foreign people in most cities. We all have a vaguely common background and so sometimes talk to each other because of it. There are some movements within the community but there is no 'transgender movement' in it's own right ... . (Jul 12th, 2005, in <Transgender Movement?>)

From the feminist perspective, Gillis and Munford seemed to conflate 3<sup>rd</sup> wave feminism with postfeminism when speculating that the 3<sup>rd</sup> wave as a movement is a '*... competitive generational model [that] does not allow for a collective memory of female-based thought, empowerment and activism*' (2004:176). They questioned the application of the wave metaphor to the 1<sup>st</sup> and 2<sup>nd</sup> waves, as well as to the 3<sup>rd</sup>. They suggested that naming waves is a label too far and that 'feminism' itself is label enough to define what 'feminists' are all about and are trying to do. They also argued that, '*Feminism – ... - needs to be multiple, various and polyphonous ...*' (4). It could also be said that the numbering aspect of the wave terminology might suggest a rigid temporal sequence, the corralling of feminist thought and the restricting of access to its membership, rather than feminism being a movement-in-process. Polly Toynbee challenged the idea that there was actually any 2<sup>nd</sup> feminist wave or movement at all (6 June 2002), again challenging the enclosure of feminism into time-bound chunks.

However, the wave metaphor may be useful as a way to describe feminists of certain generations as formed both from their own chronological wave but from possibly differing philosophical waves, waves which may differ from each other in fundamental ways. As Astrid Henry described, waves as metaphorical sea waves emphasise both continuity and discontinuity (2004:24); although waves are significantly formed from what preceded, each new wave will make progress beyond those previous waves and so will change the nature of the feminist 'shore line'. In a similar way to Toynbee, Henry highlighted the fact that we cannot really identify discreet feminist waves by affixing them with chronological

start and finish time slots since feminism carried on before and between the temporal time slots allocated to these waves (20). Although not chronologically definable, a newly identified and inclusive philosophical wave could assist feminists and trans people to position themselves as having a freshly formed standpoint epistemology, needing to be identified as both originating from but different to other philosophical waves. The new wave could simply be entitled, '3<sup>rd</sup> wave', as well as '3<sup>rd</sup> wave feminist', in order to encompass other inclusive social philosophies.

Some feminists argue that '3<sup>rd</sup> wave' should indicate a whole new variety of feminism if it is worthy of a new name but could it not just as validly indicate a new feminist impetus? Perhaps existence of a 3<sup>rd</sup> wave may be justified if it can simply act as a motivational device, which it may well do in contrast to just being called feminism, for reasons introduced by Walker and Wong, as described in section 3 above. Literary Historian Jane Spencer seemed to realise the value of such a jump start to feminist philosophy, '*... talking and writing about third wave feminism is wholly beneficial, fostering a recovering sense of feminist urgency*' (2004:12). While discussing Cathryn Bailey's addressing of the problem of feminist inter-wave conflict, Jacqueline Zita found support for the christening of a new wave in noting that,

While Bailey is critical of this historical representation and finds it difficult to justify, by the criteria of age, decade, or content, the existence of a qualitatively new 3rd wave, she nonetheless favours the pragmatic need to articulate 3rd wave feminisms against neo-conservative attempts to extinguish feminist consciousness and disassemble all traces of its former collectives. (Summer 1997:2)

Ednie Kaeh Garrison saw value in the naming of 3<sup>rd</sup> wave feminism as a way to distinguish it from postfeminism,

While the "third wave" may not be a "wave" of feminism in the sense assumed by social movement scholars, the strategic invocation of the name as "political resistance" to the vocabulary of postfeminism is significant. (Garrison, 2005:249)

Addressing the compartmentalisation of feminism, Gillis and Munford hypothesised that, '*The wave paradigm not only ensures that each generation must "reinvent the wheel" but also lends power to backlash politics and rhetoric*' (2004:177). For instance, Gloria Steinem complained that some 3<sup>rd</sup> wave philosophising makes her, '*... feel like a sitting dog being told to sit*' (1995:xxii)', pointing out that she and several other 2<sup>nd</sup> wavers have been living out what are now classed as 3<sup>rd</sup> wave feminist lifestyles and ethics for years. However, perhaps it is better to reinvent or reconstruct the wheel to some extent than to be left with no wheels at all in an era of waning feminist philosophy and activism. Successful feminism risks being confused with the pyrrhic victory of women's inclusion into masculinist capitalism. By reconstructing the wheel, 3<sup>rd</sup> wave feminism seems to have generated enough heated debate to jump start feminists into considering what feminism was, is, what it could be, and where it is going.

Baumgardner and Richards detected a comparison of the 3<sup>rd</sup> wave to the rebelling daughters of Grrrl and Girlie cultures (Gillis and Munford, 2004:176). However, rehabilitating the image of the mother from negative to positive, and the daughter from infantile to mature, has been part of the project of philosophical 3<sup>rd</sup> wave feminists involved with 'maternal relations'.<sup>20</sup> Henry stated that, '*Handed to us at birth, feminism no longer requires the active identification that it once did*' (2004:40)', suggesting, similarly to Walker and Wong, that contemporary women and feminists have feminism handed to them on a plate. However, many of those who wish to identify with feminism may still be 'Othered' from this movement, just like women of colour were 'Othered' from the 2<sup>nd</sup> feminist wave. These 'Othered' people, including many trans people, may wish to take a break from non-feminism by forming an inclusive feminism and/or 3<sup>rd</sup> wave because of their experiences of exclusion, rather than just a feminism/wave of their own.

If included into the feminist fold, trans people may have a movement of their own to share in return. Trans man Alex Whinnom described how, '*It wasn't until 1992, when Press for Change was founded, that the climate seemed right for*

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<sup>20</sup> See chapter 3 s. 3, chapter 8 s. 3 and chapter 9 s. 1 for an analysis of maternal relations.

*collective political activism*’,<sup>21</sup> seeming to remark on a movement whose time had come. Whittle referred to a blossoming ‘trans community’ in *Respect and Equality* and expanded this to explain how trans people have become their own theoretical community (2002:51,52,71). It would seem that this new community formed a philosophical alliance of people oppressed too much by universalising metanarratives, for instance of law, medicine and separatist feminism, to wish to form its own dictatorial narrative. It was also an alliance wishing to distance itself from membership requiring biological or social status to one based upon relations of inclusive difference or ‘postdifference’.<sup>22</sup>

Arguments for and against naming trans and feminist movements have addressed the exclusionary practice that a named movement can evoke,

Some third-wave feminists prefer not to call themselves feminists, as the word feminist can be misinterpreted as insensitive to the fluid notion of gender and the potential oppressions inherent in all gender roles, or perhaps misconstrued as exclusive or elitist by critics. Others have kept and redefined the term to include these ideas.<sup>23</sup>

Currah found indications, in the work of fellow trans theorists, of how internecine conflict might build up between gendered minorities if they coalesced into movements. For instance, Patrick Califa theorised that 2<sup>nd</sup> wave type separation could come to blight the ‘transgender movement’ if it sought to focus on identity issues, and Rikki Wichins warned that a transgender movement that didn’t ‘... *interrogate the fact of its own existence*’ would repeat the normalising effects of other initially well-meaning social movements (Currah, 2006:5). Currah warned that consolidation into a movement could engender either, ‘... *a strategic and pragmatic point of reference or an erasure of the very different ways gender crossing is lived and experienced ...* (5).

For Currah, the transgender movement is dissoluble and can therefore engender the potential for escape from imposed gender ‘Othering’,

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<sup>21</sup> From <http://www.pfc.org.uk/node/30>.

<sup>22</sup> See chapter 5 s. 4, chapter 8 sub-section 3.1 and chapter 9 s. 3 for explanations of ‘postdifference’.

<sup>23</sup> From [http://en.wikipedia.org/wiki/Third-wave\\_feminism](http://en.wikipedia.org/wiki/Third-wave_feminism).



... the ultimate goal of transgender rights does not seem to be to contain gender nonconforming identities and practices within slightly expanded yet still-normative gender constructions and arrangements. ... The transgender rights movement might be described as an identity politics movement that seeks the dissolution of the very category under which it is organised. (2006:24)

Nevertheless, some gender variant people may wish to retain the hard won 'othering' of gendered or philosophical categories, that they have carefully built up.

Arguments against joining a category based movement included one suggested by Transstudy participants expressing the dangers of becoming associated with a social movement, outlining how this can mark the individual out as a 'tall poppy', recalling the risks of political subjectivity outlined in chapter 6 section 2,

Again this is one where I disagree, "transgender movement" it assumes most of us want to be called "transgendered" when the reality is most don't as Monica says, there is no way she will show anyone her GRC. I would be the same, I don't want people knowing my past. (Alyssa Jul 17th, 2005, in <Transgender Movement?>)

While acknowledging the dangers of publicising one's trans subjectivity, Clarette addressed a potential need for transgender to 'come out' as a movement in order to give a name and a voice to trans people's experiences via the exchange of verbal and written narrative,

I've seen various arguments against publicity in various places. But if societies can become aware, then somewhere someone (or more than one) might be able to grow knowing that they are not alone in wondering what's wrong with them, and might be able to work out (even in the face of opposition) sooner that maybe it's not wrong at all. That, in my opinion, is the primary reason to have a transgender movement in the first place. (Clarette Nov 7th, 2005, in <What advice to a Newbie>)

This mirrors the argument put forward in chapter 6 section 2, where a 'politics of naming' engenders out and proud subjectivity, and that ventured in chapter 8 section 4, where epiphanies of self-realisation are assisted by shared

narratives. Sometimes, however, the need for a movement is a burning desire initiated by unbearable conditions. Trans man Brandon Teena was raped and murdered by two men in early 1990s rural south-eastern Nebraska when it was revealed to his murderers that he was trans. Tara Godvin ventured that his death initiated a trans based movement,

Ten years ago, a handsome, brown-haired 21-year-old named Brandon Teena was raped and later murdered by two men after they discovered he wasn't born a man. ... The New Year's Eve tragedy in rural southeastern Nebraska inspired the award-winning 1999 film, "Boys Don't Cry". It also touched off a movement in the transgendered community. ... In the days after Teena was killed, a new generation of activists banded together to demand greater civil rights protections. Ten years later, 65 municipalities and states have hate crime laws that specifically include transgendered people, according to the Transgender Law Policy Institute. California became the fourth state to adopt such a law earlier this year. (Monday December 29, 2003)

## 7.5 Conclusion

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Section 1 suggested that the rise of the trans narrative has challenged the silent and secret hegemony between medical or legal specialist and client, a hegemony previously weighted in favour of the specialist's voice. However, both varieties of specialist still tend to work within the parameters of gender dualising discourse. This discourse derived from the time when medical reassignment first offered people the potential to acquire the body of their preferred gender and when April Ashley's lack of voice led to her, and subsequently other trans people, being viewed as women have in much of industrial Western history: as passive and mute objects of patriarchs' determinations.<sup>24</sup>

Entry into a certain type of subjectivity, for instance that required for admittance to gender reassignment, can only occur for those people identifying with the 'language' of the in-group, for instance, medical, legal, academic or gendered

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<sup>24</sup> See chapter 4 s. 1.

vernacular. Louis Althusser labeled this as a summoning process he called interpellation or hailing (1971). Those excluded from hailing hear the clarion call of, 'hey, not you' directed their way. This reverse hailing can paradoxically lead to the excluded forming 'different' social voices and 'views from somewhere', that can help them surface from silent and secret repression.

As discussed in section 2, trans people have to construct gender appearance and roles that so easily become 'Other' to heteronormative in the eye of the perceiver. People whose appearance falls outside of the heteronormative schema will incur suspicion from people in general and from regulatory discourses such as medicine and the law. Heteronormative discourse dictates that women and men must look uniformly different to each other and society will sanction those who fall outside of heteronormative parameters. During the course of passing as heteronormative, people who transition can find that they 'lose themselves' and their wealth of gendered experience through denial of their pre-transition history. When articulated, this is the kind of experience that can reveal a 'whole' perspective on gendering, as outlined in chapter 6 section 3.

Section 3 begins by describing how Butler theorised that a politics of naming labels gender variant people as 'Other' before consideration of their needs for physical and social adjustment. She suggested that treating the transitioning person as a client with choice of self-expression would reduce pathologisation for both transitioning and non-transitioning gender variant people. Diagnosis based in pathology engenders a requirement for transitioning people to pass in order to be recuperated and individual pathology means that the individual, rather than society, is viewed as pathological.

Currah explained how lack of official diagnosis left some legal subjects without legal protection based on definitional standing. Basing claims on what one chooses to do or be became inadmissible in legal procedure. Flynn figured that this contravened the US Constitution and reasoned that reliance on self-representations of sexual subjectivity would be a simpler court process than carrying out investigations into biological aetiology.

Philosophical 3<sup>rd</sup> wave feminists suggested that the power to choose to represent as a gendering is more important than which gender is self-

represented.<sup>25</sup> The philosophical 2<sup>nd</sup> wave largely involved a call for feminists to fall in step with a radical feminist 'army' united by a supposed common gendering. An inclusive approach to gender, such as that espoused by the 3<sup>rd</sup> wave, is more genuinely feminist in being qualitatively different to masculinist hegemony rather than involving a simple reversal of the gendered power balance in an identity based regime.

Transstudy participants supported the right to self-define, to choose to present a gender or not, but generally did not support the idea that the gender one has can be chosen. Presenting gender as a feature that can be chosen would deny what some participants saw as the inherent nature of gendered identity and would lead to much more difficulty in persuading medical and legal practitioners that gender is essential and permanent. Nevertheless, choice of whether to present gender or not can rely on the individual's self-insight when a true aetiology of gendered essence is still unavailable, and perhaps not really desirable if it would work to eliminate choice.

In section 4 it was suggested that the wave metaphor can be adopted to show how feminism can be recycled in order to draw from the best parts of previous feminisms in order to constitute a new evolved form. It would not just be an exercise in differentiating a new wave from old waves for originality's sake. The 3<sup>rd</sup> wave could be an identity-in-process like sexual subjectivity, a subjectivity socially constructed through dialogic negotiation with a constituency of membership through choice. Narratives from Clarette aligned with such representations of the 3<sup>rd</sup> wave by providing an interpretation of feminism as organic in essence, in the sense of an evolving and living body. Her vision also involved an inclusive idea of who could be feminism's constituents.<sup>26</sup>

Transstudy participants tended not to perceive the existence of any trans movement, or to wish for the existence of one. Being in such a movement would for them mark them as tall poppies when they wished to 'pass' into conventional society. However, political subjectivity or membership of a movement would seem to provide the best long term option for gender variant

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<sup>25</sup> For instance, Baumgardner and Richards (2000:24) and Gloria Steinem (1995:xxvi).

<sup>26</sup> Feb 7th, 2006, in <Are there just feminine and masculine people now?>

people by providing them with a name and a voice that will allow them and their experiences to emerge from silence and secrecy.

The first two sections of chapter 8 discuss how closed and static views of gender variance lead to social exclusion. The second two sections discuss how to dismantle these views.

## CHAPTER 8: EXCLUSION TO INCLUSION – POSTDIFFERENCE FOR ‘OTHERS’

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### Introduction

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Section themes in the previous two chapters have pointed to the need for compatible trans and feminist factions to be inclusive of subjective difference. Could it be that 3<sup>rd</sup> wave thinkers, such as some feminists and some trans people are characteristically open to social inclusion for diverse social subjectivities? [B]ell hooks warned of the danger of movements based on single identity-type membership<sup>1</sup> in movements or factions, and considered that the,

... feminist movement, like other radical movements in our society, suffers when individual concerns and priorities are the only reason for participation. (1984:62)

This was also an issue addressed by womanist poet and author Audre Lorde who recommended that hierarchies and dualisms be challenged by looking at how all social subjectivities intersect and can support or oppress each other (1984:48). Irene Diamond and Lee Quinby also aligned with an inclusive feminist ethos when considering that, ‘*For [Jana] Sawicki,*<sup>2</sup> *difference is a resource that helps us multiply sources of resistance* (1988:xix)’, suggesting that inclusive feminism nurtures strength through diversity. Perhaps the 3<sup>rd</sup> wave could be a multi-subjectivity and multi-issue based feminist/trans wave, while critically examining different subjectivities and theories that apply for inclusion into the feminist/trans landscape, in the spirit of ‘asymmetrical reciprocity’.<sup>3</sup>

A wish for connection with real lives rather than with stereotyped identities matches with the tenets of ‘solidarity’, recommended by bell hooks as a

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<sup>1</sup> Identity, rather than subjectivity-based movements were criticised in chapter 7 s. 4.

<sup>2</sup> Jana Sawicki is Professor of Philosophy and Women’s Studies, Williams College, Massachusetts.

<sup>3</sup> ‘Asymmetrical reciprocity’ is Iris Marion Young’s idea of critical dialogic negotiation, as discussed in chapter 5 sub-section 5.2.

postmodern concept of philosophical kindred.<sup>4</sup> Solidarity connects to the way that viewing subjectivity as genre<sup>5</sup> and genealogy<sup>6</sup> can liberate the characteristically stifling mores of identity (rather than subjectivity) politics. A passage of text by participant Clarette suggested that tolerance of others lessens rather than increases the challenge to our personal subjectivities,

More importantly still, individuality has become widespread. What someone else does is no longer such a challenge to our personal identities. Also known as tolerance ... though not yet universal. (Clarette Jun 10th, 2005, in <gender presentation then and now>)

This chapter examines issues affecting the acceptance of subjective difference and how such difference can work to the benefit of transgender and 3<sup>rd</sup> wave feminist factions.

## 8.1 Social Cleansing

Leslie Feinberg's account of socially sanctioned purges of trans identity and expression in *Transgender Warriors* highlighted a kind of social cleansing, to paraphrase the expression 'ethnic cleansing', that persistently features in historical accounts of trans people in society (1996:37). At various stages in human history, heteronormativity initiated the mass social cleansing of certain trans subjectivities, once what it is to be a man and a woman had been socially defined.<sup>7</sup> This was not usually murder, but involved the eradication of gender variant people of varying kinds, identified by those in advantageous positions in social power relations, from social life. Single instances of such purging have been regular, and have occurred in most parts of the world.

Exclusion and intimidation of gender variance is probably as old as human society and often appears in narrative form, for instance in the account of beleaguered King Sardanapalus of mythical Ancient Greece. Sardanapalus' enemies hounded him for a period of years for cross-dressing (even though, or

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<sup>4</sup> See chapter 1 s. 2, chapter 3 s. 3 and chapter 5 s. 5.

<sup>5</sup> See chapter 3 s. 1.

<sup>6</sup> See chapter 3 s. 1 and chapter 4 s. 5.

<sup>7</sup> Such examples of social cleansing can be found in Feinberg (1996:62,63) and in Bullough and Bullough (1993:ix,23,39-40).

perhaps because, it was carried out within the confines of his palace) (Bullough and Bullough, 1993:23).

In the eighteenth and nineteenth century Western world, such persecution has been carried out subtly via the requirements, by medical and legal gatekeepers, for the trans individual to fall in line with heteronormative expression, by undergoing transition with an expectation of bodily reassignment (Hines, 2005:72). This expectation includes the demand for a set period of Real Life Experience to demonstrate compliance with schemata of heteronormative gender. There has been no RLE or official recognition for non-heteronormative gender variance. The GRA 2004 and the new EA 2010 recognise transition as more of a social process than previous legislation,<sup>8</sup> but only as a process towards heteronormativity.

