Journal of medical ethics, 1987, **13, 86-91**

Mutilation, deception, and sex changes

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Author's abstract

The paper considers and rejects two arguments against the performance of sexual reassignment surgery. First, it is argued that the operation is not mutilating, but functionally enabling. Second, it is argued that the operation is not objectionably deceptive, since, if there is such a thing as our 'real sex', we do not know (ordinarily) what it is. The paper is also intended to shed light on what our sexual identity is and on what matters in sexual relations.

The American Psychiatric Association's official *Diagnostic and Statistical Manual of Mental Disorders (third edition),* popularly known as DSM-III, includes transsexualism as a diagnosis, listing it in a section on 'Psychosexual Disorders' under the subcategory of 'Gender Identity Disorders'. To be diagnosed as a transsexual, DSM-III requires a patient to meet five criteria.

A. Sense of discomfort and inappropriateness about one's anatomic sex.
B. Wish to be rid of one's own genitals and to live as a member of the other sex.
C. The disturbance has been continuous (not limited to periods of stress) for at least two years.
D. Absence of physical intersex or genetic abnormality.
E. Not due to another mental disorder, such as Schizophrenia (1).

Psychiatrists do encounter patients meeting all five criteria. For such patients the clinical outlook is bleak. Chronicity is the norm. No presently known psychiatric treatment modalities have been regularly successful in (re)aligning transsexuals' self-conceived sexual identity to an identity ordinarily deemed to be congruent to their anatomical sex. Nor, for that matter, have present treatment modalities worked well in alleviating the transsexual's subjective distress (2).

In the absence of effective psychotherapeutic or pharmacological remedies for transsexualism, numerous transsexuals have sought, and seek, a surgical solution. Dissatisfaction with one's anatomic sex need no longer be, it seems, an irremediable source of psychic pain. With a bit of hormonal and surgical wizardry, doctors can now bring individuals to a phenotypic resemblance to the anatomic sex of their choice. Man may look as woman; woman as man.

That medical art can now produce these counterfeit phenotypes raises a variety of philosophically puzzling issues. In this paper I wish to explore two of these issues.

First, I believe that transsexualism focuses attention on deep issues having to do with one's 'real' sex. Bluntly, what is it? So far I have mentioned anatomic sex and alluded to the sex people conceive themselves to be, or gender. But I am interested in whether there is some fact about human beings which constitutes their real sex.

Secondly, I wish to explore how a stand on the first issue shapes beliefs about the moral permissibility of sexual reassignment surgery (hereafter SRS).

Unfortunately, the depth of these two issues may be obscured if SRS is immediately assimilated to ordinary cosmetic surgery. It is simply *too* facile to defend SRS by observing that just as some individuals are dissatisfied with their physiognomy, so are some dissatisfied with their sexual anatomy. And since no deep philosophical issues arise in connection with the production of counterfeit faces, none arise in connection with the production of counterfeit genitalia. Of course common sense marshals doubts about the comparability of routine cosmetic surgery to SRS. Doctors and laymen readily understand the motivation for undergoing run-of-the-mill cosmetic surgery. Aquiline noses *are* generally preferred to bulbous ones. The social benefits of looking good are well known. And besides, surgery seems to be able to alter the actual size of noses in a way that surgery cannot alter actual sex. Nor, in the case of routine cosmetic surgery, do physicians attempt to justify surgery by claiming that the operation will bring the patient to a closer resemblance to an underlying psychological reality. A fanciful case might help to make these reflections clearer.

Key words

Deception; mutilation; sex; sex change; sexual reassignment surgery; transsexualism.

II

Suppose that a patient requests that a doctor amputate his hand (3)? The doctor balks. The patient persists. His request, he explains, arises from a persistent and longstanding dissatisfaction with his two-handedness. For as long as he can remember, he has desired to be a one-handed person living the life of a one-handed person. Subsequent psychiatric work-ups show no evidence of known mental disorders. He is not psychotic. His reality testing is intact. He readily admits that he is *anatomically* two-handed; however, he rejects the position that it is a *biological* fact which determines whether one is one- or two-handed. What matters, he insists, is a person's psychological perception of one- or two-handedness. He finally goes on to inform the doctor that he has successfully passed as a one-handed person for over a year. Hence he now claims to be ready for the final and decisive step, amputation.

