

What does trans inclusion in a liberal state require?

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Abstract. One of the most prominent minority groups today is trans people. Those who see themselves as fighting for trans rights have tended to take these to include a right to legal recognition by the state, and social treatment by fellow citizens, *as* the sex of identification. These rights claims have been given substantial legal and institutional uptake. If trans people's full inclusion in public life *requires* legal recognition and social treatment as the sex of identification, then this is merely a description of things being as they should be. But if trans people's inclusion within the liberal state *does not* require these things, then this may be a description of a violation of liberal neutrality, the enforcement by the state of a contested and controversial conception of the good; and a tyranny of the majority, the weight of social opinion being pressed against those who want to talk about (what they see as) the fact that things *are not* as they should be. One way to gain some clarity on whether things are as they should be or not is to carefully consider the principles that liberal democratic states have used to secure the full inclusion in public life of other minority groups, and their application to trans people. I'll consider in particular *toleration*, collective and individual *exemptions*, and *full accommodation*; as they have applied to religious minorities, women, sexual orientation minorities, black people, and people with physical disabilities.

1. Introduction

One of the most prominent minority groups today is trans people. Those who see themselves as fighting for trans rights have tended to take these to include a right to legal recognition by the state, and social treatment by fellow citizens, *as* the sex of identification (or *not* as the sexes of *disidentification*, in the case of nonbinary trans people). These rights claims have been given substantial legal and institutional uptake. Where change of legal sex had been possible in some countries after 'sex reassignment surgery', that stringent gatekeeping requirement gradually gave way to some period of time living as the sex of identification, and in some countries today legal sex can be changed by statutory declaration alone (this is colloquially known as sex self-identification law, and became controversial after a public consultation over introducing it in the United Kingdom). In some countries the protected attribute 'gender identity' has been incorporated into equalities law, including sex discrimination law, meaning not merely that trans people cannot be discriminated against as trans, but that they cannot be discriminated against as their sex, even in cases where there are permanent exemptions otherwise allowing that.

Many workplaces have introduced policies that make it a disciplinary matter to fail to treat a trans person as the sex of identification, even where the law does not require that. And many individuals, especially on the political left, have strong negative reactions to phenomena like 'misgendering' and 'deadnaming', to the invoking of a trans person's 'sex assigned at birth' as a reason to exclude them from a single-sex space, and to the idea of a feminist or lesbian, gay and bisexual politics that is not 'trans-inclusive'.

If trans people's full inclusion in public life *requires* legal recognition and social treatment as the sex of identification, then this is merely a description of things being as they should be. But if trans people's inclusion within the liberal state *does not* require these things, then this may be a description of a violation of liberal neutrality, the enforcement by the state of a contested and controversial conception of the good; and a tyranny of the majority, the weight of social opinion being pressed against those who want to talk about (what they see as) the fact that things *are not* as they should be.

One way to gain some clarity on whether things are as they should be or not is to carefully consider the principles that liberal democratic states have used to secure the full inclusion in public life of other minority groups, and their application to trans people. I'll consider in particular *toleration*,

collective and individual *exemptions*, and *full accommodation*; as they have applied to religious minorities, women, sexual orientation minorities, black people, and people with physical disabilities.

These three principles are not mutually exclusive: all three might be in play for one minority group. For example, a state whose law protects against religious vilification, permits and protects faith education, and allocates public funding to faith organizations, thereby protects Jews from religious, cultural, and/or ethnic discrimination, permits Jewish schools, and supports the presence of synagogues and the celebration of Jewish holidays. Religious anti-vilification law secures *toleration*; the exclusion of non-Jewish students from Jewish schools is permitted by *exemptions*; and the state's refusal to endorse one religion—opting to celebrate all religions with a significant population in the state, rather than none—is a matter of *full accommodation*.

I'll start with toleration, in Section 2, in dialogue with a recent essay by Gary Francione. In Section 3 I'll turn to exemptions, drawing on Cecile Laborde's discussion of religious exemptions (Section 3.1 focuses on collective exemptions, Section 3.2 on individual exemptions). Finally, in Section 4, I'll turn to full accommodation.

2. Toleration

Toleration is one of the principles of liberal individualism.¹ At a minimum, it falls out of the commitment to each person pursuing her own conception of the good in her own way. Unless she is harming others, she should be left alone.² Even if we judge her to be making a mistake, she is free to make her own mistakes and learn from them—or not learn from them, as the case may be.

The flip side of toleration is that just as we should not *interfere* with what another person is doing, neither must we *participate in* what they're doing. If someone you know decides to go off grid and pursue a life of solitude in the middle of the outback, that's fine—you don't have to bring her snacks. If she decides to found a weird religion and spend her days on street corners trying to attract followers, that's fine—you're under no obligation to *become* one of those followers. Toleration is 'live and let live', it isn't affirmation or participation. Indifference is perfectly sufficient.

In a recent article in *The Philosopher's Magazine*, Gary Francione distinguished between what he called 'equality claims' and 'belief claims', in the context of a liberal society, and as they apply to activism for trans rights (Francione 2024). Equality claims are 'claims to be free from discrimination, based on one's transgender status, concerning the distribution of basic goods such as employment, education, and housing', while belief claims are 'claims that we are discriminating against those who identify as transgender to the extent that we do not accept certain beliefs promoted by trans activists as literally true, or, at the very least, that we do not act *as if* we accept those claims as literally true and support changes in social institutions and practices so that they accord with those claims' (*ibid*). An equality claim would prevent hiring discrimination against a transwoman (for being trans); a belief claim would require the employer to believe, or act as though she believes, that the transwoman *is* a woman, or is female.³

¹ Although for discussion of toleration preceding the liberal tradition see e.g. (Nederman 2011; 2016).

² This is a Millian way to justify toleration. Alternative justifications are prudential or pragmatic, appealing to the costs—social, economic, or political—of *intolerance*; consequentialist (appealing to the thought that tolerance will get us more of what we value than intolerance); sceptical or fallibilist, appealing to the idea that we should not intervene on actions or ideas that we cannot know *for certain* to be false or harmful; and moral, appealing variously to autonomy, impartiality, or respect for persons (Horton 1987).

³ These two types of claim are harder to disentangle when the country's law contains permanent exemptions from anti-discrimination law for sex-specific hiring. In ordinary cases, hiring discrimination on the basis of sex is not permitted, so if a transwoman is not hired when the best candidate it may be more or less clear that this is a case of discrimination against trans people. But if the job is sex-specific, e.g. for a same-sex carer for a person with a physical disability, then if a transwoman is not hired when the best candidate this *may* be a case of impermissible discrimination against trans people, or it *may* be a case of *permissible* discrimination on the basis of sex. Equality claims in Francione's sense protect trans people *qua* trans people. Only a belief claim in Francione's sense would protect trans people *qua* the opposite sex, i.e. considering a transwoman to be a 'woman assigned male at birth', and so *female* for the purposes of sex discrimination exemptions.

