

De-gendering and De-sexing Motherhood

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Abstract

Each one of us who has come into this world (so far) has done so via birth. Everyone therefore has a birthing ‘parent’, but not all would consider that respective person to be their parent. For example, those who have been adopted might instead consider the person (or people) who adopted them to be their parent(s). There are, therefore, ways to become a parent that do not involve giving birth, and instances of giving birth that do not result in becoming a parent. But what about motherhood, more specifically? Must mothers be women, and must mothers have given birth? What makes a ‘mother’ – is it always and only the person who makes us? It is these questions that I explore here, in order to find a trans-inclusive approach to parental designations.

Motherhood

What is a mother? While at first this might seem like an easy question to answer, once we consider the variety of mothers that there are it becomes harder to find something that they all have in common. We might start by asking ‘who is a mother?’ to give us a set of people considered as mothers to see what differentiates them from the rest of the people who are not considered mothers. But would such an exercise provide us with something that carves the distinction ‘at its joints’ between motherhood and non-motherhood? It is unlikely, because like many categories, identities and boundaries, this is unclear due to the complexities of our social realities and family formations. Consider a man who transitioned from being a woman, who has given birth – was/is he a mother? What about a woman who transitioned from being a man, who has children – is she a mother?

I will argue that not all who are pregnant and give birth become mothers, and not all mothers were pregnant and gave birth, as motherhood

and pregnancies come in many shapes and sizes. As such, I hold that ‘mother’ and ‘pregnant’ are multiply realizable states, as both are ways of ‘becoming’, and there are different ways to become each that don’t require the other. Not only are there multiple ways to *become* a mother and to *become* pregnant, but there are also multiple ways of *being* a mother and *being* pregnant. The existence of those who have given birth but are not mothers, and of mothers who have not given birth, are evidential of this: the non-birth-giving mothers (via adoption, being a trans mother and having multiple lesbian mothers); and the birth-giving non-mothers (due to miscarriage, surrogacy, anonymous birthing, trans-masculine and nonbinary pregnancies, and even cis women who gave birth but reject the gendered aspects of ‘motherhood’ and consider themselves ‘parents’ instead).

Nevertheless, as I will show,¹ English and Welsh law fails to accurately represent this multitude of realities. I emphasize one legal aspect to highlight this: the *mater semper certa est*



principle, which translates as ‘mother is always certain’. This principle, written into the Human Fertilisation and Embryology Act 2008 and the Children Act 1989, entails that the person who gives birth is the mother. And as in the Births and Deaths Registration Act 1953 and the Adoption and Children Act 2002, this legal motherhood applies for six weeks minimum until such a status can be relinquished and transferred by giving ‘effective consent’ to adoption or via parental orders.

One of the results of this principle in action is inappropriate birth certificate registration, which will automatically name the person who gave birth as ‘mother’, and this is the only way to be registered as ‘mother’ on the birth certificate. Birth certificates will *only* include the person who gave birth as ‘mother’, even if someone else is identified as an ‘adoptive mother’ (a qualified form of motherhood) or a ‘parent’ who is a woman, and even when the person who gave birth has no intention of or does not consider

themselves as being a mother, for gendered or social reasons.

Presumably, the *mater semper certa est* principle is meant to track a difference in how certain we can be of, say, who contributed sperm and who contributed gestation – the latter being more obvious. But that does not mean that the person gestating is *certainly* going to be the mother (for they may be a man or nonbinary, or have other reasons not to be identified as a mother), and so ‘mother’ is *not* ‘always certain’. I therefore argue for the rejection of this principle, by showing that its role in birth certificate registration follows and perpetuates a biologically essentialist definition of motherhood which may misgender trans and nonbinary people who give birth.

