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Gender: Law's Allergic Reaction to the Body

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Besides being our era's dominant word, "gender" is also its most peculiar, with language, biology, psychology, sociology and feminism all staking a claim to ownership. This essay contends that the multifaceted word has a sixth claimant. The new gender is a consequence of abortion laws: with abortion the body is without personhood, and with legal gender the "person" is without a body.

The womb is a kind of city, designed as it is to be inhabited by a single person at a time and to cater to its occupant's every need—food, shelter, warmth and so on. But the helpless, innocent child emerges alive from the tiny city thanks largely to the goodwill of those persons who live beyond the city limits. The womb is a safe space, kept so not only by the mother-to-be but also by laws.

As we are heart-breakingly aware, however, legal regimes around the world have withdrawn their support, thereby rendering womb-dwellers vulnerable to the inclinations of those closest to them. But our interest here lies beyond the womb. It lies with you and me, since abortion requires us to think less of *ourselves*. Indeed, it demands that we think of ourselves as *no-body*. Each of us is tied to the plight of the child. We are our brother's keeper. We are co-implicated.

By sanctioning abortion, law extracts personhood from the child in the womb, who is undoubtedly somebody. But it also does the opposite. It extracts embodiment from the person. Neither feat is possible in material reality, of course, but both are achievable in law, because law itself is immaterial. All told, abortion institutes a new and body-free legal use of the word "person."

McGill University professor Douglas Farrow concurs, positing that a potent force of **autonomy** is "busy evacuating the law not only of morality and of fundamental freedoms such as conscience and religion, but of the body itself." Drawing on my own work, Farrow

observes that “the process of eliminating the body from law takes its main impetus from the practice of abortion.” “Having refused to identify some humans as persons,” notes Farrow, “we have been forced to advance ever more restrictive theories of personhood and personal dignity.” So restrictive that they are reduced to “the capacity to plan, to purpose, and to act autonomously, such that human nature itself—insofar as it concerns the body—is removed from our calculations.” To take a page out of some queer theory manual, we are in the realm of the performative—doing, not being.

Were we to approach the average man in the street and ask him to name a prefix of the word “gender,” it is a safe bet his reply would be the ubiquitous “trans.” Transgender, we are told, denotes a difference between one’s sex and one’s gender. Though queer theorists themselves struggle to articulate what gender is, they nevertheless insist that it is *unrelated* to sex and *superior* to it.

Yet the primary reference point for legal identity must be consistent throughout society. If it is not sex for everybody, it can only be sex for nobody. And since the transgendered individual is armed with legal documentation that does not correspond with his or her embodied identity, our legal status no longer reflects our embodied identity. Nobody can *be* a male (sex) or a female (sex) in law. Instead, everybody *identifies as* male (gender) or female (gender).

Michael Hanby spells this out in his “[The Whole World Groans](#)”: “[I]f ‘gender,’ like ‘orientation,’ is merely a function of a self-appropriated identity distinct from one’s sexually differentiated body (now relegated to the realm of ‘mere biology’), then in fact there is no longer any such thing as man or woman as heretofore understood.” “We are *all* transgender now,” writes Hanby, “even if gender and sexual identity accidentally coincide in the great majority of instances.”

Accidentally. Aye, there’s the rub. The old norm is downgraded to a mere coincidence. Individuals *just so happen* to be embodied. All of this makes perfect sense once we have divorced the personal from the physical.

In sum, supporters of queer theory affirm the *personhood* of the gendered while denying the relevance of their *bodies*. Conversely, backers of abortion accept that each human fetus is *some body* (even to the point of harvesting *body parts*) while denying that he or she is *some person*.

During a fascinating Podcast interview, “[We’re Not in Kansas Anymore](#),” Carl Trueman puts it to Archbishop Charles J. Chaput that “the question of transgenderism raises in a very powerful way the question of human personhood.” In agreement, Chaput responds: “If we can change ourselves from male to female, what does it mean to be a human person?” Well, exactly. But abortion raised the question of personhood long before. Thus, we can turn the question around and ask: “If we can change the child in the womb from person to non-person, what does it mean to be male and female?” If law is at liberty to pronounce on *personhood*, it is absurd to assume that *any* aspect of *personal identity*—above all the *body*—remains beyond law’s pernicious reach.

A thorough investigation of identity, language and law provides a vantage point from which to observe a coherent and internally consistent two-stage account of our present disembodied legal status. Firstly, abortion begets a body-shaped hole at the heart of law. Secondly, the new

gender masks that hole, primarily by utilizing sex-derived words, such as “female” and “he.” (Hence, the advent of self-selected but enforceable pronouns.)

Gender dons the language of the body for the purpose of passing itself off as something, but beneath the disguise there is nothing but words defined in terms of the mind. The phantom gender project revolves around the ancient art of making an absence of one thing appear to be the presence of another. (Think shadows dancing on the walls of a cave.) Seen as such, gender can only be defined as the *negation of sex*. It is “not sex.”

Valid law respects and reflects the truth of human identity as found in nature, where personhood is established at conception. By declaring that humans *become* persons, the sanction of abortion effectively abolishes nature, transforming the child in the womb into a non-person, and everybody else into a legal “person” who *just so happens* also to be a natural person. If nature abhors a vacuum, an abhorrence of nature demands the creation of a vacuum.

On the surface, it may seem that abortion affects law in only one place. But since abortion concerns the status of personhood, and since all laws exist to govern persons-as-persons, abortion shreds the integrity of law *as such*. (See in particular Jeff Shafer’s “**Supreme Incoherence: Transgender Ideology and the End of Law**.”) Physical abortion severs life from the body with a snip of the spine; legal abortion separates law from reality, rendering *all of us* vulnerable to the tyrannical whims of a regime that bypasses natural identities.

Did not Saint John Paul II warn us, in *Evangelium vitae*, that when law denies an individual the dignity of a defence of his or her right to life, exposing him to lethal-and-legal violence, “the process leading to the breakdown of a genuinely human co-existence and the disintegration of the state itself has already begun”? The post-abortion legal environment suffers from a catastrophic allergy to bodies, and as a result we are all in the grip of a well-orchestrated nihilism. Saint Teresa of Calcutta’s prescient description is vindicated. Abortion is “**the greatest destroyer of love and peace**.”

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