Francione's main interest is in trans activists' claims that 'if a male identifies as a woman then that male is a woman', and correspondingly, 'if a female identifies as a [man] then that female is a man' (*ibid*). On this view, to treat a biological male as male (/a man) when he identifies as a woman is *part of* the discrimination that he is owed protection from. Accepting this claim might mean, for example, ensuring that once a transwoman has been hired, he's also allowed to use the women's bathrooms and participate in all the workplace gender equality programmes aimed at retaining women employees and, if he stays with the company that long, to retire at the women's retirement age.

Francione's strategy in his article is to compare the 'beliefs promoted by trans activists as literally true' (henceforth trans activist beliefs) with Catholic religious beliefs, and discrimination against persons with Catholic religious beliefs with discrimination against trans people with trans activist beliefs. He argues, using this comparison, that in both cases the individuals have an equality claim but not a belief claim: a claim to not be discriminated against in employment, promotion, accommodation, education, etc. but no claim to have others believe what they believe, or act as though they do. Francione writes:

'The analogy between John's [Catholic] belief claims and Jane's [trans activist] belief claims is obvious: John is convinced to a certainty that the performance of a certain ritual means that bread and wine are transformed into *something* else; Jane is convinced to a certainty that an internal or innate sense that Jane is a woman means that Jane, a male, is transformed into *someone* else. ... trans activists claim that we are acting as bigots and discriminating against Jane if we do not accept Jane's belief claims as well as Jane's equality claims, or, at least, if we do not act as though Jane's belief claims are true by allowing Jane to, inter alia, use the women's toilets or attend the lesbian lunch. Such claims would be clearly and without hesitation rejected if applied in the context of John's Catholicism' (Francione 2024).

I think this parallel between a belief in transubstantiation and a belief in the transformative effect of a gender identity is reasonable. I think the distinction between a social group and beliefs relating to that group (which might be a liberation ideology, might relate to the shared purpose of some free association of a subset of the group's members, or might be ascribed by outsiders) when it comes to what counts as discrimination against members of the group is very important. Indeed, it is at issue in the latest iteration of the ongoing controversy over Israel/Palestine, in the distinctions between Jews and Zionism, Gazans and Hamas supporters. Other examples of the group vs. beliefs about the group distinction include women and feminism, black people and critical race theory, Chinese people and the Chinese Communist Party, Muslims and violent extremism. Such beliefs may be widely-accepted by the group they relate to, or widely repudiated. There may be attempts, by group members, to get everyone in the group to 'hold the line' vis-à-vis the beliefs—this is where accusations of being a 'sellout', a 'traitor', an 'Uncle Tom', a 'self-hating Jew', a 'handmaid of the patriarchy' etc. come from (see discussion in Kianpour 2022; 2023). But just as there is always a distinction between a woman and a feminist (some women are feminists and some women are not), there is always a distinction between a trans person and a person with trans activist beliefs. Some trans people have these beliefs and some do not.

What Francione calls 'equality claims' are what I am calling toleration, because non-discrimination requires allowing a person their beliefs, but does not require endorsing them, or acting as though one endorses them. One way to see immediately that toleration cannot require accepting or endorsing belief claims is to consider what happens when two such sets of beliefs come into conflict. What is a non-trans man to do when confronted, on the one hand, with a trans person's trans activist belief claims that change of sex is possible; that what makes a person a woman is that they have a 'woman' gender identity; and that pronouns communicate information about how one would like to be treated; and at the same time, is confronted with a woman's gender-critical feminist belief claim that sex is immutable; what makes a person a woman is that she is an adult human female; and that pronouns communicate information about the person's sex? If he must accept the trans person's trans activist beliefs then he must reject the woman's gender-critical feminist beliefs; if he must accept the woman's gender-critical feminist beliefs then he must reject the trans person's trans activist beliefs. The two are

mutually contradictory. Both sets of beliefs relate to minority groups (trans people, women), so they would appear to have an equally strong claim to be believed.

Francione says the beliefs must be tolerated, but no more than that. If someone biologically male wants to ‘live as a woman’, ‘dress as a woman’, assert that he is a woman or is female, etc., that is up to him. We cannot prevent him from doing this, but neither must we agree with him. Toleration is compatible with believing there is no such thing as living as woman (beyond merely being female), no such thing as dressing as a woman (only dressing in a feminine way, which a person of either sex can do), and no possible world in which a male is, or becomes, a woman or female.

I agree with Francione that these beliefs must be tolerated, but I am interested in whether there is any stronger requirement than toleration. One reason to think there might be a stronger requirement is that rejection of others’ beliefs can imply that we think they are lying or deluded (Talia Bettcher presents this as a double bind for trans people in (Bettcher 2007)). This is bad enough when it happens to anyone who is telling the truth; it adds insult to injury when done to members of already disadvantaged groups. We can avoid it by accepting, rather than rejecting, those members’ belief claims.⁴ Another is that because others’ appraisal informs our self-respect, appraisal should generally be accurate. Minority groups routinely misappraised due to ignorance or prejudice are caused to suffer a deficit of self-respect (Valentini 2022). If our misappraisal relates to the minority group members’ beliefs, accurate appraisal may require a change in our epistemic attitudes toward those beliefs—from rejection to acceptance, or from grudging toleration to respect.⁵ While epistemic attitudes are an individual matter, the state can force our hand in various ways, for example by writing law in a way that accepts trans activist beliefs, or by prohibiting or punishing certain forms of expression of disbelief, or failure to act as one would if one believed.

A final reason to think there might be a stronger requirement than toleration is that thinking of trans people as having particular *beliefs* may not be the right way to think about them as a minority group: perhaps there is a better parallel than to Catholicism. I’ll come back to this idea in Section 4—Section 3 stays with the parallel to religion but in a broader way that justifies a stronger principle of inclusion.

3. Exemptions

While Francione seemed to take religion to have only a weak claim to inclusion (non-discrimination but nothing more), Cecile Laborde in her book *Liberalism’s Religion* (2017) considers a more substantive form of inclusion, namely exemptions. While there are other ways to think about exemptions (e.g. Vallier & Weber 2018), I focus on Laborde because her ideas are central to the arguments of one prominent defender of the claim that trans people must be treated as the sex of identification (Cosker-Rowland 2022; 2025; *forthcoming*). Laborde asks:

‘Can majority religious symbols be displayed in the public sphere? Can churches have male-only clergy? Can faith-based businesses deny services to LGBTQ citizens? Should conscientious objectors be exempted from the application of general laws? Should religious minorities be protected against discrimination on the same grounds as racial minorities?’ (Laborde 2017, p. 1).

If the church can discriminate against women in hiring/appointments, then it is not merely that those individuals who have faith cannot themselves be discriminated against in hiring *because* they are of a particular faith, but that some individuals who have faith can themselves *discriminate* against others. They

⁴ This worry about adding insult to injury is a likely part of the motivation for the popular movement to *believe women* about sexual assault and sexual harassment.

⁵ Alternative routes to a similar conclusion include Stephen Darwall’s idea of *recognition respect* (Darwall 1977, p. 38), and Charles Taylor’s idea that failure to give *social recognition* to a person’s identity (‘understanding of who they are’, ‘picture of themselves’) could be oppressive or harmful (Taylor 1992, p. 25).

are an exception to what is normally required, which is non-discrimination, in this example on grounds of sex. Laborde is mostly concerned with exceptions of this kind, which tend to be described in anti-discrimination and equalities law as ‘exemptions’ (hence the title of this section).

