

NEITHER ANDROGYNY NOR STEREOTYPES: SEX DIFFERENCES AND THE DIFFERENCE THEY MAKE

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|---|-----|
| INTRODUCTION | 212 |
| I. BIOLOGICAL SEX | 215 |
| <i>A. What Is Sex in the First Place?</i> | 216 |
| <i>B. How the Sex Distinction Begins</i> | 218 |
| <i>C. Continuing Sexual Differentiation</i> | 220 |
| <i>D. Sex Differences Affect Our Health</i> | 223 |
| <i>E. Disorders of Sexual Development</i> | 227 |
| II. GENDER AND CULTURE..... | 233 |
| <i>A. Feminism and Gender Ideology</i> | 234 |
| <i>B. Vive La Différence</i> | 240 |
| <i>C. Gender and Human Goods</i> | 244 |
| <i>D. Engendered and Engendering Bonds</i> | 245 |
| <i>E. Cultivating Boys and Girls</i> | 249 |
| <i>F. Can't We Just Be Friends?</i> | 251 |
| <i>G. Mothering and Fathering</i> | 253 |
| <i>H. Marriage and "Work-Life Balance"</i> | 256 |
| <i>I. Cultures Cultivate and Our Transgender Moment</i> | 261 |

INTRODUCTION

Recent debates about gender identity and the various waves of feminism and new feminisms have clouded many people's understanding of sex and of gender. Whether it be proposals from feminists that equate equality with sameness, and thus argue, for example, that it should be illegal to be a "stay-at-home mom,"¹ or claims by transgender activists that a boy could be trapped in the body of a girl,² many people today lack a clear understanding of the concept of biological sex, how it develops and is determined, and the difference that sex differences make.³

This article argues that sex is a biological reality, conceptualized and identified based on an organism's organization with respect to sexual reproduction. In human beings, this organization begins to

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1. Sarrah Le Marquand, *It Should Be Illegal to Be a Stay-at-Home Mum*, DAILY TELEGRAPH (March 20, 2017, 8:00 AM), <https://perma.cc/55GD-LDA4>. Le Marquand argued that feminism shouldn't be about giving women choices, but rather about making women equal to men, with "equal" understood as acting the same—regardless of what any woman might want. *Id.* Le Marquand is willing to tolerate moms staying home for the first couple of years in a child's life, but she isn't willing to tolerate that choice when children are old enough to attend school, and she wants her preference to be enforced by law. *Id.* "Rather than wail about the supposed liberation in a woman's right to choose to shun paid employment," she wrote, "we should make it a legal requirement that all parents of children of school-age or older are gainfully employed." *Id.* That might sound a bit extreme, yet decades ago the founder of second-wave feminism, Simone de Beauvoir, proposed the same policy in more unqualified terms: "No woman should be authorized to stay at home to raise her children. Society should be totally different. Women should not have that choice, precisely because if there is such a choice, too many women will make that one." Christina Hoff Sommers, *Feminism and Freedom*, AM. SPECTATOR (July 2, 2008, 1:35 AM), <https://perma.cc/L2ER-9MVD> (quoting Simone de Beauvoir). This way of thinking is common in a certain strain of feminism, which holds that freedom isn't sufficient for women's liberation because they might make the "wrong" choices. They might choose to be different from men, and thus remain "unequal." In Le Marquand's view, "Only when the tiresome and completely unfounded claim that 'feminism is about choice' is dead and buried (it's not about choice, it's about equality) will we consign restrictive gender stereotypes to history." Le Marquand, *supra*. Choice leaves women free to perpetuate outdated patriarchal stereotypes, so women should not be permitted that choice: "Only when the female half of the population is expected to hold down a job and earn money to pay the bills in the same way that men are routinely expected to do will we see things change for the better . . ." *Id.* What Le Marquand views as equality could more accurately be called an enforced *sameness*.

2. For more on transgender contradictions, see RYAN T. ANDERSON, WHEN HARRY BECAME SALLY: RESPONDING TO THE TRANSGENDER MOMENT (2018), from which this essay is adapted.

3. See, e.g., Nathan Palmer, *Sex is a Social Construction, Even if the Olympics Pretends It's Not*, SOC. IN FOCUS (August 10, 2016), <https://perma.cc/3BEB-NN7D> (arguing that sex is a social construct and that there have never been just two sexes); Mey Rude, *It's Time For People to Stop Using the Social Construct of "Biological Sex" to Defend Their Transmisogyny*, AUTOSTRADDLE (June 5, 2014, 4:26 PM), <https://perma.cc/6Z7T-75V8> (arguing that biological sex is a social construct used by transphobes).

form as a result of the chromosomes we inherit from our parents, as well as the reproductive organs, systems, genitalia, and hormones that develop as a consequence. As there are two reproductive systems, there are two sexes. This primary sexual differentiation in turn gives rise to secondary bodily differences—in terms of height, weight, organ development, musculature, and even psychology. These are not essential differences, but differences in distributional patterns. And as a result, it should not be surprising if on average and for the most part boys and girls, men and women, display different interests, inclinations, and preferences.

But these on-average differences, while they should be recognized and accounted for, should not be taken as normative. Differences between men and women should not be denied (androgyny) but nor should mere differences alone be imposed as if prescriptive (stereotypes). Instead, cultures need to cultivate the differences that make a difference in the ways that people—men and women—pursue certain goods and thus in the formation of certain social practices. And so, this article argues that gender is how cultures give expression to sexual differences.

Feminism originally sought to liberate women from a restrictive understanding of gender and free them to be themselves, but elements of it turned into a movement that went beyond giving women the same equality of opportunity and liberty as men, instead seeking to erase the differences between the sexes. Our culture has gone from the error of exaggerated and rigid sex stereotypes to the opposite error of denying that there are any important differences between the sexes. From that error comes a culture of androgyny and gender confusion. The radical feminist aim of erasing all differences between men and women might seem contrary to the transgender insistence that the inner sense of a distinctly male or female gender identity cannot be altered by therapy, though beneath it all is a delinking of gender from our biological nature.

Between stereotypes on the one hand and androgyny on the other, the virtuous mean is a view of gender that reveals meaningful sex differences and communicates the difference they make—a view that takes sex differences seriously while upholding the fundamental equality of the sexes as complements to one another. It acknowledges what sex differences mean for marriage and family, friendship and education. Our sexual embodiment is precisely what makes marriage possible, and a host of social

practices, including how we nurture boys and girls, are shaped with the good of marriage in view. On average, boys and girls, and men and women have different needs and inclinations, so our law and culture should not take the male way of being human as the norm. This means that women should not be forced to live, work, and compete as if they were men. Society should accept that men and women may, on the whole, have different preferences and freely make different choices.

We need to recover a sound understanding of gender and of why it's important for our society to respect the fundamental differences between male and female. We need to cultivate a mature and nuanced view of gender so that children understand that there are various ways to be real boys and real girls—that we don't all have to conform to a stereotype. But this does not require adopting the view that gender norms are entirely artificial, mere "social constructs."

Sex is a bodily, biological reality, and gender is how we give social expression to that reality. Gender properly understood is a social manifestation of human nature, springing forth from biological realities, though shaped by rational and moral choice. Human beings are creatures of nature and of culture, but a healthy culture does not attempt to erase our nature as male- or female-embodied beings. Instead, it promotes the integrity of persons, in part by cultivating manifestations of sex differences that correspond to biological facts. It supports gender expressions that reveal and communicate our sexual nature.

Gender is socially shaped, but it is not a mere social construct. It originates in biology, but in turn it directs our bodily nature to higher human goods. A sound understanding of gender clarifies the important differences between the sexes and guides our distinctly male or female qualities toward our well-being. A concept of gender that denies or distorts these differences, on the other hand, hinders human flourishing.

And so, this article proceeds by exploring the concept of biological sex, its biological formation in a primary and secondary sense, and disorders of sexual development and how to understand them. It then turns to gender theory and feminism, mistaken understandings of gender that either deny (androgyny) or distort (stereotypes) the differences that make a difference, and how our sexual embodiment should influence our communal pursuit of human goods.

I. BIOLOGICAL SEX

When political debates are not in the picture, the scientific community has no difficulty pronouncing when and how sex is determined. Consider three standard embryology textbooks. *Langman's Medical Embryology*, for example, concisely explains how the sex of a new organism is determined at fertilization: "An X-carrying sperm produces a female (XX) embryo, and a Y-carrying sperm produces a male (XY) embryo. Hence, the chromosomal sex of the embryo is determined at fertilization."⁴ A new human organism of a particular sex is created at that moment.

William J. Larsen's *Human Embryology* is equally straightforward in its definition of "sex determination" in the glossary: "The male sex is determined by presence of a Y sex chromosome (XY), and female sex is determined by absence of a Y chromosome (XX)."⁵ *The Developing Human: Clinically Oriented Embryology* gives more detail here:

The embryo's chromosomal sex is determined at fertilization by the kind of sperm (X or Y) that fertilizes the oocyte; hence, it is the father rather than the mother whose gamete determines the sex of the embryo. Fertilization by an X-bearing sperm produces a 46, XX zygote, which normally develops into a female, whereas fertilization by a Y-bearing sperm produces a 46, XY zygote, which normally develops into a male.⁶

Note the word "normally," which adds an important nuance: An XX embryo *normally* develops into a female, and an XY embryo *normally* develops into a male. Chromosomal and hormonal pathologies can disrupt and prevent normal development, as we will see.

X and Y chromosomes ordinarily determine whether an individual is one sex or the other. We will look at the unfolding process of sexual differentiation after fertilization and then at bodily differences between males and females, behavioral differences in newborn babies, and medical and health differences between the sexes. But first, we need to consider what exactly it means for an organism to be male or female—that is, what biological sex really is.

4. T.W. SADLER, *LANGMAN'S MEDICAL EMBRYOLOGY* 40 (9th ed. 2004).

5. WILLIAM J. LARSEN, *HUMAN EMBRYOLOGY* 519 (3d ed. 2001).

6. KEITH L. MOORE & T.V.N. PERSAUD, *THE DEVELOPING HUMAN: CLINICALLY ORIENTED EMBRYOLOGY* 35 (2003).

A. What Is Sex in the First Place?

The basics of sex determination are relatively clear. Our genetic code determines our sexed body. But what do we even mean by a “sexed” body? Here’s how the *Encyclopedia Britannica* defines sexual dimorphism: “the differences in appearance between males and females of the same species, such as in colour, shape, size, and structure, that are caused by the inheritance of one or the other sexual pattern in the genetic material.”⁷ In other words, there are physical differences between males and females that result from the sexual pattern in the genetic material. But what do we mean by “sexual pattern”? What do we mean by “males” and “females”?

To answer these questions, we have to understand how organisms are identified and classified by their organization. The neuroscientist Maureen Condic and her philosopher brother Samuel Condic explain:

The defining feature of an organism is organization: the various parts of an entity are organized to cooperatively interact for the welfare of the entity as a whole. Organisms can exist at various levels, from microscopic single cells to sperm whales weighing many tons, yet they are all characterized by the integrated function of parts for the sake of the whole.⁸

Male and female organisms have different parts that are functionally integrated for the sake of their whole, and for the sake of a larger whole—their sexual union and reproduction.

Sex, in terms of male or female, is identified by the organization of the organism for sexually reproductive acts. Sex as a status—male or female—is a recognition of the organization of a body that has the ability to engage in sex as an act. More than simply being *identified* on the basis of such organization, sex is a coherent concept only on the basis of that organization. The fundamental conceptual distinction between a male and a female is the organism’s organization for sexual reproduction. Sherif Girgis explains:

After all, male and female are not just any two sexes, as black and white are just two races. Maleness and femaleness, and a certain social purpose, are necessarily inter-defined: one cannot

7. *Sexual Dimorphism*, ENCYCLOPEDIA BRITANNICA (2016).

8. Maureen L. Condic & Samuel B. Condic, *Defining Organisms by Organization*, 5 NAT’L CATH. BIOETHICS Q. 331, 336 (2005) (emphasis omitted).

fully explain either maleness or femaleness without reference to the other and to a certain social good. The reason is that what differentiates them are not just different anatomical or genetic features, but—at a deeper level of explanation—their joint (basic) physical potential for a biological task: reproduction. And this task, its social value, and its link to sexual composition are certainly not mere social inventions.⁹

The conceptual distinction between male and female based on reproductive organization provides the only coherent way to classify the two sexes.

Drs. Lawrence Mayer and Paul McHugh highlighted the same truth in a recent review of the scientific literature on sexuality and gender identity:

The underlying basis of maleness and femaleness is the distinction between the reproductive roles of the sexes; in mammals such as humans, the female gestates offspring and the male impregnates the female. More universally, the male of the species fertilizes the egg cells provided by the female of the species. This conceptual basis for sex roles is binary and stable, and allows us to distinguish males from females on the grounds of their reproductive systems, even when these individuals exhibit behaviors that are not typical of males or females.¹⁰

After explaining the “binary and stable” conceptual basis for maleness and femaleness,¹¹ Mayer and McHugh note that a structural difference for the purposes of reproduction is the only “widely accepted” way of classifying the two sexes:

In biology, an organism is male or female if it is structured to perform one of the respective roles in reproduction. This definition does not require any arbitrary measurable or quantifiable physical characteristics or behaviors; it requires understanding the reproductive system and the reproduction process. Different animals have different reproductive systems, but sexual reproduction occurs when the sex cells from the male

9. Sherif Girgis, Windsor: *Lochnerizing on Marriage?*, 64 CASE W. RES. L. REV. 971, 988 (2014) (emphasis added) (citations omitted).