The case is designed to mirror the diagnostic criteria for transsexualism. But it seems so absurd. Clearly, the doctor ought not to cut off a patient's hand merely because the patient desires to be one-handed. Even if the patient sincerely believes that a particular psychology determines whether he is *really* one-or two-handed, he undoubtedly is wrong, and needs to be convinced that he is wrong. If that is impossible, doctors still ought not to amputate. Cutting off a healthy hand is a mutilation. Since doctors ought not to mutilate patients, doctors ought not to cut off healthy hands. And *if* no morally significant differences exist between the hand case and the transsexual case, then doctors ought not to perform SRS. Efforts to improve psychotherapy are in order, but not surgery. Some might object that this amounts to refusing to give patients what they want. Doctors, though, in even so simple a matter as the dispensation of medications have long been in the business of denying patients what they want. It is the patient's needs as a human organism, not his wants, that set some boundaries on medical treatment.

Further reflection on what morally significant differences might separate the one-handed case from the transsexual case may even make the transsexual's case for surgery appear *weaker*. If surgery were given the patient desiring one hand, nobody would be deceived after surgery. An encounter with a woman with one hand is an encounter with somebody who is *really* one-handed. Nobody cares (ordinarily) how she got that way. SRS, by contrast, raises the possibility that deceptive encounters would take place. Part of the purpose of SRS, one might claim, is to camouflage a person's real sex in order to *deceive* others. So not only does SRS appear to be mutilating, it appears to be deceptive to boot.

The above case against SRS relies on judgements that I believe to be common. Most obviously I have assumed that the correct test for an organism's 'real' sex is, at some level, biological. No psychological facts could, that is, serve as necessary or sufficient conditions for one's being a real male or female. Transsexuals deny this common sense position. They presumably hold that what distinguishes the hand case from their case is that a particular psychology is the correct litmus test for determining real sex. *To avoid confusion on this point, I shall henceforth use the word 'Sex' to refer to one's real sex as identified by whatever the correct test for real sex happens to be.* I add that I am assuming, for argument's sake, that Sex is a natural kind. If it is not, then arguments against SRS are harder to come by, since a sharp division between the sexes would be difficult to sustain. I also add that I do not think that 'sex' is used in everyday English as a natural kind term, but then neither is 'butter' which refers (in American English) not only to butter but to margarine as well. Nutritionists, however, do insist on stricter usage, a not uncommon phenomenon in the sciences.

III

What, according to transsexuals, does SRS accomplish? In the first place, a psychological perception establishes Sex. Ordinarily, this perception agrees with one's anatomic sex, but in rare cases there is an incongruity between one's anatomic sex and Sex. SRS removes this incongruity. After SRS the transsexual has minimised the possibility of people making mistakes about his or her Sex on the basis of irrelevant anatomical data. No deception is involved because it is the patient's *presurgical* appearance which was deceptive. And the operation is not mutilating because it *enables* the patient to *function* better, even if imperfectly, as a man or a woman.

Without supplementation this defence will do virtually nothing to undermine the common sense position that Sex is determined by biology. Unless that position is undermined, the transsexuals are taking for granted the point at issue. Since it is the transsexuals who wish to depart from the intuitively pretheoretically satisfactory biological tests for Sex, they have the obligation to show that Sex, unlike one- or two-handedness, is not a matter of biology. A promising strategy is a thought experiment. In its simplest form, the experiment connects our Sex with our personal identity.

Suppose that there are an F-body female and an M-body male. The F-body person satisfies all the standard biological tests for being female. She is 44+XX, has feminine nuclear sex, female hormonal levels, and female gonadal sex. The M-body person also satisfies the corresponding tests for males, being 44+XY etc. Let us call the F-body and M-body persons 'Sally' and 'John' respectively. Both satisfy the obvious psychological test for Sex. Sally believes that she is a woman; John that he is a man. Like most people, they can state what Sex they are without consulting biological manuals or making a visual inspection.