One of her arguments in the book is that religion is not unique: it can (and should) be disaggregated into different dimensions that matter, including ‘cognitive statements of truth, identificatory symbols, comprehensive ways of life, modes of voluntary association, moral and ethical obligations, vulnerable collective identities, and so forth’ (*ibid*, p. 2). Once it is disaggregated, it can be considered alongside secular conceptions of the good and forms of association. This approach makes it easier to think about how her arguments apply across to other kinds of groups, of most interest for my purposes, trans people with trans activist beliefs.⁶ If religion is not special in the first place, then what she says about the accommodation of religion can be straightforwardly applied to other belief systems.

Laborde discusses both *collective* and *individual* exemptions. The church having the right to hire only male clergy is an example of a collective exemption from ordinary anti-discrimination legislation; an individual from a non-majority religion seeking flexible working hours to accommodate prayer or religious holidays is an example of an individual exemption from ordinary workplace operations. Let’s first try to understand her argument for collective exemptions, or ‘the scope of the privileges [religion] justifies’ (*ibid*, p. 178).

3.1 Collective exemptions

Collective exemptions depend on a distinction between what Laborde calls ‘coherence interests’ and ‘competence interests’ (*ibid*). Coherence interests relate to the group’s ability to pursue its purpose, while competence interests relate to the group’s authority over its doctrine.

Let’s take coherence interests first. Coherence interests are the interests an association of individuals has in being able ‘to live by their expressed standards, purposes, and commitments’ (*ibid*). Once individuals have figured out their conception of the good, they may want to get together with others who share it, to pursue that conception of the good *together*. Laborde introduces the idea of ‘collective integrity’ to refer to such a group being able to ‘maintain a structure through which their members can pursue the purpose for which they have associated’ and to ‘achieve some coherence between their purpose, structure, and ethos’ (*ibid*). Indeed, groups may *enforce* their ‘ethos and standards’ on members: ‘My university will rightly discipline me if I plagiarize academic work; my political party will expel me if they find out I am an ideological opponent and have only joined cynically to influence the selection of its next leader’ (*ibid*, p. 179). Likewise, religious associations have the ‘right to prohibit apostasy and blasphemy for their members, to excommunicate heretics and dissidents, and to refuse entry to nonbelievers. A religious association that is unable to insist on adherence to its own religious tenets as a condition of membership is unable to be a religious association’ (*ibid*).⁷

Laborde thinks that discrimination in membership—the ‘associational prerogative to refuse or rescind association’—is permitted when it ‘is in furtherance of the association’s doctrine or purpose’ (*ibid*, p. 178). To illustrate, a group set up with the purpose of facilitating healthy male relationships without the distraction of competing for female attention might refuse membership to women, because this exclusion is crucial to the purpose of the group. But a group set up to teach boys maths, where the purpose of the group is only to encourage interest and skill in mathematics, may not refuse membership to a girl, because this exclusion is *not* crucial to the purpose of the group. (From the first example we see that it could be: it just depends on the details of the actual group). I note, because it is relevant to our

⁶ She writes, ‘whatever treatment [religion] receives from the law, it receives in virtue of features that it shares with nonreligious beliefs, conceptions, and identities’ (*ibid*, p. 3).

⁷ This is not a bad explanation of why *feminism* isn’t an association of women: it is unable to insist on adherence to its own tenets, because there is so much disagreement over what those tenets are. More specific types of feminism may be associations, like intersectional feminism, or gender-critical feminism.

later application of these ideas to trans inclusion, that Laborde uses as an illustration of coherence interests that ‘a support group for female rape victims should not be forced to accept a male manager’ (Laborde 2017, p. 178).⁸

Not all kinds of associations have coherence interests, on Laborde’s account. Because her interest is in ‘exemption from general laws’, her focus is on particular kinds of associations, namely those that ‘are *formally* constituted as *voluntary* associations and... the primary mode of association is *identificatory*’ (*ibid*, pp. 180-181, my emphasis). A requirement of formal constitution means ‘organized religions’ would count, but ‘diffuse, loose religious communities—such as “the Hindu community” or “the Muslim community”’ would not (*ibid*, p. 181). To count as a voluntary association the religious group must ‘guarantee freedom of exit for its members’ (*ibid*). And finally, in identificatory associations, ‘individuals identify with the projects and commitments that are at the core of the association’s [collective] integrity’ (*ibid*, p. 182).

Next, competence interests. Laborde writes, ‘While coherence interests refer to associations’ ability to live by their professed standards, purposes, and commitments, competence interests refer to associations’ special expertise in the interpretation and application of those standards, purposes, and commitments’ (*ibid*, p. 191). This is an ‘epistemic dimension of freedom of association’ (*ibid*). She says that competence interests ‘do not justify blanket exemptions’ but do ‘demand judicial deference’ (Laborde 2017, p. 190). So they are *weaker* interests than coherence interests.

Her example comes from giving two parallel cases of expulsion, one in which the Boy Scouts expels a gay scoutmaster, another in which a Christian church expels a gay priest. While the courts can easily figure out what is involved in being a good scoutmaster, the matter of what makes a good priest is more dependent on the details of ‘theological doctrine or spiritual practice’, which may be inaccessible (*ibid*, p. 190). In a case such as the latter, ‘the state must avoid “entanglement” with religion’, the courts ‘must adopt a hands-off approach in matters of religious doctrine. ... must either defer to the decisional structure of the religious organization, or they must apply so-called neutral principles of law. What they must *not* do is to take sides on disputed matters of doctrine’ (*ibid*, pp. 191-192). It follows that if the Christian church in the example just given claims that it expelled the gay priest *because he was a bad priest*, it’s outside the competence of the court to assess that claim, so the expulsion will be permissible (*ibid*, p. 192). (Laborde says that ‘deference’ doesn’t mean ‘immunity’: a court may accept to hear a case alleging discrimination and may defer in matters of doctrine without yet taking the doctrinal claims to be the final word—perhaps there is adequate evidence to support the expulsion being a matter of ‘heterosexist prejudice’ (*ibid*, pp. 192-193). These competence interests also apply in contexts such as employment in ‘highly specialized fields’ (*ibid*, p. 195).

Neither of these two aspects of collective exemptions pays off for trans inclusion. Being trans is not any kind of association; trans *activism* may be, and may be both voluntary and identificatory,⁹ but is rarely formal. (Stonewall in the UK, ACON in Australia, and GLAAD in the US, are all formal; the trans activists of Bluesky are not). And in any case, trans activist associations¹⁰ are not seeking the right

⁸ For other examples see her pp. 179-180. Edinburgh Rape Crisis Centre was, until recently, run by a transwoman; see discussion at (Horne 2021) and the statement from Rape Crisis Scotland here: <https://www.rapecrisisscotland.org.uk/news/news/our-statement-on-the-ongoing-employment-tribunal-concerning-edinburgh-rape-crisis-centre/>

⁹ (Although detransitioners and desisters might have something to say about ‘freedom of exit’ from the association, given the extent to which they are vilified).