10. Lawrence S. Mayer, M.B., M.S., Ph.D. & Paul R. McHugh, M.D., *Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences*, 50 NEW ATLANTIS 10, 89 (2016). Mayer is a scholar-in-residence in the Department of Psychiatry at Johns Hopkins University and a professor of statistics and biostatistics at Arizona State University. McHugh is a professor of psychiatry and behavioral sciences at the Johns Hopkins University School of Medicine, and for twenty-five years was the psychiatrist-in-chief at the Johns Hopkins Hospital. The editor of the NEW ATLANTIS, in the introductory note to their report, called McHugh “arguably the most important American psychiatrist of the last half-century.” *Id.*

11. *Id.*

and female of the species come together to form newly fertilized embryos. It is these reproductive roles that provide the conceptual basis for the differentiation of animals into the biological categories of male and female. There is no other widely accepted biological classification for the sexes.¹²

Males are organized to engage in sexual acts that donate genetic material, while females are organized to engage in sexual acts that receive genetic material and then gestate the resulting offspring. This fundamental difference in organization is what allows scientists to distinguish male from female. When Dr. Deanna Adkins called this “an extremely outdated view of biological sex” in her declaration to a federal court in North Carolina, Dr. Mayer responded in his rebuttal declaration: “This statement is stunning. I have searched dozens of references in biology, medicine and genetics—even Wiki!—and can find no alternative scientific definition. In fact, the only references to a more fluid definition of biological sex are in the social policy literature.”¹³ Just so.

The underlying biology of reproduction isn’t that controversial. Sex is understood this way across species. No one finds it particularly difficult—let alone controversial—to identify male and female members of the bovine species or the canine species. It’s only recently, and only in the human species, that the very concept of sex has become convoluted and controversial.

B. How the Sex Distinction Begins

For much of history, people thought sex in humans was determined environmentally in the womb. While sex is environmentally determined in some species—such as the sex of some reptiles being determined by the temperature in which the egg is incubated—we now know that for humans the starting point is the presence of an XX or XY chromosomal composition. In fact, we’ve known it since 1921.¹⁴ But it was only in 1959 that scientists were able to explain *why* these chromosomes make a difference and *how* they do it.¹⁵ Prior to this time, they were uncertain

12. *Id.* at 90.

13. Expert Rebuttal Declaration of Lawrence S. Mayer, M.D., M.S., Ph.D., U.S. v. N.C., 192 F. Supp. 3d 620 (M.D.N.C. 2016) (Case 1:16-cv-00425-TDS-JEP).

14. LARSEN, *supra* note 5, at 307.

15. SCOTT F. GILBERT & MICHAEL J.F. BARRESI, DEVELOPMENTAL BIOLOGY 183 (11th ed. 2016).

“whether femaleness was determined by the *presence* of two X chromosomes or by the *absence* of the tiny Y chromosome and, conversely, whether maleness was determined by the presence of a Y chromosome or by the presence of a *single* X chromosome.”¹⁶

Scientists now know that “the *presence* of a Y chromosome determines maleness and its *absence* determines femaleness.”¹⁷ This is because the Y chromosome ordinarily carries the SRY (“sex-determining region on Y”) gene.¹⁸ The SRY gene contains a transcription factor known as the testis-determining factor (TDF), which directs the formation of the male gonads.¹⁹

For the first six weeks of human embryological development, males and females develop in more or less the same way.²⁰ One textbook explains that “[t]he early genital systems in the two sexes are similar; therefore the initial period of genital development is referred to as the *indifferent state of sexual development*.”²¹ As the gonads start to develop, they are referred to as “indifferent gonads” because under some circumstances they can develop as either male or female, independent of the genetic sex.²² The presence of a Y chromosome with the SRY testis-determining factor initiates the formation of testicular differentiation in week seven.²³ The absence of SRY allows the indifferent gonads to continue development into the ovaries.²⁴

The formation of the gonads—testicles and ovaries—then directs subsequent sexual differentiation.²⁵ As *The Developing Human* explains it, “the type of sex chromosome complex established at fertilization determines the type of gonad that differentiates from the indifferent gonad. The type of gonads present then determines the type of sexual differentiation that occurs in the genital ducts and external genitalia.”²⁶ Once the ovaries and testes are formed, we read in the *Journal of Cellular*

16. LARSEN, *supra* note 5, at 307.

17. *Id.*

18. *Id.* at 519.

19. *Testis Determining Factor*, CAMBRIDGE DICTIONARY OF HUMAN BIOLOGY AND EVOLUTION (Larry L. Mai et al. eds., 2005).

20. MOORE & PERSAUD, *supra* note 6, at 304.

21. *Id.*

22. John Hutson, *Disorders of Sex Development (DSD)*, in CLINICAL EMBRYOLOGY: AN ATLAS OF CONGENITAL MALFORMATIONS 427, 428 (Robert Carachi & Sameh Hemi Edward Doss eds., 2019); M. WAHEED RANA, HUMAN EMBRYOLOGY MADE EASY 243 (1998).

23. MOORE & PERSAUD, *supra* note 6, at 307.

24. Hutson, *supra* note 22, at 428.

25. MOORE & PERSAUD, *supra* note 6, at 307.

26. *Id.*

Physiology, they become “the primary regulators of mammalian sexual differentiation by secreting sex-specific hormones that regulate downstream developmental processes. Thus, these reproductive tissues impose body-wide and long-lasting phenotypic effects.”²⁷ Genotype, you may recall, refers to our genetic composition, while phenotype refers to its physical manifestation. An ordinary male has an XY genotype, which expresses itself in a male phenotype through the development of testes. The Y chromosome carrying the SRY gene initiates the formation of the testes, which in turn produce testosterone, which then masculinizes the body and contributes to the development of a male.²⁸ Otherwise, without a Y-carrying SRY, the human will normally form ovaries and develop as a female.²⁹

C. Continuing Sexual Differentiation

The primary development of our sexed bodies takes place with the formation of the gonads, either ovaries or testes. The secondary development of our sexed bodies takes place in two stages. It begins in the womb with the development of our internal reproductive organs, external genitalia, and sex hormones. Then, it continues at puberty, when our bodies reach sexual maturity.

Apart from reproductive organs and genitalia, boys and girls have remarkably similar bodies at birth, though newborn boys have longer bodies with more lean mass.³⁰ During puberty, however, bodily differences become more pronounced as “the two sexes take increasingly divergent pathways, with girls passing through puberty earlier and ceasing to grow at a younger age.”³¹ Here is how one scholar put it in *Best Practice and Research: Clinical Endocrinology and Metabolism*:

[F]emales enter puberty earlier and undergo a more rapid pubertal transition, whereas boys have a substantially longer

27. Nichole Rigby & Rob J. Kulathinal, *Genetic Architecture of Sexual Dimorphism in Humans*, 230 J. OF CELLULAR PHYSIOLOGY, Oct. 2015, at 2304, 2305.

28. *Id.* The formation of the testes gives rise to the sertoli cells, which produce anti-Mullerian hormone (AMH), also known as Mullerian inhibiting substance (MIS) or factor (MIF), which stops further development of the Mullerian ducts (which otherwise would develop into the uterus and fallopian tubes) and causes their regression. MOORE & PERSAUD, *supra* note 6, at 307.

29. Rigby & Kulathinal, *supra* note 27, at 2305. This development is guided by several genes, including RSPO1, WNT4, and FOXL2. *Id.*

30. Jonathan C.K. Wells, *Sexual Dimorphism of Body Composition*, 21 BEST PRAC. & RES.: CLINICAL ENDOCRINOLOGY & METABOLISM 415 (2007).

31. *Id.* at 416.

growth period. After adjusting for dimorphism in size (height), adult males have greater total lean mass and mineral mass, and a lower fat mass than females. These whole-body differences are complemented by major differences in tissue distribution. Adult males have greater arm muscle mass, larger and stronger bones, and reduced limb fat, but a similar degree of central abdominal fat. Females have a more peripheral distribution of fat in early adulthood; however, greater parity and the menopause both induce a more android fat distribution with increasing age. Sex differences in body composition are primarily attributable to the action of sex steroid hormones, which drive the dimorphisms during pubertal development. Oestrogen is important not only in body fat distribution but also in the female pattern of bone development that predisposes to a greater female risk of osteoporosis in old age.³²

The result is that male and female bodies differ not only in their sex chromosomes (XX and XY) and in their organization for reproduction but also, on average, in size, shape, bone length and density, fat distribution, musculature, and various organs, including the brain.³³ These secondary sex differences are not what define us as male or female; organization for reproduction does that. But this organization leads to other bodily differences. There are organizational differences and organism-wide differences in organs and tissues, as well as differences at the cellular and molecular levels. These differences affect not just our physiology but also our minds.

Indeed, after the reproductive organs, the brain is possibly the most “sexed” organ in a human being. This is not to say that there are male brains and female brains, but that on average there are differences in the brains of males and females that tend to make a difference in how men and women experience emotion and pain, how they see and hear, and how they remember and navigate.³⁴

Larry Cahill, a neurobiologist at the University of California, Irvine, reviewed the literature for *Scientific American* in 2012 and reported “a surge of findings that highlight the influence of sex on many areas of cognition and behavior, including memory, emotion, vision, hearing, the processing of faces and the brain’s

32. *Id.* at 415.

33. Amber N.V. Ruigrok et al., *A Meta-Analysis of Sex Differences in Human Brain Structure*, 39 NEUROSCIENCE & BIOBEHAVIORAL REVS. 34, 43 (2014); Wells, *supra* note 30, at 415.

34. Larry Cahill, *His Brain, Her Brain*, SCI. AM., May 2005, at 41, 42, <https://perma.cc/KR6L-A55T>.

response to stress hormones.”³⁵ There are differences in the size of various regions and structures in the brain, as well as differences at the cellular level.³⁶ In the journal *Endocrinology*, Cahill cites “abundant evidence” showing that “sex influences on brain function are ubiquitous, found at every level of neuroscience.”³⁷

While male and female brains are similar in many ways, researchers have found “an astonishing array of structural, chemical and functional variations” between them.³⁸ This is not to suggest that either men or women are smarter. Cahill stresses that “no one has uncovered any evidence that anatomical disparities might render women incapable of achieving academic distinction in math, physics or engineering.”³⁹ The documented differences between male and female brains, on average, cannot legitimately be used to justify stereotypes or discriminatory treatment, or to nullify the considerable variation among males and among females. We should appreciate each person’s individuality, and we should honor the complementarity in the male and female ways of being equally human.

Differences between the sexes begin in the womb, and they are manifested in our behavior from infancy.⁴⁰ Many researchers have found that young children show a distinct pattern in choosing toys. Cahill notes that “[b]oys tend to gravitate toward balls or toy cars, whereas girls more typically reach for a doll.”⁴¹ Whether this difference comes from nature or nurture has long been a subject of debate; however, an experiment conducted by researchers to observe the play habits of vervet monkeys may shed some light on this debate.⁴² Given a selection of toys, “male monkeys spent more time playing with the ‘masculine’ toys than their female counterparts did, and female monkeys spent more time interacting with the playthings typically preferred by girls.”⁴³ These results in monkeys cannot be explained away by

35. *Id.*

36. *Id.* at 41. In addition to Cahill, see Ruigrok et al., *supra* note 33, at 43 (observing that on average men had higher volumes and tissue densities in certain brain regions while women had higher volumes and densities in other regions).

37. Larry Cahill, *A Half-Truth Is a Whole Lie: On the Necessity of Investigating Sex Influences on the Brain*, 153 *ENDOCRINOLOGY*, June 2012, at 2541, 2542.

38. Cahill, *supra* note 34, at 41.

39. *Id.* at 40.

40. *Id.* at 42.

41. *Id.*

42. *Id.* at 43.

43. *Id.*

reference to cultural stereotypes or the social pressures that operate among humans.

It's also difficult to blame socialization for the differences in how newborn human babies respond to objects and to people. Girls tend to show more interest in their mothers than boys do.⁴⁴ Girls typically prefer movies showing faces, while boys prefer movies showing cars.⁴⁵ Cahill cites a study that found these preferences in one-day-old infants, long before nurture could have any effect: the baby girls looked more at a face, while the baby boys looked more at a mechanical object.⁴⁶ This pattern of behavior in the first day of life indicates that "we come out of the womb with some cognitive sex differences built in."⁴⁷ A recent study using MRIs suggested that, on the whole, "male brains are structured to facilitate connectivity between perception and coordinated action, whereas female brains are designed to facilitate communication between analytical and intuitive processing modes."⁴⁸

D. Sex Differences Affect Our Health

When we step back from contentious political debates, we can see scientists acknowledging what might otherwise be an unpopular truth: that there are biological differences between men and women, and they are consequential for our health. Recognizing differences between the sexes is increasingly regarded as vitally important for good medical practice, because scientists have found that male and female bodies tend to be susceptible to certain diseases in different ways, to differing degrees, and they respond to treatments differently.⁴⁹ For this reason, the best research protocols now require that both males and females be included in samples, and that the sex of participants be tracked so that any sex-specific results can be recorded.⁵⁰

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Madhura Ingahalikar et al., *Sex Differences in the Structural Connectome of the Human Brain*, 111 PROC. OF THE NAT'L ACAD. OF SCI. 823, 823 (2014).

49. See COMM. ON UNDERSTANDING THE BIOLOGY OF SEX & GENDER DIFFERENCES, INST. OF MED., EXPLORING THE BIOLOGICAL CONTRIBUTIONS TO HUMAN HEALTH: DOES SEX MATTER? 1 (Theresa M. Wizemann & Mary-Lou Pardue eds., 2001), <https://perma.cc/FZP4-RHAV> [hereinafter DOES SEX MATTER] (describing physiological and pathological sex-based differences).

