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Trans* Rights Under Egalitarianism

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Abstract

Trans* rights have only come to the forefront of social, political, and philosophical discourse in recent years. Many of the issues afflicting the trans* community have yet to be properly addressed. This essay discusses trans* reassignments, including gender confirmation surgery and hormones, and makes a case for the government subsidization thereof. Ronald Dworkin and Phillip Pettit's works regarding egalitarianism are used as supporting evidence. The essay delves into their notions of victimization, domination, equality of resources, the ability to pass the "eyeball test", and liberal civic republicanism and applies these concepts to the real life issues of the trans* struggle, resulting in a clear call for action.

Though the struggle for trans* equality began at the same time as the rest of the LGBTQQPIA movement, trans* issues have only come to the forefront of human rights discourse in recent years.¹ As trans* rights enters the limelight, the requirements to end trans* marginalization and victimization begin to be addressed. One of the biggest issues facing trans* individuals is their ability to access the process of sex reassignment. Hormones and surgeries are incredibly expensive and, considering the lifelong discrimination that trans* people face and the socioeconomic disadvantages that result, the costs are often too much to for them to bear.² Many have argued that trans* reassignments should be subsidized by the government if an individual is unable to afford it. Many others oppose the government funding of reassignments, stating that tax dollars should not be used for that purpose. Though the latter view is still pervasive, one will find that trans* reassignment subsidies are necessary under the egalitarian principle, in accordance with the works of Ronald Dworkin and Phillip Pettit.

¹ (Skillings).

² (Grant).

The Egalitarian Systems

Dworkin

Dworkin's theory of egalitarianism is explained by a thought experiment that invokes the concept of an island with limited resources. The island is occupied by a group of shipwrecked people that must create a system to fairly divide the available resources. Presupposing equal concern and accounting for varying preferences, Dworkin argues that they must receive an equal amount of currency, which they may use to bid on various resources.³ Through this auction system, everyone has the ability to get what they want and cannot be envious of others, as they have had equal opportunities to bid on each item.⁴ Dworkin states that individuals must be allowed to do with their resources what they wish, as to ensure their liberty. Individuals' right to use their property in the most abstract manner possible is presupposed before the auction, so long as they do not use their resources to infringe on the rights of others. Dworkin makes incredibly clear that liberty cannot triumph over equality.⁵ Thus, Dworkin's model uses equality to achieve liberty, in an attempt to avoid victimization.⁶

Dworkin's system is an incredibly concrete one. However, problems arise when one attempts to apply it to the world as it is. The United States does not have an auction and our borders are much more malleable than that of an isolated island. Wage gaps are astronomical; there is no equality of resources. In the United States, people do not have the opportunity to achieve equal resources and; therefore, cannot pass the envy test. Also, many people who are aware of social justice issues argue that there is no equal concern for citizens. Dworkin states that background injustices are the reason his model is not perfectly applicable as is.⁷ He makes clear that to make the island model applicable to society, we must mold laws so that they reflect equal concern and more closely adhere to his egalitarian model. One would do this by examining the opportunity costs of adopting the available options and enacting defensible distributions of resources.⁸

Dworkin also outlines the necessary aspects for individual actions in accordance with the ideal of a state of defensible distributions. He tackles the question of whether an

³ Equal concern for all is a necessary and unavoidable prerequisite for any action taken. (Dworkin, 130).

⁴ The auction must pass the envy test, over a lifetime, not just directly after the auction.

⁵ (Dworkin, 128).

⁶ (Dworkin, 176).

⁷ (Dworkin, 166).

⁸ (Dworkin, 170).

individual can be just while existing in an unjust society. In accordance with his Liberal Civic Republican beliefs, Dworkin finds that one cannot be just in an unjust society.⁹ To protect one's morality and quality of life, one must fight to overturn an unjust system; one cannot sit idly by as others are oppressed and marginalized. One cannot be content in their privilege and allow others to suffer, while remaining just. They must strive towards equality and equal concern, lest they be complicit in a reprehensible system.