Social groups will often implement social cleansing to police any subjective variance in their midst, by using ridicule, violence or by subtly denying access to social environments such as community, family, work and leisure. Such a process occurred when society identified what it saw as a deviant or 'folk devil', according to sociologist Stanley Cohen,

An initial act of deviance, or normative diversity, (for example, in dress) is defined as being worthy of attention and is responded to punitively. The deviant or group of deviants is segregated or isolated and this operates to alienate them from conventional society. (Cohen, 2011[1972]:11)

The way that societal reaction, and the mass media particularly, segregate the deviant and bipolarize folk devils from the rest of the community, is a stronger basis [than perceptions based upon age difference] for attitude formation. (74)

Participant Lysandra, when describing her experiences at work, narratively recounted such a process,

My transgender experience is not respected in my workplace. It has been clearly communciated to me that I'll be tolerated professionally, but not respected. I am often excluded from work related social activities due to

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<sup>8</sup> (Government Equalities Office, 2011)



my transgendered status. There are no business lunches or after work invitations to the pub. (Lysandra Mar 7th, 2005, in <respected in your workplace>)

Whether Lysandra was transgendered, trans or transitioned, colleagues perceived her as different from heteronormative and therefore worthy of exclusion. The trans person ousted from society becomes like many immigrants or refugees; unable to find a social home and is seen as a dark and sinister foreigner who just serves to satisfy people's stereotypes. A sense of not belonging accompanies an expectation that life will have to change dramatically every so often in order to escape from alienation and oppression.<sup>9</sup>

Monica narrated an incident of a trans person being forcibly cleansed out of the work situation,

A friend of mine ... was a mental nurse caring for children with severe disabilities and behaviour problems. She expected her employers, the [...] Hospital, would be at least understanding. In fact, her all female colleagues were very supportive, but her employer virtually put her under house arrest in her tied flat. ... Finally, she was hounded out of her job and never practiced in nursing ever again, despite having skills that were to say the least special. But that was the seventies. (Monica Aug 27th, 2006, in <What should a modern Real Life Experience involve?>)

A similar situation recently reached the court environment, which at least meant that the victim gained visibility and voice as someone oppressed, something that would seem not to happen in most instances of trans oppression.<sup>10</sup> 'X' was a teacher in Brighton who suddenly found the flow of job offers from employment agencies drying up with no explanation.<sup>11</sup> Together with a former co-ordinator of Brighton's LGBT Community Safety Forum, she found that a reference revealing her trans history from a Brighton Council Manager had been supplied to her regular employment agency. Details of this reference had in

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<sup>9</sup> Leslie Feinberg's fictional account of a life of upheaval brought about by transphobic actions in *Stone Butch Blues* (1993) ably illustrates the effects of social cleansing.

<sup>10</sup> A conjecture based upon literature reviews, research and personal experience.

<sup>11</sup> X v Brighton and Hove City Council [2006/7], as reported by Dean, Tracy (08 November 2008). Details taken from a report in the Daily Mail (17 December 2006).

turn been distributed to other agencies. Council and Employment Agency workers consequently obeyed hints from those in influential positions to disregard X's applications for work. It was direct discrimination of a surreptitious kind orchestrated by a self-purportedly LGBT-friendly Council.

Whittle wondered why such ostracisation is still on-going for trans people, often really for those *perceived* to be trans, as opposed to heteronormative (Whittle, 2002:38-39).<sup>12</sup> A lack of a cohesive trans movement, for instance evident when Transstudy participants ask, 'what trans movement?', may be partly to blame.<sup>13</sup> Oppression may be easy to get away with since establishing that a victim is trans is not as straight-forward as it is for many social subjectivities. Identifying who is and is not trans has been a burden on the law from before *Corbett* to the EA 2010 (Whittle and Turner, 2007b:'Historical and Legal Perceptions of Sex and Gender'), but is necessary for the recognition of trans people as a protected category. Identification of who is and is not gender variant has yet to be fully addressed, significantly because self-representations of gender variance are still largely held in suspicion by mainstream society.

Social exclusion can come on suddenly if a newly transitioning person begins to appear in their preferred gender. As Christine Burns described, exclusion resulting from transition can be very sudden for the trans person and the physical reassignment they rely upon to provide them with a congruent gendered appearance can take years,

For me the shock was to loose almost every shred of my security all those years ago when I let people know my transsexual background and took the steps to do something about it. I lost practically every shred of security overnight and learned what it feels like to be an outsider. (Reported by Dean, 2 June 2007)

It is not surprising that many trans and gender variant people seek to 'pass' into heteronormativity when faced with this kind of social alienation. This predicament has been ameliorated to some extent by the EA 2010, which

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<sup>12</sup> The effects of discrimination and harassment on perception are to some extent addressed by the EA 2010.

<sup>13</sup> An issue addressed in chapter 7 s. 4.

provides legal protection against direct discrimination for trans people lacking immediate access to means of transition and for those who find it particularly difficult to pass as heteronormative.<sup>14</sup> However, this protection almost always comes after the horse of discrimination or harassment has bolted out of the social stable.

Sometimes, and nearly always at some point in each trans person's life, the trans person will contribute to the policing of their own trans subjectivity by purging or hiding any trace of their own gender variance,

I was married for twenty plus years, now with a 26 yr old daughter, yet in all that time my "ex" never knew anything about my predilection for dressing as a woman. I went to considerable lengths to hide everything. At one point in time I was the CEO of a quite sizable IT company, yet there I was busy hiding my activities like some disobedient child afraid of getting caught. (Raelene Nov 8th, 2005, in <What advice to a Newbie>)

## 8.2 Immigrants and Refugees

In the <Immigrants and Refugees?> and <Trans people and their cultural 'home'> Transstudy topic threads, a series of metaphors including 'immigrants', 'refugees', 'colonisers', 'emancipated slaves' and 'expatriates'<sup>15</sup> were discussed by participants as to their suitability in describing the social situation of trans people. Monica coined the term, 'political defector'<sup>16</sup> to describe her own defection to a preferred gendered subjectivity. In <Types of Trans person> it can be seen that she would wish this subjectivity to eventually change into acceptance as 'a naturalised citizen'<sup>17</sup> in the gendered 'land' of her choice. Sadie provided yet another metaphor for trans subjectivity,

'Ex-pat syndrome: constantly wondering who of your friends is going to break next and go home - you maybe? Well, it would explain the likes of

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<sup>14</sup> An explanation of protection against perception that leads to direct discrimination can be found in the EA 2010 Explanatory Notes at Pt 2, chp 2, s.13, clarified in the third bullet point of explanatory note 63, and perception of protected characteristics also applies to 'Victimization' at Pt 2, chp 2, s.27.

<sup>15</sup> Kimana Jan 29th, 2006, in <Immigrants and Refugees?>.

<sup>16</sup> Monica Jul 15th, 2006, in <How do you believe you will you age?>.

<sup>17</sup> (Apr 13th, 2005).

Charles Kane I guess. <sup>18</sup> (Sadie Apr 13th, 2005, in <Types of Trans person>)

Kimana might have been interpreted as a 'refugee' in her own 'country', both because of her ethnicity and because of her trans subjectivity. Her narratives bring to mind the persecution portrayed by Leslie Feinberg in *Stone Butch Blues* in her protagonist's attempts to find a spiritual and physical 'home' away from all her tormentors. All Transstudy participants seem to have engaged in a search for a gendered 'home' that would give them full status as citizens in the gendered community.

Judith Halberstam pointed out that even though trans men cannot (as yet) achieve a fully reassigned body, it doesn't mean that they cannot or should not find a legitimate 'home' in their preferred gender (1998:163).<sup>19</sup> Halberstam suggested that all people strive to seek a gendered 'home', in the sense championed by Jay Prosser (1998:182,184,185). In this way s/he introduced a consideration of the usefulness of metaphors of travel and border crossings, notably applied by Gloria Anzaldúa in *Borderlands/La Frontera* (1987[1999]), as a way to identify transition. Here, the transitioning person, just like all other gendered people, does not change totally but rather embarks on a journey of self-discovery. Halberstam noted that,

In Chicano/a studies and postcolonial studies in particular, the politics of migration have been fiercely debated, and what has emerged is a careful refusal of the dialectic of home and border. (1998:170)

This seems to mean refusal of the notion of home as separate from border. Those in advantageous power positions often assign definitions of what is gendered 'home' and what is gendered 'border'. We could also ask who it is who has the power to migrate, travel, to set up a new 'home' and to keep it running, and we can wonder, '*... who ... can afford to stay home*' (173).

Monica further developed the metaphor of trans people as 'immigrants' in the <Can feminism include input from and inclusion for born males?> topic thread,

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<sup>18</sup> Charles/Samantha Kane brought a case against Dr Russell Reid after complaining that he had been referred for reassignment surgery after only a month of living as a woman. The case had the effect of increasing gatekeeping checks at Gender Identity Clinics.

<sup>19</sup> Bringing to mind the thoughts of Dhillon Khosla and Shannon, as recorded at the end of chapter 2 s. 3.

I believe trans women experience a similar kind of treatment from feminists as that received by immigrants to Britain from the host population. ... To some British people the immigrant is one of his country's more enterprising individuals who may have valuable skills or qualifications and who wishes to throw in his lot with us, sink or swim, and is therefore one of our fellows. ... Other British people don't even want to hear what he has to offer: he is just another sponging foreigner, who is here to exploit our society and who should be sent home on the next plane. ... As an extreme example, read Germaine Greer's 'The Whole Woman', in particular the chapter called 'Pantomime Dames'. (Monica Mar 17th, 2005)

Monica aptly describes how trans people as immigrants offer a valuable 'view from somewhere'<sup>20</sup> that benefits the host population, despite the fiercely parochial views of separatists like Greer. Even though trans people may do all they can to become 'naturalised citizens' of their chosen gendered 'land', they may always retain the tag of outsider because of their different appearance and history of difference.

Sympathetic legislation will greatly facilitate access to the position of 'naturalised citizen'. However, in commenting upon The Sex Discrimination (Amendment of Legislation) Regulations 2008, Angela Clayton mentioned that,

Press for Change believe that the Government has missed an opportunity to level up the protections afforded for trans people. Instead, once again, they have chosen to do the minimum required by European Law and making the most restrictive interpretation of what they can do within the enabling legislation. (Clayton, 2007, December 8)

The Regulations did not mark much of a move to including trans people as full citizens in British society. Doing the minimum required by European Law has been a consistent feature of British law's approach to trans subjectivity, marking out its trans policy as one of maintaining subjective 'border check points'. This has also been the case in the EA 2010 where trans people remained linked to

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<sup>20</sup> See chapter 1 s. 2 and chapter 7 s. 1 for a description of the views from nowhere, everywhere and somewhere.

the notion of 'gender reassignment' and their association with medical pathology was upheld, as was the expectation that they be rehabilitated into heteronormativity. The GRA 2004 has also featured 'doing the minimum required', in which, as Whittle commented,

It appears to still be lawful to indirectly discriminate against transsexual people (even with a Gender Recognition Certificate) who are not, "intending to undergo, undergoing or have undergone gender reassignment". (Whittle, et al, 20 December 2006:79)

This distinction between the 'real' transsexual and the 'unreal' transgender person marks the refuge taken by those who want to operate just within the confines of the law, but no further, when not wishing to treat gender variant people as fully included gendered citizens. An ethics of care approach to trans inclusion would target this kind of discrimination by focusing on individual circumstances. This would eliminate subjective discrimination by working to identify the real sources of societal dysfunction. Recognising that there can be 'social dysphoria', as well as gender dysphoria would act as a narrative reversal of pointing the finger of blame.<sup>21</sup> If it is society that is ill, or deviant, then it should be recognised as such. Adherents to this idea must bear in mind that being trans often does involve mental distress but it seems that this distress may well derive not from disease but from unaccepted subjective difference. This perspective on gender dysphoria is supported in the World Professional Association for Transgender Health (WPATH) Standards of Care (7<sup>th</sup> Version, 2011:23), where it is recommended that, '*Mental health professionals assess clients' gender dysphoria in the context of an evaluation of their psychosocial adjustment ...*', rather than purely searching for the identification of pathology.

As many have noted, from the work of Thomas Szaz in the 1960s<sup>22</sup> to Lawrence Stevens,<sup>23</sup> difference is conflated with pathology in a separatist heteronormative society. The international *Stop Trans Psychopathologisation Campaign* campaigns for removal of the categories 'gender dysphoria' and 'gender identity disorders' from the DSM and ICD mental diagnosis manuals, as well as

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<sup>21</sup> As suggested by Vivienne Burr in the case of depressed women (2003:122) – see chapter 7 s. 3.

<sup>22</sup> Szaz T (1961) *The Myth of Mental Illness: Foundations of a Theory of Personal Conduct*.

<sup>23</sup> See <http://www.antipsychiatry.org/index.htm> and the rest of the anti-psychiatry movement.

providing more general information, networking and lobbying activities. The campaign's motto is, '*Trans identities are not a disease*' (ILGA, 2012).

Monica claimed, as do many other trans people, that her type of difference was present at birth rather than being an acquired disease or being a result of social construction, stating,

Quote: Kate Bornstein has described trans as 'gender euphoria' to lessen its association with illness.

This is a ridiculous, not to say a stupid assertion. The experience of being transsexual is not 'euphoric'. On the contrary it is ABSOLUTE TORMENT. One is indeed ill, by reason of being in severe mental distress, but as the result of some congenital cause rather than the result of any actual disease process.

Quote: 'because of the way that society regularly still reacts towards it [trans subjectivity].'

This statement implies that the whole reason for transsexual suffering is attributable to the way society treats us. Not so; this is only a small part of the cause of suffering. The main suffering is internal and independent of any outside influence. (Jun 2nd, in <Title of the Transstudy>)

Monica's description might support the adopting of the term, 'body dysphoria', rather than 'gender dysphoria' or 'social dysphoria' in order to describe the suffering that transitioning trans people undergo.<sup>24</sup> Nevertheless, social dysphoria stemming from dysfunctional society undoubtedly poses problems for those who transition.<sup>25</sup> Just as immigrants and refugees are often lumped together in one 'dangerous outsider' category, so is often the case for trans people. This process even happens in the courts where primitive ideas about what trans subjectivity involves often prevail,

Hurst describes how this discrimination works against people for breaking gender norms, no matter what their sexual orientation is. He says that

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<sup>24</sup> Bringing to mind Whittle's comparison of trans subjectivity to the sound emitting from a tree falling in the forest. If trans subjectivity was not witnessed by anyone else, like the sound from the tree, it would nevertheless still be there.

<sup>25</sup> See Whittle, et al (20 December 2006:1.2, 2.2, 2.7-2.10).

“courts often confuse sex, gender, and sexual orientation, and confuse them in a way that results in denying the rights not only of gays and lesbians, but also of those who do not present themselves or act in a manner traditionally expected of their sex. (Hurst, 2007:141, as quoted on Wikipedia by Aconway (see Assorted Authors, 18/02/2008))

From the discussion in this section it seems possible to argue that gender variant people are, in a gendered sense, already citizens of their gendered ‘country’ and should not have to apply for special entry to subjectivity, unless, perhaps, there are psychological and physical health risks involved and costs to the general population. Many do need assistance to transition and reassign but should not be treated as alien immigrants.

### 8.3 Maternal Relations

Some feminist commentators have identified maternal relations as an attribute of a utopian 3<sup>rd</sup> wave feminism.<sup>26</sup> Kristeva’s interpretation of the semiotic mode of communication and Gilligan’s ethics of care seem to align with this inclusive philosophy. However, this idealistic vision is not realised in many real-life inter-feminism and inter-feminist generational relations as lamented by bell hooks who, when writing in 1984, warned that, ‘*Despite current focus on eliminating racism in feminist movement, there has been little change in the direction of theory and praxis*’ (1984:53). [H]ooks saw the remedy for this in the kind of ‘womanist’ communication outlined in chapter 3 section 3, where the clique of academic conformity is replaced by a community of diversity, which respects the communicative idiosyncrasies of others, rather than producing its own variety of metanarrative and sociobabble (1984:56). Such a community might draw inspiration from, ‘... *the strength and vitality of women’s essential role in neighbourhood and community politics*’ noted by Diamond and Quinby as characteristic of the approach to local issues by feminist activists (1988:xvii). Ednie Kaeh Garrison suggested the importance of local issues or micro-politics,

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<sup>26</sup> For instance, Rebecca Dakin Quinn (Henry, 2004:2), Julia Kristeva (1993:206) and bell hooks (1984:44), as suggested in chapter 3 s. 3.



The perception that suffrage constitutes a national or universal issue, whereas anti-lynching is too specific and localized, speaks directly to the ease with which dominant feminists adopt dominant cultural values ... (2005:243)

Micro-political approaches can be distinguished from the focus on single issues criticised in chapter 4 section 1 and chapter 9 'Practical Applications' because micro-political activism is often set within a broader framework or mind-set of challenging the roots of social problems. Maternal relations bode well for multi-issue theory and activism in their connection with breaking down stereotypes, introducing the 'view from somewhere' of the gender variant voice, and in applying womanist modes of communication.

Something like maternal relations seems to have been suggested to be a feature of woman's conversation by trans man and autobiographer Max Wolf Valerio, who acquired special insights into what he saw as the downsides and upsides of this kind of communication. He saw the downside of transitioning as a tendency to miss out on the bonding jocular 'mickey-taking' type of banter that comes as mandatory in some masculine circles (2006:205). On the upside, he wistfully recalled the, '*... verbal articulation of nuances and undercurrents of feeling, being able to analyse and talk freely about my emotions, thoughts, and life situations ...*' (2006), characteristic of his time spent growing up as a girl. He speculated that speaking comes more naturally for those brought up as female (2008),<sup>27</sup> bringing to mind a comment by the research supervisor suggesting that trans men may be used to informal organic discussion, as noted in chapter 7 section 1. This may reveal how those brought up in the female gender role (or who identify with such a role) tend to align more with semiotic communication where, according to Kristeva's psychological perspective, emotional force deriving from pre-symbolic desire manifests as rhythmic articulation, tonal presentation and emphasis in body language.<sup>28</sup>

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<sup>27</sup> Scientific investigations have been carried out to support this assertion, for instance: Hunter, Darryl, Trevor Gambell & Bikkar Randhawa (2005), Colley, Ann and Zazie Todd (December 2002) and Janssen, Anna and Tamar Murachver (October 2004).

<sup>28</sup> As portrayed by Kristeva and described in chapter 5 s. 4.

Ideas of who can and cannot articulate maternal relations are complicated when trans subjectivities are taken into account since it seems that gender variant people may be more open to caring kinds of communication. Trans men can adopt them from experience of having grown up in the female gender role<sup>29</sup> and trans women may take them on by adopting the female gender role. For instance, Monica narrated her process of gaining insight into the care burdens put upon women in <Hidden Trans men?> (May 18th, 2006). Kimana described how for her the dynamics of her Native American family network seemed to develop in a way different to families imbued with heteronormativity,

Luckily, I've had a strong support system throughout it [her transition] from my Native community, They have been there when I was ready to rip off heads and use them for bowling balls. ... Heck, my Tiospia has grown by leaps and bounds since those early days. (Kimana Aug 9th, 2006, in <Stephen says, 'Help'>)

Kimana revealed the often-prevalent need for the trans person to build their own 'extended family' of new friends and family, something known as 'Tiospia' in her native community. Trans people often cannot depend upon the established and hierarchically organised relations of nuclear or kin-based family so they rely on a relational mode of trans community set up by committed individuals,

We found that trans people experience many problems at home and in their neighbourhood, with some losing their family support network, their home and friendship circles. Some 45% of respondents reported family breakdown which was due to their cross gender identity. 37% are excluded from family events and have family members who no longer speak to them because they have transitioned to their acquired gender, and 20% of respondents felt informally excluded from their local community and neighbourhood since their transition. (Whittle, et al, 20 December 2006:s. 2.10)

Semanalysis and ethics of care (further discussed in the next sub-section) have facilitated maternal relations by addressing the types of inter-generational

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<sup>29</sup> As suggested by Max Wolf Valerio (2006:326) and Stephen Whittle (8 July 2007) – see chapter 6 s. 3.

communication issues identified by Astrid Henry.<sup>30</sup> Issues of inter-generational communication also arose in the Transstudy threads. For instance, in <Hormone Regimes> Raelene seemed to take up a maternal (caring) approach when advising Alyssa even though this sometimes veered into the paternal (controlling). Narrative exchanges such as those between Raelene and Alyssa bring to mind those developed in debates between feminists from different chronological waves where misunderstandings occur but where knowledge disinherited by masculinist culture is nevertheless passed on via alternative communicative networks.<sup>31</sup> After undertaking interviews with trans women, Sally Hines found that trans women were not necessarily the hierarchically-inspired masculinists in disguise that separatist feminists had made them out to be,

Contrary to the claims that trans women ultimately exemplify problematic masculine behavior, many of those interviewed employ feminist critiques to reject what they view as “unacceptable” attitudes in other trans women. (2005:71)

Participant Ariel suggested that generations of trans women have much to offer each other,

... I also see first hand how much the older people could teach the younger ones, and how much the younger ones could learn, if only they listened. And yes, the same applies the other way around. (Ariel Nov 5th, 2005, in <Trans people and their cultural 'home'>)

This knowledge grapevine, similar to relations within the extended family of the Tiospia in Kimana’s community, can ensure that isolation does not separate trans people off from their social or spiritual community, as long as they can access this community by some means or another.

