

# Jurisdictions and Gender Categorization Protocols

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## Abstract

We propose an outline for the design of a gender categorization protocol. We first perform requirements capture. Thereupon we propose a gender categorization protocol which is supposed to implement said requirements. We motivate the plausibility of gender categorization protocols by contemplating a plurality of jurisdictions each entitled to their own gender categorization protocol. Gender theory is understood as the theoretical framework which different jurisdictions must share, while per jurisdiction a gender architecture (i.e. a gender categorization protocol) implements the universal requirements imposed by gender theory. A jurisdiction may comprise a (part of a) national state, while it may also comprise an international organization. By way of a case study, we will contemplate in some detail the jurisdiction constituted by the Roman Catholic Church (RCC), for which we propose a dedicated refinement of the general gender theory, which then allows to design a tailor made gender architecture specifically for RCC.

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# 1 Introduction

A viewpoint or position is understood to be *gender critical* if it deviates in whatsoever way from the idea that for all persons  $P$  gender self-identification (if possible) determines gender categorization. The terminology of gender identification versus gender categorization follows Barnes 2022 [4]. We will call the (seemingly) unique position that is non-gender critical *fully subjective* (on matters of gender categorization). Fully-subjective positions may differ in the way one deals with gender self-identification, for instance in how to determine to what extent gender self-identification is sincere.

Thus a position (e.g. the justification of a certain method for categorization) is gender critical if there are any circumstances under which the position allows a challenge (i.e. be critical of) a person’s gender self-identification. It seems to be more systematic to call a gender critical position a gender self-identification critical position. However, under the assumption that gender *self-identification* determines gender categorization (the gender non-critical position indeed) the shift from “gender critical” to “gender self-identification critical” makes no difference. We find, for what it’s worth, that the phrase gender critical can be precisely justified on the basis of the gender non-critical position.

## 1.1 Formal gender theory

We will work in the paradigm of formal gender theory (FGT) as specified in [10]. The idea is that gender framework is used with three proper gender labels: male, female, and neutral and also with peripheral gender label  $\perp$ , where  $\perp$  may be used as the result of a failed attempt to self-identification; we denote this framework a  $3G_{\perp}$ . Formal gender theory is not so much a formalization of gender theory, rather it is a theory of formal genders. Gender can be thought of as a property of persons, each person being equipped at any time with a unique gender. Different genders are thought to be mutually exclusive, whence the  $3G_{\perp}$  gender framework obtains characteristics of a formal logic. Except for  $\perp$  which was introduced in [10] for technical reasons, FGT is in conformance with the quickly developing literature on gender theory in early 2023. We will proceed on that path, well aware that gender theory may take quite different directions at any time. If no use of  $\perp$  is made we speak of a  $3G$  gender framework.

## 1.2 Jurisdictions: areas of uniform instantiation of gender theory

Gender categorization of persons plays a role in various jurisdictions. Such jurisdictions may be determined by nation states, political units and institutions within nation states, but just as well by religions, ideologies, and non-governmental organisations.

**Definition 1.1.** (Jurisdiction) *A jurisdiction is a coherent set of rules regarding societal functioning. A jurisdiction  $J$  may impose constraints on gender categorization protocols which are to be performed in the scope of  $J$ . A jurisdiction may be legal and for that reason may have a geographic area as its scope; alternatively, a jurisdiction may be institutional and its scope may intersect with some or even with all legal jurisdictions. With a gender categorization protocol comes a formal notion of gender for a jurisdiction  $J$ .*

We hold, as discussed at length in [10], that regarding matters of gender, a jurisdiction will at any time provide a gender categorization protocol which determines how (at any time) gender is assigned to, or recognized in, an individual. Different jurisdictions may use different protocols and transfer of persons between different jurisdictions requires clear interfaces, and is best managed in a setting where as much as possible the different gender categorization protocols are specified in the same language and notation in spite of significant differences which may arise. Formulated in IT terms, a common ontology is needed.

We will suggest elements of a uniform language and notation for gender theory that allows different gender architectures and gender categorization protocols. As a case study, we will work out in some detail a gender architecture that might work well for the Roman Catholic Church (RCC). The protocol that we will propose in 5.2 below is specified in a language that allows for very different architectures some of which the RCC does not approve of.

## 1.3 Aim and structure of the paper

The aim of the paper is to discuss gender categorization protocols in relation to the underlying jurisdiction. We will make a proposal for such a protocol as a proof of existence, not so much as a specification of our views and preferences regarding gender categorization. We will first discuss the ambiguity of the term gender as it occurs in gender theory, and we will propose a pseudo-disambiguation of gender. Then we describe some generalities on gender theories. Next we discuss constraints on gender categorization which we expect to hold for all jurisdictions and we discuss as a case study the way gender is dealt with in the RCC.

## 2 Pseudo-disambiguation of gender

We will use the phrases ‘gender identity’ and ‘gender categorization’ as in Barnes 2022 [4]. We understand that the viewpoint [4] adopts a mono-angular perspective (using the visual metaphor implicit in the terminology of [20]) of gender identity, a perspective which is exclusively based on gender self-identification. We need to be somewhat more specific about the term ‘gender’. From Andler [2] we quote:

The sex/gender distinction is a staple of feminist philosophy. In slogan form: sex is “natural,” while gender is the “social meaning” of sex.