¹⁰ There is a question here about what exactly counts as a trans activist association. There are formal associations like universities and businesses that have adopted trans activist commitments as part of their current corporate ethos (for example by signing up to the workplace accreditation schemes offered by Stonewall in the UK or ACON in Australia; or by introducing policy that embeds a trans activist viewpoint, like gender-affirmation leave.) *If* this is sufficient to make these associations into trans activist associations, then my claim that trans activism is not usually formal will be false, and we might consider any differential treatment of employees who reject trans activist beliefs *as* those associations seeking the right to discriminate. That is to say, just as the church may seek to refuse to appoint women clergy, a university signed up to ACON’s Workplace Equality Index (a LGBTQI+ inclusion scheme) may seek to discipline staff who go against the scheme’s commitments. Whether we

to discriminate. Rather, trans activist associations are seeking that their beliefs be accepted, so that *others* count as discriminating against them when they do not accept the beliefs (or at least act as though they do). The closest parallel to this would *not* be something like an organized religion within the liberal state being permitted to discriminate against women in hiring when that is part of their religious doctrine, but rather something like the state adopting a religion, or ceasing to be neutral between different religions and putting its resources into backing and promoting one particular religion. If the parallel to religion is apt then this has happened in Australia: by adding ‘gender identity’ to the Sex Discrimination Act (1984) as a form of sex discrimination, and talking in terms of comparators with ‘the same gender identity’ or ‘a different gender identity’, the state has adopted trans activist beliefs.¹¹ If they had done this with organized religion it would count as a violation of liberal neutrality and of the separation of church and state.¹²

When it comes to competence interests, those who share trans activist beliefs may reasonably be described as having inaccessible doctrine that the state and the courts should avoid entanglement with (this is one way of thinking about ongoing difficulties with providing an informative definition of gender identity or a plausible explanation of the identification of gender identity with gender). But again, those with trans activist beliefs are not generally seeking to discriminate against others, and it is not clear how to apply the idea of competence interests back to their claim that *they* are being discriminated against when *others* do not accept their beliefs as being true (or act as though they do).

3.2 Individual exemptions

Individual exemptions involve not a right to discriminate against others, but a right to be exempt from specific laws or policies that other people are generally bound by. (So where associations’ exemptions were from anti-discrimination law in particular, individual exemptions have a wider scope). Perhaps this will give us the resources to say something about trans inclusion.

The main idea is that individual exemptions ‘apply to an ethically salient category of integrity-protecting commitments’ (*ibid*, p. 198). Judgements of ethical salience are ‘judgements that rank certain freedoms and rights as essential to the exercise of basic human capacities’ (*ibid*, p. 200). Freedoms of ‘conscience, speech, and association’ are all examples (*ibid*). Integrity is ‘an ideal of congruence between one’s ethical commitments and one’s actions’ (*ibid*, p. 203). It is grounded in the ultimate values of ‘identity, autonomy, moral agency, and self-respect’ (*ibid*, p. 204).¹³ An integrity-protecting commitment is ‘a commitment, manifested in a practice, ritual, or action (or refusal to act), that allows an individual to live in accordance with how she thinks she ought to live’ (*ibid*, pp. 203-204). In Laborde’s view it is

accept this broader understanding of a trans activist association depends on whether we think the association is defined by its core business or purpose (e.g. for a university, teaching and research) or whatever values it happens to espouse at a time, however opportunistically (as with companies’ ‘green-washing’ or ‘rainbow-washing’). Laborde is clear that associations cannot claim coherence interests for everything they happen to do; we must distinguish between an association’s ‘core and peripheral... activities’ and establish a nexus between ‘the association’s main purpose and the specific activity or function for which it claims an exemption from nondiscrimination laws’ (Laborde 2017, p. 185). Clearly there is *not* this nexus for universities, nor for most companies. I’m grateful to Mary Leng for discussion on this point. For a podcast investigation of the impact of Stonewall’s ‘Diversity Champions’ scheme on British workplaces see (BBC 2021).

¹¹ To even make sense of the idea of the same or different gender identity, we have to accept the principle of universal gender identity, which is that everyone has one. Then we recast non-trans females as ‘people with woman gender identities’, making non-trans females people of ‘the same’ gender identity as transwomen (mutatis mutandis for non-trans males and trans men). Non-trans females and transwomen together then have a ‘different’ gender identity to non-trans males and trans men together. If the trans people in question are non-passing this makes sex discrimination law into a weapon for the enforcement of trans activist beliefs, because any exclusion of a transwoman from a female-only space, service, or provision will count as sex discrimination. A legal case, *Tickle v Giggle*, recently went through the Australian courts, involving a non-passing transwoman who alleged sex discrimination after being ejected from the women-only social media platform Giggle for Girls. The courts found indirect discrimination of the transwoman (see e.g. Yang 2024).

¹² For a careful discussion of when the liberal state can adopt aspects of religion *without* violating these principles, see discussion in Laborde 2017, esp. Ch. 4.

¹³ I should confess that I do not understand how ‘identity’ is a value, let alone an ultimate value—although of course it is something that some people in fact value. It seems to be in a different category to autonomy, moral agency, and self-respect.

commitments that are a matter of integrity, as opposed to those that are a matter of mere preference, that are candidates for exemptions. She says ‘These commitments cannot be sacrificed without feelings of remorse, shame, or guilt, by contrast to preferences, which can’ (*ibid*, p. 204). If an individual claims an exemption on the basis of an integrity-protecting commitment, she must show that it isn’t trivial, that it connects to her ‘sense of self’ or to her ‘moral or ethical identity’ (*ibid*, p. 207). (The claim must also not be morally abhorrent—*ibid*, pp. 207-208).

A good example of an integrity-protecting commitment is conscientious objection to war (*ibid*, p. 214). Examples of exemptions for integrity-protecting commitments include not compelling Orthodox Jews to undergo autopsies when their deaths are not suspicious (*ibid*, p. 220); not denying Muslims time off on Fridays (when Christians, because of the dominant culture, are given time off on Sundays) (*ibid*, p. 220); and not requiring Sikhs to wear safety helmets on construction sites (*ibid*, p. 222). At the end of the chapter, Laborde returns to her point that religion is not unique: ‘A less ethnocentric, more egalitarian regime of exemptions should move away from the category of religion altogether, and instead take as its focus integrity-protecting commitments—whether these are ethical, cultural, or traditionally religious’ (*ibid*, p. 238). So: a Sikh man’s religion is important enough for adherence to be a matter of integrity for him; wearing a turban is a part of Sikh religious practice; therefore it is legitimate to exempt him from the more general legal requirement that workers on construction sites wear safety helmets.