### 8.3.1 Semanalysis Linked with Ethics of Care

The main way of breaking down gendered and ethnic stereotypes is to interact with people to learn about their individuality, and this can be done via the

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<sup>30</sup> As outlined in chapter 3 s. 3.

<sup>31</sup> See the discussion centred around Astrid Henry’s work in chapter 3 s. 3 and chapter 7 s. 4.

dialogic methods of semanalysis and ethics of care in order to produce maternal relations.<sup>32</sup> Kristeva's ethical outlook and investigative technique of semanalysis (1980[1969])<sup>33</sup> can be allied with Carol Gilligan's ethics of care (1982)<sup>34</sup> because both interrogate the types of 'common sense' discourses that produce gendered stereotypes,

Rather than being an abstract set of moral principles, ethics is, for Kristeva, a relational, dialogic practice in which one acknowledges both the otherness of the other and the otherness of the self to itself. (Edelstein, 1993:196)

For her [Kristeva], ethics has more to do with the shattering than the maintenance of codes, more to do with free play than coercion, more to do with love than law. (200)

At a time when efforts are being made to eradicate discrimination between the sexes in the search for social equality and justice, the differences between the sexes are being rediscovered in the social sciences. This discovery occurs when theories formerly considered to be sexually neutral in their scientific objectivity are found instead to reflect a consistent observational and evaluative bias. (Gilligan, 1982:17)

When one begins with the study of women and derives developmental constructs from their lives, the outline of a moral conception different from that described by Freud, Piaget, or Kohlberg begins to emerge and informs a different description of development. (19)

Semanalysis interrogates discourse by applying a critical analysis of oppression from a perspective informed by maternal relations. Semanalysis opened up the borders of narrative by critically deconstructing symbolic language to provide a concept of language-in-process. Sandy Stone suggested that the trans person can draw from their own bodily difference to infiltrate and reconstruct the operation of that which Kristeva identified as symbolic language,

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<sup>32</sup> Maternal relations are introduced in chapter 3 s. 3, and chapter 6 s. 3 deals with how gender variant people often embody such relations.

<sup>33</sup> Introduced in chapter 5 s. 4.

<sup>34</sup> Introduced in chapter 1 s. 1 and chapter 4 s. 5.

To attempt to occupy a place as a speaking subject within the traditional gender frame is to become complicit in the discourse which one wishes to deconstruct. Rather, we can seize upon the textual violence inscribed in the transsexual body and turn it into a reconstructive force. (Stone, 1991:295)

Gilligan articulated the claim that relations-based moral reasoning (ethics of care), apparently more (but not exclusively) evident in girls' and women's communicative interaction, had been overlooked as a legitimate form of moral development. She claimed that this occurred because of the preponderance of males carrying out research into moral reasoning and of males being the subjects of this research (1982:18). Benhabib and Edelstein continued this critique into the chronological 3<sup>rd</sup> wave, using 3<sup>rd</sup> wave philosophy.

Semanalysis and ethics of care investigate subjectivity-based oppression at many levels by taking into account the whole subjective experience of corporeal (bodily), psychological (gendered) and social (structural) features, not by essentialising the influence of one of these features, as has been the case in separatist, psychological and even social constructionist accounts.

To supplement semanalysis, Kristeva developed a 'herethics', influenced by '*... maternity and the pre-oedipal mother-child relation*' and by '*... libidinal excesses*' (Wright, 1992:197,199). In 'Women's Time' she considered that the 3<sup>rd</sup> feminist phase heralded the time for a new ethics influenced by women's experiences,

... do women not participate in the upheaval that our society is experiencing on several levels (war, drugs, artificial insemination), an upheaval that will require a new ethics? (1993:224)

Gilligan suggested the possible source of this new ethics,

The elusive mystery of women's development lies in its recognition of the continuing importance of attachment in the human life cycle. Woman's place in man's life cycle is to protect this recognition while the developmental litany intones the celebration of separation, autonomy, individuation, and natural rights. (1982:23)

She described how women in her Abortion Study eventually combined something like maternal relations and an ethic of justice to form a relationship of responsibility and rights with others and self. She explains that the women gained,

... a new understanding of the connection between self and others which is articulated by the concept of responsibility. The elaboration of this concept of responsibility and its fusion with a maternal morality that seeks to ensure care for the dependent and unequal characterises the second perspective [in a sequence of perspective development]. ... The third perspective focuses on the dynamics of relationships and dissipates the tension between selfishness and responsibility through a new understanding of the interconnection between other and self. (74)

### 8.3.2 Erotics of Unnaming vs Politics of Naming

Those deploying ethics of care in their social relations have been essentialised as being, rather than sometimes being, certain types of people, as discovered by Gilligan (1982). According to Currah, rather than positing that oppression occurred in reaction to essential identity, Professor of Law Kimberlé Crenshaw argued that it manifested from reactions to subjectivities, or the perception of people's essence,

Crenshaw favours an approach that focuses on the effects a system of subordination has on oppressed identity groups ... . That race, gender and even sex are categories that turn out not to be firmly grounded in biology or in science does not mean that they do not have powerful social and legal effects, effects that are both enabling and disempowering. (2009:252)

Oppression resulting from perceptions leads to 'Othering' of those placed in a stigmatised social grouping. A 3<sup>rd</sup> wave narrative addressing connections through feelings of 'Otherness', connections that can be investigated by semanalysis and ethics of care, was provided by Greg Tate in *To Be Real*. Tate identified the socialising of the same-sex female community in his native New York, '*... obviously there is a lot more acceptance of lesbian sexuality among young working-class black women than anybody's talking about*' (1995:201). Although profoundly 'Othered' from mainstream society, these young women

did not seem to automatically exclude people with other sexual subjectivities from their own social circles. Participant Raelene also seemed to encounter a more inclusive approach from lesbians from younger generations,

I must admit that in all my dealings with the lesbian community I have had total acceptance by the younger ones - below forty, and been considerably disliked by the older dykes. (Raelene Nov 4th, 2006, in <Hey You!>)

It is not known whether this (narrated) difference is an effect of age, or of effects of a generation. However, lesbian communities from all feminist generations may have to hide their sexual subjectivity for reasons of safety and personal security, just as is the case with many a gender variant or transitioning person. These communities may be operating something similar to the 'erotics of unnamings' identified by Harriette Andreadis of 16th and 17th Century women involved in same-sex relations (1999:125).<sup>35</sup> Those involved in female same-sex relations in that period unnamed their sexuality before it was named in the first place and Andreadis argued that this was done in an effort to evade drawing attention to their gendered subjectivity (1999:131).

In relating 20<sup>th</sup> century women's' sexual subjectivity to feminist personal politics, Tate pointed out that women involved may actually be undertaking '... *antipatriarchal acts*' of which no-one is aware (Tate, 1995:204). This may resemble the effectiveness of a plain-clothes wartime resistance movement, subverting the enemy under their very nose. This parallels Kate Bornstein's recommendation for trans people in the face of stifling heteronormativity (1994); a very different operation to Raymond's portrayal of trans women as patriarchal conspirators (1979:104).

Tate pointed out that many black women still view organised feminism through less than rose-tinted glasses, so they may well wish to be feminist in their own, less conspicuous, ways. This indicates a kind of personal politics of unnamings and seems to have been supported by Gina Dent, writing in *To Be Real*, when she noted that,

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<sup>35</sup> As discussed in chapter 2 s. 1.

Black feminism, or “womanism,” includes me and my grandmother, since it has never based itself on a self-conscious description of particular movements or strategies. (1995:62)

This thesis proposes that, in a fully inclusive society, neither trans people, lesbians, gay men, gender variant people or older people from older chronological waves should be expected to hide or ‘unname’ their subjectivity and history, even though their choice to do so must be respected.<sup>36</sup>

Gloria Anzaldúa (1999[1987]) also identified this issue of personal unnamings versus political namings, with respect to Chicano/a people who could pass as black and/or white. This ability was more of a curse than a blessing, as such people were left with the moral dilemma of whether to pass as someone from the more privileged ethnicity. Society needs to, in fact should now, be in a postdifferent (difference inclusive) state where people can be proudly ‘post-out’ in an empowering way where people can ‘pass’ as themselves rather than as stereotypes.

Is there any alternative to either ‘erotics of unnamings’ (invisible inclusion in an ‘Othered’ group) or ‘politics of namings’<sup>37</sup> (visible inclusion in this group) to lessen the possible mutually exclusionary effects caused by both? The first can exclude people from subjectivity politics and the latter can exclude people without the appropriate subjectivity. An answer may be offered by the kind of ‘politically postmodern identity’ theorised and supported by several 3<sup>rd</sup> wave theorists.<sup>38</sup> This subjectivity (identity-in-process) would not act to exclude others based upon assumptions of inherent identity. Inclusion into subjectivities based upon the desire to belong (via genre and genealogy), rather than what is taken to be essential identity, may allow many hidden sympathisers to surface, as Tate observed,

When I presented my conundrum to Lisa Jones she said, “well I can’t write about that scene [the black lesbian scene] because I’m too much of an

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<sup>36</sup> As outlined in chapter 6 section 2 in respect of a ‘post-out’ society and in chapter 7 section 2 with regard to ‘passing’.

<sup>37</sup> Erotics of unnamings and politics of namings are explained in chapter 2 s. 1, chapter 3 s. 4 and chapter 6 s. 2.

<sup>38</sup> The concept of political postmodern identity is explained in chapter 3 s. 1.



outsider”. And like, I’m not? To which she replied, “you’re an insider by virtue of your desire to be inside of it”. (Tate, 1995:206)

The conundrum mentioned by Tate was his narrated dilemma of wishing to theorise black lesbian feminism and yet realizing that black lesbian feminists may take exception to his engagement with their community as a male. It appears that philosophical 3<sup>rd</sup> wave feminists are (theoretically) keen to provide narrative access for men and trans people, as positively different others (small ‘o’), to support feminism, as evidenced by texts in 3<sup>rd</sup> wave anthologies such as *To Be Real* (1995) and *Catching a Wave* (2003).

The acceptance of desire for subjectivity, such as Tate’s, rather than proof of subjectivity, is supported to some extent, if only for people transitioning between heteronormative genders, by the explanatory notes to section 7 of the EA 2010, which address gender reassignment. In paragraph 43, it is stated that,

This section replaces similar provisions in the Sex Discrimination Act 1975 but changes the definition by no longer requiring a person to be under medical supervision to come within it.

### 8.3.3 Ethics of Care to Postconventional Ethics

Within the Transstudy discussion site, participants considered the way that trans people should be named or recognised in order that society can accommodate their issues in an ethical manner. Some participants called for recognition of essential identity whereas a fewer number called for recognition of gender as socially constructed. For some, genre and genealogy, being both subjective definitions, would not provide a concrete enough definition for protection in law and treatment in medicine. In discussing the defining of subjectivity by categorisation and the relation of this to ethics, Clarette suggested that,

The ethics of this seem to me to be about determining whether a social limitation is a good or bad one, or putting this in a different way, determining whether our perceived need for space is valid or delusion. It is not obvious to me that the world has to adapt itself to my shape; I merely request that I should have an equitable degree of elbow room. A society which commits itself to creating justice for all on equal terms would not

insist on double-standards - morality is not different because your gender is different. And it's not different again because your gender is not polarised. (Clarette, Oct 31st, 2005, in <Omnisexual, bisexual, trisexual, or just plain straight, lesbian or gay?>)

Unlike some participants' calls for recognition of identity, Clarette's narrative calls for an ethics more focused upon individual subjectivities than on essentialised group identities. 'Value judgments' will affect both the ethic of justice and ethics of care although those applying ethics of care with 'strong objectivity'<sup>39</sup> would be likely to realise this effect. The interpretation of what Clarette calls a 'single standard of moral conduct for all' is debatable, does sie mean universal judgment or perhaps ethics of care if it is a flexible standard that can focus on the individual or case in question? The answer to this might be found in hir call for 'mindfulness' of the needs of others without the application of '*... preconceptions of what people need ...*' (Nov 5th, 2005, in <Omnisexual, bisexual, trisexual, or just plain straight, lesbian or gay?>), suggesting an identification with semiotic communication and ethics of care.

In <What advice to a Newbie>, Raelene's narrative converged with the ethical alignment narrated by Clarette when arguing that people should be treated as individuals with rights to individual choice and that this should apply to trans people wishing to modify their bodies. She stated that,

I disagree with almost every aspect of the Harry Benjamin Standards of Care for trans people. And even more so with the people involved who seemingly would like to act as "control freaks" over the lives of others. ... Each and every one of us is a unique individual, and should be treated as such. There is no one size that fits all. (Nov 11th, 2005)

However, version 6 of these guidelines actually stated that everybody was to be treated as an individual, even when it came down to gender reassignment surgeries, (2001:20, in 'XII: Genital Surgery'). Nevertheless, Raelene's quote aligns with trans critiques of the way the law has traditionally appointed itself as the arbiter of definitions, as described in chapter 4 section 2. The attributing of

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<sup>39</sup> Strong objectivity was Sandra Harding's term for scientific investigation that was self-critical (1991). It did not seek to present a Modest Witness's 'view from nowhere' in a demonstration of 'verbal cleanliness'.

sexual subjectivity by legal authority figures to trans respondents has been a feature of many legal cases from *Corbett* onwards and before.<sup>40</sup>

How might some participants' calls for recognition of essential identity and Clarette's call for recognition of subjectivity be reconciled in ethical procedure? Gilligan's interpretation of the concept of postconventional ethics might satisfy Raelene's call for individual attention but still retain recognisable guidelines to ward off the favouritism that can infiltrate a pure ethics of care (The Researcher Nov 13th, 2005, in <What advice to a Newbie>). The ethic of justice as part of postconventional ethics, informed by the on-going input from ethics of care, would provide a safety net for those with lack of access to the communicative means and ability necessary for ethics of care.

#### 8.3.4 Genre and Genealogy

Postconventional ethics would need to identify those needing special social care. Instead of resorting to as yet unknown definition by aetiology, we could look to Sandy Stone's identification of trans person as 'genre' (1991:296) where trans subjectivity can be located in psychological or social domains, without defining its aetiology, whether biological, psychological or social.<sup>41</sup> Sandy Stone also called for a reading of the trans person as an individual rather than as an end result of universal theories of trans development (1991:298). Similarly to Stone, Whittle quoted from Stone in Epstein and Straub to suggest how trans people have used their new self-definitional power to reclassify themselves as a 'genre' instead of 'a class or problematic third gender' (2002a:82).<sup>42</sup> This meant a new self-definition as individual or group subjectivity-in-process but at the same time subjectivity with roots in material embodiment and psychological sexual subjectivity. As described in chapter 1 sub-section 1.3 and chapter 6 Introduction, Alison Stone (2004:85) reinterpreted 'woman' as genealogy and, as described in this section, Foucault described

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<sup>40</sup> Attribution of sexual subjectivity by determination of biological sex in *Corbett* was followed by determination of heterosexual functionality in the cases of X, Y & Z (1997), described in chapter 4 sub-section 4.2, and *Attorney-General v Otahuhu Family Court*, described in chapter 4 sub-section 2.1. However, in this section it was noted that Lord Winston bucked this trend, in House of Lords debates on the content of the GRA 2004, by pointing out what he saw as the infinite complexity of defining sex for the purposes of law (Whittle and Turner, 2007:8.2).

<sup>41</sup> As discussed in chapter 2 s. 3.

<sup>42</sup> See chapter 3 s. 3.

genealogy as identity-in-process (1977:144, 1984:81).<sup>43</sup> Whittle maintained that there is a need for political and legal recognition of the exclusion that blights trans lives, rather than efforts to attempt the formidable task of identifying trans people's biological or psychological difference to non-trans men and women (2002a:86,121).<sup>44</sup> Genre and genealogy could form an appropriate template for this endeavour, rather than relying on deterministic physical and psychological frameworks and aetiologies provided by discourses of medicine and psychoanalysis that go on to influence the law.

Significant changes in representing the self's sexual subjectivity occurred in the period from early modern times to the present day, suggesting that aetiologies of sexual subjectivity have been in-progress, in the way that chapter 6 section 4 claims has been the case for individual sexual subjectivities. An explosion in the number of defined sexual subjectivities followed the scientific gaze directed at sexual subjectivity, as described by Foucault (1998[1978]:18,20).<sup>45</sup> For instance, when including vocal narratives from gender variant patients in his collection of case notes, eg from Case 99, Krafft-Ebing (1893) interpreted gender variance as a psychiatric abnormal pathology and Sigmund Freud introduced the idea of gender variance (in this case 'aberration' and 'inversion' meaning homosexuality) as a deviant or dysfunctional route<sup>46</sup> away from conventional gender (2000[1905]:2),

[Freud's] first class of aberrations contains those sexual activities that are deviant in respect of the sexual object. The most important and largest population in this class consists of adults whose sexual object has been "inverted". These inverts, or homosexuals as they are ordinarily called, "vary greatly in their behaviour in several respects". (Marcus, 2000[1905]:xxxviii)

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<sup>43</sup> As described in chapter 3 sub-section 1.1.

<sup>44</sup> Acceptance rather than aetiology is also recommended in the conclusion to chapter 2, and in chapter 4 s. 2, chapter 6 s. 4 and chapter 9 sub-section 2.1.

<sup>45</sup> See chapter 2 s. 1.

<sup>46</sup> If not as degeneracy and not as exclusively innate nature or acquired trait (Freud, 2000[1905]:5,6).

We were thus led to regard any established aberration from normal sexuality as an instance of developmental inhibition and infantilism. (Freud, 2000[1905]:97)

Freud's theory seems reminiscent of the kind of 'progress narrative' identified and criticised by Marjorie Garber (1997:8,69,70), where a successful sexual development will leave any gender variance behind. In contrast to these deterministic applications of theory, Havelock Ellis (1896) incorporated complete narratives from gender variant patients into his work and did not try to extrapolate from these accounts to form discreet medical types or to suggest that inversion was not a stand-alone sexual subjectivity of its own. Narratives inspired by Ellis's interpretation of gender variance provided enough information to suggest readings of gender variance as something other than homosexuality (Foster, 1985 [1956]:150). According to Prosser, these kinds of narratives engendered inter-trans negotiation where trans people put out feelers in order to articulate trans subjectivity into existence.

According to Currah, the search for aetiology has been undertaken by both opponents of, and supporters of, gender variant rights,

... the litigation strategies of transgender rights advocates are very much informed by the legacies of the civil rights movement, as are the strategies of those who oppose transgender rights, especially in the emphasis on immutability. (2006:16)

The aetiological choice seemed to be that gender variant people were either made by medical means or were made by God at birth. Little truck was given to ideas of gender variant people choosing gender, or as being made, by whomever, as gender variant at birth.

