

**Submission
No 57**

**INQUIRY INTO EDUCATION LEGISLATION
AMENDMENT (PARENTAL RIGHTS) BILL 2020**

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28 February, 2021

Hon Mark Latham MLC

Chair, Portfolio Committee No. 3 – Education
Upper House Committees | Legislative Council
Parliament of New South Wales

Dear Mr Latham,

This is to submit the attached commentary in relation to the *Education Legislation Amendment re Parental Rights* with specific reference to the teaching of Gender Fluidity. I repeat my conclusion here for convenience.

Conclusion

Whatever view might be taken philosophically or psychologically of the issue, what is clear is that the very notion of ‘Gender fluidity’ and of kindred notions is theoretically highly controversial, contested, and practically challenging inasmuch as it is taken by advocates to ground moral and political claims of recognition and rights. As such while it might be a matter for discussion in the Humanities and Social Sciences learning area of the Australian Curriculum (presumably in relation to Civics and Citizenship) it could not and should not be presented as uncontroversial, and the sorts of points summarised above would need to be cited along with the views of advocates.

To do otherwise would be intellectually dishonest and educationally unprofessional; and to do so in the face of opposition from parents would be to violate their rights in respect of the moral education of their children cited earlier and implied in the Universal Declaration of Human Rights.

I am content for my submission to be made public.

Yours sincerely,

Education and Gender-Fluidity

John Haldane, University of St Andrews, etc.

Introduction

I am writing in relation to the *Education Legislation Amendment (Parental Rights) Bill 2020*, specifically with regard to the matter of the notion of ‘gender fluidity’ and the question as to the rights of parents in respect of the teaching of fundamental moral and political values and principles.

Let me explain at the outset that my expertise in regard to these matters is as a professional philosopher with special interests in ethics, education and public policy. I have held and hold positions in a number of universities in the UK, the US and Australia.

My principal and longest-standing affiliation, however, is with the University of St Andrews where I began my academic career in 1983. The following year I was one of the founding members of the University’s *Centre for Ethics, Philosophy and Public Affairs (CEPPA)*, which I directed for some 25 years. In 1994 I became Professor of Moral Philosophy and as of 2020 continue in an Emeritus role, and as the Senior Fellow of *CEPPA*. I am also editor of the book series *St Andrews Studies in Philosophy and Public Affairs*.

Additionally, I have held the *Royden Davis Chair in Humanities* at Georgetown University, DC, the *J. Newton Rayzor Senior Distinguished Chair in Philosophy* at Baylor University, Texas, where I remain *Distinguished Affiliate Professor*. I am currently *Professor of Virtue Theory* in the School of Education, University of Birmingham. UK, and *Professor of Philosophy of Education* at Australian Catholic University. Since 1995 I have been a *Fellow of the Royal Society of Edinburgh*, and for the past ten years I have also been *Chair of the Royal Institute of Philosophy* in London. I hold three honorary degrees from universities in the UK, US and Australia.

I divide my remarks into three parts:

- 1) The family and education
- 2) Gender Identity and Fluidity
- 3) Conclusion.

1) The Family and Education

Writing in regard to the tenth anniversary of the *International Year of the Family* in 1994 Kofi Annan, the former Secretary General of the UN observed that “The family has a continuing and crucial role in social and human development as well as in provision of care and support to individuals.” Here he was speaking of societies’ dependence on the family as a formative and supportive institution, but the 1948 UN *Universal Declaration of Human Rights* affirms the ethical status of the family and acknowledges its prior standing in respect of the first of these basic functions:

The opening sentence of the UDHR preamble states that: "... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"; and thereafter the status of the family and the rights of parents are affirmed:

Article 16, (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 26, (3) "Parents have a prior right to choose the kind of education that shall be given to their children."

It is evident that families matter. One can say this confidently without any appeal to philosophical, political or other theories. Families are where things start for the mass of human beings, and it is in the context of the family, small or large, that children are trained and in which they acquire and develop the primary human modes of relating intelligently to the world. The fact of the dependency of children upon immediate providers is part of human natural history. Family relations are inalienable, as are the responsibilities and rights associated with them and these latter cannot be annihilated, though they may be neglected, overlooked or infringed upon.

In considering the question of the state in relation to the well-being of children, there are two forms of family involvement to be acknowledged and taken account of. First, there is the dependence of the child upon its immediate '*moral environment*'; and second there is the family considered, not just as a source of moral consciousness and formation but as a '*societal community*' whose well-being is partly constitutive of the child's own interests. On these accounts, the state has both moral and prudential reasons to respect the primacy of the role and authority of parents in the moral education of children.

Such education, like morality itself, has several aspects corresponding to a) the promotion of welfare (and protection from harm), b) the recognition of rights, duties and obligations, and c) the cultivation of a sense of human existence and of the goods and meanings attaching to it. So far as present issues are concerned the last of these has special relevance since it includes an understanding of the basic dimensions of human nature: bodily, psychological, and social. The matter of sexual identity relates to each of these: primarily to the first but importantly to the second and third also.

2) Gender Identity.