The question for us, then, is whether a trans person’s trans activist beliefs are a matter of integrity for them, and if those beliefs count as integrity-protecting commitments, what general legal requirements they exempt those trans people with trans activist beliefs *from*. The comparison to Sikh workers is instructive. The only people wearing turbans on construction sites are Sikhs. *Not* wearing a safety helmet creates an elevated physical safety risk to the Sikh individual alone, and a slightly elevated financial risk to the construction company working on the site (because if there is an injury, they will have to pay for the medical treatment). There are no more basic values that take priority over integrity (as there would be if the Sikh individual demanded that *others* not wear safety helmets). And there is no other group that itself has integrity-protecting commitments that stand in conflict with the Sikh individual not wearing a safety helmet.

Trans inclusion is different in all three respects. Transwomen are not the only males who seek to be treated as women/female (reasons for seeking this treatment include paying less for car insurance¹⁴ accessing better prison conditions,¹⁵ and exploiting the greater social trust between women.¹⁶) When transwomen are exempted from treatment as male (in particular when this means they are included in female single-sex spaces, services, and provisions), that affects women’s interests. The basic values of safety, privacy, and fairness, all which plausibly take priority over integrity, are all at issue. And there are several other groups that have their own integrity-protecting commitments that stand in conflict with the trans person’s trans activist beliefs, even if those beliefs *are* a matter of integrity for trans people.

One such group is women with radical or gender-critical feminist beliefs, who may reasonably be described as having an integrity-protecting commitment to maintaining female sex-separated spaces, services, and provisions as a form of affirmative action for women. Another is lesbian and gay people with gender-critical beliefs, who may reasonably be described as having an integrity-protecting commitment to asserting the permissibility of exclusive same-sex romantic and/or sexual attraction. Yet another is faith groups whose doctrine asserts sex complementarity, who may reasonably be described as having an integrity-protecting commitment to following their faith. There is a striking discontinuity between Sikhs on construction sites and transwomen in women’s prisons. Whereas Sikh integrity-protecting commitments can be easily accommodated without that creating a conflict of rights with

¹⁴ (NZ Herald 2018).

¹⁵ (Kay 2021).

¹⁶ (Steinbuch 2023)—although in this case the perpetrator was a transwoman.

another group or clashing with another group's integrity interest, transwomen's integrity-protecting commitments (if that is what they are) cannot.¹⁷

Let's backtrack a little, to ask whether trans people's trans activist beliefs *are* a matter of integrity in Laborde's sense. Rach Cosker-Rowland (who is himself a transwoman) uses Laborde's concept of integrity-protecting commitments to argue for the right to 'gender-affirming healthcare' (Cosker-Rowland 2022). This means medical or surgical interventions aimed at creating an appearance more like the sex identified with.¹⁸ Cosker-Rowland sees gender-affirming healthcare as securing *authenticity* for the trans person, and sees authenticity as linked to integrity because without gender-affirming healthcare, the trans person won't pass as the opposite sex, and so won't be treated as the opposite sex—treatment which is part of their conception of the good. He writes:

‘...the social changes that GAH [gender-affirming healthcare] enables are essential to many trans and non-binary people's (desired) transition. Many trans people's desired transition involves their being generally treated by others as members of the gender with which they identify rather than the gender they were assigned at birth. That is, their not being subjected to the social norms associated with the gender that they were assigned at birth, people generally referring to them with the pronouns of that gender—not misgendering them—grouping them in with the gender with which they identify when there are such groupings, and permitting them to use spaces for the gender with which they identify rather than another gender. More concretely, many trans women want to be treated as women in public, to be thought of as women when shopping, rather than stared at and treated as weird for being in the women's clothing section or using female changing rooms; many trans men want to be seen as ‘one of the guys’ by other men and treated as such. But trans people are not generally treated in these ways socially until they look more like a member of the gender with which they identify than a member of the gender they were assigned at birth: they are not treated as a man/woman until they pass as a man/woman (at least in dominant social contexts)’ (Cosker-Rowland 2022, p. 833).

Some of this requires a bit of translation. According to the typical set of trans activist beliefs, people are assigned a gender at birth. The *name* of that gender assignment is ‘boy’ or ‘girl’, later ‘man’ or ‘woman’. Where a second-wave feminist would complain that female babies are assigned to femininity, a trans activist complains that male babies are assigned to be boys. Their problem is not *that* babies are expected to conform to social norms in accordance with their sex, but only that some babies are assigned to the wrong category of social norms. Inclusion for trans people means getting to be treated as the other sex; questions about whether the other sex is being treated fairly in the first place are generally out of scope.

So, according to Cosker-Rowland: many trans people want to be treated as the other ‘gender’ i.e. sex (the word ‘sex’ appears nowhere in the paper, but this is the best sense I can make of what is meant);¹⁹ treatment as the other sex requires passing as the other sex; passing as the other sex is made ‘much easier’ with surgical and medical transition (*ibid*); therefore trans people should have access to surgical and medical transition. (Cosker-Rowland skirts the issue of whether this should be publicly-funded, noting only that there are some publicly-funded medical procedures ‘not grounded in health and harm reduction’—*ibid*, p. 835). If this desire for treatment as the other sex were a mere preference then it would not satisfy Laborde's description of an identity-protecting commitment. But Cosker-

¹⁷ That I say ‘transwomen’ rather than ‘trans people’ here is intentional: the discontinuities are different in the case of trans men. The case for exemption (from treatment as female) in the case of trans men, and by appeal to integrity interests, may well succeed.

¹⁸ Or as Cosker-Rowland puts it, ‘Gender-affirming healthcare (GAH) interventions are medical or surgical interventions that aim to allow trans and non-binary people to better affirm their gender identity’ (Cosker-Rowland 2022, p. 832).

¹⁹ The quote above refers to ‘gender... assigned at birth’, where the common phrase is ‘sex assigned at birth’—no one observing babies’ genitals and declaring them boys or girls thinks they’re assigning a gender identity. The second phrase is apt in the rare cases of intersex conditions, but highly misleading in the case of trans people. If we think gender *identity* is assigned at birth, and the assignment can be correct or incorrect, that makes a bit of a mystery out of *why* so many people with one type of genitals are ‘assigned girl’ and so many people with the other type of genitals are ‘assigned boy’, as well as why there should be any such thing as wanting to be treated as the other sex/gender if sex/gender has nothing to do with bodies. It's also unclear why there are two types of social norms and what they're being applied on the basis of, if all that people have is undetectable ‘gender identities’. These questions remain unanswered in (Cosker-Rowland 2025; Cosker-Rowland *forthcoming*). On the importance of the connection between gender expression and embodiment for trans people see (Zhou 2025).

Rowland invokes *authenticity*, talking about ‘the transition which [trans people] desire and which enables them to live authentically’ (*ibid*, p. 833).

Perhaps related to my difficulty with understanding how identity is a value (see fn. 13), I find it non-obvious that sex/gender identification is a matter of integrity *simply because* it is a matter of identity—(and the same point can be made for authenticity, which is just a way of talking about identity but adding in some sense that there is a ‘real’ or ‘true’ self rather than many possible selves all equally authentic)²⁰—but those who accept that identity is a value will likely be more ready to accept this.