Later trans narrators have expressed a desire to avoid the pursuit of aetiology altogether, seeing the quest to understand the effects of trans subjectivity as a more fruitful and productive endeavour.<sup>47</sup> Whittle explained how this new perspective led to a third space beyond the quest for definition,

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<sup>47</sup> Stephen Whittle (2002:86,121 – see chapter 8 s. 3) expressed this view as well as the following trans narrators.

It may be the case that transgender theorists may deny gender as cause and effect (Whittle, 1996a), but neither do they see it in terms of biological process. The new formulations are attempting to move beyond either definitional point, and to go into Bornstein's (1994) third space in which 'our own patchwork individual identities have come together to form a brilliant complex mosaic of theatre for our day'... . (Whittle, 1998:48)

Romero ventured the opinion that, '*Sexual desire, for example, is too variable, too unpredictable, and too circumstantial to permit its full mapping and explanation* (2009:184).' The same seems to remain the case for sex and gender, despite scientific attempts to attempt such mapping. Currah considered that setting up gender aetiologies would set up new hegemonies that would inevitably contradict certain people's experience,

The challenge for the movement as a whole, then, is not to identify the "right" theory of the relationship between sex and gender. Either disavowing the medical model ... or trying to establish that model as the only way for transgender people to proceed ... would entail the imposition of a new hegemonic norm, one that would not be true to many people's experience of gender. (Currah, 2009:255)

Currah suggested celebrating contradictions in sexual subjectivity, rather than trying to make sense of them,

Rather than trying to make sense of all these contradictory accounts of sex, gender, and the relationship between them, rather than trying to develop the "one perfect theory" to unify them within the context of the larger transgender rights imaginary, we should, as a movement, be celebrating the incoherencies between them even as we continue to pursue rights claims by invoking particular constructions of gender definition. (256)

Currah also described how defining the biological aetiology of 'disability' has caused stereotyping of those it is taken to describe, and this has included gender variant people themselves,

For decades, disability rights activists have suggested that the problem for people with disabilities lies not in their bodies but in the social

architectures – legal, physical, normative – that turn a physical or cognitive difference into a disability. ... some trans people and trans allies have felt profoundly uncomfortable with the use of disability rights laws for trans advocacy. This is a consequence, ironically, of having fallen prey to the stigmatizing discourse surrounding disability. (Currah et al, 2006:xviii)

Foucault portrayed the search for aetiologies as a fruitless endeavour, recommending that, '*The genealogist needs history to dispel the chimeras of the origin* (1984:80)' and claiming that,

... a genealogy of values, morality, asceticism, and knowledge will never confuse itself with a quest for their "origins", will never neglect as inaccessible the vicissitudes of history. (1977:144)

He also raised the image of a subject-in-process, rather than one based upon a given aetiology, when theorising that,

Where the soul pretends unification or the self fabricates a coherent identity, the genealogist sets out to study the beginning – numberless beginnings, whose faint traces and hints of colour are readily seen by a historical eye. (1971:81)

O'Leary supported this conceptualising of subjectivity by describing how, for Foucault, the subject should be, as well as is in actuality, one formed from genealogy rather than from metanarratives,

We can no longer allow religious systems, moral codes or scientific truths to shape our lives. We are in much the same position as those ancients for whom the question, 'how is one to live?' could only be answered by the cultivation of a relation of self to self in which the self is neither given nor produced, but is continuously worked on in a labour of care (epimeleia) and skill (techne). (O'Leary, 2002:2)

Autobiographer Jan Morris considered various aetiologies for 'trans-sexualism', proposing that, '*It is not a sexual mode or preference. It is not an act of sex at all* (1975 [1974]:15). She also challenged the aetiological association of transitioning gender with homosexuality by describing how when she pursued the, '*... more elemental pursuits of pederasty ...* (29)', she did not seem to experience homosexual attraction at all. She focused her transsexual aetiology

on the spirit, '*... I see it above all as a dilemma neither of the body nor of the brain, but of the spirit (16)*', seeming to mean spiritual essence, just like Whittle has always thought of his trans subjectivity as part of the essence, if essence-in-process, that makes him Stephen. Jan eventually found it easier to view her transgender as, '*... sans cause, sans meaning ... (153)*', echoing a sentiment by Transstudy participant Sadie,

People who are hostile to us are still hostile whether being trans is a "lifestyle choice" or a "medical condition". ... I am of the opinion that it isn't either, really. There may or may not be a medical cause: I don't care if there is as I am more concerned with living with it than the medical side. It's like a calling, really. I have to be this way, there is no other choice. (Mar 21st, 2005, in <Is it helpful to pathologise transgendered subjectivity?>)

Here Jan and Sadie both displayed an alignment with a postmodern viewpoint where efforts to find out how the truth is produced and maintained are seen as more achievable than a genuine understanding of the truth. Whittle outlined how he considered that, '*... multi-community experience*' has led to this same conclusion,

Though the Rousseausian social contract has produced the identity of collectivity by raising the 'I' (individual) to the power of the homogenous 'we', the multi-community experience derived through the identity politics of contemporary societies challenges this by effectively proposing an 'identity' that is not just logically based, but is empirically and experientially based. (2002a:15)

The perception of genders as 'genres and genealogies', rather than as definable essences, aligns with this notion of empirical and experiential formation of subjectivity, just as it aligns with maternal relations' quest for a deeper understanding of the individual rather than the production of umbrella aetiologies. Genre and genealogy address struggles for subjective definition that have moulded trans lives, such as those discussed in chapter 2 section 3 and chapter 6 section 1.



For instance, Jan Morris narrated an experience of becoming real, by realising herself through reassignment, rather than becoming less real as separatist feminists have suggested is true of the reassigning experience, declaring that, '*... I no longer feel myself isolated and unreal*' (1974:145). Jan theorised that she became a woman by being treated as a woman (1974:140), marking the influential effect that others have on gendering, and matching the experience of autobiographer Dhillon Khosla in the other transitioning direction (2006:295). After bodily reassignment Jan felt that she had gained, '*... membership of a camp, a faction or at least a school of thought ...*' (1974:140)', bringing to mind Alison Stone's concept of 'woman' as deriving from genealogy, and Stone and Whittle's portrayals of 'trans person' as genre (1991:296, 2002a:82). 'Membership of a camp' could allow trans people to enter the feminist 'camp', via that which Hines identifies as Gayle Rubin's idea of an 'action paradigm', if they were to empathise genuinely with a feminist ethos,

In contrast to an identity paradigm, Rubin proposes an "action paradigm" in which feminist identity arises out of political commitment rather than female biology. (Hines, 2005:75)

### 8.3.5 Postdifference

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It can be said that trans people have a history of difference to heteronormative subjectivities but, if subjectivity as genre and genealogy are an acceptable given, that does not logically mean that they should be excluded from heteronormative subjectivity and discourse. We gather from Astrid Henry (2004:78) and womanist writers that black women are different to both black men and white women. That does not mean that a meeting of minds between these ethnic/gendered subjectivities can never occur.

As discussed in chapter 2 section 3, chapter 3 section 1 and chapter 6 section 3, separatist difference feminism, the type of feminism that values women only for the ways that they differ from men, has excluded not only women different to a certain image of ethnicity, class and body type, but also feminist-friendly men,

... [separatist feminists] are accused of failing to recognise that different men have differing degrees of access to power, and of denying the possibility that some men are sympathetic to feminist issues and do not consciously wield their potential power. (Whelehan, 1995:85)

Kristeva has ... reserved her most severe criticisms for French radical feminism<sup>48</sup> or the kind of feminism which emphasizes women's intrinsic difference from men. (Moi, 1986a:10)

In the 1<sup>st</sup> and 2<sup>nd</sup> chronological feminist waves, difference feminism contributed towards many gains for women by demonstrating that women nearly always have a very different experience to men. However, feminism needed to evolve by recognising the evolution of difference and the relevance to feminism of the experiences of those from different sexual and ethnic subjectivities. The philosophical 3<sup>rd</sup> wave, as an ideal, is critical of fixed identity positioning and is differences friendly in its openness to inclusion for subjectivities not previously thought of as associated with, or in need of assistance from, a feminist movement. Although supporting queer/postmodern critiques of essentialised identity and theory, it is also a faction critical of the loss of subjective positioning; maintaining that freedom from subjectivity politics is a luxury that only those in privileged positions in power hegemonies can afford. This wave therefore seeks to combine the apparent contradiction of identity-in-process with identity politics.

Audre Lorde coalesced her feelings of 'outsiderness' to the 2<sup>nd</sup> wave movement into a proposition that difference should be included and not excluded (1984:111-112),

We have no patterns for relating across our human differences as equals. As a result, those differences have been misnamed and misused in the service of separation and confusion. (115)

Lorde proposed that it was time to move on from the rigid essentialism of woman vs man in order to realise a genuinely feminist society. Experience was the key to explaining subjectivity for Lorde since experience could present a challenge to the dictates imposed upon subjectivity by the categories of body, sex, ethnicity, health and class. Professor of American Studies Rudolph Byrd used the phrases, 'lived experience' and 'life experience' several times when describing how Lorde involved her own experience in her writing

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<sup>48</sup> Moi seems to mean 'separatist feminism' as radical feminism doesn't logically have to mean radical separatist feminism.

(2009:11,12,19,20,28,29). Echoing the moral code of ethics of care, Lorde recommended that difference should be sought out and celebrated, rather than treated with suspicion (1984:112). Lorde was considered as 'Other' to the 2<sup>nd</sup> wave by many of those 'within' but her 'Otherness' endeared her to excluded people. She suggested the need for cohesion with other 'Others' in order to form a coherent challenge to patriarchy, bringing to mind Anzaldúa's notion of the 'kindred' who do not fit and hooks's 'solidarity' (Lorde, 1984:112, Anzaldúa, 1983:209, hooks, 1984:63,64). This cohesion has been called for by philosophically 3<sup>rd</sup> wave feminists and by trans people in search of a social and spiritual community, the successful resolution of which may form a 'postdifferent' (difference inclusive) coalition. It may be realised in the form 'genre' and lead to connection with sympathetic others via the concept of 'genealogy'.

Queer theory's concept of subjectivity as fluid or in-process paradoxically allows those who have been 'Othered' to feel part of a community of no community, to belong to the community of those who do not fit, *'The stance of queerness thus potentially provides a point of unity across differences of gender, sexual practices, and sexual orientation'* (Stychin, 1995:142). The queer ethos has thus been a refuge for those with no gendered place to go (144). This aligns closely with the ethos of 'postdifference', where difference is subject to celebration rather than ostracisation. Some quotations relevant to Gilligan and Kristeva's work indicate their alignment with the concept of inclusive difference, named in this thesis as postdifference. For instance, a 27-year-old female participant in Gilligan's college student study narrated her feeling that she had developed a postdifferent perspective on life,

On her own behalf, Hilary says somewhat apologetically that she has become, since college, more tolerant and more understanding, less ready to blame people whom formerly she would have condemned, more capable of seeing the integrity of different perspectives. (1982:136)

Another student, Kate, exemplified this perspective on postdifferent connection, resulting in a philosophy where,

Responsibility now includes both self and other, viewed as different but connected rather than as separate and opposed. (147)

Gilligan also noticed how Piaget's investigation into childhood moral development revealed a progression from requirements for similarity to a respect for fair treatment of difference,

[Piaget] also notes how children's recognition of differences between others and themselves leads to a relativizing of equality in the direction of equity, signifying a fusion of justice and love. (172)

Here the ethic of relationships is positioned as more mature than an ethic of separation.

Edelstein picked up on Kristeva's call for a less myopic approach to ethics which would engender the valuing of subjective difference,

An ethical politics would enable both more loving and more just treatment of those seen and valued as different; such a politics is especially crucial now as national borders are increasingly fluid, as immigration expands internationally, and as countries like the U.S. and France become increasingly ethnically diverse. (Edelstein, 1993:205)

Another example of the valuing of subjective difference was provided by Moerings who described how the COC, a Dutch organisation for the integration of homosexuals, changed its concept of inclusion for homosexuals, in the period from the 1960s to the 1970s,

The more moderate COC ... swapped integration for emancipation, changing the emphasis to the uniqueness of one's development and identity as a homosexual and one's specific position in society – in which, for example, marriage need not be copied as a way of giving shape to a relationship. (1998:126)

The aim for 'being identical' to heteronormativity changed to the aim to be equally valued, a state of equity, in order to allow for respect and toleration of difference.

## 8.4 Finding Ourselves - Epiphanies

The starting point for a Foucauldian ethics is therefore the refusal of self, the rejection of those forms of identity to which we are tied – both by

ourselves and by the institutions, values and practices of the societies we live in. (O'Leary, 2002:15)

Narratives of personal epiphanies featured in a significant number of the autobiographies reviewed in chapter 2, and provided a useful focus for the critical discourse analysis in this study. For instance, Christine Jorgensen experienced finding herself through literature via the revelation of endocrinal knowledge and via an actual and metaphorical sea crossing (1967:71,101), Mark Rees found a description of sexual subjectivity cohering with his own in the *Times* newspaper (1996:75) and Max Valerio experienced an initially disturbing but ultimately liberating epiphany of self-realisation when finding a book about female-to-male reassignment (1996). As related in chapter 2 section 1, Christine Jorgensen (1967:22), the fictional Stephen Gordon (2005:ix,x,xiv,186), and Stephen Whittle (Self & Gamble, 2000:52-53) all had intense moments in libraries when they realised they had found literature describing their gendered condition. It is notably the case that trans people include such instances of intense evaluation into their life narratives, as noted in chapter 2 sub-sections 2 and 3 and chapter 5 section 3. Epiphanies may be accounted for in retrospect by narrative means, as suggested by Jay Prosser (1998:117), and will therefore be subject to the caprices of memory, but all the same, they demonstrate interpretations of the development of gendered self-insight.

Narrative analyst Catherine Riessman theorised that, '*A primary way individuals make sense of experience is by casting it in narrative form ... . This is especially true of difficult life transitions and trauma ...*' (1993:4). Awareness of this narrative process can provide guidance for trans people's interactions with the law since it outlines the importance of 'finding' one's own gendered self in one's own time, rather than having it imposed by society. This marks a kind of dialogic negotiation of gender with oneself and with others in one's family and community, and is notably crucial for young people getting to grips with their own subjective being.<sup>49</sup> Gendered subjectivity is something that one is

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<sup>49</sup> Finding oneself can be carefully facilitated by the application of the label 'gender variance' and pubertal deferral treatment to gender variant youngsters, as suggested in chapter 6 s. 4 and chapter 9 sub-section 2.4.

expected to live with for a lifetime so it is important that one is allowed to try and get it right.

Rather than the losing of oneself in the moment of 'jouissance', in the sense theorised by Kristeva, where, '*... the ego gives up its image in order to contemplate itself in the Other*' (1982:9), the epiphany for the trans person seems to, at least eventually, involve a finding of the self, in the way conceived of as 'plaisir' by Roland Barthes,

... a pleasure (plaisir) linked to cultural enjoyment of identity, to cultural enjoyment and identity, to the cultural enjoyment of identity, to a homogenizing movement of the ego ... . (Heath, 1977:9)

However, as made clear by Whittle in review notes to this chapter, his own epiphany, '*... wasn't pleasurable as such in 1965 – it was terrifying!*'

Richard Middleton, referring to Barthes, contrasts jouissance to plaisir, where jouissance is an explosion of feeling where the subject transcends and/or descends from the self,

In this erotic process, the subject is deconstructed ('lost'), overwhelmed by the pleasures of jouissance. ... Plaisir results, then, from the operation of the structures of signification through which the subject knows himself or herself; jouissance fractures these structures. (Middleton, 1990:261)

In this way the narrative experience of finding self, as related by the trans person, resembles plaisir as a, perhaps much longer lasting, establishment of self and the construction of subjectivity.

The suggestion that trans people are keen searchers of self is supported by instances in the autobiographies and Transstudy narratives, such as when Jan Morris compared herself to '*... those people down the hill*' (1975:14). Jan suggested that the transvestite achieves a '*sexual frisson* [her italics]' (113) when cross-dressing, something which might seem narratively akin to jouissance. However, in contrast, Jan described the transitioning person as achieving something more substantial and on-going, like plaisir, in the realisation of the self. Less intimate friends almost expected a change in personality when Jan cross-dressed in early stages of transition but one couple

found her to be, '*... surprisingly like the person they had always known ...*' (115).

The epiphany is taken to be a valid part of human experience in Kimana's Lakota culture,

Basically, the Spirits will contact us in three ways. One is the actual vision where a Spirit comes and talks to you. This can be any living creature, even a snake or skunk. Then there is the dream that has a Spirit in it telling you something, often in a vague way that makes you have to analyze it and really think about it or have it interpreted by someone. The last way is through a message that comes to you, something like an epiphany. When you get the messages, we often think, "Why didn't I think of that". It's so clear and obvious. (Mar 22nd, 2006, in <Dreams and Trans Subjectivity>)

The process of finding out who we really are is facilitated by social discourses inclusive of diversity and difference. Although people need to find themselves through association with others, we need to consider whether this is based upon the unnecessary exclusion of others when we are 'hailed'<sup>50</sup> and they are not. Trans support groups such as Press for Change have endeavoured to broaden this scope for inclusive hailing by spreading knowledge of trans subjectivity, but it has been an uphill battle for many years since heteronormativity is still the prevalent gender schema in Western industrial culture. As well as not recognising gender variance, heteronormativity as schemata and discourse often does not recognise that some people have to find themselves through gender transition. Discourses of medicine, education and the law still have a long way to go before trans people feel fully and appropriately 'hailed' and included. As Kimana mentioned,

Now, I understood why I was meant to live. It gave me a purpose to not only live, but showed me that I really was sane. All I had to do was live the way I was meant to and everything would work out. I wasn't crazy after all,

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<sup>50</sup> See chapter 5 s. 5 and chapter 7 s. 1 for a description of 'hailing'.

society just had no clue in how to deal with me. Sometimes, it still doesn't.  
(Kimana Jan 8th, 2006, in <School and trans-development>)

The epiphany, the personal moment of feeling hailed through personal choice, is an articulation of self-revelation for those denied a gender schema of their own.<sup>51</sup> It doesn't mark a magical, or necessary pleasurable, gender transformation, à la Jan Morris in the cocoon of the Burou clinic in Casablanca, but it is the moment of clarity shining through obscuring clouds of oppression.

## 8.5 Conclusion

In section 1 of this chapter, the way that gender variance has been purged from societies was addressed. People starting out on the road to transition are particularly ripe for oppression because they are perceived to be different from the norm. They may be conventionally gendered 'within' but this holds no water for the oppressors who require people to appear heteronormative. Social cleansing involves the subtle removal of 'undesirables' from what are taken to be important social situations and events, thereby denying these people the social engagement that can lead to social subjectivity.

Section 2 examined how trans people have to run the gauntlet of conservative social structures where people are expected to stay in their allocated subjective spaces. Anything different is a challenge to the hegemony of the status-quo and any variance from the norm is taken to be unacceptable deviance. Trans people's positioning as outside of gender by theorists espousing essentialist theory, has portrayed them as desperate immigrants wishing to enter the superior territory of heteronormativity, rather than as unacknowledged citizens. The law needs to recognise that trans people do not need to reassign into one or other side of the heteronormative divide in order to be people with social, civil and human rights.

