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Transgressive Definitions: Kimberly Nixon and the Sociological Effects of Language Imprecision

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Transgressive Definitions:
Kimberly Nixon and the Sociological Effects of Language Imprecision

By

Meaghan Fisher

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Kimberly Nixon and the Sociological Effects of Language Imprecision

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ABSTRACT

In 1995 Kimberly Nixon, a transsexual woman, attempted to become a peer counsellor at Vancouver Rape Relief Society. Based on that organization's restrictive definition of the term 'woman,' she was denied this opportunity based on her previous male identity. This thesis looks at the use of language in identity and category construction, using the *Nixon* case to ground theoretical work. It also uses the concept of vagueness to investigate the nature of categorical boundaries, and queer theory to propose possible solutions to problems of identity labelling.

DEDICATION

To my Grandpa, Dr. Charles P. Fisher. His enthusiastic and steadfast support of my

academic pursuits is one of my most cherished memories of our time together.

ACKNOWLEDGEMENTS

This thesis could absolutely not have been completed without my committee. My advisor, Dr. Gerald Cradock has been a great source of advice and encouragement throughout this process. His reminders to keep my research grounded have helped to keep this project within manageable limits. Dr. Jane Ku has helped me to see the connections between my work and real individuals, which has led me to consider the potential practical applications of this research. Dr. Karen Engle has been incredibly supportive of my interest in abstract concepts, the contemplation of which has been the most exciting aspect of my time at the University of Windsor. Thank you.

I am very fortunate to have some great friends, whose contributions to my life and work are very significant and valuable. I especially want to recognize Thea Shaw, Betty Kershner and Gillian Stager. My life is much richer for having these women in it.

Finally, and most importantly, I want to thank my family. I am incredibly privileged and grateful to have such patient, understanding, loyal, and loving people in my life. None of the work I have done academically, and especially personally, would have been possible without their encouragement and unwavering support. My parents Mark and Joanne, and sisters Whitney and Courtney are all people I am very proud of, and whose presence in my life is my greatest blessing.

TABLE OF CONTENTS

INTRODUCTION

This thesis is essentially about the implications of the ways that we, as individuals, use language. On its face, we might assume that language is merely a neutral system of communication, allowing us to relay our ideas to one another. However, when we look closer we can see that, in Latourian terms, language is not simply an intermediary that "transports meaning…without transformation" but a mediator which "transform[s], translate[s], distort[s], and modif[ies] the meaning…[it is] supposed to carry" (39). Language plays an active role in the ways that we understand ourselves and each other, and has the ability to create opportunities or to limit them, depending on its application. How people engage with language in order to support their position is at the heart of what I will be exploring over the course of this thesis.

In order to communicate, each person using language must have a working definition of the words they employ. These definitions often, although not always, bear some resemblance to the definition(s) that appear in dictionaries. Sometimes, these words are used in ways that are completely unconnected to their standard definitions. In these cases, we might just correct the speaker, given that their understanding of the word is simply incorrect. Other times however, even when two speakers are using the same word in ways that correspond adequately with the official definition (as laid out in standard dictionaries), their actual significance can be incongruous. In these cases, it is not as simple as correcting one or another of the speakers. At this point, it is useful to parse the actual intended meanings of the

word, as employed by each participant in a verbal exchange, in order to be able to determine how they are effectively being used, and to be able to develop an understanding of the others' statements.

Unfortunately, most verbal exchanges do not begin with each participant defining what, precisely, they mean by each of the words they are about to use. While this would likely be very helpful in minimizing the number of misunderstandings or the degree of their complicating effects, it would be impractical to undergo such explanations before every kind of verbal interaction. In this way, we prioritize efficiency over clarity. Most of the time, this appears to be a reasonable compromise. People generally use words in similar enough ways that communication can be effective without having to explain the meanings behind each of our word choices. When it becomes apparent that the participants in a verbal exchange are using a given word to mean different things, the conversation will often turn to clarifying each participant's meanings before continuing the interaction. For most interactions where words are used in conflicting ways, this is sufficient to achieve clarity. Some disconnects between word choices, however, call for more investigation in order to make sense of the issues they raise.

In *Kimberly Nixon v. Vancouver Rape Relief Society*[1] we see an excellent example of two entities using the same term, "woman," in conflicting ways. Kimberly Nixon, a transsexual woman, uses the word in a way that includes her experience of womanness, one which falls outside of expected norms, but one that nonetheless can arguably belong under the umbrella, "woman". Conversely, Vancouver Rape

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[1] Hereafter, *Nixon.*

Relief Society (VRR) employs a much more restrictive definition of the term, one which excludes individuals like Kimberly Nixon, whose female sex and gender identities were not assigned at birth and whose experience therefore lacks certain milestones which VRR believes to be essential to legitimately identifying oneself as "woman". The consequence of this conflict of language use is that Kimberly Nixon was denied the opportunity to volunteer as a peer counselor with Vancouver Rape Relief on the basis that she was not the right kind of woman to meet the criteria set by the organization for its membership.

The fact that both Kimberly Nixon and Vancouver Rape Relief can employ the same term in conflicting ways, and both arguably be correct, is a testament to the polysemic nature of language. While language can be understood as a broad system of signs and signifiers that work together to allow those that employ it to communicate with one another, it also exists at an individual level (Derrida, 1974; Saussure, 1959). Each individual who uses a language has their own personal understandings of the words that comprise their vocabulary. While these understandings are generally similar enough to facilitate communication between individuals, they may differ in the precise meanings given to them by their users.

What this means for language is that if we were to chart the use of a word by its speakers, it would appear not as a single point on a graph but more like a cloud, with a higher concentration of points at its center, and a more diffuse representation of points as we move toward the edges[2]. This is to say, most people would have a

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[2] It has come to my attention that my conceptual work here mirrors that of Sainsbury and his use of a magnet's effect on iron filings to describe the nature of language and categories. Though my work was conducted without explicit

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fairly similar understanding and way of using a given word, but there would be

outliers whose interpretation and use of a term would be relatively different from

the rest. These outliers would not necessarily be wrong in their difference, but their

existence would be evidence of the fact that language can be used and interpreted in

more ways than a standard dictionary or popular definition would offer.

Outliers in language use are incredibly important to the practical use of

language, in several ways. First, the misunderstandings that occur because of

differences in meaning can actually become opportunities for clarifying our

positions, rather than taking for granted that the other person understands our

meaning. Second, the fact that every person who uses a language does not

necessarily share the same meanings for words is vital to the evolution of language

over time. If language were concrete and specific, there would be no way for a word

to change its significance as needed. For example, language would not be able to be

reappropriated for new uses if it were only able to mean one specific thing. New

words would constantly have to be created as new discoveries were made, and old

words would be permanently retired, except to recount history, as old ideas and

technologies became obsolete. Third, there is an argument that language can restrict

the things we are able to think about. Wittgenstein says, "When I think in language,

there aren't meanings going through my mind in addition to the verbal expressions'

the language is itself the vehicle of thought" (in Harris, 27). Is it possible to imagine

things that we do not have words for? If not, the fact that language is used in ways

knowledge of his, it is possible that his work somehow influenced the development
of my own similar understanding of the nature of language and categories, and I am
therefore acknowledging his work and this possible transfer of ideas.

that incorporates outlier ideas can help to counter this restriction. Fourth, the fact that language can be used in ways that most people do not employ it can be used as an opportunity to find space for one's particular identity or ideas. A woman like Kimberly Nixon is able to employ the term that best fits her identity, regardless of its usual understanding, because language is somewhat flexible. Without this kind of flexibility, anyone whose personal characteristics did not fit within the confines of a given category would have to find another separate place for themselves within language. In this way, flexibility in language can allow people to feel included. They can include their experience within a given word-category, and broaden the understanding of what it means to be that thing.

That language is flexible is an important feature of it, not only for those that would use it to broaden understandings of words, but also for those who would act to restrict it. By taking a narrow view of the meanings of words, we can create restrictive boundaries of meaning whereby words, as we use them, can only apply to the particular things we include within the definition. In this way, the use of language can have political implications – either through the use of conservative definitions or broader, more liberal understandings and applications. It is important, then, to remember that language is not a neutral vehicle for understanding one another, but can also be used as a tool to legitimize and promote one's own understanding of the world.

The ways that we use language are not simply communicative, but can also be constitutive. That is to say, we can use language in ways that legitimize certain positions and de-legitimize others. In the case of *Nixon*, we can see that members of

the Vancouver Rape Relief Society use the term "woman" not just to indicate a type of individual, but also to delineate which types of individuals are not women. By creating a specific and exclusive definition for "woman," the organization is able to restrict their membership only to the people who fit the category as they have defined it. Their use of language acts as much as a barrier as it does a way to communicate their position.

In order to investigate the issues of language use within *Nixon* and their broader implications I will begin with an overview of the events of the case. This section will be relatively brief, just enough to provide context for the information I will be extracting from court transcripts and academic articles written about the case. Following this overview, I will identify a number of issues arising from these transcripts, and will use them to ground the arguments I make and conclusions I draw in subsequent sections of this thesis.

The next section will be on language use. I will be using the work of a number of different scholars to investigate the practical applications of language, the flexibility of language use and the disconnect between objects or individuals and their labels. This section will be perhaps one of the most theoretical of the thesis. Its purpose is to show the framework of language use that *Nixon* operates within, and also to show that this case study is by no means a unique circumstance. The issues around language that appear within *Nixon* are common, though not always with the same serious, tangible consequences. Presenting theory to that effect will help to bolster the connections between this case and other applications this work might have.

Categories are an important feature of this thesis. The way that we group items or individuals together and classify them as one thing or another is an act of highlighting certain features, and ignoring or de-prioritizing others. This is significant for two reasons. First, the process of classifying depends on language. We must delineate which types of characteristics are essential for belonging to a given category. In order to do this, we must use words to describe them, words which we will have already exposed as being problematic in terms of their ability to be used as universally understood signifiers. If language is not fixed, how can it create steady boundaries around categories?

Second, classifications are interesting for their prioritizing of certain characteristics in defining categorical boundaries. The more complex an item to be classified, the more traits it will have. In humans, we can see that identity categories, for example, necessarily involve the 'rounding up' of some features and 'rounding down' of others. So, while it is possible that no person will perfectly fit the 'man' or 'woman' category, by highlighting some of their features, whether physical, emotional, intellectual, etc., they can be made to fit. The problem is, sometimes individuals who can be easily made to fit one category might feel more at home in another. So, which types of attributes are we prioritizing while we divide groups of people up, especially into gendered categories? Further, is it possible that these categories are less 'natural' than we might expect, and if they are constructed, can we begin to exert more agency in how we are categorized, based on our own understandings of ourselves?