Biological Essentialism

English and Welsh law on birth certificate registration defines motherhood in a biologically

essentialist way. An accusation of ‘essentialism’ in philosophy is often a slam-dunk against a position, as essentialist definitions of concepts are usually understood as incapable of accommodating the complexities of reality since they oversimplify and reduce phenomena to some necessary ‘essence’ which does not capture all entities that are intended to fall under the concept. Essentialism derives from Plato and his Platonic Forms, whereby things of a certain kind instantiate a Form for that kind which is what makes it that kind. With regard to gender, to define ‘woman’ in an essentialist manner would be to say that there is some ‘essence’ that all women share which defines them as women. In a specifically Platonic sense, this would mean there is some Form which is the essence of women which all women instantiate. A specifically *biological* essentialist understanding of gender takes the essential element of being a woman to be being female. In this article I will highlight where I find the English and Welsh law to use the term ‘mother’ as if it were defined in a biologically essentialist way, whereby all mothers are to share an essential aspect of motherhood, which is to give birth. In other words, I will argue that English and Welsh law treats giving birth (erroneously) as being the essence of motherhood.

‘Consider a man who transitioned from being a woman, who has given birth – was/is he a mother? What about a woman who transitioned from being a man, who has children – is she a mother?’

As is familiar in philosophy, one way of providing an essence or a definition for a term is to provide necessary and sufficient conditions for that term. A trait is *necessary* to a type when all tokens of that type must have that trait – for example, being female is a necessary condition for being a vixen, as all vixens are female (but not all females are vixens – there are female humans etc. too, so being female is not sufficient for being a vixen). A trait is *sufficient* for a type when anything that has that trait is a token of that type – for example, being a vixen is sufficient for being a fox, as all vixens are foxes (but not all foxes are female – there are male foxes too, so being a vixen is not necessary for being a fox). What about the relationship between birth-giving, motherhood, being a woman, and being female? The animal kingdom interestingly provides a lot of variety on these relationships, perhaps the most lauded being the seahorse where it is the male of the species that gives birth. Within our human population we make distinctions between social and biological roles, and between sex and gender: that makes things even more complex. But this hasn’t prevented the desire to pin motherhood down with necessary and sufficient conditions. I argue that aspects of English and Welsh law appear to abide by a biologically essentialist definition that takes birth-giving to be both necessary and sufficient conditions of motherhood, as such:

Sufficiency condition: If you give birth, then you are the mother. Birth-giving is sufficient for motherhood, where all who give birth are mothers, and there are no people who give birth who are not mothers.

Necessity condition: If you are a mother, then you are the person who gave birth. Birth-giving is necessary for motherhood, where all mothers have given birth, and there are no mothers who have not given birth.

Considering this analysis going in both directions provides us with a biologically essentialist definition, whereby motherhood is (and only is) understood as having given birth:

Biologically essentialist definition: You are the mother if and only if you are the person who gave birth. Birth-giving is necessary and sufficient for motherhood, where ‘mother’ and ‘birth-giver’ are co-extensive (by referring to all and only the same people).

This biological essentialization of motherhood as birth-giving is evidenced by there not being any other way to attain such a status on birth certificates in English and Welsh law. To be named the mother *just is* to be the person who gave birth, and nobody else can be deemed a mother without further qualification. To demonstrate this, in family arrangements whereby there is more than one mother (i.e. lesbian parents) only the person who gives birth can be registered as ‘mother’ on the birth certificate. Any other person who did not give birth (regardless of being a woman and/or having a genetic relation via egg transfer, for example) can only be registered as ‘parent’ on the birth certificate. Furthermore, even once a parental order is granted to an intended mother (who is qualified as an ‘adoptive mother’, for example) and the status of ‘mother’ of the person who gave birth has been relinquished, the intended mother is also only registered as ‘parent’ on the birth certificate and is not otherwise legally recognized as ‘mother’ in any unqualified way.

As such, motherhood is established in one way, and that is through giving birth. This highlights that despite the gender of a legal parent being a woman, that is not enough for motherhood status – they do not meet the necessary condition that is essential for being a mother, which is to give birth. And to evidence the sufficiency of giving birth for motherhood, note that giving birth *always* results in the creation of a legal mother. It is not possible for there to be a birth without there being a mother. Whoever gives birth is automatically registered as the legal mother on the birth certificate, as they meet the sufficient condition that contributes to the essentialist definition of motherhood. This is a significant result which has otherwise been overlooked in much legal analysis elsewhere, where the biological essentialism in the law does not

account for a number of family formations and cannot recognize either non-birthing mothers or birthing non-mothers.