Pettit

Pettit tackles the issue of egalitarianism from another angle. He begins by listing the three core concepts required to create an egalitarian state: equal freedom, a mixed constitution, and contestatory citizens. He addresses equal freedom by outlining his theory of non-domination, in which he states that everyone should be allowed to live without hindrances.¹⁰ If one is dominated, they are subject to an alien will, and are therefore neither free nor equal. This means that people must be able to make choices regarding their preferences without being hindered.¹¹ The two types of external forces that create hindrances are invasion and vitiation.¹² Invasion directly and purposefully alters the number of options or the associated rewards or punishments that come from choosing them. Invasion that is not consented to is direct domination.¹³ One may consent to have their choices invaded, such as in the instance of giving a friend one's keys when one is preparing to drink a great deal. Even if the drunk demands their keys back, and feels as if they are being dominated, the fact that they consented to this invasion means that it is not domination. Vitiating forces are the other legitimate form of domination, though they are merely circumstantial. The two types of vitiating forces are invigilation and intimidation. Invigilation is when the body in power, or a portion thereof, observes an individual and their choices and can strike at any time to correct them if their choices do not coincide with those that the state will accept. Intimidation is when one is actively threatened and made aware that there would be negative consequences if they were to make a particular decision. All of these, except voluntary invasion, keep people from what they want, and, therefore, are types of domination. As domination keeps people from choosing what they want, it opposes their basic liberties and, due to this, is inegalitarian.

⁹ (Dworkin, 233).

¹⁰ (Pettit, 77).

¹¹ (Pettit, 34).

¹² (Pettit, 35).

¹³ More on altering the options available on page 56 in *On The People's Terms*.

From equality of freedom, Pettit moves on to equality of resources. He states that to uphold the principle of non-domination, there must be economic factors supporting it. People must be resourced if they are to be seen as having equal status.¹⁴ Pettit states that, to be free, one must be able to pass the eyeball test, in which one citizen can look another citizen in the eye without shame due to economic inequalities.¹⁵ While a poor person does not need a luxury vehicle to pass the eyeball test when confronted by the image of someone with a Lamborghini, they may require a functioning car, if taking public transit is difficult and/or stigmatized. This resourcing would be funded by taxation, though Pettit states that it is only justifiable to tax money from the rich if resourcing others protects their freedom in that specific case.

Beyond resourcing, Pettit also believes that people must be protected. He suggests that this be done through laws and norms, specifically through infrastructure, insurance, and insulation. Infrastructure includes education, policies, and other institutional elements. Insurance includes social, medical, and judicial. Insulation includes shelters, health clinics, transitional housing, and other such programs that are last resort solutions to serious issues. These programs all support individuals who are not part of the privileged mega-rich, by ensuring basic social resources needed to have a fulfilling life, regardless of socioeconomic standing. Thus, according to Pettit, through a combination of protection and resourcing, the poor can receive the support they need to function as the equal and free citizens that they are.

Comparisons

While Dworkin and Pettit both have the same aims—to outline an effective egalitarian system—they go about it in notably different ways. Dworkin argues for liberty through equality of resources, while Pettit calls for equality of resources through liberty. Dworkin constructs an immaculate system, while Pettit relies on formulaic logic. However differently their systems are laid out, their views of domination and victimization are parallel. Their systems both effectively address egalitarian issues and come from the same concept of every human deserving the same rights, respect, and concern.¹⁶ Both systems also effectively support trans* rights and the struggle for affordable transitions.

Reassignments

Trans* individuals face an enormous amount of hardships in our current society. With the normalization of the perceived gender binary and rigid gender roles came the

¹⁴ (Pettit, 87).

¹⁵ (Pettit, 86).

¹⁶ As seen in the eyeball test/equal concern parallel.

alienation and marginalization of a substantial portion of the population. According to the 2011 study by the National Center for Transgender Equality, “Injustice at Every Turn,” trans* individuals face enormous adversity. “Ninety percent (90%) of those surveyed reported experiencing harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it,” there is double the rate of unemployment among trans* individuals than cis individuals, trans* people are four times more likely to make under \$10,000 than cis people, and 26% have been fired from a job for being trans*.¹⁷ One fifth of the respondents had experienced homelessness, 57% experienced family rejection, one fifth reported being harassed by the police, and “16% of respondents who had been to jail or prison reported being physically assaulted and 15% reported being sexually assaulted”.¹⁸ Unfortunately, though society enacts harm on trans* individuals, external prejudice is not the only destructive force in their lives. 41% of trans* individuals have attempted suicide; a staggering difference when compared to the national average of 1.6%.¹⁹ Though a good portion of the motivation for so many people to attempt to commit suicide is the structural oppression and outward hate they experience, another portion of it is due to dysphoria. Gender dysphoria is the feeling that many trans* individuals have that their physical body does not match the sex and/or gender that they really are. Though many people are male to female trans or female to male trans, dysphoria is also experienced by those who are gender non-binary.²⁰ Dysphoria has been recognized by the medical community as something which necessitates reassignment, as it can lead to depression, various forms of self-harm (including attempts at preforming reassignment surgery on oneself), and suicide if left untreated.²¹ Treatments include hormones and various gender confirmation surgeries, though the amount of hormones one takes and the types of surgeries one has is entirely reliant on the discretion of the individual receiving them.²² Unfortunately, due to the prejudice that trans* people face at school, work, and in general society, they are often unable to amass enough money afford these potentially lifesaving medical procedures. The therapy sessions which one must partake in before beginning one’s transition cost about \$100 per

¹⁷ (Grant).