Now suppose that one night, Sally and John have memory swaps. The F-body awakes with John's

memories and the M-body with Sally's memories. What is now the Sex of Sally or John or, if one is sceptical about the possibility of identity swaps, of the F-body person and the M-body person? Anatomically it cannot be disputed that the respective bodies have remained biologically male and female. Is that continuity sufficient to establish the Sex of either body after the swap? For suppose that John or, again to be cautious, the F-body person is asked, prior to looking, 'What Sex are you' (4). Surely, the anticipated reply is 'Male'. Although 'he' might change the reply after glancing in a mirror, it seems at least as likely that *he* will insist that *he* has been put into a body other than his own and, indeed, into a body of the opposite sex. This intuition is solidified by considering what John's response might be if there had not been a memory swap, but rather a jesting God left John's memories intact while transforming the M-body so as to be qualitatively identical to the F-body. John might very well complain that he is a male trapped in a female's body, that one should not judge his Sex on the basis of anatomical findings. That, though, is precisely what the transsexual claims. Moreover, the case promises to distinguish the transsexual case from the one-handed case. Were a person's hand to regrow one night, there is no tendency to maintain that she is really a one-handed person. Even if she asserted, prior to looking, that she is one-handed, one would overrule her. A strong desire to overrule John is conspicuously absent. At least part of the reason for that is that John's contention is *plausible*. There is a willingness to consider the possibility that the correct test for Sex is psychological rather than physiological.

IV

Despite the intuitive plausibility of making the criteria of sex psychological, there is a Humean line of argument against it.

Asserting that one's Sex is a matter of psychological perception could mean one of three things. First, that there is a particular and unique kinaesthetic sensation for each Sex; secondly, that there is a simple perception of masculinity or femininity when identifying one's Sex; thirdly, that there is some complex perception of masculinity or feminity when identifying one's Sex.

The first position is unsatisfactory. If a kinaesthetic sensation enables identification of Sex, transsexuals must attend to some biological part possessed by one Sex and not the other. But transsexuals do not claim to possess such a part. They grant they are anatomically as the opposite sex. Hence they have not the right parts to notice.

The idea that the correct test for Sex lies in a simple perception of masculinity or feminity founders on the inability to characterise the perception. I, for example, am unable to discern any simple perception of my Sex, unless I return to a perception of my physical parts, which amounts to a retreat to the kinaesthetic reading of perception that has already been rejected.

The third alternative claims the psychological perception of Sex to be complex. Presumably, this means that there is some constellation of psychological facts to which persons attend when identifying their Sex. If so, psychologists should be able to develop reliable and valid tests for detecting the presence of a masculine or feminine constellation. Psychiatrists working with transsexuals do in a sense attempt to do this. Typically, it is discovered that transsexuals prefer activities stereotypically associated with the other sex. Male transsexuals report a preference for sewing, cooking, and other 'womanly' chores, females for 'manly' pursuits like bowling and topless bathing. But to make the psychological perception of Sex a matter of noticing that one has a certain pattern of preferences confuses one's Sex with one's preferred role. Who doubts that men might prefer the social status of women and vice versa? Preferences, however, do not plausibly determine what Sex we are. The present suggestion would cause a person's Sex to vary if his or her preference constellations reversed. Moreover, the present preference test for Sex would have as its consequence that transsexuals could obtain an indisputably successful Sex change by moving to a society in which the Sex they wish to be has the preferences that they presently have and looks as the transsexual looks without SRS.