Here feminist philosophy refers to a rather heterogeneous area, and writing “some authors from philosophy of feminism” instead might be better suited. However obvious the above quote may seem to a casual reader, it is not immediate how to reconcile this view of gender with the now popular 3G framework (using the terminology of [10]) where gender can take three proper values: male, female, and neutral, or else  $\perp$  representing no information on gender in the  $3G_{\perp}$ . It is definitely implausible that ‘social meaning of sex’ takes only one of three or four discrete values (such as the elements of  $3G_{\perp}$ ). In [4] merely a 2G framework is used, though without any implication that there is a problem with its embedding in a 3G gender framework, that’s just not made use of in [4].

We find a dilemma: ‘gender’ in FGT is quite different from ‘gender’ as inherited from the philosophy of feminism. A first way out of this dilemma is to understand gender as ambiguous. Doing so would be convincing if the concept denoted by ‘formal gender’ were well-established. The very controversy of ‘Dembroff versus Byrne’ indicates, however, that precisely such clarity is currently missing. In other words: formal gender is a concept which seems to be still in its formative phase.

We prefer to look for another way out of said dilemma by assuming that in formal gender theory (FGT), gender is meant as “formal gender” where formal gender is given by one of a discrete number of options. Thus *all* occurrences of gender in FGT are to be read as formal gender for which gender is used as an abbreviation.<sup>1</sup> Gender as used in Andler’s quote would then be understood as an abbreviation of social gender. The relation between social gender and formal gender is non-obvious. A tentative claim concerning the relation between social gender and formal gender reads thus:

**Claim 2.1.** *Formal gender is a  $3G$  or  $3G_{\perp}$  projection of social gender.*

Underlying, though implicit, in Definition 2.1 is the proposal of [20] to think in terms of a ramification of notions of gender identity: three mono-angular perspectives on gender identity, three bi-angular perspectives and our preferred triangular perspective.

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<sup>1</sup>So we have (about gender) what in theory of computing is often referred to as polymorphism with type inference.

We speak of pseudo-disambiguation because we do not imply that gender is ambiguous: in this paper there is no notion of gender, the latter is merely an abbreviation which needs to be completed in a context dependent manner.

## 2.1 Bridging terminology between Barnes 2022 and Turyn 2023

Turyn 2023 [39] provides a survey and analysis of the role of first person authority (FPA) in the determination of gender identity. FPA is a well-known feature of gender theory which has to do with the foundations of self-identification. An original reference for FPA in gender theory is Bettcher 2009 [14]. The terminology of Barnes 2022 [4] and Turyn 2023 [39] show discrepancies in terminology rather than in meaning which are not immediately recognizable:

- (i) Turyn’s “sincere avowal about one’s gender identity” corresponds to “gender identity” of Barnes.
- (ii) “gender identity” of Turyn comes close to “gender categorization” as used by Barnes.
- (iii) Turyn uses “existential self-identity” which has no obvious counterpart in Barnes.

Regarding (iii) we proceed as follows: we intend to achieve a stable terminology by appealing to an internal/external distinction using the prefixes endo and exo. We prefer to introduce endo-gender (with alternatives: true gender, real gender, internal gender) as a new phrase which can be added to the terminology of Barnes 2022, and then to read “gender identity” of Turyn as endo-gender. Gender categorization would be rather exo-gender (i.e. gender as a perceived from outside a person). Turyn 2023 discusses “existential self-identity” (on the matter of gender), a phrase due to Bettcher [14]. We propose that existential self-identity may be read as endo-gender, or conversely (endo-gender may be defined as existential self-identity).

Having introduced endo-gender we suggest that Barnes 2022 does not make use of any distinction between endo-gender and gender categorization, while a more convincing understanding of gender categorization is that it might deviate from endo-gender (granting that Barnes 2022 uses the simplifying assumption that both notions can be identified).

FPA may be understood as an explanation of why to adopt (sincere) avowals (by  $P$ ) about  $P$ ’s gender identity as being definitive for an assessment of endo-gender. FPA as used for such purposes may be justified along different lines: an epistemic justification is based on the idea that  $P$  is best informed about their endo-gender, while an ethical justification is based on the idea that  $P$  is entitled to being authoritative about their own endo-gender. Turyn 2023 argues that gender theory cannot do without an epistemic justifi-

cation of FPA (or rather gender theory cannot do without instances of FPA which need an epistemic justification). How to obtain circumstances that allow an epistemic justification is not so clear, however.

## 2.2 Gender identity and gender categorization may differ: rejecting the fully-subjective position

We recall that the gender identity of  $P$  captures the gender that  $P$  ascribes to themselves, while gender categorization captures the gender which is ascribed to  $P$  by external observers. We notice that following [1] the transgender identity of  $P$  describes whether or not  $P$  self-identifies as transgender. Following the style of terminology of [4] we propose that transgender categorization stands for an external judgement/assessment of the transgender status of  $P$ . In [3] the phrase transgender modality is proposed for the same notion instead of transgender categorization. By using the phrases transgender identity and transgender categorization speaking and writing about b-sex at birth can be avoided.

By allowing gender identification and gender identity to be different a fundamental degree of freedom arises, which has been advocated in our [21], in fact following the arguments of Bogardus 2022 [15]. Below we will describe a gender categorization protocol which makes use of said degree of freedom.

**Definition 2.1.** (Fully-subjective position) *The fully-subjective position in gender theory amounts to the claim that under all conceivable circumstances, if for person  $P$  the gender identity is  $g \in \{\text{male, female, neutral}\}$  then eventually (i.e. after some reasonable delay) the gender categorization of  $P$  must equal  $g$  as well.*

In the literature there are many papers (e.g. Barnes 2022 [4]) which either adopt a fully-subjective position or some lightly amended version of it. A recent critique of the fully-subjective position in gender theory can be found in [15].

Positions that are non-fully-subjective are also termed gender critical.