Clearly, then, motherhood needs redefining, away from biological essentialism, and without the necessity and sufficiency conditions of birth-giving. In the next section I will look to the following two strategies of redefining motherhood: (i) de-gendering motherhood; (ii) de-sexing motherhood. Both fail to accommodate trans men and nonbinary people who give birth, because both may misgender them as a ‘mother’. This is obviously the case in (i), where any gender can be a mother – even the men! And while (ii) breaks the necessity linkage for how to become a mother so that a person of any sex can be a mother, it does not break the sufficiency linkage and thus may also misgender trans men and nonbinary parents as ‘mothers’. What is needed is a strategy that de-essentializes motherhood by rejecting *both* the necessity *and* sufficiency of birth-giving.

De-gendering Motherhood

Despite the problems in treating ‘mother’ and ‘birth-giver’ as synonymous, it has been argued that actually there is a way of doing so that is in line with the aims of inclusivity. Two examples include:

- (1) The National Institute for Health and Care Excellence guidelines, which specify: ‘The guideline uses the terms “woman” or “mother” throughout. These should be taken to include people who do not identify as women but are pregnant or have given birth.’²
- (2) The 2021 Ministerial and other Maternity Allowances Act, which was specifically rewritten using the terms ‘mother’ and ‘expectant mother’ and was defended as being ‘legally acceptable and more inclusive than other suggested alternatives’.³

But how could it be that ‘mother’ is inclusive of trans men and nonbinary people who have given birth? Well, the argument goes, simply by being included as a mother! ‘Mother’ becomes ‘inclusive’ of all those who give birth, regardless

of their gender. I interpret this argument as stemming from a gender-critical stance that holds that ‘gender doesn’t really mean anything’, or words to that effect. One way of elucidating that position is to take gender to refer only to sex. When gender picks out nothing but sex, then gendered terms can be used broadly (supposedly, ‘inclusively’), as long as they remain fixed to their designated sex. As such, gendered terms refer only to their biological sexed meaning, where, for example, ‘mother’ means anyone who gives birth, and ‘woman’ means anyone who is female. The upshot of this is that trans men who identify as fathers and have given birth would be re-identified as mothers, and furthermore, any trans man who has retained their female physiology would be re-identified as a woman. The reasoning is presumably that you cannot be misgendered as there is no such thing as gender, and that there is nothing else entailed by motherhood than simply having given birth (just as there is nothing else entailed by being a woman than simply being female). As such, the justification of the inclusivity of this approach is that mothers and women can be masculine without claiming another identity, so you may come as you are for as long as you do not change your designations. With femininity so unconstrained, there is a freedom to be ‘non-feminine’ (but not to be renamed as such). This is the limited sense of inclusivity that this approach of de-gendering motherhood facilitates.

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Those of this gender-critical persuasion argue that using gender-neutral language for the sake of inclusivity is not required when gender is already itself neutral, meaning nothing over and above its biological sexed meaning. For example, when ‘mother’ is simply a label for a biological role, there is no reason to change terminology for the sake of gender when it is *apparently* already free of gender. Yet terms like ‘mother’ are *not* free of gender, and so if gender-neutrality truly is the aim of this de-gendering approach, then I suggest that the aim would be better served by the use of actually gender-neutral language, rather than attempting to strip gender from terms that have become highly gendered in their societal usage. Given their rich social meaning, it is not unreasonable for a trans man to feel that calling them a mother is misgendering them. For as Damien Riggs argues, the term ‘mother’ is so ‘tightly regulated ... in relation to gender norms’ that it complicates attempts to use it in a way that includes all cis men who undertake ‘mothering’ practices and trans men who give birth.⁴

