Including Transgender Identities in Natural Law

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There is an emerging consensus within Natural Law that explains transgender identity as an "embodied misunderstanding." The basic line of argument is that our sexual identity as male or female refers to our possible reproductive roles of begetting or conceiving. Since these two possibilities are determined early on by the presence or absence of a Y chromosome, our sexual identity cannot be changed or reassigned. I develop an argument from analogy, comparing gender and language, to show that this consensus is premature. Language and gender imbue our body with further social meaning and so, I conclude, that just as we can learn multiple languages, so too can we learn multiple genders. Since language and gender each constitutively contribute to our wellbeing as a "second nature," I argue against this consensus to show that the reason people who are transgender struggle to flourish is not because of a "troubled trans psyche," but because there are conceptual, interpersonal, and institutional obstacles stacked against them.

Natural Law is a philosophical theory that plays a central role in many religious traditions, especially Catholic intellectual thought. There is a growing consensus within Natural Law that explains transgender identity as an "embodied misunderstanding." The basic line of argument is that our sexual identity as male or female refers to our possible reproductive roles of begetting and conceiving. Since these two possibilities are determined early on by the presence or absence of a Y chromosome, our sexual identity is biological and so cannot be changed or reassigned. Therefore, any identity claim that is contrary to this biological reality is a self-misunderstanding. Although earlier work on transgender identity in Natural Law affirmed this conclusion (Schwartz Moraczewski, & Monteleone 1984), these efforts were part of a dialogue and not

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presented as the definitive answer. One reason, then, that this emerging consensus is becoming more prominent is because current work within Natural Law does not philosophically contest it: if we presume that this "Embodied Misunderstanding Consensus" (EMC) is the only way that Natural Law can recognize transgender identity, then we concede conceptual and ethical ground without argument and without reason. My goal is to show that EMC is premature. Arguing by analogy, I make the case that just as we have the capacity to learn a (new) language, so too do we have the capacity to learn a (new) gender. If successful, then this analogy shows that there is unexplored theoretical space within Natural Law where we can recognize transgender identity as legitimate.

One reason we should map out this theoretical alternative is because taking EMC for granted makes life harder for people who believe that being transgender and being religious are equally important in their lives. People who are transgender and religious regularly report that they do not find peace, respect, or dignity with EMC (Mollenkott 2007; Martin 2018; Hartke 2018).[1] Maria Lugones (2003) observes that the most crucial parts of who we are "curdle" and inseparably mix. Instead of opting for an either/or identity or compartmentalizing who we are, Lugones insists that we embrace these multiple parts, however ambivalent, and remain open to new ways of being that fully recognize us in each of those multiple parts. Although there are intellectually adjacent critiques of EMC in biblical studies (Apostolacus 2018) or moral theology (Ford 2020), Natural Law is philosophically grounded in an Aristotelian framework,[2] which creates a different kind of argument. Addressing EMC on its own terms provides distinct support for people who want to affirm their curdled faith as someone who is both a believer and transgender.

Developing an alternative to EMC would have two further positive effects. First, other believers might be similarly committed to their faith: not wanting to gainsay transgender identity, but also not seeing any easy way to reconcile these two commitments. A theoretical alternative to EMC that is rooted in Natural Law keeps many of those religious or philosophical values intact, making it more likely to be persuasive. Second, people who work in religious schools, hospitals, or outreach organizations (e.g., shelters, adoption agencies) have to

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1. Some people who are transgender and religious do leave the faith that they were raised in as a coping mechanism in response to transphobic messages. If the people who leave their faith tradition see this departure as a morally significant loss, then it complements the moral urgency for an alternative to EMC—both for those who go and for those who stay in their faith (Levy & Reeves 2011).

2. While Aristotle is often cited as a theoretical touchstone for Natural Law, Michael White (2019) explains that much of the Natural Law language we attribute to Aristotle is due to Cicero's translations and contributions on the role of reason in nature, ethics, and law. This conceptual genealogy aside, White acknowledges that Aristotle's metaphysical structure permeates Aquinas's thought and subsequent Natural Law frameworks.

live under policies that are based on EMC (Schmitz & Woodell 2018; Herriot & Callaghan 2019; Plemons 2019). Showing that EMC is not the only way to understand transgender identity can help change those policies and reduce that vulnerability for staff or improve the services that they can provide to transgender students, patients, and clients.

Another reason that we should develop an alternative to EMC is because while Natural Law is a theory about human flourishing that transcends time and place, it is a moral tradition like any other. Presenting EMC as an inevitable outgrowth of Natural Law ignores that Natural Law emerged over time and in response to moral issues as they developed. Joseph Boyle (1994) reminds us that while Natural Law philosophers and theologians forged, tested, and refined these responses into an intricate corpus of moral reasoning, we have to apply it to moral issues that may have been previously unimaginable (e.g., nuclear deterrence). Successfully applying Natural Law to a particular moral issue, then, starts by recognizing that answers do not come from on high nor are they plug-and-chug: we have to carefully deliberate on past approaches and come to a nuanced understanding of present circumstances.

Building on Boyle's insight, understanding how Natural Law should include transgender identity requires being familiar with what it means to be transgender. Terminology is challenging because historically common descriptions can shift with the political landscape. While terms like "transgenderism" and "transgender ideology" are prevalent in Natural Law, they are not disanalogous to "alternative lifestyles," "intrinsically disordered," or "gay agenda."[3] Many of the terms that I use here may become outdated or unacceptable, but I have tried to use the language that many transgender philosophers and scholars use because this work is about their lives.

But the disconnect isn't just about descriptions. Susan Stryker (2017) explains that while "transgender" is an umbrella term for myriad identities and activities, the prefix, trans-, describes a political commonality for individuals who transgress, transcend, or otherwise cross boundaries that would keep them in an unchosen starting place. Moral discussions in EMC tend to fixate on cases where transgender people seek out surgeries to move away from that unchosen starting place by "correcting a wrong body." But this approach presumes a particular kind of narrative that overly medicalizes what it means to be transgender. However widespread the "wrong body" narrative is, it is not the only way to talk about what it means to be transgender because many transgender people do not have nor want surgery (Bettcher 2014; Stone 2016). It's not that

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3. Mark Jordan (2000) points out that these latter descriptions imposed a rhetorical silence in Catholic moral conversations about gay, lesbian, and bisexual issues. This terminological barrier made dissent harder because the very language reformers could use was already working against them.

this narrative is false, but that it omits its genealogy: historically, transgender people had to make political concessions about self-description to doctors, psychiatrists, and bureaucrats because they were legal gatekeepers. A medical diagnosis determined who could legally change their name and identification documents, get insurance approval for hormones, or finally start to live the life they wanted (Meyerowitz 2002). Stryker's point, then, about being trans means crossing boundaries, is not just terminological. The way that we understand those boundaries—if they are biological or political—determines how we understand those who traverse them.

I spend Section 1 working up some conceptual snapshots of how Aristotle understands actuality and potentiality. In Section 2, I show how EMC relies on this understanding to argue that our sexual identity is unchangeable because of our physiological development. I introduce my analogy in Section 3 by analyzing what our capacity to learn language entails. Language imbues bodies with a communicative purpose that promotes our flourishing by constitutively contributing to our nature as a *habitus*, a set of skills and dispositions that forms a "second nature." I complete the analogy in Section 4, arguing that gender imbues body parts with an interactive purpose that constitutively contributes to our nature as a *habitus*. Contingent to—but continuous with—our nature, language and gender enable our moral lives to take shape because they situate us as moral agents in the social world. I show in Section 5 that my analogy is compatible with insights from transgender theory. Against EMC, I conclude that the reason people who are transgender struggle to flourish is not because of a "troubled trans psyche," but because there are conceptual, interpersonal, and institutional obstacles.

1. Actuality, Second Potentiality, and First Potentiality

Aristotle talks about actuality and potentiality in several places and in a few different ways. Instead of exegetically surveying Aristotle's entire corpus, I concentrate on some conceptual focal points in *Metaphysics*, *Physics*, and *De Anima*.[4] These focal points catalog how Aristotle uses actuality and potentiality to account for distinct kinds of changes.

In *Metaphysics*, Aristotle (1043a) explains that a pile of bricks, lumber, and other raw materials is potentially a house and only actually a house when they are put together in the right way. Explaining this relationship is more complicated than it appears. In order for the raw materials to have this potentiality, Michael Frede (1994) points out that we have to consider their actual state. If the

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4. Translations of Aristotle's works are from Aristotle (1984).

lumber is rotted or the bricks crumble under weight, then these material flaws preclude them from potentially being a house. The potentiality to be a house also depends on the art of housebuilding. The raw materials will not assemble themselves; they require an outside force to change them into a house. Since builders and laborers build with a particular house in mind, this outside force is goal-oriented because that goal explains how the finished house should be built. Once the raw materials are assembled according to the goal that the builders have in mind, then there is an actual house.