## 2.3 Cis-cis-female, cis-cis-male, cis-cis-neutral, cis-cis-gender

Assuming that we consider a legal jurisdiction  $J$  which maintains a database on matters of gender. We assume that at any time all persons have a unique (current) gender in  $\{\text{male, female, neutral}\}$ . Said unique gender is contained in the governmental data regarding a person. The current gender may differ from a persons' b-sex, in which case the latter is unlikely to be recorded in governmental data about a person.

A cis-gender person has gender equal to gender assigned at birth. It is also required that a cis-gender person has always been cis-gender. A cis-cis-gender person (at some

moment  $t$ ) is first of all cis-gender and in addition has (current) gender identity equal to the (current) gender categorization, i.e. equal to the gender assigned at birth. A cis-gender male who self-identifies as female is not cis-cis-gender.

We find that with gender theory expanding from 2G to 3G and including gender identity in the discussion, one finds sharpening of notions like cis-male and cis-female into cis-cis-male and cis-cis-female.

## 2.4 Non-classical gender theory

FMT works like a logic, and as soon as 3G is considered canonical, i.e. having three proper genders available is a standard (with  $\perp$  merely present for technical reasons, having to do with handling failures and faults), it becomes tempting to contemplate non-classical versions of it. Non-classical logics may admit either more truth values or fewer proof rules than classical logics, or both. With non-classical FMT we think in terms of more gender labels to begin with. The first option for moving from FMT to a version of non-classical FMT is to add pairs of different proper gender label to the possible values of “gender”, while  $\perp$  plays the role of the triple of all gender labels.

The combination (male, female) may be understood as giving explicit room for a large part of the androgynous spectrum. The combinations (female, neutral) end (male, neutral) occur in [33] as well as in many blogs and posts on social media about gender. On Reddit [r/genderqueer](#) [34] one finds various testimonies dating from 2021/2022 of persons who identify as woman and as non-binary at the same time, though perhaps not in the same contexts.

So each of the new gender labels, now considering pairs as labels as well, has a reasonably clear interpretation, though making sense of all six labels at the same time is less straightforward.

## 2.5 Giving up on gender

Increasingly we feel helpless when trying to make sense of the term gender. In practice we now use four forms of gender:

(i) Formal gender: one of the few elements of 3G or of  $3G_{\perp}$ . Formal gender is used for categorization of people. Why such categorization is useful is usually left unexplained. Formal genders are also called gender labels.

(ii) Psycho-bio gender: degrees of belonging to the various gender labels, which come about from considering biological and psychological characteristics of a person. In more detailed versions of psycho-bio gender, different traits of a person are distinguished and per trait the degrees of belonging to a gender label are determined.



(iii) Social gender: degrees of belonging to the various gender labels given the sociology of roles in a given society, including the dynamics of the definition and distribution of roles.

(iv) Endo-gender. (In the terminology of [14]: existential gender identity): the endo-gender of  $P$  is the self assigned/identified gender of  $P$  which is sincere and which by definition can only be expressed by  $P$ . (We, as authors, do not yet believe that endo-gender exists, but other authors, e.g. Bettcher [14] are convinced of the relevance, and for that reason existence of endo-gender.)

When in [20] we wrote about a triangular perspective on gender we were still thinking of a concept of gender which allows for an integrated picture. However, these angles of perspective are nothing more than the intellectual sources of the three specialized notions of gender as distinguished above.

## 2.6 Neutral gender: cis-neutral or transneutral

The terminology of neutral gender is difficult, see e.g. [25], and many neutral (i.e. non-binary) self-identified persons are uncertain about their transgender status and understand gender attributions as temporary and transient (see e.g [44]). We propose to split the neutral category in two parts: cis-neutral (ANAB individuals as used in [10] and transneutral (those neutral persons who are either AFAB or ANAB). We hold that by definition transneutral persons are also transgender. In other words being transneutral (MTN transgender or FTN transgender) captures two out of six ways of being transgender.

## 3 Potentially general rules on matters of b-sex and gender

In [21] we have proposed that gender theory must come with degrees of freedom and must not come with a claim or imperative that all jurisdictions have the same perspective on gender, i.e. the same gender architecture in the terminology of [10] or the same gender categorization protocol (also in the terminology of [10]). In favour of international communication about matters of b-sex and gender we would propose that for all jurisdictions some uniformity is advisable.

### 3.1 Rules per jurisdiction

Here is a package of rules which might bring about the desired uniformity.

### 3.1.1 Rules about b-sex

- There is a b-sex module which indicates how the notion of b-sex is approached and maintained. For a b-sex module we refer to [11]. There is an explanation concerning decision taking as well as an update protocol for a database on matters of b-sex.
- The b-sex module allows for a characteristic M/E-sex (see the b-sex module in [11]) which can be determined at any time, and which can be determined especially at birth. AAB-sex is defined as M/E sex at birth.
- Having AAB-sex as b-sex and only allowing for change if it is manifest that at the time of birth a grave failure has occurred with “b-sex assignment at birth” is an option, it is in fact the most conservative option, all other options are more liberal.
- It is made explicit whether or not the notion of b-sex allows b-sex transition (i.e. whether or not the notion of b-sex is transition permissive).