Regardless, it is fairly obvious that a male’s assertion that he is trans (or: that he is a woman; that he is female), his presenting himself in what he takes to be a woman-like way, and/or his adoption of what he takes to be ‘woman-like’ behaviours, etc., *will* be examples of him manifesting in practice, ritual, and/or action his ‘commitment... [to] live in accordance with how [he] thinks he ought to live’. He thinks he ought to live *as a woman*, and this is him doing what he thinks that means—even if he is wrong. This is more than a mere preference. Would such males feel remorse, shame, and/or guilt were they to *not* live in accordance with how they think they ought to live, that is, as (their idea of) women? Likely at least some would, especially given the extent to which gender identity and sexual orientation have been paired in contemporary narratives of the ‘authentic self’, in which being ‘out of the closet’ is seen as an unqualified good.²¹ There’s also no objection from the idea that trans integrity-protecting commitments are ‘morally abhorrent’. They might be morally objectionable, but they are not morally *abhorrent*.

It seems, then, that Laborde’s discussion of individual exemptions for identity-protecting commitments may well apply to some trans people with trans activist beliefs. Cosker-Rowland’s focus was on gender-affirming healthcare, which is not an exemption, making it unclear why he relied on Laborde’s work to argue for it. Maybe we will find some reason to think trans inclusion requires gender-affirming care in Section 3, when we turn to the principle of full accommodation. For now, our question is *what the exemptions are*, and whether these can be justified all things considered. Let me take these two questions in order.

Writing of the transwoman who wants to use women’s changing rooms, Cosker-Rowland seemed to think that because this is a matter of ‘authenticity’ for the transwoman, that is the end of the matter on Laborde’s account. He does not consider women’s interests in single-sex changing rooms, whether these are basic interests like safety and privacy, or some type of integrity interest (for example, a feminist separatist interest in maintaining whatever single-sex spaces there still are). We could grant that transwomen have an individual integrity interest in *presenting* as women, *behaving* as women, and *saying* they are women, without yet granting that trans people should ever be exempted from legal treatment as their sex. Most of the time we are not treated as our sex, but when we are, that may be for good reason.

That is, it is perfectly possible to maintain that both sex and gender identity matter, and to take either or both into account where they are relevant. What has been most controversial between those with trans activist beliefs and those without them is transwomen’s use of female-only spaces (e.g.

²⁰ See further discussion on this point in (Byrne 2024, Chapter 8).

²¹ This is not quite the same kind of thing as having a conscientious objection to war, or sincerely holding a particular religious faith, and feeling compelled to behave in a particular way compatible with those beliefs. It’s not *moral/ethical* in that way at all. Rather it’s a matter of the ‘self’ who then goes on to have beliefs like that. There’s a sense that the male’s self *really is a woman*, but once that ‘woman-ness’ is realized, the big life projects and commitments are likely to become other things. It seems to function more as a precondition for integrity-protecting commitments than as an integrity-protecting commitment in its own right—although there are exceptions where for some people, especially those males who are wealthy enough to secure multiple cosmetic surgeries, it appears to become a lifelong project. In this respect the project of a trans person achieving ‘passing’ may be comparable to projects like body-building, or retaining the youthfulness and beauty of a model or actor/actress. We may not think these are the most admirable projects (because they are so self-focused), but if they are sufficiently important and integral to the life of the person who has them, they will count as a matter of integrity in Laborde’s terms. For discussion of body-building see (Chambers 2022), for a sympathetic discussion of pursuing beauty see (Widdows 2018), and for the recounting of one transwoman’s determined pursuit of passing see (McCloskey 1999).

changing rooms), services (e.g. rape crisis counselling), and provisions (e.g. a dedicated women's lecturership in engineering) (I'll just say 'spaces' from now on, as shorthand). So one exemption that those with trans activist beliefs might be seeking is an exemption *for* trans people *from* treatment as their sex when it comes to all sex-specific spaces, or some particular sex-specific spaces. Someone passionate about trans inclusion might think that transwomen ought to be able to compete in the women's category for every Olympic sport. Or they might think that sports should be sex-separated, but that transwomen employees should be exempted from the normal expectation that males use the male bathrooms, and so permitted to use the female bathrooms.

There are only three options if we are to deny that trans people should be exempted from treatment as their sex when it comes to sex-specific spaces. The first is to deny that the use of the other sex's space is a matter of integrity for them. The second is to accept that it is, but argue that there are more basic values that take priority over integrity that block the trans person's integrity interest in using the other sex's spaces. The third is to accept that using the other sex's spaces is a matter of integrity for trans people but argue that other minority groups have integrity interests that require trans people *not* using the other sex's spaces, resulting in an integrity-interests standoff.

The first option is implausible, for it would require thinking that the transwoman's integrity interest in *living as a woman* is met by living this way in the public sphere, where people are not generally treated as their sex, or if they are, only in rather trivial ways (like whether the waiter says 'sir' or 'ma'am'). If the project is a matter of integrity they are likely to want to test it where it is most at issue, meaning that use of the other sex's spaces becomes an important marker of acceptance or attainment. (A parallel is that to test whether you have freedom of speech you must say something that others would prefer you didn't say). If trans people have an integrity interest in being treated as the sex of identification, then they have an integrity interest in using the other sex's spaces.

Both of the other two options are plausible. There will often be more basic values that take priority over integrity (safety, privacy, fairness),²² and because of other groups' integrity interests, there will often be integrity-interest standoffs. That being said, there may be some occasions on which trans inclusion does not come up against basic values or other groups' integrity interests. For one example, there is not likely to be any integrity-interest standoff when trans activist beliefs are introduced through policy initiatives to organizations whose members already share those beliefs (e.g. queer student union groups, Green Party branches). And in the instance of an integrity interests standoff where there are no more basic values at stake, it would be open to the person with trans activist beliefs to offer reasons to think that trans integrity interests should trump (one such reason might be the comparative social disadvantage of the two groups).

Cosker-Rowland did, in a later paper, take up the question of what might defeat trans people's '*pro tanto* rights' (Cosker-Rowland *forthcoming*). He wrote, 'I argue that... there are no rights, harms, or other considerations that outweigh trans and nonbinary people's *pro tanto* rights...' (p. 18). But his focus in that paper was on rights '...to freedom of legal gender identification' (*ibid*), and he argued that trans people could have this granted (by the state) *without* that settling the matters of inclusion in the other sex's spaces. Indeed, he gave a number of examples of where there is both change of legal sex *and* exclusion of transwomen from female single-sex spaces (*ibid*, pp. 23-27). He also focused on harm, understood in terms of physical safety, rather than considering all of the basic values at stake in the full suite of female single-sex spaces, and did not consider the possibility of an integrity interests standoff.

In sum, there are substantial discontinuities between the religious exemptions Laborde thinks justified when it comes to the full social inclusion of people of faith, and the sex-based exemptions most compatible with trans activist beliefs when it comes to the full social inclusion of trans people. I take this

²² For a discussion of the values at stake in women-only spaces see (Lawford-Smith 2023, Ch. 4), and on bathrooms in particular see (Lawford-Smith 2023, Ch. 6).

to show that there is no comparable case for exemption from treatment as one's sex in the case of trans people—at least not when it comes to single-sex spaces.

