TRANSGENDER, TRANSITIONING & DSM

An analysis of discursive violence and violations of human rights in academic discourse and DSM

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I would really like to thank all the great people I have met who have helped me to understand the complex realities of transgender issues.

Key Words:

Transgender, transsexuality, transitioning, essentialism, social constructionism, DSM, Gender Identity Disorder, discourse, violence, human rights, the Hammarberg report.

Abstract:

This thesis analyses the violence perpetrated against transgender people. It scrutinizes the concept of transgender and the important role of transitioning. It looks at the essentialist and social constructionist debate and its relation to transgender. In this thesis, I will advocate a theory of violence in which violence is understood as structural. I will advocate bringing the lived experience of transgender people to the foreground in theorizing about embodiment. Hereby, I will especially focus on discursive violence and the violation of human rights. I will relate transgender and the importance of transitioning to DSM’s understanding of Gender Identity Disorder. Consequently, I will uncover DSM’s subtle misogyny and transphobia and argue that it perpetrates discursive violence against transgender people. In addition, I will scrutinize the direct and indirect ways it violates the human rights of transgender people. Finally, the thesis will discuss the suggestions the Hammarberg report has made in order to improve the human rights situation of transgender persons.
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1. INTRODUCTION

1.1 Introduction

This thesis analyses the discursive violence and the violation of human rights transgender people are subjected to. More precisely, it deals with the essentialism versus social constructionism debate and the Diagnostic and Statistical Manual for Mental Disorders (DSM)’s understanding of transgender as violent. Whereas the Lesbian, Gay and Bisexual community is internationally visible, making rapid process and massivley fighting for equality and equal rights, the T in LGBT (Lesbian, Gay, Bisexual and Transgender) is still often rendered invisible altogether. I deal with transgender in this thesis in a broad sense. This means that people are concerned who identify as transgender, transsexual, transvestite or even “gay”, who are seeking the help of the medical profession in order to get hormone treatment or surgery and/or who are trying to get their legal gender marker changed. In addition the thesis concerns individuals whom by others are considered gender variant and who are currently not (fully) recognized and protected by law. Transgender people are not only subject to transphobic violence physically and publicly, but also legally, medically, socially and discursively. In academia, essentialists and social constructionists have theorized about transgender and transitioning. Transitioning is an important part of the person’s self-identity process (Prosser, 1998). It starts with ‘coming out’ and seeking help (of a doctor or psychiatrist) to living full time in the preferred gender and being legally and socially recognized and accepted as such. In many cases transitioning involves hormone treatment, sex reassignment surgery and the legal process of getting one’s gender marker changed on official documents. Usually a diagnosis is needed before a transgender person can get access to these medical, legal and social services. The Diagnostic and Statistical Manual of Mental Disorders (DSM) and its section ‘Gender Identity Disorder’ (GID) is therefore of pivotal importance as a gate keeping document. Due to the institutionalized violence perpetrated against transgender people, the process of transitioning, or more specifically, the ‘transition-system,’ often goes hand in hand with a series of serious human rights violations. This thesis analyses both the

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1 i.e. including people who do not identify as lesbian, gay or bisexual
2 I mean here people who refer to themselves as gay such as the “fem queens” described in David Valentine’s book *Imagining Transgender* (2007)
3 by the national (and international) law in countries in the western world. What this entails will be thoroughly discussed in chapters 3.8 and 3.9 of this thesis.

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academic discourse as well as DSM’s understanding of Gender Identity Disorder. Since
international institutions and structures (such as the Council of Europe, the European Union,
the United Nations, the DSM and the similar International Statistical Classification of
Diseases and Related Health Problems (ICD)) and cultural understandings of gender
determine the specifics of transgender issues, this thesis will focus on the western world, and
due to my access to information, especially on Sweden. Transgender issues, in addition, can
never be separated from other aspects that make up a person’s individual and social identity
such as age, race, ethnicity, class and broader assumptions about men and women. In fact,
misogyny is a central part of transphobia and also that I try to uncover throughout the thesis.
Therefore my analysis will follow an intersectional approach. In addition, I would like to
make clear that I take a specifically anti-transphobe stance in my thesis.

My thesis consists of two different analytical parts. The first part problematizes the
concept of transgender on a more theoretical and philosophical level. It deals with the
academic discourse on transgender. In this part I focus on the essentialist versus
constructionist debate. It analyses the essentialist, but especially the social constructionist
traditions and their relation to transgender. I will argue that within these academic discourses
discursive violence is perpetrated against the transgender person. More specifically, I will
scrutinize the different viewpoints which make up the constructionist side of the debate which
has gained much momentum in the postmodern/poststructuralist tradition. For this analysis I
will be using Janice Raymond, Jay Prosser and David Valentine as my main theoretical
sources. I believe this is important because it shows the power of discourses related to
transgender and therefore aid to explain the context in which DSM and more specific laws are
manifested. Simultaneously, scrutinizing this debate and the positions of Prosser and
Valentine, aids to critically look at the common discourses and helps to argue for change and
a more humane approach to transgender issues. Consequently, I will argue that there is a need
to bring the lived experience of the transgender person back to the foreground in theorizing
about transgender embodiment and that this should be done from an intersectional approach.
The second part of my thesis focuses on the Diagnostic and Statistical Manual for Mental
Disorders IV Text Revised (DSM) and its understanding of and its advice for medical
professionals to deal with what it is called Gender Identity Disorder. Thus, the second aim is
to problematize DSM, as it is one of the most determining factors in the ‘transition-system’. I
do so first by bringing its biased essentialist anti-feminist and transphobe underlying
assumptions to the foreground. This will show that DSM is guilty of perpetrating discursive
violence against transgender persons. The second way I problematize DSM, is by arguing that it directly and/or indirectly violates the human rights of transgender persons. For this analysis I will use the Declaration of Human Rights from 1948. I will end by discussing the Council of Europe’s Hammarberg Report\(^4\) since its proposed changes in national laws for the improvement of human rights of transgender people is closely related and even reliant on a human rights improvement in DSM.

1.2 Positionality

An author’s positionality is important to be known for the credibility of her or his work and therefore I would like to say something about my own background. I am a white cisgender\(^5\) bisexual woman, who comes from a lower middle class background, but has enjoyed higher education. Important to note is that I do recognize that my background, especially as a white and a cisgender person might make it harder to uncover certain blind spots I might have when it comes to transgender issues. This is the reason why I will use an intersectional approach following the example of Valentine in order to overcome some of my limitations. I want to keep a feminist point of view at all times, which in my opinion is sometimes neglected in transgender literature. Simultaneously, as mentioned above, my stance is specifically anti-transphobe, which in turn I feel is sometimes neglected in feminist literature. In addition, I would like to state that I will use the word cisgender, instead of ‘genetic’ or ‘biologic’ as most of the (older) literature does, because there is so more to biology than genitalia or even anatomy. We cannot say that we know at this point in time that transsexuality is not biologically explainable.

My own background, my knowledge and my research represent a very western point of view. The history of the category transgender, the usage of DSM, terms such as ‘butches, transgenders and genderqueers’ as used in this thesis are western concepts. I make no pretentions as to discuss this problem as global. Although transgender is not limited to any geographical space, the specifics of all concepts and categories to a certain extend are. Unfortunately I have not had the opportunity yet to research transgender issues of other world regions, and so, as mentioned above, this thesis focuses specifically on the western world.

\(^4\) The ‘Hammarberg Report’ is the *Issue Paper on Human Rights and Gender Identity* from the Commissioner of Human Rights, Thomas Hammarberg.

\(^5\) ‘Cisgender’ means that a person identifies as the gender assigned to them at birth.
Valentine quotes Anne Wilchins in his book (2007, p. 204): “Academics, shrinks, and feminist theorists have traveled through our lives and problems like tourists on a junket”. The shrinks are a category related to DSM, I fall under the last category and as an academic I have the first in common with the people related to the creation of DSM. The quote above shows both DSM’s power as well as that of my own. I understand the worry expressed in this quote, but I would like to ensure that I am writing this thesis not out of some sensational curiosity, but because the current literature related to transgender (both academic, as well as medical documents like DSM) infuriated me.6

1.3 Intersectionality

In this thesis intersectionality is defined as the realization that the interaction of different sections determine the experience of a person or a social group. Gender, race, ethnicity, age, sexuality, disability and class are examples of these sections. Leslie McCall (2005) defines intersectionality as “the relationships among multiple dimensions and modalities of social relations and subject formations” (p. 1771). She claims that especially feminists have embraced intersectionality as “itself a central category of analysis” (p. 1771). But also progressive activists and other social scientists often use an intersectional approach in order not to be blind and in order to capture the complexities of a real person’s life and social situation. More concretely this means for example that being a woman cannot be viewed apart from other categories such as race and class (see Crenshaw, 1989). What Valentine argues in addition is that “the intersectional analysis might not always capture the lived dynamics that intersectional analyses aim to describe” (2007, p. 17). What he means to say is that not only is it important to look at all these sections when studying social phenomena, but also to scrutinize the categories (such as “a heavy reliance on the distinction between an unproblematized “gender” and “sexuality””) which undercut the critical impulse of intersectional analyses (p. 17).

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6 I do not want to picknick on “identities like flies at a free lunch” I will be open to criticism and hope that anyone who sees an apparent blind spot or bias in my work will draw my attention to it.
2. PART I: TRANSGENDER AND TRANSITIONING, ACADEMIC DISCOURSE AND DISCURSIVE VIOLENCE

2.1 What is transgender? Definitions

The term transgender is problematic in itself as there are many different ways of defining it. In academia, ‘transgender’ is currently often considered an umbrella term for different forms of alternative gender identification. Transsexuals, i.e. people who identify as the ‘other’ sex, transvestites, i.e. people who ‘cross-dress’, or ‘genderqueers’, i.e. people who have a more fluid definition of their gender and who often do not recognize the gender binary as more than imaginary, all belong to this overarching concept. In the world of activists in many western countries, the word transgender can besides being an umbrella term also mean that one is of a transgender identification which is different from transsexual or transvestite. Transsexuals recognize their own gender identity within the old categories of man and woman. The main problem for them is then that their body does not reflect their gender identity. For transgenders these categories are more problematic as they do not recognize themselves in either category. In this thesis both understandings of the word transgender are relevant, because I will approach transgender as people who identify as transgender, transsexual, transvestite or even “gay” (such as the “fem queens” described in David Valentine’s book Imagining Transgender, 2007) who are seeking the help of the medical profession in order to get hormone treatment or surgery and/or are trying to get their gender marker changed. In addition I also deal with people who are considered gender variant by others and who are currently not (fully) recognized and/or protected by law. To illustrate the real-life situation of transgender persons I will refer to specific procedures and requirements which exist in different countries. Unfortunately, I will not be able in all of these cases to give a concrete reference. Usually the treatment of transgender patients, especially in the medical world, is based on guidelines and unwritten rules. I would like to ask the reader to accept this limitation. Slight differences can exist among institutions and psychiatrists, although most countries have only a very limited amount of institutions which deal with transgender patients.

Where definitions are concerned, I have a few other terms to discuss. Sometimes it might seem that the words transsexual and transgender are used interchangeably. I want to

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7 What this entails will be thoroughly discussed in Part II of this thesis.
stress that I am aware of the differences (and overlaps) of these terms. The reason they sometimes might seem to be used interchangeably is because in some parts transsexuals specifically are concerned and in other parts it is better to use transgender. The other reason is that Prosser, as a transsexual writing about transsexuality, uses the word transsexuality. This might complicate matters a bit as in some cases it again specifically concerns transsexuals, whereas in others he uses the word transsexual for which we nowadays might prefer to use the word transgender. I will point this out further on in my thesis.

I will use the terms male to female and female to male. These terms are problematic in that they emphasize the transition, the crossing between the gender binary. These are accepted terms currently and they are considered useful as they explain clearly who is meant. There are differences between the experiences of male to females and female to males and in order to clarify this I will have to use the terms occasionally.

I have explained that DSM’s Gender Identity Disorder (GID) is the classification used by psychiatrists and medical professionals. Although the common way to refer to Gender Identity Disorder in written word is GID, I choose not to do this. Since I believe the abbreviation to sound even more like a number or a classification code and even more demeaning than ‘Gender Identity Disorder’ I will use the entire word from this point on.

The usage of ‘people of color’ is an important one. People of color is a false term, as ‘white’ people are also people of color. Pretending ‘white’ people are colorless makes them the norm. The reason why I will still use this term is because it is still the commonly accepted term to use and because it shows a hierarchy. I use the term thus in a normative sense, not because I want to create this hierarchy, but because using the term shows that there is one and that this is unacceptable.

2.2 Transgender and the debate between essentialism and social constructionism

In the social sciences and humanities the debate between essentialism and social constructionism has been pivotal. Both essentialists and social constructionists use the terms “the transgender” or “the transsexual” to prove their own point. Essentialists argue that transsexuality illustrates that there is something ‘essential’ about men and women, whereas

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8 It is not impossible that in some years, despite their clarity, these terms will no longer be considered acceptable.
social constructionists have approached transgender as an archetype of postmodernism (or they have condemned transsexuals for being essentialists). Although the focus will be on social constructionism, essentialism, or biological determinism, is mostly defended by the medical (and legal) profession. It will therefore be covered in the second part of this chapter. Social constructionism is mostly defended in the social sciences and the humanities, especially in feminist and queer theory. I focus mostly on social constructionism and feminism here for several reasons. Firstly, the essentialist point of view is rather old and has determined most of binary thinking in both academia (whether in biology, anthropology or other fields) and everyday life. The argument goes that there is a certain ‘essence’ to things. For example, there is a certain essence to being a man and a certain essence to being a woman. This makes men and women, by nature, fundamentally different. Essentialism, or as it is sometimes called, biological determinism, has often been used for explaining (and sometimes justifying) differences (and therefore hierarchies) among people. For this reason essentialism is widely critiqued by feminists and other social scientists. What should be clear is that as a feminist also I do reject its positions. I will discuss essentialism more in part II of my thesis. Consequently, feminists and social scientists have developed a powerful counterargument: social constructionism. However, although the social constructivist point of view has been mostly accepted within gender studies and feminist theory, I will criticize also this theory. In addition, it is important to realize that the opinions on what this school of thought actually entails are divided. I will come back to this in chapter 2.7 with Prosser’s discussion on poststructuralist’s tradition of either literalizing or deliteralizing the transsexual subject. As I will argue, Prosser shows that within this poststructuralist tradition there is a tendency to either literalize (condemn) the transsexual subject, or to deliteralize (celebrate) it. The essentialist and social constructionist side also interact and can work to reinforce one another. The essentializing patriarchic medical profession has negatively affected how transgender is understood and what the requirements for transitioning are. Patriarchic institutions feel even more that their assumptions are right when they are backed up by what to them are the real gender benders: feminists.