We can also use the goal-oriented nature of housebuilding to explain how actuality and potentiality are related. While the art of housebuilding includes several other arts (e.g., carpentry, masonry), each subsidiary art is for the sake of the single goal: housebuilding. Frede concludes that if completing the goal set down by the art of housebuilding explains why the raw materials went from a potential house to an actual house, then potentiality is only actualized by "a specifiable single change or process" (1994: 190). So, potentiality is not a claim that anything could become anything given sufficient time and alteration. Instead, potentiality confines change to this single process without restricting its duration. Notice that actualization does not consume or exhaust potentiality. True, once the house is built, the raw materials have been turned into an actual house and so cannot still become the house they already are, but the physical qualities of the raw materials mean that they retain the potentiality to be used to build another house.

Aristotle also works out a general theory of change in *Physics*, not just describing changes in motion, location, or time, but maturation too. Maturation is a single process that explains how an organism develops over time. For Aristotle, this process depends on an organism's nature (199a5–b30). "Nature" is a complicated term for Aristotle, but John Cooper (2009) elucidates that it provides a metaphysical explanation of what an organism is. Natures enumerate the various parts of an organism, but they also implicate a goal of what an organism should be by describing how it will progress towards that goal. Thus, natures are a dynamic blueprint, telling us what something is (actuality) and what it can become (potentiality).

An acorn, for example, is a nut that is potentially an oak tree. While we know that external conditions (e.g., soil, temperature, rainfall) are also responsible for an acorn growing into an oak tree, the reason an acorn grows into an oak tree is because it absorbs and metabolizes nutrients from the surrounding environment. This claim, that becoming an oak tree is the nature of an acorn, is not statistical. Aristotle acknowledges that every seed will not turn into a plant because conditions might not be favorable (e.g., drought, blight, squirrels), but part of his argument for organisms having natures is that we recognize regularities and patterns in the world that are not due to chance or social custom (198a15–199a15;

Thayer 1975). Hence, even if we know that not every acorn will turn into an oak tree, we know that none of them will turn into a maple or a fir.

Natures infuse these regularities and patterns with normativity. Charlotte Witt (2003) elaborates that while we may be interested in how a specific sapling will mature, we can only understand potentiality as referring to the kind of tree it will become. Since, by definition, the specific mature tree does not yet exist, there would be nothing for the nature of the specific sapling to grow towards. Natures, then, do not guarantee actuality, but Aristotle's point is that under normal conditions, a specific organism will endeavor to actualize its potentiality as a member of its kind.

While maturation is a single process linking potentiality and actuality, it references several other developments. For example, during gestation, animal embryos develop organs, tissues, and bones. Each of these parts form according to a functional goal: a heart is not just an organ, but an organ that pumps blood. If a heart forms in such a way that it fails to pump blood well, then it is a bad heart rather than just a statistically unusual heart. This functional point is not just about how good or bad an individual organ is, but also about how well it integrates with other parts of the body. The heart works with the lungs to circulate oxygenated blood throughout the body, which helps other organs perform their functions. Even though each individual part has its own nature, the nature of an embryo is not just to grow these parts, but to grow them so that they functionally cooperate towards actualizing a common goal: growing, sustaining, and repairing the organism. If an embryo fails to develop the right organs (e.g., anencephaly) or fails to organize them in the right way (e.g., ectopia cordis), then it suffers by failing to actualize its potentiality in the same way that a heart that fails to pump blood well indicates a defect rather than a difference.

We might be tempted to conclude that these two snapshots of actuality and potentiality have nothing to do with each other. Housebuilding depends on human convention and requires external interference to actualize the potentiality in the bricks. Maturation, on the other hand, is an internal activity. But contrasting the artificial with the natural obscures an important metaphysical insight. While organisms strive for their own growth and are self-repairing, some may be too badly damaged or too overcome by an advanced illness to heal themselves. Frede analogically argues that just as the rotten wood and crumbly bricks lack the potentiality to be a house, so too does a badly damaged body lack the potentiality to heal itself because the current state of its cells prevents it from having that potential.

As an art, medicine provides tools to restore health. Since healing would not happen in these cases without an external force intervening (e.g., doctor, medication), Aristotle is right that "art in some cases completes what nature cannot

bring to a finish, and in others imitates nature" (199a15).[5] If the metaphysical reason that we connect an organism's potentiality and its actuality was because its maturation did not depend on chance or custom, then this "artificial completion" should not make a metaphysical difference in what something is, becomes, or returns to—at least in the "completing" cases that Aristotle mentions, because it constitutively contributes to that single process. Hepatitis C is curable with a course of antivirals. After the antivirals finish, our immune system is strong enough to keep the viral load undetectable: an artificial cure completes the natural goal of health. When medicine imitates health, however, it can restore the body to a prior state, but only so long as it is present. HIV attacks the immune system, making people vulnerable to opportunistic infections. Antiretrovirals halt the decline by stopping viral replication, giving people with HIV/AIDS time to treat other infections and heal. While miraculous, this "Lazarus Effect" only imitates health because if someone loses access to antiretrovirals, the virus goes back to replicating and the previous dangers reemerge.

We can extend this point to introduce a more complex account of actuality and potentiality. In *De Anima*, Aristotle discusses his theory of the soul and distinguishes between first potentiality, second potentiality (sometimes called first actuality), and second actuality (417a20–30). When someone closes their eyes or is asleep, they can still potentially see even if they are not using their eyes at that exact moment. From what I have said so far, we might describe the act of seeing as actuality and the ability to see as potentiality. But sight, our ability to see, is also a state or condition that we may or may not have and so we can also describe it as an actuality, something our bodies potentially mature into during development. Roughly speaking, first potentiality is our capacity to acquire abilities in first actuality/second potentiality.

Natures enumerate and organize capacities, ordering them in terms of when and how they develop so that they can functionally cooperate with each other. A human embryo, then, has the natural capacity to develop working eyes as it matures, but it may not always do so. Anophthalmia is a defect where eye sockets do not fully form. Without eyeballs, the body never possesses its first actuality/second potentiality for sight. Analogous to the raw materials for housing, the bricks did not cook for long enough, at the right temperature, or the materials (e.g., sand, clay, lime) were not proportioned correctly. Other times, damage takes longer to manifest. Congenital syphilis, for example, can cause blindness, but it may take weeks, months, or (in rare cases) years to manifest. So, congenital syphilis does not prevent first potentiality from developing into first actuality/

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5. "Imitate" is morally innocuous for Aristotle, but Julia Serano (2016) warns that it raises a red flag in discussions about transgender identity, especially for transwomen, because it portrays transwomen as "artificial" women. I share Serano's concern and rebut the "artificiality" objection below.

second potentiality because a child born with it would still have the ability to see. If left untreated, however, congenital syphilis can stop people from seeing (second actuality) because it destroys the ability to see (first actuality/second potentiality). Even if someone loses the ability to see, they retain their capacity to possess the ability to see because humans are the kind of animal that can have the ability to see, whereas other animals, (e.g., worms, jellyfish) do not.

First and second potentiality do not just refer to biological development. Aristotle himself talks about learning grammar (417a20–30) to illustrate the distinction and language acquisition is the standard go-to example for distinguishing first and second potentiality. Human embryos have the capacity to develop higher cognitive function, including language acquisition. Actualizing this first actuality/second potentiality is complicated and depends on biological and social factors. Brain damage can impede or preclude learning language. Physiological or anatomical complications can inhibit learning a language: a misshapen or missing tongue impedes verbal articulation, lack of muscular control, amelia, or amputation interfere with learning sign language. Even if there are no bodily impairments, learning a language depends on social conditions. Without a family and friends to teach and help us practice language, we are not going to learn a first one on our own.

Actualizing a second potentiality does not consume our first potentiality. If we can learn many languages, then we cannot conclude that our natural capacity (first potentiality) to learn language orients our ability (second potentiality) to learn a particular language. Some languages, however, make use of natural abilities that others do not. Tonal languages (e.g., Chinese, Cherokee) use tone to indicate when the same word communicates a different meaning. Someone who did not learn a tonal language early in life may struggle to master tones and so actualize their auditory ability, but even if another language requires using our body in a new way, we can learn to do so just as native language users did.

Actuality, second potentiality, and first potentiality normatively describe changes. I now turn to how EMC depends on our natural capacity to develop sex organs. Then, in Sections 3 and 4, I introduce my analogical argument by analyzing what our capacity to learn language and gender entails and show that language and gender constitutively contribute to our nature.

2. Actuality, Potentiality, and EMC

The central claim in EMC is that our sexual identity is determined by our natural capacity to develop reproductive organs that can beget or conceive. Since our sexual identity is determined by that biological capacity, surgically or hormonally changing our bodies will not change it. Identity claims that do not recognize our sexual identity, therefore, misunderstand our bodily reality.

In the previous section, we talked about how a human embryo is an organism that absorbs and metabolizes nutrients. This organic activity happens because the embryo functionally organizes its various parts to cooperatively work towards development. Teresa Iglesias (1984) argues that this development is what metaphysically differentiates a zygote from other organic entities (e.g., ova, sperm, segments of DNA) that are similar in terms of "genetic material," but lack the principle of change that is internal to the zygote and so will not develop as it will. Iglesias pauses on how we understand development, affirming that zygotes do not develop "*into* a person" but instead are the "development *of* a person" (1984: 35). The key move in this argument is that by nature, an embryo endeavors to actualize two kinds of capacities: biological capacities that make us humans and rational capacities that make us persons. While these capacities are distinct, they are inseparably part of the same organism and actualized by the same developmental process.