One implication of this, for those passionate about trans inclusion, is that more gatekeeping on who is part of the minority group, and/or a clearer and more restrictive definition of 'gender identity' as the protected attribute for trans people in anti-discrimination and equality law, would help to put exemptions back on the table. That is simply because a narrower group than 'any male who self-identifies as a woman' will likely pose less of a threat to the basic interests at issue in female single-sex spaces, and create less of an integrity-interests standoff. For one example, gay men generally do not pose a sexual safety threat to women, so if membership in the minority group were restricted all the way back to Ray Blanchard's 'homosexual transsexuals'—one of two types of transsexual proposed in his original taxonomy—there would be far more to be said in favour of an exemption for transwomen when it comes to women's prisons (Blanchard 1989).²³

4. Full accommodation

Our question has been, does trans people's full inclusion in public life require legal recognition and social treatment as the sex of identification? We've considered two answers: no, it merely requires non-discrimination against trans people, and toleration of trans activist beliefs; and no, exemptions for trans people from treatment as their sex is not justified, because of the more basic values at stake and because of the integrity interests of other minority groups. Neither *toleration* nor *exemptions* get us even close to what those who see themselves as fighting for trans rights have demanded (and in some cases, been granted). We have one more principle to consider: *full accommodation*.

There are cases in which we must transform society in order to secure the full participation in public life of particular groups of individuals. These cases are what I mean by *full accommodation*. Public bathrooms for women were one such accommodation, taking them off the 'urinary leash' that kept them always within a certain distance of their homes.²⁴ (An *exemptions* approach would merely have said that women could use those public bathrooms designated as for men). Familiar examples of full accommodation include wheelchair ramps for public buildings, and accessible apartments and hotel rooms, for people with significant physical disabilities; gay marriage; racial desegregation; and working hours flexibility for working mothers and other carers. The objects of the transformations have varied: the built environment, the law, public signage, workplace policy, shared concepts.

It is helpful to consider all of these examples, because they reveal a fault line in terms of sameness and difference (sameness *as* and difference *from* the dominant group). Racial desegregation was a sameness issue: under slavery and Jim Crow, African Americans were thought to be different but were in fact the same. Racial desegregation was a matter of *treating as* the same people who *were in fact* the same. Gay marriage, on the other hand, was a difference issue: a small minority of people are same-sex attracted. This difference could be accommodated by revising the definition of marriage in law. The

²³ I have been proceeding on the assumption that sex-separated spaces are justified, and the question is whether exemptions for specific spaces for transwomen can be justified. But someone with trans activist beliefs could object that this is just *feminist beliefs* being given uptake by the state, that there is a violation of liberal neutrality *in either case*, because if the state should not endorse specific conceptions of the good then it should endorse *neither* feminist nor trans activist beliefs. And if it is in fact violating liberal neutrality by endorsing feminist beliefs, then I need an argument for why it shouldn't switch to endorsing trans activist beliefs—it can't just be that the state should keep doing the impermissible thing it has been doing. My response can only be that sex-separated spaces are justified by reasons *other than* uptake of feminist beliefs, reasons like women's safety and privacy, affirmative action to secure women's full participation in public life, etc. One implication of this may be that some of the sex-separated spaces that feminists value should not actually exist in a liberal state (or should exist only as private); and even if they should, that might not be for the reasons that feminists think. I'm grateful to Moti Gorin for discussion on this point. For discussion of the feminist justification of women-only spaces see (Phelan & Lawford-Smith 2023).

²⁴ For further discussion see (Penner 2001).

urinary leash was a difference issue;²⁵ physical disability accommodations are a difference issue; and flexible working hours for carers is (currently) a difference issue.²⁶

Thinking about sameness and difference in the matter of trans inclusion is helpful, because it reveals a more fundamental disagreement. To accommodate *sameness* we stop treating people as different; we take steps to make sure they are fully included in what is already there. To accommodate *difference* we must create new things and/or change old things. We build female bathrooms and wheelchair ramps, we re-design apartments and hotel rooms to make them accessible, we rethink the legal definition of marriage, we revise paid and unpaid leave policy to make it sex-equal, and we rethink the length and structure of the working day.

One complexity in trying to work out whether trans inclusion is a *sameness* or a *difference* issue is that when we consider historical cases of integration and desegregation there is *one* dominant social group (whites; men). When it comes to trans people, whether there is one dominant group relative to which they are a minority is contested. Those with conservative feminist, gender-critical feminist, or sex-realist beliefs say there are males and females, and females are disadvantaged relative to males (so a minority group in their own right, just not numerically). Those with trans activist beliefs say there are ‘cisgender’ people, whether male or female, and trans people are disadvantaged relative to them.

From the perspective of those with trans activist beliefs, trans inclusion looks like a *sameness* issue, where we stop treating people who *have the same gender identity* differently (see also fn. 11). Transwomen get whatever females get, trans men get whatever males get. The obvious problem with this approach is that being of the other sex means one is *not* the same, and this undercuts the case for accommodation *within* the other sex’s spaces. Racial desegregation was premised on sameness where there was actually sameness. Trans inclusion would be premised on sameness where there is difference. Those with trans activist beliefs find themselves in the awkward position of upholding sex separation generally—tacitly conceding that there *is* a difference that matters—while asking for inadequately-argued exceptions to sex separation for trans people.

Thus it is clear that trans inclusion is a *difference* issue, meaning that we must create new things, and/or change old things. Take bathrooms: we might build new ‘all gender’ bathrooms in addition to the existing sex-separated bathrooms; or we might change the existing bathrooms, making it clear that they separate by gender identity rather than sex, adding urinals to the previously-female bathrooms and sanitary bins to the previously-male bathrooms. If there is only the ‘cisgender’ dominant group, then either approach is permissible. If women are a minority group in their own right, then only the first approach is permissible, for the second introduces measures to address one minority group’s disadvantage at the cost of disrupting measures to address another minority group’s disadvantage. Perhaps such a thing can be justified if one minority group is significantly better-off than another, even if still below equality, and if there is no way to impose the full cost of inclusion on the dominant group. But it is far from clear that either of these things are true when it comes to trans inclusion. Building new things would seem to be the right approach to full accommodation for trans people.

If trans people’s full accommodation in public life can be accomplished by building new things (‘all gender’ bathrooms, an open category for sporting competitions, a trans wing in the men’s prison), where does that leave our questions about legal recognition by the state, and social treatment by fellow citizens, as the sex of identification? Given what I have said already about conflicts between minority groups, it is clear that the state must *not* offer legal recognition if that means, or is taken to mean, entitlement to the other sex’s spaces. What about individual co-citizens, as they come into contact with trans people. Must they believe, or act as though they believe, that a transwoman is female / a woman, a trans man is male / a man? Here we must return to the distinction between what a minority group

²⁵ Had it been resolved with unisex bathrooms it would have been a sameness issue, but given additional interests such as in privacy, it was a difference issue. For sameness we’d have built *more* bathrooms, for difference we built *women’s bathrooms*.

²⁶ On the persisting sex difference in attitudes toward and request of flexible work for childcare see (Fine 2025).

demands, and what is actually required to alleviate its disadvantage. The crucial question is whether trans people's disadvantage can be addressed without requiring other people to adopt, or act as if they have adopted, trans activist beliefs.