In what is literally a 'sign-of-the-times' the website *Dictionary.Com* carries an email sign-up notification which reads "**LGBTQIA+ Language Changes Fast We'll keep you up to date!**"

This is indicative of at least two things. First, that there is widespread uncertainty about the meanings and acceptability of such terms as *gender*, *cis-gender*, *transgender*, *gender-queer*, *gender-fluid*, *non-binary*, etc, and second, the fact that terms are being generated not in line with longstanding scientific, medical, philosophical or anthropological understandings but as part of a broad cultural and political movement involving advocacy of changing ideas and norms and criticism of existing ones.

It is important to recognise the revisionary, controversial and contested character of most of these notions. First, it is relevant to observe two standard philosophical distinctions a) between *concepts* and *conceptions* and b) between *descriptive* and *prescriptive* definitions.

Concepts represent presumed general natures and tend to be stable and commonly shared while *conceptions* differ and are more liable to be subjects of debate and disagreement. For example, in political discourse it is common to invoke such notions as those of ‘society’, ‘the private’ and ‘the public’, ‘justice’, ‘rights’ and ‘common goods’ etc. These are generally recognised to be central and important *concepts*; but there are disagreements between different *conceptions* of what each amounts to and requires. Thus, there are egalitarian, libertarian, and other *conceptions* of justice, the common good, and of the private/public distinction. Again, in some spheres there are stable and uncontested common *concepts* which serve to define matters, as in chemistry, biology and medicine; whereas in others there is extensive disagreement between competing prescriptive *conceptions*, such as in fields of art, literary and musical appreciation.

The concept of *sex* as an aspect of identity applicable to human beings and other animal species is part of biology, relating primarily to reproduction. Thus, the idea of *primary* (internal and external genitalia) and *secondary* (pelvic build, menstrual cycle), *sexual characteristics*. In looser connection with these are what might be termed tertiary sex characteristics, typically behavioural ones, e.g., aggression, competitiveness, nurturing. While there are broad commonalities around these, they may not be historically and culturally universal, and this gave rise among anthropologists in the 19th and early 20th centuries to interest in the extent to which they might be culturally variant.

A proposal somewhat in line with these speculations, but with a more specifically political character was made in the middle of the 20th century by the French philosopher Simone de Beauvoir in *The Second Sex* (1949) to distinguish between *biological sex* and *cultural gender*, writing that: “Everyone agrees there are females in the human species; today, as in the past, they make up about half of humanity; and yet we are told that "femininity is in jeopardy"; we are urged, "Be women, stay women, become women." So not every female human being is necessarily a woman; she must take part in this mysterious and endangered reality known as femininity. ...”. Prior to the reception of her work the term ‘gender’ was a grammatical one used by linguists to identify nouns and pronouns (e.g. in Latin and French) as male, female, common or neuter. Its application to describe certain kinds of cultural identity was then an innovation.

Although the idea of ‘gender identity’ has recently entered into the vocabulary its status as socially constructed remains contested among philosophers, psychologists and others. Its primary usage had until quite recently been among feminists who wanted to argue that that certain conceptions of ‘femininity’ were the product of imbalances between the powers of the sexes, enshrined in cultural categories and norms.

Two points in all of this are important to appreciate. First, and notwithstanding the rare occurrence of individuals born with mixed or indeterminate primary sexual characteristics, the biological classificatory terms *male* and *female* have not been seriously contested or given new conceptions. Second, that the tertiary characteristics associated with *masculinity* and *femininity* have generally been held to have either objective or intersubjective criteria of application. In other words, it has been held by gender theorists that, like the natural category *sex*, the culture identity *gender* is something whose applicability is not a matter of self-determination or self-identification.

More recently, however, it has been proposed that unlike sex, gender is neither fixed nor binary, and that the criteria for its application are subjective and self-determining. That is to say that with respect to gender anyone is that which they claim to be, and that this 'identity' can be *multiple*: 'I am *both* masculine and feminine', variable 'I am *sometimes* masculine and *at other times* feminine' or other 'I am *neither* masculine nor feminine'. This idea of self-determining gender- (or non-gender)-identity has met with opposition from two quarters. First, from those who favour only the biological classification *male* and *female* (with the possible exception of 'intersex' which is taken to be the result embryological abnormality); and second, from feminists, and 'queer' theorists who hold that gender is also determinate and define themselves partly in terms of it.

The idea of 'Gender Fluidity' ('Non-Binary' etc) is therefore a controversial, prescriptive conception advanced by a small number of advocates rather than a theoretically stable or robust concept. Additionally, it appears internally incoherent. If there are no objective or inter-subjective criteria for its application by reference to which a claim to be 'Gender-fluid' say, can be adjudicated, then there is no concept or even conception (of a concept) at issue, instead there is simply an ungrounded declaration. This is why some have associated the rise of such terminology and associated behaviour with on the one hand attention-seeking, and the aspiration to celebrity; and on the other with histrionic personality disorder, and identity disorder. Less dramatically, however, one may think of it as involving a conceptual confusion between sexual and/or gender identity and personality characteristics.

3) Conclusion

Whatever view might be taken philosophically or psychologically of the issue, what is clear is that the very notion of 'Gender fluidity' and of kindred notions is theoretically highly controversial, contested, and practically challenging inasmuch as it is taken by advocates to ground moral and political claims of recognition and rights. As such while it might be a matter for discussion in the Humanities and Social Sciences learning area of the Australian Curriculum (presumably in relation to Civics and Citizenship) it could not and should not be presented as uncontroversial, and the sorts of points summarised above would need to be cited along with the views of advocates.

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