Throughout these two sections, I will be employing vagueness theory to look at how boundaries can be 'fuzzy'. With this, I will also be looking at how it is possible that an individual like Kimberly Nixon can at once be legitimately categorized as a woman *and* as a man. Conversely, it is possible for her to find herself in neither category, which is very problematic for a binary system.

Finally, I will be using queer theory to look at how people have already been using the flexible features of language to locate themselves within it. This section will look at the reappropriation of words, the creation of new terms and categories, and the political and social implications of this claiming of linguistic space. This section will be where I begin to find possible answers to the questions I raised in the first section.

Ultimately, I want this thesis to recognize the problems that multiple understandings of words can create, then use those problems to find opportunities for new ways to think about the issues I present, and to show possible implications of these potential new approaches. I intend for this thesis to be both realistic and hopeful. First we need to recognize the issues that language use can present, and then we can attempt to find solutions.

METHODS

In order to conduct the research involved in this thesis, I began first with the intention to examine how language can be an effective method of communication despite the fact that it is applied in as many particular ways as there are individuals that use it. Given that this is a highly theoretical research topic, I chose to ground it in a case study of the conflict between Kimberly Nixon and Vancouver Rape Relief. My intention was to use concrete examples from the case study to demonstrate the practical applications and consequences of different types of theory.

I decided to use the Kimberly Nixon v. Vancouver Rape Relief case in particular because of its explicit use of a single term, 'woman,' in two conflicting ways. It is also useful for showing the serious practical implications that language can have, given the legal ramifications for both Kimberly Nixon and VRR, and the limiting effect language ultimately has on the opportunities available to Ms. Nixon.

In order to collect data for the case study, I located each of the five court decisions related to this case. I then conducted discourse analysis as laid out by Norman Fairclough in his book, *Analyzing Discourse.* What this entailed was a close reading of each of the decisions, then coding the material using highlighters. I looked specifically for different intended meanings of the term 'woman;' the conflation of the terms 'sex' and 'gender;' biographical information about Kimberly Nixon that would support her claims to the term 'woman;' and the institutional framework that supported Vancouver Rape Relief's definition of 'woman'.

In order to support my ideas about the theoretical roots of the issues in

Nixon, I read extensively in three major areas of interest. First, I began with an

investigation of the basic texts of semiotics, especially Saussure. From there, I began

to look at how meaning could be severed from the object. In particular, I was

interested in how an individual could understand themselves as a woman, without

having had a female body. This led me to deconstructionism, especially Derrida,

whose work allowed me to think about the construction of meaning, particularly the

difference between embodied identity and expressed identity. That is, knowing that

you're a woman because you have a female body, and knowing that you're a woman

because you feel like one.

As a result of looking at how meaning is constructed, I began my work in

category construction with Ian Hacking's *Rewriting the Soul*, in which he discusses

the development of dissociative identity disorder from its roots to its current

diagnostic criteria. Following that, I read Bowker and Star in order to get a more

general sense of categories and their boundaries. Their work deals with the concrete

construction of categories, that is explicitly manufactured ways of understanding

types of things, especially medical diagnoses. In both Hacking and Bowker and Star,

there is a sense that even the boundaries around types of diagnoses and their

particular criteria, things for which there are entire diagnostic manuals designating

their parameters, are fuzzy. Presented with the somewhat unfixed nature of

categorical boundaries, I began to read Keefe and Smith's collection on vagueness,

which is what allowed me to investigate how different individuals or entities can

have such different definitions for the same words, yet both be arguably correct.

Finally, I used a collection of theorists, especially Judith Butler, Judith Halberstam and Michel Foucault, all of whom have done work centered on the LGBT community, to find some solutions to some of the questions about identity that surfaced during my work in the previous sections. I have titled this section 'Queer Theory,' though the work of the particular theorists I've used can be claimed by a number of different disciplines. I used this title for the final theoretical section of this thesis to indicate the way that I applied existing scholarship, not necessarily as an indication of the original disciplinary grounding of it. I used selections of their respective bodies of work that either already focused on issues relating to the LGBT community, or whose arguments could be tied to them in a logical, if not explicitly intentional, way.

This thesis does not include any new interviews with individuals involved with the *Nixon* case. Given that this project was initially conceived of as a theoretical paper about the use of language, and the *Nixon* case intended only to help to make the arguments I put forth more accessible, I did not feel it necessary to collect more first-person data. Instead, I made the decision to rely solely on the information located within the court decisions. Had the *Nixon* case and not theoretical arguments been the central focus of my work, I might have made a different decision about contacting and interviewing the actors in that case.

CASE STUDY

In 1995, Kimberly Nixon came upon an advertisement looking for women to act as peer counselors at Vancouver Rape Relief Society. Ms. Nixon had previously accessed these types of services at Battered Women's Support Services after she had been the victim of male and intimate partner violence (Findlay, 58). She had wanted to become involved as a peer counselor for that same organization, but because of a mandatory waiting period between being a client and becoming a volunteer she opted to work with VRR instead.

VRR is an organization whose guiding principles are "feminist, anti-racist, pro-choice and pro-lesbian" (*Nixon*, para. 23). In order to ensure that its prospective volunteers' political ideologies are compatible with the organization's, individuals must first undergo a pre-screening interview. Issues raised during these interviews include:

1. Violence is never a woman's fault,
2. Women have the right to choose to have an abortion,
3. Women have the right to choose who their sexual partners are, and
4. Volunteers agree to work on an on-going basis on their existing prejudices, including racism. (*Nixon*, para. 23)

During her pre-screening interview, Ms. Nixon indicated that she agreed with each of these statements, and based on these answers she was invited to participate in the next peer counselor orientation workshop. At no point during this initial contact was she asked about her gender identity, despite the fact that VRR had strict policies indicating that only women were allowed to act as peer counselors (*Nixon*, para. 25).

On August 29, 1995, Kimberly Nixon arrived at Vancouver Rape Relief to begin training to volunteer as a peer counselor. During this evening, she was called aside by one of the facilitators who, based on Ms. Nixon's appearance, suspected that she had not always lived as a woman. When Ms. Nixon was asked about whether she had ever lived as a man, she confirmed that she had been assigned a male gender at birth but had since transitioned and become a woman. Based on this information, Ms. Nixon was asked to leave the training based on the fact that "a woman had to be oppressed since birth to volunteer at Rape Relief and that because she had lived as a man she could not participate" (*Nixon,* para. 31). The following day, Ms. Nixon filed a complaint with the British Columbia Human Rights Tribunal claiming that she was being discriminated against on the basis of her gender.

Background

Kimberly Nixon was born in 1957, and at the time of her birth she was assigned a male gender. She reports that as early as four years of age she felt that her body, especially her male genitalia, did not fit with her sense of gender identity. She would dress in women's clothing in private, but maintained a male identity in public. Eventually, she decided that she could no longer maintain two separate gender identities, one in public and one in private, and in 1986, at the age of 29 she began to live full-time as a woman (*Nixon*, para .10, 11).

In 1987, Ms. Nixon began attending the Gender Disorder Clinic at Vancouver General Hospital. This is where, in 1990, she eventually had gender reassignment surgery, which effectively completed her transition from male to female. The legal

result of this surgery was that she was able to alter her birth certificate to indicate her female gender, meaning that she was now legally a woman (*Nixon*, para. 12).

In order to qualify for gender reassignment surgery, an individual must first be diagnosed with Gender Identity Disorder (GID), a psychiatric condition where an individual feels that their sense of personal gender identity is at odds with their biological sex. The term "transgender" is used as an umbrella term for individuals who feel this type of mental/physical disconnect between their gender and sex. Kimberly Nixon is a transsexual, a transgender individual whose mental and emotional sense of their gender is so at odds with their biological sex that they seek medical interventions, including hormone therapy and surgery, to rectify this incongruence (*Nixon*, para. 14-16).

It is important to clarify, at this time, that where I use the term sex I mean specifically physical traits, including genitalia and secondary sex characteristics, such as breasts, body hair and timbre of voice. Where I use the term gender I mean a mental and emotional state of understanding oneself as, in a gender binary, either a man or a woman. For the purposes of this thesis, I will be engaging with the idea that gender is a mutually exclusive and all-encompassing category. That is, every person must be either a man or a woman. I do this while recognizing that there are other ways of classifying gender and that depending on the societal context in which this thesis is read, my analysis may seem overly restrictive if there is a more permissive system of gender in place.

The reason I have outlined the precise ways I will be using the terms 'sex' and 'gender' is that many of the sources I will be drawing upon do not make such a

clear distinction between these terms. In cases where the terms become conflated, or the lines between them blurred, I will draw attention to this, both for clarity's sake, and to show practical examples of how language can be used in incongruous ways by different speakers.

An important feature of transgender and transsexual individuals is that their decision to live, or indeed become through medical means, a gender other than the one they were assigned at birth is not about becoming something different than what they are, but about bringing their bodies in line with their understanding of themselves (*Nixon*, para. 14-16). Therefore, while Kimberly Nixon may have presented publicly and been understood as a boy and later as a man, she maintained a consistent, life-long understanding of herself as female. It therefore can be argued that Kimberly Nixon had always been a woman, despite her assigned gender and presumed gender identity.

The reason both Kimberly Nixon's sex and gender are important is that it calls into question the criteria necessary to be considered a woman. Obviously, VRR believes that in order to be a woman, one must be understood as female from birth. That means that female individuals would have had a lifetime of lived experience of not only their own womanness, but also the ways that women are treated in their society. For VRR, then, being a woman is not only related to one's own body and sense of oneself, but also about the societal factors that act upon women. VRR is particularly concerned that in order to fully understand women's experience, one must have had a lifetime of experiencing women's oppression (*Nixon*, para. 31).

An issue with VRR's restrictive definition of 'woman' in terms of oppression is the idea that there is such a thing as "women's oppression." In order for there to be a universal experience of oppression felt by women, there would have to be a universal experience of being a woman. We know, however, that women do not share a singular, universal experience of their gender. In fact, there are as many different ways to be a woman and interpret that experience as there are women. It also seems to assume that gender can be separated out from all of the intersecting forces that act upon individual women, forces including race, class, sexuality, ability, age, etc. When we start to see the subjectivity of women's experience, we become aware that rather than a singular "women's oppression" there are perhaps women's oppressions, which have in common the limiting of opportunity, but the degree of those limitations, and how it appears in each arena of a given woman's life is highly individual. Further, women's oppression is not enacted only by men, but by other women. VRR's restrictive gender policy seems to suggest that in an environment made up exclusively by women who have a lifetime of experience of women's oppression, the threat of further oppression is limited. They do address the possibility of racial oppression in their guiding principles, but say nothing of the replication of broader societal power structures as they relate specifically to 'women's oppression' within the organization itself.