Examples of this de-gendering approach in action are the legal cases of *R (TT) v. Registrar General for England and Wales v AIRE Centre* [2019] 3 WLR 1195, and *R (McConnell and YY) v. Registrar General for England and Wales* [2020] EWCA Civ 559. These cases ruled that Freddy McConnell (a trans man with a legally acquired change of gender as male, who gave birth and wanted to be registered as ‘father’, ‘parent’ or ‘gestational parent’) was a mother simply by virtue of having been the one to have given birth. Gender identity was inconsistently both overruled and incorporated into the decisions, since ‘mother’ was de-gendered in order to accommodate McConnell’s status as a man, but McConnell’s very status as a man was not de-gendered as he was still recognized as a man (rather than by his female physiology). Indeed, McConnell’s legal representatives argued that being identified as ‘mother’ undermines his legal status as a man. Nevertheless, the court pushed that ‘mother’ was not gendered (even if ‘man’ is), citing a ‘material difference between a person’s gender and their status as a parent’.⁵ McConnell could keep his masculine name, his

legal male sex, his gender as a man, and even his social status as a ‘father’, but nevertheless legally ‘father’ would not apply: ‘[f]or all other purposes, be they social, psychological or emotional, [McConnell] will be a male parent to his child and therefore his “father”’ (para. 147), but otherwise ‘mother’ and ‘father’ are simply ‘a matter of the role taken in the biological process, rather the person’s particular sex or gender’ (para. 139). With motherhood de-gendered and only referring to birth-giving, McConnell satisfied the sufficiency condition for being a mother, regardless of his gender. This inconsistency is written into the Gender Recognition Act 2004 s12, which states: ‘The fact that a person’s gender has become the acquired gender under [the Gender Recognition Act 2004] does not affect the status of the person as the father or mother of a child’ – a harmful inconsistency for those it is imposed upon.

What this case further demonstrates is the incongruity between legal use of ‘mother’ and social use of ‘mother’. Motherhood is an inherently gendered concept which denotes a familial role defined by heteropatriarchal society. Furthermore, stripping motherhood down to birth-giving goes against a lot of what many consider the meaning of ‘mother’ to be, beyond just giving birth, but also raising and caring for children. To legislate otherwise is to be out of touch with the lived realities that the law is intended to legislate about, mischaracterizing their legal subjects and carving out groupings in unfitting ways. Indeed, the high court judgement even concedes that there is likely to be ‘a tension’ (para. 147) between the legal definition of ‘mother’ and how ‘mother’ is socially understood, but no legal remedy for this tension was identified in McConnell’s case. As far as the English and Welsh law was concerned here, de-gendering parental terms was all that was needed for accommodating trans individuals. But de-gendering legally may serve to mis-gender socially. Just because the law might deem ‘mother’ to be annexed from gendered roots, it does not follow that it is so in any other domain, creating the rather tongue-twisting situation: *It engenders trans men to be mis-gendered by the de-gendering of cis-gendered terms like ‘mother’, just as they*

would be by ‘woman’, given their historical and present gendered agendas. And as Stephanie Kapusta argues, misgendering, in and of itself, is morally contestable. An alternative ought to be sought.⁶

De-sexing Motherhood

There is a movement that aims to ‘queer motherhood’, where the term ‘mother’ is queered in a way to make it inclusive of different forms of motherhood.⁷ This process of queering motherhood starts from a place of de-sexing motherhood. So unlike the gender-critical approach considered earlier that takes ‘mother’ to be un-gendered, referring only to a biological state of having given birth, this queerer approach takes ‘mother’ to be un-sexed, referring rather to anyone who takes on the various roles and forms that motherhood encapsulates. This breaks the necessity link between birth-giving and motherhood, such that giving birth is not essential to be deemed a mother. On this approach, then, at least the trans woman who did not give birth could be included under the ‘motherhood’ umbrella! But so might be the trans man. As Shelley M. Park, a main proponent of queering motherhood, states:

To be inclusive, the phrase ‘queer mother’ must have a denotation broader than ‘lesbian mother.’ Queer mothers may include gay drag queens, pregnant transmen, femme strippers, straight swingers, and many others.⁸