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9 See chapter 2.7 on the literalizing/deliteralizing of the transgender subject in the post-structuralist academic tradition.
10 This I will prove with my discussions on the historical context of DSM and the document itself in chapters 3.2, 3.3 and 3.4.
11 See discussion on Janice Raymond in chapter 2.7 of this thesis.
2.3 A theory of Violence

The reason the essentialism versus social constructionism debate is important for my thesis, and for understanding the transition-system (and most notably DSM) as a breach of human rights, is that discourse is violent. In order to make my case that DSM is violent towards transgender people, I need to elaborate some more on the concept of violence. What is commonly understood as violent is straightforward physical violence, such as murder, rape, assault and torture. Shockingly, this is something many transgender people have to endure. However, within the social sciences it is also commonly understood that violence is more than that. Feminists, people of color and others are all too aware of structural violence. Structural violence does not only mean that violence can be systematic, it also means that violence is subtle. Rape, for example, as an incident is a straightforward example of violence. Rape of women as a broader social phenomenon is the result of violent misogynistic structures within society. Racism, misogyny and the like are examples of structural violence with many subtle but real implications. I want to elaborate upon and expand the notion of structural violence some more. Valentine urges us to look critically at violence itself, after he “heard many divergent experiences and practices described to [him] as violent” (2007, p. 205). He points out that violence is extremely hard to define; “on the one hand it is sensual and obvious; on the other, it depends on its definition and narration by its victims to become real as violence” (emphasis in original, p. 210). Thus, Valentine shows how transgender people do not only suffer direct violence such as torture and murder, but also more subtle structural violence which is often discursive. In the following chapter I will analyze Raymond’s argument as part of Prosser’s analysis of the deliteralizing and literalizing tradition. What will follow from this is that discourse can be violent. Definitions and discourses decide how we see a phenomenon. They are often created from a certain angle. In turn, discourse can be violent when it makes certain people the norm, when it defines certain people and decides who is included in which category. Valentine makes two important points. The first one is that “violations do not reside simply in external acts but in the interpretive processes” and secondly, institutional and social interpretative processes also make perceptions of the self a social sense (p.223). If the concept of violence is extended this way, a journal article or a document like DSM can be violent as well. DSM for instance decides the “citizenship” of the category transgender in its description of Gender Identity Disorder. Valentine states that discursive violence as well as research can perpetrate representational violence. The category transgender itself, Valentine has argued, unintentionally excludes certain people of race and lower class. More importantly, discursive
violence has real-life consequences. Valentine relies on Michel Foucault and others\textsuperscript{12} when he argues that “phrasing thus highlights how self-identity and one’s identification by others are complexly intertwined and shaped by relationships of social power” (p. 26). Not only the self, but also the social is in part shaped by these discourses. Discourses thus have real-life effects on both the self and the social. The social is affected in several ways by these violent discourses. Namely, these type of discourses can lead to general dismissal of transgender as a real phenomenon and to the ill treatment of transgender people in all sections of society. They aid to form the general opinions on what transgender is, who are considered to be ‘true’ transsexuals, i.e. who is considered neither ‘fake’ nor ‘confused’ and therefore fit for diagnosis and consequently medical treatment. Additionally, these discourses aid to decide which medical procedures we consider valid and necessary. In turn, these discourses and medical practices influence the way laws are defined, e.g. about employment, protection and the possibility of gender marker change. These discourses aid to (not only aid but in themselves are) the human rights violations against transgender people.

\textbf{2.4 Prosser, Valentine and queer theory}

Prosser’s \textit{Second Skins. Body Narratives of Transsexuality} (1998) is one of the key sources for the philosophical part of my thesis on transsexuality and transgender. I would like to start by stating that there are some problems with his work, which have to be kept in mind throughout the next section. The most important and notable is the negligence of the intersections of class, but especially of race and ethnicity in his work. This is quite a big disadvantage in his work in my opinion, as it clearly limits the value of the work he produces. I will come back to this later on. Another problem is that Prosser wrote his book quite some years ago and some terminology might seem outdated now. In addition, Prosser identifies as a transsexual in the more traditional sense of the word, which might make his work seem irrelevant to the broader spectrum of possible transgender identifications. Nevertheless, it is my opinion that his work on transsexuality is easily expandable to include other forms of transgender identification. Despite the problems just mentioned, Prosser is useful because he has a very intelligible way of criticizing the constructivist side in the constructivist versus essentialist debate, without giving credit to the essentialist side. He provides us with a theory as to how transsexuality is manifested and why transitioning is such an important and ‘real’

\textsuperscript{12} The others Valentine refers to are West and Zimmerman, 1987; Boellstorff, 2004 and Kulick, 2003.
part of it. In addition, he advocates bringing the narrative of transsexuality back to theorizing about a topic in which the object of analysis’s voice has completely been made disappeared.

Not only Prosser, but also Valentine deals with the category of transgender in his book *Imagining Transgender. The Ethnography of a Category* (2007). Both research how the category has been understood and used and are critical of how it is understood and used. In addition, both authors also have clear ideas of how the concept can be used and understood better. Valentine deals more with the institutionalization of the category transgender in the early 1990s, especially as an institutionalized category for activism, whereas Prosser deals more ontologically and philosophically with the category, focusing especially on transsexuality specifically. Prosser, writing his book earlier than Valentine, more specifically in the time Valentine is theorizing about, states that “politically, the creation of a transgender movement is underway which advocates “a politics and culture of transition” (Prosser, 1998, p.11). It is important to realize that Prosser often uses the word transsexuality in cases for which nowadays we might prefer to use the word transgender. Prosser has a limited (or maybe rather old) understanding of queer. Prosser’s understanding of queer is an understanding appropriate for 1990s United States, it is therefore more closely associated with ‘homosexuality’ than it is in a context for present Sweden. Nevertheless, his understanding of queer theory is very closely aligned to his understanding of constructionism, which in turn he sees to be part of the poststructuralist or postmodern tradition. Valentine shows that in this case Prosser’s book has to be read in the context of its time. Like a decade ago, queer is also now often equated with transgender.

### 2.5 Transgender and constructionist theories

At the beginning of this analysis I again feel the need to stress that Prosser’s and my critiques on constructionism do not imply a favorable view on essentialism. This thesis remains a feminist argument, and essentialism, or biological determinism, as a theory (both historically and at present) is a priori rejected. This thesis deals with the concept of transition in a poststructuralist tradition.

Prosser rightly states that naming oneself transsexual is not always an easy or comfortable task as feels to name oneself “gender displaced,” “being a subject in transition”, someone who is either moving beyond or in between sexual difference” (Prosser, 1998, p.2).
Transition is complicated as it symbolizes a zone which disconnects from identity places, thereby threatening to dislocate ourselves from our own identity. It seems “an intermediate nonzone” (p. 3). Transition however, can be considered something transsexuals do, Prosser states. More specifically, it is can be considered something transsexuals do, not something they are, despite that the word has this connotation. However, as we will come to see later, transition itself could be materiality, and therefore it could both be process and fixity. His aim “in reading transsexual narratives is to introduce into cultural theory a trajectory that foregrounds the bodily matter of gender crossings” (p. 5).

Prosser starts his book by arguing that queer studies have made the transgendered subject a queer icon, something which symbolizes a turn of thought as well as evidence (because of its transition, its gender ambivalence) for the failure of the old binary model of sex and old assumptions about gender difference. He states that although the very existence of queer theory makes the reading of transsexual narratives possible, the very “association of transsexuality with limits, and queer theory’s limitations around transsexuality, make [his] project necessary” (p. 6). He makes an important statement here, one which can hardly be understood without understanding queer theory in a postmodern or post-structuralist context. Because of the postmodern obsession with constructionism, queer theory (and Prosser feels Judith Butler exemplifies this) “has written of transitions as discursive but it has not explored the bodiliness of gendered crossings” (p. 6). More specifically, queer theory has focused on the transgender (butch, drag, transvestite etcetera) rather than on the transsexual. In other words, it has focused on subjects who cross the ‘borders’ of gender, but not of sex. Prosser continues by showing that because of this transsexuality “reveals queer theory’s own limits: what lies beyond or beneath its favored terrain of gender performativity” (p.6). After all, both feminist constructionist and queer theory’s goal often appears to be to prove that gender is performative. Transsexual narratives therefore, could aid to analyse and reveal queer theory’s limits and aid to come to better theories of gender and critically look at the accepted constructionist convictions. Although I am not so concerned here with the analysis of narratives myself, I am concerned with bringing the transgender subject as an actual person with lived experiences back to theory. Transitioning is crucial for this goal.

If, for queer theory, transition is to be explored in terms of its deconstructive effects on the body and identity (transition as a symptom [symptom or proof?] of the constructedness of the sex/gender system and a figure for the impossibility of the system’s achievement of identity), I read transsexual narratives to consider how transition may be the very route to identity and
bodily integrity”. In transsexual accounts transition does not shift the subject away from embodiment of sexual difference but more fully into it (p. 6).

At this point it is important to come back to postmodernism and poststructuralism. Prosser shows that a lot of the literature when talking of construction and transsexuality, focuses on the real medical construction of the body. Theories on the social construction of illness, constructionism in postmodern culture and the assumption that the transsexual is medically constructed lead to quite transphobic accounts by some authors. Much of the literature thus sees the transsexual as the perfect example of construction, “because of his or her medical construction” (p. 8). I would add that it is not only the case that constructionists often tend to see transsexuals as archetypal because of the medical construction, but also because many believe transsexuality is a social theoretical invention.

Consequently, constructionist theories deny the transsexual to any type of agency. Although it is true that the medical practitioners are powerful and although to a certain extend the transsexuals are dupes of their sex, they are as much constructing subjects as they are constructed subjects. This is yet another reason why constructionism deserves some careful consideration. Prosser states that poststructuralists ironically essentialize construction and that construction here does not connote anything positive.

Construction in a more mainstream sense is overtly a means of devaluing and discriminating against what’s “not natural,” [or maybe denying the existence of anything “natural”] precisely to desubjectivizing the subject and – in the context of transsexuality – to invalidating the subject’s claims to speak from legitimate feelings of gendered difference (p. 8).

This is not to deny the achievements of constructionism. It is a great achievement that so many academics are aware of society’s influence on the construction of identities, but as to deny transsexuality as something other than a construct, is ignorant and harmful to transgender persons.

2.6 Prosser, ‘body as point of reference’ and constructionism

It has become clear that Prosser is writing more about transsexuality than about transgender, but he considers both. He sees to producing transgendered and transsexuals narratives as specific and allied subjectivities as strategic.
Transgendered narratives as much as transsexual ones continue to attest to the valences of cultural belonging that the categories of man and woman still carry in our world: what I term “gendered realness”. That is, transsexual and transgendered narratives alike produce not the revelation of the fictionality of gender categories but the sobering realization of their ongoing foundational power and why hand over gendered realness when it holds so much sway?” (p.11)

Firstly, my opinion is that they do both. They show that the categories of man and woman still hold so much sway, but simultaneously they show the fictionality of gender (or at least our current understanding of it). In addition, I believe transgender narratives, both as “neither nor” or “both” and as an umbrella term, do away more with the gendered realness, unlike the transsexual narratives. I assume Prosser means for this question to be rhetorical, but I think there is a valid answer to this question. To hand over gendered realness would be good for feminist reasons, it serves a feminist agenda. In fact, to do away with the notion of gendered realness would aid in achieving equality (such as equal pay, same access to jobs etcetera) but also to reconsider invented (and often derogatory) things as making girls paint their nails and play with barbies. This indeed is a whole different issue than the issue of transsexuality, but it cannot be separated here from the discussion about gendered realness. Doing away with it would definitely not at all serve a transgendered or transsexual agenda but in many cases it would help a feminist agenda. Therefore we should not do away with it, but neither deny the problems of accepting it. Rather, both should be included in order to come to a thorough analysis of gender. Ultimately, though, I think this is exactly what Prosser is trying to do with his criticism on constructionism: accept feminist achievements in theory while making way for transgender and transsexual inclusion. “While coming out is necessary for establishing subjectivity, for transsexuals the act is intrinsically ambivalent. For in coming out and staking a claim to representation, the transsexual undoes the realness that is the conventional goal of this transition” (p. 11). This is true for the many cases where the person feels inside to be rather a woman (or a man) than a transsexual. In other words, coming out as transsexual might partly deny the “realness”, in the sense that the fact is that this person is in fact a woman (when male to female) or a man (when female to male). Prosser continues to say that “in accounts of individual lives, outside its current theoretical figuration transition often proves a barely livable zone” (p. 12). It therefore remains a bit unclear unfortunately what Prosser is exactly advocating. Coming out as a transsexual, and taking transition as subjectivity in itself seems to be desirable on the one hand, but on the other one should not deny her/his own ‘gendered realness’, i.e. that is when one in fact is a woman or a man.
Prosser is of this opinion unlike Sandy Stone, as I will discuss later, who calls for ‘coming out’ and feels disapproving of ‘passing’.

Prosser’s aim is to include transitions in the “paradigms for writing bodily subjects” and “to allow transsexuality through its narratives to bring into view the materiality of the body” (p. 12). The reason that this is Prosser’s aim is nicely formulated by Elizabeth Grosz when she states that the “body has remained a blind spot in both Western philosophical thought and contemporary feminist theory” (Grosz quoted in Prosser, p. 12). Bodies are everywhere in present theorizing, however paradoxically the theorizing about bodies has often led not to fill the blind spot but rather enlarge it. Or in other words, by talking and studying bodies, the materiality of the body has often been increasingly absent. Thus, ironically, “our postmodern sensibility desires to make contact with some ground, with the physical stripped of metaphysical pretentions. This physical ground would be the body” (my emphasis, Cecile Lindsay quoted in Prosser, p. 12). “The irony is that the focus on bodies as effects or products of discourse re-metaphysicalizes bodies, placing their fleshy materiality even further out of conceptual reach” (p. 12). I agree with Prosser since in the social sciences theories about the body often take on a philosophical character, thereby paradoxically losing sight of the actual body with all its movements, pains, flesh and fluids.

Rhetorically, Prosser asks if “this paradox about the body – the bodily materiality slips our grasp even as we attempt to narrate it- [is] our inevitable poststructuralist legacy?” (p. 13). Prosser believes that materiality in post-structuralism only refers to discourse and signification as Foucault and Jacques Lacan have argued (p.13). Therefore he does not see materiality as a reference to flesh. This point is crucial to his argument. However, I believe a less radical view to be closer to the truth and which would not disqualify the rest of argument, namely my opinion is that materiality is always linked to discourse and our “metaphysical” perception of it is always affected by it. Nevertheless, I agree that does not mean materiality is discourse. I agree with Prosser that sometimes we have created “genders without sexes” as Somer Brodribb13 once stated (Brodribb quoted in Prosser, p.13). This means that constructionism has created genders as real without any reference to sex. The materiality of language has replaced the materiality of the body, at least in most of the cases when constructionist theory is concerned.

2.7 Literalization/ Deliteralization

I will continue to analyze how transgender persons have been represented in cultural theory so far. According to Prosser the transsexual person has either been read as a literalization or its deliteralization, since the body is conceived as a discursive effect, “in terms of signification”.

“When figured as literalizing gender and sexuality, the transsexual is condemned for reinscribing as referential the primary categories of ontology [‘man’ and ‘woman’] and the natural that post-structuralism seeks to deconstruct” (p. 13). So in fact, literature about transsexuality has often literalized the transsexual subject. This means that transsexuals are seen as people who ‘essentialize their genitalia’ and who do not understand that gender is performative and they wrongly reinforce old notions of woman and man. They take it too literal and confirm the old sex/gender system. Thus, in literalizing, the “transsexual is condemned for positing a sexed body before language” (p.14).