Arguably, and Kimberly Nixon does just that in her human rights complaint, VRR, an organization dedicated to addressing various types of oppression aimed at women, is actively engaging in oppression based on Ms. Nixon's gender. Given that Ms. Nixon had been a legal woman for several years at the time of her interaction

with VRR, and the fact that she had a lifetime of lived experience of understanding herself as a woman, it seems reasonable to suggest that she was not only familiar with the experience of women's oppression, but indeed experienced it at the hands of VRR members. Given that we have already established that women experience themselves and the unique forms of oppression acting upon them in individual ways, is it possible that what we are seeing in this instance is not a difference between experiencing women's oppression and not experiencing women's oppression, but the difference between two subjective experiences of women's oppression, and the privileging of one type over another?

These differentiations indicate two things. First, the obvious fact that individuals will experience the same incidents in different ways, depending on their particular positionalities. Social forces, including upbringing, social location, race, sexuality and even personality, will act to determine how a person is affected by events in their lives. Second, the fact that so much attention can be paid to distinguishing one type of "women's oppression" from another tells us that "women's oppression" is not a universally understood term, nor are the component words of that phrase. So, when we work to understand precisely what is meant by "women's oppression" we are not only trying to understand the term or the phenomenon, but also by determining which words fit which experiences, we are legitimizing a certain type of experience while delegitimizing another. In this way, language is not simply an indicator, but something that in fact creates meaning.

LANGUAGE

Semiotics

When linguists like Saussure (1959) and Derrida (1974) talk about "signified" and "signifier" they mean, essentially, the *thing*, and the word used to represent the *thing*. So, a long, thin object that allows a writer to distribute ink from an internal reservoir through its tip in controlled, deliberate patterns is the signified and "pen" is its signifier. These two things are linked well enough that if you were to ask someone to pass you a pen, they would almost certainly deliver something resembling what I've just described. However, the term "pen" is broad enough to encompass many different objects, the majority of which bear some resemblance to each other, but whose diversity is enough to allow for some potential confusion. For example, if a person wanted a specific pen from a group of pens, they would have to use qualifying adjectives to increase the likelihood of receiving the intended object. The term "pen" also encompasses objects that do not exactly match the above definition. For example, some pens do not contain an internal ink reservoir, and instead their nib must be dipped into inkwells in order to function. Pens whose ink has run dry can also be included within the signifier, "pens," despite the fact that they no longer function as the distributor of ink. In addition to the array of objects that can be referred to by "pens," this glut of signifieds can also be indicated by an assortment of different signifiers: quill, marker, writing implement, ballpoint, felt-tip, etc. If we branch out into languages other than English, the list grows exponentially.

The signifier "pens" can also be ambiguous. While in an office environment it would almost certainly apply as I've described, in other environments it could refer to entirely unrelated objects. In an agricultural setting, a pen could refer to an ink stick, but it could also refer to an enclosure used to contain livestock. In departments of corrections, it could refer to a penitentiary. When used in a sportscast, the term "Pens" might refer to the Pittsburgh Penguins hockey team. In this case, the capitalized first letter might indicate to a reader that the writer was speaking about an organization whose name is a proper noun, which would help to decipher the intended meaning. A listener, however, would not have access to that same clue, and would instead have to rely on its use in context to be able to determine the nature of the thing being signified.

Using this example, we can see that even a simple term, "pen," which relates to a common object can be the source of some confusion. The object being signified does not conform to a uniform standard. Pens come in a wide array of designs, and can function in different ways, and sometimes not function at all, but are still grouped together based on a vaguely similar set of characteristics. The signifier is also not a fixed entity. Multiple words can be accurately used to indicate the signified objects. And many different signified objects can be indicated by the word "pen". When we consider all of these variables, we can see that the relationship between even a simple signifier and signified can be complex.

Considering that pens are not conscious beings, there are far fewer compounding factors in terms of the disconnects between signifier and signified than there can be when the objects in question are able to exert some agency about

their position, and who have an active role in their relationships with social forces. While our understandings of pens and their significance in context can cause shifts in their implied meaning, pens can never actively disrupt the meaning being placed on them. People, however, are constantly negotiating their relationships with various signifiers.

Kimberly Nixon is an excellent example of someone engaging with their signifiers. As we've already established, Kimberly Nixon was assigned a male gender identity at birth. The reason for this assignment is that she was born with male sexual organs, and the society she was born into assumes a natural link between male genitalia, masculine personality traits, and a male gender identity[3]. For many people, this set of associated physical, mental and emotional characteristics would be largely accurate. Rather than aggressively rejecting masculinity or 'man-ness', many people assigned a male gender identity would instead work within that category to become a certain *type* of man. Ms. Nixon however, became aware at an early age of the disconnect between her body, her male gender identity, and how she understood herself at an intrinsic level. As an adult she chose to alter her physical body and her public identity to better reflect her gendered sense of self. While the medical and surgical interventions are an important part of Ms. Nixon's transition, I would argue that the shift in the language she used to identify herself to others is at least an equally important component.

Ms. Nixon was able, even as a child, to recognize that the gender identity assigned to her was incongruous with her personal sense of self. Despite a wide

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[3] Halberstam's work in *Female Masculinity* (1998) challenges this essentialist link.

range of external forces attempting to reinforce her male gender, including the strong link between male genitalia and presumed masculinity, Ms. Nixon retained a sense that the labels being applied to her were incorrect. Without the ability to exert her agency in response to these signifiers, she would have been required to retain a male identity based on the external evidence supporting this designation. However, because of a strong desire to have her public identity match the way that she experienced her gender, and because of the flexible nature of language and its definitions, she was able to carve a place for herself within the word "woman," and use emotional and intellectual evidence to support this locating of her gender identity. Based on her use of gendered terminology, it is arguable that these signifiers have more to do with a person's sense of identity than the physical characteristics of their body, and the social reinforcement of a strict connection between primary and secondary sex characteristics, and gender.

VRR, on the other hand, takes a much more conservative view of the characteristics that must be present in order for an individual to accurately, according to them, employ the term "woman" for themselves. Some of these characteristics include being understood and treated as a girl and then a woman, experiencing discrimination and oppression because of their femaleness. In addition to these, most women will go through puberty and menstruate, although some women who would be designated as such by VRR would not experience these, due to various physical conditions (*Nixon,* para. 160). Although its reading of the term "woman" is very restrictive, its definition of "oppression" must be very broad in order to encompass all of the different ways that individual women experience and

interpret gender-based societal pressures. In fact, it is possible for individual women's experience of gendered oppression to bear little resemblance to one another, and indeed it is possible for women to exert these kinds of forces on other women, rendering them not just passive targets of oppression, but perpetrators. However broad their definition of "women's oppression" however, it is clear that only individuals who have been understood as female since birth can have experienced it. An individual like Kimberly Nixon, according to them, may have experienced gender-based oppression on the basis of being transgender, but that would not be sufficiently analogous to qualify her as a *real* woman, and therefore would leave her without the qualifications to act as a peer counselor for their organization.

Speech Genres

One of the ways we can understand how two entities can use the same word, yet have such different meanings is by looking at the work of Bakhtin. In his essay, "The Problem of Speech Genres" (1986), he says that a given word exists in three ways: First as a neutral entity, just another part of a language. Second, it exists in the way that another person uses it, at this point it is their word, with their intended meaning and its context. Third, it exists in the way that the person speaking uses it, which is affected not only by its context, but also by that person's history and their purpose for using the word (88). Regardless of any serious misunderstanding of a word's actual (neutral) definition, every time a word is used it is necessarily given a

distinct meaning by its speaker, as shaped by the speaker's history, understanding of the word's significance, and its linguistic and situational contextual environment.

Except when it exists in its passive, neutral state, language is its own active force, not merely something to describe the actions and circumstances of other sources of power. Evidence of this can be found any time an argument is made with special attention to the style and persuasive potential of the language being used. If language were simply a conduit, the same argument could be made, and be equally successful, regardless of the actual words employed.

The way that words are used is not the only important aspect of an interaction between individuals. The way that words are understood is an equally important part of language-based communication. In his essay, "The Death of the Author" (1968), Barthes argues that in language-based communication, the most significant part of an interaction is not what is said by the speaker, but how that is interpreted by the listener. He is focused primarily on the written word, but his argument is applicable to other modes of communication. When we speak, our purpose is always to be understood by another. So, while we might choose our words carefully in order to maximize the chances of comprehension on the part of the other person, what is of particular importance is how the words are interpreted, understood and reacted to.

The Polysemic Woman

In Kimberly Nixon's case, we see a disconnect between what is intended and what is understood from the very beginning of her dealings with Vancouver Rape

Relief. Her attempt to become involved with the organization began when she responded to an advertisement calling for women to volunteer as peer counselors for other women who had been the victim of male violence (*Nixon*, para. 20). Nixon had previously experienced intimate partner violence and sexual assault at the hands of men, and had received peer-led counseling for these traumas from Battered Women's Support Services (para. 21). Therefore, when she came across VRR's call for volunteers, she used her past experience, both as an individual who identified as a woman, and someone who had been eligible to receive women-only services after her own experiences of male violence, to interpret the ad's specification that peer counselors be women as including her within that designation. VRR, on the other hand, had used their own particular sense of the term "woman" to indicate that only women who had been born and raised as female were able to volunteer as peer counselors, given the fact that they would have the requisite lived experience to identify and relate with their clients.

This multiplicity of definitions and interpretations of a single word is an example of what Barthes calls "polysemy" in his essay, "Rhetoric of the Image" (1980). Writing about photographs, he says, "…all images are polysemous; they imply, underlying their signifiers, a 'floating chain' of signifieds, the reader able to choose some and ignore others. Polysemy poses a question of meaning and this question always comes through as a dysfunction…" (274). Though he uses photography as his subject in this essay, the concept is easily applicable to the use of language. What it means is that every word has a range of associated features, and the meaning of the word changes based on the specific features, or signifieds,

intended by the user of the word. In this way, it is possible for there to be multiple legitimate meanings for a given word, depending on which items it is used to indicate.

In his essay, "Signature Event Context" (1988), Jacques Derrida is careful to specify the difference between polysemy and what he calls dissemination (2). When a word is polysemic, it means that it can be understood or defined in a variety of still-specific ways. That is, though individuals can have different, sometimes opposing, ways of understanding a word, each of them has a precise comprehension and way of using it. Dissemination, according to Derrida, would mean that the word is being used in vague, indeterminate ways. So, while when all understandings of a given word are taken together it can appear that the word loses any precision it might have had, a better way to interpret that sort of data is by recognizing it as a collection of discrete points, each of them deliberately located.