50. *Id.*

The Institute of Medicine at the National Academy of Sciences published a report in 2001 titled *Exploring the Biological Contributions to Human Health: Does Sex Matter?*⁵¹ The executive summary answered the question in the affirmative, saying that the explosive growth of biological information “has made it increasingly apparent that many normal physiological functions—and, in many cases, pathological functions—are influenced either directly or indirectly by sex-based differences in biology.”⁵² Because genetics and physiology are among the influences on an individual’s health, the “incidence and severity of diseases vary between the sexes.”⁵³ The difference between male and female is thus “an important basic human variable that should be considered when designing and analyzing studies in all areas and at all levels of biomedical and health-related research.”⁵⁴

The chapter titles of the report sum up basic truths about our bodily nature: “Every Cell Has a Sex.” “Sex Begins in the Womb.” “Sex Affects Behavior and Perception.” “Sex Affects Health.”⁵⁵ Some of the biological differences between the sexes that bear on health derive from hormone exposure, but others come more directly from our genetic material.⁵⁶ There are:

multiple, ubiquitous differences in the basic cellular biochemistries of males and females that can affect an individual’s health. Many of these differences do not necessarily arise as a result of differences in the hormonal regime to which males and females are exposed but are a direct result of the genetic differences between the two sexes.⁵⁷

Written into our genetic code are differences that manifest themselves at the cellular level in ways that can affect our health.⁵⁸ Sexual differentiation begins at conception, progresses in the

51. *Id.* at 1.

52. *Id.* at 1.

53. *Id.* at 3.

54. *Id.*

55. *Id.* at xiii–xiv.

56. *Id.* at 4.

57. *Id.*

58. *Id.* Of course, our “genetic code” is not as straightforward as sometimes assumed. Some of our genes can be expressed—turned “on” or “off”—in a process known as epigenetic change. Epigenetic changes, such as DNA methylation and histone acetylation, lead to differential effects in human development as various developmental genes are turned on or off. See Nancy G. Forger, *Epigenetic Mechanisms in Sexual Differentiation of the Brain and Behaviour*, PHIL. TRANSACTIONS OF THE ROYAL SOC’Y B: BIOLOGICAL SCI., Jan. 14, 2015, at 1 (discussing recent studies that suggest males and females may use different epigenetic modifications to control gene expression).

womb, and continues throughout life, notably at puberty but also significantly at menopause in females.⁵⁹ “Hormonal events occurring in puberty lay a framework for biological differences that persist through life and contribute to the variable onset and progression of disease in males and females.”⁶⁰

Some people may overplay the differences between men and women, as in the popular phrase “men are from Mars, women are from Venus.” But men and women do, on average, have biologically rooted differences in perception and behavior. These differences are undoubtedly influenced by culture and society, but culture and society themselves begin on a biological foundation. “Basic genetic and physiological differences, in combination with environmental factors, result in behavioral and cognitive differences between males and females,” says the Institute of Medicine.⁶¹ Females tend to display more verbal ability in general and to recover verbal skills better after suffering a stroke.⁶² Men tend to be more conceptual and more focused on action—as the studies with newborn babies show.⁶³

These biological differences seem to have consequences for mental health.⁶⁴ An article in the *Neuroscience and Biobehavioral Review* points to well-known differences between men and women in susceptibility to mental disorders: “Examples of male-biased conditions include autism, attention deficit/hyperactivity disorder, conduct disorder, specific language impairment, Tourette syndrome, and dyslexia, and examples of female-biased conditions include depression, anxiety disorder, and anorexia nervosa.”⁶⁵ This is not to say that these are exclusively male or female conditions, but that one sex or another experiences them with greater frequency.

A literature review in the *Journal of Cellular Physiology* reports that “men are able to synthesize serotonin, the neurotransmitter commonly associated with pleasant moods, at a greater rate than women,” and therefore men have a lower incidence of major

59. DOES SEX MATTER, *supra* note 49, at 5 (noting the influence of sex differentiation throughout the lifecycle).

60. *Id.*

61. *Id.* at 6.

62. *Id.* at 19, 86.

63. See Cahill, *supra* note 34, at 43 (stating that male infants preferred a film featuring a car over a film featuring a face).

64. See Ruijgrok et al., *supra* note 33, at 35 (discussing that certain neurological and psychiatric conditions differ substantially between males and females).

65. *Id.*

depression, anxiety, and multiple sclerosis, but a higher incidence of attention deficit hyperactive disorder and coronary artery disease.⁶⁶ There are also differences in susceptibility to Alzheimer's disease and dementia.⁶⁷ While scientists don't know how much of these differences are due to environment and how much to biology, they do know that "innate physiological differences between males and females may play a large role in sex differences in disease onset, susceptibility, prevalence, and treatment responses."⁶⁸

Men and women also tend to respond differently to pain,⁶⁹ which has important implications for the use of painkillers and other medicines. Men and women have "variable responses to pharmacological agents and the initiation and manifestation of diseases such as obesity, autoimmune disorders, and coronary heart disease, to name a few."⁷⁰ Differences in the chemistry and structure of the brain influence our response to stressful events and how we remember them.⁷¹ The differences between men and women in memory formation surrounding "emotionally arousing incidents" have implications for the treatment of post-traumatic stress disorder.⁷²

Acknowledging sex-based differences is vital for women's health, as Jill Goldstein and colleagues emphasize in a paper for *Frontiers in Neuroscience*.⁷³ "[W]e now know there are significant sex differences in many chronic diseases, including brain disorders," they write, so understanding the causes of these differences "is critical to understanding women's mental health and healthcare needs."⁷⁴ They cite studies demonstrating, for example, that "the vulnerability for sex-dependent risk for MDD [major depressive disorder] begins in *fetal* development."⁷⁵ Neuroscience must therefore "adopt a 'sex-dependent' and/or 'sex-specific' lens on investigations of the brain."⁷⁶

66. Rigby & Kulathinal, *supra* note 29, at 2304.

67. *Id.* at 2306.

68. *Id.* at 2304.

69. DOES SEX MATTER, *supra* note 49, at 23.

70. *Id.* at 7.

71. Cahill, *supra* note 34, at 43.

72. Cahill, *supra* note 37, at 2542; Cahill, *supra* note 34, at 45.

73. Jill M. Goldstein et al., *Fetal Hormonal Programming of Sex Differences in Depression: Linking Women's Mental Health with Sex Differences in the Brain Across the Lifespan*, FRONTIERS IN NEUROSCIENCE, Sept. 8, 2014, at 1, <https://perma.cc/K223-TVF5>.

74. *Id.*

75. *Id.*

76. *Id.*

Of course, male and female bodies are alike in many ways, but there are notable differences in average male and average female bodies beyond our different organizations for reproduction. In other words, there is a fundamental, essential difference, and there are subsidiary, average differences. There is also wide variation among males and among females and considerable overlap between them, even in the areas just discussed. While environmental factors are likely to influence many of these differences, there's no denying the role of biology.

E. Disorders of Sexual Development

We have seen what happens when human development follows the normal pattern. We've focused on the focal case, as Aristotle teaches. But what if something goes awry? Then the story is more complicated. We'll look at some of those situations now.

Traditionally, these have been referred to as disorders of sexual development (DSDs). Recently, there has been a push to reclassify "Disorders of Sexual Development" as "Differences in Sexual Development." A few clinics have adopted this new terminology⁷⁷ to avoid stigmatization. But the word "disorder" does convey something important for human well-being. The distinction between ordered and disordered development is based on an understanding of purpose and function in the systems of an organism.

Consider some uncontroversial examples first. The cardiovascular system is meant to circulate blood and thus transport the various nutrients carried in the blood. The respiratory system is meant to take in oxygen and expel carbon dioxide, thus enabling the cardiovascular system to circulate *oxygenated* blood. The digestive system is meant to break down the food we eat, converting it into energy and nutrients for the body. The various organs that constitute these systems are understood to play particular functional roles: the heart to pump blood, the lungs to breathe, and the intestines to digest. This is why we can speak of cardiovascular disorders and heart disease, respiratory disorders and lung disease, digestive disorders and intestinal disease. We don't speak of "differences" in heart development. A

77. See, e.g., NAT'L HEALTH SERVS., *Differences in Sexual Development*, NAT'L HEALTH SERV. (Aug. 15, 2019), <https://perma.cc/ZQX5-MVWY> (defining a DSD as a difference in sexual development and presenting disorder of sexual development as a synonym).

heart that doesn't pump blood well isn't different, it's diseased. A digestive system that doesn't process nutrients is disordered; it isn't ordered to its proper end. A similar logic applies to the reproductive system and the sex organs.

The basic point is that the human body—like other bodies—is a complex matrix of integrated systems. The human body is an organism made up of organs that are organized in various systems to perform various functions. Organs are judged healthy or sick on the basis of how they perform their function within the system of which they are a part. Humans are judged healthy when all of their biological systems fulfill their functions properly. The nomenclature, then, is accurate: there are indeed disorders of sexual development when a sex organ or organ system develops in a way that leads to problems with reproductive functioning. For this reason, this article refers to DSDs as they have been traditionally in the medical and scientific communities as disorders of sexual development.

DSDs occur in roughly one out of every 5,000 births.⁷⁸ They can result in ambiguous external genitalia, a mismatch between internal and external reproductive organs, the incomplete development of reproductive organs, and the formation of two sets of sex organs.⁷⁹ These disorders in development are frequently caused by chromosomal or hormonal defects.⁸⁰

People with DSDs do not constitute a third sex. Rather, DSDs are a pathology in the development and formation of the male or female body. This is the consensus view of medical experts who study and treat DSDs.⁸¹ As the pediatric endocrinologist Quentin L. Van Meter writes, “The exceedingly rare DSDs are all medically identifiable deviations from the human binary sexual norm. The 2006 consensus statement of the Intersex Society of North America and the 2015 revision of the statement does not endorse DSD as a third sex.”⁸² After all, biological sex is grounded in the organism's organization for reproduction. There is no third

78. Peter A. Lee et al., *Global Disorders of Sex Development Update Since 2006: Perceptions, Approach and Care*, 85 HORMONE RES. IN PAEDIATRICS 158, 159 (2016).

79. CONSORTIUM ON THE MGMT. OF DISORDERS OF SEXUAL DEV., INTERSEX SOC'Y OF N. AM., CLINICAL GUIDELINES FOR THE MANAGEMENT OF DISORDERS OF SEX DEVELOPMENT IN CHILDHOOD 2 (2006) [hereinafter CLINICAL GUIDELINES].

80. *Id.* at 4.

81. Declaration of Quentin L. Van Meter, MD at 4, U.S. v. North Carolina, 192 F. Supp. 3d 620 (M.D.N.C. 2016) (No. 1:16-cv-00425-TDS-JEP), <https://perma.cc/F4LV-WCBT>.

82. *Id.*

gonad. With DSDs, what can develop are ovaries and testes that don't function properly for reproduction.⁸³

DSDs can have a variety of causes. They can arise from genetic mutations, hormonal influences, the formation of a chimera or mosaic as an early embryo, or chromosomal abnormalities at fertilization.⁸⁴ To take this last example first, sometimes a chromosomal disorder at conception results in more than 46 chromosomes or fewer than 46 chromosomes, leading to a disorder in sexual development.⁸⁵ People with Klinefelter syndrome have 47 chromosomes and are XXY.⁸⁶ They develop as males but tend to have abnormal body proportions with enlarged breasts, and they frequently suffer from sexual and reproductive problems, including infertility.⁸⁷ People with Turner syndrome have only 45 chromosomes, with a single X chromosome rather than XX or XY.⁸⁸ They develop as women but are infertile, because two X chromosomes are necessary for normal development of the ovaries.⁸⁹

People with DSDs are grouped into three general categories: (1) those with an XY set of chromosomes who develop female characteristics, referred to as XY DSD; (2) those with an XX set of chromosomes who develop male characteristics, referred to as XX DSD; and (3) those with more than one set of chromosomes who develop both ovarian and testicular cell lines and genitals—what used to be called true hermaphroditism, but what is now referred to as ovotesticular DSD.⁹⁰ There are dozens of specific types of DSDs that fall into these three categories. We will look at a few of them to illustrate the phenomena.

Consider two examples of XY DSD. As *The Developing Human* reminds us, “If a *normal* Y chromosome is present, the embryo develops as a male. If no Y chromosome is present, or the testis-determining region of the Y chromosome is absent, female

83. See CLINICAL GUIDELINES, *supra* note 79, at 2 (describing different types of DSDs).

84. *Id.* at 4.

85. *Klinefelter syndrome*, MAYO CLINIC, <https://perma.cc/QV75-TJ8R>; *Turner Syndrome*, GENETICS HOME REFERENCE, NAT'L INST. OF HEALTH, <https://perma.cc/8PBS-69D5>.

86. *Klinefelter Syndrome*, *supra* note 85.

87. *Id.*

88. MOORE & PERSAUD, *supra* note 6, at 307; *Turner syndrome*, *supra* note 86.

89. See MOORE & PERSAUD, *supra* note 6, at 307 (noting that without two X chromosomes, complete ovarian development, which would be necessary for fertility, does not occur).

90. Hughes et. al., *Consensus Statement on Management of Intersex Disorders*, 91 ARCHIVES OF DISEASE IN CHILDHOOD 554, 555 (2006).

development occurs.”⁹¹ Recall our earlier discussion about SRY, the gene that commences the formation of male gonads.⁹² The testes then produce testosterone, which influences the subsequent development of male reproductive organs and external genitalia.⁹³ This is when development follows the typical pattern.