Working backwards, Iglesias maintains that any criteria we pick for personhood in adult humans (e.g., self-consciousness, rationality), is an actuality that was rooted in a potentiality that was present earlier on in the adult human's life. If a zygote, and not ova or sperm, has biological and rational capacities by its nature, then that nature metaphysically explains why we have the relevant criteria for being a person. Since a zygote will, under favorable conditions, actualize those two capacities through the same developmental process we are the same kind of being now that we began as. We are now, and always were, human persons.

The next step in the argument involves the presence or absence of a Y chromosome. Ryan Anderson (2019) explains that embryos with a single Y chromosome develop testes because of the sex-determining region on Y (SRY) gene. If an embryo does not have this gene, it will develop ovaries instead.[6] Once formed, testes and ovaries initiate further sex differentiation. Although the primary effects from this differentiation are external genitalia and increased hormone production, Christopher Tollefsen (2015a; 2015b) returns to the point that natures integrate parts to cooperatively work together for the same end. Sex differentiation, then, also includes developing blood vessels and muscles that support our reproductive systems. The SRY gene does not, therefore, just indicate which organs will form, but how they will form as an integral part of the whole organism.

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6. Anderson briefly notes that someone may have a Y chromosome and either lack the SRY gene or have a mutation on it, reasoning that each disjunct interferes with reproductive function and so does not impugn his account of sexual identity because he considers them as developmental disorders (2019: 88–92). Anne Fausto-Sterling (2000) critiques this kind of reasoning and Joan Roughgarden (2013) presents an evolutionary account of gender diversity and sexuality, presenting a more complex picture than Anderson presents. Since these objections are external to Natural Law, I set them aside, but note that Anderson does not address them.

As a matter of first potentiality, zygotes use the genetic material that they have to develop reproductive organs. Like other organs, reproductive organs are functional and so, once formed (first actuality) they start to perform their functions (second potentiality). During gestation, ovaries and testes produce hormones. Other functions (e.g., producing sperm, releasing ova) actualize later, during puberty. Puberty alters hormone levels, which initiates further anatomical changes throughout the body (e.g., broadening hips/shoulders, musculature, fat distribution, breast growth, height). In addition to shaping our bodies, hormones initiate other physiological changes (e.g., facial hair, timbre) and behavior (e.g., aggression, libido).

Although we can individuate each of these functions, they are metaphysically unified in each teste or ovary towards a common end: the ability to sexually reproduce. Melissa Moschella (2021) completes this line of argument: this biological ability to beget or conceive determines our sexual identity; it is what makes us male or female. Since this ability depended on the presence or absence of a Y chromosome, then once we have our sexual identity, we cannot change it. In that respect, our current genital status is beside the point because losing them to a scarring accident, having them removed because of cancer, or having bottom surgery does not undo the chromosomal blueprint in our nature (Stephens 2016; Bedford & Eberl 2017). Circling back to Tollefsen's point about integrative parts, artificial sex organs, even ones constructed from previous organs or skin, are not organically integrated with the rest of the body, and so prosthetically imitate, but do not complete, the organ's functional goal of begetting or conceiving.

But zygotes also develop rational capacities alongside our biological capacities. Since the organism we are now is continuous with the organism we were when we were a zygote, Moschella explains that "our biological identity is essential and intrinsic to our personal identity" (2021: 787). Based on this position, then, any personal identity claim that does not accurately reference our body is mistaken because it misrecognizes what our body is. Moschella acknowledges that while culture and personal choice mediate how individuals understand their body, the anatomical and physiological changes from sex differentiation happen on a "pre-discursive" level and so delimit our biological abilities, tendencies, and limitations (2008: 104–7). If bodies are metaphysically prior to our cultural or personal understanding, then they have an explanatory precedence (cf. Fausto-Sterling 2012; Butler 2011). While gender norms vary throughout time and across cultures, Moschella leverages this "pre-discursive" conclusion to assert that gender norms are "ultimately rooted in biological sex differences and would make no sense without them" (2021: 789). Transgender identity claims, then, are based on a tension between sexual identity and gender norms that are culturally positioned as opposite of that sexual identity.

Moschella argues that this tension results in an embodied misunderstanding not because transgender people misperceive their sexual identity, but because they have an intense and longstanding desire to live out gender norms that do not socially align with their sexual identity. While she does not find anything objectionable about this desire itself, Moschella places two moral strictures on how someone decides to live out a transgender identity. First, while we do not have to have sex in order to flourish, surgery that damages or incapacitates our ability to sexually reproduce is ruled out entirely because it forecloses our ability to participate in reproductive sex. Reproductive sex is what makes marriage a one flesh unity because it biologically unites spouses in a single act and so, for Moschella, partly constitutes marriage as a basic good that contributes to our flourishing (2019a; 2019b). Since hormone therapy only reduces fertility, I presume that Moschella holds it would be proportionately wrong only to the extent that it reduces fertility.

Moschella's second worry is about self-perception. Moschella presses that since surgery or hormones do not change someone's sexual identity, their "success in reducing psychological distress must ultimately be based on self-deception (even if sub-conscious)" (2019b: 202). While Moschella leaves some space for moral casuistry, she affirms that "such self-deception is inherently bad" and so it is unclear if using a different name, going by corresponding pronouns, changing comportment, or wearing different clothing would be morally different in kind or only in degree (2019b: 202). Anderson, Edward Furton (2015), and Alexander Witt (2021) insist that encouraging any gender behavior or identification that is discordant with someone's sexual identity only promotes confusion for the individual and sets a harmful example, confusing others who misinterpret that encouragement as approval.

Gender dysphoria is often presented in EMC as proof-positive why trans lives deserve to be pitied, but not promoted. Anderson's book on transgender identity is an extended plea not to give into behaviors or policies that encourage transgender identification, instead arguing that many children will desist or grow out of it.[7] Despite her sympathetic call for pastoral compassion and understanding, Moschella pins a lot of argumentative hope on gender dysphoria clearing up on its own, lessening because of improved treatments, or going away entirely because someone of the opposite sex will come along and make (straight) marriage an attractive option that didn't seem possible before (2019:

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7. More recent research (Olson et al. 2022; Roberts 2022) suggests that this conclusion is misleading because the reason children and adolescents may stop trying to transition (or "regret" or "retransition") is based more on social rejection, lack of family support, difficulty finding employment, or other forms of discrimination (e.g., being denied access to homeless shelters) rather than it being "just a phase."

206). In sum, EMC can say that being transgender is an impediment to human flourishing or, at best, something to be managed so it does not interfere with other aspects of flourishing.

Decisions about clothing, name change, and self-presentation are ethical choices because they are about how people should live. Robert George (1994) and John Finnis (2011a) affirm that things are good for us because of the nature we have. If our nature and bodies were different, then the things that would benefit them would be different too. Pica, for example, is the strong desire to eat paint chips, sand, or hair. Satisfying this desire will not make us better off because our bodies are not the kind of organisms that can digest and grow from eating paint chips, sand, or hair. If, however, our bodies were the kind of things that could digest and grow from eating paint chips, sand, or hair, then eating them would make us better off. So, just as our natural capacity to digest constrains which foods will benefit us regardless of what we deeply want, so too does our natural capacity to develop ovaries or testes constrain our ability to make moral choices about how to live out our gender identity.

Some recent work in Natural Law has focused on how political arrangements are more than a moral backdrop for our nature. Jonathan Crowe (2015) acknowledges that our ability to flourish depends on our own "normative inclinations" to recognize basic goods and appropriately actualize them, but he adds that flourishing also depends on social structures, technology, and political resources. Friendship is a basic good that promotes flourishing, but people living in the Stone Age were constrained by how they could actualize it because they couldn't really befriend anyone who wasn't physically close by. Friendship in the Digital Age does not depend on physical proximity, so we can actualize a wider network of friendships. We can also use Crowe's insight to detect if obstacles to flourishing are due to someone's normative inclinations or are based in political infrastructure that is not designed to accommodate them. We can further adapt some of Lisa Tessman's (2005) work on oppression and virtue ethics to extend this conclusion. If we presume that a political arrangement is just, then we can inadvertently attribute structural problems to an individual's "flawed" nature. So, the poor get branded as lazy or spendthrift rather than as doing their best with low wages, increasing rent, and little social respect.

This conclusion, about human nature and wellbeing, matters for Natural Law because it is supposed to provide an account of human flourishing. Transgender identity claims, according to EMC, are confused about what is good for bodies and so attempts to live a transgender life cannot lead to flourishing. Someone who is transgender can flourish in their vocation, as a friend, as a dedicated member of their community, and in every other way, just not with respect to being transgender. In order to provide an alternative to EMC, then, I need to

show that a physiological account of our body does not determine our nature. I now turn to my argument from analogy and show in the next two sections that language and gender constitutively contribute to our nature as a *habitus*, a set of socially learned habits, behaviors, skills, and dispositions that form a second nature. As a *habitus*, language and gender shape how we experience basic goods and so provide a metaphysical explanation of what it good for us. I contrast auditory languages with sign languages to emphasize that there is no one "correct" set of natural capacities that languages must use to enable us to flourish, preparing the point that gender likewise does not necessitate any one "correct" set of natural capacities that enable us to flourish in that gender.