This sort of diverse specificity in language use can clearly be the source of confusion and misunderstanding. In *Nixon* we see this very clearly. Each entity, Kimberly Nixon and Vancouver Rape Relief, is using their own precise definition of what type of individual can be accurately called "woman." The reason they clash is that, while they are both arguably correct, they are not correct in the same ways. Kimberly Nixon's definition of "woman" focuses on issues of personal identity, a sense of belonging, and performing gender in a way that fits within a generally accepted range for women. We can know this about her definition because it necessarily includes her. If her definition of "woman" were more focused on being consistently understood as female, or on biological markers, or on childhood

experiences of gendered socialization, she would not fit her own understanding of the term. So, even without an enunciation of her precise definition of the term, we can make a reasonable inference of her intent by taking into account the factors necessary to ensure her belonging within this group signifier.

Vancouver Rape Relief, on the other hand, must have a definition of "woman" whose component parts are sufficiently at odds with Ms. Nixon's as to create a significant conflict. In the organization's case, we do have an exposition of the precise nature of their understanding and employment of the term "woman":

> ...only a woman, born so, and who grew up understanding what it means to be a girl and a woman in an oppressive society, could understand Rape Relief's political view of male violence and, therefore qualify as a 'peer' for Rape Relief's purposes (*Nixon,* para. 44).

This definition of 'woman' exists within the organization of VRR, and is useful for their purposes. It would not, however, be a very effective definition in other environments. In terms of everyday usage, it would be far too cumbersome to ensure that every person using the identity label 'woman' fit the terms of VRR's definition. In fact, this definition would likely disqualify many individuals who were born female, if their upbringing or outlook kept them from understanding oppression in the way required by VRR.

Vancouver Rape Relief uses the term 'woman' in a way that is specific and significant within their organization, but would be ineffective if it were used to mean the same thing outside of the group. That is to say, the way that 'woman' is normally used and defined in terms of everyday speech bears little resemblance to the way VRR uses it. Bakhtin calls this phenomenon "secondary speech genres" (62).

According to him, secondary speech genres are formed by taking primary speech genres, that is, the usual way words are used, and absorbing them into a specific kind of speech environment or genre, where they begin to make sense only in relation to the other terms within that format (62). When VRR talks about women, they are speaking about the kinds of women that they understand using their specific institutional speech genre. That type of woman only exists and makes sense in relation to their organization. So, when Kimberly Nixon uses her type of 'woman,' which is arguably part of a separate type of secondary speech genre, to challenge VRR's type of 'woman,' they come into conflict not only because of their separate understandings, but because of the ideological environment within which each of these types of 'women' come to be. The words are not just collections of letters, or even signifiers attached to a signified object, but they are ways of communicating a belief system which allows each entity, Nixon and VRR, to define 'woman' in two distinct, conflicting ways, both of which are arguably correct.

When this conflict between VRR and Kimberly Nixon makes its way to the judicial system, the legal secondary speech genre supersedes. This means that not only are Kimberly Nixon and VRR's definitions of 'woman' in conflict with each other, but they are now forced to align themselves with a legal definition of 'woman,' in order to argue their cases. This appears to be more difficult for VRR, likely because their definition of woman is more rigid and specific in its usage than Ms. Nixon's. While Ms. Nixon might find herself outside of an everyday definition of 'woman,' she is still able to stake a legitimate claim to the term based on medical and legal grounds. VRR's insistence on patriarchy and oppression as necessary

components of women's experience means that their understanding is much more narrow and exclusive, and less likely to be commonly used.

Within the legal structure, we can see some evidence of VRR's membership pushing back against the confines of the speech genre, in an effort to assert their position, and to maintain some control over the way that their arguments are understood. An excellent example of this is when Vancouver Rape Relief's counsel calls Ms. Lee Lakeman to testify during the Human Rights Tribunal. During her testimony, Ms. Lakeman states that she is aware that Ms. Nixon's birth certificate, as it existed at the time of her attempt to volunteer at VRR, reflects her post-operative sex with an 'F' under the gender heading. Despite having knowledge of her female legal status, Ms. Lakeman insists on referring to Ms. Nixon using male pronouns. When she is asked by Ms. Nixon's counsel to use female pronouns, she reluctantly agrees, but is sure to first register her dissent into the record (*Nixon,* para. 151). This active resistance by a member of VRR's organization is evidence both of the fact that the legal speech genre challenges their authority, and of an attempt to reframe and reassert their expertise as it relates to the structure of their organization and its ideology.

Ms. Lakeman is clearly aware that Ms. Nixon's legal status is female, yet she uses male pronouns to indicate her understanding that Ms. Nixon is not really a woman, despite medical and legal evidence to the contrary. Without explicitly challenging the authority of the Human Rights Tribunal and the legal system in general, Ms. Lakeman is able to defy them by choosing pronouns for Ms. Nixon that indicate her objections. In this way, she enters both her understanding of the term

'woman' and a demonstration of the authority of VRR's speech genre and the power associated with it into the record.

When Ms. Lakeman testified during *Nixon,* there were at that moment effectively four speech genres acting at once. There was Vancouver Rape Relief's secondary speech genre, with its conservative definition of woman. There was Kimberly Nixon's secondary speech genre as enacted by her counsel, whose definition of woman is permissive enough as to encompass her experience of womanhood. There was the legal secondary speech genre, which Ms. Lakeman was reacting to; her resistance to its structure and her eventual reluctant adherence to it are actually what make it most visible. Finally, there was the primary, or common, speech genre, that is, the usual way the term 'woman' is understood in everyday conversation. This speech genre is particularly present when reading the transcript of the interaction without prior knowledge of the forces at work in the language being used.

What is interesting about having so many different types of speech genres acting at once is that they are necessarily influencing one another. For instance, Ms. Lakeman would not have had to be so actively defiant if the legal speech genre and judicial framework were not so confining. If she had been free to speak and act as she pleased, she would likely not have found it necessary to assert her position so forcefully. While she eventually had to adhere to the rules of the Human Rights Tribunal, she was still able to demonstrate her dissent, and this found its way even into the written record.

Any time that different understandings of language, including as part of different secondary speech genres and expert discourses, interact with each other, they necessarily exert some kind of influence on one another. This influence may not immediately result in a major change in the definitions or use of given words, but they will eventually result in some alteration of meaning, given enough repeated exposure to other forms of the word. In this way, conflict about the meanings of words can bring about a kind of evolution in language.

While changes in language do not all come about in specifically this manner, it is important to note that the possibility for alterations in the meanings of words are built into the nature of their use. If language were fixed, that is, if every word held precisely the same meaning for every user in every context, there would be no room for evolution. Every word would mean precisely the same thing as it did when it first came into use. This would both force the creation of new words every time the need arose for a way to express something that had not already been assigned a signifier, and it would have the potential to stunt the growth and change of society at large. Without the ability to repurpose old words, it would be difficult to both conceive of, and especially to express, new concepts (Saussure, p. 163-167; Derrida, 1988). The beauty of being able to make use of the flexibility of language is that words can be used in different contexts to signify different ideas. For instance, 'percolate.' It usually signifies the process of preparing coffee in a specific manner, but it can also be used to express the act of allowing ideas to flourish and be refined until they are fully formed. If percolate only ever meant to make coffee, it could never have this second application, and the imagery shared by these two concepts

would only ever be allowed to exist in its physical sense, and not in terms of thought processes.

Repurposing old words is important also for emerging identity groups, or for people attempting to gain legitimacy by appropriating words associated with already established groups in society (Butler, 1993: p. 226-230). We will explore this more fully in the final section, but it is important to note that much like Ms. Lakeman's resistance to the secondary speech genre in use during the Human Rights Tribunal, the use of language can be a political act in and of itself, depending on the contexts and the allusions that the words themselves make.

Sex and/or Gender

Much of this thesis has dealt with how a single term can be used in ways that are sufficiently different as to cause misunderstanding or disagreement. Another issue I would like to address is how two terms can be used to indicate more-or-less the same thing, with confusing results. In particular, I would like to focus on the terms "sex" and "gender" and how they are used sometimes interchangeably, despite their actual (neutral, according to Barthes) meanings. I want to use this example to show that sometimes the ways that words are actually used are more important than their standard, dictionary definitions. By this I mean, a dictionary can indicate that a word means anything at all, but unless that is how the word is generally employed in actual interactions between speakers, its standard definition is irrelevant. This is another way we can see that language has the opportunity to transform itself – by becoming different than its original meaning, it extends the

limits of the word, encompassing both its theoretical (dictionary) meaning, and its practical meaning, as it is used by individuals in their verbal interactions.

We have already explored how differing definitions of the term "woman" are central to the conflict between Kimberly Nixon and Vancouver Rape Relief. The impact of the conflation of "sex" and "gender" within the legislative and legal systems as they relate to this case is also very significant. Where the use of the term "woman" in this case involves the use of a single signifier to indicate different signified objects or individuals, this new set of terms has a somewhat opposite application. In this case, we have two signifiers used inconsistently to apply to a variety of signified concepts. In order to begin to discuss this complex use of language, I will first define these terms as I understand them, which will help to show why I find their use in the context of the various legal proceedings involving Kimberly Nixon and Vancouver Rape Relief inconsistent, confusing and ineffective in terms of their ability to differentiate between two somewhat related concepts.

When I use the term "sex," I use it to indicate one's physical self, especially genitalia, though secondary sex characteristics are also related to my understanding and employment of this term. When speaking about sex I use the terms male to indicate individuals with a penis and testes, and female to indicate individuals with a vulva. There are also individuals whose sex is atypical for a range of physical, hormonal, chromosomal reasons, or combinations thereof. These individuals are referred to as intersex. Some of these individuals or their parents decide to take surgical measures to better align the appearance, and sometimes function, of their genitalia with 'typical' male or female genitalia.

It is my understanding that Kimberly Nixon's sex at birth and throughout her early life was male. I base this understanding on the fact that she was born with a penis, and later developed the secondary sex characteristics normally associated with male individuals; low voice, facial hair, etc. I also understand that non-genital surgical interventions such as breast implants, electrolysis to remove unwanted body hair, etc. were performed in an effort to bring her physical body more inline with her desired female sex. At this point I would say that she was presenting as female, but her sex was still technically male. At the point at which she underwent sex reassignment surgery, the result of which was the construction of a vulva and vagina from what had been penile and scrotal tissue, I would assert that Ms. Nixon had changed her sex from male to female. The fact that the sex designation on her birth certificate was able to be altered from "M" for male to "F" for female after this surgery indicates that the law also interprets genitalia to be indicative of sex.