### 3.1.2 Rules about the gender framework

- There is a possibly non-classical (formal) gender theory (either  $3G$  or  $3G_{\perp}$ ). It is made explicit whether or not combi-gender labels will be used. It is made explicit if and why/where the peripheral gender label  $\perp$  will be used. By consequence there is a notion of gender as well as a notion of natural gender (gender simply derived from b-sex).
- There is a gender categorization protocol which determines how the gender of a person evolves during their life-cycle (the simplest form being that natural gender is adopted, in which case the notion of gender is redundant but is still needed in order to communicate with other jurisdictions on matters concerning b-sex and gender).
- There is a notion of gender identity, and it is made explicit whether or not and if so, to which extent, gender identity plays a role in the gender identification protocol.
- The notion of gender is made independent of sexual orientation. Definitions of sexual orientation (as made use of in a given jurisdiction) may refer to the notions of b-sex and gender (as maintained in that same jurisdiction), but not the other way around.

### 3.1.3 Rules about interfacing

- Each jurisdiction adopts an instance of gender theory (i.e. gender architecture). There is no such thing as denial of gender theory at large, but there are many options for fine-tuning of the gender architecture.
- For each jurisdiction it must be made explicit how one intends to deal with incoming travellers: is the current gender categorization from their original jurisdiction adopted, or is some form of re-gendering required. (Precisely this step requires that a notion of gender is always available.)

For positive transgender experience within the RCC we mention [46]. For the positive relation between transgender prejudice and religious fundamentalism we refer to [30].

## 3.2 Gender policy rules for international institutions

International institutions need to adapt locally to the implementation of gender theory (gender architecture), as embodied in the local jurisdiction and local conventions. These adaptations may vary significantly, given the significant differences between various jurisdictions on matters of b-sex and gender.

It is relevant that an institution acknowledges the terminology of gender theory. The policies of an institution may deviate from what local jurisdictions prescribe, though not so much that problematic, if not useless legal battles result.

## 4 Case study: proposal for a Roman Catholic Gender Theory

We take as an example of an international institution the Roman Catholic Church (RCC), writing under the (perhaps somewhat hypothetical) assumption that the rules per jurisdiction have been adopted universally. The RCC maintains an institutional jurisdiction which coexists in any nation with the legal jurisdiction for that nation. Coexistence may range from comfortable compatibility to problematic incompatibility.

In each jurisdiction the RCC will be confronted with a local implementation of the general rules. The local implementation may or may not be in conformance with the views held by the RCC at an international institutional level, or at a national institutional level (e.g. see the statement of the Committee on Doctrine–United States Conference of Catholic Bishops (USCCB) 2023 [41], a document in which the existence of b-neutral, cis-neutral and trans-neutral individual is denied, among other restrictions on matters of gender transition).

## 4.1 Accepting neutral gender

We propose that RCC adopts the view that a person may be of neutral gender that is ANAB, assigned neutral at birth). That has always been the case, but as a (bio)medical truth it has only recently reached the RCC. About this matter we have some remarks:

- We notice that in Committee on Doctrine–United States Conference of Catholic Bishops 2023 [41] it is claimed that all persons are either male or female, and that “Persons affected by Disorders of Sexual Development do not fall outside the two categories of male and female, but they do exhibit ambiguous or abnormal indicators of sexual difference, so that the sex of their bodies is difficult to determine, though not impossible for modern medical and genetic techniques.”
- By consequence of the above remark in previous centuries it has been impossible to determine bodily sex with 100% certainty in all cases. From this observation alone it follows that b-sex is to some extent socially constructed, a paradoxical conclusion by all means. However, we do not know whether or not, when the bible was written, people were aware that bodily sex could not be assigned at birth with 100% certainty in all cases.
- Making sense of the situation is simplified by considering endo-gender as one of the forms of formal gender, in fact representing a “true” formal gender of a person at a given time. Taking on board the still speculative assumption that endo-gender at birth can be determined with 100 % certainty with the help of a b-sex determination protocol making use of genetic information etc. it may be assumed that before say 1900 (with modern analytical methods still not yet available) the determination of sex (i.e. b-sex) at birth in some cases failed to identify the endo-gender of a newborn, say *P*. In such cases (when contemplating what happened in hindsight) one would expect rather than be surprised about *P*’s intent of transgending if that were to become manifest.
- Given the fact that (in previous centuries) only visual inspection of genitals was available as a method for assigning gender at birth there must have been some non-determinism in case of ANAB (assigned b-neutral at birth) persons for whom some choice must be made. Said non-determinism is hard to reconcile with [41] (item 5), however, where the The Congregation for the Doctrine of the Faith is quoted:

the importance and the meaning of sexual difference, as a reality deeply inscribed in man and woman, needs to be noted. “Sexuality characterizes man and woman not only on the physical level, but also on the psychological and spiritual, making its mark on each of their expressions.”It

cannot be reduced to a pure and insignificant biological fact”, but rather “is a fundamental component of personality, one of its modes of being, of manifestation, of communicating with others, of feeling, of expressing and of living human love.” This capacity to love—reflection and image of God who is Love—is disclosed in the spousal character of the body, in which the masculinity or femininity of the person is expressed.

Indeed if, lacking sufficient morphological/anatomical information, instead genetic information is used for assigning sex at birth then after all “sex is reduced to a pure and insignificant biological fact”. Modern medical insights on gender dysphoria, including various treatments, allow to prevent precisely that from happening.

- In Item 17 of [41] it is suggested that medical treatment of gender dysphoria or gender incongruence always “aims at transforming the sex characteristics of a body in to the sex characteristics of the opposite sex”. The latter claim, however, is unconvincing for gender (re)affirmative interventions aiming at transneutral gender status.
- The statement in [41] subscribes to the side of Byrne in “Dembroff versus Byrne” as discussed in our [10, 11], where b-sex is determined at birth with a protocol that uses M/E-sex as the first take on b-sex, while relying (in the terminology of [11]) on CS-sex, GoS-sex, and GmS-sex. The details of such reliance are left to the discretion of medical staff, so that a person’s gender is in part determined by the medical staff involved in the process of birth.
- The arguments used to decide (the key issue raised in) Dembroff versus Byrne in [41] are entirely theological, and are therefore disjoint from the arguments used by Byrne. In [11], however, we have argued for a position that is closer to Dembroff’s position than to Byrne’s conclusion, which for that reason contradicts the position voiced in [41].