3. Argument from Analogy: Language

As a matter of first potentiality, humans have the capacity to learn language. Actualizing this capacity depends on three components: (1) natural capacities, (2) rational capacities, and (3) the language options that are available to people in their society. Although there is a lot of work in linguistics detailing the neurological or empirical nuances in language acquisition, I restrict my argument to minimal premises about learning language to keep things theoretically neutral.

Our first potentiality to learn language is complex because it unifies several natural and rational capacities towards a shared end: learning language. Some of these subsidiary capacities are "prerequisites" for learning language generally. Memory, language perception, and language production are each necessary natural capacities for learning any language. If the parts of our brain responsible for these functions get damaged during gestation (e.g., fetal alcohol syndrome), then we will have a harder time learning language. Damage later in life (e.g., stroke, tumor) will similarly cause us to struggle communicating with or comprehending others (e.g., aphasia). Being able to abstract formal principles, make deductive inferences, or learn rules are all rational capacities that are needed for learning any language. Since we can reason poorly, commit logical fallacies, or mistakenly apply the rules of one language to another, these rational capacities do not guarantee language mastery.

We do not develop this single capacity in the abstract, we do not just learn language, we have to learn a particular language. Being able to actualize a specific language depends on which options are available to us in our society. No one living in Shang China (1600–1046 BCE) had the first potentiality to develop Nahuatl as a first actuality because there was an ocean and two millennia between them and the Aztec empire (1200s–1500s CE). The linguistic rules and conventions that constituted Nahuatl did not exist yet and so could not exist as

a language option for people living in Shang China to learn.[8] Some language options use rules or conventions about roots, word order, or script directionality that do not show up in other languages, so some languages may only actualize certain rational capacities. In addition, some languages may only actualize specific natural capacities: tones, clicks, specific throat muscles, or tongue movements. Learning a language, then, is not just about memorizing vocabulary or mastering syntax, we might also have to develop a natural capacity that we have neglected and would likely not have considered to use while we were using another language that did not use that natural capacity.

Whichever particular language we end up with will actualize our first potentiality to learn language, but doing so will not exhaust our first potentiality. Think back to Frede's point about the bricks completing their potential to be a house: even if they complete their potential to be this particular house, they retain their potential to be repurposed for another house. By the same fact, when we actualize our first potentiality to learn one language, we use a specific set of natural and rational capacities. Since people know multiple languages, we can reuse the same set of capacities to learn a different language. Just as builders can mix and match building materials (e.g., bricks, wood, vinyl, stucco, steel), so too can we use a different set of biological and rational capacities that we are not familiar or practiced with to learn a new language.

The same reasoning extends to Aristotle's distinction between first actuality/second potentiality and second actuality. Knowing a language means that we have the ability to communicate in it (first actuality/second potentiality). When we are actively using a language, we are demonstrating that ability as second actuality, but we do not thereby use up our ability to use a different language later. An interpreter speaking Arabic (second actuality) does not lose her ability to speak Turkish (first actuality/second potentiality). It might take time, effort, and practice to effectively switch between two or more languages, but when we develop a particular language first actuality, we are not forever locked into it.

Now, if different languages use different natural abilities, then we do not just look at the "biological level" to know how parts work because we have to consider how they work together towards a particular goal, namely communicating in that language. Aristotle makes a similar point at the end of *De Anima*, indicat-

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8. John Finnis (2011b: 284; 2011c: 288) describes our capacity to learn language in terms of particular languages. If we read Finnis as saying that humans have a capacity to learn Icelandic, Quechua, and Afrikaans whenever they are born, then this interpretation makes particular languages more like Platonic Forms because anyone could tap into that language at any time, even before the native population developed it. Another way to read Finnis' claim is that he is drawing attention to the fact that humans in one society can learn any language that humans can learn in another society. On that interpretation, I think Finnis could be more careful to recognize that actualizing that biological capacity still metaphysically depends on the existing body of social knowledge.

ing that language imbues body parts with an additional function that contributes to our flourishing. Aristotle concludes that we do not have bodies for being, but for wellbeing: tongues are not just for helping us chew, but for communicating, and ears are not just for hearing, but for listening to fellows (435b20–25). Language, then, may be a human art, but it is what enables the relevant body parts to actualize this intended social end, communicating with others. If different languages draw on different natural capacities, and languages orient those capacities towards flourishing, then we do not have to worry if any particular language is using the "right" natural capacities because we can instead focus on if the language in question unifies those capacities in a single activity that promotes flourishing.

These biological differences might not seem that persuasive if we are thinking about how auditory languages differ from each other, but if we contrast auditory languages with sign languages, then we can better appreciate how languages can be composed of different sets of biological capacities. When I talk with my hands, I use them to supplement, but not replace, my speech. If we presume that language is primarily auditory, then hands only really have an auxiliary function in communication. If, however, we consider sign languages as our conceptual starting point, then our biological capacity for hand movement actualizes a new communicative function because hands are the primary means of communication. We use our rational capacity to learn a specific sign language because, just as each auditory language has its own rules about word order or grammar, so too does each sign language have its own rules about hand motions or turn taking. So, while our first potentiality to actualize auditory or sign language depends on anatomical features (e.g., vocal cords, fingers), each language uses the same general natural capacities (e.g., memory, language perception) and the same general rational capacities (e.g., rule recognition), so developing a sign-first actuality is no different than developing any auditory-first actuality (Petitto 2014). Pro-tactile Sign Language also shows that we adapt our biological capacities for the DeafBlind, even if our previous auditory or visual presumption about language would have precluded these biological functions for our hands and body contact.

This contrast also encourages us to consider how this auditory presumption conceptually connects d/Deafness with moral issues about wellbeing.[9] Assuming that auditory languages are the default way to communicate implies that d/Deafness is an intrinsic loss of wellbeing because people who are d/Deaf are navigating the world with four senses instead of five. When we think about

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9. H. D. L. Bauman and Joseph Murray (2014: xiii) point out that while the usual convention is to mark individuals who cannot hear as "deaf," while reserving "Deaf" to refer to people who are part of a cultural or political community, this distinction is somewhat in flux among scholarly and activist discussions.

d/Deafness as a curse, a biological loss, or something that an individual must overcome, then we start to treat people who are d/Deaf as charity cases needing saving (Lane 1999; Barnes 2016). In other words, this auditory presumption means that the loss of function in one body part makes someone who is d/Deaf worse off because someone who is hearing relies on that function for their life to go well.

As we saw, however, in Aristotle's conclusion at the end of *De Anima*,[10] language lets us reframe questions about how natural capacities relate to flourishing. Being or becoming d/Deaf has a global impact on someone's wellbeing because it affects their relationships, education, and employment, but this impact is not an automatic loss because notice that these concerns are not about the individual, but how the individual can interact with others and participate in society. The auditory presumption, then, misdiagnoses why there is a loss of wellbeing because what matters is how society provides opportunities and resources for people who are d/Deaf (Bauman 2005). Since d/Deaf wellbeing dramatically increased when signing became widespread, mass media regularly included closed captioning or signing interpreters, we funded d/Deaf job training programs, and organized d/Deaf cultural events, then the issue was not with someone trying to make a flawed biology work. Circling back to Crowe's point about how political factors mediate access to basic goods that promote flourishing, we restructured society to better include a language that used a different set of biological capacities and saw increased levels of wellbeing in people who are d/Deaf.

Our first potentiality for language, then, depends on bodily development, but it does not require that everyone develop along the same single-track trajectory. What matters is how a language unifies the bodies we have so that they can empower us to communicate with each other. Although they are external to our bodies, political factors are important because they regulate which resources and opportunities someone can access with a language. Since lacking resources and opportunities reduces our flourishing, it is easy to misconstrue this failure to flourish as an embodied characteristic.

This line of argument still suggests a metaphysical divide between our nature as embodied human persons and language as an external collection of social knowledge. This "divide" is conceptually misleading because actualizing

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10. It isn't clear how sympathetic Aristotle himself would be in extending this point to sign languages. Giulio Ferreri (1906: 469–70) points out that, using faulty science, Aristotle believed that hearing was necessary for learning and so was committed to the position that d/Deafness was an intrinsic loss of wellbeing. Dafydd Stephens acknowledges that Aristotle disrespectfully describes d/Deafness but suggests that he may have seen the loss of one sense as a partial barrier to learning rather than an absolute barrier (2006: 90). Martha Rose also points out that "for the Greeks, as for all pre-Enlightenment cultures, speech, language, and reason were intertwined" so it isn't fully clear when Aristotle is talking about one of these individual concepts or when he is conflating them (2003: 76).

a language depends on natural capacities like hearing, gesturing, or seeing, but it is unlike other natural capacities to breathe or digest. Medieval philosophers distinguished between our natural powers and our *habitus*, a set of dispositions and inclinations that we internalize as a "second nature." We develop a *habitus* through training, conditioning, and practice, but it would be a mistake to discount its contribution to our wellbeing as artificial imitation (Kent 2002). Aristotle held that while we do not have any of the virtues or vices in us by nature, we do have the natural capacity to acquire them through habituation (1103a20–b25). Cary Nederman adds that later scholastics took this point to mean that a *habitus* being accidental was exactly what made it possible for us to change or refine it because "human beings actively determine for themselves the general pattern of their moral character" (1989–1990: 108). So, while a *habitus* is contingent to our nature, it must also be continuous with it because it is what enables our moral lives to take shape.