The failure of psychological perception as the test for Sex entails the rejection of the transsexual's contention that SRS prevents others from making a mistake about the transsexual's Sex. An accurate description of what SRS accomplishes seems to be this: an individual who has the natural phenotypic appearance of one Sex and has the socially acquired stereotypic preferences of the other Sex is given a phenotypic appearance commonly thought to be congruent with those preferences. In the light of our preceding discussion, some important differences between SRS and the amputation case can be noted. First, the swap and transformation cases clarify why someone might wish to have a phenotypic appearance other than he or she has. Changed appearance, in some instances, may be enabling. If Sally is transformed into an M-body, Sally's ability to enjoy, to take one example, the style of intercourse she prefers disappears. SRS would enable Sally to engage in sex acts otherwise unattainable. Second, and similarly, many other roles which, whether rightly or wrongly, are closed to her in the absence of SRS, would be after SRS reopened. Unlike the hand case, SRS may compensate an individual's loss of one kind of functional potential in a way that is rationally understandable. Third, and related to the emerging rationality of SRS, is the importance of psychological and social factors highlighted in the swap and transformation cases. Societies generally do have roles for the sexes. The swap and transformation cases show that one's identification with sex roles could be independent of one's Sex. Although sex roles are not reliable tests for Sex, they may constitute all that an individual regards to be most important in regard to his

or her own sexuality. In short, masculinity and feminity, as matters of *personal* concern, are socially created roles with tenuous ties to biology. No analogous social roles exist for the one- or two-handed. Since an individual's phenotypic appearance, whatever his or her Sex may be, can be essential for occupying a role, it is indeed rational for individuals to wish to occupy the only role in which they feel comfortable.

The rationality of SRS for some individuals undermines the claim that the surgery is mutilating. Hence the first objection, that SRS is mutilating, has been met. The second objection, that SRS is deceptive, remains. The individual with one hand deceives no one. Transsexuals who have undergone SRS do appear to deceive others about their Sex. Rejecting psychological or social tests for Sex brings suspicion of deception into relief. Embracing a biological test for Sex apparently fuels the suspicion of deception. So there seems to be a strong link between the first issue of concern in this paper, namely, 'What is one's Sex?' and the second issue 'Is SRS morally permissible'?

One could, of course, when confronted with the inadequacy of psychological or social tests for Sex, deny that there is such a thing as Sex. Given, however, the frequency of references to this or that organism *being* male or *being* female, denial of the existence of Sex would be advisable only as a last resort. I intend to accept that there is a biological essence to Sex in order to press what taking a biological test for Sex morally commits one to *vis-a-vis* SRS. The biologically oriented may believe it best to dispense with an organism's having a Sex. Instead, one might distinguish an organism's sex at different levels, noting, such levels as chromosomal sex, hormonal sex, gonadal sex, gender sex, and social sex, and so, on this view, there is no Sex of an organism.

V

Elementary biology texts often explain that males have 44+XY chromosomes and females 44+XX. Abnormalities do exist. For example, in Klinefelter's syndrome, the child is 44+XXY. The additional X chromosome may lead to such observable traits as gynaecomastia, and a somewhat feminine appearance. Still Klinefelter's children are considered males. They have a male, not a female, genital appearance.

Other kinds of abnormalities also exist. Perhaps the most interesting of these is testicular feminisation syndrome. Individuals exhibiting the syndrome have the usual 44+XY male chromosomal pattern. Their hormonal levels are those ordinarily found in a male. Despite this underlying masculinity, these individuals are perfectly female in external phenotypic appearance with female breasts, clitoris, and a blind vagina. If raised from birth as females, these individuals need never have cause to question their Sex. They are female, of course. But were they in adulthood diagnosed as having the syndrome, from the standpoint of biology, do the hormonal and chromosomal 'maleness' override the individual's indisputably feminine appearance?

I believe that if there is a scientifically correct answer, then individuals with testicular feminisation syndrome are male in Sex, though the argument to support my contention is not knockdown. When addressing the question two levels need to be distinguished. At the first level are facts easily observable. In biology many of these facts concern an individual's phenotype. At the second level there are facts causally responsible for the phenotype at the first level. In biology, these are the genotypic facts. Although environmental factors invariably bear on how genotypes are phenotypically expressed, the genotype sets some limits on what may be phenotypically expressed. Now I propose that when one asks what an organism's Sex is, the concern is with what the genotypic facts are. Although the possibility of a disharmony between the phenotype and genotype may not occur to laymen, specialists may ask questions about Sex with full knowledge that numerous factors may prevent a genotype from receiving its normal phenotypic expression. In the case of individuals with testicular feminisation syndrome, there is an inability of tissue to respond to the presence of male hormones. This species-atypical deviation prevents the individual from presenting a male phenotype. Roughly, I suggest, an organism's Sex is what it would be in the absence of abnormal interferences with its species-typical development. Obviously it is the job of scientists, not philosophers, to discover what is species-typical development and what abnormal interferences in that development are. To be sure, I am not claiming that it is yet known what the precise biological facts constitutive of a person's Sex are. I claim only that it is reasonable to believe that there are such facts and that it is they which determine an organism's Sex.