There have been feminists arguing exactly this. Feminism, and most notably radical feminism, has tried hard to overcome the feminine-defined roles of patriarchy. By doing so, feminists have often tried to stretch, bend and overcome traditional patriarchic and sometimes suffocating notions of gender and gender roles. Janice Raymond reinforces patriarchic binary conventional notions on gender and transsexuality. She literalizes transsexuality. Moreover, quite surprisingly, I found out recently that in the lesbian community, there are still quite some women echoing Janice Raymond, the in my opinion conservative lesbian feminist (as will become clear in the following section). Some women still feel that transsexuality is ‘giving in to’ patriarchic notions of the binary gender model. This is why it is important to focus on her when talking of poststructuralism/social constructionism and transgender persons. I want to focus on her not only because her arguments still are popular, but also because she has been influential in forming opinions on the topic of transsexuality. Janice Raymond (2002) sees transgender, in its broadest sense, as a confirmation of this patriarchy. The strictly patriarchic binary notion of gender is exactly what produces transgender. Furthermore, transsexuality, becoming ‘the other’ sex (which in this case mainly means becoming a woman) is a confirmation of male-invented femininity. Raymond does not stop here and even claims that “all transsexuals rape women’s bodies by reducing the real female form to an artifact, appropriating this body for themselves” (1998, p.308). As a result, the male to female lesbian feminist is the worst type of transsexual, Raymond proclaims in her chapter Sappho by Surgery. Since the chromosomes are really what biologically constitute a gender, anatomically male-born women can never truly be women. In this sense, they will
always inhibit the male and the masculine. The male to female lesbian feminist which enter all-woman communities penetrate and divide women (as man usually do, she states) and even take on dominant positions. The lesbian feminist community is an all-woman community where powerful female energy freely floats. No wonder, the male to female lesbian feminist, which is even compared to a eunuch, a type of spy of patriarchy, wants to infiltrate this community. However, as this community consists of women who have been able to live outside, or rise above the binary system and patriarchy, Raymond concludes that the lesbian feminist, who accepts the transsexual in her community, is by definition an inadequate feminist. Drawing on the work of Pat Hynes Raymond makes a radical statement (p. 308) by saying that

Pat Hynes has suggested that there is only an apparent similarity between a strong lesbian, woman-identified self and a transsexual who fashions himself in a lesbian-feminist image. With the latter, his masculinity comes through, although it may not be recognized as such. Hynes especially points to the body language of transsexuals where she notes subtle but perceptible differences between for example, the way lesbians interact with other women and the way transsexuals interact with women. One specific example of this is the way a transsexual walked into a woman’s restaurant with his arms around two women, one on each side, with the possessive encompassing that is characteristically masculine.

This quote shows a variety of things about Raymond’s line of reasoning. The “apparent similarity”, is indeed considered apparent, and therefore deceptive. The “transsexual fashions himself,” thereby disputing the whole idea of a possibility of ever becoming a (real) woman. Masculinity will come through, and it is possible for us (‘real’ cisgender women) to notice that. If we focus on body language for example we might be able to identify the deceiver. The differences are subtle, but they are perceptible. The example used is of a McCarthy type origin. Raymond does not go explicitly as far as to advocate a witch hunt on transsexuals (“look close and you can find them everywhere”) as McCarthy had done with communists and homosexuals, but this type of reasoning is both radically stigmatizing and transphobic. She goes on to argue that the male to female lesbian feminist is fundamentally different from a cisgender lesbian feminist as “he is a man with a man’s history; that is, he is free of many of

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14 Joseph McCarthy was Senator of Wisconsin in the United States from 1947 till 1957 during the Cold War era. In his right wing irrational fear of communists (and homosexuals) he went as far as to stigmatize or even eliminate many people who were ‘sympathizers’ of communism, a practice nowadays referred to as ‘McCarthyism’.
the residues of self-hatred, self-depreciation, and self-contradiction that attend the history of women” (p.308). It seems part of either naivety or denial to think that transsexuals have a history free of self-hatred and self-depreciation. I would argue that if this self-hatred and self-depreciation is indeed a central part of the history of women, than this would rather be an argument for the inclusion of male to female lesbian feminist into the feminist community than of exclusion. When talking of “the history of women” Raymond seems to envisage a rather uniform history of women, which has been disputed by bell hooks, who shows that white western women have tended to write “the history of women” in ways which much exclude or deny the different experiences of women of color. Carol Riddell (1989) also argues that not only do others need to be included in our struggle in order to be successful, the male to female experience is no less valid than the female-born woman’s is. So in much the same way as women of color have been excluded from ‘woman’s history’, the male to female (lesbian feminist) is. These arguments lead to the core of my disagreement with Raymond. She states that “the transsexually constructed lesbian-feminist is a man, and not a woman” (p. 308). I disagree here on several grounds. First, I do think it is possible that a woman born with male anatomical parts can be a woman. Secondly, I think by saying this she reinforces the binary gender system in much the same way patriarchy has done. Thirdly, as a result she does not allow for variety or hybridity and fourthly, she does not allow for self-identification but rather makes normative claims about what gender is and ought to be. Another contradiction in Raymond’s argument can be found when she starts talking about what biologically constitutes a woman. Earlier on in the chapter, as analyzed above, she has made a case for “the history of woman” as being the most important factor determining what makes a woman a real woman. Later she argues that chromosomes are the determining factor. Being born XX makes you a woman, being born XY, wishing you were XX, makes you a transsexual, but still mostly a man. All this is again biological determinism. In fact, she uses the same reductionist arguments she so badly tries to dismiss when criticizing patriarchy.

I agree with Elizabeth Rose when she states that “Raymond’s article encourages us to set our “bottom line” (about whom we will allow the privilege of self-definition)” (Rose quoted in Raymond, 1998, p.312). Thus, it is clear to state that the literalizing of the transsexual subject is flawed. There is another issue important to discuss in relation to Janice Raymond; namely the issue of feminism. Raymond asks the question “if feminists cannot agree on the boundaries of what constitutes femaleness, then what can we hope to agree on?” (p.312). I think feminists generally agree that patriarchy is something bad and something to be
challenged. And indeed, in many cases feminists do not agree. But who says that is desirable? Can we ever say what constitutes a category? Is there a uniform identity for any category? I would argue there is not. Feminism, as bell hooks has taught us, has mostly been a white western construct in the first place. I would argue that “femaleness” is not necessary to strictly define. It should be inclusive rather than exclusive.

Sandy Stone responded in 1991 to Raymond’s *The Transsexual Empire* with *The Empire Strikes Back: A posttranssexual Manifesto*. Rather than dealing with Raymond’s book in a deconstructive manner, she goes beyond Raymond’s argument by analyzing the origins of transphobia. Metaphorically one could say that rather than convincing a racist that a black person is not an inferior human being, she looks at the problem of racism itself and how it can be counteracted. Stone shows that there are only a very limited amount of studies and accounts of transsexuality. The few stories generally known written by transsexuals were written in ways which would be acceptable to society. Most of the knowledge about gender ‘ambivalence’ came from John Money’s\(^{15}\) and Harry Benjamin’s\(^{16}\) limited research, which was quickly accepted as the authority on the issue. However, these few studies done about the “disorder” of transsexuality were flawed, as they were not representative in either quality or quantity and were strongly biased by the general notions of gender of society. I will analyze this further on in my thesis. Sandy Stone continues to explain that discourses about being in the ‘wrong’ body have dominated discourses about transsexuality, since people were expected to go from unambiguous men to unambiguous women and vice versa. The possibility of variety and hybridity had been denied. Since a transsexual person had to “pass” in order to get surgery, s/he would act accordingly. The clinical understanding of what it means to be transsexual are thus not only limited, but they have been heavily influenced by patriarchic notions of gender. Stone explains that also in the books the authors “replicate the stereotypical male account of the constitution of woman: Dress, makeup, and delicate fainting at the sight of blood” (Stone, 1991, p. 329). She continues to state that “no wonder feminist theorists have been suspicious. Hell, I’m suspicious” (p. 329). Stone thus shows the problem of male-invented femininity but argues that this makes transsexuality as such no less real. Transsexuality, as a phenomenon, is cultural inscribed. There is thus no problem with

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\(^{15}\) John Money was a well-know scientist throughout the twentieth century who did research on the biology of gender. His often reductionist and controversial findings were accepted as the truth.

\(^{16}\) Harry Benjamin was the first to take the ‘phenomenon’ of transsexuality seriously in his book *The transsexual Phenomenon* from the year 1966. Although the book often has reductionist ideas of what transsexuality is (I will criticize it later on in chapter 3.2) it at least recognized that medical treatment such as SRS is the only working remedy. He remains an authority on the matter until today.
transsexuality, but rather with how it is “solved” and constructed by a quantitative and qualitative limited medical profession, and in turn by feminists. Stone argues that there is both a similarity to the colonial discourse with both the initial fascination of the exotic and the professionalization of the limited “knowledge”. Thus, Stone states that “the people who have no voice in this theorizing are the transsexuals themselves. As with males theorizing about women since the beginning of time, theorists of gender have seen transsexuals as possessing something less than agency” (p. 332). They, like cisgender women before, are being infantilized and seen as unable to develop true subjectivity (or as infiltrating spies from patriarchy, for that matter). More importantly, “the transsexuals have been resolutely complicit by failing to develop an effective counterdiscourse” (p. 332). In other words, “we find the epistemologies of white male medical practice, the rage of radical feminist theories and the chaos of lived gendered experience on the battlefield of the transsexual body: a hotly contested site of cultural inscription” (p. 333). Stone believes a counter discourse is crucial. She states that although it feels great to be accepted, silence is a price to high to pay. Therefore she advocates we move on to posttransexualism, in which lived experience of the transsexual are created by the transsexual him/herself. Prosser, writing himself a few years after Sandy Stone’s first publication, is answering this call. He tries to explain the lived experience of the transsexual by the use of a theory about ‘a skin of one own’, which I will discuss later. Not only does Prosser answer her call, he also calls for it to be extended by arguing for a theoretical discussion centered around the inclusion of transsexual narratives.

In conclusion, the literalizing tradition condemns the transsexual or transgender person for being an ‘essentializing’ person. Ironically, by arguing this the literalizing social constructionist essentializes the transgender person.

The other tradition within social constructionism is to deliteralize it. Prosser explains that when seen as deliteralizing the gendered body, “the transsexual is celebrated for pushing sex as a linguistic signifier beyond the body” (1998, p. 14). It is the archetype of postmodernism, it shows the sex/gender system is fiction. Is it praised here because transsexuals allegedly show that gender is performative, not only in the Butlerian sense, but almost literally.

Prosser states that “juxtaposing both sets of readings, it becomes clear that neatly superimposed on the literalizing/deliteralizing binary is another binary, that of the reinscriptive versus the transgressive” (pp. 14-15). This means that the literalizing is
reinscriptive, as it reinforces the man/woman as well as the sex/gender binary, whereas the deliteralizing is transgressive as it sees the transsexual as going beyond the sex/gender binary, being the ultimate postmodern subject.

There is presently a fear of the literal, Prosser explains (p.15), and so all literalizing is seen as hegemonic and therefore bad and all deliteralizing is seen as subversive and therefore good. This means that the content or the actual meaning is no longer thoroughly analyzed when the subversive, -i.e. the progressive, the anti-status quo, is celebrated. Prosser shows that this is similar to Sedgwick and Frank’s argument that theories are pretty much automatically evaluated on the basis of whether they “reveal (“good”:antiessentialist) or conceal (“bad”:essentialist) constructedness” (…) Essence” has been poststructuralism’s most targeted category!” (p.15).

Stone and Prosser both advocate the voice of the transsexuals themselves, narratives made by transsexuals and not by other more powerful figures theorizing about them. Stone though shows she is very wary of the autobiographies written, since they are not just a story, but an outcome of many processes with different power relations. Many narratives are expected to be experienced and told, and therefore told and sometimes even experienced. Nevertheless, Prosser (1998, p. 14) concludes that

in readings that embrace the transsexual as deliteralizing as much as those that condemn the transsexual as literalizing, the referential transsexual subject can frighteningly disappear in his/her very invocation. Like the materiality of the body, the transsexual is the very blinds pot of these writings on transsexuality.

He ends this discussion by stating that poststructuralism also has the tradition of critically looking at its own routines, being routinally self-reflexive. This is where Prosser sees hope. He does acknowledge though that these frameworks as described above (anti essentialist, literalizing/deliteralizing, reinscriptive/transgressive) are so routed now that it is impossible to just move beyond. Nevertheless, he wants to use the routine of self-reflexion and “begin our conceptual transitions by reading transsexual narratives to rupture the identity between the binaries, opening up a transitional space between them” (p. 16), with being conscious of the risk of essentialism. In other words, Prosser does not claim to come to a solution for the constructivism versus essentialism debate, neither does he claim to come to a third way of seeing the transsexual subject other than literalizing or deliteralizing. Instead, he does want to
look at transsexual narratives, in order to give voice to the transsexuals in a space where they are theorized about while being disappeared and open up a transitional space between the binaries.

2.8 A new theory of embodiment: a skin of one’s own

Thus Prosser does not want the body to be re-metaphysicalized. He does not want the material body to be a blind spot in theorizing about embodiment. How does he suggest to go about this, other than merely looking at existing transsexual narratives? The keyword is: skin. He states that his new theory of embodiment is tentative as it addresses “how the material flesh may resist its cultural inscription, because it goes against the flow of theory’s insistence on the cultural constructedness of the body” (p. 7).

Prosser shows that embodiment is essential to subjectivity, and that this is exactly what is shown by transsexuality. However, important to realize is that embodiment and how it affects subjectivity has as much to do with the flesh (the actual body) as with the feeling about the flesh (how one feels about this body). Initially, the transsexual person does not feel that s/he inhabits her/his own flesh (or feels ontologically uncomfortable with it) and strives for the feeling of inhabiting their own flesh. Transsexual narratives, and the central focus on transition within these narratives, “contribute significantly to discussions of what constitutes the “matter” of the body in cultural theory, suggesting ways in which this matter may not be commensurable with the cultural construction of identity” (p. 7). So, in fact, using transsexual narratives in theorizing could eliminate or narrow the above mentioned blind spot. The body would then come to the foreground and thus no longer be the blind spot in theorizing about the body.

The artist Orlan17 states that “skin is a mask of strangeness” and that by reconfiguring her face, she was “actually taking off a mask” (quoted in Prosser, p.61). This is interesting and I believe this to be true. However, it leads Prosser to ask “if skin is a mask, where is the self in relation to the body’s surface? Deeper than the skin (underneath the mask)?” (p. 62). Although I believe skin is a mask, I believe that the self defines itself in relation to that mask.

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17 Orlan is a French artist who is mostly known for her work with plastic surgery. Generally considered a beautiful woman, Orlan used herself as a canvas for her art. Plastic surgery was publicly performed on her, however, not with the aim to make herself look beautiful but to transform herself into elements of different famous sculptures and paintings of women.
The self is thus deeper than the skin, but exists only in relation to it. Orlan symbolizes “the poststructuralist insistence on the absolute constructedness of the body” (p. 62). This is a clear example of the deliteralizing tradition in social constructionism. Interestingly, she refers to herself as “une transsexuelle femme-a-femme.” Prosser concludes from this that “her identification with a substantial transsexual transition implied that something of herself was indeed invested in the surgery”, that the transformations were not simply skin deep (p. 62). This might seem obvious, but nevertheless, Prosser continues to state that “on the other hand, the readiness of her embrace of transsexuality and the ease with which transsexuality translated into a context that made of surgery a spectacle brought to the surface a commonplace assumption about transsexuality: that is, that transsexuality is precisely a phenomenon of the body’s surface” (p. 62).

According to the life sciences, a transsexual can only change sex partly (hormonal and genital), since sex is considered to be found in the gonads, chromosomes and the brain as well. “‘Gender’ has made it routine to ask how much of sex is socialization, cultural construction, and personal history. How can surgical intervention into biological material alter the accretion of this sociocultural matter, the experiences that make up our lives as men and women?” (p. 63). Prosser argues that surgical intervention does not alter this, though it will aid for future accretion to be different. “Ann Fausto-Sterling argues that even medical narratives of sex reveal the dimorphic sex modal as arbitrary. The transsexual would be seen to assume a binary difference that doesn’t even exist in biology” (p. 63). As I showed with my discussion above, this is only argued in (the literalizing) feminist discourse, not at all in medical discourse (like DSM). Secondly, Londa Schiebinger18 (1989) shows that the claim is not that the biological two sex system is entirely made up, but rather that presumptions about the difference between men and women influence the way we see and explain biology. Thus the difference in reality is far more blurry, and does not exist in the way as is argued. That is not to say it does not exist persé. Catherine Millot argues that “that the referent is symbolic, that sexual difference is a matter of signification only” (Millot in Prosser, 1998, p. 64). Again this is very much a feminist discourse, and not at all anything that supports a DSM document. Nevertheless, both the social constructionist feminist discourse and both the essentialist DSM document harm transsexual persons and as I will continue to argue, both are false.

