

## Transsexual Marriages and the Role of the Court: Issues for Psychiatry and Society

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Since Benjamin's<sup>1,2,3</sup> pioneering contributions to the study of transsexualism,\*\* there has been a steadily growing literature that has investigated such important and diverse aspects of this subject as the historical,<sup>4</sup> etiological,<sup>5</sup> diagnostic,<sup>6,7</sup> and medico-legal.<sup>8</sup> In more recent years, Levine<sup>9,10</sup> has found numbers of male transsexuals whose social behavior, problems, and life style significantly differ from those whom most previous studies have examined. In addition, Levine *et al.*,<sup>11</sup> Person and Ovesey,<sup>12,13</sup> Stoller,<sup>5</sup> and Volkan,<sup>14</sup> among others, have discussed various aspects of the self-system of transsexuals.

For the most part, these and other studies focus on or are indirectly related to the over-arching issue concerning whether transsexuals seeking authorization for sex reassignment surgery are psychologically qualified to undergo this irreversible change in their lives. The explicit or implicit assumption involved in the clinical diagnoses whose authorization is a prerequisite for this surgery is that the psychic and social lives of transsexuals who undergo this surgery will then be considerably improved because their anatomies will be congruent with their psychic states. Furthermore, sex reassignment surgery is indispensable for transsexuals who wish to marry, as it appears most do.

The purpose of this paper is to identify and discuss certain key issues that are involved in transsexuals' marriages, most of which were significant in the court cases discussed below which highlight them. The relevance of these issues extends beyond married transsexuals to incipient (pre-pubertal) transsexuals and their parents, as well as to transsexuals desiring to marry but who are denied this opportunity because they do not qualify for sex reassignment surgery. It also bears on psychiatrists and other professionals who are confronted with the responsibility for advising transsexuals about their prospects for marrying. Finally, it will be suggested that the inconsistencies and problems that were not dealt with or resolved, as well as the central issues themselves, are those whose resolution can be most effectively settled by psychiatry rather than by the courts.

### The Judicial Decisions

In *Corbett v. Corbett*,<sup>15</sup> the husband petitioned for a declaration that his marriage was void because his wife was a person of the male sex or for a

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\*\*A transsexual is defined as a person who requests sex-reassignment surgery.

“decree of nullity on the ground of non-consummation.” At the time of their marriage the petitioner knew that his wife had been registered at birth as a male and had undergone sex-reassignment surgery. In turn, his wife asked for a “decree of nullity on the ground of either the petitioner’s incapacity or his willful refusal to consummate the marriage.”

The court proceedings revealed that the husband, who had four children in his previous marriage, had been a transvestite during this marriage and had also been involved in homosexual behavior with numerous men, although he had not engaged in anal intercourse. As time went on he also became more involved in the “society of sexual deviants, and was interested in sexual deviations of all kinds.” Furthermore, he candidly stated during the hearings that when he first saw the person who was to become his transsexual wife, she was a female impersonator and that he was “mesmerized by her. This was so much more than I could ever hope to be. The reality was far greater than my fantasy.”

The court held that the primary issue involved was the validity of the marriage and that this depended upon the “true sex of the respondent.” The secondary issue dealt with the “incapacity of the parties, or their respective willingness or unwillingness, to consummate the marriage, if there was a marriage to consummate.” During the hearing both parties called upon three leading medical experts to deal with “various aspects of anatomical and psychological sexual abnormality”; the experts differed in their inferences and conclusions derived from the literature dealing with these subjects.

The criteria with which the judge dealt, and which the medical witnesses were said by him to accept, were: (a) chromosomal factors, (b) gonadal factors, (c) genital factors, and (d) psychological factors, with (e) secondary sexual characteristics of importance as well. In terms of these criteria the judge stated that

... sex is clearly an essential determinant of the relationship called marriage, because it is and always has been recognized as the union of man and woman. It is the institution on which the family is built, and in which the capacity for natural heterosexual intercourse is an essential element. It has, of course, many other characteristics, of which companionship and mutual support is an important one, but the characteristics which distinguish it from all other relationships can only be met by two persons of the opposite sex.

He then added that:

The question then becomes what is meant by the word ‘woman’ in the context of a marriage, for I am not concerned to determine ‘legal sex’ of the respondent at large. Having regard to the essentially heterosexual character of the relationship which is called marriage, the criteria must, in my judgment, be biological, for even the most extreme degree of transsexualism in a male or the most severe hormonal imbalance which can exist in a person with male chromosomes, male gonads, and male genitalia can not reproduce a person who is naturally capable of performing the essential role of a woman in marriage. In other words,

the law should adopt, in the first place, the first three of the doctors' criteria, *i.e.*, the chromosomal, gonadal, and genital tests, and if all three are congruent, determine the sex for the purpose of marriage accordingly.