Section 3 suggested that the silent and secret undercurrent of 2<sup>nd</sup> wave heteronormative feminism operated to exclude underprivileged women from its discourse of womanhood, and that silent and secret discourse 'Othered' gender

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<sup>51</sup> A feeling expressed by Clarette, (Clarette refers to 'scripts' but this seems close to 'schemata' in meaning), as related in chapter 6 s. 2.



variant people from heteronormativity. Maternal relations has operated in the opposite, if far less privileged, direction as a characteristically inclusive discourse in allowing access to subjectivity by routes other than elitism or entry into the heteronormative hegemony.

In sub-section 3.1 there is a description of how Kristeva's ethical mode involving the investigative method of semanalysis and Gilligan's formation of ethics of care both carry out the function of challenging 'common sense' gender stereotyping discourse by applying a critical analysis of oppression from a perspective informed by maternal relations. Both theorists suggest the need for a third phase of moral development to implement these relations.<sup>52</sup>

In sub-section 3.2 it was suggested that a 'politics of naming' draw from the rich social insights gained from 'erotics of unnameing' so that the 'Otherness' endured by gender oppressed people can be articulated into a 'view from somewhere'. To enhance this social voice, sub-section 3.3 suggested that the mindfulness inherent in ethics of care be combined with the ethic of justice to provide access to social forums, and protection from legal institutions, for excluded 'Others'. Postconventional ethics, as theorised by Carol Gilligan and as described in chapter 4 section 5, combines the two moral developments in order that one can police the operations of the other.

In sub-section 3.4 genre and genealogy were suggested as ways to unite excluded others by recognition of their unifying experiences of difference. This involved a rejection of the search for aetiology in favour of identifying individuals by their associations, perceptions and life-long development. A positive approach to 'Otherness' and difference, namely 'postdifference' was introduced in sub-section 3.5 in order to differentiate it from separatist difference exclusion. Postdifference draws from the font of difference to realise a genuinely inclusive feminist society based upon a coalition of 'Otherness'.

In section 4 it was claimed that trans people often include instances of epiphany in their life story narratives. Provision can be made in law and medicine to respect the fact that trans people may have to endure these often frighteningly

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<sup>52</sup> In the form of the third phase for Kristeva (1993:222), and in the form of postconventional ethics, after the ethic of justice and ethics of care, for Gilligan (1984:73).

intense evaluations of their gendered selves but that these can be turned around into positive and enlightening processes of self-discovery, or 'plaisir', leading to a psychologically healthy person. Groups such as Press for Change have worked to engender trans people's understanding of their epiphanies of self-realisation so that they may be 'hailed' into their preferred gendering.

Now that, in some societies, trans people are not expected to collude totally with the discourse of heteronormativity by denying their pre-transition history, or to perceive their pre-transition selves as necessarily ill, they can read their epiphanies in a positive way in order to escape the machinations of silence and secrecy and to realise their gender in a more idiosyncratic way,

Here, here, Raelene. ... your experience is uniquely interesting. "how come there are so many of you around nowadays?" Perhaps your answer should have been, "There is only one". (The Researcher Dec 6th, 2005, in <Is it helpful to pathologise transgendered subjectivity?>)

Chapter 9 reorganises themes discussed in chapters 6 to 8 into 3 main areas of recommendation for future action. These three areas form the ethos of a 3<sup>rd</sup> wave philosophy that can be adopted by philosophically 3<sup>rd</sup> wave, or inclusive, gender variant and feminist people.



## CHAPTER 9: RECOMMENDATIONS – GHOSTS IN THE MACHINE

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### Introduction

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Chapters 6 to 8 discuss threats to the empowerment of people oppressed by heteronormativity, and this chapter suggests ways that these threats may be overcome. As noted in sections 1, 2 and 3 of chapter 4, committed individuals have contributed to this empowerment by ‘re-engineering’ the legal machine in order to facilitate gender oppressed people’s inclusion into social discourses. For instance, chapter 4 section 2 refers to how April Ashley called for a challenge to what she narrates as the aloof and clinical discourse of the law (Fallowell and Ashley, 1982:210,228). Involvement with his own legal case<sup>1</sup> led Stephen Whittle to mould law from the inside rather than to be its object. His negotiations with trans people and the law initiated a paradigm change in trans people’s self-awareness and self-acceptance, giving them the self-confidence to go forth and claim their own gender.<sup>2</sup> Such inputs into legal discourse have moulded case law to introduce the gendered individual rather than the gendered stereotype as legal subject. Whittle provided examples of how making headway in case law, focussing on the individual cases, e.g. *P v S & CCC* and *Chessington World of Adventures v Reed*,<sup>3</sup> can eventually lead to a transformation of statute law,

In 1999, the Sex Discrimination (Gender Reassignment) Regulations came into force, amending the Sex Discrimination Act 1975 (SDA). ... The SDA is now intended to formalise the 1996 decision of the European Court of Justice (ECJ) in *P v S and Cornwall County Council (P v S)*, and which had been affirmed in 1997 by the Employment Appeal Tribunal in *Chessington World of Adventures v Reed*. (Whittle, 2002b)

However, trans and gender variant voices still often manifest as metaphorical ‘ghosts in the machine’ of established discourses such as gender, medicine and the law, rather than as properly subjective gendered citizens. Philosopher

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<sup>1</sup> X, Y & Z in chapter 4 s. 4.

<sup>2</sup> From Whittle’s PFC profile at <http://www.pfc.org.uk/node/31> - now unavailable.

<sup>3</sup> *Chessington World of Adventures Ltd v Reed* [1997] IRLR 556, EAT.

Gilbert Ryle used this term to critique René Descartes' mind-body dualism as an inaccurate separation of these dualised components, the mind supposedly being the 'ghost' in the body. However, this metaphor may aptly describe a social, rather than biological, phenomenon of many gender variant people's experience of disconnection within social discourses such as law, medicine, feminism, the family, employment and leisure. This experience has included a feeling of invisible existence<sup>4</sup> or, at the other extreme, of being subject to reactions of fear or disbelief. The machines of discourse are built up by reliance on the image of the Modest Witness<sup>5</sup> with a 'view from nowhere'<sup>6</sup> imparting a perspective untainted by 'narrative messiness'.<sup>7</sup> However, there are in fact no impartial discourses in human society. Personally political agendas pervade all strata of society but are shrouded by silence and secrecy masquerading under the guise of articulation and openness.

This chapter suggests how trans people, gender variant people and those with a 3<sup>rd</sup> wave ethos can draw upon their particular kinds of narrative voice and experiences of difference in order to increase their visibility and voice in the discourse of the law. The reconstructing discourse themes have been reorganised into three main themes of recommended focus. These three themes, *Maternal Relations*, *Genre and Genealogy* and *Postdifference* indicate how maternal relations can engender relations of genre and genealogy which can lead to a society based upon a 'postdifferent' or inclusive approach to difference.

## 9.1 Maternal Relations

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As the years progressed and I read even more what other TS's wrote about themselves, I came to the realisation that for the forty odd years I had considered myself to be alone and unique, I hadn't been at all. We all have the same or very similar tales to tell. (Raelene Nov 7th, 2005, in <What advice to a Newbie>)

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<sup>4</sup> For instance in the way described by Jan Morris (1974:14-15,106-7) – see chapter 2 s. 3.

<sup>5</sup> Donna Haraway's concept of 'Modest witness' (1997:23) is explained in chapter 7 sub-section 1.2.

<sup>6</sup> The concept of the 'view from nowhere' is introduced in chapter 1 s. 2.

<sup>7</sup> Narrative messiness is suggested as the antithesis to 'verbal hygiene' in chapter 5 s. 4.

Uniqueness and commonality can both be revealed by implementation of maternal relations, via ethics of care, as discussed in chapter 3 section 3 and chapter 8 section 3. Within this research, maternal relations emerged as the best potential means for amplifying the voice of those silenced by discourses of patriarchy and heteronormativity. Women and feminists of colour sowed the seeds for the reintroduction of feminists as a community, gaining inter-generational and inter-community knowledge from various media of expression.

Gilligan and Kristeva theorised that communication deriving from maternal relations, rather than from an essential essence of womanhood, was an undiscovered fount of inspiration for ethical procedure. Gilligan uncovered the web of relational reasoning that girls and women would characteristically use to establish moral viewpoints in hypothetical ethical situations.<sup>8</sup> Kristeva visualised the visceral semiotic current running under the veneer of the symbolic in the world of communication, like a discursal<sup>9</sup> ghost in a machine, unable to be articulated in formal language<sup>10</sup> but influential nonetheless. These related concepts of gendered articulation pertain closely to the communicative modes of philosophical 3<sup>rd</sup> wave feminists and 3<sup>rd</sup> wave trans people.

In chapter 4 section 5, it was argued that Carol Gilligan sought to present the connection between maternal reasoning and females as deriving from their upbringing rather than their birth-given nature. This theory ties in with Kristeva's belief that either men or women could fulfill the (psychological) maternal function to a significant extent,

I think Kristeva, like other postmodernists, de-essentialises gender; she treats the maternal as metaphorically available to both men and women, but also considers maternity as a psychological experience shared by many women. (Edelstein, 1993:201)

Maternal relations as a socially constructed, rather than a sexed feature, of gendered subjectivity can find support from accounts of trans people developing both gendered 'voices', before and after their gendered transition, as described

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<sup>8</sup> Gilligan's main investigation into this phenomenon was carried out in the abortion study (1982:71-105).

<sup>9</sup> This term is used by critical discourse analyst Fairclough as an adjective of 'discourse' (2003:208:top).

<sup>10</sup> As described by Huang, Jessica (22 October 2002).

in chapter 6 section 3 and chapter 7 section 1. As seen in chapter 6 section 1, views based on stereotyped difference within difference have alienated trans people and feminists from each other and from their own, and have mimicked the paternal relations of separation inherent in much modern day society.

### 9.1.1 Voice

Chapter 7 section 1 suggested that 3<sup>rd</sup> wave theorists make efforts to seek out differently gendered voices obscured by identity essentialism<sup>11</sup> and by academic/medical/legal discourse. Certain forms of narrative schema/voice act as gatekeepers to discourse through presenting language as a barrier. A 'politics of naming'<sup>12</sup> is one way of articulating voice in order to challenge the kind of isolation experienced by the gender oppressed. In drawing from the example of, '*... convicts of the 19th-century silence system ... (1974:43)*', Jan Morris described how isolation like hers could lead to the lack of ability to recognise oneself since in these circumstances there are no others with whom to use as measures of ourselves. To allay this kind of isolation, trans people and feminists working within their subjective communities can serve as living 'mirrors' of gender oppressed people's experiences. Trans people and 3<sup>rd</sup> wave feminists can 'voice coach'<sup>13</sup> one another in order that their experiences of gendering may articulate a challenge to silent and secret gender oppression.

Chapter 7 section 1 also developed the argument in chapter 2 section 2 that infantilisation has been significantly deployed by the silent and secret authoritative voice in order to extinguish the social voice of gender variant people. This has backfired when those with infantilised subjectivities reject the terms of maturity laid down by the hegemony.<sup>14</sup> Therefore, trans people can re-appropriate the means of entry to adulthood by producing their own schema of growing up, derived from resourcefulness built up in the process of adopting a new schema of gendered presentation.<sup>15</sup> Trans people come to realise that

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<sup>11</sup> This kind of essentialism and the responses it has engendered by trans people was discussed in chapter 6 ss.1 and 4.

<sup>12</sup> The politics of naming are described and discussed in chapter 2 s. 1 and chapter 8 s. 3.

<sup>13</sup> See chapter 6 s. 2 for an explanation of 'voice coaching' as a concept.

<sup>14</sup> As narratively undertaken by Mark Rees in *Dear Sir or Madam* (1996:35, 74, 75, 180) and by Judith Halberstam in *Female Masculinity* (1998:) – see chapter 2 s. 2.

<sup>15</sup> For instance, as narrated by Max Valerio (2006:328) – see chapter 2 s. 2.

maturity is in the eye of the beholder when trying to adapt to their chosen gendered schema and that what is mature for one gender is often classed as immature for the other. Gilligan echoed this sentiment when suggesting that immaturity has been a feature of masculinist-based society rather than of women,

[That women's] subordination of achievement to care, and their conflicts over competitive success leave them personally at risk in mid-life seems more a commentary on the society than a problem in women's development. (1982:171)

### 9.1.2 Postconventional Ethics

Gilligan's concept of postconventional ethics combined ethics of care with the ethic of justice as two sides of an ethical 'Möbius Strip', apparently separate but running on from each other,

For her [Gilligan] the ethic of justice (that everyone should be treated the same) should be added to the ethic of caring (that no one should be hurt) to produce a better outcome. Her conclusion is thus not to produce a separatist system of justice for women, nor to replace the ethic of justice with the ethic of caring. (Smart, 1989:74)

The marriage of the ethics of care focus on responsibility and the ethic of justice's focus on rights might be said to resemble a union of philosophical 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> wave views. The more rights-focused 1<sup>st</sup> and 2<sup>nd</sup> waves are complemented by the care-orientated 3<sup>rd</sup> wave. The optimum strategy for a postconventional approach is not to essentialise subjectivity but also not to deny subjectivity-based oppression, as Scales points out,

There is nothing to be gained by portraying any particular experience of oppression as inevitable or primary. At the same time, there is much to be lost from refusal to recognize the regularity of some kinds of injuries. (2009:409)



A conflict of interest or dilemma between providing umbrella/universal protection<sup>16</sup> for all and a focus on individuals and/or identity groups has been identified by trans-friendly people involved with legal issues, as indicated by participant Clarette and by writer/trans woman Jane Fae,

I am unsure whether I can prove the validity of a single standard of moral conduct for all ... I may have to appeal to value judgements. (Clarette Oct 31st, 2005, in <Omnisexual, bisexual, trisexual>)

... I [Fae] asked about whether the current approach to inequality – focusing on specific group needs – was the best solution, or part of the problem. Here some difference opened up, with [Labour MP] Ms Eagle arguing that government needed to target legal support and protection to those most in need of it – and [Lib Dem MP] Ms Featherstone being more concerned with advocating rights for all. (Fae, 16 April 2010)

This dilemma was also identified by Carol Smart, in a chapter section entitled 'Equality v Difference', as pertaining to women's battles for their gendered positions to be recognised in law,

... whether women should be given special treatment by the state and the law on the basis of their uniquely female capacities and supposed characteristics, or whether justice would be better served by treating women as equal to men, with equal rights and responsibilities. (1989:82)

Currah argued that the apparent umbrella versus special recognition dilemma, rights for all versus care-based focus on individual or group circumstances, need not be resolved by choosing one or the other,

... I argue that the very different goals of working to dismantle gender as a coherent legal concept and working to expand gender to include trans people should not be seen as an either-or proposition. (2009:245)

The implementation of the EA 2010 seems to have moved some way towards combining these two apparently incompatible forms of moral procedure. This Act was designed to respect difference (in the form of equality strands) while

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<sup>16</sup> The researcher takes 'umbrella protection' to mean consideration of how to protect and respect a range of subjectivities by applying standard anti-discriminatory law.

incorporating the notion of equality under the banner of one Act. However, as mentioned in chapter 4 section 5 and chapter 8 section 2, reliance on 'gender reassignment' as the protected characteristic relevant to trans people means that the interpretation of who is and who isn't trans is still restricted to those who transition between heteronormative genders, reducing the possibility of inclusion for all gender variant people.

The Yogyakarta Principles on the Application of International Human Rights Law demonstrate how universal ethics can be a positive affair when informed by those most closely affected by discrimination. Those most closely involved are the people who can provide a perspective informed by ethics of care. As previously suggested, particularly in chapter 2 section 2, women and trans people have characteristically been excused from discourse based upon representations of their subjectivities as psychologically undeveloped and effusive. Despite all this, trans people and women have surfaced from discourse banishment to provide guidance into issues of human rights and moral relations, such as those addressed by the Yogyakarta Principles. These include citizens' rights to 'access', 'expression', 'participation' and 'recognition' (Whittle, 20 March 2007) and certainly work to inform an ethics of care.

### 9.1.3 'A movement of their own?'

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As in so many other identity-based activist projects, one axis of identification is a luxury most people cannot afford. ... Identity politics must give way to some form of coalition if a political movement is to be successful. (Halberstam, 1998:159)

... why, when we can observe so many examples of successful political alliances, would we build a wall between other trans people and ourselves just because we are a little different (either in an imagined or a real sense)? Difference should be celebrated! (Hardie, 2006:128)

I have urged others that as non-trans feminists we need to recognise that we have been trained in the prejudices that society purveys and that we need to learn how to offer respect and support to trans people. (Findlay, 2006:150)

The “original feminist paradigm” is the concept of unity; the new paradigm is difference and coalition. (Garrison, 2005:250)

Previous chapters suggested that a coalition of 3<sup>rd</sup> wave feminist and trans factions would be mutually functional, as suggested by lesbian-feminist lawyer Barbara Findlay above, and, for instance, when legal gains for feminists inform the legal claims of trans people and visa versa. This may occur when equal pay claims, lobbied for by women, can transfer to protect transitioned people or has occurred when umbrella protection from discrimination, as lobbied for by trans activists, was also afforded to women by the EA 2010. It also may derive from mutually reinforcing gains in the right to take time off work for physical needs, for pregnancy in women’s case and reassignment surgeries for trans people. This coalition would draw upon its knowledge of the complexity and contradictions of gender in order to challenge the requirement to blend into heteronormativity imposed by an unchallenged ‘masculinist’ culture.

Consideration has to be given to whom a 3<sup>rd</sup> wave coalition or movement might properly belong. It seems that a coalition can suffer if one faction is significantly more inflexibly ideological than another. If 3<sup>rd</sup> wave feminists and the trans community are inherently inclusive of difference such ideological dominance should not happen. Both would properly belong to the gender varied and to those sympathetic to gender variance.

In chapter 7 section 4 it was suggested that the evolution of feminism and/or transgender into a new wave or movement may serve as a motivational strategy, legitimising the use of a new feminist/transgender banner even if the new wave is not wholly differentiated from others. However, a reconstruction of feminism/transgender needs to be more than just an academic exercise that leaves real lives untouched and it must also free itself from ties to one (old or new) generation if it is not to alienate people on the grounds of age. This reconstruction could act as a specially formed feminist/transgender response to multi-issues such as those mentioned in chapter 3 section 4. It would also come into play as way to address micro-political issues, as described in chapter 3 section 4 and chapter 8 section 3.

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## 9.2 Genre and Genealogy

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I will propose that what women have in common is a relation and not a thing. (Zack, 2005:2)

Genre and genealogy are connected to 3<sup>rd</sup> wave philosophy and ethics of care in that they promote understanding of the individual rather than the allocation of people into taxonomic groups that are very often derived from no more basis than cultural convention. Genre and genealogy allow for members of certain social subjectivities, such as '3<sup>rd</sup> wave feminist' and 'trans', to be seen as different but compatible, members who offer strength in diversity and specialism. Some people understandably seek to escape connection with oppressed genre and genealogy because of the oppression involved. Greater awareness of the strength that can be gained through solidarity in genre and genealogy needs to be a feature of trans-feminist relations.

Parameters of group inclusion, when investigated by ideas of genre and genealogy, can be monitored and negotiated as advances are made in the understanding, rather than the precise definition, of the group subjectivity involved. In this way subjective stereotypes can be subject to reconstruction. Genre and genealogy identify subjectivities of choice and relations of passion, marking a quantum leap for social inclusion for the 'kindred' of those who do not fit.<sup>17</sup>

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### 9.2.1 Which Trans and Feminist Subjectivities are Real?