To be clear, Medieval philosophers did not consider either language or gender to be a *habitus*; not because they denied it, but because they were focused on other issues: the durability or decay of moral character, whether *habitus* required practice or if God could divinely infuse it into people as a dormant characteristic for both biblical patriarchs and for unbaptized infants, did *habitus* cause us to act or did it only coordinate other motivational factors (Faucher & Roques 2018). Although there has been a resurgent interest in Medieval thought among Analytical Thomists to promote Natural Law (Haldane 2004; Feser 2015), there has been comparatively little development of *habitus* as a conceptual resource (Faucher & Roques 2018: 1–2). While there might not be a historical precedent for recognizing language or gender as a *habitus*, they are each contingent to, but continuous with, our nature. Language and gender help complete what our biological nature itself cannot because they are what enable us to recognize, pursue, and actualize a wide range of basic goods. In contrast, feral human children may be untainted by *habitus* and other human arts, but their wellbeing is stunted even if their natural capacities are fully developed.

Recall that a key premise in Natural Law is that basic goods contribute to our flourishing because of the nature we have. So, in order to show that languages constitutively contribute to our nature, they cannot just be instrumentally valuable. The political obstacles to sign language, for example, denied people the opportunity to use it (second actuality) to access basic goods and fully participate in society. The fact that we learned that hearing people had mischaracterized the nature of being d/Deaf shows that the error was in our assessment, not the state of being d/Deaf, and so the political obstacles only instrumentally interfered with d/Deaf flourishing.

Another way to show how languages constitutively contribute to our wellbeing would be to think about how great works contribute to our flourishing.

Reading *Don Quixote* in Spanish or *The Tale of Genji* in Japanese enriches my life because it actualizes basic goods like aesthetic experience or knowledge. Switching between languages does not, then, create a new set of basic goods for us to actualize, but it does change how we access them because the reason reading great works in their original language enriches our life depends on facts about the great work itself and on facts about my ability (first actuality/second potentiality) to access them in the relevant language. This example won't work for two reasons. First, accessing the great works requires us to actively read them (second actuality). Since I need to show that language plays a constitutive role in our nature, I can't appeal to an activity. Instead, I need to show that having the characteristic as a first actuality/second potentiality explains the increase of well-being. Second, this example makes languages instrumentally valuable because if the reason I want to learn a language is to access other basic goods, then I want those basic goods, not the language that gets me them.

Instead of focusing on how we can access basic goods, Sophie-Grace Chappell (1998: 175ff.; forthcoming 2024: 30–32) encourages us to think about the basic goods in terms of how we experience interactions and events in our lives. While Chappell focuses on how we narratively situate events (e.g., loss as a set-back or part of a come-back) or relationships (e.g., a teacher being tough as helping or discouraging students) in our lives, I want to develop her insight by concentrating on how political values infuse language and so inflect how we experience basic goods. The Basques are a group of people who live in northern Spain and southwestern France. Francisco Franco was a Spanish dictator who ruled from the 1930s to his death in 1975. After he seized power, Franco outlawed the Basque language through a series of economic penalties, cultural suppression, and political persecution. While these measures reduced the opportunities Basques had to read, write, converse, and conduct business in Basque, many Basques growing up in Spain had learned both Spanish and Basque (first actuality/second potentiality) and so could still access all of the same basic goods by using Spanish as a second actuality. Now, there is nothing objectionable about using Spanish and the switch between second actualities was easy on a fluency level, but the coercion to use Spanish was an everyday reminder that people with a Basque first actuality were subordinated. Thus, even though there were no political barriers to people accessing basic goods in Spanish, their Basque first actuality vitiated how they experienced the relevant events and interactions. The basic goods, then, did not change, but their Basque "second nature" changed how people could experience them.

I've argued in this section that we have a single first potentiality to learn language. This first potentiality unifies various subsidiary natural and rational capacities towards the single goal of learning language. Since this first potentiality can only actualize as a specific language, and different languages can utilize

various anatomical features (e.g., hands, eardrums, tongues) and language specific rules, then we can rephrase questions about biological function in terms of how a language enables us to participate in a single activity that contributes to our flourishing. I also showed that languages constitutively contribute to our nature as human persons not because they change what the basic goods are, but because they provide a new metaphysical explanation for how we experience interactions and individuals as instances of the basic goods.

4. Argument from Analogy: Gender

As a matter of first potentiality, humans have the capacity to learn gender. Actualizing this first potentiality depends on three components: (1) natural capacities, (2) rational capacities, and (3) the gender options that are available to people in their society. I will use some of the conclusions from the previous section to show how this first potentiality diverges from EMC and then discuss how gender constitutively contributes to our nature as human persons.

Now, like language, we do not develop this first potentiality for gender in the abstract; we do not just learn gender, we have to learn a particular gender. So, actualizing our first potentiality for gender depends on which social options are available in a society. We saw in Section 3 that some natural and rational capacities were general "prerequisites" for learning any language and that some languages only required a specific set of natural and rational capacities. Although there is an extensive body of empirical work about gender in developmental psychology, I will similarly restrict my claims to minimal premises about learning gender.

By analogy, memory, gender perception, and gender production are each necessary natural capacities for learning any gender. Individuals have to be able to recognize that descriptions or norms are about gender rather than something else (e.g., sharing, napping). In addition, individuals have to be able to remember these descriptions or norms and then be able to produce them by enacting or rejecting them (e.g., "I don't want dolls, those are girl toys"). Other people may attribute a gender to us (e.g., dressing us in gender specific clothes, using gender specific pronouns), but in order to develop a gender first actuality, we have to also have the ability to demonstrate that characteristic. So, if these cognitive features are damaged during gestation or later in life, or are not present, then we have not actualized a gender because we have not developed the capacities to learn one.

Natural capacities explain how we develop on a biological level. As we saw in Section 2, EMC built its case on the biological function of testes and ovaries. Testes and ovaries function by initiating physiological and anatomical changes

during gestation and maturation, culminating in our ability to beget or conceive. According to EMC, this developmental trajectory establishes our sexual identity. Since we develop as one organism, as human persons, our sexual identity is an essential and unchangeable part of our personal identity.

But EMC's argument about our sexual identity does not show the conclusion it purports to. All the premise about physiological development shows is that people with ovaries typically develop one way, people with testes typically develop another way, and people with intersexed organs typically develop another way if they are not subjected to surgical intervention. We can, therefore, reformulate the sexual identity category that EMC uses in terms of people who have particular organs. If the key premise for the sexual identity argument was that these organs orchestrate physiological and anatomical changes, and this reformulation builds the biological category around those organs, then reformulating them would not lose any scientific explanatory power because it would track the same developmental trajectories. For our purposes, then, natural capacities explain why we have the body that we do, but they do not commit us to creating sexual identity as a further category.

Another important conclusion from Section 3 was that languages imbue our natural abilities (e.g., hearing, seeing, hand dexterity) with a further communicative purpose. Language, then, is a unifying principle that metaphysically explains how various body parts work together for a communicative goal. The contrast between auditory and sign languages showed that we could reframe questions about natural capacities (e.g., which ones, how many) in terms of how a language unifies the relevant capacities to contribute to our flourishing. When we actualize a gender, we are articulating a metaphysical explanation for why we have the body we do because we are accounting for how our body parts and natural abilities work together as a unified whole. Learning a gender is a deeply personal task, but it is also aimed at an interactive end: we want people to recognize and interact with us as that gender. This account of ourselves, then, explains why someone has the gender they do (first actuality) and enables them to express that gender to others (second potentiality).

Understanding gender as a first actuality lets us bring in some of the other conclusions about *habitus* from Section 3. Practice lets us switch between languages easily, but learning a first, second, or n^{th} language takes time and effort. There is memorizing and practicing a new form of communication, but we also have to learn a new set of values that are embedded in that language: which kinship relationships are (not) worth naming, which social groups get used as insults or as honors, or which emotions are recognized in the vocabulary. Analogously, even if the relevant gender norms and identifications were drilled into us, they were not instantaneously installed into our psyche, they took work—both in terms of learning what they were and in terms of who they applied to. So,

a *habitus* for gender or language is not just a sense of self, it is a sense of how we are situated in the social world with respect to political institutions, large-scale patterns of social acceptance and rejection, and specific demands from individuals (Bourdieu 1977). Importantly, our first potentiality for language and gender means that we are not restricted to one *habitus*.