"Gender" is far more difficult to define. For ease of understanding, I will say that gender is an intellectual, emotional and spiritual understanding of one's self as a composite of masculine and feminine traits, usually leading to the adoption of an identity label of either "man" or "woman." Gender usually falls in line with a person's physical sex, and when this is the case these individuals can be called cis men or cis women, using a geographical term to indicate both signifiers being on the same side of a division, that is a man who is physically male or a woman who is physically female. Gender can also be inconsistent with a person's physical sex, meaning that a male-bodied individual can feel a sense of personal belonging within the category "woman" or visa versa. The umbrella term transgender is applied to

individuals whose gender and physical sex are not aligned in terms of male/man, female/woman. Within this umbrella, we find a range of experiences and labels. An example of this is that Kimberly Nixon is transgender, and more specifically she is transsexual, meaning that she felt it necessary to change her physical sex in order to bring it into harmony with her gendered sense of herself.

My understanding of gender is that it is comprised of two basic parts: identity and expression. Identity tends to be more rigid, though not immovable, while gender expression includes things like clothing choices, preferred hobbies and activities, hairstyles, ways of expressing one's self, and especially ways of understanding one's self in terms of masculinity or femininity, all of which lend themselves to the public performance of one's personal identity as it relates to man-ness or woman-ness. It is also a space where contradictory experiences of one's self are possible, an obvious example would be women performing typically masculine occupations, and men doing things like homemaking.

Some people like to conceive of gender as being on a spectrum, with masculinity on one end and femininity on the other, with people falling somewhere along its length. This concept of a continuum likely originates with Alfred Kinsey's studies into human sexuality, wherein he placed homosexuality on one end of a scale, and heterosexuality on the other. If this is, in fact, the origin of the concept of gender being on a continuum, it is an example of the conflation and confusion of the terms 'sex,' 'gender,' and 'sexual orientation.'

My understanding of gender is more complex than a singular continuum with male on one end and female at the other. I see that there are many factors affecting a

person's gender identity, and depending on context, those factors can have more or less influence on a person's actions and sense of themselves. One of the most important of these factors is a person's own agency about their gender expression, which can vary for a wide variety of reasons, including things as simple as their emotional state at any particular moment.

Despite the fact that sex and gender, as I have presented them, are very different concepts, they are terms that are often confused or conflated. While in casual conversation this might be either insignificant or easily rectifiable, when these terms are misused in things like legislation or judicial decisions, the consequences become much more serious. In *Nixon*, we are presented with many different instances of this issue of language use, and in the subsequent appeals the interpretation of sex as opposed to gender actually influences the decisions made by the presiding judges.

The entire legal interaction between Kimberly Nixon and Vancouver Rape Relief amounts to one complaint before the BC Human Rights Tribunal, *Nixon,* two cases before the Supreme Court of British Columbia, both of which were brought by VRR. The first of the Supreme Court cases was to argue that the Human Rights Tribunal's jurisdiction did not extend to the claims that Kimberly Nixon was making against them, and the judge ruled against VRR in this case. The second Supreme Court case was an attempt to overturn the Human Rights Tribunal's judgment for Kimberly Nixon in *Nixon*. VRR won this case, and the decision of the Tribunal for Kimberly Nixon was set aside. The cases before the Court of Appeal for British Columbia were both brought by Kimberly Nixon, and were attempts to have the

second Supreme Court judgment set aside. Ms. Nixon was unsuccessful with her appeals, and as of the last one in 2005, not only had the Human Rights Tribunal's findings been overturned, including an award of $7500 for "compensation for the injury to her dignity, feelings and self-respect" (*Nixon*, para. 446(a)), but she was ordered to reimburse VRR for their costs relating to these cases and appeals.

There are a great number of ways to examine and interpret the data provided by the transcripts and decisions of these cases, not least of which is from a legal framework, investigating the reasons for the arguments and decisions made by the different actors involved. For my purposes, however, these documents and their data will be used to demonstrate practical examples of how the terms 'sex' and 'gender' are used, and how their confusion and conflation can lead to serious consequences for people, depending on how they are applied within a legal context. The work that I do with regards to these terms could be used by another researcher to evaluate the soundness of certain legal arguments, but this application is beyond the scope of this thesis, and would likely be best handled by an individual with a legal background, which is not something that I possess.

The law at the heart of the conflict between Kimberly Nixon and Vancouver Rape Relief is Section 22 of the British Columbia Human Rights Code of 1973, which was later replaced by the 1984 Human Rights Act. This section states that if an organization's primary purpose is to promote the "interests and welfare" of an identifiable group, including a group defined by their "sex," they would be exempt from being considered to be contravening the Human Rights Code/Act when they limited their scope to include only members of that identifiable group. What this

means is that when VRR's application for a women-only hiring policy on the basis of this section was approved in 1977, they were no longer required to treat all applications equally, and were allowed to set the terms of their membership requirements to reflect not only their women-only organization, but also to reflect their particular definition of the term "woman" (2000 BCSC 889, para. 6-9).

What is interesting about the wording of Section 22 is the term "sex." Given what we have established as a working definition of the term, in order to determine whether a person's sex qualified them for service within an organization whose membership was determined by this characteristic, it would be necessary for anyone trying to join such a group to undergo some type of physical examination. Based on the testimony given by the witnesses in the court proceedings between Kimberly Nixon and VRR, it appears that at no point was anyone, including all of the individuals who had become involved with the organization before Ms. Nixon made her attempt at volunteering, ever subject to a physical assessment of their sex-based qualifications.

The idea of undergoing a physical examination to determine sex seems ridiculous, especially when it is proposed as a requirement for activities such as answering phones or counseling individuals through difficult personal issues. At no point would a person be expected to perform any kind of activity that related specifically to their sex and sexual functions. Despite the law's wording, I do not expect that its intent had anything to do with making sure that everyone's genitalia was appropriately suited for their involvement with women- or men-only organizations. Instead, I believe that the more appropriate word would have been

'gender,' and if the term 'sex' were determined to be necessary, an explanation of its specific meaning in context would be useful. For example, based on my understanding of the law and its practical application, I would define 'sex' in this context as a set of physical characteristics leading to a social understanding of an individual as either male or female. This provides a means of determining sex, for the purposes of this law, without having to specifically determine the nature of a person's genitals. Even without this clarification of the word's intended use, it appears that this is how the term is interpreted by both the organizations affected by the law, and by the judicial system.

In *Nixon*, the Human Rights Tribunal states that

> ...it is permissible for Rape Relief to discriminate on one gender ground, the exclusion of men. All parties agree to that proposition. Further all parties appear to agree that sex/gender is not binary. That is, humans are not sexed or gendered along binary male-female distinctions; rather, sex and gender fall on a continuum. Hence, they submit that the distinction they made against male to female transsexuals is not discriminatory. (*Nixon,* para. 91)

This section is indicative of a number of the contradictions and conflations in understanding that exist within both public perception and even the legal system in terms of sex and gender. First, only the category 'sex' is protected by Section 22, as it pertains to this case. The term gender is never used in the legislation, yet it finds its way into the Tribunal's decision, even being used in the same compound term, "sex/gender". This is particularly important because it seems that throughout each of the five court decisions that I have analyzed for this thesis, the terms sex and gender appear to be used indiscriminately to mean some combination of physical and psychological markers that delineate men from women.

The fact that this section of the *Nixon* decision uses both sex and gender, yet fails to draw a clear distinction between the terms is especially interesting when we consider Bakhtin's concept of secondary speech genres. Given that the legal system, of which the Tribunal is a part, utilizes a very particular kind of speech genre, which supersedes other speech genres, we would expect that it would have a strict definition for concepts as important as sex and gender. However, it appears that these terms are used in much the same indiscriminate way that they are used in primary, that is common, speech genres. This is clear both from the source material I have used, and the laws themselves which form the basis of the legal proceedings. If 'sex' as it is used in laws and in its application in court proceedings actually meant only physical sex, there would be no argument about whether or not a person was or was not 'woman enough' – it would require only a physical examination to reach a conclusion. However, given that not only is there no record of a physical examination ever having been performed during the course of the dispute between Ms. Nixon and VRR, but many of the arguments have to do with whether Ms. Nixon's personal history and identity are sufficiently analogous to those women born with female genitalia. These sorts of traits have far more to do with gender identity than sex, yet they are argued as if they were directly related to Ms. Nixon's physical self. There appears to be no solid distinction between the terms sex and gender, even as it appears that there is an understanding that they do not signify precisely the same thing, or type of traits.

CATEGORIES

We have now established that language is not as fixed or stable as it might appear to be before engaging in further investigation. We can see that while language generally serves as a means of communication with a sufficiently limited potential for confusion as to be reasonably effective, it still is able to be not just the source of misunderstanding, but can lead to serious practical consequences in people's lives, as in the case of Kimberly Nixon. I would now like to turn to another feature of the case study of Nixon v. VRR, the use of categories, especially how categories are defined. Ian Hacking (1995a) defines category as "a tree of classifications, or else the most general classification at the top of such a tree" (355). This definition seems suitable for our purposes, and I will be employing it throughout the coming section.

The category that I first want to explore is that of 'woman.' Some might argue that woman is not actually a category, meaning a kind of umbrella term, but something much more specific. A woman is, after all, a type of object, something real and practical, not theoretical or imaginary. While it is arguably correct that a woman is a *thing*, I also want to recognize that the category 'woman' is in fact constructed, and in many ways artificial. It is also true that within the category 'woman,' we can find many different varieties of women, even among those that were assigned a female gender identity at birth.