He also stated that to view the respondent as a woman, as society did, would be to confuse sex with gender, and that marriage depended on the former. In terms of this line of reasoning, the judge concluded that the "so-called" marriage was void.

Much different circumstances obtained in the case of *Anonymous v. Anonymous*.<sup>16</sup> The plaintiff, a non-commissioned officer in the United States Army, sought a declaration as to his marital status with his wife, whom he had met on the street, where she appeared to be female. Then they went to a house of prostitution, where, although they spent a short time together, he did not see her unclothed or have any sexual relations with her. A few months later the two married, and after the ceremony they returned to the husband's apartment. As he was intoxicated then, he fell asleep. Upon awakening early in the morning, he touched his wife and discovered that she had male sex organs. Shocked by this, he left the apartment, got drunk again and then returned to the apartment, where he slept on the couch. The next day his wife told him that she intended to have an operation to remove her male sex organs.

These individuals never lived together nor had they any type of sexual relationship. Not long after their marriage, the husband was sent overseas and the Army deducted an allotment from his pay for his wife's support. Upon returning from overseas duty, he went to court to arrange for her "release from jail on a prostitution charge." At this time he began to make arrangements for a legal divorce or separation, although he was then told by the defendant that the sex-reconstruction surgery had been completed. However, the court ruled that the "mere removal of the male organs could not, in and of itself, change a person into a true female. What happened to the defendant after the marriage ceremony is irrelevant, since the parties never lived together." The ruling also stated that "the law makes no provision for a 'marriage' between persons of the same sex." Consequently, the marriage was nullified.

In *M.T. v. J.T.*,<sup>17</sup> the plaintiff was a male transsexual who had lived with the defendant as a couple for five years *before* undergoing sex-reconstruction surgery. Shortly after the operation, they married and the marriage was consummated. Approximately two years later, however, the husband told his wife that he had to leave her or he would be disinherited, and soon deserted her. From that time on he failed to support her.

In this case the judge found that the question to be resolved was "whether a person who is classified at birth as a male must remain so forever and thus be prevented from marrying another male after undergoing a successful sex reassignment operation. We answer in the negative." Taking into account the same factors for determining sex that were used in *Corbett v. Corbett*,<sup>15</sup> as well as additional ones (sex of rearing and assumed sex role or psychological sex), the ruling of the judge was guided by his observation that

the law is correct in requiring a transsexual to be classified pursuant to his anatomical sex rather than by the assumed sex role or psychological sex of the person. The problem occurs in defining sex *after* a successful reassignment operation and that basic issue has not, as of yet, been adjudicated by any court in the United States. (Italics added)

The judge also commented that

... the judge in *Corbett v. Corbett* was also a medical doctor and in our opinion he took an unrealistic view of the progress made by the medical profession over the years concerning the problem of transsexualism.

... the plaintiff believed herself to be of the female gender all her life. Her subsequent anatomical change required the conclusion that she was a female at the time of the marriage ceremony. Her belief being medically sound, not mere whim, and an irreversible sex reassignment operation having been performed, society has no right to prohibit the transsexual from leading a normal life.

*Corazzini v. Corazzini*<sup>18</sup> (a Memorandum Decision, not a Judgment) is a much different case from the preceding ones. Mrs. Corazzini had filed for dissolution of the marriage in 1976 and was awarded temporary support. This ruling, however, was overturned in the litigation discussed here, since the court held that James Corazzini, her husband and a female transsexual, was really a woman. However, he was required by the court to pay \$200 a month for the support of his sixteen-year-old daughter, who was born to Mrs. Corazzini after artificial insemination, as was the couple's twenty-year-old son. The court's decision, while taking into account several arguments of the petitioner, was based on its holding "the law of the place of marriage controls the question of its validity." The couple was married in Arizona, where the state code reads that:

The Clerk shall not issue a license without consent of the parents or guardians of the parties applying unless the parties applying shall be the male, twenty-one (21) years of age, and the female eighteen (18) years of age. The Court construes this section as legally requiring that to have a valid marriage in Arizona in 1953, the parties had to be of the opposite sex.

The court added that the marriage was invalid because Mrs. Corazzini "knew or should have known of the true facts" concerning the sex of her spouse, and that the latter, contrary to a doctor's conclusion and coincident with a medical examination report, "does not have the genital organs of both sexes and 'he' cannot elect the sex 'he' wishes to be."

### Discussion

The issue at the forefront of all these cases, if not similarly emphasized in each, is whether or not heterosexuality in both partners is a prerequisite of marriage. Both this historical meaning and legitimacy of marriage have been

rooted in the fundamental beliefs of religion and tradition that heterosexual partners in marriage are both necessary and proper in order to perpetuate the family and the group, as well as because both men and women more completely fulfill themselves through parenthood.