But some XY people lack the SRY gene or have a severe mutation in it. As a result, the testes never form and the body never masculinizes; these individuals develop as females who are infertile (because they lack a second X chromosome).⁹⁴ Other XY people have a functional SRY gene but develop as females because they suffer from complete androgen insensitivity syndrome (CAIS).⁹⁵ These individuals have a mutation in the gene that contains the androgen receptor protein, so they cannot be influenced by testosterone.⁹⁶ SRY instructs them to develop testes and their testes produce testosterone, but it makes no difference in their development because their bodies do not respond to it.⁹⁷ Thus they never develop a penis.⁹⁸ Though they are XY chromosomally, they develop as females in appearance: “Persons with androgen insensitivity syndrome develop as normal-appearing but sterile women, lacking a uterus and oviducts and having internal testes in the abdomen.”⁹⁹

Now consider some examples of XX DSDs. Some people with XX chromosomes develop as males because one of their X chromosomes contains the SRY gene (which is normally on the Y chromosome).¹⁰⁰ Typically this results from “a translocation of SRY from the paternal Y to the paternal X chromosome.”¹⁰¹ While ordinary cells divide and reproduce identical copies by a process called mitosis, the sex cells form by meiosis, in which a 46-chromosome cell produces four 23-chromosome sex cells, either

91. MOORE & PERSAUD, *supra* note 6, at 307.

92. *Id.*

93. *Id.*

94. Bonnie McCann-Crosby, MD & V. Reid Sutton, MD, *Disorders of Sexual Development*, 42 CLINICS IN PERINATOLOGY 395, 403 (2015).

95. *Androgen Insensitivity Syndrome*, GENETICS HOME REFERENCE, NAT’L INST. OF HEALTH, <https://perma.cc/L9JL-TZNM>.

96. *Id.*

97. GILBERT & BARRESI, *supra* note 15, at 195.

98. *Id.*

99. *Id.*

100. Adriana A. Carrillo et. al., *Disorders of Sexual Differentiation*, in 2 PEDIATRIC ENDOCRINOLOGY 374 (Fima Lifshitz ed., 5th ed. 2009).

101. *Id.*

sperm or ova.¹⁰² As sperm are produced by this process in a male, the SRY gene can be translocated from a Y to an X in what's known as meiotic crossover.¹⁰³ Because what matters most for male development is the presence of the SRY gene, individuals with SRY on an X chromosome develop for the most part as normal males except for being infertile since they lack other important genetic material that is located on the Y chromosome.¹⁰⁴

Other people with XX DSDs develop for the most part as women, though they may also develop some male genitalia in a process known as virilization.¹⁰⁵ For example, some XX people have congenital adrenal hyperplasia (CAH), a disorder that prevents the normal production of cortisol.¹⁰⁶ This results in the overproduction of androgen, the male sex hormone, which in turn can lead to the virilization of the female external genitalia.¹⁰⁷ But internally these individuals develop and function as women.¹⁰⁸

Let's now consider the parallels between XY DSDs and XX DSDs. An XY without SRY will develop as a female,¹⁰⁹ while an XX with SRY will develop as a male.¹¹⁰ An XY with SRY but without the ability to respond to androgen (CAIS) will develop as a female,¹¹¹ while an XX without SRY but with too much androgen (CAH) will develop as a female with virilized external genitalia.¹¹² These are just a couple of the ways in which minor genetic or hormonal abnormalities can lead to DSDs.

In the third general classification of DSDs, the individuals possess cells with both XX and XY genotypes, resulting in a mixture of male and female characteristics. One common cause of this condition is the presence of two sets of DNA in the same person, and therefore two sets of sex chromosomes: XX and XY, or a single X and an XY.¹¹³ When genetic mutations in the developing embryo result in two or more different genotypes in

102. Inbar Maayan, *Meiosis in Humans*, EMBRYO PROJECT ENCYCLOPEDIA (last modified July 4, 2018, 4:40 AM), <https://perma.cc/4W69-MWY7>.

103. McCann-Crosby & Sutton, *supra* note 94, at 402.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* at 403.

110. *Id.* at 402.

111. GILBERT & BARRESI, *supra* note 15, at 195.

112. McCann-Crosby & Sutton, *supra* note 94, at 402.

113. Carrillo et al., *supra* note 100, at 373.

the same person, it's called a "mosaic."¹¹⁴ When two different embryos combine early in a pregnancy to form one, it's called a "chimera."¹¹⁵ In both cases, the result is two different sets of DNA, with some of the body's cells being XX (or a single X) and some being XY, and these cells can direct the growth and development of different parts of the same person.¹¹⁶

As noted above, DSDs occur in approximately one out of every 5,000 live births, but specific types vary in frequency and in severity.¹¹⁷ For example, complete androgen insensitivity syndrome (CAIS) occurs in one out of every 20,000 to 64,000 births.¹¹⁸ The most common form of congenital adrenal hyperplasia (CAH) occurs in one out of every 14,000 to 15,000 births.¹¹⁹ Ovotesticular DSD occurs in one out of every 100,000 births.¹²⁰ The examples of DSDs described here are the more easily understandable varieties. Others have a more complicated etiology and are less well understood. They can result in a more ambiguous body formation, including external genitalia.

The standard treatment for people with DSDs—for example, a newborn baby with ambiguous genitalia—begins with trying to discern the causes of the DSD, which may shed light on the underlying sex of the child.¹²¹ *Pediatric Endocrinology*, a standard desk reference, says that after an "assessment of the anatomy of the sex organs," the decisions regarding a course of treatment should rest "on [the] likely cosmetic appearance of the reconstructed genitalia, on the potential for normal sex steroid secretion at puberty, on the potential for normal sexual intercourse, and on the potential for fertility."¹²² These children do not constitute a third sex; they are either male or female, but with a disorder in their development. Historically, the sound medical response has been to identify the predominant underlying sex and then take measures to provide health and functioning.¹²³

114. *Id.*

115. *Id.*

116. *Id.*

117. Lee et al., *supra* note 78, at 159.

118. Carrillo et al., *supra* note 100, at 377.

119. Lee et al., *supra* note 78, at 159.

120. *Id.*

121. Carrillo et al., *supra* note 100, at 382 (describing factors resulting from the genetic disorder that should be considered in treating the patient).

122. *Id.*

123. *Id.*

II. GENDER AND CULTURE

If sex is a bodily, biological reality, gender is how cultures give expression to sexual differences. Historically, gender was primarily a linguistic and grammatical term. But when the word gender was used to mean a personal attribute, it was synonymous with a person's sex—until recently. The term has now acquired another meaning, related to sex though distinct from it—and, in some opinions, separable from it. Here is how the American Psychological Association sets out the difference between sex and gender:

Sex is assigned at birth, refers to one's biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy. *Gender* refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for boys and men or girls and women. These influence the ways people act, interact, and feel about themselves. While aspects of biological sex are similar across different cultures, aspects of gender may differ.¹²⁴

Some activists go further than the APA and argue that gender is merely a social construct. That idea should be rejected, but this doesn't mean we need to jettison the concept of gender altogether. Sex is a bodily, biological reality, and gender is how we give social expression to that reality. This section of the article argues that gender properly understood is a social manifestation of human nature, springing forth from biological realities, though shaped by rational and moral choice. It begins by discussing some aspects of feminist theory, and how parts of the feminist movement wound up equating equality with sameness. Human beings are creatures of nature and of culture, but a healthy culture does not attempt to erase our nature as male or female embodied beings. Instead, it promotes the integrity of persons, in part by cultivating manifestations of sex differences that correspond to biological facts. It supports gender expressions that reveal and communicate the reality of our sexual nature. And so, the bulk of this section discusses the ways in which our sexual embodiment makes a difference to our communal pursuit of goods.

124. AM. PSYCHOLOGICAL ASS'N, ANSWERS TO YOUR QUESTIONS ABOUT TRANSGENDER PEOPLE, GENDER IDENTITY AND GENDER EXPRESSION 1 (2011), <https://perma.cc/47DJ-UUN9>.

Gender is socially shaped, but it is not a mere social construct. It originates in biology, but in turn it directs our bodily nature to higher human goods. A sound understanding of gender clarifies the important differences between the sexes and guides our distinctly male or female qualities toward our well-being. A misguided concept of gender, on the other hand, conceals, denies, or distorts the realities of our nature and hinders human flourishing.

A. Feminism and Gender Ideology

Many cultures throughout history have cultivated false ideas about women, underestimating their capabilities, holding them to rigid stereotypes, and limiting their opportunities. The first wave of feminist thinkers contested those untrue stereotypes and unfair limitations. It began in 1792 with *A Vindication of the Rights of Woman*, where Mary Wollstonecraft asserted that the liberal arguments of the day for the natural rights of man should apply equally to woman—that natural rights have no sex.¹²⁵ She argued that women, like men, are fully rational animals, and thus they should receive a similar education. Almost a century later, John Stuart Mill, in “The Subjection of Women,” criticized the way that women were taught to accept a subordinate status: “All women are brought up from the very earliest years in the belief that their ideal of character is the very opposite to that of men; not self-will, and government by self-control, but submission, and yielding to the control of others.”¹²⁶ He argued that women should have the same rights as men and be self-governing like men.¹²⁷

First-wave feminists took aim at a system in which women lost their own legal identity once they were married.¹²⁸ Full legal equality and citizenship for women was the goal of these feminists, including Elizabeth Cady Stanton and Susan B. Anthony, who emphasized the similarities between men and women. Another

125. See Mary Wollstonecraft, *ENCYCLOPEDIA BRITANNICA*, <https://perma.cc/DL29-EJA7> (describing arguments for improved education for women within *A Vindication of the Rights of Woman*).

126. JOHN STUART MILL, *THE SUBJECTION OF WOMEN* 28 (4th ed. 1878) (1869), <https://perma.cc/5SRG-EHGA>.

127. See *id.* at 30 (arguing history is not supportive of a system of inequality between men and women).

128. Scott Yenior, Heritage Foundation, *Sex, Gender, and the Origin of the Culture Wars: An Intellectual History*, FIRST PRINCIPLES, June 30, 2017, at 3, <https://perma.cc/LCR8-TKNX>.

strand of early feminism, highlighting the distinctively feminine attributes of women, was developed by Hannah More, Frances Willard, and Clare Boothe Luce—names largely forgotten today but more popular and prominent in their own time than the feminists who are now better known.¹²⁹

The first wave of feminism achieved some notable successes, particularly gaining for women the legal right to own property and the right to vote. But second-wave feminists disapproved of the ways that some women exercised their newly acquired rights. These feminists contended that society was conditioning women to internalize their own subjugation. Simone de Beauvoir inaugurated this line of thinking in *The Second Sex* (1949).¹³⁰ Recall these memorable lines from the book: “One is not born, but rather becomes, a woman. No biological, psychological, or economic fate determines the figure that the human female presents in society; it is civilization as a whole that produces this creature, intermediate between male and eunuch, which is described as feminine.”¹³¹ In other words, society and culture teach girls to think of themselves as the “second sex,” defined by their subordination to the first sex.¹³² Women are socialized to accept the drudgery of domestic life—childbearing and rearing, cooking and housekeeping—as their lot. According to Kate Millett, a radical follower of de Beauvoir’s, the social construction of gender by the patriarchy is done so inconspicuously that it can pass itself off as simply a matter of nature.¹³³

These themes were extended by Betty Friedan, who wrote in *The Feminine Mystique* (1963) that “American women are kept from growing to their full human capacities” as the country keeps producing “millions of young mothers who stop their growth and

129. See Sommers, *Feminism and Freedom*, AM. SPECTATOR (July 2, 2008, 1:35 AM), <https://perma.cc/L2ER-9MVD> (expanding on an alternative strand of early feminism that focused on the feminine attributes of women).

130. SIMONE DE BEAUVOIR, *THE SECOND SEX* (H. M. Parshley ed. & trans., 1989) (1949).

131. *Id.* at 267.

132. Margaret H. McCarthy, *Gender Ideology and the Humanum*, 43 COMMUNIO 274, 278 (2016).

133. *Id.* (citing KATE MILLETT, *SEXUAL POLITICS* 58 (Chicago: First Illinois Paperback ed. 2000/1970)). Sr. Allen points out that Millett (following John Money and Robert Stoller) pioneered the use of the term “gender” as something “so arbitrary . . . that it may even be contrary to physiology.” Sr. Mary Prudence Allen, *Gender Reality*, 4 SOLIDARITY: THE J. OF CATH. SOC. THOUGHT & SECULAR ETHICS, no. 1, 2014, at 15–1, 15 (citing KATE MILLETT, *SEXUAL POLITICS* 30 (1970)).

education short of identity.”¹³⁴ As a result, the woman “who has no goal, no purpose, no ambition patterning her days into the future, making her stretch and grow beyond that small score of years in which her body can fill its biological function is committing a kind of suicide.”¹³⁵ Thus, Friedan said, “[t]he feminine mystique has succeeded in burying millions of American women alive.”¹³⁶

At the heart of the second-wave feminists’ argument is the idea that the female body, particularly in its capacity for bearing children, is at odds with women’s freedom. While other female mammals have the same reproductive role, de Beauvoir remarks, the female human is “the most deeply alienated” among them all, “the one that refuses this alienation the most violently; in no other is the subordination of the organism to the reproductive function more imperious nor accepted with greater difficulty.”¹³⁷ A woman thus rebels against her destiny by “affirming herself as an individual.”¹³⁸ De Beauvoir doesn’t consider the possibility that a woman’s individuality and her bodily nature might be “in *direct and positive* relation to each other,” as Margaret McCarthy puts it.¹³⁹ McCarthy continues to explain that the theory of gender as a social construct arises from a deep discomfort with the female body, a sense that a woman’s body “opposes her existence as a person,” and “[i]t is therefore ultimately her own body that the woman must resist.”¹⁴⁰ Here again is a modern form of the ancient Gnostic heresy, wherein the real person is the self/mind/will, which must transcend and liberate itself from the body.¹⁴¹

Shulamith Firestone took de Beauvoir’s ideas about the oppressiveness of the female body to their logical conclusion in *The Dialectic of Sex* (1970).¹⁴² The book uses Marxist terms in calling for a feminist revolution by the sexual underclass, with the aim of eliminating not just male privilege but any distinction at all between the sexes.¹⁴³ To this end, women need to seize control of

134. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* 495 (2010 ed.) (1963).