To properly explore the category 'woman,' it is perhaps necessary to travel further up the chain of classification to what I will call sex/gender. The reason I have

combined these two terms, after having spent a good portion of the last section trying to separate the two is that to be able to explore all of the characteristics that might combine to make a particular woman, it is necessary to look at not only sex or gender, but both of them, and how they act on each other to create meanings distinct from those that we might find if we looked at the two signifiers separately. What I mean by this is that sex may be a purely physical characteristic, but it is generally understood as a non-linguistic signifier of gender. Conversely, gender may be entirely social and psychological, but it is assigned based on the physical markers of sex. For example, I would guess that no infant born with fully-formed, standard male genitalia has ever been pronounced to be a girl, unless the person making that statement were either making a joke or conducting some kind of social experiment. Given that infants are non-verbal, and unable to signal anything but their need for one biological necessity or another, a determination of gender based on personality traits is impossible at the moment of birth, yet this is usually when gender assignments are made. This necessarily means that gender assignments are inextricably linked, at least initially, to sex. In the case of Kimberly Nixon, to use a more relevant example, it was residual physical characteristics of her former sex that signaled to members of Vancouver Rape Relief that her experience of gender was unsuitable for their requirements of peer counselors. Even though all of the medical, psychological, legal and anecdotal evidence suggested that Kimberly Nixon was now a woman, sex characteristics like body size, facial features, etc. were what indicated that her experience of gender was not that of a person who could really understand what it is to be a woman. Finally, when we interact with individuals, we

usually determine their gender based on secondary sex characteristics, and only ask specific questions about gender identification in environments like gender studies classrooms and doctors' offices. We rely on sex characteristics to communicate gender, and we rely on outward displays of gender to make assumptions about those sex characteristics we do not usually see, namely genitalia. Though different, they are inextricably linked, thus, sex/gender.

There are two basic ideas about sex/gender. The first is that it exists as a binary. A person is either male/man or female/woman. We can see evidence of this binary on things like survey forms, public washroom signs, department store clothing racks, essentially every public space. A second idea is that sex/gender exists on a continuum. At the respective ends of this continuum are male/man and female/woman, and what falls between are all of the different iterations of sex and gender, including classifications like transgender, genderqueer, butch, femme, etc. While this continuum theory of gender does allow for some flexibility in terms of identification and understanding, it is still perhaps too simplistic, especially if we conceive of it as being a line onto which we plot various points of gender identity. This single line is not sufficient to represent all of the different ways that sex and gender act upon each other, and that outside interpretation acts upon those. Instead, I think it is useful to conceive of gender as a set of continuua, each intersecting at different points along their length to create a multidimensional model of sexed and gendered characteristics acting upon one another to create a fully realized human being with traits that can be read and understood as either masculine or feminine, both or neither. It's a complex model, but the subject of sex/gender is certainly not a

simple, straightforward topic.

Now that we have established that sex/gender is an incredibly complicated set of intersecting traits, experiences and understandings, it is time to investigate how these can be separated into distinct categories. We know that they can be separated, because we operate within a societal structure that places great emphasis on a gender binary, but having considered how complex sex/gender is, and how varied, it seems overly simplistic to presume that a simple and complete bisection is possible.

Before setting about the task of delineating what constitutes a male/man and female/woman, it will be useful to look at the construction of categories in a broad sense. While we are doing so, bear in mind that not only is this a very complicated topic in its own right, its complexity is compounded by the problems with language we have already outlined. In order to define categories, we must use words. Words which are not universally understood, that is, they are polysemic. For the time being, we will set aside further enunciations of issues of language, but it is important to recognize that this current is one that runs throughout the arguments made in this thesis. If language is not stable, how can the frameworks we build with it be?

In their book, *Sorting Things Out,* Bowker and Star describe classification systems as "a stabilizing force between the natural and social worlds" (86). Hacking distinguishes between what he calls "human kinds" and "natural kinds" (1995a) by saying that the latter are "kinds that are, at least at first sight, peculiar to people in a social setting." Natural kinds, on the other hand, are "natural only when it is not peculiar to people in their communities" (1995a: 353). What this means is that

43

many of the things that humans are or do are natural, in that they occur without any kind of mediation by humans. For example, every human naturally has mitochondria. They do not have to be consciously acquired, or even understood, in order to be part of the human body. They are a natural kind. The categorical work that gives mitochondria their name, however, is not a natural kind. While they are natural, all of the work to isolate them, study them, classify them, make sense of their role in relation to other organelles and anatomic structures, is not natural. It is a constructed body of knowledge, and is a human kind. Humans have constructed a way of understanding the body, including mitochondria, and while this particular topic is natural, the study and understanding of it is not.

Humans, as organisms, are natural kinds. Development from fertilization, embryo, fetus, to infant is not an artificially constructed process, though again, our understanding of it is. Humans breathe without having to think about or understand it. They do not have to be conscious of their heart muscle in order for it to pump blood around their bodies. None of these things occur as a result of social forces, or artificially constructed frameworks.

Humans are naturally born with a collection of body parts. Most humans are born with a reasonably similar set of anatomical structures. So many, in fact, that any time a human is born whose anatomy differs from what is expected, they are understood to be not normal, or in fact defective. This is a construct, a human kind, a category. The set of physical structures that a human is born with is a natural kind. How it is understood, in this case normal or not normal, is a human kind. When humans are born with bodies that are understood to be defective, they are often

subject to medical interventions in order to bring them in line with the structures that are most common, or normal. In some cases, these interventions can be life-saving, for example performing heart surgery on an infant that would die without this kind of external effort. In others, the interventions can be more cosmetic in nature. In these cases, the reason for medical or surgical treatment of naturally occurring traits which fall outside of a 'normal' range can be understood as social in purpose.

Among the body parts that humans are born with are genitalia. We have separated bodies with these naturally occurring structures into two categories, male and female. Male bodies have genitalia that protrude from the lower torso, and whose component parts have been labeled 'penis' and 'testes,' although these have finer anatomical classifications, which are not especially relevant for our purposes here. Female bodies have genitalia which are generally internal to the lower torso. Their genital area is generally called 'vulva,' though it is commonly misidentified as 'vagina,' though this is only actually one structure within the larger female genital area. In any case, human bodies are generally categorized into these two groupings.

Within each sex-based grouping, there is a certain range of acceptable physical diversity, in terms of genital appearance. Not every set of genitalia is identical, but provided that the male structures are sufficiently penis-like and the female structures are sufficiently vulva-esque, that is, they conform to social ideas of 'normal' genitalia, they are easily classified by either one sex label or the other. This classifying of natural physical features is evidence that while the structures that we call genitalia are not human kinds, sex categories are.

According to Kate Haas, up to four percent of humans are born with genitalia that fall far enough outside of a normally expected range that they are not clearly identifiable as either male or female (2004:41). The current preferred term for bodies whose sex is not immediately apparent is intersex conditions. This term covers a diverse set of abnormalities[4], which are caused by an equally diverse set of factors, none of which are within the scope of this thesis. What is important for us is the fact that sex as a category is constructed, and that there are some bodies whose natural state does not fit neatly within one of the two options available in the sex binary system.

Many children who are born with intersex conditions are subject to surgical procedures to alter their bodies to bring them in line with the expected physical appearance for either male or female sexed individuals. It is important to note, too, that individuals who are born with 'normal' male genitalia, but whose penis is damaged as the result of an accident, have had their genitalia reconstructed to appear female, despite retaining other biological markers of male sex, including chromosomes. According to Haas, "babies born with ambiguous genitals or small penises and baby boys who were accidentally castrated were surgically altered and raised as females" (46). The emphasis, then, appears to be on standardizing the appearance of genitalia, regardless of the other features of sex that would affect things like secondary sex characteristics, reproduction, and those biologically rooted aspects of gender identity.

Haas' point about boys whose penises were either too small or damaged

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[4] A term that I use to indicate being outside of an expected range, not as a way of privileging one kind of anatomy over another.

being reconstructed so as to appear female says a great deal about how we determine sex and its relationship to gender. What it says is that in order to be male, an individual must not only have a penis, but that penis must be both functional and within a given range of size. Failing these, a person is not really a man. Given that our society enforces a strict sex and gender binary, it stands to reason that if a person is not really a man, they must be a woman. The presence of a penis appears to be the deciding factor, and the categories are perhaps better labeled 'man' and 'not-man,' a catch-all for every individual whose body does not adhere to the standards for the former category. If 'woman' or 'female' were the operative categories, any individual born with an irregular vulva would be operated on to construct male-appearing genitalia, but of course this is not the case.

We have established that sex categories are constructed, and that the sex binary enforced in our society is not a natural kind. Further to this, we can then begin to see how intersex conditions are actually a product of a sex binary. If there were not two distinct categories in which to be placed, any iteration of genitalia would be acceptable, even if it looked dissimilar to that of other individuals. The fact that a third repository for all 'other,' sexually unclassifiable individuals is necessary simply reinforces the binary that created it. It allows the categories 'female' and 'male' to maintain some regularity by not forcing them to incorporate irregular forms of genitalia.

Despite what we know about sex being a constructed category, it is still sometimes mistaken for being natural. This has to do with its basis being in physical traits, which are themselves natural, but their classification is not. Gender is also

occasionally presented as a naturally occurring phenomenon, often by groups promoting essentialist ideas of the roles of men and women, but because its basis is in things like personality traits and mannerisms, it is more easily understood as a socially constructed category. Despite a widely accepted notion that gender is a category that people are socialized to perform in certain ways, usually according to their sex assignments, there are still firmly-held beliefs about the ways that men and women necessarily differ, and these ideas tend to be very strictly enforced by the people and groups that hold them.

We know that Vancouver Rape Relief has a narrow view of what constitutes a woman. Because of their reaction to Kimberly Nixon's residual male secondary sex characteristics, we know that one of the features of a 'real' woman is female genitalia. Even without a requisite physical examination of their volunteers, VRR is enforcing an essentialist position about the acceptable bodies of the women involved in the organization. If it were not, Ms. Nixon's appearance would not have been the signal of her ineligibility that it was. Instead, her assertion that her gender is female and that she identifies as a woman would be enough to make her a legitimate candidate for a peer counseling volunteer position.

During the testimony for the Human Rights Tribunal, Dr. Pacey testified for VRR, and defined female as, having

> ...had grown up female, both as inner identity and behaviour in the world. As such, the peer counselor has lived through the milestones of a woman's experience such as; childhood, adolescence, menstrual periods, first sexual experience and taking her place as a woman in the world (*Nixon*, para. 160).

Given this definition, we can see that not only are Vancouver Rape Relief interested

in a person's social location in terms of their gendered experience, but are also invested in a person's sex, as evidenced by their inclusion of menstruation as an essential feature of womanhood as they define it. Not only does this exclude individuals such as Kimberly Nixon, but it also includes women-identified individuals who either fall into the intersex category or who have never menstruated for other reasons. Additionally, including sexual experience as a necessary aspect of fully-realized womanhood excludes women who have, for whatever reason not engaged in sexual activity. It also seems to assume that things like menstruation, sexual activity and experiences of growing up are significant in universally understood ways for all women. We know that VRR is an organization dedicated to anti-oppression work, based on their ideological tenets, but it appears that they are also invested in the existence and promotion of a universalist understanding of what it means to be a woman, even as they are actively engaging with what they understand as oppressive patriarchal forces within society. This seems to be a reproduction of essentialist ideas, even as they are approaching these from a radical position in relation to a broader understanding of societal norms.