¹⁸ (Grant).

¹⁹ (Grant).

²⁰ Non-binary individuals includes anyone who feels as if they are neither a man nor a woman or a mixture of those genders. It is necessary to recognize genders other than the man/woman binary if a legitimate trans* rights movement is to take place. (Tran).

²¹ (Taylor). (Marksamer).

²² The goal is to make one feel comfortable in their bodies, not to reinforce the perceived gender binary by expecting someone to “fully” transition.

session.²³ Hormones cost up to \$100 a month and must be taken for several years.²⁴ Female to male chest surgery costs between \$1,500 and \$8,500.²⁵ Breast augmentations costs about \$8,200.²⁶ Male to female reassignment (colloquially known as “bottom surgery”) costs about \$7,000 to \$24,000.²⁷ The cost for female to male reassignment (“bottom surgery”) is often more than \$50,000 and can cost up to \$100,000.²⁸ These costs are obviously incredibly high and are only made less feasible by the fiscal inequalities experienced by the trans* community.²⁹

San Francisco has enacted measures to tackle the problem of unaffordable reassignments. The cost of San Francisco city workers’ transitions is covered by their health insurance.³⁰ The health insurance plan pays for hormones and operations, but does not cover cosmetic procedures.³¹ Although this policy seems promising and is an unprecedented step in the right direction, “employees first must go through an extensive medical review process that takes up to six months,” in which a psychologist must deem their dysphoria so severe that gender confirmation surgery is absolutely necessary.³² Trans* individuals must also be employed for at least a year and their coverage caps at \$50,000 with a 15-50% deductible, which is not enough to cover many procedures.³³ Furthermore, complications arise when non-binary individuals seek hormones or gender confirmation surgery. As 50% of trans* individuals have reported having to teach their medical providers about trans* issues, it is altogether possible that non-binary individuals’ “partial” transitions may be written off as non-necessary.³⁴ This

²³ (Marksamer).

²⁴ (Marksamer).

²⁵ (FTM Chest Reconstruction Surgeries).

²⁶ (Male to Female Price List).

²⁷ (Sex Reassignment Surgery).

²⁸ (Sex Reassignment Surgery). (Marksamer).

²⁹ This is further illustrated by the fact that 48% of trans* individuals have postponed basic medical attention for illness or injuries due to their inability to afford it. (Grant).

³⁰ (Mason).

³¹ (Mason).

³² This can lead to people being turned away if their dysphoria is not deemed severe enough. (Mason).

³³ (Mason).

³⁴ (Grant).

can lead to a bureaucratic nightmare in which non-binary people must search, with varying levels of success, to find an informed and sympathetic psychologist, in a timely manner, to approve their healthcare requests.

Accompanied by the same issues is another, recent and commendable, amendment to a program that aims to aid trans* people in affording their transitions. Healthy SF is a health insurance program for the poor and uninsured in San Francisco that now subsidizes gender confirmation surgeries, though it does not pay for hormones.³⁵ Individuals must jump over the same hurdles as city employees to prove surgery is necessary.

Though they are not as inclusive or comprehensive as would be ideal, these programs are a promising start, when it comes to the subsidy of transitions. An ideal system of subsidies would be accessible to non-binary individuals, cover both hormones and gender confirmation surgery, and include state recommended psychologists that are well-versed on trans* issues and that would facilitate a speedy acceptance process for trans* individuals.

Egalitarian Justification

There are countless methods one could use to justify the subsidization of a life-saving medical procedure for those who are so systematically oppressed that they cannot afford it on their own. Though emotional and ethical appeals are incredibly effective in this situation, the most concrete justification is an egalitarian one. Both Ronald Dworkin and Phillip Pettit's theories not only justify, but demand making transitions affordable through social welfare programs.