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In chapter 6 section 1 it was found that portrayals of non-transitioning trans subjectivity as whim, deviance or luxury mirrored accusations levelled at 3<sup>rd</sup> wave feminism for being (variously) privileged, confused, immature, lethargic and aggressive. Both subjectivities have been perceived as infantile or unreal by others, including separatist feminists and what might be called separatist trans people. In the last century, oppressed women and then trans people eventually found themselves developing well-formed social and personal subjectivities partly because they had to struggle to gain a foothold in negotiation for the definitions of those subjectivities within social, medical, legal

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<sup>17</sup> A reference to the quote from Gloria Anzaldúa (1983 [1981]:209) in *This Bridge Called My Back*.

and academic discourses, and partly because of the standpoint epistemology (the 'view from somewhere') they gained from suffering oppression. Nevertheless, some people, and notably those influenced by a queer ethos, claim that the search for the realness of sexual subjectivity is a search for the pot of gold at the end of the rainbow,<sup>18</sup>

In any event, labels do not define anything, we merely tie them on to remind ourselves, usually in very approximate terms, of the box's contents, so we can look in it for something we might need later... . (Clarette Oct 27th, 2005, in <Omnisexual, bisexual, trisexual>)

Foucault's theory that relations are formed through genealogy, rather than deriving from the truth of identity,<sup>19</sup> could be recognised in law as the way to define subjectivities, including kin relationships, in the future. Wider interpretations of who can be a parent or partner are now given by the law, for instance by the GRA 2004 and the Civil Partnership Act 2004, although a father can still only be, even if post-transitionally, male and a mother female, and marriage partners must still be of opposite genders in most countries. This can lead to people assuming that genders are defined when in actuality they are not,

The law only says that marriage is a union between a man and a woman ... but then it was assumed that the definition of those terms was so obvious and beyond question that there was no need to define them ... not even to the extent of suggesting that the social term "woman" was supposed to equate with any contemporary biomedical understanding of the term "female" (and vice versa). (Burns, 1996)

People often wish for a biologically established relation with the group with which they wish to identify, for instance women who wish to be known as feminist in a separatist sense of difference, and trans women who wish to be

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<sup>18</sup> Such as Jan Morris, (1975 [1974]:153), Sadie Mar 21st, 2005, in <Is it helpful to pathologise transgendered subjectivity?> (chapter 4 s. 2), Sandy Stone (1991:296) in chapter 2 s. 3, Stephen Whittle (2002a:82) in chapter 8 sub-section 3.2, Dhillon Khosla (2006:8) and Shannon in chapter 6 s. 1 (Apr 7th, 2005, in <Male=man, female=woman?>).

<sup>19</sup> Foucault theorised that the image of self that we take to be identity is built up by experience (Foucault 1984:87), and this interpretation is described by Prado (2000:53-84). Foucault's interpretation of the self as a subject-in-process is described by O'Leary (2002:5,7,9,13,14,16) and by Prado (2000:57,67,72,81) who refers to Foucault's image of the self as a 'soul'.

known as biological women. When a biological aetiology is unavailable, relations of genre and genealogy can serve to unite people who are committed to 'trans' and 'feminist' as subjectivities rather than identities. Who is to say that these definitions are less real than those based upon supposed biological relations? Gaby Calleja of Malta Gay Rights Movement considered that,

There are over 6 billion people in the world, and yet we assume there are only two genders. But contrary to popular perception, gender is a social construct; it is not fixed at conception as many people believe. There could be other genders apart from simply male and female. (Reported by Dean, Tracy, 26 October 2008b)

A shift towards interpreting trans subjectivity as deriving from a social process, rather than a physical one with medical supervision,<sup>20</sup> may be seen as a move towards a 'muddying of the waters' of trans subjectivity, as discussed in chapter 6 section 1, if it becomes less clear who is and who is not trans. The drawback of a wide definition of trans subjectivity is that it makes it difficult to identify trans people for legal protection or medical intervention as a clearly defined group. Such definition can, for instance, more easily be derived in the classification of trans people as those, 'proposing to undergo, undergoing, or having undergone reassignment', as is the case in the EA 2010. However, as suggested in chapter 2 section 1, restricting the definition of gender variance to this category can suffocate further investigation of gender variance.

Perhaps, as suggested by Cowan,

The fundamental questions underpinning this discussion are should it ever be necessary to ask law to define sexual identity? The answer to this question may be no. Sex appears to be important in areas of criminal law, marriage law, and in the regulation of sports. However, this need not be the case – the UK could legislate for gender-neutral criminal offences, legalise same-sex marriage and could regulate sport on the basis of prohibiting athletes from taking hormones (including those required to

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<sup>20</sup> As described in the Explanatory Notes to the Equality Act 2010, see the Government Equalities Office ([http://www.equalities.gov.uk/equality\\_act\\_2010.aspx](http://www.equalities.gov.uk/equality_act_2010.aspx)).

maintain a change of gender) rather than interrogating what sex they are. (2005:90)

Parties interested in the quest to find an aetiological outcome, such as separatist feminists and heteronormative trans people, can spend their time hoping that the dice of aetiological outcome will come to rest in their favour, instead of just supporting that which they most desire or believe in.

### 9.2.2 The Whole Trans Person

Foreignness is within us: we are our own foreigners, we are divided. (Kristeva, 1991:181)

Thus the counterpoint of identity and intimacy that marks the time between childhood and adulthood is articulated through two different moralities whose complementarity is the discovery of maturity. ... The divergence in judgement between the sexes is resolved through the discovery by each of the other's perspective and of the relationship between integrity and care. (Gilligan, 1982:165)

'Voice coaching'<sup>21</sup> can be drawn upon to examine how, when moving from passing as one gender to the realisation of their preferred gender, trans people have had to fashion their own schema of sexual subjectivity, even when their aim is to pass into heteronormativity.<sup>22</sup> These schemata will be different to heteronormative schemata because of the different routes to gender that trans people have to take. As a result, trans people can often draw upon aspects of gender from both heteronormative genders in order to reveal and develop unique aspects of gender. As suggested in Kimana's narratives of her native culture, this kind of mixed gendered personality can sometimes be seen as a repository for social insight for those cultures not automatically cleaved into two gendered halves.

The conclusion to *Bellinger v Bellinger*<sup>23</sup> supported the notion of gender as developed, as what we might call genre and genealogy, by including legal

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<sup>21</sup> As described in chapter 6 s. 2.

<sup>22</sup> As suggested in a quote from Clarette (Apr 10th, 2006, in <The Whole Trans person>) – see chapter 6 s. 3.

<sup>23</sup> See chapter 4 sub-section 4.3 for a brief explanation of this case.

consideration of, 'style of upbringing and living, and self-perception', as valid indicators of preferred sexual subjectivity. This replaced the as yet impossible attempt at defining aetiology through biological determination (Whittle, 2007:40),<sup>24</sup> and uncritical reliance on the heteronormative gender schema. The articulation of such new perspectives on gender might remedy the apocalyptic scenario visualised by transvestite autobiographer John Pepper where droves of people from each gender are vaguely fumbling in order to find the lost half of their true being (Woodhouse, 1989:421). Pepper's vision seemed to aptly describe the marginalisation into oppressed or 'Other' gender that has blighted women's lives and has transformed trans people into heteronormativity's 'Others'. In assessing this vision, Annie Woodhouse noted that, '*... an ability to see gender as fluid, ranging from wholly masculine to wholly feminine would go a long way towards destroying such [gender] division ...*' (420).

### 9.2.3 Identity as a Process: Subjectivity

Kristeva replaced essentialist portrayals of the subject with ideas of the subject-in-process,<sup>25</sup> to indicate the shift from a 2<sup>nd</sup> to a 3<sup>rd</sup> phase of gender inclusive thinking (Oliver, 1998).<sup>26</sup> She maintained that the subject follows a process of psychoanalytically informed development, but saw more room for individual development, agency, and maternal influence within that process than Freud ever did,<sup>27</sup>

The relationships between the subject and the other, between the subject and itself, between the semiotic and the symbolic are all dialogic, in Kristevan theory. (Edelstein, 1993:200)

Kristeva argues that "we must maintain the autonomy of discourse with respect to the social level, because it is a level of autonomy that guarantees freedom. We can speak in a different manner than our familial and social determination". (203)

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<sup>24</sup> Aetiology versus acceptance for trans subjectivity is discussed above in sub-section 2.1.

<sup>25</sup> As described by Edelstein (1993:196,200,202). Kristeva also described feminism as in-process (1993:199). In *New Maladies of the Soul* she speaks of, 'the singularity of each woman, her complexities, her many languages', when challenging the general use of the phrase 'woman' (1993:221).

<sup>26</sup> In *New Maladies of the Soul* Kristeva associated the 3<sup>rd</sup> phase with increasing interdependence (1993:201), with a call for recognition of subjectivity as 'free and flowing' (221) and with a perspective rather than a mass movement (222).

<sup>27</sup> Gilligan also perceived the possibility of such idiosyncratic development (1982:7,24-25,39:2,98:2).



Kristeva's view of subjectivity-in-process challenged portrayals of identity-in-stasis handed down by conservative society that precluded the possibility of trans or transitioning subjectivity. If trans subjectivity is presented as in-process some might take this to mean it is either unreal or that it is difficult to define, as discussed in chapter 6 section 1. The medical community requires something to be defined before it can offer treatment and the legal community before it can offer special protection. Perhaps the only way to surmount the dilemma of whether to present gender as 'in-process' is to present gender as identifiable at any one point in time, but subject to a life-long process of fine tuning through dialogic negotiation informed by ethics of care.

In the legal cases of *Goodwin* and *I*, the European Court of Human Rights adopted an approach more in line with viewing trans subjectivity as functional and in-process than as dysfunctional identity awaiting assimilation into heteronormativity. The Court recognised that trans people could be of their chosen gender while not having had surgery or while waiting for surgery. This view of preferred gender as in-process, rather than as a change of gender, helped to inform the delineation of the protected characteristic of 'gender reassignment' for the purposes of the EA 2010.

It is important that all gendered subjectivities are seen as in-process, and not just gender variant ones, if the reality of gender construction is accepted. Carol Smart suggested that Catherine MacKinnon produced a unilateral account of subjectivity-in-process that portrayed women as being the only gender subject to this development,

... it is problematic to posit that culture, history, language, ethnicity can construct female sexuality, whilst proposing that men are outside culture, merely being its makers. (Smart, 1989:77)

Recognition of sexual subjectivity as a process, whether social, physical or spiritual, requires support from social structures such as family, community, education, law and medicine. Such support will be reciprocated when gender variant people (such as trans people and feminists) can contribute to society as fully included citizens.

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### 9.2.4 Choice

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In a just regime, one that celebrates individuals as authors of their own lives, one's gender identity should be the deciding factor in determining one's legal sex. (Currah, 2009:255)

Cowan noticed that Canadian law had opened up the possibility for self-perception of gender to affect legal determinations,

... legal and social acknowledgment of sexual identity in the UK remains rooted in the expert medical analysis of the state of the transsexed body/mind, while Canadian discussions of sexual identity in discrimination claims have been more open to the importance of self-perception in gender. (2005:85)

The choice to transition or not provides the individual with agency to define, or not to define, their sexual subjectivity, affording that individual some measure of control in the path that their life takes. Choice to self-define subjectivity can endow the individual with agency to escape the tyranny of assigned identity, identity which in many cases is entirely inappropriate. Choice in self-expression relies on the people often best placed to explain individual gender, the individuals themselves.

According to Cowan, choice may open up possibilities for new gendered expression and may lessen any social compulsion to transfer to the 'opposite' sexual subjectivity,

I am not suggesting that individuals who wish to do so should not be allowed to define themselves as 'men' or 'women' in the traditional sense. But recognising the construction of binary sex involves recognising that there are many more possibilities than two, and therefore we should not try to fit disparate bodies/socially lived experiences into this artificial binary system. Surely this is a human rights issue. (2005:93)

... problems arise when someone who has changed sex and lives in their 'new' gender, changes their mind and wishes to change back again. Forcing subjects to live in a binary and dichotomous sex and gender system leads to a discourse of 'mistakes'. (93)

For this reason, care has to be taken when advocating choice to transition for children and adolescents because their powers of informed choice are still often in early development. Butler suggested that an open choice for gendered being needs to be provided for young people and that diagnosis too early in life may create oppression and isolation,

... we ought not to underestimate the pathologising force of the diagnosis, especially on young people who may not have the critical resources to resist its pathologising force. In these cases the diagnosis can be debilitating, if not murderous. (2006:276)

In negotiations of the draft Equality Bill, Press for Change considered that access to pubertal deferment treatment should be granted to those young people who evidence a strong desire to transition, in order that transition would be easier should they choose that route later in life.<sup>28</sup> As discussed in chapter 6 section 4, Press for Change also argued that applying the label 'gender variant'<sup>29</sup> rather than 'gender reassignment' to such young people would help to eliminate any compulsion they might feel to label their own gender by marking them as not yet ready for full transition.

These innovations would have to be accompanied by an increase in trans awareness for school staff. Currah noted that, in the US of the 2000s, schools themselves were not acting as sites for gender reform,

Forced [by her school] to choose between dressing in girls' clothing or having no picture in the [school] yearbook, [pupil] Youngblood chose the latter. When the yearbook was published, there was no picture of Youngblood in it. She had been cleansed from her school's official history – even her name did not appear. (2006:7)

That schools are central to reproducing hegemonic cultural norms is made clear by the courts in the many decisions supporting gender-based dress codes in schools (2006:7).

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<sup>28</sup> Press for Change (May 2009).

<sup>29</sup> Discussed as Question 73 at the Public Bill Committee 2nd Meeting (Afternoon 02/06/2009) – as described in s. 6.4.

Viewing faulty attribution of gender at birth as eliminating choice, rather than later assuming pathology on the part of the gender variant individual, for instance in the school environment, aligns with the ethic of 'relocating problems away from an intra-psychic domain'. As noted in chapter 7 section 3, this is how Vivien Burr believed that society could combat the pathologisation of depressed women,

... in re-casting the problem at a societal level rather than at the level of the individual a different analysis emerges. Such an analysis may suggest that the woman sees herself as oppressed rather than depressed. (2003:122)

Choice of subjectivity can also engender passion for that subjectivity rather than a feeling of compulsion to adhere to the subjectivity out of a sense of fear. This kind of choice can open up membership to the subjectivities 'feminist' and 'trans person' where 'feminist' is based primarily upon a personally political standpoint and where identifying as trans person or as someone seeking transition allows transition to be a positive and affirmative experience. In a minority of cases, it seems that choosing to transition gender, or to declare gender variance, may be a choice to be different to heteronormative. If heteronormativity rejects an individual should the individual not have the choice to find something different?

### 9.3 Postdifference

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And what happens when I begin to become that for which there is no place within the given regime of truth? (Butler, 2004:58)

For men, the absolutes of truth and fairness, defined by the concepts of equality and reciprocity, are called into question by experiences that demonstrate the existence of differences between other and self. (Gilligan, 1982:166)

The reconstructing discourse themes grouped into this section evidence ways in which gender variant subjectivities can flourish once maternal relations and genre/genealogy provide the social space in which they can exist. Genre and genealogy engendered subjectivities formed from identification through choice rather than from assigned biological identity. Postdifference is genre and

genealogy as positive and valued subjective difference, endowed with the agency to participate fully in society.

Postdifference involves recognition for all gender variance, helping to ensure that reassignment treatments are not erroneously sought in the individual's quest to realise their preferred gender. This recognition involves acceptance of difference, rather than the imposition of aetiology, in the identification of sexual subjectivity.<sup>30</sup> Difference that openly challenges dualities such as man/woman and straight/gay can reveal sexual subjectivity as complex, for instance in the understanding that trans men and trans women are not simply the gendered opposites of each other and that people can possess gender different to the 'heteronorm'.

### 9.3.1 Political Subjectivity?

In the <The Paper> topic thread the researcher suggested the value of a kind of 'naming-in-process', rather than a politics depending upon fixed and dualised differences, concurring with the requirements of a move from 2<sup>nd</sup> wave to 3<sup>rd</sup> wave philosophical thinking (Jun 18th, 2006). This would be a way of articulating gendered experience without fixing it into essentialism, or by losing it from discourse as can be the case in an 'erotics of unnamings'<sup>31</sup> or by diluting political subjectivity into uncritical postmodernist non-subjectivity. Sylvia Walby called for a 'Post-Post-Modernism' in order to remedy the latter (1992) and 3<sup>rd</sup> wavers have distanced their philosophy from loss of subjectivity politics as discussed in chapter 3 section 1.

3<sup>rd</sup> wave theorist Ann Ferguson theorised that subjectivity is still often related to material and community influences but thought it possible that a subjectivity based politics could be based upon an inclusive 3<sup>rd</sup> wave ethic (Summer 1997). This would differ to identity-based inclusion since, as according to Polly Toynebee,

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<sup>30</sup> As called for in chapter 4 s. 2, chapter 6 s. 4, chapter 8 sub-section 3.2 and sub-section 2.1 of this chapter.

<sup>31</sup> Erotics of unnamings and politics of naming are explained and discussed in chapter 2 s. 1, chapter 3 s. 4, chapter 6 s. 2 and chapter 8 s. 3.

Women never will form one coherent mighty movement because gender is not enough as politics. But it is one way of thinking, one around which to build temporary coalitions on particular issues. (6 June 2002)

### 9.3.2 Passing

The continued debate about 'passing' into gender indicates that we are still not close to living in a 'post-out'<sup>32</sup> society. Passing, usually meaning the endeavour to appear as one of the two heteronormative genders, operates to airbrush people out of history when the transitioning person is expected to deny their history of transition, or when gender variant people have to step in line with heteronormative discourse. However, it must be remembered that politicising a gender, or a refusal to pass unnoticed into heteronormativity, could affect all those who hold the political/non-passing gender since it 'outs' the gender in question. Nevertheless, a whole field of 'tall poppies' would be a formidable prospect for those inclined to single out and persecute the isolated (non-passing) 'tall poppy'.

Increased awareness of trans people since the 1970s has increased their visibility as targets for abuse, especially if they do not pass in public.<sup>33</sup> It could be that some trans people wish to evade transphobic harassment and discrimination, in seeking to assimilate into heteronormativity, '*... trans people do not seek secrecy, we are seeking privacy...*' (McNab, 15 June 2004). Such privacy was bolstered with the introduction of the GRA 2004 but privacy and passing will always be needed if oppressive gender hegemonies prevail. Passing as a requisite, rather than as a choice, seems to equate with the kind of forced lifestyles portrayed in *1984* by George Orwell. If medicine and the law encourage trans people to pass to the extent that history and subjectivity are denied this will forever situate trans subjectivities within, and subject them to, silent and secret discourse.

The GRA 2004 (and now the EA 2010) to some extent promote recognition rather than passing by not demanding bodily reassignment as a condition of

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<sup>32</sup> This expression is explained in chapter 6 s. 2 and is attributed to Dr Claudia Castañeda.

<sup>33</sup> As related by Whittle, et al (20 December 2006:56), and by Monica (Mar 11th, 2005, in <respected in your workplace> and Jun 15th, 2006, in <How do you believe you will you age?>) in chapter 7 s. 2.

achieving 'gender reassignment'. Trans people are not now legally required to pass physically as males and females but they are expected to pass as such in other measures of appearance such as dress, make-up and behaviour. The hegemony of heteronormative appearance prevails in practice and those trans people who fit into the heteronormative gender schema will still find it easier to gain medical, legal and social approbation of their claims to gender recognition.

### 9.3.3 Social Cleansing

Postdifference means inclusion for difference rather than difference exclusion in the way that transphobic people, separatist trans people and separatist feminists have sought to exclude gender variance.<sup>34</sup> Trans oppression proceeds unnoticed if not defined, as described in chapter 8 section 2 and sub-section 3.2 above, so a postdifferent paradigm would recognise gendered difference as evolving but identifiable, as the kind of 'politically postmodern identity' described in chapter 6 section 2. Highlighting the difference between difference separatism and difference inclusion,<sup>35</sup> women's liberation spokesperson Gloria Steinem mentioned that,

From Black Power to Gay Power, the goal is not to perpetrate difference, but to protest the invisibility, suppression, and political uses of difference. (Steinem, 1995:xx)

As suggested in chapter 7 sub-section 1.2, oppressors rely on a mixed bag of oppressive devices to draw from in order to silence and exclude an oppressed subjectivity. They pick and mix from this bag to conjure up an armoury of oppressive devices that seem to reflect the natural order and 'common sense'.<sup>36</sup> These devices include infantilisation, marginalisation, invisibilisation and scripts of inferiorisation such as those undermining the intelligence, mannerisms, appearance and customs of the target subjectivity in question. Forums for what Gilligan called 'voice', should be available for the 'different' to articulate their difference without imposing that difference upon the whole of society.