135. *Id.* at 462.

136. *Id.*

137. SIMONE DE BEAUVOIR, *THE SECOND SEX* 44 (Constance Borde & Sheila Malovany-Chevallier trans., Alfred A. Knopf 2010) (1949).

138. *Id.*

139. McCarthy, *supra* note 132, at 280.

140. *Id.*

141. For more on this, *see generally* ANDERSON, *WHEN HARRY BECAME SALLY* (2018).

142. SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX: THE CASE FOR FEMINIST REVOLUTION* (1970).

143. *Id.* at 11–12.

reproduction and change it fundamentally, Firestone declares, in a futuristic vision that merits quoting at length:

[J]ust as to assure elimination of economic classes requires the revolt of the underclass (the proletariat) and . . . their seizure of the means of *production*, so to assure the elimination of sexual classes requires the revolt of the underclass (women) and the seizure of control of *reproduction*: not only the full restoration to women of ownership of their own bodies, but also their (temporary) seizure of control of human fertility—the new population biology as well as all the social institutions of childbearing and childrearing. And just as the end goal of socialist revolution was not only the elimination of the economic class *privilege* but of the economic class *distinction* itself, so the end goal of feminist revolution must be, unlike that of the first feminist movement, not just the elimination of male *privilege* but of the sex *distinction* itself: genital differences between human beings would no longer matter culturally. (A reversion to an unobstructed *pansexuality*—Freud’s “polymorphous perversity”—would probably supersede hetero/homo/bisexuality.) The reproduction of the species by one sex for the benefit of both would be replaced by (at least the option of) artificial reproduction: children would be born to both sexes equally, or independently of either, however one chooses to look at it; the dependence of the child on the mother (and vice versa) would give way to a greatly shortened dependence on a small group of others in general and any remaining inferiority to adults in physical strength would be compensated for culturally. The division of labor would be ended by the elimination of labor altogether (through cybernetics). The tyranny of the biological family would be broken.¹⁴⁴

Let that sink in for a moment. Firestone calls for bringing an end to “the sex distinction itself,” with the help of biotechnology.¹⁴⁵ Sexual differences between human beings “would no longer matter” if we implemented a radically new form of procreation, rightly described as “artificial reproduction,” and somehow make children have less need of mothers or of any nurturing by adults.¹⁴⁶ Then, at last, “[t]he tyranny of the biological family would be broken.”¹⁴⁷ De Beauvoir spoke approvingly of Firestone’s book and said its thesis was “correct,

144. *Id.* (first and second emphasis added).

145. *Id.*

146. *Id.*

147. *Id.*

because women will not be liberated until they have been liberated from their children, and by the same token, until children have also been liberated from their parents.”¹⁴⁸ De Beauvoir too believed that “the family must be abolished.”¹⁴⁹

Many second-wave feminists sought evidence in science for the view that sex-based differences in social roles and expectations have no basis in biology, and they believed they found it in research on DSDs.¹⁵⁰ Specifically, they cited John Money, the psychiatry professor whose work with intersex children at Johns Hopkins led him to conclude that our social concept of male and female, or “gender,” is entirely separable from biological attributes.¹⁵¹ Robert Stoller, who founded the Gender Identity Center at the University of California, Los Angeles in 1965, endorsed Money’s work as evidence that “gender role is determined by postnatal forces, regardless of the anatomy and physiology of the external genitalia,” and that the latter might “contribute to the sense of maleness” (or femaleness) but is not “essential” for it.¹⁵² Money later claimed that “the gender identity gate is open at birth for a normal child no less than for one born with unfinished sex organs” and that it remains open for at least a year thereafter.¹⁵³ Some second-wave feminists embraced Money’s theory of gender identity because it suggested that our bodies do not pull us toward any fixed norms of femininity or masculinity, and because it eroded male supremacy and traditional roles by “problematizing the biological basis of identity,” as Scott Yenor puts it.¹⁵⁴

For some radical feminists, to say that gender is socially constructed and not naturally linked to the body doesn’t go far enough. Thus, Judith Butler maintains that even the body is a

148. ALICE SCHWARZER, *AFTER THE SECOND SEX: CONVERSATIONS WITH SIMONE DE BEAUVOIR* 39 (Marrienne Howarth, trans., Pantheon 1984).

149. *Id.* at 40.

150. See KATE MILLETT, *SEXUAL POLITICS* 30 (1970) (describing the results of the California Gender Identity Center in support of the view that gender is determined after birth); BEAUVOIR, *supra* note 137, at 30–31 (describing similarities between male and females and referencing intersexuality as a result of hormonal imbalances).

151. See, e.g., Millett, *supra* note 150, at 30 (citing Money’s conclusions that gender is determined after birth).

152. ROBERT J. STOLLER, M.D., *SEX AND GENDER: ON THE DEVELOPMENT OF MASCULINITY AND FEMININITY* 48 (1968).

153. JOHN MONEY & PATRICIA TUCKER, *SEXUAL SIGNATURES: ON BEING A MAN OR A WOMAN* 98 (1975).

154. Yenor, *supra* note 128, at 12.

“social construct.”¹⁵⁵ In her view, a conception of the body as something fixed and indisputable is pernicious because it “successfully buries and masks the genealogy of power relations by which it is constituted.”¹⁵⁶ In short, “the body” conceived as something in particular is all about power.

Butler takes issue with sex reassignment therapy, and even surgery for people with DSDs, since these treatments presuppose a particular bodily form that is correct or optimal. She suggests that “mixed genital attributes might be accepted and loved” instead of being transformed into “a more socially coherent or normative notion of gender,” and she notes that opposition to “idealized gender dimorphism” is growing within the trans movement.¹⁵⁷ Butler doesn’t think there’s a gender identity inside of us, waiting to be found. Gender in Butler’s view, as McCarthy explains, isn’t a noun or an adjective—*man* or *woman*, *masculine* or *feminine*—but rather “a *verb* that *constructs*.”¹⁵⁸

In a word, Butler thinks of gender as a “performance.”¹⁵⁹ The performance of gender can become part of a “struggle to rework the norms by which bodies are experienced,” and to “contest forcibly imposed ideals of what bodies ought to be like.”¹⁶⁰ Transgender activists may be participants in this struggle, but it isn’t only about transgender identities; it’s about what is to be considered reality for all of us. The deep political importance of the transgender movement for Butler lies in its challenge to the concepts of “normative human morphology” that “give differential ‘reality’ to different kinds of humans,” and its role in altering “what norms govern the appearance of ‘real’ humanness.”¹⁶¹ Individuals who are “drag, butch, femme, transgender, transsexual,” Butler argues, “make us not only question what is real, and what ‘must’ be, but they also show us how the norms that govern contemporary notions of reality can be questioned and how new modes of reality can become instituted.”¹⁶² For this process to happen, the body must be

155. McCarthy, *supra* note 132, at 283 (quoting Judith Butler, *Bodies that Matter*, in *ENGAGING WITH IRIGARAY* 141–73 (Caroline Burke et. al. eds., 1994)).

156. *Id.* McCarthy summarizes Butler’s thinking about the body.

157. JUDITH BUTLER, *UNDOING GENDER* 64–65 (2004).

158. McCarthy, *supra* note 132, at 289.

159. *See, e.g.*, JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 172–73 (2006) (describing sex as a construct).

160. BUTLER, *supra* note 157, at 28.

161. *Id.*

162. *Id.* at 29.

understood not as “a static and accomplished fact,” but instead as “a mode of becoming” that “reworks the norm, and makes us see how realities to which we thought we were confined are not written in stone.”¹⁶³

Following the trajectory of radical feminist ideology and thinking about the human body, one might see how we arrived at the concept of gender fluidity and dozens of gender options from which children are obliged to choose. Gender has come to be regarded as something of one’s own making, a domain of the “disembodied will,” which “chooses” an “identity” without needing to justify the choice.¹⁶⁴ In McCarthy’s words, gender ideology is founded on “a view of the body as a problematic limit to freedom—freedom conceived as pure self-initiating self-determination.”¹⁶⁵ And that is a problematic understanding of the body and of freedom.

B. Vive La Différence

Is a human being essentially a will that can freely remake the body into whatever it chooses? Is the self fundamentally separable from the body?¹⁶⁶ We do not generally live as though our body were nothing in particular or as though we could separate our self from it. We attend to its needs for water, nourishment, rest, and so on. We may try to improve it, but can we willfully change what it fundamentally is? Can we treat certain bodily characteristics, particularly our bodily sex, as irrelevant to who we are, how we live, and how we structure our society? The evidence says it isn’t so easy.

We know that science has revealed a wide range of sex-based biological differences, including brain structure and function, body size and shape, and susceptibility to physical and psychological disease. We have seen how sex-based differences in behavior and preferences are apparent virtually from the moment of birth: that one-day-old girls direct their attention more to faces, and one-day-old boys direct their attention to mechanical objects.¹⁶⁷ In early childhood play, boys tend to favor balls while

163. *Id.*

164. McCarthy, *supra* note 132, at 288.

165. *Id.* at 284.

166. See generally ROBERT P. GEORGE & PATRICK LEE, BODY-SELF DUALISM IN CONTEMPORARY ETHICS AND POLITICS (2009).

167. Cahill, *supra* note 34, at 43.

girls favor dolls,¹⁶⁸ for the most part, and behavioral differences can be seen through adolescence into adulthood. Of course, there is individual variation: some girls think that boys have cooler toys, while some boys are drawn more to creative arts than to rough sports. But a general pattern of sex-based differences shows up consistently in academic research. It is simply natural.

Some feminists have pressured schools and toy companies to counteract these demonstrated preferences, on the grounds that children have been socialized into them, and in the belief that gender-neutral toys and activities might undo or prevent this effect. One kindergarten teacher decided to forbid boys from using Legos in their free-play time because she was displeased to see girls playing with dolls or crayons while the boys rushed to the blocks and began building things.¹⁶⁹ She was determined to get the girls building with Legos, even if it meant denying that opportunity to the boys.¹⁷⁰ One toy company produced a catalogue showing “little boys playing with a Barbie Dream House and girls with guns and gory action figures.”¹⁷¹ These efforts at social engineering inevitably fail, for even when boys and girls are given the same toys, they are likely to use them in different ways. The Hasbro toy company tried to produce a gender-neutral playhouse, and found that girls were likely to dress the dolls and kiss them, and generally “play house.”¹⁷² By contrast, the boys would take the tiny baby carriage and catapult it from the roof of the house.¹⁷³ Noticing this pattern, a Hasbro manager came to a startling conclusion: “Boys and girls are different.”¹⁷⁴

As Christina Hoff Sommers puts it, “boys and girls, on average, do not have identical interests, propensities, or needs.”¹⁷⁵ Academic research consistently shows sex-based differences in children’s play, across cultures and even across species:

The female preference for nurturing play and the male propensity for rough-and-tumble hold cross-culturally and even cross-species Among our close relatives such as vervet and

168. *Id.* at 42.

169. *Kindergarten Teacher Bans Legos For Boys Citing “Gender Equity,”* CBS SEATTLE (Nov. 15, 2015, 11:10 AM), <https://perma.cc/QA3E-8GPR>.

170. *Id.*

171. Christina Hoff Sommers, *You Can Give a Boy a Doll, But You Can’t Make Him Play With It*, ATLANTIC (Dec. 6, 2012), <https://perma.cc/6ALZ-887C>.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

rhesus monkeys, researchers have found that females play with dolls far more than their brothers, who prefer balls and toy cars. It seems unlikely that the monkeys were indoctrinated by stereotypes in a Top-Toy catalog.¹⁷⁶

The Lego company, recognizing that boys and girls are different, sought to capitalize on this fact by creating new sets of Legos that would be especially appealing to girls.¹⁷⁷ Known as “Lego Friends,” these sets increased Lego’s sales by 25 percent.¹⁷⁸ Jonathan V. Last described the Lego Disney Castle as “a Death Star for girls,” and as “a big, 4,080-piece step toward gender equality.”¹⁷⁹ Lego sets had always been created on the assumption that typical male interests and preferences are the norm, and the new sets corrected that mistake.

We should be comfortable acknowledging that it’s natural for boys and girls, on average and for the most part, to have different preferences in toys and games. This is a sound understanding of gender, but the qualifier “on average and for the most part” is important. If a particular boy tends to be more interested in stereotypically girl toys, that’s perfectly fine. We need to avoid the extremes of forced androgyny on the one hand, and inflexible stereotypes on the other. In play and in other respects, we need to allow boys and girls to express their sex-based differences *and* their individuality.

A sound theory of gender would likewise accommodate the demonstrated differences between men and women in “work–life” preferences. As a descriptive matter, men and women tend to prefer different ways of arranging their lives professionally and domestically.¹⁸⁰ A study published in the *Journal of Personality and Social Psychology* in 2008 looked at data from fifty-five countries and found that across the world, “women tend to be more nurturing, risk averse and emotionally expressive, while men are usually more competitive, risk taking, and emotionally flat,” as Hoff Sommers reports the findings.¹⁸¹ But what may be especially

176. *Id.*

177. Kate Stanton, *Lego Gets Sales Boost from Girl-Friendly Toy Series*, UPI (Feb. 28, 2013, 10:51 AM), <https://perma.cc/28XB-6BWL>.

