

Gender Blender: Intersexual? Transsexual? Male, female aren't so easy to define

by Eric Vilain

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This was the moment of truth. The ultimate test before the coronation. A deacon would extend his hand below the robe of the future pope and check for the presence of two testicles. Middle Ages legend has it that this rite was started after Joan, an Englishwoman and a cross-dresser, managed to get elected pope in 855 but was discovered two years later because of an ill-timed childbirth.

Will we soon be witnessing such surreal examinations in our city halls? After all, if the Constitution will allow only marriages between a man and a woman, the county clerks had better make sure that they are issuing licenses legally. Patting down the two male organs would ensure an absolute certainty of sex identification. Or would it?

In reality, sex isn't so straightforward. Let's take testicles as a defining characteristic of a man. Are individuals with only one testis "real" men? The "two-testicles rule" would disqualify about 3% of male newborns a year about 4.5 million Americans total. Does one need to produce active sperm or eggs to be considered a man or woman? Adding a fertility criterion would eliminate millions more from both categories.

If conventional wisdom cannot easily define men and women by just a simple look at the private parts, science should help us distinguish between the sexes. Since 1921, we have known that women have two X chromosomes and men an X and a Y chromosome. This is the fundamental genetic distinction between men and women.

But still, it's been difficult to find clear-cut answers. Olympic Games officials have struggled with the science of "sexing" individuals for many years often after high-profile cases of gender confusion. In the 1936 Olympics in Berlin, U.S. runner Helen Stephens beat Polish runner Stella Walsh in the 100-meter sprint, winning a gold medal and breaking Walsh's 1932 record. The Polish press falsely accused Stephens of being a man. Ironically, after Walsh was killed during a 1980 robbery, her autopsy revealed male genitals. Decades later, Erica Schinegger, who won the women's downhill skiing world title for Austria in 1966, was two years later found to be chromosomally male and, as such, disqualified for the Olympics. Her case forced the International Olympic Committee to require all athletes to take a test counting the number of X chromosomes.

In 1990, scientists learned that a gene called SRY on the Y chromosome is what makes fetuses become boys and not girls. In 1992, the Olympic test was perfected to detect the presence of the SRY gene.

But even that was insufficient. Any genetics expert knows that there are exceptions to the chromosome rules. There are females with a Y chromosome; there are males with no SRY gene. At the Sydney Olympics in 2000, the IOC decided to "refrain from performing gender tests," conceding that no single test provided a complete answer.

Identifying the gender of intersex and transsexual individuals poses an even more complex challenge. Intersexuality is defined as the presence of "ambiguous genitalia," making it impossible to tell easily whether the newborn baby is a boy or a girl. It occurs at a frequency of 1 in 4,000 births. Plastic surgery of the genitals is often performed to conform a typical appearance of one sex or the other, and a male or female legal sex is assigned shortly after birth. Many of these children grow up feeling alienated from their legal sex identity and undergo reconstructive surgery as adults to regain their dominant gender identity. If intersex adults change their legal sex, which sex should be considered when they marry?

Although the validity of marriage of an intersex person has not been tried in court, legal challenges to marriages of transsexuals abound. Transsexuals believe that they have been born in the wrong body and often pursue a difficult and painful process of surgical reassignment. But courts often don't recognize the change of sex and invalidate spousal rights of transsexuals. In the 1999 landmark case of Littleton vs. Prange, a male-to-female transsexual was denied the right to sue under a wrongful death statute for the death of her husband. The Texas Court of Appeals referred to sex provided by "our creator" as opposed to sex created by physicians and rejected "man-made" sexual organs.

Sex should be easily definable, but it's not. Our gender identity our profound sense of being male or female is independent from our anatomy. A constitutional amendment authorizing marriages only between men and women would not only discriminate against millions of Americans who do not fit easily in the mold of each category, but would simply be flawed and contrary to basic biological realities.

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