## 4.2 Further rules

- RCC is able and willing to interact with local persons and organizations in terms of the general rules per jurisdiction as mentioned above. In particular RCC will use and understand the term “gender” even if only natural gender is in conformance with the views of RCC (so that from the perspective of RCC gender seems to be a redundant notion).
- RCC adopts *defeasible essentialism* as a paradigm for reading bible texts: e.g. “everyone is male or female” is understood as: with the exception of special categories

of persons, all persons are male or are female. Thus: non-existence of gender neutral persons cannot be inferred from mere reading of bibles texts as universally quantified assertions.

- RCC adopts the gender assignment for persons as it is provided by the local jurisdiction. Thus, even if, say RCC opposes transgendering at an institutional level, RCC will interact with transmen (according to the local jurisdiction) as if they are male and with transwomen as if they are female.
- RCC has its local policy rules for dealing with their own staff, as well as with the members of the church when they are transgendering. For instance:
  - (i) a rule may be that a priest upon becoming transsexed or transgendered will not be a priest anymore,
  - (ii) a rule may be that a priest must be cis-cis-male.(For the complications of designing and implementing such policies, see e.g. [16].)
- RCC may issue advice on medical treatments as provided by RCC institutions (hospitals, clinics etc.) For instance there may be a negative advice about providing gender reassignment therapy.
- When new members of RCC are welcomed these persons are initially incorporated with their gender as given by the local jurisdiction, and without any question about or investigation of b-sex.
- If a transman or a transwoman enters the RCC then their status as transman or transwoman may be made public (within RCC) and must neither be challenged nor be made a cause for any form of negative discrimination against them. In other words, transmen and transwomen will not be asked to hide their past, and will at the same time be treated as men and women respectively.

We notice that in XII 9 of [28] the Russian Orthodox Church (ROC) explicitly states otherwise: new members of the ROC can only be baptized under their gender assigned at birth.

- RCC accepts that the rule for incorporating new members creates a necessity for RCC to be able and willing to speak and think in terms of gender theory. RCC promises to interact in terms of the terminology of gender theory when appropriate (here a promise is meant in the sense of promise theory [9]).

- The RCC also acknowledges that it is challenge (for RCC members and officials) to interact with transgender persons in a respectful manner, in spite of fundamental differences of opinion. RCC acknowledges that acceptance of homosexuals was long overdue, and is now taking place in many dioceses.
- The RCC (or rather its local officials) acknowledges that it has a successful tradition of learning on the long term, paired with a tradition of top-down resistance against “the obvious” on the short term, where short term may easily amount to a century or more. (See e.g. [31].)

### 4.3 The RCC position is gender critical

We notice that the RCC’s position on gender may safely be considered gender critical. We very much disagree with the connection that is laid between gender critical thinking and genocide on the site of the Lemkin institute (see [32] as of March 2023), however, and we see no grounds whatsoever for such outrageous claims. The Lemkin Institute creates a formidable disservice to gender theory by casting differences of opinion in that manner.

Investigating the incorporation of gender in RCC doctrine is by no means a new subject, proposals to that extent may be found e.g. in [43]. RCC views on gender theory are said to be in discourse coalition with Russian Orthodox views in [29].

### 4.4 Other RCC views on gender and sex

With USCCB-GT-2018 we denote the resources on gender theory of the USCCB dated in 2018 [40] consisting of a catalogue of snippets of information regarding the RCC (read USCCB) position on gender. That catalogue has been collected by the USCCB and it displays an unfortunate landmark of (binary) heteronormative cis-genderism.

We notice that USCCB-GT-2018 does not acknowledge the relevance of sexual orientation, and does not provide moral space for the lives of homosexuals who do not cherish the perspective of a heterosexual marriage. These matters are relevant because the existence of homosexual persons has been established as a scientific fact as well as the lack of effect of so-called conversion therapies. Changing one’s sexual orientation is very difficult, and cannot be asked from arbitrary persons. It follows that the RCC catechism as quoted in USCCB-GT-2018 (and as below and as quoted below from that source) fails to pay proper attention to persons who are not heterosexual.

(No. 2333) “Everyone, man and woman, should acknowledge and accept his sexual identity. Physical, moral, and spiritual difference and complementarity are oriented toward the goods of marriage and the flourishing of family life.

The harmony of the couple and of society depends in part on the way in which the complementarity, needs, and mutual support between the sexes are lived out.”

(No. 2393) “By creating the human being man and woman, God gives personal dignity equally to the one and the other. Each of them, man and woman, should acknowledge and accept his sexual identity.”

Remarkably USCCB-GT-2018 skips the trivial observation that the RCC just as well proclaims a gender theory which might be termed a gender ideology. Given the fact that the RCC version of gender theory is in contradiction with several US laws it would be plausible that the USCCB acknowledges that they maintain some form of Roman Catholic Gender Theory (RCGT) which, as do proponents of most alternative gender theories, they claim to be universally valid for all of mankind.

How different is the situation in the Church of England, in [24] the details of welcoming transgender persons in various services are detailed. Anglican bishops are openly split on the matter of same sex marriage, however.