Prosser relies heavily on Didier Anzieu, who suggests the body’s surface is that which matters most about the self. His concept of the “skin ego” takes the body’s physical skin as the primary organ underlying the formation of the ego, its handling, its touching, its holding – our experience of its feel-individualizing our psychic functioning, quite crucially making us who we are. Bordering inside and outside the body (…) skin is the key interface between self and other [the being of two leaves], between the biological, the psychic, and the social (p. 65).

Interesting would be to think about how far do e.g. eyes do the same and how Prosser would explain the difference with skin and eyes. Psychic structures are not a result of, but stem from the body.

Prosser wants to read the sexed body into Anzieu’s reading and find stories of sex change, transsexual narratives, the perfect material for this. Transsexual narratives are useful because they include stories of hormone therapy, which alters tissue structures of the muscles, the fat, the breasts, the genitalia, redistributes hair, changes skin texture, as well as surgery which removes sex organs and reshapes other bodily tissues like nerves, skin and flesh. The bodily materiality is anything but ignored or re-metaphysicalized in these narratives. Prosser states that the “formula for transsexual ontology” has become: “the subject trapped in –and trying to escape- the wrong (sexed) body” (p. 67). The ‘sexed’ in brackets here is important. Maybe one could even say that the right body is sexed wrong. Prosser shows that in many autobiographical accounts people mention they want to unzip from their skin so that the true them can walk out, like unzipping a divers suit. The wrong body motive is still the measurement of true transsexuality. Nevertheless, Prosser states this is not only due to discursive power, but also because being in the wrong body is exactly what is felt by a transsexual person, a feeling still remaining present even after sex reassignment surgery (p. 69). Prosser thus shows that the wrong body motive does not only exist as a result of expectations by the so-called gate keepers as Sandy Stone seems to argue, but that it is actually a useful motive as it in many cases correctly describes how a person feels. Sex Body Dysphoria could then be more accurate term than Gender Identity Disorder. Prosser also argues that sometimes psychological feelings can be visible on the body, it has real physical effects. In addition, this is not unrelated to the fact that many transsexuals get “mistaken” (or rather, rightly recognized) as their preferred gender before transitioning. Prosser states that

19 The being of two leaves is a concept developed by Lisa Folkmanson Käll in the Chapter ‘A being of two leaves: on the founding significance of the lived body’ in the book Body Claims (2009).
“sited on the borders between psyche and body, skin appears as an organ enabling and illustrating the psychic/corporeal interchange of subjectivity” (p. 72). This is an important argument. Especially in the case of transsexuality the skin specifically is very important, although this is also true for many other organs. The skin ego theory however explains that the skin is especially important, because unlike sight and hearing, one cannot live without it. It is a psychic-somatic interface, the “contact between material body and body image, between visible and felt matter” (p. 72). The matter that touches and is touched.

2.9 A skin of one’s own and the importance of surgery

Prosser asks the question “how does one function without feeling surrounded by a proper body?” in order to make us imagine what it feels like to be transsexual (p. 73). But how does Prosser theoretically account for the difference between transsexuals and other people who hate or feel uncomfortable in their bodies? He uses the phantom argument. “If the skin is the organ enabling the sense of touch, how does one touch, how is one touched, in a skin not one’s own?”(p. 76). The already (wrongly) sexed body parts, make the body untouchable and therefore we can state that sex is not gender all along. Prosser attempts to explain transsexuality, what it is and why it is possible to exist:

While, like Anzieu, [Oliver] Sacks never writes of sexual anatomy, the transsexual might be grasped via his terms as a subject who has “lost” sex prorioception: s/he can’t feel her or his sex; it is the felt/unfelt “blind spot”. Yet proprioception is body image residing in the sentient rather than the visual.” (…) The passage from The Ego and the Id, in which Freud suggests a nonidentity between seen and felt body and sustains the importance of feeling, needs to be understood, therefore, as seminal. Like Anzieu’s and Sacks’s prioritization of touch over sight, Freud’s distinction between what can be seen of the body and what it can feel, and his alignment of the sensory with internal perception, explicates the strange materiality of transsexual wrong embodiment. Together they suggest why the transsexual’s gender identity, originally invisible but deeply felt, can wield such a material force: why “feeling like” in the face of such opposition from the visible body can be experienced as a core self. Not only do they allow the substantiation of the figure of the wrong body into a transsexual ontology in which body image, while still a psychic projection, is nevertheless deeply felt, Anzieu and Sacks elucidate the cruciality of the feeling of bodily integrity to successful and happy functioning in general (both my emphasis, pp. 78 and 79).
First of all, bodily integrity is a human right and I will come back to this later. The passage is important because it is a theory explaining the very *existence* of transsexuality. The wrong embodiment is not visual, but lies in the sentient. It is not related to the seen and social *superego*, but it is a matter of the felt *Id*. Felt, deep inside, ‘natural’ and real. It is not a phenomenon of cultural construction/appropriation. With the passage “in which body image, while still a psychic projection, is nevertheless deeply felt” it seems Prosser is trying to say that even though body image is a psychic projection, it is not imagined, but real. Anzieu quoted in Prosser (p. 80): “Belief is a vital human need. … one is not a person if one does not believe in the identity and continuity of the self”. This is exactly the phantom argument Prosser uses. Firstly, it serves as an explanation to what makes transsexuality different from other cases in which people are not happy in their own skin and the importance of surgery for transsexual people. Secondly, it explains the importance of surgery for transsexual persons:

Both neurologist and psychoanalyst perceive their patients’ discomfort or suffering to be intimately bound up with some form of corporeally effective loss; recovery consists in an equipollent corporeal reappropriation. It is this notion of corporeal reappropriation that inhabits the logic of sex reassignment surgery: attaining that feeling of a coherent and integral body of one’s own (p. 60).

Prosser states that “the realization of identity hoped for and/or brought about as a result of the manipulation of the material surface of the body can be substantial, skin is anything but skin deep” (p. 82). In this case this is very true. However, it is important not to forget that ironically this is ‘the’ essentializing sentence which justified the suppression of women in nineteenth century Europe. “If the dominant body image pretransition is that of being rapped within an extraneous “other” skin, sex reassignment surgery is figured as bringing release from this skin” (p.82). One of the persons cited in the book talked of *wearing* breasts. This really illustrates how alien breasts can feel to a person. People describe “surgery as a return: coming home to the self through body” (p. 82-83). I briefly touched upon this in the last chapter, but the ‘coming home’ metaphor should not be accepted without some consideration though. Raewyn Connell\(^\text{20}\) (2005) expresses some difficulties with the coming home metaphor. In how far is the coming home really experienced in reality? This also turns us back to Sandy Stone who has showed similar concerns with this discourse. She believes the ‘coming home’ metaphor makes it sound as if a person wakes up completely relaxed and

\(^{20}\) R. Connell is one of the founders, if not the founder, of Men and Masculinities Studies. She has done a lot of research on the social construction of masculinities. The concept of hegemonic masculinities is considered particularly useful.
finally her or himself after surgery. In reality, she says, a person undergoing such a process is completely exhausted and confused and when waking up after surgery you are not suddenly freed from all these emotions. Prosser defends himself by stating that the metaphor is useful because ‘coming home’ is in fact really what many people feel after surgery. It is therefore not only a popular metaphor because the gatekeepers expect to hear it from transsexual patients (as Sandy Stone argues) but also because many people actually feel this way. In my opinion in this discussion one does not disprove the other, it just shows that transgender and transsexual identification is diverse and not a uniform experience.

The metaphor aside, the fact remains that for most people (and these are the people im concerned with in this thesis) surgery is very important and crucial to their identity. When Prosser relies on the phantom argument, he explains that “memory is crucial to how we experience our bodies” (1998, p. 84). Referring to Sack, Prosser explains that “the phantom limb […] may be understood as a sensory memory of the lost body part, a feeling of presence that remains in its very absence” (p. 84). Although meant well, in my opinion Prosser discredits his own argumentation when stating that “the body of the transsexual becoming born out of a yearning for a perfect past – that is, not memory but nostalgia: the desire for the purified version of what was, not for the return to home per se (nostos), but to the romanticized ideal of home” (p. 84). He explains things better when he states that a person can feel that their surgically constructed vagina or penis feels as their penis only if these parts were already phantomized: “There must already be in a felt imaginary, for the transsexual to appropriate the rearranged somatic material as his or her new sex, a prior phantomization of sex, which is not to undermine but to underlie the felt presence of transsex precisely in the very space of its physical absence” (p. 85). Prosser says that surgery therefore does two important things for restoring the felt self-identity simultaneously. Firstly, surgery takes away “everything that didn’t belong” and secondly, it restores the phantomized body parts. Prosser sees the surgeries as reconstructive, not as cosmetic. The phantom argument allows for that and that is one of its important political advantages.

Surgery is not only important to someone who identifies as transsexual and really wants to be of ‘the other sex’, but also for people who identify as transgender in that they don’t feel to be strictly ‘man’ or ‘woman’ at all. Prosser confirms this when he argues that “surgery addressed body image precisely through the manipulation of these tissues; the transsexual’s sex is changed as the subject feels this surface to be significantly altered (p. 86).” So it is up to the person to decide when he or she is happy and when he or she wants
more surgery, not up to a medical or legal authority. This shows again that Prosser’s concept of transsexuality is not that far away from our current understanding of transgender.

The phantom argument is not a universal truth and it might be more subscribed to by some than by others. Nevertheless, in my opinion Prosser’s argument is an interesting philosophical attempt which tries to explain why surgery is so important. On the other hand, just like proving that homosexuality is genetic or neurological might serve some political advantages (e.g. that it is scientifically possible therefore not a choice. It might gain some more tolerance as a result), it might serve political disadvantages at the same time (a genetic or neurological ‘abnormalcy’ or ‘disorder’ could seen as something we can ‘fix’). In the end, one could ask ‘is the phantom argument really necessary’? How important is that this is felt by some people and not by others? Should not the right to self-definition and self-determination be enough? I know these issues remain ethically grey areas, and that it is therefore impossible to come up with a perfect system, but nevertheless, if a person is convinced s/he needs surgery then why not allow this person to decide about their own bodies?

Some important problems remain in Prosser’s theorizing about surgerical importance. He quotes Ann Bolin’s statement that “surgery… is their access to normalcy” (p. 88). However, this of course is dependent on the context. It is dependent on how the person identifies, how important they feel surgery is and more specifically what surgerical procedures are important to them. Moreover, it is also dependent on the social surroundings of the person in question. Nevertheless, surgery remains important in general. Although Stone politically advocates against passing, this is not an option for everybody. After all, “sex reassignment surgery in theory allows the transsexual to pass as nontranssexual, to appear as a “real” man or a “real” woman” (p. 89). Also for other transgender persons surgery can make them more the self they are. Prosser goes even further by stating that “in postsurgical scenes the transsexual virtually installs his or her transsexed subjectivity in the new tender parts, precisely as if s/he becomes these parts” (p. 89). Following his line of argument, it is quite clear that this was not Prosser’s intention, but this statement is reductionist. Is it not rather the case that the person becomes a new person (more themselves) aided by these parts rather than becoming them? Prosser explains that surgery, the cycle of suffering and recovery, gives sex reassignment surgery almost a ritualized structure, so that this makes it a specific transsexual

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21 Ann Bolin is an anthropologist who has done research concerning male to females, which is published in In Search of Eve: Transsexual Rites of Passage (1988).
experience, a transsexual rite of passage, to become fully a transsexual (p. 89). This is again problematic in itself as you should again not make this part of the definition of transsexuality. Nevertheless, it is true that the experience is important for many individuals especially as they interact with one another. To me it is unacceptable that Prosser’s whole chapter is concerned with skin and that there is absolutely no racial perspective (only when he talks about breast prothesis in the last page). It could and should be far more intersectional. How can one talk about the importance of skin for self-image and not mention skin color? In contrast, Valentine successfully manages to include all sections in his analysis and so I will move on to his anthropology of a category.

2.10 Valentine: the Janus face of a category.

Valentine argues that transgender as a concept and a category has been developed by social activists and academics since the early 1990s. Transgender and homosexuality was before often understood as one and the same; namely a sexual inversion. Now they became to be seen as fundamentally different. This became possible due to the development of understanding the categories of gender and sexuality as two distinct categories. The distinction is party passed on the “assumption that “sexuality” is experienced as separate from “gender”” (2007, p. 155). Valentine argues that this need not always necessarily be the case. When these categories are seen as completely separate, homosexuality is transgender’s inherent other. The distinction helped the homo-emancipation as homosexuality was no longer associated with gender inversion. As a result homosexuality became a private matter and gender ‘ambivalence’ became a public matter. (Although by making homosexuality a private matter, gay and lesbians could simultaneously make public claims to marriage, housing etc). Homosexuality happened in the ‘privacy of someone’s own home’ between two gender normative people. Homo-emancipation thus advocated what is called homo-normativity, i.e. a lifestyle more or less identical to the hetero-normative lifestyle. In 1973 homosexuality disappeared from DSM, and in 1980 a new category was born: Gender Identity Disorder. And so the Lesbian and Gay (LG) community starting making process and the Transgender (T) community had to start working hard also to emancipate themselves within the LG community. (The Bisexual (B) community is another story. The B booked huge progress with the L and the G, but also had to fight alongside the T for internal emancipation).
Transgender is politically a very empowering category, as with this one category it is possible to mobilize a large group and diverse group of people with common issues and demand rights. The term is useful since, as the Hammarberg Report (see chapter 3.9) states, transgender people face serious discrimination and “the human rights situation of transgender persons has long been ignored and neglected, although the problems they face are serious and often specific to this group alone” (2009, p.5). Nevertheless, according to Valentine it remains elitist and based on the understanding of two distinct categories of gender and sexuality. His ethnographic fieldwork among the different groups of New York City which are by social activists and academics understood as transgender, shows that many people do not have the understanding that these two categories are distinct. For different reasons, many people considered transgender by others, are either unaware of the term or consciously decide not to use it. An example Valentine uses is a black male-bodied prostitute called Fiona who identifies as female and calls herself gay even though she likes men. For social activists and academics this identification is often considered ‘wrong’ and a result of ‘lack of education’. They are of the opinion that calling yourself gay is just ignorant, when you identify as a woman and are attracted to men, is just ignorant. It is like saying that one plus one equals three. This person obviously does not know who they are. If only we could educate them to explain them who they are (i.e. transgender but straight in this case). Valentine states that “for all the power of transgender as a category of identity and social justice activism, my fear is that people like Fiona – poor, black, and disenfranchised – may be left out of an imaged future of justice and freedom frequently understood as enabled by this category” (2007, p. 6). In other words, transgender’s “employment in institutionalized contexts cannot account for the experiences of the most socially vulnerable gender-variant people” (p. 14). In reality, one can conclude, sexuality and gender are neither the same nor completely separate from one another. Human beings come in all shapes and sizes and in all varieties and therefore only no classification would capture the reality. So in fact, with my usage of the term transgender to include all people who have to deal with DSM’s understanding of Gender Identity Disorder and who are not protected by law (see Part II) on the basis of their gender identity, I also include people who have absolutely nothing to say for this term. In other words, I include people who feel excluded by the term. Indeed the feeling of exclusion is closely related to the sections of race and class. Nevertheless, I have chosen to use the term in lack of a better one and because it is a politically useful term, as I have argued earlier.
Admittedly, Valentine’s analysis is not without shortcomings either. In his analysis of the categories of gender and sexuality, Valentine never explains why he uses the word ‘sexuality’ instead of ‘sexual orientation’. Maybe he believes the word sexuality to be more accurate, since it shows less rigid the distinction from gender? I am of the opinion that it is very important for him to make a case here, as sexual orientation seems to do more justice when one believes the categories to be distinct. I agree with Valentine that our current understanding of the categories gender and sexuality is exclusive and that such a distinction cannot always be easily made. On the other hand, I think Valentine could have given a bit more credit to this distinction, as it is real and felt as real by many people, including myself. I agree that the borders are indeed blurry, but it the distinction is also empowering for many people (and not only for the emancipation of homosexuals as explained above). Another shortcoming in his analysis is that although on different occasions Valentine mentions an inexhaustive list of all the intensely complex and diverse gender identifications there are, he never talks about gay transsexuals. With gay transsexuals I mean persons who identify as female to male and who are attracted to men (whether cis or transgender) or a male to female who is attracted to women. Gay transsexuals would be especially interesting for Valentine’s analysis as he states that transgender “is in fact a central cultural site where meanings about gender and sexuality are being worked out” (p. 14). I want to state that gay transsexuals can be used both as evidence that the categories of gender and sexuality are two distinct categories as well as that they are overlapping and intertwined. I do not believe it matters, but for Valentine’s analysis of the categories of gender and sexuality I believe it is relevant to talk about. Another reason why gay transsexuals are relevant, is because they are often believed not to exist or hardly to exist. It is not a coincidence that except for Janice Raymond, none of the literature I have used or come across mentions gay transsexuals. Therefore I believe it is important to make a case for the existence of gay transsexuals. They exist, and in my experience it not an uncommon identity, and there is a need for visibility and recognition of these persons in literature that deals with transgender issues.