The ‘may include’ is important here. It is clear that the intention of this approach is inclusivity, and to reject a biological essentialist understanding of ‘mother’ that limits it only to those who gestate and give birth. Park explicitly describes the project of queering motherhood as going through a process of denaturalizing motherhood, and asserts that there is ‘no “natural” way of becoming a mother, and no “natural” body that a mother has’.⁹ This is all very well and good, but the limitation of the project is in its potential lack of recognition of those trans men and non-binary people who give birth who do *not* want

to named ‘mothers’. For them, the result is the same as the gender-critical ‘de-gendering’ approach, and the reason for this is because both approaches seem to maintain the sufficiency of giving birth for motherhood. While it might be the case that some pregnant trans men and nonbinary people are comfortable with being termed a queer mother, some would not consider themselves as being a mother of any kind (such as in the McConnell case), even if a by-product of their pregnancy indeed *queers* motherhood. Trans men and nonbinary people who give birth may *queer motherhood*, but they are not all *queer mothers*. So ‘queer mothers’ may include ‘pregnant transmen’, as Park states, but importantly not always.

This line of reasoning in queering or de-sexing motherhood is reminiscent of Sara Ruddick’s *Maternal Thinking: Toward a Politics of Peace*, which takes mothering to be a role which can be performed by women and men alike.¹⁰ So, men can be maternal, and men can be mothers. Once again, we see the same attempt at inclusivity resulting in the erasure of many trans men’s realities of being fathers. Yet unlike the queering motherhood approach, a biological essentialism sneaks in at the level of pregnancy. Ruddick’s book was first published in 1989, and reassessing her arguments in the preface to the 1995 edition, Ruddick (2002) qualifies that ‘All mothering, whether done by men or women, depends on some particular woman’s labor’, that is, ‘still and only’ by a woman’s pregnant body.¹¹ This is simply not true, given that trans men and nonbinary people can have pregnant bodies, and thereby do engage in the labour of gestation. While Ruddick de-sexes motherhood, she still sexes pregnancy. And so while Ruddick ‘queers motherhood’ by accommodating men as mothers, she does not accommodate for men being pregnant. We can thus infer that Ruddick takes all those who are pregnant to be women and mothers, but not all mothers to be women. This means that, as we saw for Park, birth-giving may not be necessary for motherhood, but it still may be sufficient, thereby entailing that trans men and nonbinary people are mothers when they give birth (and according to Ruddick’s later qualification, they are then women by virtue

of having performed a ‘particular woman’s labor’). This is echoed in Jennifer Finney Boylan’s memoir:

According to Ruddick, men, too, are capable of ‘mothering,’ ... [yet] if someone had shared this theory with me when I was a father – and I identified as a feminist even then – it would surely have hurt my feelings. At the heart of this theory seems to be an assumption that caring for children is something women do. If you’re a man and you’re trying to nurture and protect your kids, it seems to me as if you’re being called an honorary woman.¹²

However, it is of course the case that trans and queer experiences are not homogeneous, just as cis experiences are not all the same. There are many trans men and nonbinary people who parent and consider themselves mothers, just as there are many trans women and nonbinary people who parent and consider themselves fathers. Queering parental terms accommodates this flexibility, but to be inclusive of trans men as fathers and trans women as mothers, it is both the sufficiency as well as the necessity of birth-giving that need to be rejected in defining motherhood. De-sexing motherhood alone or de-gendering motherhood alone does not meet this level of inclusivity.

Critical and Political Purposes

There are arguments justifying the use of ‘maternal’, ‘mother’ and/or ‘woman’ by appealing to the political purposes of highlighting inequalities that cis women experience. Unlike the ‘gender-critical’ arguments considered earlier, it is here not a case of being *critical of gender* whereby ‘woman’ is de-gendered, but rather that the *gender is critical* (i.e. of critical importance) to address (cis)women’s oppression. Given that some who endorse a de-gendering approach seek to continue to use otherwise gendered terms for political aims, it then becomes unclear whether the so-called gender-critical stance is indeed ‘critical of gender’ or thinks that ‘gender is critical’ in their argument as to why ‘maternal’, ‘mother’ and/or ‘woman’ must be used despite

their trans-exclusionary consequences. Those who position gender as being of critical importance politically while simultaneously being critical of gender are therefore somewhat in tension with themselves.