#### **4.5 Connection of RCC gender theory with “Dembroff versus Byrne”**

The controversy “Dembroff versus Byrne” (see [10, 11]) captures, as a theme in analytical philosophy the questions “what is a woman?” and “what is a man?”, where Byrne defends the classical, though philosophically novel, position (AHF/AHM) that a (wo)man is an adult human (fe)male, thereby making redundant the concept of gender, while Dembroff denies the arguments fielded by Byrne. Various bodies within the Roman Catholic Church (RCC) have recently produced statements, among which USCCB-GT-2018, which may be understood as a more detailed version of Byrne’s position, where additional detail comes about from being more precise about assigning sex at birth. Remarkably the arguments put forward in USCCB-GT-2018 side have little overlap with Byrne’s arguments.

We find that the arguments for AHF and AHM as put forward by the USCCB are needlessly non-modern, technically unconvincing, and logically inconsistent. We suggest defeasible gender essentialism as a path towards a modern RCC compatible take on the (in)validity of AHM and AHF.

We notice that a (wo)man may be defined as an adult human with (fe)male gender. The position of Byrne implies that for male and female individuals, the gender equals b-sex, and consequently the introduction of the concept of gender has nothing to offer. It also follows from AHF and AHM that an adult human, say  $P$ , of neutral gender must have neutral b-sex. Otherwise if  $P$  is (fe)male  $P$  is a (wo)man, and has gender (fe)male. It follows that



assuming AHF and AHM formal gender corresponds to b-sex, so that introducing a notion of formal gender has no merit.

## 5 GenCP<sub>n,m</sub>

We will now describe GenCP<sub>n,m</sub> in three stages: requirements, protocol specification, and metaprotocol. The metaprotocol describes how parameters for the protocol can be dynamically adapted according to circumstances.

### 5.1 Requirements on GenCP<sub>n,m</sub>

The following requirements will be met. The tag PCGSId (potential compromise of gender self-identification) which is present with some of the requirements indicates that a requirement may involve compromising for a person  $P$ ,  $P$ 's gender self-identification in some phase of their life, by having a different gender categorization for  $P$  than  $P$ 's self-identification (i.e. than  $P$ 's gender identity).

If elements of a political (say feminist) agenda are represented in this collection of requirements that state of affairs is rather by accident the case than by intention.

1. A 3G gender framework is adopted together with a classical gender theory. By consequence combi-gender labels like female-neutral, male-neutral, or male-female are not used.
2. Transsexed persons change b-sex, and change natural gender correspondingly (in other words the notion of b-sex at use is transition permissive).
3. Transgender individuals may but need not be transsexed (i. e. have made a b-sex transition).
4. Detransitioning is acknowledged, and detransitioning need not involve a move back to the original gender (usually GAAB). Upon transitioning (or partially transitioning) MTF or FTM a detransitioning step towards neutral gender is an option (see e.g. [35] where a nuanced perspective on detransitioning is proposed which goes beyond mere regret, and which casts in a plausible manner transitioning as a meaningful phase in advance of detransitioning).
5. An expected correspondence of 75% or more with natural gender.
6. (PCGSId requirement) Sex typing involves a serious attempt to fit in the natural gender as assigned from birth.

7. (PCGSId requirement) Sex typing mechanisms for AFAB and AMAB persons (or better called gender typing mechanisms) are allowed enough time for the population to create adequate circumstances for reproduction. This criterion gives rise to the parameter  $n$  below which neither b-sex transition nor gender transition is allowed (under normal circumstances).
8. There are no assumptions on sex typing (i.e. gender typing) for ANAB persons (assigned b-neutral at birth) because there is little or none experience with such cases.
9. (Barnes' assignment requirement) Persons who are actually incapable of gender self-identification (thereby producing  $\perp$  as their gender) will be gender categorized by an independent agent who focuses on the individual best interests of said person. The proposal to make an agent provide gender categorization for persons incapable of self-identification is taken from [4].
10. (Extended Barnes' assignment requirement) Persons who are considered incapable of (advantageous, for them) gender self-identification will be gender categorized by an independent agent who focuses on the individual best interests of said person.
11. (PCGSId requirement) There is a minimum age (parameter  $n$  of the protocol) for transgenering for AFAB persons and for AMAB persons.
12. ANAB persons may be transgenered to male gender or female gender below the age of  $n$  under watch of professional consultation and on the proposal of parents.
13. (PCGSId requirement) There may be a phase of pre-transgenering where in expectation of a forthcoming gender transition gender typing into the current natural gender is discontinued. This step is always performed under professional consultation.
14. There is an age (parameter  $m$  of the protocol) above which anyone may transgender according to their gender self-identification. Above age  $n$  transgenering may but need not be preceded by a phase of pre-transgenering. The latter choice is made by the transgenering individual themselves.
15. All gender neutral persons who are not cis-neutral have self-identified as neutral and have been considered capable of doing so.

## 5.2 Description of GenCP<sub>n,m</sub><sup>v1</sup>

We describe version 1 of the protocol, assuming that suggestions obtained from readers may provide input for subsequent modification and improvement, and to further versions of the protocol.

Reasonable choices for  $n$  and  $m$  (counting in years) are  $n = 10$  and  $m = 30$ . A team of experts must contain an experienced physician, a (developmental) psychologist, and a biologist (in case of b-neutral assignments).