In recent decades, the forces of urbanization and industrialization have brought about the erosion of many traditional standards, with much more highly individualized and relativized values and choices frequently having contested or replaced them, as the case of *M.T. v. J.T.*<sup>17</sup> attests. A parallel development reflecting this trend is the tendency during the past decade to give much greater consideration to ameliorating the problems afflicting the lives of transsexuals. This, in turn, has diverted attention from equally pressing problems which burden the lives of transsexuals during their lives from childhood into adulthood (prior to surgery) and which also exert an upsetting influence on the lives of their parents and others who are close to them.

Green<sup>19</sup> detected a problem that has gone all but unnoticed in the literature. He wrote about two transsexual girls (aged nine and eleven) whom he had seen and who, subsequent to seeing transsexuals on television programs and reading about them, insistently told their parents that they now realized that they were transsexuals and very much wished to remain so. Upon learning that transsexuals can legally marry (the *Corazzini* case was summarized by newspapers), the children such as they may become more adamant in their desire to become transsexuals in their adult lives, since such marriages appear to give the *imprimatur* of emotional and psycho-sexuality normality to transsexualism. Consequently, such youngsters would also be more inclined than not to refuse to enter (or, upon entering, to resist) treatment at that time in their lives (pre-puberty) when it could be most effective in enabling them to resolve the unconscious conflicts underlying their gender-disorientation.

Regardless of the intensity and unswerving conviction of young children (incipient transsexuals) that they are and wish to be transsexuals, the social realities impinging on their lives are a source of great unhappiness to them. As Levine<sup>9</sup> has shown, and as numbers of transsexuals have stated on television programs, transsexual children in elementary and secondary school are subjected to the vicious taunts, slurs, and disparaging remarks of school children who resent and are hostile to them because of their effeminate manners and withdrawal from boys' games and camaraderie. Such degradation and rejection by peers can do little to help them develop self-esteem and feelings of worthiness about themselves, and may seriously impair their ability to develop sound object relationships with others.

The remarks of some transsexuals in the mass media have suggested that their parents took in stride their children's revelation, made during their young childhood, that they were transsexuals. However, there is other evidence<sup>9</sup> that such disclosures have caused parents considerable anguish, and that the relationships between the parents and their transsexual children were severed as a result. And even in an age when the transsexual phenomenon has become increasingly known to the public due to the attention given it by the mass media, it is quite probable that there are parents who would be extremely upset were their children to announce their

transsexual identity to them. Then, too, the lives of such parents and their transsexual children are apt to become even more difficult and fraught with distress when this information becomes known, as soon or later it must, to relatives, friends, and neighbors. Such persons are apt to be critical, unaccepting, and hostile in mood, if not expression, thereby ostracizing both the parents and their transsexual children. Coping with the ill feelings and withdrawal of others over time can be an exacting emotional burden.

There is still another question that merits consideration. Are the persons who marry transsexuals really heterosexuals (as seems to be widely assumed by professionals and laypersons)? The husband in *Corbett v. Corbett*,<sup>15</sup> for example, openly admitted his transvestism and homosexual activities during his first marriage; the husband in *M.T. v. J.T.*<sup>17</sup> had lived with a male transsexual for five years before they married, and following the latter's surgery — which coincides with Levine's<sup>9,10</sup> findings that numbers of pre-operative transsexuals characteristically lived with bi-sexual males; and the wife in *Corazzini v. Corazzini*<sup>18</sup> knew without question that her husband was a female. Thus, if post-operative transsexuals actually marry bi-sexuals, as apparently occurred in the cases discussed above, state laws might render the marriages void on this ground alone were they to be contested in court, holding that transsexuals were deceived by their spouses who presented themselves as heterosexuals. On the face of it, this question appears to have more implications for the judiciary and legislatures than for psychiatry. However, should post-operative transsexuals generally attract bi-sexuals as mates, then psychiatrists and others who diagnose transsexuals for the purpose of authorizing sex-reassignment surgery face the difficult task of informing them that their prospects for marrying heterosexuals appear to be much more dubious than many now apparently believe. (Some pre-operative transsexuals I interviewed said they knew post-operative transsexuals who had married bi-sexuals, comments that could not be verified and must, therefore, remain speculative.)

The foregoing discussion may seem to be dealing less with conjecture or problematic eventualities if one takes into account the fact that there is little likelihood of male heterosexuals marrying transsexuals if they know beforehand that the latter must use a dilator to prevent the artificial vagina from collapsing and infecting because of the absence of mucosal membranes, of their need for electrolysis and dependency on periodic estrogen treatment (which diminishes the libidinal drive) to maintain female-appearing flesh tone, hips, breasts, and voice level, and that not having ovaries, they can neither menstruate nor conceive children.