If the foregoing is correct, a person's Sex should have no moral significance. No one, in the ordinary flow of events, *knows* what Sex he or she is. At best persons form reasonable conjectures about their Sex, for to know their Sex would require that they know that they possess an essence which has yet to be discovered. That nobody *knows* his or her Sex can provide a defence against the charge that SRS deceives.

A defence of the claim that nobody *knows* who is of what Sex needs one more bit of evidence to be plausible. In addition to testicular feminisation syndrome, there is a rare syndrome in which there are 'males' who are 44+XX. For individuals who are engaging in a sexual relationship, there is invariably a slight possibility that their partner is not of the Sex they reasonably believe their partner to be. To know what Sex a partner is, the knower would have to make an inquiry into his or her partner's genetic structure. Of course people will say that it is so improbable that their partner is not of the Sex that they believe them to be that they do *know* their partner's Sex. They are wrong. If I buy a Canadian lotto ticket, I *say* that I know that I will not win. I do not, however, *know* that I will not win. If I knew that I would not win, the purchase of the

ticket would be inexplicable. What I know is that my chances of winning are very, very slight. Despite the odds, I hope that I will win. This lottery parallels knowledge about the Sex of a partner. Nor will it do to object that the lottery case is dysanalogous to the Sex determination case on the ground that an individual's sexual phenotype is typically a causal product of a sexual genotype. There is but a finite probability of the genotype receiving a typical phenotypic expression. Were I asked to wager on a person's Sex, I should wager if a bookie offered me favourable odds. Suppose I did wager. To what facts would the bookie and I appeal to settle? Not the phenotypic facts, for they are not disputed. Rather, a *presently* unknown fact would settle the question. The situation is similar to that during the Olympic games, where it is not assumed that those who look like women are women. People may claim to know, but without having investigated the relevant biological data, no knowledge is to be had. But why should that matter? Intuitively, it seems the sexual differences that concern people are at the surface. Whatever a person's sexual preferences, the preferences are apparently stimulated and sustained by readily observable factors of the partner. People seem to care not about the sexual essence of a person, but about whatever surface features make it reasonable to suppose the individual is of the Sex desired. It is these surface features which carry the moral and practical weight.

The moral insignificance of deep biology to relations between people is supported by the following hypothetical case. Suppose John loves Sally. They are intimate. One day they discover that Sally has testicular feminisation syndrome. John now knows that Sally is 44+XY instead of 44+XX. Now it should be plain that John's sexual attraction to Sally had nothing to do with Sally's having or not having XX chromosomes. If Sally had had XX chromosomes, John would not expect to experience anything sexually that he is not already experiencing. The sexual attraction was for Sally's phenotype. Nor need the discovery of the Y chromosome affect Sally's self-perception. She has grown up in, and is comfortable with, the social role of a woman. Psychologically the discovery of the XY pattern may unsettle the couple. But many facts, that have no moral significance *per se*, may affect how persons treat each other. Some people would be extremely upset if they discovered that their partner had, despite an utterly 'aryan' phenotypic appearance, a racially mixed genotype. The more one thinks about the case of John and Sally the more one admits, I claim, the moral irrelevance of deep biology to relations between people.