What has become clear is that language is important. Language is important, but also powerful. Often people do not feel represented by the categories there are. The reason someone is ‘in between’ categories is because of the way we designed these categories on the borders. With another discourse the same person could have been part of a stable category. It is therefore of utmost importance that we stay critical of the categories we use, and of the concepts that underpin these categories.
To conclude Part I of my thesis, I would like to once more consider transitioning and surgery. Prosser has thus made us aware of the meaning of transitioning and the importance of surgery for many transsexual (and transgender) persons. Talking both of literalizing and deliteralizing poststructuralist accounts of transsexuality, Prosser states, and I agree, that “the recurrent problem with theoretical visions of sex reassignment surgery is their blithe elision of this perspective and of the experience of sex reassignment” (p. 92). So, in conclusion

…surely what has facilitated the elision of the experience of embodiment (of how bodies actually feel) in contemporary theories of transsexual and other bodies is such a splitting between our experience of our bodies and our theory, a failure to relate our bodily surfaces to our conceptual surfaces. Adrienne Rich’s urging that we turn from an abstracted theory of the body to a situated personal account of our own bodies might still prove useful in moving theory away from the generalized notion of “bodyhood” that characterized bodily discourses to attend to subjective bodily experience (pp. 92-92).

Both Prosser and Valentine have argued that there is a gap between theory and lived experience. Theories have often re-metaphysicalized the body (Prosser) or excluded people as their lived experience was not recognized by the categories used to describe these people (Valentine). Therefore, the aim should be to bring the body and lived experience back to the center of theorizing. After all, my conviction is that by making sure that bodies reclaim a central position in theories about embodiment, i.e. by giving transgender narratives a central position in theories about transgender, discourse can become less violent.
3. PART II: TRANSGENDER & DSM: DISCURSIVE VIOLENCE AND THE VIOLATION OF HUMAN RIGHTS

3.1 Introduction to Part II

Prosser’s aim is to include transitions in the “paradigms for writing bodily subjects” and “to allow transsexuality through its narratives to bring into view the materiality of the body” (1998, p. 12). After realizing the importance of the transgender narrative with the central position of transitioning, it is time to move on to the real-life situation of transitioning: DSM. Although the second part of my thesis is by definition less theoretical/philosophical than when theorizing about embodiment, I will still aim at bringing the real lived situation to the foreground. I have now considered the importance of surgery and it is therefore useful to go on to what gives access to surgery: a diagnosis. This diagnosis is usually dependent for a large part on the DSM in the western world. DSM therefore deserves my fullest attention. In the following part I will argue that DSM’s understanding of Gender Identity Disorder is a both a violation based on its inherent gender inequality and discursive violence and a direct and indirect violation of Human Rights.

3.2 Historical context to DSM: Benjamin, essentialism and influence on DSM

The essentialist side of the debate is based upon the idea that there are essential differences between men and women (Laqueur, T., 1992; Connell, 2005). The difference is often considered to be more than skin deep, as Sigmund Freud once said. In the western world this view has often been accompanied by (semi-)scientific and academic theories. Similarly, essentialism has seen essential differences between races and classes as well, making the white middle class able-bodied heterosexual western man the universal person and women, people of color and lower class people not only essentially different, but also inferior. Paradoxically, as Prosser states, “the discourse of inversion in turn-of-the-century sexology, its medicalization of transgender in the body, provided the significant threshold under which the transsexual as sex-changeable and indeed sex-changed subject could make his/her first appearance” (1998, p. 10). Interestingly, Jean-Jacques Rousseau already developed his theory of complimentarity in the eighteenth century in his book Emile or on Education ([1762]1978). In this theory of complimentarity he stated that these ‘scientific evidences’ showed that men
and women were not only physically and emotionally different, they also served different goals in society (public and private), complimenting each other. These scientific evidences have been largely disproved (such as the common nineteenth century conviction that women had smaller skulls proportionally to the size of their bodies and were therefore less intelligent\textsuperscript{22}). It has also become impossible to state that one gender is smarter than the other or that one race is more intelligent than the other. Nevertheless, subtly these believes continue to exist and the life sciences and social sciences keep producing (subtle) theories and ‘evidences’ about the essential differences between and inferiority of certain people\textsuperscript{23}. The DSM is a good example, as it contains misogynistic and transphobe elements as I will argue later. Another reason DSM is a good example is that the manual is considered to be based on scientific research and consequently its findings and recommendations are considered objective, real and just. However, until recently homosexuality was considered a mental disorder and simultaneously its understanding of transgender as Gender Identity Disorder (GID) shows this continuous bias. As stated earlier, the understanding of Gender Identity Disorder is based upon limited and flawed research. A lot more critical research is needed, conducted by feminists and transgender people and others with a critical stance towards accepted cultural notions and an awareness of the powerful influence of these accepted cultural notions on our interpretation of data (and the way we gather data in the first place\textsuperscript{24}).

Harry Benjamin’s \textit{The Transsexual Phenomenon} (1966) is by far the most important and influential work about transsexuality. His book dates from 1966 and therefore he deserves some credit as he was willing to break the taboo and research the ‘phenomenon’. He advocated medical interventions as the only effective remedy and believes psychological curing is useless. It having been previously considered to be perverse and taboo, he made transsexuality known to a lot of people especially in the medical field and an accepted medical topic to talk about. Case histories have shown that persons have felt the need to transition to ‘the other sex’, long before there was any discursive recognition of the phenomenon.

\textsuperscript{22} For a thorough discussion on this topic see Londa Schiebinger’s book \textit{The mind has no sex? Women in the origins of modern science} (1989).


\textsuperscript{24} Marlene Zuk has analyzed how our presumptions influence the way we gather and interpret data. See \textit{Sexual Selections: What We Can and Can’t Learn about Sex from Animals} (2003).
Nevertheless, certain biases of Benjamin continue to hunt us and are even visible in DSM. First of all, the focus is largely on male to females and the conviction is that female to male transsexuals hardly exist at all. Although this is slowly starting to change, the conviction still exists today. Benjamin’s interpretation of what transsexuality is and how to handle it medically are for a large part based on sexist understandings of the category of man and woman. In fact, DSM is heavily influenced by Benjamin’s book as it remains still one of the most important medical research done on the ‘phenomenon’ in part also because certain advisory institutes to DSM are heavily influenced by Benjamin’s book. In DSM, like in Benjamin’s book, the traditional categories of man and woman themselves are never scrutinized and simply taken for granted. That being said, I want to emphasize that I am not arguing that there is a master plan or conspiracy behind DSM. Rather than being the result of a master plan, DSM’s understanding of Gender Identity Disorder is a result of structural causes.

Having shown the background context of what produced documents such as DSM, I will continue now to look at the current DSM itself.

3.3 DSM IV TR – 302.6 and 302.85 Gender Identity Disorder – an introduction

The second aim of this thesis is to problematize DSM. I will do so first by bringing its biased essentialist anti-feminist and transphobe underlying assumptions to the foreground. The second way I will problematize DSM is looking at the Human Rights it directly and indirectly violates.

Prosser’s theory of embodiment (and the included importance of surgery) leads directly to DSM as it is the standard for diagnosis and diagnosis in turn is necessary to get access to surgery and in most countries, hormone treatment. In some countries it is possible to get hormone therapy also without an official diagnosis if one can get access to private institutions. In Denmark for example hardly anyone has managed to transition via the official health care system, because no one can fulfill the strict criteria required (one even needs support from parents and family in order to transition). Many transgender people in Denmark therefore seek the help of private practitioners.

As a reminder, DSM stands for the Diagnostic and Statistical Manual for Mental Disorders and lists all ‘mental disorders’ which can prevail in both children and adults of
different ages and genders. Psychiatrists use the DSM to see which criteria a patient fulfills in order to diagnose a patient. The DSM is published by the American Psychiatric Association. Needless to say, the American Psychiatric Association is a powerful institution and is for many transgender persons (and other persons with a classified mental disorder) a key gatekeeper to their happiness and sanity. The World Health Organization publishes the International Classification of Diseases (ICD) and specifically important here is Chapter V: Mental and Behavioral Disorders (ICD-10 V). DSM and ICD’s mental disorders are coded among similar, almost identical lines. The ICD is thus from the WHO, whereas the DSM is from an American institution for psychiatrists. The DSM therefore focuses only on the mental problems relevant for psychiatry, whereas the ICD also lists other medical diseases. The ICD is often said to be used more in Europe, while in fact DSM is often the referred to document in Europe. DSM will therefore have my focus, but by criticizing in I indirectly also criticize the ICD.

The classification of a phenomenon/something as a mental disorder in DSM has a huge influence on the understanding of this very phenomenon. In addition, also the diagnostic criteria stated decide who will be diagnosed and who will not, with all its negative and positive consequences. The narrative of the DSM is internalized by the medical profession in the western world and therefore largely decides our understanding and experience of a (so-called) disorder. I will not uncritically criticize DSM as a whole, as I lack the right information and background to do so. I am here thus criticizing DSM’s Gender Identity Disorder. To illustrate the power of the diagnostic criteria, as stated above, homosexuality was for a long time considered a disease as it was classified as a disorder in DSM. Fortunately, it has been erased from the DSM as homosexuality is now understood to be one of the variances of normal human sexuality. Transgender people similarly seek the de-patholization of transgender/transsexuality. DSM is a powerful and pivotal part of our understanding of gender as binary. The de-patholization of transgender would not only aid the transgender patient, but would also confirm that ‘man’ and ‘woman’ as traditionally understood are only two variances on the spectrum of normal human gender (identity). Diagnosis is useful in the sense that it gives access to surgery, but there could be alternatives to needing a diagnosis of mental disorder in order to get access (I will discuss this further on p. 44). In addition, the definition of Gender Identity Disorder shows that ‘man’ and ‘woman’ are not only the only two distinct, but also opposite categories. Having GI disorder therefore means one wants to cross from one sex to ‘the other’. This indicates that the categories of
both man and woman are not categories of overlap and variance, but are considered two clear and rigid categories.

Currently, the 2000 DSM IV TR (Text Revised) is being used, which is an updated version of the 1994 DSM IV. The DSM contains a separate section on transvestism. It seems that with Gender Identity Disorder transsexuality that is- identification with the ‘other’ or ‘opposite’ sex is meant rather than a transgender identification where a person feels they belong to neither category of man or woman. However, in reality also transgender persons who are not transsexual, but still want some type of medical treatment, will fall under the heading Gender Identity Disorder. DSM V is currently being worked on and it is expected to be published in May 2013. According to the official website of DSM V, there are some proposed changes on gender identity disorder. Recently posted is that Gender Identity Disorder will not, despite a lot of activism from the transgender, medical and legal community, be removed, but the name will be changed to ‘gender incongruence’. (http://www.dsm5.org/ProposedRevisions/Pages/proposedrevision.aspx?rid=482# and http://www.dsm5.org/ProposedRevisions/Pages/proposedrevision.aspx?rid=192#). Some other minor changes are proposed, such that specific periods of time a person should have fulfilled the diagnostic criteria will be mentioned. We will have to wait until 2013 though to be sure whether the name will be changed, and if and how the text and diagnostic criteria will be altered. I will thus focus on DSM IV TR.

In the following analysis, when there is the derogatory use of ‘boys’ or ‘girls’ I will specify with male to female or woman and female to male or man for both clarity and respect.

In addition, I should mention that although I believe the DSM’s understanding of Gender Identity Disorder to be particularly harmful, as well as the gatekeeper function the often ignorant/uninformed doctor or psychiatrist has, that many doctors and psychiatrists have the best intentions. Often, and this is a structural problem, the ill-treatment of transgender persons by medical professionals can be the result of plain ignorance.

3.4 DSM IV TR – 302.6 and 302.85 Gender Identity Disorder

There are four criteria for being diagnosed with Gender Identity Disorder. The first is that “there must be evidence of a strong and persistent cross-gender identification”, which is explained as “the desire to be, or the insistence that one is, of the other sex” (my emphasis,
American Psychiatric Association, 2000, p. 576). The second criterion is that this identification must not merely be a desire for any perceived cultural advantages of being the other sex. There must also be evidence of persistent discomfort about one’s assigned sex or a sense of inappropriateness in the gender role of that sex (p.576).

Thus, the cultural advantages of being the other sex are “perceived”. As mentioned earlier, since the people who draft the DSM are mostly white middle class able-bodied men there is an inherent bias in the understanding of certain concept such as ‘man’, ‘woman’ or even ‘gender’. These concepts are considered obvious, clear, basic, fundamental and remain unquestioned. Is the desire for perceived cultural advantages then a common thing for non-transgender women to feel, or also (and how much so) for non-transgender men? To make sure that it is not just ‘advantage-seeking’ behavior, the criterion includes that there must be evidence of persistent discomfort about one’s assigned sex or a sense of inappropriateness in the gender role of that sex (my emphasis, p. 576). Although the former is both crucial and obvious, the latter is rather unclear when not further specified. I, as a woman, feel there is a sense of inappropriateness in the gender role of my sex. Living in western urban spaces, enjoying high education and the approval of my family to make my own choices I am fairly comfortable nevertheless. However, if I were born into different circumstances I might feel extreme discomfort and feel a strong sense of inappropriateness in the gender role of my sex, but that would still not mean I am transgender. The problem here, and this is a problem persistent in the discussion on transgender and transsexuality, is that the current sex/gender system is not only oppressive to transgender people, but also to women (and men) in general. In case of the transgender patient, both forces of sexism and transphobia are simultaneously at work, as well as classism and racism in the case of many. The third criterion is that the diagnosis is not made if the individual has a concurrent physical intersex condition. This is to separate a mental/psychological (transgender) issue from a physical (intersex) one.

Nevertheless, the third Transgender Europe (TGEU) Council which took place in Malmö in autumn 2010 showed that the distinction is not that easily made and that the matter is more complex than that. In fact, there are quite a few people who identify both as intersex and transgender. Their intersex ‘condition’ is something which is clear at birth and doctors with the help of the parents decide for one sex and perform surgery to make the genitals look as much like the decided sex as possible. Consequently, the advice to the parents is to raise their children as much as possible with the traditions associated with the chosen sex. Later on in
life, often it turns out the wrong decision had been made at birth and so the person goes from being raised as a girl to the realization they are a man (or vice versa) and the transition starts. This is not uncommon and so many people have a double identification of intersex and transgender. The final criterion is that “there must be evidence of clinically significant distress or impairment in social, occupational, or other important areas of functioning” (p. 576). Note that the focus is on ‘distress or impairment’. Although in virtually every case this will not be a problem of proving, it is quite an oddity that this is considered a necessary criterion.