Much, if not all, of this discussion leads to another question on which certain other important ones — the sex assignment of post-operative transsexuals, their prospects for marriage, and the kinds of spouses they will attract (and be) — may hinge. That is, while differences of view exist among those who have written about, diagnosed, or provided therapy for transsexuals regarding the specific state of their self-system, they have not argued or suggested that transsexuals are emotionally stable persons whose only *essential* psychological difference from heterosexuals is nothing more than an unshakable conviction that they are really members of the opposite sex. Persons and Ovesey,<sup>12,13</sup> Socarides,<sup>7</sup> Stoller,<sup>5</sup> and Volkan,<sup>14</sup> among

others, have written cogently and informatively about the fantasies and dreams of transsexuals. And their analyses suggest that the latter have marked psychological disturbances that appear to fall into the categories of psychosis, borderline syndromes, or split egos. Thus, for the purposes under discussion here, it may be asked if post-operative transsexuals actually regard marriage as the fulfilling union of two individuals who, in various ways, are complementary to each other, or if their underlying reason for wanting to marry heterosexual males is that they believe the latter alone can confirm or authenticate their femaleness — as has been indicated by the transsexuals studied by Levine.<sup>9</sup> Thus, it may be asked if transsexuals' psychological acceptance of sexual involvement with bi-sexual males (essentially homosexual activity) which numbers — but clearly not all — of them engage in prior to surgery is transformed into a heterosexual psychological state as a result of the anatomical change produced by surgery.

Another issue of importance, one involving psychiatric rather than judicial considerations, can only be noted briefly here, due to the limitations of space, rather than discussed as extensively as it merits. This issue deals primarily with the gender identity development and psycho-sexual well-being of children who are raised (however acquired) by transsexual adults (independently or with a spouse or living partner). More specifically, it has to do with whether or not such children would experience disturbances in their gender orientation and in their psycho-sexual lives as a result of the ways in which the attitudes, values, and personalities of transsexual adults would affect their child-rearing practices and affective relationships with the children they raise.

While psychiatrists and others understandably entertain grave doubts about the advisability of transsexual parenting for the psycho-sexual development of children, it is to be noted that Green<sup>20</sup> reported in his study of children raised by transsexual (and homosexual) parents that he found the children developed as heterosexuals, results which would seem to dispel the reservations about the effects of their parenting that are held by professionals and laypersons. However, it may be premature to conclude that such children will not later develop either the sexual dysfunctions with which heterosexuals are troubled, or the psycho-sexual and gender-orientation disturbances that lead to homosexuality or transsexualism in their adult years and which, for some of them, may break up their marriages. Furthermore, to the extent that they accept their parents' transsexualism (or homosexuality), some such children may, as parents, be insufficiently attentive to or unconcerned about the gender identity development of their children, who may, therefore, develop sexual dysfunctions associated with heterosexuals or become transsexuals (or homosexuals). Such developmental possibilities ought not to be lost sight of as a result of unanticipated findings from research investigating the gender identity development of children who have been raised by transsexual (or homosexual) parents.

So long as transsexual marriages are legal, there remains the possibility that more transsexuals who marry, particularly younger ones, may acquire children through adoption (or the artificial insemination of a spouse). To be sure, the numbers of children adopted by them will remain extremely few,

since there are and will be comparatively few married transsexuals. Moreover, agencies that award children for adoption will probably be inclined to view heterosexual marriages as more suitable for raising children. Nevertheless, to the extent that psychiatry has a fundamental professional and moral obligation and commitment to the emotional well-being of specific individuals, rather than only to minimal numbers of them, psychiatrists and the psychiatric profession must somehow come to grips with this question and the problems it poses.

A brief observation is offered in concluding these remarks. It is assumed that there is general agreement among psychiatrists (and other professionals) that the social and economic lives of both pre- and post-operative transsexuals are far more tension-free and humane if they are able to lead their lives as women or men, and that they should have the opportunity to do so. To argue to the contrary would be deliberately to impose on them an unjustifiable burden of misery. Yet to affirm that they should be permitted to live as women or men in these roles does not thereby dispose of the questions, issues, and problems that have been examined in the body of this paper. Instead, it points up the challenging task that confronts psychiatry – the need for its members to address themselves to and endeavor to resolve these perplexing issues. However commendably judges may approach and rule on the cases involving transsexual marriages that are brought to them for a determination, psychiatrists' professional experience and knowledge are better suited for dealing with the issues raised by these cases than are the courts.

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