

# RADICAL TEACHER

A SOCIALIST, FEMINIST, AND ANTI-RACIST JOURNAL ON THE THEORY AND PRACTICE OF TEACHING

## Problematizing Sex/Gender with Transgender Marriage Law

(*RADICAL TEACHER* NO.88, 2010)

by Daniel Farr

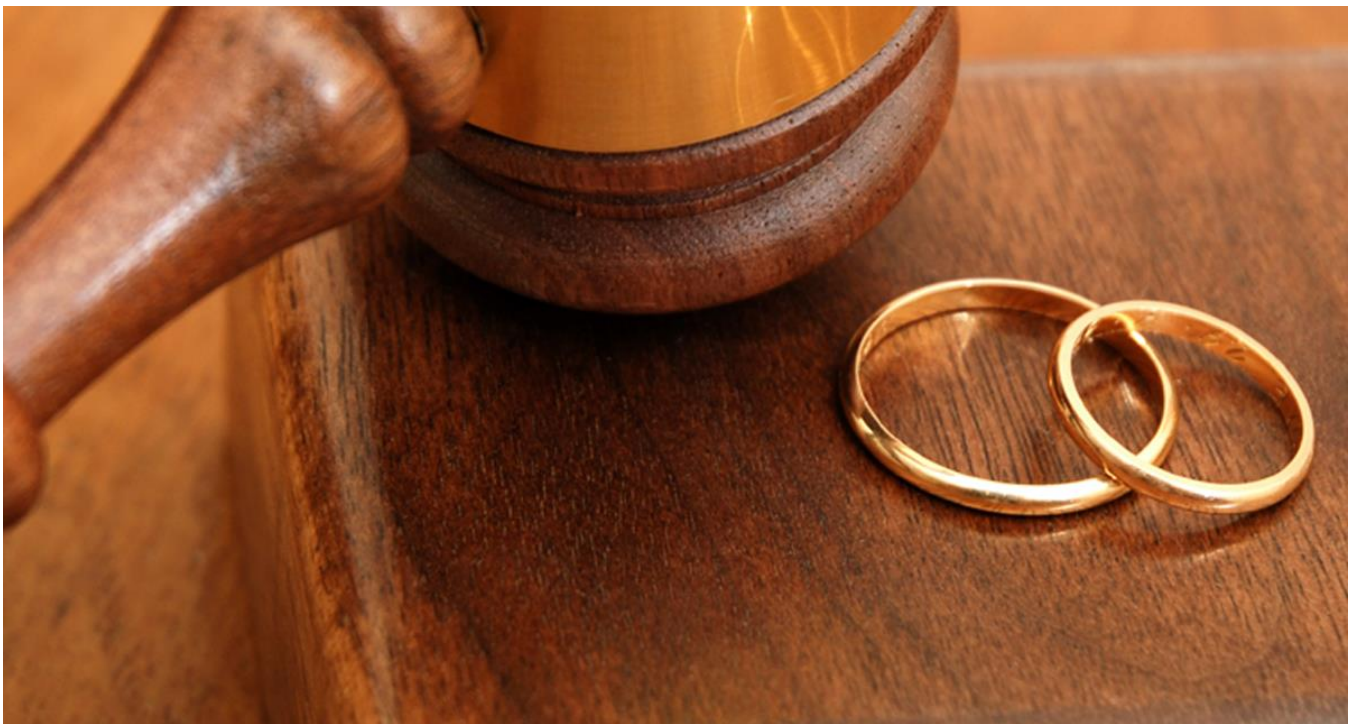


IMAGE: LAMBDA LEGAL

Legally, can one be both a man and a woman? Legally, can one have no "opposite sex"? Are the definitions of gender, sex, and marriage confusing in the United States? The answer to all is a resounding "Yes." While undoubtedly the recent debates and legal changes surrounding the issue of "same-sex" marriage offer significant opportunity for classroom debate about lesbian and gay rights, an investigation of transgender marriage and divorce cases offers even more opportunity for critical discussion about sex and gender in the United States.