Some people grow up in a bilingual context and learn how to navigate the social world with either language. Being bilingual can be posh, but Gloria Anzaldua (2012) tells us that this desirability depends on larger social evaluations about which languages are seen as cultured or worth knowing. Anzaldua presses that politically devaluing a language creates a state of "linguistic terrorism," that subsequentially devalues the community of language users (2012: 80–81). Branding a language as illegitimate creates an omnipresent atmosphere of anxiety about individuals who are "illegitimate" or "illegal," those who can be arrested, deported, robbed, beaten, raped, or killed. Moreover, linguistic terrorism structurally shapes who could challenge those reprisals or punishments by determining what language people would have to use to do so—if they even had the standing to do so at all. People who do not have the ability to speak the outlaw language do not have these worries because their everyday lives and ordinary experiences are not connected to the interpersonal harms or the institutional vulnerabilities. But, as Anzaldua stresses, people who do have that ability worry about a slip of the tongue in front of the wrong audience. The sense that "the world is not a safe place to live in" becomes ordinary, almost unremarkable, and something that gets drunk "along with our morning coffee" (Anzaldua 2012: 42). By analogy, some children know very early on that they are transgender. This transgender *habitus* exists alongside a cisgender *habitus* because these self-aware children learn very early on how the world expects them to act: what they can(not) tell their parents, how people at school will react, who they need to emulate in order to survive, who, if anyone, they could trust, and who would care if they were bullied, beaten, or disowned.

Other times, people learn that they are transgender when they are teenagers or adults. Veronica Ivy (2015) points out that while these later in life narratives are not as common in media or cultural representations, they illustrate that developing a new gender means learning a new self-understanding and learning how to interact with people. This epistemological shift is not automatic or all at once, it requires practice and skill.[11] C. Jacob Hale (2009) is right that on one

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11. Julia Serano (2016) cautions that this point about learning gender can easily go wrong. Movies, television shows, and news reports depict trans women in the act of putting on makeup, wobbling in heels for the first time, or dressing and undressing to suggest that trans women are not "real" women because they have to learn what they already are. Alternatively, these same representations incorporate "before" pictures "as if to constantly remind us that she's really a man underneath it all" (Serano 2016: 43).

level, this shift is about a new name and pronouns, but in a far more important sense, it is about learning how to respond to and anticipate normative presumptions about gender in ordinary interactions. Consider, for example, that trans men who get pregnant are not learning anything new about their natural capacities, but they do have to learn how to experience their pregnancy as men: prying questions about conception, not being hassled about what they eat, accessing prenatal care in "women's clinics," finding a supportive midwife/doula, complications with chest feeding, and coping with pre/peri/neonatal loss (MacDonald 2016; Stroumsa et al. 2019). When someone actualizes a gender option, they are accounting for how that gender metaphysically unifies their body for a further interactive end. As a *habitus*, gender constitutively contributes to our nature because it inflects how we experience basic goods. *Contra* EMC, the issue is not how our natural capacity to beget or conceive positions us to participate in marriage, but how we have structured society and interpersonal relationships to empower or exclude people based on their actualized gender.

Lastly, gender, like language, is partly constituted by rules and so references our rational capacity. While these rules normatively structure language, they do not impose uniformity. Even though our first potentiality for language actualizes into a specific kind of language (e.g., Thai, German), we do not expect all language users to be the same, even if they instantiate the same language-kind. We recognize that people can actualize the same language-kind, English, as a first actuality, without also expecting that actualization to be the same (e.g., British, American, Australian) for each person or language community. Dialects diversify language, both by region and demographic; formative experiences and idiosyncrasies further individualize language. So, there is no "one correct way" to be a language user. Notice also that many of our language rules are not really about the language. Norms about (mis)pronunciation, conjugation, or word choice often double as political values and get used against someone as evidence that they are ignorant or lack credibility (Medina 2012). If these evaluative inferences and subsequent penalties are unjust, then demands that people conform to political or class biases in language are not purely descriptive claims about what native or "real" language users do.

We've seen similar presumptions about legitimacy show up in gender options. Feminists of color have historically objected that dominant understandings of being a woman presumed that middle class White women were the conceptual default (Hull, Scott, & Smith 1982; Davis 1983; Lugones 2003; hooks 2014; Morga & Anzaldua 2015). This presumption determined which political projects got counted as "Feminist" or were in "women's interests," and in turn fabricated the belief that all women had the exact same concerns or problems. When women of color tried to bring up other issues, they were dismissed as focusing on class or race, and not gender (and definitely not about all three as intersec-

tional). Reflecting on this tension, Angela Davis (2016) recognizes that a similar kind of presumption about being cisgender has excluded trans men and women from being recognized as men and women. Instead of trying to tinker with the parameters of who counts as a man or woman, Davis urges us to fundamentally rethink what the category should be.

This reformulating call to action takes us back to Chappell's discussion about how we experience basic goods. Although she acknowledges that we experience basic goods as human persons, Chappell is right to add that we can only do so as individuals who have our own goals, relationships, and histories (1998: 120–29). When we account for these events and interactions, we are actualizing a narrative unity in our lives. This unity makes a moral difference in how we live because it answers a fundamental question about moral motivation, about why we choose to act. This self-explanation indicates a kind of pluralism—not among the basic good themselves, but among the possible narrative unities that we could tell about ourselves. By prioritizing the good we did, we may unduly understand ourselves as the hero when a more honest assessment would cast us as a complicated protagonist (Jean-Baptiste Clamence). Not knowing facts about our circumstances means that we might misinterpret impending tragedy as success and prosperity (Oedipus). In any case, narratives structure our lives and so constitutively alter how we experience basic goods.

Chappell extends this point about individualism and plurality in her more recent work on being transgender (2024: 30–32). I want to apply two insights here. First, Chappell is right that figuring out gender is a personal and individual task. For our purposes, when someone is providing an account of themselves, they are developing a first actuality because they are determining the gender that they want other people to recognize and treat them as (cf. Butler 2005). Notice that this aim is still about how an individual understands the way a gender metaphysically unifies their body and in no way would it necessitate or expect uniformity in how others actualize their own gender first actuality than a dialect demands other language users to conform. Second, while this account of ourselves is imperative, it can often be repurposed to demand that trans people justify who they are to others. Chappell clarifies that while "trans people don't owe cis people, or anyone else, an explanation of why they're who they are" being trans does not mean refusing to give philosophical arguments about moral choices (2024: 27). Building on this point, the propensity to ask people who are transgender how they can be what they claim to be reveals something about why an interlocutor presumes the moral standing to ask the question at all: the interlocutor is presuming a norm about gender legitimacy.

I have argued that our first potentiality to learn language analogically indicates our first potentiality to learn gender. Since we can learn multiple languages, we can also learn multiple genders. Each of these first potentialities depends on

natural capacities, rational capacities, and the respective options that are socially available. Both language and gender imbue our bodies with a further social purpose, which metaphysically unifies our natural abilities to cooperatively contribute to their respective goals. I've also shown that even though languages do not each use the same set of natural capacities, they still contribute to our flourishing because they accomplish the same goal provided that political barriers do not interfere. I argued that language and gender are a *habitus* that is contingent to, but continuous with, our nature because they each enable our moral life to take shape and inflect how we experience basic goods. Since this argument uses the same theoretical resources about actuality and potentiality that EMC does, it is a theoretical alternative within Natural Law.

5. Theoretical Compatibility and Political Hazards

One of the main reasons I wanted to develop an alternative to EMC was because people who were transgender and religious did not find EMC representative of who they were. So, unless my argument from analogy can represent transgender lives as transgender authors, activists, and scholars represent them, my position is no different than EMC. I do not have space to survey every theory of gender or even only consider the prominent ones, but I do want to show that our first potentiality for gender is compatible with two theories that are representative bookends and take transgender identity as a starting point. If our first potentiality for gender is compatible with either bookend, then, as a disjunctive syllogism, I can show, against EMC, that political barriers, rather than a "troubled trans psyche," stymies transgender flourishing.

Julia Serano (2016) argues that we have a "subconscious sex," a neurological expectation about how our bodies should be. The phrasing is doubly important: "subconscious" emphasizes that we aren't directly aware of this expectation; "sex" emphasizes our body instead of cultural categories or political practices that construe gender as a social artifact. Serano contrasts our subconscious sex with what she calls our "conscious sex," which processes and interprets the subconscious feelings about what our body should be like (2013: 149–58; 2016: 78–86). The key here is that everyone has both a subconscious and a conscious sex, but people are only really aware of their subconscious sex when it diverges from their conscious sex. Citing her own experiences with this dissonance, Serano explains that it felt like a pervasive and persistent feeling that something was inexplicably off—not in the world, but in her. Moreover, this feeling was elusive and resisted Serano's efforts to repress, explain, or rationalize it away. In fact, Serano recounts that the only time she felt relief from this dissonance was

when she started taking hormones because they changed her body into the body she was expecting to have on the subconscious level.

Given that hormones have predictable physiological effects on bodies, it is unsurprising that other trans narratives attribute the same kind of relief because they close the physical gap between the body someone's conscious sex recognizes and the body their subconscious sex expects them to have. Taking hormones (e.g., testosterone, estrogen) brings us back to Aristotle's comment that "art in some cases completes what nature cannot bring to a finish, and in others imitates nature" (199a15). Aristotle doesn't set the contrast between genuine and counterfeit, but between complete and incomplete. If hormones close the gap between subconscious sex and conscious sex, then they complete what nature cannot because they bring hormone levels up to where they should be. Since hormone production is a continuous process and not a static event, each dose is the completing stopgap between actual hormonal level production and required hormone level production for healthy function.