After these criteria have been established, the DSM goes on to state what this would mean in practice in the case of both children (‘boys’ and ‘girls’) and adults (‘men’ and ‘women’). “The assigned diagnostic code depends on the individual’s current age: if the disorder occurs in childhood, the code 302.6 is used; for an adolescent or adult, 02.85 is used” (p. 578). These codes simply refer to the number in the classification system of the manual. Elsewhere is explained that in some cases an adolescent may be diagnosed along the lines of the children’s diagnostic procedure. I would like to stress that the use of the words boys and girls and men and women dismisses or ridicules the experience of the transgender person. Girls with penises are persistently referred to as boys and men born with vaginas are routinely referred to as women.

The DSM bases its criteria on stereotypical and often unrealistic assumptions about what it means to be a boy or a girl:

In boys, the cross-gender identification is manifested by a marked preoccupation with traditionally feminine activities. (...) They particularly enjoy playing house, drawing pictures of beautiful girls and princesses, and watching television or videos of their favorite female characters (...) and have little interest in cars and trucks (p. 576).

Again this reduces gender to stereotypical behaviors and interests. It follows the essentialist side of the debate mentioned earlier. Although these assumptions are harmful even for cisgender men in society, they are especially sexist and misogynistic. One cannot help but recognizing Victorian ideas of what men and women are in these descriptions (see Burton, 1990; Cott, 1997; Davidoff & Hall, 1987; Gibson, 1997; Hall, 1995; hooks, 1981; Laqueur, 1992; Richardson, 2002; Schiebinger, 1989). In practice this has a multitude of consequences. An important one is the effect it has on the interpretation of what gender a child has. To illustrate, in an American documentary on transgender children, a little girl was presented, who, although obviously a girl with the bodily characteristics of a boy, got into
trouble when talking to medical professionals as she preferred playing with dinosaurs rather than with barbies. Dinosaurs were considered a boys toy and so her transgender status was questioned on the basis of her preference to play with dinosaurs.

A summary of the diagnostic criteria for children is given later under the first criterion of having a strong cross-gender identification (p. 581). The ‘disturbance’ can be seen in at least four of the five following criteria:

1. desire to be, or insistence to be of the other sex;
2. cross-dressing;
3. playing and fantasizing to be the other sex;
4. participate in the stereotypical games and pastimes of the other sex;
5. strong preference for playmates of the other sex.

The “persistent discomfort or sense of inappropriateness in the gender role” (p.576) can be seen by the games they play as well as other things such as in girls the “rejection of urinating in a sitting position, assertion that she has or will grow a penis or assertion that she does not want to grow breasts or menstruate [something most little girls do not want] or marked aversion toward normative feminine clothing” (p. 581). The normativity here is nowhere questioned. What becomes clear from these descriptions of what real man and woman are and what transgender people consequently do, is related to the penis as the main signifier. More accurately, the genitalia remain the main signifiers, where the penis is seen as the penis and the vagina is seen as a ‘lack’ or ‘absence’ of. Being born with a penis means that one is a man, that one is strong, that one is uncompromising. Being born without a penis means you are a woman. You are a woman and you like to engage in feminine activities. These activities range from playing with dolls and dreaming about princesses to putting on make-up. In a way, the problem of transgender is considered that one does not understand (‘mental disorder’) the appropriate behavior associated with your genitals. Shaving your legs, putting on make-up, and/or wanting to be a woman is considered inappropriate behavior for a person with a penis. Secondly, when transgender is concerned there is an additional focus on urination. Although the reference to urination here is a short one, it is not uncommon for psychiatrists to be especially concerned with their patient’s feelings about urinating (see Hammarberg, 2009). What is clear is that DSM in a way reduces ‘man’ and ‘woman’ to their
genitalia and associated stereotypical behavior. Obviously, DSM follows the essentialist tradition in its understanding of man and woman. There is another way in which the normativity itself is not questioned. Most women feel there is a certain sense of inappropriateness in their gender role and most little girls do not like to menstruate or grow breasts makes. This illustrates that it is also hard to come up with sensible criteria for diagnosing transgender. The big question of course is, if it is at all necessary to define transgender as a mental disorder with criteria in need of a diagnosis. The most often used argument in favor is that it is necessary to distinguish the ‘real’ transsexuals from the ‘fakes’ or ‘confused’. What if you allow someone to get surgery and it would all turn out to be a mistake? I think the sensibility of these questions should be up for further public and scientific discussion. How often do people make a mistake? How often do they ‘want to go back’? Is this statistically something to worry about? And if it is, was this process for this person not necessary to find out that their identification is closer to being neither a woman nor a man (at least as it is traditionally understood)? Another argument in favor of diagnosis is that it actually gives access to surgery. Even though most transgender people agree DSM is problematic or even horrible, it is still what grants access to surgery. Especially for transsexual persons this makes DSM crucial. But rather than making it very difficult or even impossible for people to get access to surgery and hormone treatment, and rather than denying people the right to self-definition because of these worries, we should make both transsexuality and different forms transgender identification well-known phenomena in society.\textsuperscript{25} It is important to make children and young adults aware of the possibility of transgender identification and it is important to work on general acceptance in society so that self-definition about one’s identity and its need for hormone or surgery can become the main criteria. Of course these are big discussions which will have to be held in society. One thing is clear, DSM is full of unacceptable notions. The following section will again confirm this.

Slightly less stereotypical is the description of the adult with Gender Identity Disorder. Adults with Gender Identity Disorder have “the desire to adopt the social role of the other sex or to acquire the physical appearance of the other sex through hormonal or surgical manipulation” (p. 577). Social role is not further elaborated upon. The usage of ‘the other sex’ shows that the binary system is taken for granted and that there is no space allowed for variations to the male/female variant in the health spectrum. Variations exist, but they are

\textsuperscript{25} Ideally it would be great to reconsider the old categories of man and woman in the most fundamental way.
mental disorders. Again, this is similar to DSM’s past inclusion of homosexuality, because within the health spectrum no alternative to heterosexual love and attraction was accepted.

With cross-dressing and hormonal treatment (and for males, electrolysis), many individuals with this disorder may pass convincingly as the other sex. The sexual activity of these individuals with same-sex partners is generally constrained by the preference that their partners neither see nor touch their genitals (p. 577).

This is based on the conviction that there is only one type of transsexual.26

The summary (p. 581) shows that the first criterion in adolescents or adults manifests itself in the desire to be, and the frequent passing as, the other sex or “the conviction that he or she has the typical feelings and reactions of the other sex” (p. 581, my emphasis). The second criterion is shown with the preoccupation of getting rid of sex characteristics by requesting hormones, surgery etcetera or “the belief that he or she was born the wrong sex” (p. 581, my emphasis). As I discussed earlier on, it is important to recognize our limited knowledge of the human body and that there might be (or probably is) a biologically sound explanation for the occurrence of transsexuality. The fact that they use words as ‘conviction’ and ‘believe’ explains why the phenomenon is considered a mental disorder and not a physical/medical one.

“In adolescents, the clinical features may resemble either those of children or those of adults, depending on the individual’s developmental level, and the criteria should be applied accordingly” (p. 577). Teenagers can thus engage “in behaviors that suggest significant cross-gender identification (e.g., shaving legs in males). Clarifying the diagnosis in children and adolescents may require monitoring over an extended period of time” (p. 577). The former example again is both stereotypical and culturally specific. For example, in certain areas in California there is as much pressure on young men as on young women to be shaven, and among certain social surroundings in Spain you will be considered shallow if you do, no matter what your sex. The latter guideline in practice also applies to adults. This is a very tricky point. One cannot deny that also medical professionals are only people and they would not want to make the mistake of given people treatment when later shows this was not the right decision. In addition, to the uninformed person (which the average person is on this issue), the risk of wrongly diagnosing someone with Gender Identity Disorder is a very big one. Fear, ignorance and plain transphobia lead to the fact that in many countries the ‘monitoring phase’ is taken very seriously. In Slovenia for instance, this means you have to

26 Prosser actually makes also makes comments about this uncomfortability with the genitals in Chapter 2 of his book (1998).
go through a ‘real-life test’ of two years in which you should continuously live as ‘the other sex’, while in fact you are not being monitored. Also in Sweden the real-life test is a criterion. Often, the patient already lived as ‘the other sex’ prior to contacting the medical professor. In addition, tests like these, even when shorter than two years, can do more harm than good. The anxious waiting can increase rather than decrease the psychological problems of a person already in a fragile position. The section ends with “in adolescents and adults, preoccupation with cross-gender wishes often interferes with ordinary activities. Relationship difficulties are common, and functioning at school or at work may be impaired” (p. 577). This, in my opinion, is not necessarily a clear aspect of Gender Identity Disorder itself, but rather the result of the difficulties which come from living in our society with a transgender identification.

Four specifiers are mentioned, although the word specifier is not defined. These are: ‘Sexually Attracted to Males, Sexually Attracted to Females Sexually Attracted to Both, and Sexually Attracted to Neither’ (p. 578, emphasis in original). Although homosexuality was long removed from DSM, and although homosexuality is now considered one of the natural variances of human sexuality, this is not the case for transgender persons. When it comes to gender identity, or Gender Identity Disorder, sexual orientation is of importance.

Males with Gender Identity Disorder [that is transwomen] include substantial proportions with all four specifiers. (…). Those men attracted to neither gender are often isolated individuals with schizoid traits. Virtually all females with Gender Identity Disorder [that is transmen] will receive the same specifier – Sexually Attracted to Females – although there are exceptional cases involving females who are Sexually Attracted to Males (p. 578).

The latter means a gay couple, not an uncommon identity. How sexual orientation is further of relevance is not explained. I find the usage of the words ‘schizoid traits’ abominable. Neither is there an elaboration what these schizoid traits are or any data related to this. If schizoid traits really do occur often in these individuals then is this a result of their Gender Identity Disorder or a result of other variables? The latter seems more likely to me. In addition, the schizoid traits are not only accounted to the gender identification of the person, but also to the sexuality of that person.

Under the heading Associated Features and Disorders some more interesting things are mentioned. One is that many male to females (my use) “resort to self-treatment with hormones and may very rarely perform their own castration or penectomy” (p. 578). What
does ‘very rarely’ mean? That this happened once ever? For this and other statistics I looked up the DSM sourcebook, but unfortunately their online publications show nothing related to Gender Identity Disorder. “Some males (male to females) may engage in prostitution, which places them at high risk for human immunodeficiency virus (HIV) infection. Suicide attempts and Substance-Related Disorders are commonly associated” (p. 578). Although this seems indeed to be the case, DSM makes no statement related to the protection of these people or the reason why people with Gender Identity Disorder are more likely to engage in prostitution or have suicide attempts. There should be recognition here for the difficulties of living with a transgender identification in our society. That there are quite some transgender people who engage in prostitution shows the violent structures which work against their gender identity, race and class. It cannot be accounted to some general promiscuity in transgender people. DSM does not claim the latter here, but neither does it claim the former.

The DSM continues with stating that “disorders are more common among males than among females” (p. 578). My opinion is that less visibility, a common narrative and a certain interpretation do not mean a lower prevalence. Adult males (male to females), except for those who are sexually attracted to men, “usually report a history of erotic arousal associated with the thought or image of oneself as a woman (termed autogynephelia)” (p. 578). Note again the stating of “except for those who are sexually attracted to men”. This confirms that despite Valentine’s findings (see chapter 2.10), the categories of gender and sexuality are not considered totally separate. Clearly, according to DSM your sexual orientation has an effect on or says something about your gender (identity). This, however, is not further explained. Now a comparison to transvestism follows:

In most cases, the individual would qualify, at least in his past, for a diagnosis of Transvestic Fetishism. In others, however, the individual’s favorite fantasy emphasizes feminine attributes other than clothing. Some men, for example masturbate while picturing themselves as nude women, focusing on their imagined breasts and vulvas, others masturbate while picturing themselves engaged in some stereotypically feminine activity such as knitting (pp. 578-579).

There is so much to say about this excerpt. First, I strongly doubt that transvestism is always about eroticism. I do not appreciate eroticism being seen as necessarily inherent to transvestism. Secondly, men dressing up in women’s clothes (though DSM V proposes to no longer see transvestic fetishism as something only men can have/do) is considered a mental disorder. The meaning of this disorder is defined by dressing. Why would there be a classified disorder just because of the way you want to dress up? It seems weird that the way someone
likes to dress can qualify them for a mental disorder. I believe that even outside the academic episteme of social constructionism, it is quite clear that dressing and values about dressing are socially constructed. It would therefore be more than logical and ‘natural’ for people to defer from the ‘normal’ or common (accepted) way of dressing. Thirdly, how is what someone masturbates to relevant? My opinion is that not only is it irrelevant, it is very offensive and humiliating to ask a person to reveal what they think about when they masturbate. Masturbation fantasies are fantasies, often far away from what one would want in reality. In practice, this often leads psychiatrists to ask their transgender patients about their masturbation habits. Due to this criterion, in many cases a transgender person who is ‘comfortable’ enough with their genitalia to masturbate is considered not a true transsexual (for example in Denmark). Lastly, the use of the example of knitting here is both ignorant and misogynistic.

“Females with Gender Identity Disorder generally experience less ostracism because of cross-gender interests and may suffer less from peer rejection, at least until adolescence” (p. 579). This statement is confirmed by research which is currently being conducted. “In child clinic samples, boys (male to females) with this disorder are referred for evaluation much more frequently than are girls (female to males). In adult clinic samples, men outnumber women by about two or three times” (p. 579). Data suggests ‘that roughly 1 per 30,000 adult males and 1 per 100,000 adult females seek sex-reassignment surgery’ (p. 579). In fact, this no longer seems to be true. Transmen are becoming more visible as they are claiming their rights. Several transgender institutions, such as Transvisie Nederland and Stichting Transman, have stated that recently the male to females are no longer outnumbering the female to males, as was traditionally the case. In addition, Jamison Green (2004) has argued that recently in the United States female to males are increasingly claiming visibility in the transgender community. It seems thus that it is not the case that there are less female to males, but that in fact they are only gaining visibility now. “Only a very small number of children with Gender Identity Disorder will continue to have symptoms that meet criteria for Gender Identity Disorder in adolescence or adulthood” (p. 579). This claim is interesting. It is not one commonly made. The question remains how reliable the data are and how much research has been done before coming to this conclusion. The DSM continues to say which children (depending on their sexual orientation) are most likely to grow up without Gender Identity Disorder. Only a small percentage may grow up with a “chronic course of gender confusion or dysphoria” (p. 580). This statement, together with the statement that “males with Gender
Identity Disorder who are sexually attracted to males tend to present in adolescence or early adulthood with a lifelong history of gender dysphoria” (p. 580)”are obvious heteronormative assumptions. But, the DSM states,

in contrast, those who are sexually attracted to females, to both males and females, or to neither sex tend to present later and typically have a history of Transvestic Fetishism. Typically, after sex reassignment, those males who were attracted to females wish to live with another woman in either a lesbian relationship or as sisters. If Gender Identity Disorder is present in adulthood, it tends to have a chronic course, but spontaneous remission has been reported (p. 580).

It would be useful and interesting to see some statistics about the numbers of reported spontaneous remissions. It seems unlikely that spontaneous remissions occurred, and if at all, it seems doubtful that they occurred because of reasons other than social stigma. The word of the use ‘sisters’ here seems quite misplaced as well.

‘Gender Identity Disorder can be distinguished from simple nonconformity to stereotypical sex-role behavior by the extent and pervasiveness of the cross-gender wishes interests, and activities’ (p. 580, emphasis in original). It is more than “tomboyishness” in girls or ‘sissyish’ behavior in boys” (p. 580). The word ‘sissyish’ here says a lot about our society, namely that it is sexist and that there is a lot of pressure on boys to behave like ‘men’. This is again confirmed by the following explanation: “Rather, it represents a profound disturbance of the individual’s sense of identity with regard to maleness or femaleness” (p. 580). Maleness and femaleness are thus considered clear, fixed and commonly understandable categories.