1. At birth of  $P$  a b-sex is assigned to  $P$  resulting in AFAB, AMAB or ANAB (assigned b-neutral at birth, see [10]). There must be two independent specialists arriving at the same judgement, otherwise a third specialist must be asked to help out. If three different results were obtained the result is ANAB.
2. The b-sex assignment is done with M/E-sex as discussed in our [11]. We assume that M/E-sex is a version of anatomic/endocrinologic biological sex which is transition permissive, that is: at least in some cases a combination of medical treatments (typically involving both surgery and possibly permanent hormonal interventions) may change a b-sex assessment into either male or female. Under these somewhat uncommon conditions, natural gender is transition permissive as well as it simply follows b-sex (which is transition permissive by assumption).
3. The gender life-cycle of a person is started immediately after birth by adopting the gender corresponding to b-sex at birth (thereby mapping male to male, female to female, b-neutral to neutral).
4. Until age  $n$  care takers are advised to work towards gender typing corresponding with the natural gender. (There is no obligation of this kind, and the details of upbringing with adequate gender typing will vary with societal conventions.)
5. Between ages  $n$  and  $m$  one or more of the following processes may take place once or more (though in such a manner that at most three times the b-sex is changed, if at all):
  - The situation is kept unchanged and no event triggers any investigation into the appropriateness of natural gender for  $P$ .
  - caretakers may work towards reassignment oriented gender typing under the following condition:
    - (i) the subject has expressed a corresponding wish and has convinced a local team of experts of the plausibility of that intention,

(ii) each quarter there is an inspection by a local team of experts to confirm that the plan for reassignment is still adequate,

- treatment for gender dysphoria may change the b-sex of  $P$  (most plausibly towards b-neutral). Then gender re-categorization follows suit (so that natural gender categorization is preserved).
- With consent of and under permanent watch of the local expert team a full reassignment therapy may be carried out making  $P$  transsexed and ending in corresponding gender recategorization.
- With consent of and under permanent watch of the local expert team a partial reassignment therapy may be carried (the therapy being ended by lack of expected success) failing to make  $P$  transsexed as required and now, in consultation with the local expert team the envisaged gender may (but need not) be chosen for categorization. These steps are constrained by the rule 4.1 (FTMp) and 4.4 of our [11].

We notice that transitions under this clause are transitions of gender which cannot be explained as transitions of b-sex according to the notion of M/E-sex that is used to “implement” b-sex. In other words, these transitions are proper gender transitions. At the same time these rules are very limited and one may easily imagine more liberal rules. We aim at a gender categorization protocol that is very conservative while still giving room for both b-sex transition and proper transgendering.

6. At age  $m$  or above the person is allowed to switch gender at will, though in total at most 5 switches will be permitted (including a switch at death). As AGT (see [20]) becomes well developed it is envisaged that self-identification will be AGT informed.

The upper bound 5 is chosen higher than what is now used in several jurisdictions. A second switch may happen after a first switch did not yet lead to a satisfactory outcome. A third switch may take place if, after two switches, a person becomes transneutral, a fourth switch may take place at death. At the writing we see no rationale of allowing more than 5 switches.

7. At death a person is finally assigned the last gender unless
  - (i) the person has written a will, and
  - (ii) the will of the person indicates another gender which is then taken as the gender at death (unless a total of 5 switches has already been reached in which case the last gender is taken for the gender at death).

### 5.3 Meta-protocol for GenCP<sub>n,m</sub><sup>v1</sup>

Not part of the gender categorization protocol proper, and not formally described here, is a mechanism which moves the bounds  $n$  and  $m$  up and down. These moves are part of a meta-protocol which may be extended to add and remove rules for gender categorization. These moves will require decision taking at a political level.

The lower bound  $n$  is moved up if demographic studies indicate an unwanted increase in youth transgenering to neutral gender, the lower bound can be decreased in the opposite circumstances.

The upper bound can be increased if too many non-obvious transgenering events take place so that worries about preservation of societal reproduction are justified. The upper bound may be lowered in the opposite circumstances. The idea that at most 25% of the population has gender different from gender assigned at birth is leading for these moves.

## 6 Concluding remarks

We have adopted elements of the terminology of Barnes 2022 [4] in order to obtain some uniformity. By consequences the need arises to translate developments on other work into the terminology derived from [4], which is done with Turyn 2023 [39]. We expect that similar translations of terminology will be needed when making use of new developments for writing further work in this line of research.

### 6.1 Deviating from the fully-subjective gender self-categorization

It is an underlying assumption of the protocol that gender and b-sex can be meaningfully distinguished and that the Dembroff [27] versus Byrne [22] controversy (with [23] as the first step of round 2) is resolved in favour of Dembroff's position. That assumption has been confirmed in our [11].

We are aware that, by deviating from the fully-subjective position on gender, the above protocol may trigger transphobia accusations (see [10] for a catalogue of related accusations and [12, 13] for the accusation concept). We rely on [15] for arguments which allow for a discrepancy between gender identity and gender categorization (for a specific person  $P$ ).

Implicit in the protocol is that below age  $m$  any participant is supposed to promise (see [9]) to be open to the local team of experts about intentions for transgenering and about discussing the how and why of such intentions. If such promises cannot be made additional scrutiny may follow when wishes for transgenering are merely formulated without further backing or attempt to validation. We refer to [17, 19] for additional justification

for caution with transgenering to neutral at an early age.

We emphasize that  $\text{GenCP}_{n,m}^{v1}$  is merely one of many possible gender categorization protocols. It uses all available mechanisms (including sexual transition), however, and it makes proper use of a notion of gender, i.e. the protocol can be hardly explained without making use of a gender architecture that deviates from gender assigned at birth.

## 6.2 On the need for gender categorization protocols

We will not embark on the question why b-sex (biological sex) or gender is not simply considered a private personal attribute which, like much medical information, is left in the private sphere and is dismissed as a possible entry on questionnaires for all sorts of purposes. Bem (e.g. [6]) motivated her work with an intention to reduce the relevance of b-sex as much as possible, by using a catalogue of more specific characteristics instead.