178. *Id.*

179. Jonathan V. Last, *The Lego Disney Castle: Finally a Death Star for Girls*, WKLY. STANDARD (July 12, 2016, 8:00 PM), <https://perma.cc/DPS2-CACH>.

180. Christina Hoff Sommers, *What “Lean In” Misunderstands About Gender Differences*, ATLANTIC (March 19, 2013), <https://perma.cc/HK8Q-WGKF>.

181. *Id.*

surprising is that these differences are most pronounced in “the more prosperous, egalitarian, and educated societies.”¹⁸² It appears that “prosperity and equality bring greater opportunities for self-actualization,” Hoff Sommers concludes.¹⁸³ In summary, Hoff Sommers argues that “[w]ealth, freedom, and education empower men and women to be who they are.”¹⁸⁴

Today there are more women than men earning doctoral degrees, particularly in the humanities and social sciences, and even in biology and health sciences.¹⁸⁵ Some feminists note that women still earn fewer doctoral degrees in hard sciences like physics and math, which could be a sign either of overt discrimination or of internalized cultural stereotypes. But Hoff Sommers suggests that the real reason could be that women have the opportunity to pursue careers in the fields they find most interesting.¹⁸⁶ Society should be comfortable with women’s freedom to make those choices.

The difference in men’s and women’s preferences is especially marked in what is now called “work–life balance.” According to a recent Pew study, more than three-quarters of married moms would rather *not* work full-time (preferring part-time work or full-time homemaking), while more than three-quarters of married dads prefer to work full-time.¹⁸⁷ W. Bradford Wilcox refers to this pattern as the “neo-traditional” family model: Fathers do considerably more childcare and housework than they did in the 1950s, and most married moms today have paying jobs.¹⁸⁸ But most husbands still do the larger share of the breadwinning, and wives generally do more of the childrearing. American men and women prefer neither a strict likeness in domestic and breadwinning responsibilities, nor a “1950s-style ‘Leave It to Beaver’ model of family life.”¹⁸⁹ And it appears that young Millennials in particular favor something in between, viewing ideal family arrangements in a more traditional way than did the Generation Xers or the baby boomers.¹⁹⁰

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. PEW RESEARCH CTR, MODERN PARENTHOOD 13 (March 14, 2013), <https://perma.cc/X329-MSCG>.

188. W. Bradford Wilcox, *Surprisingly, Most Married Families Today Tilt Neo-Traditional*, INST. FOR FAMILY STUD. (Feb. 26, 2014), <https://perma.cc/CG3X-FG39>.

189. *Id.*

190. See W. Bradford Wilcox & Samuel Sturgeon, *Why Would Millennial Men Prefer Stay-*

Wilcox and Samuel Sturgeon suggest that differences in how men and women choose to strike a work–life balance reflect young women’s realization that they have equal opportunity and they have choices.¹⁹¹ Many young women—and young men—are now adopting a “choice feminism,” accepting the idea that mothers can stay at home or hold part-time jobs as long as it’s their own decision.¹⁹² These young adults “support an ethic of equal opportunity for women in the public sphere, even as they embrace an ethic of gender specialization in the private sphere.”¹⁹³ Rather than decry these preferences—or outlawing stay-at-home moms—we should honor them, and respect the choices that women make for their own lives. Hoff Sommers remarks that “American women today are as independent-minded and self-determining as any in history.”¹⁹⁴ Thus it is “condescending to suggest that they have been manipulated when they choose home and family over high-octane careers.”¹⁹⁵ *Vive la différence.*

C. Gender and Human Goods

The previous section was largely descriptive, reporting on the preferences that boys and girls, men and women, tend to show. What follows is prescriptive: how *should* we order our society in view of demonstrated sex differences? A healthy culture will recognize and try to accommodate our complementary ways of being equally human. It will strive to arrange our social life in a way that respects both male and female preferences and allows both men and women to flourish according to their nature.

A basic principle of sound ethical reflection is that there is *natural* goodness for natural kinds, not merely conventional or willfully created “goodness.”¹⁹⁶ A human being has a particular nature set by the human form. We have an integrated rational animal nature, a personal bodily nature. Certain things are good

at-Home Wives? Race and Feminism, WASH. POST (April 5, 2017), <https://perma.cc/CNN5-LZJP> (referring to studies showing young people are more traditional in attitudes towards roles within the home).

191. *Id.*

192. *Id.*

193. *Id.*

194. Christina Hoff Sommers, *Ambitious Women Should Be Prepared to Work 60 Hour Weeks*, N.Y. TIMES (Nov. 8, 2015), <https://perma.cc/KPK9-U3N4>.

195. *Id.*

196. On “natural goodness” see generally PHILIPPA FOOT, *NATURAL GOODNESS* (2001) and ROSALIND HURSTHOUSE, *ON VIRTUE ETHICS* (2002). See also Elizabeth Anscombe and Alasdair MacIntyre, generally.

for our nature and other things are not. Human persons are naturally directed toward certain ends in order to fulfill the type of creature they are. Some activities contribute to our wellbeing and perfect our nature, while others detract from our flourishing and defile our given nature.¹⁹⁷ A healthy culture builds upon a sound understanding of what human nature is and what human flourishing requires.

Human culture grows out of the basic truths of our nature as embodied beings, male and female. Because these truths are universal and inescapable, every society has some understanding of gender that arises from our nature and then, in turn, influences our behavior and gives structure to social relations. Gendered social structures are universal because they are inextricably tied to our nature, as J. Richard Udry explains:

Humans form their social structures around gender because males and females have different and biologically influenced behavioral predispositions. Gendered social structure is a universal accommodation to this biological fact. Societies demonstrate wide latitude in this accommodation—they can accentuate gender, minimize it, or leave it alone. If they ignore it, it doesn't go away. If they depart too far from the underlying sex-dimorphism of biological predispositions, they will generate social malaise and social pressures to drift back toward closer alignment with biology. A social engineering program to de-gender society would require a Maoist approach: continuous renewal of revolutionary resolve and a tolerance for conflict.¹⁹⁸

In short, a society cannot attempt to erase sex differences without serious consequences. Building a society on a sound understanding of gender is simply good for our nature.

D. Engendered and Engendering Bonds

The deepest way in which our sexual embodiment shapes our society and our personal relationships is in our capacity to be husbands and wives, mothers and fathers. This capacity lies at the

197. For more on natural law ethics, see generally JOHN FINNIS, *AQUINAS: MORAL, LEGAL, POLITICAL THINKER* (Oxford University Press 1998); JOHN FINNIS, *FUNDAMENTALS OF ETHICS* (Georgetown University Press 1983); JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (Oxford University Press 2011); ROBERT P. GEORGE, *IN DEFENSE OF NATURAL LAW* (Oxford: Oxford University Press 2001); PATRICK LEE & ROBERT P. GEORGE, *BODY-SELF DUALISM IN CONTEMPORARY ETHICS AND POLITICS* (Cambridge University Press 2008).

198. J. Richard Udry, *Biological Limits of Gender Construction*, 65 AM. SOC. REV. 443, 454 (2000).

very heart of the concept of gender, as the word's etymology makes clear. The root of the word "gender" is *gen*, which also gives us *generate*, meaning "to produce" or "to beget," and its noun form, *generation*, referring to offspring or kin.¹⁹⁹ Sister Mary Prudence Allen tells us that this concept of *gen* "was commonly used in both philosophy in Athens and theology in Jerusalem" for over a millennium.²⁰⁰ Tracing the continuation of the concept in the English language, she finds these related words in *The Oxford Dictionary of English Etymology*:

gender, genealogy, generate, generous (nobly born), genesis, genetic, gene, genial (nuptial, productive, joyous), genital (external generative organs), genitive (grammatical possessor or source), genius (innate capacity, person possession prevalent disposition of spirit), genocide, gens, gentleman, gentlewoman, genuine, and the suffix, -geny (e.g. progeny).²⁰¹

This etymology, she concludes, gives us one kind of evidence that "the radical separation of the concept and word 'sex' from the concept and word 'gender' suggested by some 20th century authors is artificial indeed."²⁰²

Our sexed nature has profound implications for how we should structure the formation of young people to prepare them for marriage and family life, and how husbands and wives interact with each other and with their children as moms and dads. It also has implications for how we form same-sex and opposite-sex friendships. Again, a sound theory and expression of gender will reveal relevant sex differences and channel them to human goods, not conceal or distort them.

Margaret McCarthy highlights three derivations from the root *gen*, saying that we should understand ourselves as "engendered, gendered, and generous."²⁰³ First, as engendered beings, we are "brought into existence through the sexual process, through *generation*."²⁰⁴ This gives us an immediate relationship to a mother and father and to a family. Second, as gendered beings, we are

199. Allen, *supra* note 133, at 25.

200. *Id.* at 26.

201. *Id.* at 26–27 (quoting *Gen*, THE OXFORD DICTIONARY OF ENGLISH ETYMOLOGY (Charles Talbut Onions ed., 1966)).

202. *Id.* at 27.

203. Margaret Harper McCarthy, *The Emperor's (New) Clothes: A Look at the Logic of the (Not So) New "Gender Ideology"*, 18 (Catholic Women's Forum, 2019) (confidential working paper) (on file with author).

204. *Id.*

embodied in a sexual way, as male and female, standing in relation to one another as potential husband and wife. Third, we are to be generous, “in the *generosity* of the act specific to the sexes.”²⁰⁵ Our legal and philosophical traditions have long called this the *generative* act.²⁰⁶ When engaged in as a free and loving expression of spousal commitment, the generative act is also the marital act—and it can make husband and wife into father and mother. Our embodiment as male or female situates us within society and sets us on a certain trajectory:

[T]o have a sexual body is to find ourselves already in relations we do not simply choose and, even more, in relations that define us—constitutive relations. To have a sexual body places us before three such relations. Being sexual, we are born and as such are children, sons and daughters, owing our existence to others, being, effectively an “inheritance.” Then, being sexual, we are already poised toward the opposite sex. To say “male” or “female” is already to have the other in view. Finally, being sexual, we are potentially mothers or fathers. All of this, then, situates our freedom, and dramatically so, whether we like it or not.²⁰⁷

McCarthy’s three-fold series of gender relations entails that boys should understand themselves as sons and potential husbands and fathers, girls as daughters and potential wives and mothers. This understanding should shape how we relate to each other. The prescriptive sense of gender tells us how we *ought* to approach marriage, family life, and friendship. We are volitional agents when it comes to our gender, which deeply influences how we prepare for marriage, how we interact with nonmarital friends, and how we relate to our children as mothers and fathers, but it doesn’t all come automatically. We need to be nurtured and educated in a right understanding of gender, a right way of understanding and perfecting our nature. This process of nurture is not a mere “social construct” or an “alien imposition,” as McCarthy comments, but something that “belongs to human nature. It is what human nature demands.”²⁰⁸

A social construction is not by definition at odds with nature, for it emerges from our nature and serves human needs. Our

205. *Id.* at 23.

206. SHERIF GIRGIS, RYAN T. ANDERSON & ROBERT P. GEORGE, WHAT IS MARRIAGE? MAN AND WOMAN: A DEFENSE 25 (2012).

207. McCarthy, *supra* note 132, at 291–92.

208. *Id.* at 290.

nature requires a sound social construction, including a social concept of gender that not only respects our sex differences but also reveals them and highlights their potential for marriage and children. We have seen that biological sex is a coherent concept only in relation to the organizational capacity for sexual intercourse and procreation, and thus a sound understanding of gender would promote our “orientation towards the one form of the marital good (husband or wife), and one form of parenting (father or mother), that one’s sex makes possible,” writes the philosopher Chris Tollefsen.²⁰⁹ Communicating these truths about our embodied nature is crucial “because of the massive significance of the good of marriage and family for personal and social well-being.”²¹⁰

Amy Kass, as a professor at the University of Chicago, found that young people didn’t understand what marriage is or why it matters, and they had no idea how to get or stay married.²¹¹ When she asked her students what would be the most important decision they’d ever make in life, nearly all of them gave answers that touched on career preparation.²¹² But one student answered differently: “[d]eciding who should be the mother of my children.”²¹³ The other students attacked him—the men for his willingness to put family above career, and the women for his judging a potential wife on her suitability for motherhood.²¹⁴ Kass, on the other hand, thought his answer “revealed an admirable seriousness about life and the life cycle,” an awareness of “the supreme importance of finding the right person with whom they might make a life, both for themselves and for those who would replace them.”²¹⁵

A healthy culture fosters an atmosphere in which boys and girls come to understand themselves, in significant part, in terms of their potential to be husbands and wives, and fathers and mothers.

209. Christopher O. Tollefsen, *Gender Identity*, PUBLIC DISCOURSE (July 14, 2015), <https://perma.cc/4BFR-P6BA>.

210. *Id.*

211. Amy A. Kass, *A Case for Courtship 3* (Inst. for Am. Values, Working Paper No. 73, Sept. 22, 1999), <https://perma.cc/ES9Q-QLDJ>.

212. *Id.* at 2.

213. *Id.*

214. *Id.*

215. *Id.* at 3.

E. Cultivating Boys and Girls

The way we educate boys and girls must begin with the awareness that our social concept of gender grows out of nature and cannot be understood apart from it. Anthony Esolen observes that the very concept of “masculinity” is rooted in physical nature, and therefore our social norms of masculinity need to work *with* nature:

There is no human masculinity out there, free-floating in the space of ideals; it is always grounded upon the physical and psychological basis of the human male. Nor is there a physical human maleness that is not already oriented towards its social flourishing and fulfillment When a man is a man, he is not simply playing a role. He is fulfilling his being.