When equality is at issue, believing, or acting as though one believes, can be required. In a liberal state we must all act in a way appropriate to the moral equality of persons. One can be morally required not to express prejudice against another person on the basis of their group membership (at least, in the cases of groups generally recognized as minorities). So the hard question is whether one can acknowledge the moral equality of trans people *without* accepting that a transwoman should be treated as female, a trans man as male. Is treating a person as their sex when they disidentify with that sex *like* treating a woman in a sexist way, a black person in a racist way, a gay person in a homophobic way?

I said at the end of Section 1 that I would return to the idea that in thinking about trans people as a minority group, there might be a better parallel than to Catholicism. If trans activist beliefs are simply a doctrine that some subset of trans people have come to adopt, comparable to feminism or critical race theory or the social model of disability, then the parallel to religion is apt. Rather than adopt any such doctrine wholesale, the state must look through it (or look elsewhere than it) for *true* claims that relate to the group's disadvantage or vulnerability. Trans people do face disadvantage, so the state does face a question of how to accommodate them. (This is important, for it is not the minority group's *demands* that set how they should be accommodated, it is the facts of their disadvantage, and the best way to alleviate it considering all relevant interests).

But a perhaps better parallel would be to same-sex attraction, or to (some types of) neurodiversity. Part of what motivated the de-pathologizing of same-sex attraction was the recognition that it was outside of people's control; once de-pathologized it became more or less undeniable that the group's disadvantage had been largely a matter of the social friction caused by the belief that same-sex attraction was immoral or unnatural. Greater understanding of high-functioning autism has led to accommodations that reduce the extent to which autistic difference is disabling. If we think of trans activist beliefs not as *doctrine* but as an expression of what it would take to de-pathologize transness, or to ensure that trans difference is not disabling, that would strengthen the case for co-citizens' adopting of trans activist beliefs. This would be a way of doing one's part in securing the full accommodation of trans people.

We can bolster the case for adopting trans activist beliefs further by considering why things are as they are now.²⁷ The typical working day was built by men for men at a time when women were largely excluded from paid work; *that* they built it, under those conditions, is not a sufficient reason to maintain the working day in that form. Similarly, those with trans activist beliefs might say that gender concepts and terms, as well as sex-separated spaces, were built by the 'cisgender' for the 'cisgender', at a time where there was little knowledge or understanding of transgender people. *That* they built them, under those conditions, is not a sufficient reason to maintain them. This approach relies on showing that the conditions in which gender concepts and terms, and sex-separated spaces, were created were unjust. Or even more radically, we might say that regardless of why things are as they are, *if* changes could be made that would minimise or even eliminate a group's disadvantage, and those changes are not made, then the group experiences injustice.²⁸ In either case, there would seem to be a *prima facie* claim for trans activist beliefs to be adopted, not merely tolerated, and that would take us back to treating trans inclusion as a *sameness* issue (same gender identity) rather than a *difference* issue (different sex). If

²⁷ This approach takes its inspiration from Sophia Moreau's *Faces of Inequality*, where she offers an account of unfair subordination that refuses to take subordinate groups to have 'special needs' requiring 'accommodation'. She writes, 'at least part of the reason why these groups require an accommodation in the first place is that our social environment has been constructed in such a way as tacitly to accommodate the needs of more privileged groups. I shall be proposing that we need to think of these *prior* policies and structures as "accommodations"—accommodations to certain social groups, which make their interests and needs seem normal and the interests of other groups seem exceptional' (Moreau 2020, p. 42).

²⁸ It is possible to read this as an implication of the argument in (Barnes 2016).

‘woman’ and ‘female’ refer exclusively to biological sex, then a male claiming to be female *is* either lying or deluded. But here’s a way to make him *not* lying or deluded: change your understanding of ‘female’, in a way that makes his claim true.²⁹ This is not so different to gay marriage, where in order to include gay couples in the legal institution of marriage, we changed our concept of marriage.

But it is unlikely that trans people’s disadvantage is explained by the social friction caused by other people’s rejection of the idea that identifying as female makes you female, or that anyone who identifies as a female must be treated as a female (*mutatis mutandis* for identifying as male). One commonly cited aspect of trans disadvantage is suicidality, which tends to be invoked in such a way as to imply that greater acceptance of transwomen as female, trans men as male, would mitigate it. But a recent study showed that the increased suicidality of trans people relative to other cohorts disappears when comorbidities are controlled for (Ruuska et al. 2024). It is highly unlikely that widespread beliefs about the relation between sex and gender identity are what cause depression, anxiety, bipolar disorder, schizophrenia, etc.

It is also highly misleading to frame sex and gender concepts and terms, and sex-separated spaces, as being built by the ‘cisgender’ for the ‘cisgender’. Gender was *the* central second-wave feminist concept, being used to mark a distinction between the biological (sex) and the social/cultural (gender). That allowed feminists to argue that what had been thought part of women’s nature—her femininity—was actually part of the culture, which trained girls into femininity. I know of no philosopher with trans activist beliefs who has *argued for* the displacement of ‘gender’ by ‘gender identity’. Any such argument would have no show not merely that the conceptual revision has utility for trans people, but that conceptual preservation has no utility for women (which would be true only if the project of feminism were complete, sex equality now secure).

In the same spirit, sex-separated spaces have long been part of a suite of measures aimed at women’s full inclusion in public life. Early feminists had to campaign for women’s bathrooms in order to get women off the urinary leash—it is just not plausible to describe women’s bathrooms, then, as built to suit dominant interests with no thought of the minorities who might need something different. The same thing, with the appropriate adjustments, can be said about women’s sports, women’s prisons, women’s domestic violence refuges, and more. An understanding of feminist history would go a long way to help those with trans activist beliefs to avoid advocating for measures to secure trans inclusion that unwind previous measures to secure women’s inclusion.

5. Conclusion

Arguments for adopting, or acting as though we have adopted, trans activist beliefs, in the name of the full inclusion of trans people in public life, appear to have failed. Trans people should be protected from discrimination, but trans activist beliefs are not owed more than toleration. The introduction of trans activist beliefs into law and policy in a liberal state should be just as concerning to us as the introduction of religious beliefs into the same. The insistent social enforcement of trans activist beliefs is a tyranny of the majority, upholding one group’s interest in living as it believes it should at the expense of everyone else’s interests in living as *they* believe *they* should. A liberal state is neutral between competing conceptions of the good; liberal individuals form and pursue their own conceptions of the good, the only constraint being that the pursuit does not harm others (Mill [1859] 1978) or wrongfully set back their interests (Feinberg 1987, Ch. 1). Liberalism does not, and *cannot* (coherently), require one person’s participation (affirmation, validation, acceptance, endorsement, or adoption) in another person’s projects. Toleration is required; indifference is sufficient. This is the same conclusion that Francione

²⁹ For a discussion of making this move for sex (whether sex can be changed, and whether sex can be changed once ‘sex’ is changed) see (Gascoigne 2025).

(2024) reached, just via a route likely to be more satisfying to those sympathetic to the case for trans inclusion.

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