Teaching at primarily small, private liberal arts colleges, I have found that one can readily initiate a discussion on the conflation of sex and gender by asking what defines "sex" and "gender." Most often students will respond with a dichotomous system -- male/female or man/ woman -- and include associated secondary sex characteristics, chromosomes, and gender stereotypes in their definitions. (This activity can be particularly valuable if students work in small groups to create definitions and then discuss them as a class.) I problematize their definitions with the introduction of intersex, transgender, and transsexual identities, but students often manipulate these to fit their dichotomous understanding of sex and gender. However, the introduction of legal cases relating to transgender marriage encourages recognition of the obstacles and limitations that dichotomous definitions bring, and of the difficulties faced by those who are regarded as blending or changing sex and/or gender; it also provides an opportunity to note the complexities of a legal system poorly equipped to deal with "non-traditional" persons.

Since state marriage laws vary in their use of terms such as "man" and "woman," "male" and "female," and "opposite sex," I encourage students to consider how courts make such determinations. Students generally return to their prior definitions, but begin to include material they consider legally defining, such as a birth certificate, driver's license, and passport. Most students do not realize that in many states a person, post-transition, may contest and modify their birth certificate to reflect a changed sex. I ask students if the birth certificate then reflects their "real" sex, and what it might mean to be legally defined as male or female and still possess the sex organs affiliated with the "opposite" sex.

While there are a number of court cases one may use, I will briefly mention two cases found in Robson (2007). The legal precariousness trans-persons may face concerning their sex/gender is particularly highlighted by "In re Estate of Gardiner." In this case the courts recognized that J'Noel Gardiner's sex/gender had changed from her male birth-sex, but she was determined to not be female either. The courts asserted that her sex was "transsexual." As such, given that marriage in Kansas was limited to two parties of

"opposite sex," Gardiner could not be legally married to a man, or to anyone else, as there was no "opposite" to a transsexual. In the eyes of Kansas she may have been a woman, but she was neither male nor female.

While many cases demonstrate the legal restrictions on trans-persons wanting to marry, the case of "M. T. v. J. T." helps students recover some optimism about social equity. In this case the marriage of a male-born man and a male-born transgender woman was upheld based on the understanding of sexual capacity. Possession of the appropriately heterosexual sex organs (i.e., a penis and a vagina), that is, the capacity for "sexual intercourse," determined the legality of this union. I find students respond to this in a predominately positive manner, noting the progressive stance of this court case, yet the heteronormativity of this determination is often left unquestioned. I encourage a more critical read of this court decision by asking if marriage should be legal for anyone who is disabled and incapable of sexual intercourse. This often results in a more meaningful discussion about the definition of marriage and the issues of gender and sex, as well as the heteronormative reliance upon a stable binary sex/gender system.

The very basis of what many students regard as stable binary categories of sex/ gender, and even heteronormativity, are increasingly challenged by trans-persons seeking legal equity and marital recognition. The use of court cases in class highlights not only the problematic definitions and approaches when defining a person and the rights of marriage, but the social obstacles faced by those who challenge traditional conceptions of sex and gender. While one can readily draw comparisons to same-sex marriage issues, transgender marriage issues demonstrate particularly well the sexist and gender discriminatory nature of our culture.

## Reference

Robson, Ruthann. "A Mere Switch or a Fundamental Change? Theorizing Transgender Marriage." *Hypatia* 22, no. 1 (2007) 58-70.



This work is licensed under a [Creative Commons Attribution-NonCommercial-No Derivative Works 3.0 United States License](https://creativecommons.org/licenses/by-nc-nd/3.0/).



This journal is published by the [University Library System](https://www.library.pitt.edu/) of the [University of Pittsburgh](https://www.library.pitt.edu/) as part of its [D-Scribe Digital Publishing Program](https://www.library.pitt.edu/), and is cosponsored by the [University of Pittsburgh Press](https://www.library.pitt.edu/).