While our subconscious sex explains how we relate to our own body, Serano reasons that we have similar "intrinsic inclinations" that dispositionally orient us towards behaviors. Intrinsic inclinations are "any persistent desire, affinity, or urge that predisposes us toward particular gender and sexual expressions or experiences" (2016: 98). Here too "intrinsic" pushes away from social constructs and emphasizes an organic origin. Although Serano acknowledges that socialization constitutively contributes to our intrinsic inclinations, she naturalizes it by likening it to the same kind of socialization that we see in other kinds of animals. Describing socialization as a naturalized process matters for Serano because it sharpens her contrast between our biological bodies and gender as a social artifact. Elsewhere, Serano brings these components together clarifying that our subconscious sex and intrinsic inclinations are natural urges that our conscious sex interprets and evaluates based on the given narratives and identity labels in a society. Similarly, we have a biological drive to eat, but social and cultural values about what is food do not just influence what we end up eating, but what we even desire to eat (2013: 149–58). In sum, Serano does not reduce us to physiological beings, but we do end up with a body that is somewhat primal and independent of social classification.

Even though Serano prioritizes our physical body, our first potentiality to learn gender is compatible with her account. Remember that in Section 1 we talked about how our natural capacities normatively structure our development, they do not describe the body we have, but the body we should have. Since our subconscious sex and intrinsic inclinations similarly indicate the body we should have, they conceptually parallel our natural capacities. Our conscious sex would then correspond to our rational capacities because it uses available social categories and gender norms to interpret our unconscious sex and intrinsic inclinations.

While biological factors take center stage for Serano, she doesn't deny that we exist outside of a cultural context. As she acknowledges, social scripts about gender instruct us how to interpret bodies, especially our own. Now, even if we naturalize the socialization that constitutes our intrinsic inclinations by explaining it in terms of how other animals raise their young, the adult humans who are doing the socialization are using social scripts, narratives, and categories to not only interpret our bodies, but to inform the socialization itself. Since our subconscious sex is grounded in neurology or our physiological development, we are not wholly determined by that socialization, hence we do not see uniformity in everyone's subconscious sex. If, however, our intrinsic inclinations are constitutively continuous with the social values that were inculcated into us by that socialization, then social values do not only show up in our conscious sex, they would also have to be part of our intrinsic inclinations. I bring up this point not to object to Serano's naturalization efforts, but rather to show that this conclusion matches Aristotle's at the end of *De Anima*, that some natural capacities have a further social purpose.

Let me oversimplify how *habitus* could enter into Serano's position. If our subconscious sex is independent of cultural categories and norms, then our expected body is a theoretical constant. That is, even though the social values that interpret our bodies can change throughout time and across cultures, our subconscious sex would remain invariant. Different societies have different gender options. Some gender options (e.g., *tribades, hijra, mukhannathun*) may be a transgender identity localized to a particular culture or they might be an additional gender option, but what matters for our purposes here is that these options provide the social norms our conscious sex uses to make sense of our subconscious sex. Each of these gender options, then, are constituted by conditions or rules about membership: natal genitals, current genital status, occupation, facial hair, religious rituals, sexual position, clothing choices, etc. Serano acknowledges that each of these conditions can vary in importance, one condition may be all-determining in one gender option, but be entirely irrelevant in another, and so concludes that if someone had been born in a different time or lived in a different society, then they would gravitate towards a different gender option not because their bodies changed, but because the "best fitting option" for them changed (2016: 100–102). If these conditions are what make the varying gender options possible in a society, then they are what determine if someone can live as that gender in that society because they set the standards for which bodies are eligible for which options.

If these conditions are constituted by political institutions, widespread social practices, and other structural components, then they are metaphysically contingent to our subconscious sex. If these gender options prescribe norms,

rules, and values, which is what our conscious sex picks up on, then actualizing one of these options plays a similar role to a *habitus*. Our intrinsic inclinations may explain our motivation to actualize one gender option over another, but it wouldn't preclude us from actualizing another gender option any more than growing up with one language first actuality would preclude us from learning another. If we feel distress from struggling to actualize the gender option that complements our subconscious sex, then the reason for that distress is because of the larger structural constraints, because they are what enable or prevent people from actualizing that gender option. So, if there are societies where we would have an easier time actualizing a desired gender option or we could modify our own society to make that actualization easier, then the distress and lack of flourishing is due to the external political conditions, not a biological or psychological flaw.

Arguing against a bodily etiology, Talia Mae Bettcher (2009) thinks of gender as a series of personal avowals. Roughly speaking, an avowal expresses an attitude, aspiration, or desire. Unlike simply reporting a psychological fact about ourselves, avowals express how we relate to a fact or state of affairs: "I celebrate her success" is different than "I envy her success." Now, since I typically know what I think or avow before others do, I have a first-person authority over my mental states that others do not. But Bettcher contends that this epistemic understanding of first-person authority as privileged access isn't what matters because when we make an avowal, we are "taking responsibility for a desire" (Bettcher 2009: 101). More to the point, we have an ethical first-person authority to author our own commitments, to say what we are about, what we stand for, and how we want to live. While this ethical individualism gives us maximal latitude to decide on how we want our lives to go, it holds us accountable for our avowals as descriptive endorsements of who we are. So, when I make a gender avowal, I am not reporting some inner truth about myself, I am expressing something about myself, namely my commitment to live in a particular way. Like other avowals, what makes a gender avowal genuine is how well I live up to those standards I set down. Since I can make any gender avowal with whatever body I have, Bettcher denies that biological properties are germane for being a man or a woman.

Bettcher advocates for this individualism because it ultimately is what helps us make sense of our own lives and unique experiences. These efforts, however, do not happen outside of a social context; any gender avowal gets contrasted against pre-established social meanings. In our dominant social context, gender euphemistically discloses our genital status. Just as "darn" points to "damn," so too do gender markers (e.g., clothes, voice, physical features) and gender avowals (e.g., "I'm a woman") expectatively point to someone's current genital status (Bettcher 2007; 2012). Bettcher explains that this expectation inflicts two

moral harms against transgender avowals. First, the dominant expectation presumptively makes an avowal on someone else's behalf. Avowing someone else's attitudes for them without consulting them invalidates their ethical first-person authority because it denies their standing to determine the course of their own life. Second, by initially denying this first-person authority, our dominant social context also preemptively discredits transgender avowals to correct it because our expectation that gender points to current genital status means we believe that the body tells the "truth" about someone regardless of their gender avowal. Verbs like "discovered" or "found out" turn the contrast between gender avowal and genital status into a harmful, sometimes lethal, double bind, where someone is branded as an "evil deceiver" out to seduce, trick, or prey upon "real" men or women, or they are dismissed as a pathetic "make-believer" who is only pretending to be what they are not.

While dominant social meanings impede gender avowals, Bettcher directs our attention to other possible resistant contexts. These resistant worlds are more open to transgender avowals, not just in terms of providing the physical safety to make them, but also the conceptual freedom to explore and workshop a gender. Going back to Section 3, Franco's repression of Basque was not absolute: some children still learned Basque in clandestine *ikastolak* and adults still used it in secret or out in the countryside. These resistant worlds helped sustain a sense of Basque dignity and provided opportunities, however constrained, to flourish in resistance, opposing a regime that denied their existence. These resistant contexts do not have to be perfect. Many enclaves reinscribe unjust hierarchies, but if these resistant worlds can reduce some of the conceptual and interpersonal obstacles that prevent people from making the gender avowal they want to, then it shows that these barriers are metaphysically external to our bodies and so part of the dominant social context.

These resistant contexts give people the opportunity to develop a new gender as a first actuality and demonstrate it as a second actuality. The key connection from Bettcher's view to my analogy is that our rational capacity enables us to recognize rules and apply them. So, in order to recognize when we are in the dominant social context or a resistant world, we have to be able to know when which set of rules are in effect. Worlds, then, are not so much physical spaces as interpersonal and institutional contexts separated by normative membranes (Lugones 2003; Bettcher 2009: 107–15). For a long time, people did have to be physically close to each other to create a world, but, going back to Crowe's point about how technology changes the way we access basic goods, the Digital Age has enabled people to join online groups anonymously where they can be themselves without fear of local identification by neighbors, people at school,

or coworkers.[12] Depending on where (or when) someone grew up, they may struggle to think of themselves as transgender—not because they are confused, but because sorting through everything is confusing and because many local or national representations or pronouncements about what it means to be transgender were neither attractive nor accurate (Whittle 2006). Once inside the resistant world, people are freer to explore what the more accepting norms mean for them as individuals and so develop a gender first actuality.