When we raise boys and girls, we raise them at once in accord with the sexual nature they possess already and with the flourishing of that nature that we hope to see as they become husbands and wives, fathers and mothers. We must always have that aim in mind. The boyishness of the boy is to come to flowering in manhood and fatherhood. The girlishness of the girl is to come to flowering in womanhood and motherhood. That is what the sexes are for. We want no longer to deny reality. We want to work in harmony with it²¹⁶

The way to guide a boy into manhood is not the same as the way to lead a girl into womanhood. Boys and girls on average have differences in brain structure and functioning, in interests and proclivities. They have different trajectories as they flower into adulthood, and the sexual dynamics between males and females influence how they interact. For these reasons, it is valuable to set aside some time for single-sex education and activities in order to help boys and girls mature into men and women without the complications of opposite-sex dynamics. This was one reason for the founding of the Boy Scouts and Girl Scouts, as well as fraternities and sororities.

The careful formation of boys is especially crucial when our culture seems to be having a crisis of manhood, Esolen says. “A girl grows into womanhood more naturally than a boy grows into manhood, because the potential for motherhood is expressed so obviously in the form of her body,” while a boy “must be *made into*

216. ANTHONY ESOLEN, *OUT OF THE ASHES: REBUILDING AMERICAN CULTURE* 96 (2017).

a man.”²¹⁷ A boy’s “physical, psychological, and intellectual development is more protracted” than a girl’s.²¹⁸ Yet the organizations that once existed to help boys navigate this development into manhood have all disappeared or been radically transformed by an ethos of androgyny. There is no longer a Young Men’s Christian Association or a Boys’ Club of America. The Boy Scouts of America still exist, but they “do not believe there is such a thing as *boyhood* that is to become *manhood*. They do not know what boys *are*, or they pretend they do not. They might then be called the Physically Immature Male Scouts of America.”²¹⁹ Esolen wrote those lines before the Boy Scouts announced that they would now be open to girls.²²⁰

The main reason that boys need activities and organizations of their own, Esolen explains, is because boys act differently when girls are around:

Boys sense that they cannot be themselves in the company of girls. More particularly, they do not form close friendships with one another in the company of girls. Boys who are shy or unathletic or slower to develop are hurt the most by the prohibition against this feature of normal boyhood, because the early grower, the tall boy, the athlete, will be admired no matter what; everyone else will be scorned or ignored. But when boys *are* alone, they work out a kind of natural hierarchy that gives everyone a place, and they establish *rules* that transcend them all and that unite them.²²¹

Contrary to what girls might imagine, boys are less aggressive among themselves when girls are not present, and even their fighting is more restrained. But things change in mixed company:

When the girls are around, then they have to show off, they grow nervous and suspicious of one another, and they will try to win points with the girls by displays of dominance over their weaker fellows, a dominance that is accompanied not by grace, or by honoring the courage of a boy who lacks the stature and strength to win a fight, but by contempt and dismissal.²²²

Boys need opportunities to learn how to temper their own

217. *Id.* at 97.

218. *Id.* at 99.

219. *Id.* at 97–98.

220. Pete Williams, *Boy Scouts Will Admit Girls, Allow Them to Earn Eagle Scout Rank*, NBC NEWS (October 11, 2017, 12:02 PM), <https://perma.cc/T8JM-7PTN>.

221. ESOLEN, *supra* note 216, at 99–100.

222. *Id.* at 100.

aggression and rivalry, even as they learn how to interact with girls, too. Giving boys and girls what they need to blossom into men and women requires knowing when co-education is appropriate and when single-sex education is best. Single-sex sports teams, clubs, and friendships provide valuable opportunities for boys and girls to develop. We need to avoid the androgyny mistake, pretending that boys and girls are the same, and the opposite mistake of thinking they are so different that they must always be educated separately.

F. Can't We Just Be Friends?

Adults need to acknowledge that their own interactions with the opposite sex are likely to be different from those with the same sex. This doesn't mean that men and women *can't* be friends—Harry in *When Harry Met Sally* got it wrong—but that these friendships are likely to be different from same-sex friendships. Men generally share interests with other men that can form the basis of friendships among themselves, and it's likewise for women. Trying to eliminate male-only associations and activities in a misguided spirit of egalitarianism can be damaging to men and to the women they care about (and who care about them).

Men and women need both same-sex and opposite-sex friendships, but they need to approach them in different ways for the latter bring complications that the former do not. C. S. Lewis noted how easily and naturally a male–female friendship may pass into erotic love.²²³ He also wrote about the misunderstandings that arise from differing assumptions, since “what is offered as Friendship on one side may be mistaken for Eros on the other, with painful and embarrassing results. Or what begins as Friendship in both may become also Eros.”²²⁴

Several years ago, *Scientific American* reported on an academic study that provided evidence of differing assumptions and a pattern of misunderstanding in male–female “platonic” friendship.²²⁵ Using real-life pairs of friends, the study found large differences in how the men and the women experienced the friendship:

223. C. S. LEWIS, *THE FOUR LOVES* 98 (1960).

224. *Id.* at 106.

225. See Adrian F. Ward, *Men and Women Can't Be "Just Friends,"* SCI. AM. (Oct. 23, 2012), <https://perma.cc/T3HZ-DPTD> (noting that men were more likely to presume a female friend was attracted to them than vice versa).

Men were much more attracted to their female friends than vice versa. Men were also more likely than women to think that their opposite-sex friends were attracted to them—a clearly misguided belief. In fact, men’s estimates of how attractive they were to their female friends had virtually nothing to do with how these women actually felt, and almost everything to do with how the men themselves felt—basically, males assumed that any romantic attraction they experienced was mutual, and were blind to the actual level of romantic interest felt by their female friends. Women, too, were blind to the mindset of their opposite-sex friends; because females generally were not attracted to their male friends, they assumed that this lack of attraction was mutual. As a result, men consistently *overestimated* the level of attraction felt by their female friends and women consistently *underestimated* the level of attraction felt by their male friends.²²⁶

Men, it appears, find it difficult to be “just friends” with women, for they “seem to see myriad opportunities for romance in their supposedly platonic opposite-sex friendships.”²²⁷ According to this study, “we may think we’re capable of being ‘just friends’ with members of the opposite sex, but the opportunity (or perceived opportunity) for ‘romance’ is often lurking just around the corner, waiting to pounce at the most inopportune moment.”²²⁸

This reality is the main reason why Billy Graham established for himself the “rule” that Mike Pence too finds prudent. The underlying principle has even been endorsed by Ta-Nehisi Coates, the progressive best known for his writing on race and his call for reparations.²²⁹ Coates recognizes that setting up guardrails around our natural impulses is not a partisan issue:

I’ve been with my spouse for almost 15 years. In those years, I’ve never been with anyone but the mother of my son. But that’s not because I am an especially good and true person. In fact, I am wholly in possession of an unimaginably filthy and mongrel mind. But I am also a dude who believes in guard-rails, as a buddy of mine once put it. I don’t believe in getting “in the moment” and then exercising will-power. I believe in avoiding “the moment.” I believe in being absolutely clear with myself about why I am having a second drink, and why I am not; why I

226. *Id.*

227. *Id.*

228. *Id.*

229. See generally TA-NEHISI COATES, BETWEEN THE WORLD AND ME (2015); Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://perma.cc/F2AM-5RDL>.

am going to a party, and why I am not. I believe that the battle is lost at Happy Hour, not at the hotel. I am not a “good man.” But I am prepared to be an honorable one.²³⁰

The kind of guardrails that Coates describes are part of a sound culture designed to govern human nature. How we structure our own guardrails may vary, but the need for them is unquestionable.

G. Mothering and Fathering

Guardrails are one way to promote a happy marriage. Indeed, the most important consequence of the distinctly male and female forms of embodiment is the possibility for the one-flesh union known as marriage.²³¹ The fruit of marriage is procreation and childrearing, to which mothers and fathers contribute differently, and not out of mere preference. We have seen that mothers and fathers typically do make different choices with respect to childrearing, and because of their distinct bodily natures and capacities they ordinarily *should* make different choices.

There is no such thing as generic “parenting.” There is mothering, and there is fathering, and children do best with both. While many mothers and many fathers have raised children alone out of necessity, and have done so successfully, it remains true that mothers and fathers bring different strengths to the task. A variety of parenting skills “tend to be distributed in sex-specific ways,” as W. Bradford Wilcox found in reviewing the research in psychology, sociology, and biology.²³² This research shows that “men and women bring different gifts to the parenting enterprise” and that “children benefit from having parents with distinct parenting styles.”²³³ This is one reason why family breakdown is so harmful to children and society.²³⁴ Mothers and fathers are not interchangeable, and it bears emphasizing that mothers cannot replace fathers. “The burden of social science evidence supports the idea that gender-differentiated parenting is important for human development and that the contribution of fathers to childrearing is unique and irreplaceable,” writes David

230. Ta-Nehisi Coates, *Violence and the Social Compact*, ATLANTIC (Dec. 20, 2012), <https://perma.cc/4KRA-HLFG>.

231. See generally RYAN T. ANDERSON, TRUTH OVERRULED: THE FUTURE OF MARRIAGE AND RELIGIOUS FREEDOM (2015).

232. W. Bradford Wilcox, *Reconcilable Differences: What Social Sciences Show about the Complementarity of the Sexes and Parenting*, TOUCHSTONE, Nov. 2005, at 32, 32–33.

233. *Id.* at 36.

234. *Id.*

Popenoe.²³⁵ Men and women are “different to the core, and each is necessary—culturally as well as biologically—for the optimal development of a human being.”²³⁶

These differences are not the result of gender stereotypes, but rather what comes naturally to mothers and fathers. Mothers have a greater understanding of infants and children and a special ability to nurture and comfort children. Fathers do especially well in the areas of “discipline, play, and challenging their children to embrace life’s challenges,” as Wilcox puts it.²³⁷ The concerns of fathers are directed more toward the child’s “long-run autonomy and independence” while mothers concern themselves more with the child’s “immediate well-being,” Popenoe observes.²³⁸ Fathers are typically firm in discipline, while mothers tend to be more responsive.²³⁹ The “flexibility and sympathy” of mothers is valuable for children’s healthy development, but so is the “predictability and consistency” provided by fathers.²⁴⁰ Both sons and daughters benefit from the distinct and complementary attention of a mother and a father.

With sons, it is fathers who tend to engage in rough-and-tumble play, which has the benefit of channeling masculine energy while teaching the proper limits of aggression: headlocks, okay, but no biting, pulling hair, or gouging eyes.²⁴¹ “Boys learn self-control . . . from playing with and being disciplined by a loving father” and also by watching their father “handling frustration, conflict, and difficulty without resorting to violence,” Wilcox says.²⁴² Boys who lack this kind of discipline and example will be more inclined to display “compensatory masculinity,” seeking always to “prove their masculinity by engaging in domineering and violent behavior.”²⁴³ This may explain the strong statistical correlation between fatherlessness and crime.²⁴⁴ One study, for example, found that “boys raised outside of an intact nuclear family were more than

235. DAVID POPENOE, *LIFE WITHOUT FATHER: COMPELLING NEW EVIDENCE THAT FATHERHOOD AND MARRIAGE ARE INDISPENSABLE FOR THE GOOD OF CHILDREN AND SOCIETY* 146 (1996).

236. *Id.* at 197.

237. Wilcox, *supra* note 232, at 33.

238. POPENOE, *supra* note 235, at 12.

239. *Id.*

240. *Id.* at 145–46.

241. Wilcox, *supra* note 232, at 34.

242. *Id.* at 35.

243. *Id.*

244. *Id.*

twice as likely as other boys to end up in prison, even controlling for a range of social and economic factors.”²⁴⁵ Another found that “70 percent of juveniles in state reform schools, 72 percent of adolescent murderers, and 60 percent of rapists grew up in fatherless homes.”²⁴⁶ When there are no fathers around to guide boys into manhood, the social costs can be high.

Fathers also make distinct contributions to the development of daughters. A father who loves and respects his wife can model for his daughter how a man is supposed to treat a woman. A father who is “affectionate and firm” with his daughter plays a crucial role in her development into womanhood, as Wilcox explains:

The affection that fathers bestow on their daughters makes those daughters less likely to seek attention from young men and to get involved sexually with members of the opposite sex. Fathers also protect their daughters from premarital sexual activity by setting clear disciplinary limits for their daughters, monitoring their whereabouts, and by signaling to young men that sexual activity will not be tolerated.²⁴⁷

Even on a biological level, Wilcox adds, a father’s presence affects his daughter, as the pheromones released from his body slow down her sexual development. That makes her less likely to experience early puberty and less likely to be sexually active before marriage. The rate of teenage pregnancy is far lower among girls who have had a father at home throughout their childhood and adolescence than among those whose father has left the home sometime before they turn eighteen, and this effect is greater the longer a father sticks around.²⁴⁸

The best sociological evidence available, controlling for other factors including poverty and even genetics, indicates that both boys and girls fare best on virtually every indicator examined—educational achievement, emotional health, familial and sexual development, and delinquency—when they are raised by both their wedded biological parents.²⁴⁹

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.* at 35–36. (“One study found that about 35 percent of girls in the United States whose fathers left before age 6 became pregnant as teenagers, that 10 percent of girls in the United States whose fathers left them between the ages of 6 and 18 became pregnant as teenagers, and that only 5 percent of girls whose fathers stayed with them throughout childhood became pregnant.”).

249. For the relevant studies, see Chapters 1 and 7 of my book *Truth Overruled*, *supra* note 231. See also WITHERSPOON INST., MARRIAGE AND THE PUBLIC GOOD: TEN PRINCIPLES

H. Marriage and “Work–Life Balance”

A sound understanding of gender requires spouses to take seriously their embodiment and their distinct parenting gifts as they negotiate “work–life balance.” Only a mother can carry a child in her womb for nine months. Only a mother can breastfeed. Mothers are uniquely positioned to care for infants. Husbands are well suited to provide support and protection to their wives during pregnancy, labor, and recovery. This suggests that it’s a legitimate choice—not the only legitimate choice, but one that often fits the needs of young families—for a father to focus on labor outside the home, while a mother focuses her energy on labor inside the home when children are young.