To come back to the link to transvestism, “Transvestic Fetishism occurs in heterosexual (or bisexual) men for whom the cross-dressing behavior is for the purpose of sexual excitement” (p.580). As I brought up several times before, I am still not convinced it is always about sexual excitement. Although it might be true for some transvestites, the general reasoning along the lines of sexual arousal seem surprisingly similar to nineteenth century Victorian discourse on inversion. In those discourses lesbians, people of color, working class people, prostitutes and the mentally ill were considered hypersexual beings27. Also drag kings, i.e. women cross-dressers are not at all considered. To DSM, the concept of a female

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cross-dresser seems obsolete. Women can were pants and sweaters these days right? Another question which arises from this excerpt is what is considered the case then with gay men? Do they never have a desire to dress as women or are gay men by nature considered as having the desire to dress up as women? Valentine recognizes in his book that also gay men can be transvestites\textsuperscript{28}. Although still a very simplified explanation, Valentine gives at least gives one alternative reason for cross-dressing. Besides eroticism, he states that cross-dressing can be performative. The DSM is of the opinion that most individuals with Transvestic Fetishism do not have a history of childhood cross-gender behaviors. Males with a presentation that meets full criteria for Gender Identity Disorder as well as Transvestic Fetishism should be given both diagnoses. These two disorders as described in DSM seem to contradict each other and that is why it is interesting to see how the authors of Gender Identity Disorder envision someone with both disorders to be. DSM is careful to state that “GID differs from schizophrenia, as it is about the desire to be of the other gender, not the believe that one already is” (p. 581). But is it not the knowledge that one is of the other gender and the wish to be also of the other sex?

Another important aspect to realize is that many transgender people turn to sex work as a last resort (after social exclusion and no financial prospects). Many transgender sex workers are young people of color from lower classes. DSM for them is extra problematic. In order to get SRS one needs a diagnosis from a psychiatrist. Interaction with psychiatrists is an (unconscious) interaction of power relations. The sex work in combination with their transgender status and often in combination with their racial background and a lower class background make them extra vulnerable.

3.5 Prosser, embodiment and DSM

Prosser’s argument can be compared to DSM’s understanding of the subject in the sense that both focus on transsexuality rather than transgender in general, while at the same time they seem to also refer to transgender more generally. One of the reasons is that the understanding of the word transgender has rapidly changed and progressed (as it was mostly an unknown term before) since the turn of the century. Prosser explains that the acceptance of the surgically constructed penis of the female to male is related to their acceptance of ‘the

\textsuperscript{28} see Chapter 2 of \textit{Imagining Transgender} (2007) where Valentine discusses the Crossdressers International’s debutante ball.
situation’ and other factors. In my opinion it is also important to state that for some transsexuals successful and ‘full’ sex reassignment surgery are more important than for others, exactly because of that reason. Simultaneously, all these issues can be more or less or in certain ways important because transsexuality is never the same thing. And besides that, there are transgender people who need surgery in order to feel more themselves, but who would not identify as and are not transsexuals.

Prosser, in his analysis, does not fail to criticize the DSM. Many discourses and documents portray “sex reassignment surgery not as the refashioning of bodily sex but as its literal removal, as if the surgery were a matter of de-sexing rather than re-sexing the body” (Prosser, 1998, p. 81). This seems to be the underlying thought of the text in the DSM. In addition Prosser states that even though the American Psychiatric Association defines transsexuality (“classified according to a disease model”) as an illness which requires a medical remedy, the “notions of sex reassignment as “superficial” and “mutilating” shore each other up in this category of the cosmetic” (p. 81). A belief governing many laws is “that transsexuality consists in the brutal mutilation of healthy bodies, that sex reassignment surgery does not so much effect sex change as it transmogrifies “normal” men and women into unsexed or hermaphroditic monstrous others simply through the excision of their “natural” functioning sex” (p. 81). Prosser states that “without doubt what renders transsexuality most unnatural in the cultural imagination is sex reassignment surgery” (p. 81). This is definitely the thought which dominates in most western societies. DSM, on the other hand, does aim to serve as diagnosing someone with the disorder for which the only remedy is medical treatment, i.e. surgery. DSM does come from a context in which this thought of ‘unnatural’ is dominant, but it nevertheless recognizes that a). there is an existing mental disorder and b). sex reassignment surgery is the only remedy if the person truly has the disorder; psychological therapy and institutionalization are considered useless. Nevertheless, with this statement I do not mean to give too much credit to DSM’s description of Gender Identity Disorder, as it is still discriminating and harmful.

3.6 DSM and Human Rights – an introduction

I have problematized DSM on the basis of its inherent transphobic and sexist assumptions. I have proven that DSM’s understanding of Gender Identity Disorder is harmful to the transgender person in that it perpetrates structural and discursive violence. In the following
chapters I will look at DSM from yet another point of view. I will analyze the direct and indirect ways DSM violates the human rights and contributes to the violation of the human rights of transgender persons. In order to do so, I will use the Declaration of Human Rights (1948) as my main primary source. I will start by critically analyzing this document and I will end this thesis with a discussion of the Issue Paper on Gender Identity by the Commission for Human Rights of the Council of Europe.

3.7 The Declaration of Human Rights

In a post-world war context, many countries came together in Paris in 1948 in order to design a political tool with the aim to protect global citizens from the worst atrocities done. This resulted in the drafting of the Declaration of Human Rights, which I will be using in the following part of the thesis. I am using the Declaration of Human Rights from 1948 for several reasons. Firstly, it has been signed by many countries and virtually all countries concerned in this thesis. Secondly, it has been signed by these states over sixty years ago, and so most of the actors involved (both governments and citizens) in the western world generally feel embarrassed knowing that they are not living up to a human rights declaration signed that many decades ago. Thirdly, because of the former two reasons it is considered a legitimate document of authority. It is taken seriously, and when one is trying to advocate a change of laws or (medical and legal) procedures, reliance on this document gives you a fair chance to succeed. This document has the power to appeal legally to authorities in most western countries, but also emotionally. That makes it a powerful political tool. Human rights is something I and many people with me, firmly believe in. No person should be excluded from these rights. What are human rights violations? Human rights are violated when the rights laid out in the document are not being respected, and when the laws and legal authorities of a country do not manage to protect all its citizens and residents. And surprisingly or unsurprisingly, many transgender people do have their human rights violated on a daily basis. Important to note is that the transition system often disrespects human dignity. As with my other sources I did not want to use the Declaration of Human Rights uncritically and so first I will analyze it shortly from a feminist and discourse analytical perspective. Beneath I have set out the Articles of the Declaration of Human Rights which are related to DSM’s description of Gender Identity Disorder. I ask the reader to pay specific attention to the words and sentences I have highlighted (by using reversed italics).
The reason why I choose to lay out the articles first, rather than analyze them one by one is because all articles are interrelated. Depending on the issue (direct or indirect discrimination, universal appliance, protection from, the right to etc) several different articles are closely related and are therefore best analyzed together or in a single story.

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 12.
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 15.

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 21.

(2) Everyone has the right of equal access to public service in his country.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due
recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

These articles are all important for defending the rights of transgender people. Each and every one of these articles should guarantee human rights for transgender people, but each and every one are violated. I will not make further mention of Article 15, because it is not related to the DSM neither in an obvious direct nor indirect way. The reason why I did include it above is to draw attention to the fact that even this right is often taken from transgender persons, for all kinds of bureaucratic and transphobe (in which the power relations between the transgender person seeking nationality and the person granting it can result in the violation of this right) reasons.

The problem is that the Declaration of Human Rights, despite the inclusive language used, is not without problems itself. This is shown by the following excerpts. In the preamble ‘the conscience of mankind’ is mentioned. The word ‘man’ is used synonymously to ‘person’ or ‘human being’. Article 1 states that all human beings should “act towards one another in a spirit of brotherhood”. My marking of the words man, mankind and brotherhood quite likely lead readers to think “ah, not another feminist hammering on every detail”. But these words are more than words, and they do more than showing man is the norm. Carole Pateman, in her analysis of both patriarchy and brotherhood shows how these concepts are in fact institutionalized structures, implicitly favoring a certain type of human being over others (In: *The Disorder of Women*, 1989). This almost invisible but all-encompassing reality has real life every day consequences for the rights of people, i.e. they secure the inferior status of women, people of color and others. Brotherhood specifically does not only illustrate the sexist structures of society, but also the dominance of Euro-American culture. Similarly to the preamble and Article 1, in Article 15, 22 and 25 the universal person mentioned is one of male character. It is *him, his* and *himself* which illustrate this. There is one other factor which is very important about the use of male pronouns in reference to a universal person. Not only
does this pose problems, like with article 16, for the transgender person, but also for women in general. This Article requires some more thorough analysis.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

This article makes marriage and founding a family a human right. The right to marry is obviously denied to a lot of people in most countries. People with certain criminal records, people with certain mental disabilities and most notably, people of the same sex often do not have the right to marry. Noted elsewhere in the Declaration is that no person at all should be excluded from having these rights. This would make the prohibition of marriage to some people an infringement in itself. For some reason, most countries do not interpret the Declaration this way. In addition, what becomes more problematic is that it states ‘men and women of full age’ have this right. It does not say ‘to marry each other’, meaning a man and a woman together in a unity have this right, but it can easily be interpreted as such. If this were the case, the Declaration would contradict its own articles. Moreover, it becomes possible to argue that transgender people cross the boundaries of normal/normative gender and therefore do neither belong to the category of ‘man’ or ‘woman’ in this case and as a result can be denied the right to marry and found a family.

I did not want to use the Declaration uncritically, so it is my opinion that it is important to have these things in mind. Having said this, I still do believe the Declaration of Human Rights to be valuable, to contain important human rights which should be for everyone. In addition, I think it is a very valuable legal document of authority and for this reason I will still use it to make my case.
3.8 DSM and its violation of the human rights of transgender persons

Having problematized both DSM and the Declaration of Human Rights, it is time to apply the Declaration of Human Rights to DSM in order to see where the latter clearly violates human rights, based on principles such as security, personhood, human dignity, universality etcetera. DSM does not conform with human rights both on a more direct theoretical level, which becomes clear when looking at the exact wording of the DSM, but also at a more practical level, which becomes clear if one imagines the practical situation of when DSM rules would apply to a patient in a real life situation.

There are three type of Articles relevant for this analysis. Article 1, Article 2, Article 6, Article 10, Article 28, Article 29 and Article 30 do not so much deal with specific rights to which one is entitled, but rather deal with the principles of universality and equality: that each and every person is entitled to all articles set forth in this Declaration. These articles guarantee that under no circumstances is a transgender person to be excluded from these rights. Article 3, Article 5, Article 7, Article 8, Article 9, Article 12, Article 15, Article 21, Article 22, Article 23 and Article 25 deal with the more specific rights a person is entitled to such as employment, medical care, protection from discrimination etcetera. Article 6, Article 9 and Article 10 deal specifically with equality for the law, e.g. that everyone deserves a fair hearing in front of a legal authority.

All of the above mentioned Articles are extremely important for the transgender person. However, some are less applicable to DSM than others. The legal situation in most countries is violating human rights (as covered extensively by the Hammarberg report which I will discuss in the next chapter of my thesis). These articles are therefore incredibly important for achieving legal changes which will lead to the emancipation of transgender people. Nevertheless, they might seem less important when analyzing DSM since this is a medical document and not a legal one. However, a medical document, in that it decides the medical treatment of people, is always of legal relevance.

Thus, when looking at the wording of the DSM literally, one can find that the following Articles of the Human Rights Declaration are in breach. The first one is Article 1 which states that all are born free and equal in dignity and rights. The concept of dignity is crucial for
arguing that DSM’s description of Gender Identity Disorder is in violation with human rights. Firstly, human dignity is violated by the use of wrong pronouns and wrong gender reference, referring to the situation as ‘gender confusion’ and as a ‘mental disorder’. Secondly, DSM advises psychiatrists to consider the sexual desires, the masturbation habits and the urination habits of the transgender person. The psychological analysis used to find out about this often resembles an interrogation and does not respect someone’s privacy or personal integrity. The discursive violence paired with this is a direct violation of human rights. This is closely related to the second Article which is being violated: Article 5. Article 5 should ensure the protection from degrading treatment. Again, a person’s masturbation history is considered to be of importance and psychiatrists are encouraged to ask about this. Of course these interrogative questions are degrading to a transgender person. The masturbation history is only one example, many questions which psychiatrists are encouraged to ask following DSM are degrading and humiliating. The violation of human dignity and the failure to protect one from degrading treatment are related to concepts like privacy, honor and reputation. This leads to Article 12. Article 12 states that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation” and that one should be protected from these interferences or attacks. Initially, one could read this Article as a protection from raids. Indeed, it seems unlikely that in western countries there will be state-organized physical interferences in someone’s home because of a transgender status. However, the Article in fact does more than to protect someone from raids. It specifically does not state these interferences or attacks need to be of physical nature. Interference can be widely interpreted, especially when applicable to privacy, family, home, correspondence, honour and reputation. Both privacy and honour are directly violated by the wording of Gender Identity Disorder. In addition, privacy, family, home, honour and reputation are violated indirectly by DSM, to which I will come shortly. Lastly, Article 22 secures social security and economic, social and cultural rights for the dignity and free development of a person’s personality. The ‘free development of his personality’ implies at least in part (depending on the interpretation of ‘free’) that one has the right to self-determination/self-definition, a right totally taken away by DSM. After all, DSM secures the psychiatrist to decide who can ‘freely’ develop her/himself, not the person her/himself. In addition, the degree with which one is taken seriously is partly based on one’s sexual orientation, a difference which is not (or at least no longer) allowed to be made.
Indirectly, DSM is the process of getting the diagnosis and thus the key to getting one’s medical and consequently one’s legal sex changed. This has a variety of impacts which go far beyond what one sees at first sight. To link this to the Declaration of Human Rights, I will scrutinize which Articles are being breached by DSM indirectly. In other words, the impacts caused by DSM’s understanding of Gender Identity Disorder make several human rights violations. What DSM shows is that one is not born free and equal, as Article 1 of the Declaration states. Inferior status, when showing ambiguous gender identity is secured from the beginning/first signs. DSM is in many ways also related to the degrading treatment of transgender persons. As a result of the DSM, patients often have to wait a long time before they can have access to hormone therapy and sex reassignment surgery, making them vulnerable to assault. In other words, since DSM serves as a gatekeeping document for access to surgery and therefore to a better sense of self, the postponement of denial of this medical treatment can lead to degrading treatment (Article 5) by ignorant and transphobe people, whether in individual or institutional context. But also the transgender status itself, whether pre-op (pre-operation) or post-op, often ensures the degrading treatment of people. Although no direct differentiation is mentioned, degrading treatment indirectly relates to other sections of race/ethnicity and class. The sad reality is that transphobia goes hand in hand with racism and classism. Medical professionals often have broader presumptions about gender, race and class, which will interact when treating a transgender patient. Like with Article 5, one does often not live in security when one's sex does not reflect one’s gender identity. Article 3 ensures that one has the right to security of person, and thus it is clear that as an indirect result of DSM people often do not live in security. Another way in which Article 5 and Article 3 are related, is that when a person endures degrading treatment, s/he does not live in security. The physical (let alone emotional) insecurity of transgender persons manifests itself in many different ways. A concrete example is the usage of the new airport scans, where the newest technology searches for weapons by ‘seeing through’ the clothes. Here it becomes all to clear that access to surgery is even directly related to security. These airport scans are not only an infringement on the basis of security, but also on the basis of privacy (Article 12). These airport scans are therefore a privacy issue for everyone, but of course especially for transgender persons. However, insecurity is not only related to the need for SRS. In other words, that people live in insecurity does not only happen because are pre-op and waiting for surgery. There are other ways in which the security of pre-op transgender persons is not secured. Similarly, also for post-op transgender persons’ security is not always secured. As mentioned above with Article 5, the transgender status itself, which is made visible with
official documents in the use of medical and legal procedures, is enough to secure institutionalized ill-treatment of transgender persons. Article 7 secures the protection against discrimination. What follows from the analysis of the Articles 1, 3 and 5 is that this protection is absolutely not secured. It is clear that the direct wording of DSM is discriminating, but so are the indirect consequences discussed above. In addition, this article is related to article 3, where one is not only often assaulted in many different ways, but not legally protected from it either. Above I have already highlighted that Article 12, which ensures one’s right to privacy, family, home, honour and reputation, is directly violated by the way DSM believes the criteria should be confirmed. However, indirectly DSM’s understanding of Gender Identity Disorder disrespects privacy, home, family, honour and reputation. This happens in many different ways. Without a diagnosis and without the proper surgical treatment, a person is usually not allowed to change her/his sex on official documents. This causes problems related to family, especially when one is married or has (or plans to have) children. The way this happens, is that the manner in which DSM and transgender are interpreted by official institutions lead to specific laws. This interpretation of transgender in combination with homophobic laws on marriage lead in many cases to forced divorce when a person wants to change sex. The honour and reputation of a transgender person are routinely disrespected. Like with certain other mental disorders, employers for instance feel they have the right to know about someone’s transgender status. The understanding of transgender in legal institutions and situations are mostly based on DSM’s understanding. This causes two problems. The first is that many people who seek legal help are not considered ‘true’ transgender persons when they do not fully fit DSM’s profile of Gender Identity Disorder. The second is that one is considered mentally ill, and therefore not always capable of understanding everything and making one’s own decisions. In addition, our language does not allow for a proper reference to someone who does not identify as man or woman. The lack of reference leads therefore to a person becoming an abject in the social imaginary, a type of human being which is not fully human. This sounds dramatic, but laws and legal procedures confirm this sad reality. Many gate-keeping officials the transgender person has to deal with do not understand what the problem is with forced sterilization. Sterilization, the securing of infertility of a person, is required in almost all western countries in case one wants to change their gender marker on official documents. DSM obviously does not state that a person should be forcefully sterilized, but with its conservative and discriminating understanding of transgender it contributes to this reality. Forced sterilization does remind of the 1930s and 1940s in the western world, in which the quest for the perfect people of the perfect nation was a
widespread ideology. The state was heavily involved with controlling and regulating the bodies of its citizens. Seven decades later, transgenders are the only group of people which still face this forced sterilization (except for people with certain mental disabilities such as Down syndrome in certain countries). The authorities often do not understand why this is extremely problematic. A ‘true’ transsexual person would not even want to be fertile as their non-preferred gender, so what is the problem? Again, this argument is related to the idea of one type of transgender person, namely DSM’s transsexual person. In addition, the idea that a transgender person would still conceive children after their transition makes people feel extremely uncomfortable. It is considered ‘freakish’. What is clear is that the ideology of the ‘perfect people’ has not left our minds. What is also clear is that the state still controls and regulates our bodies. Forced sterilization infringes human dignity, bodily integrity, the right to honour, reputation and family and it is extremely discriminatory.