The inconsistency of gender criticality in gender-critical positions is utilized in arguments against, for example, the use of inclusive language that would have us move away from ‘mother’ and ‘pregnant woman’ to ‘parent’ or ‘pregnant person’ for instance, because such a move is said to be detrimental to the cis woman majority of perinatal service users. This can be described as ‘mundane cisgenderism’,¹³ where cis women are the norm to be catered to and where cis women’s rights are pitted against trans rights. This employs a ‘scarcity narrative’ as if there aren’t enough rights to go around.¹⁴ But justice

for one part of the population at the expense of another is not justice at all: harm to trans and nonbinary people cannot be deemed as tolerable collateral damage of protecting cis women. And we must face up to the false dichotomy between trans-inclusivity and cis-oppression. Given that it is trans individuals who are at the losing end of the morally contestable practice of being potentially misgendered by ‘maternal’, ‘mother’ and ‘woman’, we must strive for more than merely intending to be inclusive, by instead using language adopted by trans individuals and centring their experiences in our analyses and practice. Finally, given that inclusive language accommodates non-nuclear families and avoids heteronormativity, which is so restrictive in our patriarchal society, such changes may well be better for everyone!¹⁵

Notes

- ¹ I follow the findings of family lawyer Zaina Mahmoud and bio-legal scholar Elizabeth Chloe Romanis in ‘On Gestation and Motherhood’, *Medical Law Review* 31.1 (2023), 109–40.
- ² Caesarean birth NG192, 2021, 4, 6.
- ³ Lords Amendments to the Ministerial and other Maternity Allowances Bill 25 February 2021; HC Deb 1 March 2021, vol. 690, col. 61.
- ⁴ Damien Riggs, ‘Transgender Men’s Self-Representations of Bearing Children Post-Transition’, in F. J. Green and M. Friedman (eds.), *Chasing Rainbows: Exploring Gender Fluid Parenting Practices* (Toronto: Demeter Press, 2013), 62–71, at p. 70, considering Andrea Doucet’s *Do Men Mother? Fathering, Care and Domestic Responsibility* (Toronto: University of Toronto Press, 2007).
- ⁵ McConnell n. 104 [279].
- ⁶ Stephanie Kapusta, ‘Misgendering and its Moral Contestability’, *Hypatia* 31.3 (2016), 502–19.
- ⁷ See Margaret F. Gibson (ed.), *Queering Motherhood: Narrative and Theoretical Perspectives* (Coe Hill, ON: Demeter Press, 2014).
- ⁸ Shelley M. Park, ‘Queering and Querying Motherhood’, in L. O’Brien Hallstein, A. O’Reilly and M. Giles (eds.), *The Routledge Companion to Motherhood* (New York and London: Routledge, 2019), 63–76, at p. 70.
- ⁹ Park, ‘Queering and Querying Motherhood’, 73.
- ¹⁰ Sara Ruddick, *Maternal Thinking: Toward a Politics of Peace* (Boston: Beacon Press, 2002), xii.
- ¹¹ Ruddick, *Maternal Thinking*, xiii.
- ¹² Jennifer Finney Boylan, *Stuck in the Middle with You: A Memoir of Parenting in Three Genders* (New York: Broadway Books, 2013), 30.
- ¹³ A term from Gabriel Knott-Fayle, Elizabeth Peel and Gemma Witcomb, ‘(Anti-)feminism and Cisgenderism in Sports Media’, *Feminist Media Studies* 23.3 (2023), 1274–91.
- ¹⁴ Described in Alison Phipps, *Me, Not You: The Trouble with Mainstream Feminism* (Manchester: Manchester University Press, 2020).
- ¹⁵ Some ideas in this article are also to appear in a special issue of *Alternatives – Transforming Pregnancy*, ed. Suki Finn, Caterina Nirta and Laura Sjöberg.

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