We have thus far established that even though sex is rooted in natural, biological traits, it is a human kind, or constructed category. We have also established that even though gender is better suited to being understood as a construct, essentialist ideas exist about the roles of men and women, which are sometimes presented as naturally occurring, even though we know that they are not natural. We also know that depending on the definition of what it means to be a man or woman, certain experiences are presented as being necessary for full inclusion in

the category. What we will now investigate is the delineation of traits, that is, how certain characteristics are determined to be either male or female, and what this process of separation does for the nature of the categories themselves.

Constructing 'Woman'

According to Bowker and Star, "All classification and standardization schemes are a mixture of physical entities… and conventional arrangements" (39). We can see this in the development of the category, 'woman,' in that it includes both the physical traits of certain types of bodies, and the personalities and actions that have come to be associated primarily with those individuals. The attachment of socially constructed habits to a naturally occurring object, that is the body pre-classification, helps to lend some legitimacy to the entire category. The object 'woman' is a real, tangible thing, and therefore any habits or conventions attached to it take on a kind of solid form, making them seem embodied, or embedded in the natural form. This can make it difficult to challenge ideas of what makes a woman, given that both sex and gender seem to have a solid foundation, no matter what the particular definition or conception at hand is.

In *Nixon*, both parties' definitions of 'woman' are arguably correct. They both have physical, mental and societal characteristics. They both are broad enough to encompass most individuals that would be expected members of the category, without needing to add exemptions to their definitions. However, their similarities end when it comes to including individuals whose female sex and gender were not assigned at birth. While Ms. Nixon's definition of woman is broad enough to include

individuals like herself, the definition of 'woman' used by Vancouver Rape Relief is not. This raises a number of interesting questions about the nature of classifications.

Bowker and Star contend that the act of classifying is a political process (44). In order to create a succinct, functional definition of a category, some traits must be highlighted while others become less visible, or indeed excluded. How traits are prioritized depends on the goals and ideological frameworks of the people doing the defining.

When we consider the term 'woman,' we can come up with a long list of potential descriptors for the category. The items on this list will range from embodied, physical characteristics, to traits that are purely social in nature. If it were possible to conceive of a complete list of all traits relating to the category 'woman,' it would not also be possible to imagine a definition of woman that included every one of the items on that list. Many of the characteristics would be mutually exclusive, and in order to create a coherent definition of the category 'woman,' only some traits could be used at a given time.

In *Nixon* we can see this prioritization of terms very clearly. In Vancouver Rape Relief's definition, there is an emphasis placed on gender as experienced through interactions with forces of oppression. According to their definition, a woman is someone who has lived their entire life experiencing the pressures and disadvantages placed on female-sexed individuals in a patriarchal society. We can see how the terms of this definition might be problematic; not every individual experiences oppression in the same way, due to the subjectivities involved in identity. What is very clear about their definition, however, is its political nature and

how this set of criteria work to support and promote its ideological basis, which is an integral part of Vancouver Rape Relief's mandate as an organization and advocacy group.

Kimberly Nixon's definition of 'woman' highlights different criteria than Vancouver Rape Relief's, specifically an identity-centric view of what it means to be a woman. This is a necessary feature of her conception of the term, because it forms the basis of her understanding of herself as a woman. According to the information provided by each of the five legal decisions in the dispute between Vancouver Rape Relief and Ms. Nixon, she has consistently understood herself as female throughout her life, including the time before she began to transition from male to female and eventually had gender reassignment surgery.

In order for a male-bodied individual to interpret themselves as female, they must have a sense of gender-based identity which contradicts their physical self. Whereas many cis-gendered women would cite their bodies as a source of information about their gender, transsexuals must first have a psychological basis for their gender. This understanding of themselves as female is an entirely identity-based notion. That is, they cannot rely on their assigned sex or their physical selves for reinforcement of the idea that they are female. Therefore, when Kimberly Nixon defines 'woman,' she must necessarily rely on an intrinsic notion of womanness, and not on the physical manifestation of this idea, which could only come as a result of the psychologically-based certainty of her gender.

While Ms. Nixon might understand her definition of 'woman' to be a personal matter, when it is used in public it becomes a political term. For example, Ms.

Nixon's definition of 'woman' is one whose purpose is to provide a legitimacy to her identity, which in many spaces is a contested one. By defining the term using criteria which include her experience of gender, she is creating a space for herself within a social category. While Vancouver Rape Relief's definition has a primary purpose to promote their ideological stance, and in this way is overtly political, Ms. Nixon's definition, while not as overtly political, acts to disrupt a conventional understanding of what is considered a woman, thereby creating conceptual space for herself. This is a political act.

One of the ways that we can understand the situation of having multiple different definitions of 'woman,' all with their own particular criteria, and all arguably correct, is by conceiving of 'woman' as a vague term, and recognizing the relative value of each version of the term. As I have already stated, it is unlikely to be able to envision a single, wholly accurate definition of the term. Instead, we must look at different iterations of the concept, and evaluate them based on their relative accuracy.

One problem with defining 'woman' is that it is, to a certain extent, what Barthes might call a "quasi-tautological" term. That is, a woman feels like a woman because she is a woman. Kimberly Nixon must have understood herself as female because she interpreted her feelings of herself as those that a woman would have. The only way to know precisely what it feels like to be a woman is to understand your own feelings as those of a woman. Even women with female bodies can have this kind of self-reinforcing conception of themselves. Their claims to womanness are bolstered by their physical selves but ultimately, pointing to the fact that you are

physically female to support claims of femaleness is its own self-justifying claim. Women who are born with female bodies simply have more supporting evidence for their circular understanding of themselves than a person like Kimberly Nixon does.

Evaluating a term like 'woman,' and especially determining boundaries between what counts as a woman and what does not is difficult, and not only because of the self-reinforcing nature of its various definitions. An individual like Kimberly Nixon creates obvious problems in the determination of these types of boundaries, because of her non-standard personification of the term. However, it is not only these types of outlying identities that complicate the term. Even women who have been understood as female since birth can exhibit particular traits which make it difficult to develop a definition of the term that is sufficiently broad as to include them, yet flanked by sufficiently solid boundaries as to exclude individuals who are not members of this category.

In the interests of clarity, I will begin by giving what I imagine is the common understanding of the term 'woman': A human born with a vulva, which includes a vagina, who develops into a person with breasts, limited body hair, a high-pitched voice relative to that of adult male humans, who begins menstruating in adolescence and ends in middle adulthood, and who has the capacity to bear children. A woman is socially understood as a nurturer, is someone who employs things like makeup and other adornments to enhance her physical appearance, and is usually monogamously coupled with a male human, with whom she will conceive and raise children. Given what we know not only about transsexual women like Kimberly Nixon, but of the diversity within the community of cis-gendered women, we can see

54

that though this may be a fairly accurate representation of a commonly-held conception of what a woman is, it is by no means representative of the community as a whole.

Even within cis-gendered women we have an incredible array not only of physical traits, but of gender presentation, social roles, and gendered conceptions of self. In addition to these individual-specific traits, we have issues of race, class, sexual orientation, etc. compounding the differences between women. In fact, when we begin to specifically delineate what precisely a woman is, it seems unlikely that a solid definition could ever be universally or even effectively applied. Among cis-gendered women, there are individuals who are born with abnormal genitalia; women who are incapable of bearing children for a variety of different reasons; women who choose not to have children; women whose gender presentation is masculine; women who partner with other women; women who do not partner at all; women whose breasts have been removed, due to illness; women whose reproductive organs have been removed; women who do not wear makeup; women whose appearance sometimes leads them to be understood as men; etc. The category, as we can see is an incredibly diverse one.

One of the ways of conceiving of the boundaries around the term 'woman' is as being fuzzy. While there are certainly some individuals who are solidly within the category 'woman,' and whose belonging there would never reasonably be questioned, there are many individuals who, for whatever reason, find themselves on the outskirts of the category, somewhere near enough to the boundary between 'woman' and 'not-woman' to be questionable in their belongingness to the group.

Depending on the criteria being used to evaluate the category 'woman,' these individuals will sometimes be counted as being within the boundaries, and will sometimes fall outside of them. Kimberly Nixon, for example, will fall within the category 'woman' when her identity-based definition is used to determine the parameters of the group. She will fall outside of the category, however, when the criteria that Vancouver Rape Relief has outlined are used as the determining factors.

This state of being both in and outside of a given boundary is called supervaluationism (Keefe & Smith, 7). Rather than determining once-and-for-all whether an individual is or is not part of the category 'woman,' supervaluationism allows for individuals to be both contained and excluded by the category's boundaries, depending on the criteria used to determine them. In this way, boundary objects are a kind of Schrodinger's Cat, in that they are both within and outside the category at any given time.

The advantage of supervaluationism for an individual like Kimberly Nixon is that even as she is often excluded from being considered a legitimate member of the category, 'woman,' she is still able to make a reasonable, accurate claim to that identity, as long as the criteria being used for evaluation are able to apply to her experience. This is why both Vancouver Rape Relief and Kimberly Nixon are correct in their definitions of 'woman,' even though their conceptions of the word are conflicting. This also explains why the term is so contentious. Both parties are arguing a true statement. Because neither party is wrong, it is difficult to establish whose conception of 'woman' is the most correct. Evidence of this can be found in the fact that Kimberly Nixon won her case at the Human Rights Tribunal, yet lost the

56

subsequent appeals in the BC Supreme Court and the BC Court of Appeals. While our ideological frameworks might cause us to consider one decision more fair or correct than another, if we look strictly at the supervaluationist discourse, we can see that both parties have equally reasoned claims to the term 'woman,' and therefore each had a reasonable expectation of winning legal legitimation of their claim through the courts system.

QUEER THEORY

If the previous sections have been successful in outlining the problems associated with the polysemic nature of language, this section will help to provide some solutions, or at least suggestions of where to find them. The engagement with dominant discourses and frameworks that has already been done by the queer community and its scholars lends itself well to application to the *Nixon* case. It is this use of linguistic and organizational agency that we will explore in this section.

A barrier facing the broad societal understanding and acceptance of transsexuals such as Ms. Nixon is the relative newness of this form of identity. It has only been within the last century that individuals with a desire for sex reassignment have had this option available to them. While it is certain that prior to the twentieth century there were transgender individuals who would have chosen to undergo this type of surgery, had it been available to them, the act of physically becoming a sex other than the one a person is born with is a new phenomenon.