## 6.3 A remark on sexual orientation

Perhaps the most important theme where notions of b-sex and gender play a role is sexual orientation. Although freedom of sexual orientation is legally guaranteed in many jurisdictions, at the same time sexual orientation is still a source of legal problems for citizens of many countries. And even in the presence of legal protection persons of diverse sexual orientation may find that enforcement of such protections is a different matter.

We tried to determine to what extent formal gender, psycho-bio gender or social gender play, or might play a role in defining concepts in connection with sexual orientation. We were unable to find anything worth reporting, the state of the field is remarkably confusing.

Our starting point is the account of conceptualizations of sexual orientation in Sell 1997 [37]. Sell provides a history of the field from its inception (as a topic for academic work) around 1880. Sell also explains in detail why it is so difficult to make significant progress in this subject.

Then Salomaa & Matsick 2019 [36] provide a successor survey reporting significant progress w.r.t. [37]. A notable next step is made by Sari van Anders with SCT (sexual configurations theory) [42]. SCT initiates a new path of investigation, though with considerable complexity. SCT seems to be the state of the art about defining sexual orientation. SCT seems to us to be too complex for practical purposes, however. In SCT the formal notion of gender plays a minor role only, as far as we can see. In SCT use is made of psycho-bio gender and of social gender, however.

As with b-sex and gender an alternative path towards defining sexual orientation is of a philosophical nature. However, while the analytical philosophy of b-sex and gender is flourishing, the analytical philosophy of sexual orientation culminates in a single paper by

Robin Dembroff in 2016 [26]. We are unconvinced that the formalistic approach of [26] sheds much light on the subject. For instance for [26] a typical SO (sexual orientation) is (in our terminology replacing non-binary by neutral): (male, neutral) i.e. “being sexually attracted to b-sex males with neutral gender”. We are unconvinced that there is any evidence for isolating (male, neutral), alternatively denoted as MTN transneutral, as a notable category in the context of SO.

In the context of a philosophical approach to SO some further remarks can be made: in [45] it is proposed that categorical phenomenalism be taken as the defining criterion for sexual orientation, we quote:

**Categorical Phenomenalism** What it is for x to be sexually oriented to y is for x to phenomenally experience sexual arousal in response to y in virtue of the features that constitute y’s manhood, womanhood, etc.

At face value the above definition relies on social gender rather than on formal gender as we assume that with manhood is meant “to have b-sex male” etc. As [45] indicates it requires observations and statistics, with to some extent arbitrary thresholds to work from a definition of sexual orientation between two specific individuals to a judgement regarding the sexual orientation of a single person which may endure over a longer period of time.

For trans people defining notions of sexual orientation seems to be an unfinished matter of current research. Susalka [38] maintains that it is essential for an understanding of a substantial percentage of transfolk that “...there are men living in ‘women’s’ bodies and women living in ‘men’s’ bodies.” Moreover Susalka suggests that a posthumanistic approach will allow to make sense of this state of affairs as a manifestation of variation rather than as a manifestation of deviance.

Arguing against the style of [38] we would claim that recognizing and properly understanding what it means for a woman to have been born in a man’s body, and not to experience any mismatch in need for a cure, is a precondition for the development of a second class of transnormative persons (besides those who have gone through thorough medical reassignment therapy). Defining sexual orientation in a way that applies to “male in female” or “female in male” transfolk is a challenge which has been taken on board in [26], but as stated above we are as yet unconvinced or the formalistic approach chosen by in [26].

Bartram 2023 [5] starts with the assumption that sexual orientation is determined during prenatal brain development. On the basis of that assumption various data sets can better be analysed without any control variables. Following [38] the approach taken in [5] is based on homonormativity as well as on heteronormativity, and for that reason would be without merit for transgender people. In practice, however, all that is known about sexual

orientation seems to be rooted in cis-cis-gender heterosexual, homosexual and bisexual behaviour. Published work about sexual orientation of various categories of trans people is very limited.

## 6.4 On (pseudo)disambiguation

The issue of disambiguation and pseudo-disambiguation has bothered one of the authors (JAB) in other contexts as well. For instance in [7] it is argued that there is no such thing as a fraction. Pseudodisambiguation of fraction leads to: formal fraction (an expression with a numerator and a denominator) and mathematical fraction (a quantity which equals the result of dividing an integer by a non-zero integer). In many contexts (in particular in arithmetical education at school) mathematical fraction can be taken for ‘rational number’. In [7] ‘fracterm’ is used as a shorthand for formal fraction.

A complication with disambiguating fraction is that there are a range of notions in between of formal fraction and mathematical fraction that merit attention as well. For that reason [7] takes focus on the notion of fracterm and does not pretend to provide a definitive account of the meanings of fraction.

In [8] a definition is given of the notion of an algorithm. As it turns out two notions have to be developed in tandem: informal algorithm and algorhyme. Here one might think of algorhyme as formal algorithm and of informal algorithm, where the informal algorithm (or perhaps psychological algorithm) is a human readable rendering of the idea that is incorporated by the algorhyme.

We speak of pseudo-disambiguation in cases where disambiguation is applied to a word or phrase, the ambiguity of which is initially non-obvious.

## 6.5 Future work

We feel that developing a Roman Catholic Gender Theory (perhaps in tandem with a Russian Orthodox Gender Theory) is a worthwhile path of which only the beginning has been developed above. Similar gender theories may be developed for other religions. For instance the Islamic tradition in Iran gives rise to a completely different Gender Theory, see our [10]. We feel that gender theory may in due time provide a framework which helps comparing different specializations of it, and which allow the various jurisdictions and policies to be properly modeled.



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