Pettit's call for non-domination supports this trans* rights issue. As trans* individuals have been marginalized to such a great extent, their choices have been greatly reduced, due to their lowered socioeconomic statuses. Were they not a dominated group, many more trans* individuals would be able to fund their own reassignments. In a just society, hindrances on choices must be lessened to the greatest extent possible. We can completely eliminate the hindrances on the choice to begin one's transition by subsidizing the costs on a need relevant basis.

Pettit's concept of the eyeball test further supports the assertion that transitions must be subsidized. The premise, as previously stated, is that individuals must be able to look one another in the eye, without feeling indignity due to economic inequalities. An individual who feels as if their body does not match their true sex and/or gender and does not have the means to remedy this cannot possibly feel as if this is acceptable, when others are able to be comfortable within their assigned sex and

³⁵ (Taylor).

gender. They cannot pass the eyeball test because they cannot achieve this essential baseline of contentment.

Pettit also calls for protection through laws and norms. Trans* people would be better protected if their dysphoria could be quelled and the associated medical procedures would be adopted as standard in health insurance policies. This would allow for higher visibility, greater acceptance as a normal—though less common—facet of human gender, and would allow for direct aid by providing medical care to those who so desperately need it. The former two would directly address much of the hate and stigmatization that trans* people face and the latter would do a large part in lowering the depression and attempted suicide rates among trans* individuals by countering, then eliminating, their gender dysphoria.

Dworkin demands equality of resources; something that trans* people do not have.³⁶ Due to this inequality of resources, caused by background injustices, they cannot pay for reassignments. This is victimization and, according to Dworkin, must be opposed through a defensible redistribution of resources.

Furthermore, Dworkin states that one cannot be just in an unjust society. How can we allow the injustice of a specific group of people not being able to afford a lifesaving medical procedure to go unopposed? How can we sit idly by when attempted suicide rates affect nearly half of trans* people? How can we deny them the right to a privilege the majority has—comfort within their assigned sex and gender? According to Dworkin, we cannot do so and remain just; we cannot do so and be moral.

Dworkin specifically addresses how a state must approach medical coverage in the latter half of his book, *Sovereign Virtue*. He states that medical procedures which are “necessary and appropriate” must be covered by comprehensive, state sponsored medical insurance.³⁷ He also states that lifesaving operations with a success rate of over 25% would be reasonable to insure.³⁸ As gender confirmation surgery is necessary, because gender dysphoria is life threatening, it must be covered under his system. It also helps that the success rate is far above 25% as it is a low-risk operation that directly counters gender dysphoria, which is the root of the problem. Thus, according to Dworkin, transitions must be subsidized by government-sponsored health insurance.

³⁶ (Grant).

³⁷ (Dworkin, 316).

³⁸ (Dworkin, 316).

Objections

Some individuals may still raise objections to government financing of transitions. They may worry that the subsidy of reassignments would raise their taxes or health insurance costs to a level that would be burdensome. This is not the case. When San Francisco city workers' health insurance was altered to include transitions, workers only had to pay an additional \$1.70 a month.³⁹ This \$1.70 also included the addition of coverage for hearing aids and acupuncture.⁴⁰ Thus, the monthly fee one must pay to ensure life-saving medical care for one's fellow citizen is a lesser amount of currency than the change one might find between their couch cushions.

Another objection that may arise is the concern that people might get gender confirmation surgery, at taxpayer costs, only to realize it was a mistake. However, as previously stated, trans* individuals must undergo up to six months of counseling and medical reviews to ensure the necessity of reassignment, rendering this sort of error impossible.⁴¹

Finally, one could also ask that, if trans* reassignments were to be covered by health insurance, what else could be? Could forms of body dysmorphia be treated through government subsidized surgeries? According to Dworkin, only those operations which are "necessary and appropriate" should be.⁴² This means that, in most cases of body dysmorphia, counseling would be more appropriate; surgeries are unnecessary. Only when surgery is the only method of fixing an issue, should it be employed, as is the case with gender dysphoria.

Conclusion

Trans* rights issues remain largely unaddressed, despite the serious consequences of inaction. A first step towards addressing the systematic oppression and marginalization that trans* people face is the subsidization of their transitions, to counter the socioeconomic inequalities they experience and to fight the negative effects of gender dysphoria. This subsidization is fully supported by the egalitarian theories of Ronald Dworkin and Phillip Pettit. According to them, it is our duty to fight with our disadvantaged brothers, sisters, and siblings alike for their rights, if we are to be just people in a just society.

³⁹ (Mason).

⁴⁰ (Mason).

⁴¹ (Mason).

⁴² (Dworkin, 316).

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