Granting that people do not ordinarily know the Sex of their partners makes an important point about SRS. SRS is alleged to be deceptive because others are misled about the transsexual's Sex. Since, though, transsexuals are rare, the performance of SRS does not significantly affect the probability of a person making a mistake about the Sex of the transsexual. In general, people are no more likely to make mistakes about the Sex of a person if SRS is permitted than if SRS is prohibited. Consequently, SRS is not deceptive in regard to making people more liable to make an error in sexual identification. People are liable to make such errors and, as the John and Sally case illustrates, they ought to have no moral significance.

Still, the immediate response will surely be that although SRS does not make people generally more likely to make mistakes about an individual's Sex, SRS does make people more likely to make mistakes about the Sex of *particular* individuals. Prior to SRS, the transsexual's Sex will, in all probability, be correctly identified. After surgery, accurate identification of Sex is unlikely. By increasing the likelihood of misidentification of particular persons as male or female, SRS deceives.

To undermine this argument, I should point out that the case of John and Sally placed the morally significant aspects regarding sexual relations at the surface. Sally's male Sex had no moral significance for John. What presumably matters is that Sally should look as John wishes his love to look and that Sally's personality should be such as John loves. SRS will undoubtedly make some people more likely to fall in love with the transsexual. But the love will focus on the features precisely relevant to love. The surface features which are morally relevant the transsexual will have. For the man loving a transsexual who has undergone SRS, his partner will be as phenotypically female as Sally is to John. There is no doubt that the man would not have loved his partner if the phenotypic appearance was what one would have expected given the genotype, but the same is true of John and Sally. Although SRS intentionally brought about the present appearance of the transsexual while no intentional change occurred in Sally's appearance, the change being intentional does not, in itself, mean deception is involved.

If people do care about the Sex of their partner, they may always ask. Lying about not having had SRS would be deceptive, just as lying about not having had rhinoplasty would be deceptive. There are plenty of facts about people which would bother their relations if discovered, but revealing them is no duty and asking about them may well be impertinence. When one remembers that the fear underlying the question is that one cannot tell another's Sex without asking, the suspicion arises that it is morally invidious concerns which motivate the question. Why should an essence determinable only by specialists influence a choice with which a person is otherwise, if left to his or her own means, perfectly content to make on the basis of personal observations? In daily life, people show not the slightest concern for the deep biology of their associates. History may undoubtedly make one loved more or less, but failure to proclaim one's history is not evidence of deception. A man need not give his beloved a report of his sexual history to be honest, even if his beloved very much cares about his history. History is a

discretionary story.

SRS is not, then, deceptive. First, it does not change the circumstances under which people ordinarily meet. People entering relations do not know what Sex they or their relations are. Second, even if SRS raises the likelihood of making a mistake about a particular person's Sex, no deception need have occurred. Since people do not check or show interest in the deep biology of their partners, there is no reason to suppose they care what that biology is. People may care about what their partner's history is, but there is no obligation to broadcast one's history. There are many things people might have liked to know about one another. That does not establish a right to desired information, let alone deception in withholding it.

VI

I have connected the moral permissibility of SRS with one's Sex. I have argued that one's Sex is a deep biological fact to which people do not in practice attach moral significance. The moral insignificance of Sex was used to reject the claim that SRS is deceptive. Furthermore, the earlier thought experiments concerning memory swaps or bodily transformation gave a plausible rationale for one wishing to receive SRS. A woman transformed into a man might reasonably wish to have at least an anatomy phenotypically similar to the anatomy with which 'she' is psychologically comfortable. Still more, the counterfeit phenotype would enable her to perform roles otherwise closed. Hence SRS is not mutilating.

Throughout this paper I have operated on the assumption that there is such a thing as one's Sex, and have pointed out that if that assumption is correct, then one's Sex cannot be known on the basis of readily observable physical features. That assumption may well be wrong. Perhaps Sex is a concept that has no place in a sophisticated biological science. Science may, in the end, be able to do no more than state that certain chromosomes are present, that certain hormonal levels are present, and so on. Although the issue is complicated, it seems to me that arguments about SRS are most revealing if they proceed, at least initially, on the assumption that Sex exists and that it is a natural kind. If my arguments invite challenges to that assumption, so much the better.

Acknowledgement

I thank the Editor and two anonymous reviewers for forcing improvement upon me.

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