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<sup>34</sup> Difference feminism as hostile to difference is discussed in chapter 2 s. 3, chapter 3 s. 1 and chapter 6 s. 3.

<sup>35</sup> The term 'difference feminism' can cause confusion as it doesn't indicate what attitude to feminism, or theory of gender, is being proffered.

<sup>36</sup> Common sense discourse is addressed in chapter 1 s. 1, chapter 2 s. 2, chapter 5 s. 3, chapter 5 s. 5.2 and chapter 8 s. 3.

The law can prevent some of the worst excesses of these persecutions and misrepresentations by providing legal deterrents, but oppressors can still circumvent the law by excluding trans people in subtle ways. This might be done through indirect discrimination where the trans person is unable to participate because of a provision, criterion or practice that applies to everyone but in practice works to exclude the trans person. As a result of this denial of social access the excluded trans person effectively becomes an 'immigrant or refugee' in the sense outlined in chapter 8 section 2; someone not treated as a full and conventional citizen.

#### 9.3.4 Immigrants and Refugees

Social cleansing of difference has seen to it that feminists and trans people have been relegated to the margins of social discourses, and that some feminists and gender variant people have been relegated to the margins of these margins, like metaphorical immigrants and refugees. However, these people have applied their 'view from somewhere' to influence social discourses like ghosts in a machine who seep through chinks in the armour of social power relations.<sup>37</sup> Separatist exclusion, such as that experienced by the gender oppressed, is characteristically based upon difference perceived from a distance and was narratively addressed in the Transstudy by Clarette,

... it's generally easy to distance yourself from a dominant grouping, but not easy from a dominated grouping. That you don't get the choice not to be black, woman, moslem ... the dominant group will always see you that way and make you stay there. ... Political campaigns against domination and segregation have ... sought and accepted allies from any background, and of any identity. Our background still does not determine the validity of what we say. (Clarette Apr 11th, 2006, in <Black Trans>)

Clarette aligns with a postdifferent approach to political subjectivity by wishing to '*... accept allies from any background*' as a way to contest identity stereotyping. This approach combats the social dysphoria behind the demonisation of trans subjectivity that doesn't relocate or 'immigrate' into heteronormativity. By looking at individual trans lives, ethics of care can reveal

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<sup>37</sup> Discussed in chapter 1 s. 1 and chapter 2 introduction with reference to Foucault.



that it is society that is regularly dysfunctional in its approach to trans issues rather than trans people being dysfunctional in their performance of gender.

Some Transstudy narratives<sup>38</sup> and 3<sup>rd</sup> wave texts suggest that tolerance of others can lead to reinforcement and understanding of who we are rather than act as a challenge to our integrity. Postdifferent inclusion for difference leads to an understanding that the individuality of people often defines them more than their ascribed identification as social and biological types. Those we perceive as different to us may be more similar to us in philosophy and politics than those who share our gendered and ethnic features.

The concept of EU citizenship<sup>39</sup> holds the potential to transform the perception of trans people from alien immigrants into individual citizens. This concept was formally introduced in the Maastricht Treaty of 7th February 1992, via Article 17 (1) of the amended Treaties of Rome, was extended by the Treaty of Amsterdam, and has been developed by the European Court of Justice. Dutch historian and political philosopher Luuk van Middelaar claimed that EU Citizenship does not derive from an idea of nationality shared between member nations and, '*... is less about sharing a history than about assuming a common responsibility for the future*' (2007). EU Citizenship is intended as a way of integrating citizens into the whole Community and to provide them with a sense of belonging to that Community.<sup>40</sup> This Citizenship can act to protect those who are not protected by, or who have lost contact with, familial or close community ties, providing inclusion for those without conventional kin connections.

#### 9.4 Practical Applications of the Recommendations

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Protections on paper are, of course, inadequate. The legal recognition of trans people is meaningful only when it is part of a larger social transformation. (Currah et al, 2006:xxiii)

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<sup>38</sup> Eg Clarette Jun 10th, 2005, in <gender presentation then and now>.

<sup>39</sup> European Commission (updated: 09/03/2012).

<sup>40</sup> See point 1.1.1 in Committee of the Regions (2000).

Achieving equity will not be an end for trans people, but the start of a dramatic wielding of the cultural and social imagination. (Currah et al, 2006:xxiv)

... the true focus of revolutionary change is never merely the oppressive situations which we seek to escape, but that piece of the oppressor which is planted deep within each of us, and which knows only the oppressor's tactics, the oppressor's relationships. (Lorde, 1984:123)

One important lesson learned from the midcentury civil rights movement is that attention only to one single issue or identity results not in revolution, but in narrow and one-dimensional politics. (Garrison, 2005:251)

... we have not addressed the social system that oppresses transgender, but merely have tried to upgrade it. (Pershai, 2006:50)

Feminist work which challenges the epistemological neutrality of the legal system ... is necessarily less attractive to those who equate politics with institutional forms of change. The production of ideas is seen as a very inadequate substitute – even when we know the old methods of law reform have been tried and failed. (Smart, 1989:84)

In the fourth quotation, Carol Smart highlights how philosophical recommendations can be seen as less tangible and practical than concrete single-issue legislative change. However, the 'different voices', identified by Gilligan and Kristeva as revealed by ethics of care and protected by maternal relations, can reveal law as a certain kind of discourse that will dictate the content of single issues unless its basic structure, or social roots, are identified and modified.<sup>41</sup> For Kristeva, maternal relations came in the form of a semiotic voice forming a ghostly presence in symbolic language which, if drawn upon, can challenge apparently common-sense and ethical discourse, '*... the psyche represents the bond between the speaking being and the other, a bond that endows it with a therapeutic and moral value*' (1992[1979]:206).

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<sup>41</sup> This matter was first addressed in chapter 4, sub-section 1.1.

In order to address the social roots of gender oppression, largely driven by separatist perceptions of difference, the law needs to recognise that there is more to gender than heteronormativity,

Whilst there is a need for more rigorous enforcement of the law, that factor alone would be insufficient to achieve the changes in attitudes that trans people encounter daily at work ... . (Whittle, Stephen, 2002b)

A recent topic related to a belief that we have a right to be ourselves, a right to act as we see fit. But a right isn't a suit of armour that protects us. All a right gives us is a form of redress after our "rights" have been denied. (Raelene Nov 20, 06, in <Some thoughts on Trans Acceptance and Freedom>)

I agree with Kristeva "that there can be no socio-political transformation without a transformation of subjects: in other words, in our relationship to social constraints, to pleasure, and more deeply, to language". (Edelstein, 1993:202)

In *Legal Queeries* Moran et al called for legal enquiry that investigates the construction of discourses rather than making attempts to fit in with such discourses. This kind of enquiry will direct attention towards the roots of gender discrimination rather than follow a traditional reformist agenda (1998:1). Several authors in the book investigate these constructions. Moerings revealed how the discrepancy between the content of the law in Dutch society and the practice of this law reveals that the law is not actually part of the social ethos in this society,

Significantly he [Moerings] identifies a disparity between the well intentioned laws and the practical usage made of them and he suggests that political compromise in their enactment is one of the causes of this discrepancy. (Moran et al, 1998:7)

In the same volume, legal theorist Elena Loizidou portrayed the law as stern isolated father figure with a lack of connection to the 'shop floor' of gender, noting that, '*The criminal law's denial of interdependence actually leads to various miscarriages of justice* (Moran et al, 1998:8)'.

Currah et al described how a focus on society rather than biological aetiology might improve gender variant lives rather than merely work to categorise them,

... the effectiveness with which the transgender movement addresses the diversity of its constituents will depend less on finding a satisfactory vocabulary and more on how actual strategies for social change are implemented.

Whether we have psychological features in common or share a particular twist in our genetic codes is less important than the more pressing search for justice and equality. (2006:xiv)

There is a need for a cultural ethics of care, not just a professional one applied to legal cases. Ethics of care needs to be a social discourse, embedded into society. The following practical applications of the recommendations suggest how the social roots of gender oppression can be challenged by addressing the construction of discourse.

#### 9.4.1 Maternal Relations

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##### **1. Implement a politics of naming**

Increased input into the naming of genders for gender variant people would allow them to form a concept of their own gendering which may not fit into heteronormative discourse. This would prevent them from living out a life of nameless isolation. Inclusivity features in the theory and communication of philosophical 3<sup>rd</sup> wave thinkers, who need the legal sanction of a category of 'gender variance' in order to create and maintain a social space for gender variant people. Gender variance needs to be conceived of as a mature developmental outcome so that gender variant people are allowed access to social 'voice'.

##### **2. Make provision for case law tailored to individual circumstances**

Networks of relations aimed at improving the law for gender oppressed people have operated along the lines of what Seyla Benhabib identified as a dialogic model of ethics.<sup>42</sup> This has involved a focus on case law tailored to individual

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<sup>42</sup> See chapter 4 s. 5 and chapter 5 s. 5. It seems that Benhabib resembled Mikhail Bakhtin in thinking that dialogic communication is evident in all human communication (Bakhtin and Emerson, 1984:42).

circumstances (via the ethics of care) with a view to creating foundational legislation that recognises particular circumstances of gender oppressed people (via an ethic of justice). Press for Change demonstrated this legal application of postconventional ethics when contributing to the Equalities Review (Dean, 19 June 2007). In this way, legislators become aware of the special route to gendering experienced by trans people, and how they can cater for this route when drawing up legislation. As noted by Lara Karaian on the subject of this special route,

Legal theorist Douglas Kropp, for example, takes the position that we need to break from our fixation on the “grounds” of discrimination such as sex, race, age and so on, and instead we must increase our focus on the lived experience of rights claimants. (Karaian, 2006:188)

Scales points out that gender inclusive lawyers have notably been involved in ethics of care like approaches to individual cases,

The good lawyers I know were already epistemologically poststructuralist. They knew that they were re/presenting a text (which they called “cases” or “clients”), in a vortex of interpretational fluidity. (2009:397)

While not overlooking such efforts, the progressive nature of this approach still needs promoting as a feature of ethics of care based legal operations.

### **3. Form a 3rd wave/trans coalition to investigate how legal gains for feminists inform the legal claims of trans people and visa versa**

The Yogyakarta Principles encourage input from those most closely affected by particular kinds of discrimination so that oppressed people can mould the law from the inside rather than always being its object. A balanced unity of diversity between trans people and feminists will allow cross-subjective input into negotiations with the law in order to initiate a challenge to the silent and secret discourse that oppresses their gendered subjectivities. Legal theorist Lara Karaian supported this approach by considering that,

... progressive legal activists would be more accountable to the communities they are representing if they were to incorporate greater complexity and diversity into their legal arguments. (2006:182-3)

Lobbying power would be increased exponentially with a diversity union based upon politics of self-representation, rather than coercion into essentialised identity politics. Drawing from the notion of 'voice coaching',<sup>43</sup> and as suggested with examples in chapter 6 section 3, gender oppressed people often have particular abilities to reveal the effect of gendering on people's lives by questioning and revealing the common sense operation of gender.

#### 9.4.2 Genre and Genealogy

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#### **4. Abandon a search for aetiology in favour of the provision for difference**

Genre and genealogy can highlight the realities of relational connection as a challenge to unproved biological essentialism, affording gender variant people the choice to have their gender fully recognised and accepted, for instance in modified Gender Recognition and Equality Acts. In this way genre and genealogy offer more inclusive definitions of gender than, for instance, those established in the rulings of *Corbett v Corbett* and *Bellinger v Bellinger*. The EA 2010 abandons a search for medical aetiology in favour of the provision for some measure of gendered difference, albeit difference that has to assimilate under the banner of heteronormativity. However, acceptance rather than aetiology will not happen in practice unless there is a public campaign accompanying a duty on all employers and service providers to promote gender equity and to prevent discrimination, just as in the current Public Sector Duties, bringing the spirit of the EA into the community.

Provision for difference would recognise the way that different socially formed genders can input differently into discourse, as mentioned in respect of women's ethical perspective in chapter 4 section 5 and in respect of trans men's ability with speech in chapter 8 section 3. As an example, these differences can be considered in the drawing up of policy documents. Robert Shapiro and Harpreet Mahajan (1986) found that women and men respond differently to differently worded policies and Paul Kellstedt, et al (2010) found that there were differences in responses by men and women to changes in governmental public policy.

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<sup>43</sup> Outlined in chapter 6 s. 2.

Policies constructed by differently gendered people would increase access to this forum of social 'voice'. For instance, policies that provide protection for those described by Becker as 'caretakers', meaning those who undertake formal or informal care work in the community, should, according to Becker, be carefully scrutinised by those requiring the protection,

... in designing specific policies to provide better supports for caretakers, it is absolutely crucial that we consider the extent to which policies are likely to give employers increased reasons for discriminating against women and design policies so as to minimise such incentives. (Becker, 2009:169)

Scales criticised the liberal assimilationist agenda that might develop from being involved with governmental policy,

Employing access to governmental power, however, is not automatically cool. Professor Ruthann Robson (1992, 2002) has been right in her original and prolific work, consistently illustrating the "domesticating" effects of voluntarily engaging with and seeking legitimation from the law. (2009:406)

However, the alternative to involvement, even if considering alternatives to governmental policy, is lack of access and voice. The roots of social change must be tended to wherever they may be found. What Scales identifies as 'solidarity' (407), and what hooks identified as such before her as radically critical, but non-competitive, engagement,<sup>44</sup> must be established with those working in influential discourses, such as government, in order for gender inclusion to occur.

## 5. Reposition sexual subjectivity as a process

A classification of 'gender variance' rather than 'gender reassignment' would position transition as a process rather than as change and the trans person could consequently 'find themselves' without pressure to conform to a certain biological and behavioural template. Consideration of, 'style of upbringing and living, and self-perception', as in the case of *Bellinger v Bellinger*, as valid indicators of gender should be included into wording of future Gender

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<sup>44</sup> As described in chapter 1, sub-section 1.3.

Recognition and Equality Acts. This can be done by challenging both Acts' requirements for a commitment to the process of reassignment,

... legal recognition for all purposes, can now be obtained without medical treatment, as such, and it will only be with such an extension of the legal principle beyond gender reassignment that we shall see the vast majority of the UK's trans people, who are not transsexual, obtain rights as individuals, which they can enforce. (Whittle, et al, 2007:7 [Unpublished])

## **6. Make legal provision for choice of sexual subjectivity**

If the law classifies gender in a rigid way it can make a trans person's journey to gendered accomplishment a tough assignment. It can also shroud reasons behind discrimination targeted towards the trans person by not recognising that trans subjectivity is different to heteronormative subjectivity in that it involves transition or, for gender variant people, that it may entail different gendering. Application of the label 'gender variant'<sup>45</sup> rather than 'gender reassignment' to potentially transitioning adults as well as children, will provide a social space for them to be recognised for legal protection but not to feel compelled to choose one gender or another until they are ready to do so.

### **9.4.3 Postdifference**

## **7. Promote recognition rather than passing**

The EA 2010 has ensured that protection from discrimination is available for transitioning people regardless of whether or what reassignment treatment they have had, and therefore whether they pass as heteronormative or not. However, this protection usually means remedy after the discrimination has taken place. More pro-active recognition of all gender variance could transpire from inclusive initiatives. For instance, the Government could promote recognition by ensuring that the Cabinet Office, and other public appointments boards, e.g. the Magistrates Appointments Board, have an obligation to positively encourage gender variant people to seek public appointments. Such initiatives would encourage recognition of hard fought for subjectivity formed by those with a gender variant history, and would include gender variant people

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<sup>45</sup> As lobbied for by PFC in draft negotiations of the Equality Bill, for instance in Question 73, Public Bill Committee 2nd Meeting (Afternoon 02/06/2009) – see above in sub-section 2.4.



into legal employment. Also, a non-heteronormative-based Real Life Experience, for those who find it hard to 'pass' or do not wish to 'pass', would facilitate inclusion and recognition for people with a gender variant history.

As discussed when referring to the work of Butler in chapter 7 section 3, medical diagnosis of gender variance is still largely seen as a diagnosis of dysfunction, not as an indication of something valuable (2006). Recognition of gender variance would lead to increased respect for these sexual subjectivities.

### **8. Develop a legal category of 'gender variance' in order to challenge imposed perceptions of gender**

Defining every gender variation for the purposes of the law would be a formidable endeavour, so a general 'gender variant' category could serve to include those who are perceived to fall outside the parameters of heteronormativity. People would then not feel so compelled to choose one of the two heteronormative genders. 'Gender variance', as a legal category, would also protect the transitioning person, including the minor, who has to wait years for reassignment treatments that ensure heteronormative appearance, while not compelling the individual to be associated with the process of physical reassignment. Oppressors will often not wait this long for a fully heteronormative expression so protection against direct discrimination and/or harassment based upon perception,<sup>46</sup> initiated by the EA 2010, is a particularly important component of trans legal protection. Difference, such as gender variance, that doesn't seek to eradicate other difference can then be included into society as healthy diversity, as suggested in chapter 8 section 1 and sub-section 3.3 of this chapter.

### **9. Transform the perception of gender variant people from 'gender immigrants' to individual citizens**

The EU concept of citizenship<sup>47</sup> recognises the right of everyone to citizenship without resorting to received notions of gender or ethnicity. Citizenship includes all subjects living in its community as full citizens and respects their social and demographic subjectivities, promoting recognition rather than assimilation. An

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<sup>46</sup> Perception is also discussed in chapter 4 sub-section 2.4 and chapter 8 s. 1.

<sup>47</sup> Provided by the European Commission (updated: 09/03/2012).

application of this concept to gendered citizenship would encourage an 'ethics of participation', in the sense described by academics Richard Bellamy and Alex Warleigh (1998), rather than purely an 'ethics of integration'. Promotion of participation should have the effect of preventing the subtle exclusion of gender variant people by indirect discrimination. Gender variant people can be respected by their acceptance into, rather than assimilation into, gendered society. This will mark them as citizens rather than objectified 'Others'. When this acceptance allows gender variant people to slowly but significantly enter into positions of articulation in public and private society, complexities of real life gendering, often revealed by gender variant people's experience of personal epiphanies, can be used to challenge the operation of 'common sense' gender schemata.



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## APPENDIX

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### List of Transstudy Topics

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Each topic is followed by the name of the participant who originated the topic. 'Ed' indicates the researcher.