Unfortunately, our culture doesn’t always value the choice of a mother to devote herself for a time to childcare and homemaking. As Anthony Esolen writes, “the phrase ‘stay-at-home mom’ is patronizing and faintly derogatory, like ‘stick-in-the-mud mom’ or ‘sit-in-the-corner mom.’”²⁵⁰ Two decades ago, Christopher Lasch noticed this hostility toward mothers who make homes, observing that certain feminists recognized only one choice for families: both husband and wife must work full-time in the marketplace.²⁵¹ This model was seen as an inevitable result of social development, making old ways obsolete. “The two-career family represents ‘progress,’ and laggards have to fall in line,” according to this view.²⁵² Around the same time, Leon Kass remarked that modern women were “compelled to regard private life, and especially marriage, homemaking, and family, as lesser goods, to be pursued only by those lesser women who can aspire no higher than ‘baking cookies.’”²⁵³ (He was referring to Hillary Clinton’s notorious

9–19 (2008), <https://perma.cc/KE2B-E5UD>. Signed by some seventy scholars, this document presents extensive evidence from the social sciences about the welfare of children and adults; see generally W. BRADFORD WILCOX ET AL., INST. FOR AM. VALUES, WHY MARRIAGE MATTERS: TWENTY-SIX CONCLUSIONS FROM THE SOCIAL SCIENCES (2005), <https://perma.cc/H5UB-3RFE>; Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 J. OF MARRIAGE & FAMILY 876 (2003); Kristin Anderson Moore, Ph.D., et. al, *Marriage from a Child’s Perspective: How Does Family Structure Affect Children, and What Can We Do About It?*, CHILD TRENDS, June 2002, <https://perma.cc/9NRG-CCAR>; Mary Parke, *Are Married Parents Really Better for Children?*, CTR. FOR L. & SOC. POL’Y, May 2003, <https://perma.cc/53WS-NRA5>.

250. ESOLEN, *supra* note 216, at 124.

251. Margaret Harper McCarthy, *A Mother’s Work Is Never Done!*, HUMANUM, Spring 2013, at 5, 10.

252. *Id.* (quoting CHRISTOPHER LASCH, WOMEN AND THE COMMON LIFE 118 (1997)).

253. Leon R. Kass, *The End of Courtship*, 31 NAT’L AFFAIRS, Winter 1997, at 50–51 (1997), <https://perma.cc/Y4MX-DY2T>.

comment that she wasn't the sort of woman who would have "stayed home and baked cookies and had teas.")²⁵⁴

The two-career family model rests on the belief that mothers and fathers and day-care workers are all functionally interchangeable—that caring for babies and young children can be done just as well by any adult. Another underlying belief is a form of patriarchal androgyny that defines "work"—valuable work—by typically male norms, discounting the work that is more distinctively female. "Naturally, women have always worked and always will," Margaret McCarthy points out.²⁵⁵ The question is "whether or not the work specific to them counts for work," and what relation it has to other kinds of work they might do.²⁵⁶

G. K. Chesterton praised the vocation of mother and homemaker as *greater* than paid employment in the modern marketplace, noting especially the broad range of responsibilities it involves.²⁵⁷ In her own domain, a homemaker is like the Queen, "deciding sales, banquets, labors and holidays"; she is like Whiteley, the great retailer, "providing toys, boots, sheets, cakes and books"; she is like Aristotle, "teaching morals, manners, theology, and hygiene."²⁵⁸ Chesterton remarked:

I can understand how this might exhaust the mind, but I cannot imagine how it could narrow it. How can it be a large career to tell other people's children about the Rule of Three, and a small career to tell one's own children about the universe? How can it be broad to be the same thing to everyone, and narrow to be everything to someone? No. A woman's function is laborious, but because it is gigantic, not because it is minute.²⁵⁹

Today, Esolen echoes Chesterton, saying that our culture has gotten this backward. If a woman works full-time in the modern economy, specializing in one task—perhaps cooking, arranging flowers, or performing music—then society praises her. But if she

can do all these things and in fact does them for the people she loves and for those whom she welcomes into her home (and she is not afraid of guests, because her home is always just a whisk

254. Amy Chozick, *Hillary Clinton and the Return of the (Unbaked) Cookies*, N.Y. TIMES (Nov. 5, 2016), <https://perma.cc/3A9V-5KXZ>.

255. McCarthy, *supra* note 251, at 13.

256. *Id.*

257. *Id.* at 14 (quoting G. K. CHESTERTON, WHAT'S WRONG WITH THE WORLD 43 (1910)).

258. *Id.*

259. *Id.*

or two away from hospitality), we shake our heads and say that she has wasted her talents.²⁶⁰

On the contrary, Esolen says, she has put her talents to use. Instead of “preferring the specialist who amputates and cauterizes and does one thing well, for herself primarily and sometimes even at the expense of the family,” we must renew our respect for “the woman of many talents and many tasks in the home.”²⁶¹ Like Chesterton, we must acknowledge that the dignity of work does not depend on pay, and that the work done inside the home is just as important as the work done outside of it, and perhaps more so.²⁶²

At the same time, we should recognize that modernity has diminished the range of activities done in the typical home. What we think of as the “traditional family” was an entirely novel creation of the Industrial Revolution, with its specialization of the workforce and the shifting of manufacture from cottage industries into large factories. In 1938, Dorothy Sayers, the famous Dante translator and novelist, described how “women’s work” used to be understood, and how industrialization took many “pleasant and profitable activities” away from women:

It is a formidable list of jobs: the whole of the spinning industry, the whole of the dyeing industry, the whole of the weaving industry. The whole catering industry and—which would not please Lady Astor, perhaps—the whole of the nation’s brewing and distilling. All the preserving, pickling and bottling industry, all the bacon-curing. And (since in those days a man was often absent from home for months together on war or business) a very large share in the management of landed estates. Here are the women’s jobs—and what has become of them? They are all being handled by men. It is all very well to say that woman’s place is the home—but modern civilisation has taken all these pleasant and profitable activities out of the home, where the women looked after them, and handed them over to big industry, to be directed and organised by men at the head of large factories. Even the dairy-maid in her simple bonnet has gone, to be replaced by a male mechanic in charge of a mechanical milking plant.²⁶³

260. ESOLEN, *supra* note 216, at 127 (emphasis omitted).

261. *Id.* at 127.

262. *Id.* at 130.

263. Dorothy L. Sayers, *Are Women Human?: Address Given to a Women’s Society, 1938*, 8 LOGOS, Fall 2005, at 165, 169–70.

Because of industrialization, “women’s work” became more narrowly defined, so that “the home contains much less of interesting activity than it used to contain.”²⁶⁴ Sayers chided those who would fault women for seeking to regain more interesting kinds of work: “It is perfectly idiotic to take away women’s traditional occupations and then complain because she looks for new ones.”²⁶⁵ Every woman is a human being—one cannot repeat that too often—and a human being *must* have occupation²⁶⁶

When Betty Friedan wrote in 1963 that domestic life was burying women alive, she was referring to the modern form of homemaking and motherhood, with its relatively constricted domain, which denied women opportunities to flourish in meaningful work.²⁶⁷ Even the physical dwelling itself had shrunk, lacking enough land for growing food or space for the old activities of preserving it, to say nothing of room for a cottage industry.²⁶⁸ The suburban home, distant from the old hubs of community life, had become a “comfortable concentration camp,” filled with “ennui, loneliness, and ‘nameless dissatisfaction.’”²⁶⁹

McCarthy lists other things that are missing from the average home in the twenty-first century, a lonely place with “nobody home” and very little happening:

There is no nursing a baby (in the well-appointed nursery), no taking walks to the park, no witnessing first steps (which happen at the “wrong time”), no informal neighborhood clubs after school, no gathering of teenage friends under watchful eyes, no real cooking (in the gourmet kitchen), no dinners with friends (in the non-existent dining rooms), no neighborly charity for sick friends or new mothers. In short there is no time together.²⁷⁰

One remedy is to repopulate the home with meaningful activities, perhaps reviving some of the work that used to be done there. We can encourage the flowering of new home businesses, facilitated by technology. We should also respect a woman’s choice to devote herself fully to homemaking and childrearing, even while recognizing that those women who

264. *Id.* at 170.

265. *Id.*

266. *Id.*

267. FRIEDAN, *supra* note 134, at 462.

268. McCarthy, *supra* note 251, at 15.

269. *Id.*

270. *Id.* at 11.

seek other kinds of work aren't simply rebelling against the way things have always been.

Another remedy is to find better ways to balance and harmonize the work done inside and outside the home. Even the phrase work-life balance suggests that something is out of order. "Work is not something you are supposed to balance against the claims of your family," Esolen remarks.²⁷¹ Work is best done in the service of our families:

We live in comforts that the richest of aristocrats not very long ago could never have dreamed of, and yet we claim that we are too poor to have more than a child or two. The truth is the reverse: we are too rich to have more than a child or two, too committed to work for work's sake and to the purchase of prestige²⁷²

One imperative, then, is to reorder our lives, to get our priorities straight.

This resetting of priorities requires changing the workplace to make it more hospitable to women. We'll need to begin by acknowledging that men and women really are different and taking those differences seriously in how we structure the workplace, rather than promoting a policy of sameness. Steven Rhoads has observed that "encouraging more equal patterns of male and female parenting and work" in academia has failed to help women get ahead in their careers.²⁷³ "Gender-neutral" policies in tenure extension have actually worked to the disadvantage of female faculty members, apparently because "many men had used the stopped clock to conduct research, while the women concentrated on parenting duties."²⁷⁴ This result is not surprising, since "pregnancy and childbirth are not gender-neutral activities."²⁷⁵ And it can take many months after childbirth for a woman to regain the physical capacity she had before pregnancy. For this reason, says Rhoads:

Preferential treatment of women is justified even if one considers only the requirements of pregnancy, childbirth, and breastfeeding. It would certainly be reasonable to grant only female professors a semester of paid leave after the birth of a

271. ESOLEN, *supra* note 216, at 128.

272. *Id.*

273. Steven E. Rhoads, *Lean In's Biggest Hurdle: What Most Moms Want*, INST. FOR FAM. STUD. (March 16, 2017), <https://perma.cc/49F2-5PCB>.

274. *Id.*

275. *Id.*

child. Male professors in highly unusual situations could petition for exceptions to this general policy.²⁷⁶

This policy would respect the bodily nature of women and their unique capacity to bear life.

Workplace policies should also recognize that a mother is not interchangeable with other adults, especially when children are young. Rhoads recounts the case of a Ph.D. student in economics at Harvard who was told that the university would cover the cost of day care for her child but would not provide a research assistant to do coding for her so she could focus on analyzing data when she had time.²⁷⁷ Never mind that the research assistant she requested would have been cheaper than full-time day care.²⁷⁸ The preference to outsource mothering rather than coding is problematic, to say the least. A healthy society would recognize a mother's preference to care for her child not only as her personal wish but as what's best for her child and for society.

I. Cultures Cultivate and Our Transgender Moment

Our transgender moment arose in part from a rebellion against the idea of innate differences between the sexes in disposition and preferences, on average and for the most part. We have seen efforts to stamp out those differences, in the belief that they are a product of social conditioning, artificial and unjust. A strain of radical feminism intersects with transgender ideology in the shared premise that gender has no real connection to biology and can be nullified or changed at will.

An effective cultural response to transgender ideology entails recovering a sound cultural understanding of gender and sex differences. First, we must reject the concept of gender fluidity wherein every child has to *choose* a gender among numerous options—a burden that introduces confusion when children need clarity and guidance. Trying to make boys and girls the *same*, in a coercive androgyny, can also result in confusion and resentment. On the other hand, we needn't adopt the overly rigid stereotypes that might lead a boy to think he should be a girl because he is sensitive and artistic, or a girl to think she might really be a boy because she prefers sports over dolls. Acknowledging the richly

276. *Id.*

277. *Id.*

278. *Id.*

diverse ways of being male and female can help children more readily identify with and accept their own embodiment.

Getting the balance right is the work of an entire culture. For children, developing into a healthy understanding of their bodies and their sexuality is a delicate enterprise, fraught with difficulties even in the best circumstances. Transgender ideology makes the process much more difficult by destabilizing what David Cloutier calls the “sexual ecology.”²⁷⁹ It challenges the normality of congruence between sex and gender simply because a small number of people have trouble reconciling themselves with their bodily sex. “To destabilize [the] default position of body/soul congruence,” writes Cloutier, “is to allow exceptional cases to reshape the entire ecology.”²⁸⁰

We should be tolerant—indeed, loving—toward those who struggle with their gender identity, but also be aware of the harm done to the common good, particularly to children, when transgender identity is normalized.²⁸¹ Transgender activists are not merely asking for tolerance or kindness; they are demanding affirmation, not just from adults but from children and adolescents who are already challenged by the normal process of sexual development. Cloutier observes that “affirming and accommodating the transgender identity of one child will affect other children, in much the same way that gender stereotypes about alpha males and compliant females affect them.”²⁸² In a culture where transgender identities are not only affirmed but celebrated, everyone will be compelled to construct their own gender identity, unaided by a common understanding of sex differences and why they matter.

The transgender moment has been brought about by activists waging an “assault on a fragile ecology of sexual development,” using state power to favor one view of gender identity over an understanding that others support and favor.²⁸³

279. David Cloutier & Luke Timothy Johnson, *The Church and Transgender Identity*, COMMONWEAL, March 10, 2017, at 15, 18, <https://perma.cc/477P-8XCN>.

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*