The latter is not unrelated to the issue of genital examination. Since DSM explicitly states that Gender Identity Disorder can only occur in case there is no intersex condition, it happens that medical professionals perform genital examinations on their patients. This is an infringement of Article 1, Article 3, Article 5 and Article 12.

Article 21 secures the equal access to public service, which is so not the case for transgender persons, in particular for those who are poor. This fact is not only due to DSM but a general result of transphobia. Article 22 secures the social security and economic, social and cultural rights for dignity and free development of his personality. The free development of your personality is not possible as a transgender person. You are considered mentally ill, you have to fulfill certain criteria in order to even be able to get access to treatment and develop yourself according to your own identity and you have no right to self-definition. You can move freely only in as far the rigid and small box created by DSM’s understanding of Gender Identity Disorder allows you to. Article 23 should ensure your right to employment. It is needless to say that in practice transgender people often find themselves either having to hide their identities, or when uncovered face unemployment and social isolation. Article 25.1 among others again secures the rights laid out in the other Articles. The Articles should protect a person from assault. What is important is that this type of assault can be physical and brutal, but it can also be more subtle. This means that the transgender person often faces unemployment, and the consequential financial problems as well as social exclusion. Moreover, DSM’s specific criteria for the diagnosis of Gender Identity Disorder often lead to the fact that many people do not get the diagnosis. Following DSM’s criteria, they are not
‘true’ transsexuals. As a result, they do not get access to the medical treatment and legal document change they need in order to transition according to their needs. In turn, many people do not get access to the necessary public, social and financial services (Article 21) and they are not protected by law against this type of discrimination (Article 7). In addition, in order to get one’s legal gender marker changed, in most countries, one has to fulfill all criteria described by DSM and have gone through the whole medical transition procedure, which as I mentioned in most cases that even means that one has to undergo forced sterilization and forced divorce. Needless to say, the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (Article 25) is a right many transgender people do not have. Like the other rights described in the other Articles, this is a right violated in part as a consequence of DSM. In short, DSM’s direct and indirect role in the breach of human rights of transgender persons is impressive. If DSM wants to live up to the international standards of the rights of a person, it has to alter its text rapidly and thoroughly.

3.9 DSM, human rights and the Hammarberg report

In 2009, the Commissioner for Human Rights from the Council of Europe published an Issue Paper on Human Rights and Gender Identity. The Commissioner for Human Rights is Thomas Hammarberg and that is why the Issue Paper is usually referred to as the Hammarberg report. This report deals exactly with the common human rights abuses of transgender people in the different member states of the Council of Europe. Virtually no member state manages to protect its transgender citizens from these abuses. The Issue Paper is an argument based solely on the human rights approach. Whereas I have based my analysis in this thesis solely on the Declaration of Human Rights, the Hammarberg report uses many different international human rights instruments (European Convention for Human Rights, Yogyakarta Principles, UN Covenant on Economic Social, and Cultural rights, EU Directives etc.). The report deals more with the actual laws of the member states of the Council of Europe, than it does with DSM. Nevertheless, also for this thesis the report is extremely important. It proposes changes in the national laws of the member states in order to protect
transgender people from discrimination and guarantee their human rights. It refers to the importance of the role DSM plays in this one. The report specifically highlights the ways in which the indirect results of DSM cause human rights violations to the transgender person. I recognize that these indirect results of DSM are not results solely caused by the manual. However, important is to realize that DSM is a pivotal and gate-keeping document and that its understanding of transgender has a grand influence on the design of national laws. The human rights violations transgender people find in many different aspects of life can therefore never be viewed separately from DSM.

The Hammarberg report starts by simply stating the importance of gender identity. It uses simple, straight and objective-sounding language in order to explain who is concerned and what the issues at stake are: “gender identity is one of the most fundamental aspects of life. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on” (p.5). Transgender people’s “internal and individual experience of gender” and “personal sense of the body” (p. 6) is not reflected by their physiology or genital anatomy. This internal and individual experience here is not that different from the “innate” and “deeply felt” gender described by Prosser (1998). Like Prosser, the report recognizes that there are no single measurable variables which make a transgender person, e.g. such as hormone composition. Rather, it is something deeply experienced by a person. It is therefore not up to anyone but the person itself to “diagnose” them as transgender. The report has a rather inclusive interpretation of the word transgender. It recognizes its community is diverse and that it includes many people with different gender identities and/or gender expressions. It states that “many legal frameworks only seem to refer to transsexual persons, leaving out a decisive part of the community” (2009, p.6). Obviously, DSM does exactly this. I would add that not only is a decisive part of the community left out, sometimes all transgender people are wrongfully considered as one and the same. In that case, people are included in a narrow definition they do not belong to. The Issue Paper continues to state that people “may not undergo gender [sex] reassignment because of their free choice, their health needs, or the denial of access to any treatment, which is common in many Council of Europe member states” (p. 10). Classification systems such as DSM and ICD, and national laws and legal procedures should widen their understanding of transgender. To make this case the Hammarberg report quotes a statement from the European Union Agency for Fundamental Rights:

there is no reason not to extend the protection from discrimination beyond these persons [transsexuals seeking full SRS], to cover ‘cross dressers, and
transvestites, people who live permanently in the gender ‘opposite’ to that on their birth certificate without any medical intervention and all those people who simply wish to present their gender differently (pp.10-11).

DSM is to widen its understanding of transgender if the Hammarberg goal is to be achieved. Similarly to what I have advocated earlier on, the report does not mention transgender to be an issue of biology. It specifically does not use this term and explains the ‘wrong’ embodiment with terms as ‘physiology’ and ‘genital anatomy’. Already in the second paragraph is stated that “transgender people experience a high degree of discrimination, intolerance and outright violence. Their basic human rights are violated, including the right to life, the right to physical integrity and the right to health” (p. 5).

In the first part of this thesis I have explained that Valentine argues that the total separation of the categories ‘gender’ and ‘sexuality’ can be problematic as it tends to exclude certain people, usually the poor, disenfranchised people of color. Also I explained that Valentine argued that the separation of these two categories was closely related to the emancipation of homosexuals. The Hammarberg report argues that the separation of these two categories can actually be politically useful for transgender persons as well: “Some legal frameworks in Council of Europe member states, unfortunately, categorize gender identity under ‘sexual orientation’, which is not accurate since gender identity and sexual orientation are two difference concepts” (p. 7). This is also related to the above mentioned forced divorce and parenthood rights situation of a person who is in the process of transitioning. Especially in countries where same-sex marriage is not recognized or where child adoption is mostly limited to nuclear heteronormative families, seeing these categories as synonymous causes extra problems for transgender persons. The human rights of transgender persons are violated both on the level of legal guarantees as well as in everyday life situations, as I have argued above. The report aims at advising and suggestion changes in laws and legal procedures of the member states. Firstly, it advises its member states to include ‘gender identity’ specifically in anti-discrimination laws and documents. Secondly, it advises a lot of changes regarding laws on specific issues. It argues that on the basis of human rights (human dignity) procedures regarding the legal recognition of the preferred gender should be altered in such a way that it will become easier to do so. Both name and sex change on official documents should be able to be changed speedily and authorities (from court to employer) should be required by law to recognize the change. In order to have gender markers changed, requirements such as a medically supervised process of gender reassignment, forced sterilization, forced divorce and
requirements for other medical procedures such as hormone treatment should be eliminated. In addition, the document makes a case for making transition easier also for youth under the age of eighteen. These requirements and legal procedures, it argues, are related to classification systems, especially in the case of officially changing the gender markers.

Often, people need to have a gender dysphoria diagnosis and two years of hormonal treatment to qualify for the name change. As a consequence, transgender people are, for a long period in their lives, effectively barred from meaningful and full participation in society, education or employment as they may face continuous problems with ‘justifying who they are (p.21).

Other specific issues on which it advises its member states are that their should be insurance covering medical and psychological treatment, the family should be protected against bureaucratic and transphobe procedures, there should be access to health care for every transgender patient (not only for those who can afford it). In addition, the member states are advised to ensure access to the labor market and protection against discrimination on the work place. However, most important remains the argument that states should protect its transgender citizens from violent hate crimes.

The Hammarberg report recognizes that violent structures are not isolated, but that they are related to other sections. Although it does not discuss the intersection of gender identity and ethnicity, it discusses the intersection of gender identity and class quite a few times. The name/gender maker change procedure, it mentions, is often a very lengthy and costly one. In addition it states that a very high percentage (80%) of transgender people in Europe do not receive any state funding for hormone treatment. This leads to the situation in which 50% of the transgender people pay for all procedures entirely on their own, often to the point of facing extreme financial problems. The other people most likely cannot afford the medical and/or legal procedures and are forced to halt their transition. In addition, the report also recognized that discussions are also needed to link the human rights of transgender persons to a variety of other debates and topics: violence against women, domestic violence, multiple discrimination, economic, cultural and social rights (p. 43).

The Hammarberg report sees these human rights violations as an indirect consequence of DSM’s (and ICD’s) understanding of Gender Identity Disorder:
many international and national medical classifications impose the diagnosis of mental disorder on transgender persons. Such a diagnosis may become an obstacle to the full enjoyment of human rights by transgender people especially when it is applied in a way to restrict the legal capacity or choice for medical treatment (p. 7).

What one can conclude when adding all these suggestions and statements is that the report advocates the right to self-definition of a person. The law and the authorities should be there to protect a person in his social, economic and cultural rights and to protect it from discrimination. The transgender status should be given to a person by that person her/himself and the person. The Hammarberg report goes as far as to quote Yogyakarta Principle number 3: “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom” (p.14).

Important to keep in mind is that the Hammarberg report is an Issue Paper. It is a political document on European level and it proposes real changes in laws countries could make. It is neither a philosophical analysis, nor is it a report from a transgender advocacy group. The report recognizes the transgender community to be diverse. It recognizes that in all aspects of life the human rights of transgender people are violated and that this should be changed quickly. The report criticizes classifying systems such as DSM’s role in these human rights violations, and lastly, it recognizes the right to self-definition and self-determination. Therefore, in my opinion the Hammarberg report is a very useful and valuable document.

29 “In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all States must comply” (Yogyakarta Principles, 2006).
4. CONCLUSIONS

I have scrutinized academic discourse on transgender by analyzing the debate between essentialism and social constructionism. Thereby, I have critically analyzed the constructionist side of the old debate, as I believe this has not been done thoroughly enough and because transgender issues show the current limitations of the constructionist/poststructuralist tradition. Using Prosser, I have analyzed both the literalizing and deliteralizing tradition within social constructionism. Following Valentine’s intersectional and critical approach to the category of transgender, I have outlined a theory of violence. What followed from the analysis was that both the essentialist side and both traditions of the social constructionist side perpetrate discursive violence against the transgender person. Prosser discusses the crucial and central position transitioning (hormone treatment and surgery included) takes in the life of transgender persons. He makes a strong case for bringing transsexual narratives and transgender narratives into the theoretical realm on gender and embodiment. I have argued that bringing the real lived experience of transgender people back to the foreground would aid when theorizing about embodiment. In my opinion, this method can make discourse less violent.

After having discussed the importance of transitioning and medical treatment I discussed what gives access to this medical treatment in the first place: a diagnosis. I have argued that for this reason DSM, with its understanding of Gender Identity Disorder, is a gate keeping document. Prosser’s theory of transsexual embodiment explains the cruciality of transitioning. Transgender people often seek help of a psychiatrist in order to seek hormone therapy and sex reassignment surgery. In most cases a diagnosis of Gender Identity Disorder is necessary for getting access to these treatments. Therefore, discourses on health and illness in relationship to transgender are crucial and should be altered as they directly influence the content of DSM. DSM’s understanding of Gender Identity Disorder shows many transphobe and misogynistic tendencies. It is discursively violent. In addition, DSM violates the human rights of transgender persons both in direct and indirect ways. The Human Rights approach is a useful approach for achieving political change. I suggest that using this approach is particularly useful to achieve explicit protection against discrimination and simplifying procedures related transitioning. Lobbying national governments is of utmost importance and also appealing to supranational institutions is a crucial step on the way to achieving fair and equal rights.
In conclusion, DSM’s direct and indirect role in the breach of human rights of transgender persons is impressive. If DSM wants to live up to the international standards of the rights of a person, it has to alter its text rapidly and thoroughly. It is also important for DSM to change if the Hammarberg report’s goal of making more humane national laws related to transgender people is to be achieved. In short, what is clear is that the system as it exists is unacceptable.

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity (Yogyakarta Principle number 3 quoted in Hammarberg report, 2009, p. 14).

Currently, transgender and transitioning remain sensitive and complex topics and it might be impossible to come up with a perfect system. Nevertheless, the violation of the human rights of a section of our society is unacceptable and inexcusable. Discourses, classification systems, national laws and legal procedures have to be thoroughly and rapidly changed in order to improve the human rights situation of transgender persons.
Bibliography