Resistant contexts also provide the freedom for people to express their gender as a second actuality, much like the Basques were able to use Basque among family, trusted friends, or comrades in arms. We don't really avow using language in equitable contexts because there are no political stakes in effect, but in cases of language oppression the decision to demonstrate a language as a second actuality does function as an avowal because it does not just report or describe facts, the decision to demonstrate a language as second actuality can convey a wide range of political attitudes. Speaking Basque in front of the *Guardia Civil* communicates defiance or writing a letter to the family of a fallen comrade in Basque conveys sympathy. Using a dominant language outside of a resistant context may be conditioned by Anzaldua's linguistic terrorism, but that decision can also express a wide array of political attitudes: submission, practicality, strategic compliance, or abandoning others in a language community. So, just because someone is demonstrating a second actuality, we should not infer that they are doing so because they want to. People may demonstrate one second actuality over another based on political, economic, or familial reasons, and not because it expresses who they are.

Our first potentiality for language involved us developing our natural capacities in order to communicate with others. Likewise, our first potentiality for gender involved us developing our natural capacities in order to interact with others based on our gender first actuality. As I showed in Section 4, developing a gender first actuality means that we are making sense of our body so that we can interact with others, and others can interact with us, based on that first actuality. Notice, then, that our first potentiality is not about the dominant social context, but about how the individual communicates their gender. I showed in Section 4 that we could reframe questions about natural capacities (e.g., Which ones? How many?) in terms of how those capacities, whatever they are, contribute to someone's flourishing. This reframing is fully in line with Bettcher's emphasis on first-person authority because it defers to the individual on how we should

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12. Mark McCormack (2012) analyzed how online communities helped students strategize about coming out at school or their parents, be support groups, or just come to terms with being LGBT. The anonymity of online interaction meant that teenagers didn't have to worry about anyone local disclosing their identity.

interact with them. If, as Bettcher said, our first-person authority is fundamentally about determining what our ethical commitments are, then it too provides an explanation for both about how our bodies are metaphysically unified as the avowed gender and how our avowed gender will promote our flourishing.

I will close this section by individuating three kinds of political obstacles that interfere with transgender flourishing: (1) lack of well-developed gender options; (2) interpersonal violence; (3) institutional violence. I claim that the more we ameliorate these obstacles, the more we will see transgender lives improve. This conclusion diverges from EMC because if EMC were correct, then these political changes would not change how transgender lives can flourish because EMC concluded that transgender identity claims were premised on a biological falsehood.

Limited gender options constrain how we can understand and express ourselves. Rowan Bell (in press) holds that oppression prevents us from utilizing and cultivating adequate conceptual resources for our gender options. These oppressive conditions force us to find the best gender option that is currently available to us, which is not the same thing as finding a good one. Bell elaborates that, like everyone else, transgender and gender non-conforming people are trying to develop their "socially authentic" self by making use of the current gender resources available to them—however inadequate those may be. Typically done in safer, resistant enclaves where people are free to experiment with a new gender, these efforts require creativity, openness, and work. Applying Bell's conclusion here, these efforts help someone develop a gender *habitus*. This political opportunity gives people more agency to draw on different lived experiences and cooperative self-exploration to figure out who they are as an individual, but no one just shows up and gets a better understanding of their gender as a door prize. This growth process takes work because it means relearning habits that strongarmed compliance, discarding dispositions to conform, and cultivating epistemic skills like open-mindedness, humility, and curiosity. While these enclaves are empowering for individuals, Bell rightly returns our attention to the fact that this pursuit of authenticity imposes a different set of normative demands than moral demands to resist oppression. Developing conceptual resources in these resistant spaces helps people get by in the here and now, but they must also be in service of a long-run resistant plan to make those resources more accessible and plentiful outside of the enclaves.

Conceptual rigidity can also limit gender options by unduly imposing entry and exit barriers. Kate Bornstein (2016) recounts that while she initially felt happy when she became a girl, she later realized that she was non-binary, a gender outlaw who would lampoon a system that demanded a mutually exclusive either/or for men and women. But the problem wasn't just the limited gender options. Bornstein rightfully complains that even the proliferating options are still con-

ceptually rigid—both in terms of preventing initial access and falsely implying that once someone has a (new) gender, they have exhausted their potential to have another one. Comparing gender to language helps accentuate Bornstein's concern because no matter how long we have lived with a language, we have the first potentiality to learn another one. Moreover, languages document intercultural and historical exchanges; words, phrases, and concepts from one language can show up in any number of others. Arabic numerals, Latin phrases, Greek prefixes and myriad other elements from other languages enhance English by diversifying it. This openness to integrating parts from other languages dovetails with another issue that Bornstein brings up. None of us will ever check every idealized box for any gender option anyways, so instead of viewing those unchecked boxes as failure, Bornstein suggests that we are more fluid with gender to make it our own. The point, for our purposes, isn't to flit between gender options, but to develop a gender patois that adapts to our personal and political needs. Our first potentiality for language and gender, then, is not about changing from one language or gender to another, but how to also actualize changes within a language or gender.

These conceptual structures can also prevent someone from demonstrating gender as a second actuality. As we saw with the evil deceiver/make-believer double bind, our dominant understanding of gender primes us to only recognize genders in specific bodies. In addition to the physical, sometimes lethal, violence from this double bind, misgendering is a further emotional deterrent to demonstrating gender as a second actuality. The dominant understanding of gender establishes a range of acceptable gender behaviors for cisgender people. This emphasis makes gender somewhat invisible, we do it without much thought because being cisgender is a social default and so comes with a presumed legitimacy (Serano 2013). But being transgender in the dominant understanding of gender means that nothing is spelled out ahead of time and there are few social scripts to follow. As a result, gender takes a lot more attention, planning, emotional energy, and mental bandwidth because so much of it must be carefully thought out ahead of time. Misgendering someone, then, is hurtful because it disregards a major life project. Stephanie Kapusta (2016) elaborates how our dominant understanding of gender renders misgendering as a casual or unimportant response to transgender identity, especially trans women. Knowing that anyone is empowered to misgender and will not really be punished for it is a sufficient warning to not risk demonstrating a transgender second actuality.

Dean Spade (2015) shows that interpersonal violence is embedded in legal institutions and often happens in contexts where transgender rights are ostensibly protected by law, but not taken seriously. Having worked as a lawyer with transgender and gender non-conforming clients, Spade recounts how they were regularly humiliated or harassed by staff at shelters, prisons, in-patient

clinics, and welfare offices. This indifference to transgender lives, that they are something to be scorned, mocked, or gossiped about, reflects larger institutional problems. Government agencies use different standards for classifying people based on different identification documents. These bureaucratic inconsistencies show that governmental institutions are not designed to adequately process transgender and gender non-conforming applicants. Not only do different documents (e.g., driver's license, birth certificate) come with different requirements about how or if they can be changed (and by whom), different states impose unique conditions. These divergent standards mean that applicants can be marked as transgender ahead of time without knowing it, which makes them vulnerable to staff ridicule or harassment. Focusing on these external, political factors as reasons transgender lives struggle to flourish lets us push away from the position that transgender life plans are doomed to fail and instead accept that transgender lives get better when we remove the barriers that stop them from flourishing.

I spent the previous two sections comparing how we learn a language to how we learn a gender in order to develop an alternative to EMC. I showed in this section that my analogy is compatible with several different conclusions from transgender studies. This compatibility matters because the main reason I argued that we needed a theoretical alternative to EMC within Natural Law was because people who were transgender and religious did not find EMC respectful or representative of who they were. While EMC maintained that our sexual identity physiologically prevented being transgender from being a source of flourishing, I argued in this section that conceptual, interpersonal, and institutional hazards explained why people who are transgender struggle to flourish.

6. Conclusion and Conceptual Space

As a moral theory, Natural Law promises an account of human flourishing. Although this answer is based on our nature as human persons, successfully applying Natural Law to explain how being transgender contributes to flourishing means being familiar with what it means to be transgender. Currently, the most prominent Natural Law accounts advocate for EMC and so deny that being transgender can be a source of flourishing. Since Natural Law permeates several religious traditions and informs policies in outreach and service agencies associated with those traditions, there is a compelling moral reason to develop an alternative account to EMC within Natural Law that foregrounds transgender accounts of what it means to be transgender. My goal was to show that including these accounts of transgender identity would show that there was conceptual space within Natural Law to recognize transgender identity as legitimate.

I started by explaining Aristotle's distinction between first potentiality, first actuality and second potentiality, and second actuality. I then showed in Section 2 that EMC relied on this distinction to conclude that being transgender was based on an embodied misunderstanding. I used this same distinction to show that EMC misdiagnoses why many transgender lives struggle to flourish by develop an argument from analogy in Sections 3 and 4. I argued that our first potentiality for language and gender organized other natural and rational capacities to learn a body of social knowledge. Actualizing this social knowledge developed a *habitus* and so provided a "second nature" that metaphysically organized our body towards a further end, communication and interaction (respectively). I concluded by showing that my analogy was compatible with other insights from transgender studies that point to how external obstacles prevent transgender lives from flourishing.

There is, of course, more work to be done in terms of exploring that conceptual space and finding out if it is livable: the moral atlas is incomplete. Learning that information requires dialog, both with those who deny this conceptual space is possible and with transgender people who can say if this conceptual space is desirable. There is an apocryphal concession that words, sometimes, are necessary, and starting this response to EMC was no different. But the real test to see if Natural Law can deliver on its promise to transgender people is if it leads to their lives going better. Learning that information requires action, relationships, and the commitment to do better at all times.

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