A few Transstudy statistics, Ed	Cyber-Gendering, Ed
A Gender Spectrum - Collected Thoughts, Raelene	Damage from unfavourable dramatic portayal of transgender, Monica
A Third Way?, Ed	Dane Bagger, Ed
Abilities and aptitudes, Monica	Different cultural aspects of being trans, Kimana
Anankastic (obsessive/compulsive) personality, Monica	Do you still feel slightly out of kilter even after transition and SRS ?, Leon
Are there just feminie and masculine people now ... ?, Ed	Does one have to act to be a woman?, Ed
Are There Male Rapunzels?, Ed	Does one's sexual subjectivity change in different circumstances and over time?, Ed
Are we all transvestites now?, Ed	Dreams and Trans Subjectivity, Ed
Being Trans : A blessing or a curse, Leon	Dreams can come true - Contribute a dream ?, Raelene
Being Un-PC oops, Leon	Duelling Dualisms?: Speech vs Writing and Presence vs Absence, Ed
Belittling Britain?, Ed	Escaping Gender?, Ed
Black Trans, Ed	Exploitation of transsexuality by broadcasters, Monica
'Blanket' Theories of Sexual Development, Ed	Extremely open question, Alyssa
Camp Trans 2005 – 2, Ed	Film Portrayals of Trans, Ed
Camp Trans 2005, Ed	freedom of expression, Clarette
Can feminism include input from and inclusion for born males?, Ed	
Changes to Your Self-Presentation?, Ed	
Christian Institute vs the GRB, Ed	

Gender Identity, question on transforming personality with regards to sexual subjectivity(Preferred, Alyssa	Omnisexual, bisexual, trisexual, or just plain straight, lesbian or gay?, Ariel
Gender norms, Alyssa	Open questions *please*, Imogen
gender presentation then and now ;-), Clarette	Open Topic for discussion - approved by Ed, Alyssa
Grieving for what we never had?, Clarette	Personalityism, Ed
Hey You!, Ed	Post-GRS people's sexuality, Ed
Hidden Transmen?, Ed	Post-Op experiences, Alyssa
Hormone Regimes, Raelene	Psychodemographic Questionnaire?, Ed
How are we perceived?, Monica	Purging, Ed
How do you believe you will you age? , Monica	respected in your workplace, vocational environment or social settings?, Ed
How do you define 'Sexuality'?, Ed	Russell Reid vs Charles Kane & Charing Cross saga, Leon
How do you wish to know your sexed self?, Ed	School and trans-development, Ed
How long to be 'out' as pre-op?, Ed	Self-Presentation within Relationships, Ed
Identity, Subjectivity and 'Gene Reassignment Surgery', Ed	some cultural aspects of shapeshifting?, Clarette
Immigrants and Refugees?, Monica	Some thoughts on non-trans gender-changers, Raelene
Introduction, Patricia	Some thoughts on Trans Acceptance and Freedom., Raelene
Is it helpful to pathologise transgendered subjectivity?, Ed	Spiritual or religeous beliefs, Monica
Jouissance, Ed	SR, SA, SA, SC, SR or ST?, Ed
Loved Ones and New GR Certificate, Monica	Stephen says, 'Help', Ed
Male=man, female=woman?, Ed	Tabloid manipulation of trans representations, Ed
Min and Max Transition Ages?, Ed	The effect of administration of oestrogens/androgens into old age. , Monica
more perceptions etc., Clarette	
NHS safeguards, Alyssa	

The Paper, Ed	'Transsexual' = an adjective?, Ed
The Transstudy is Dead, Long Live the Transstudy!, Ed	Transsexual sexuality, Alyssa
	Trans-sexuality?, Ed
The Whole Transperson, Ed	Types of Transperson, Ed for Sadie
Title of the Transstudy, Ed	What advice to a Newbie, Raelene
Too womanly to be a woman?, Alyssa	What Causes Trans Subjectivity?, Ed
Trans and Feminist Theories, Ed	What should a modern Real Life Experience involve?, Ed
Trans and Intersex, Ed	
Trans Marriage, Ed	What was the most difficult aspect of your transition ?, Leon
Trans Parenting, Ed	
Trans Partners, Ed	What we are = what we do?, Ed
Trans-friendly social groups?, Ed	Who do you feel after the SRS ?, Leon
Transgender Movement?, Ed	Who might be the 'Others' of the Transstudy?, Ed
Trans-Naming?, Ed	Your Narrative Self?, Ed
Transpeople and their cultural 'home', Ed	
Transpregnancy, Monica	

**Topics last saved:** 29 May 2007.

**Total number of topics:** 102.

**Time period covered:** From <respected in your workplace> Ed Feb 5, 2005 - 6:01 AM to <Moving on and the losses that accrue> Ed Aug 15th, 2007 - 11:09 AM.

## Ethics Application

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### **Application for School of Law Ethical Committee Approval of Research Involving People**

#### ***Possible effects on research participants from questions about sexuality***

The research may cause embarrassment to research participants or cause them to become defensive about their sexual identity. They may also be concerned about the indirect effect that their replies may have on connections with family members. These difficulties will be minimised by providing a supportive research setting and confidentiality. Difficulties arising should be outweighed by the potential psychological emancipation and increase of self-awareness open to research participants when gaining increased insight into their sexual identity. The research will be designed to offer mutual support between researcher and research participants and the potential for empowerment through self-discovery by involving participants in the research process.

#### ***Outline of Research Methodology***

I will undertake an empirical study of adult male-to-female transgenderists' self-presentation of sexual identity in verbal and written narratives and will examine these narratives by employing a feminist poststructural analysis. I will use linguistic and textual analysis to review research results gained from verbal and written accounts. For example, I propose to refer to variants of deconstruction theory to investigate whether logocentrism, which invisibilises those whose identity is not spoken or present, applies to the lives of MtF transgenderists (Weedon, 1997:24).

I propose to conduct an ethnographic case studies account of individuals and social groups in order to view narratives in an in-depth and longitudinal manner. Such research will allow a comprehensive investigation into self-representations by involving analysis of the development of such representations from different participants over an extended period of time. I will take a participant role within transgender communities and will share my own experiences whilst undertaking research, a research ethos notably adopted by feminist researchers (Reinharz, 1992:69-70). Research participants will provide written accounts, for example in-process diaries, as well as oral accounts of their experiences and interpretations. I will assess the affects of social class, race, location, community and age on self-representations ventured in each social group. I will be prepared for some research participants to drop out of the research process, especially when such a process may involve many interviews or written accounts.

According to transgender sociologists such as Ekins (1997:26), Namaste (2000:40,51-3) and Whittle (1999:9), there has been too much study of transgender as a phenomenon at the expense of research into the lived experience of this identity and/or state of being. I will redress this omission by adopting interactive and reflexive research such as the 'looking with' the transvestic subject recommended by Namaste (1996:189-90). This will help to ensure that research participants are treated as individuals and not just as members of a certain social class. In order to maintain vigilance over the effects

that the researcher might be having on the research process, and to match the openness required from research participants, self-reflexive research will be adopted by the researcher. Interactive and supportive research will help to ensure that the research participants may agree to participate in similar research in the future. It will also mean that such participants' contribution is a valued and properly noted in the completed research.

Unstructured or open-ended interviews will form the component parts of part of the case studies. Such interviews may engender new perspectives and insights not gained from structured meetings, as found by Helen Lopata (1980) in research involving widows (Cook and Fonow, 1990:76) and may lead to a 're-examination of the assumption that more valid knowledge is produced when information is elicited in a format framed by the researcher's point of view' (1990:6).

The researcher acknowledges that he will be researching from an ideological and political base, namely a feminist ethos. This will be made known to research participants. Nielsen points out that, 'Theory, in turn, depends at least partly on one's social location, social identity, and research purposes' (1990:15). Therefore, I believe that an attempt at acknowledgment of personal theoretical and ideological location, before, during and after the actual research, ensures more chance of a move towards genuinely objective research.

The research is intended to give voice to those whose particular standpoints have been formed by their social marginalisation due to unconventional sexual identity. A standpoint is a personal perspective gained from one's particular social positioning. Also, an attempt at insight into my own social standpoints may reveal the possible effects of such standpoints on the research process and findings.

Ethical operation will also be striven for after all participants have been consulted and interviewed. For instance, Blaxter et al (2001:161) recommend that the researcher apply ethical practice to the analysis and interpretation of results, after having considered whether the subject as a whole is based on ethical procedure.

### ***Copies of information to be given to the subject before and after the research exercise, including consent forms where relevant***

A contract of participation will be offered to anyone agreeing to take part in the research. As recommended by Blaxter et al (2001:158), the contract will refer to informed consent, the use to which data will be put and the reporting and dissemination of the data. It will refer to the people who will be essentially involved in the research, presumably supervisors, research participants and researcher, and will be informed by Dr Stephen Whittle's 'Policy: Ethical Research In The School Of Law' (19/12/2002, pp.12-19). Research participants will give their 'unconstrained consent' before any research involving them is undertaken and will be reminded that they need to give this at various intervals in the research process since participants can sometimes forget that they are involved in research if such research is carried out over an extended period of time (Hammersley and Atkinson, 264,65).

### ***Details of how confidentiality of research subjects will be maintained***



This research will involve in-depth analysis of people's representations of sexuality. Therefore, strict confidentiality of identity will be maintained by ensuring the anonymity of the participants and their place of residence, if known. Participants will be referred to by pseudonyms, approximate age and biological/physiological sex. Research results will be investigated for any information that could lead to identification of research participants. However, Homan (1991) will be consulted to investigate the advantages and disadvantages of assigning pseudonyms to research participants (Hammersley and Atkinson, 267). Research environments will be carefully selected to maintain confidentiality and to further ensure the dignity and well-being of participants.

Research will not be carried out by email since this is a medium open to infiltration by outside parties according to Blaxter et al (2001:158,60). Also, email and internet research misses the 'non-verbal and social cues' that Blaxter et al note as indicative of a participant's response to sensitive matters (Blaxter et al, 2001:160).

### ***Details of how the research results will be disseminated including the method of dissemination to research subjects***

The research will take the final form of a thesis, which will be accessible to anyone visiting the university library. It may later be transformed into a published material if approved as Ph.D thesis. The full thesis will not be available on-line on the world-wide web or in CD-ROM format. Research participants will be offered verbal feedback on research findings and will be advised of the location of the research thesis in its final form.

Blaxter et al note Hack's (1997) warning that research participants may be surprised by the amount of intimate detail that can transpire from unstructured or open-ended interviews (Blaxter et al, 2001:157). Therefore, participants will be given a copy of any interview accounts to approve of for inclusion before anyone else but the researcher and supervisors have access.

I agree with Cook and Fonow (1990:78) that withholding information that participants have requested is an impediment to ethical practice. Therefore, requests for research feedback and other information will be satisfied as fully as possible.

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I will not consider my research as intrinsically ethical when employing the above modes of operation. However, I believe that a researcher should make the best efforts s/he can to move towards an ethical research framework that does not completely hinder the possibility of gaining worthwhile and accurate results.

### **References**

Blaxter, Loraine., Hughes, Christine. and Tight, Malcolm. (2001) (2nd edn) 'Access and Ethical Issues', in *How To Research*. Buckingham and Philadelphia: Open University Press, pp.154-61.

Cook, Judith A and Fonow, Margaret. (1990) 'Knowledge and Women's Interests: Issues of Epistemology and Methodology in Feminist Sociological Research, in Nielsen, Joyce McCarl. *Feminist Research Methods: Exemplary Readings in the Social Sciences*. Boulder, San Francisco and London: Westview Press, pp.69-93.

Ekins, Richard. and King, David (1996) *Blending Genders: Social Aspects of Cross-Dressing and Sex-Changing*. London and New York: Routledge.

Hammersley and Atkinson (2<sup>nd</sup> edn) 'Ethics', in *Ethnography: Principles in Practice*. London: Routledge, pp.263-87.

Namaste, Viviane Ki. (1996) "'Tragic Misreadings": Queer theory's erasure of transgender subjectivity', in Beemyn, Brett. and Eliason, Mickey. (eds) (1996) *Queer Studies: A lesbian, gay, bisexual and transgender anthology*. New York and London: New York University Press, pp.183-204.

Namaste, Viviane Ki. (2000) Chapter 3: 'Beyond Textualist and Objectivist Theory: Toward a reflexive poststructuralist sociology', in *Invisible Lives: The Erasure of Transsexual and Transgendered People*. Chicago and London: The University of Chicago Press, pp.39-70.

Reinharz, Shulamit. (1992) *Feminist Methods in Social Research*.

Weedon, Chris. (1997) *Feminist Practice and Poststructuralist Theory*. Oxford: Blackwell.

Whittle, Stephen. (1999) 'Introduction 2', in More, Kate. and Whittle, Stephen. (eds) (1999) *Reclaiming Genders: Transsexual Grammars at the Fin De Siecle*, pp6-11.

Whittle, Stephen. (19/12/2002) 'Policy: Ethical Research In The School Of Law'. pp.12-19.

## Information Sheet

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11 October 2005

### **A Study of Self-Presentation of Trans Sexual Subjectivity in Written Narratives.**

*You are being invited to take part in the above research study. This information sheet outlines the aims of the research and what it will involve. Please take time to read the following information carefully. Your decision on whether to take part might best be made after reading the following information carefully and, if you wish, after discussing your potential participation with friends, relatives and GP. If there is anything that you are unclear about or if you need more information, do not hesitate to contact me at the address or telephone number given at the end of this sheet.*

#### **The Purpose of the Study**

This research is intended to reveal the way that trans people think and talk about sexual subjectivity, particularly their own, and to relate this to contemporary feminist theory and practice. For the purposes of the research, 'sexual subjectivity' refers to sex, gender and sexuality, and to the overlapping effect of all three. The research is intended to lead to a greater societal acceptance of trans identities and trans perspectives on sexual subjectivity.

The research is currently underway and is based upon a long-term investigation into research participants' self-representations of sexual identity and/or behaviour, via an internet discussion site. I am taking a participant role within this online trans community by sharing my own experiences and ideas. Participants are welcome to provide as many contributions as they wish, of whatever length, to the 'transstudy' discussion forum, in the form of written accounts, in response to regularly posted topical questions and issues. Participants are also encouraged to steer the discussion in ways that they think pertinent by providing topics or questions to initiate new discussions. Discussion site contributions will be open to all members of the site to view.

#### **Your Decision on Whether to Take Part**

You must give your full consent, via the internet form to be filled in at <http://www.transforumresearch.com/edwardstudymenu.htm>, before becoming involved in this research project. You have the right to withdraw this consent at any stage of the research process.

#### **What Will Be the Advantages of Taking Part?**

The research will encourage you to further articulate and consider your own sexual subjectivity. Some of your contributions will be included in the final presentation of the research and all of these contributions will be available to approved interested parties. In this way the research is designed to be empowering, initially for those immediately involved in the research and ultimately for trans people as a whole. The overall aim of increasing societal acceptance of individual or alternative expressions of sexual subjectivity may eventually contribute to more freedom for the trans individual to verbally or physically express his/her/hir own particular sexual subjectivity.

#### **Ensuring Your Confidentiality**

Particular care has to be taken with regard to the protection of participant anonymity when trans identity is involved. Your personal details and name will not be disclosed to anyone who does not need to know. Steps will be taken to ensure that participants are not identifiable by reference to their name or social and geographical contexts. Research results and any presentation of research will also be investigated for any information that could lead to identification of participants. In the presentation of the research participants will be referred to by pseudonyms, chosen by the participants if preferred, and by approximate age, sexual subjectivity and geographical location. User names and passwords will be supplied to all participants for the purpose of logging onto the transstudy discussion site.

If you register to become a member of the transstudy website I will email you a password and username to use for entry to the site. You may use your own first name or any reasonable pseudonym to identify yourself in transstudy website postings.

### **The Use to Which The Research Will Be Put**

The end result of the research will be a 70-100,000-word thesis, which will be available at the Manchester Metropolitan University library. An abstract of the thesis will be available at university thesis websites. The thesis will include conclusions on the data gained and recommendations for the acceptance of and provision for trans identities.

### **Who is Involved in the Organisation of the Research?**

Other than myself, those involved with organising the research are principally the research supervisors, Dr S T Whittle and Katherine Watson of Manchester Metropolitan University.

### **Who has reviewed the Study?**

The School of Law Ethics Committee at Manchester Metropolitan University has reviewed the proposed methodology and ethical procedure for the research.

### **Contacts for Further Information:**

Dr Stephen Whittle OBE, Head of the Graduate School, HLSS, Reader in Law, The School of Law, Manchester Metropolitan University, All Saints West, Lower Ormond Street, MANCHESTER, M15 6HB. Email: [s.t.whittle@mmu.ac.uk](mailto:s.t.whittle@mmu.ac.uk). Tel: 0161 247 6444, fax: 0161 247 6309

Edward B Davies, The School of Law, Manchester Metropolitan University, All Saints West, Lower Ormond Street, MANCHESTER, M15 6HB. Email: [davieseb77@hotmail.com](mailto:davieseb77@hotmail.com)

## Consent Form

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### CONSENT FORM

#### **A Study of Self-Presentation of Transgendered Sexual Subjectivity in Written Narratives.**

**Researcher: Edward Burlton Davies**

1. I confirm that I have read and understand the information sheet dated 26th June 2004 for the above study and have had an opportunity to ask questions.

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving reason.

3. I agree to take part in the above study.

Name of Research Participant

Date

Name of Researcher

Date

## Transstudy – Introductory Email

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Thank you very much for filling out your consent form, [Name].

You can now provide answers to discussion questions, or make general comments about trans identity or subjectivity if you wish, by going to <http://www.trans-forumresearch.com/edwardlogin.htm> and then by entering your username and password. You can then click on one of the questions under the 'Topic' banner, read the question and then reply by clicking on the 'Reply' button. You can choose a name other than your username to enter into the 'name' box when using the 'reply' icon to respond to topics, if you wish.

If you wish to contribute to the site by providing a discussion topic or question, please email me with the question first, so that I can vet it for suitability.

Some topics over approximately 50 responses long run onto a second net page. For these topics please click on the 'Next' icon at the top of the Transstudy homepage and use 'Ctrl-End' to reach the end of the topic thread if you wish to view the latest responses.

Thank you very much for your time. Edward B Davies

## Closure Email

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Dear Transstudy Research Participant

I would like to thank you ever so much for providing all those words for the transstudy while it was running from 2005 to 2007. I recently had my viva (oral/aural) exam for the thesis and it was passed subject to completion of amendments. The whole research enterprise has taken a long time! The transstudy ran from 5th February 2005 to 15th August 2007, the total number of topics was 102 and the final word count was 347591.

I have changed all participant names into pseudonyms in the thesis, as advised by Stephen, the research supervisor.

You will be able to view the thesis as a pdf document before publication, partly to see whether you feel that any of your quotes break your anonymity. If so, the quotes will be removed from the thesis before publication. You can locate your contributions using word-search to search for your pseudonym in the pdf copy of the thesis. If you have any questions about the production of the finished thesis, do contact me by email or by phone.

Best Wishes from

Edward B Davies

Manchester Law School  
Email: davieseb77@hotmail.com.  
Telephone: 01524 848 173  
Contact for Further Information:  
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## Table of Cases

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- A v Chief Constable of West Yorkshire Police, (1999) IT Case No 2901131/98
- Attorney-General v Family Court at Otahuhu [1995] NZFC Otahuhu, Fam LR 57
- Bellinger v Bellinger [2001] EWCA, Civ 1140
- Bellinger v Bellinger [2003] UKHL 21, [2003] All ER (D) 178 (Apr)
- Chessington World of Adventures Ltd v Reed [1997] IRLR 556, EAT
- Chief Constable of West Yorkshire Police v A [2004] UKHL 21
- Corbett v Corbett [1970] CA, 2 All ER 33
- Goodwin v UK Government (1995) ECHR, Application No 28957/95
- I v UK Government, [1994] ECHR, Application No 25608/94
- L v Lithuania, (2007) ECHR, Application No 27527/03 ,
- P v S and Cornwall County Council [1996], ECJ, Case C-13/94 IRLR 347,
- Wilkinson v Kitzinger & Others [2006] HC, HRLR 36
- X v Brighton and Hove City Council [2006/7]
- X, Y and Z v UK (1997), ECHR, 24 EHRR 143



## Table of Legislation

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- Civil Partnership Act 2004
- Civil Union Act [SA]
- Equality Act 2006 (EA 2006)
- Equality Act 2010 (EA 2010)
- Equal Pay Act 1970
- Gender Recognition Act 2004 (GRA 2004)
- Human Rights Act 1998 (HRA 1998)
- Sex Discrimination Act 1975
- Sex Discrimination (Amendment of Legislation) Regulations 2008
- Sex Discrimination (Gender Reassignment) Regulations 1999