In his article "The Repressive Hypothesis" in *The History of Sexuality Vol I*, Michel Foucault writes about the creation of 'the homosexual' as a species (323). When he says that the 'homosexual' was created, he does not mean that sexual acts or even desire, between members of the same sex did not exist prior to 1870, when he says this new category came to be. What he means is that at this point, what had been understood as aberrant sexual acts came to be associated with a *type* of person. Now rather than being a person who engaged in unnatural sex acts, these same people would come to be classified as homosexual. Thus, homosexual came to

be a kind of person, of whom certain characteristics were expected, beyond those only relating to sex acts or sexual attraction.

I would argue that the availability of sexual reassignment, as well as hormone treatment and other types of medical interventions, has created the transsexual, as a kind of Foucauldian species. That is, rather than simply being an individual who holds certain fantasies of themselves as a gender other than the one they were born into, the transsexual now exists as a kind of individual whose goals of sexual reassignment are available to them. One of the benefits of this new category of person is that, like homosexuals, there is the potential for community and community-based activism, which could potentially lead to a greater degree of acceptance.

Something that the queer community has done a very good job of is the reappropriation and repurposing of words in order to create conceptual space for themselves. The term 'queer' is itself perhaps the best example of this. Once, and sometimes still, a derogatory term for sexual minorities, it is now a legitimate label for both a community and the study thereof (Butler, 1993). In this section I want to consider how existing language is either used in a way to signify something other than its usual meaning, or reappropriated, that is, redirected as in from a negative connotation to a positive or at least neutral one. I also want to look at how the existence of language space, both through the range of existing vocabulary and through the flexibility of existing language, can influence the types of lived identities that are available to individuals. Whereas previous sections have focused on the difficulties created by the way language is used, this section will endeavor to present

some opportunities created by these same features.

In *Giving an Account of Oneself,* Judith Butler spends some time engaging with

Foucault's work on self-constitution. In this section she says,

> ...a regime of truth offers the terms that make self-recognition
> possible. These terms are outside the subject to some degree, but
> they are also presented as the available norms through which self-
> recognition can take place, so that what I can "be," quite literally, is
> constrained in advance by a regime of truth that decides what will
> and will not be a recognizable form of being (22).

Using our knowledge of the constraining features of language, we can understand

this "regime of truth" as a kind of conservative view of the objects signified by a

given word, or signifier. For example, if the term 'woman' could only ever denote an

individual who has long hair, wears dresses, is in a heterosexual marriage and has

three children, many individuals who might have a legitimate claim to the term

would be excluded from the language space, and would therefore be excluded from

those real-life opportunities afforded only to 'women' so defined. We know that the

term 'woman' is actually more permissive than the example I've given, but precisely

how permissive depends on the user of the term. While we know that Vancouver

Rape Relief's definition of the term is too restrictive to include individuals like

Kimberly Nixon, I would argue that most people would not immediately define

'woman' in a way that would easily include her. When prompted about the existence

of transsexual individuals and their need for social inclusion, including language,

many people might take the opportunity to widen their scope, although this would

not be their initial understanding or definition of the term.

If language were fixed, there would be no opportunity to modify the way that

terms are defined, or which types of signified objects they encompass. Fortunately,

we know that language is polysemic, meaning that words are understood in various, precise ways by different individuals. If we were to amass each person's definition of a word, in our case 'woman,' we would see that there was a certain degree of commonality, but also that there were outlying understandings of the term. It is the existence of outlying understandings that allow for people to locate themselves within identity labels that might not commonly include them.

This flexibility in language, caused by the broad range in individual definitions of terms, is what allows for categories to be expanded to include new iterations of identity and to allow them to be first conceived of, and later to be embodied. If we look at Kimberly Nixon's experience in particular, we can see the evolution of conceptual space needed for an individual assigned a male sex identity at birth to complete a transition to becoming an individual who has a strong argument for inclusion within the term 'woman.' In order to become a woman, she must first have been able to think of herself in those terms. If both language and identity were fixed, this would never have been possible for a male-bodied individual. However, given that the category 'woman' is not only defined by the physical, she was able to take her intellectual and emotional understanding of herself and use it as supporting evidence for her inclusion within the term. We can see this as a kind of patchwork approach to identity.

Kimberly Nixon began with an understanding of her personal identity, as based on her emotional existence, and used that to gain entry into the category 'woman'. After being granted a kind of conditional access to female identity, that is living and identifying as a woman in order to secure a Gender Identity Disorder

61

diagnosis, she was permitted to undergo a physical transition, granting her more legitimate grounds for her assertion of womanness. At the time of her conflict with Vancouver Rape Relief, she was in a heterosexual relationship with a man, and was helping to raise a child, both of which are features of a conservative view of what it means to be a woman in her society. So, the fact that the language was permissive enough to allow her to conceive of herself as a woman is what initially granted her access to a female self-identification, leading to subsequent and increasing embodiments of 'legitimate' femininity. Without this linguistic room, Ms. Nixon may not have been able to conceive of herself as a woman, and having a fully realized female identity would not have been a realistic or even imaginable goal.

Returning to Butler's reading of Foucault, norms are defined by language. So, not only are norms restrictive or permissive based on their conceptual space, but they are also heavily influenced by the language we use to express their parameters. In this way, even conservative views of identity norms are subject to certain degrees of flexibility in as much as language is flexible. Certainly, the more rigid the norm, the more difficult it would be for an outsider to gain access, but the nature of language is such that it is not inconceivable that any identity norm could somehow be infiltrated. These opportunities of language are of particular use and interest to the queer community.

In *Female Masculinity*, Judith Halberstam cites Foucault, saying that, "At the turn of the twentieth century…the discourse of sexuality became a medical discourse, and sexual acts were transformed through complex discursive practices into stable notions of identity" (75). In both Halberstam's and Foucault's work we

can see the direct and significant consequences of discourse, that is, the use and

exchange of words over time to construct frameworks of understanding and social

norms. By transforming sexual acts between members of the same sex into a

category of person, discourse itself is responsible for what now might be called the

queer community, and each of the iterations of it that have led to our current

understandings of both the category and the individuals within it.

According to Saussure, "language always appears as a heritage of the

preceding period" (71). What this means is that words do not simply stand alone,

but invoke all of the ways that it has been used throughout its history, and all of its

transformations that have led to its current use and understanding. Judith Butler

addresses this issue in *Bodies That Matter,* when she says:

> The expectation of self-determination that self-naming arouses is
> paradoxically contested by the historicity of the name itself: by the
> history of the usages that one never controlled, but that constrain
> the very usage that now emblematizes autonomy…(228)

What this means is that the act of reappropriating language is to use words whose

history runs counter to the present aims of their use. In short, words that have been

used to hurt members of, in this case what is now known as the queer community,

are now being used to assert a position, and to affirm that position's legitimacy. It

does not, however, erase all of its previous meanings and applications. Instead, it

raises images of the negative power that the word has been imbued with, and by

claiming it for the queer community, it conjures a sense of defiance and purpose that

exists not despite the word's historicity, but because of it.

In *Gender Trouble,* Judith Butler describes the process of finding and

embodying a new form of gender identity:

> If the rules governing signification not only restrict, but enable the assertion of alternative domains of cultural intelligibility, i.e., new possibilities for gender that contest the rigid codes of hierarchical binarisms, then it is only *within* the practices of repetitive signifying that a subversion of identity is possible (198-199).

Essentially, what she has given us is the solution to the problems that we have been investigating throughout this thesis. Kimberly Nixon chooses to define herself as a woman. The reason she has chosen this word, and not a signifier that indicates difference, such as transwoman, an arguably more accurate term, is that she wants to have access to the social capital and history associated with the term 'woman.' It is for this reason that she appropriates it; not just for its current meaning, but for its resonance in terms of history, identity, normalcy, etc. In order for her to legitimize her claim to this identity label, according to Butler, she must repeat and reassert her belonging within it.

While we have focused on the particular case study of Kimberly Nixon v. Vancouver Rape Relief, she is certainly not the only transsexual or transgender individual affected by the issues addressed in this thesis. On a private scale, Ms. Nixon must continue to use her agency to insist that she has a place within the term 'woman,' and she can bolster her case by using some of the information about language, gender, categories, and the reappropriation of terms that we have gathered here. On a wider scale, that is, the transgender community as a group, these repetitions and reassertions must continue until such a time that its constituents are not only able to widen their desired identity terms sufficiently to allow them to locate themselves within them, but so that individuals outside of the community can also create strong associative links between transgender individuals and their target signifiers.

This process of repetition in order to normalize a concept is a strategy that does not effect immediate change. Instead, it works gradually, through the assertion and reassertion of transgender individuals' identities, the concept and category becomes more commonly known, if not understood. The more familiar individuals outside of the transgender community are with it, the more likely it is that non-standard gender identities like Kimberly Nixon's will become understood as another part of the social frameworks that provide the structure for sex and gender categories. This is neither a quick nor easy solution, but it may ultimately bring about the social widening of how gender categories are understood, affording transgender both conceptual and physical space in which to live.

APPLICATIONS

The work in this thesis has been grounded in the specific case study of
Kimberly Nixon v. Vancouver Rape Relief, but I believe that it has potential to be
applied to different social issues, where elements of identity formation are central.
In particular, I think that my work in this thesis could be applied to issues of mental
health and addiction, though I see potential in a broad range of areas.

In the mental health arena, patients are presented with diagnoses that they
can interpret as being an element of themselves, as being definitive of their behavior
and personality, or they may reject the diagnosis or an identity that incorporates it.
In any event, recognizing the way that categories and identity labels are built could
help service providers to be aware of these types of issues, and also to attempt to
address them with their clients.

Kimberly Nixon experienced discrimination as she attempted to locate
herself within an identity label. Individuals who receive mental health diagnoses are
often the victims of stigma as a result of their having been placed within a category
that is the target of prejudice. In both cases, understanding how categories come to
be constructed and the nature of both their constitution and boundaries can be an
excellent place to start when determining how to address the negative connotations
that come to be associated with these terms.

My work can be applied to addictions issues as well, particularly within
recovery frameworks. Within these structures, individuals with addictive disorders
are encouraged to identify themselves as addicts of their preferred substance(s). For

many individuals, this push toward identity labeling is a sufficiently negative experience to hinder any improvements to their addictions that might otherwise be accessible to them. By looking at the ways that words create and convey meaning, it may be possible to either address the concerns of skeptical individuals, or to reduce the emphasis on personal identification as necessary for treatment opportunities.

These are only a handful of areas that I can imagine my work being of benefit to. Due to the near ubiquity of categories and classifications, the work in this thesis may have applications in a vast number of areas. A list of potential sites for application could not be comprehensive, as the work that I have begun here is primarily an entry point into a discussion on language and its practical implications for categorical construction. How this information is used will depend on the context of the issues to which it is applied.

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