



FACULTÉ DES SCIENCES
PSYCHOLOGIQUES
ET DE L'ÉDUCATION

UNIVERSITÉ LIBRE DE BRUXELLES

Discursive Practices Constructing Normative and Trans* Sex/Gender Categories

*The effects of the legal certification of sex in Belgium and
the definition of the (gendered) worker subject*

Thesis submitted by Sara AGUIRRE SÁNCHEZ-BEATO

in fulfilment of the requirements of the PhD Degree in Psychology
("Docteur en Sciences Psychologiques et de l'Éducation")

Academic year 2018-2019

Supervisor: Professor Caroline CLOSON
Co-supervisor: Professor Isabelle RORIVE

Thesis jury:

Catherine HELLEMANS (Université libre de Bruxelles, Chair)

Annalisa CASINI (Université Catholique de Louvain, Secretary)

Véronique MOTTIER (University of Cambridge/Université de Lausanne)

Lupicinio ÍÑIGUEZ RUEDA (Universitat Autònoma de Barcelona)

Caroline CLOSON (Université libre de Bruxelles)

Isabelle RORIVE (Université libre de Bruxelles)

The “language of gender” cannot be codified in dictionaries, nor can its meanings be easily assumed or translated. It doesn’t reduce to some known quantity of masculine or feminine, male or female. It’s precisely the particular meanings that need to be teased out of the materials we examine. When gender is an open question about how these meanings are established, what they signify, and in what contexts, then it remains a useful—because critical—category of analysis.

Joan W. Scott¹

*El ‘passing’ es tan necesario como perverso: te da tranquilidad pero es lo que nos invisibiliza como trans*².*

Teo Valls, trans* activist³

¹ Scott, J. W. (2010). Gender: Still a Useful Category of Analysis? *Diogenes*, 57(7), 7–14.

² ‘Passing’ [as ‘cisgender’] is both necessary and perverse: it gives you peace but it makes you invisible as trans*.

³ Debate after the screening of the short film ‘*De Berta a Teo, historia de un tránsito*’ (by Irene Navascués). *Pride Festival*, Barcelona (22 June 2016).

Abstract

The main interest of this interdisciplinary thesis (psychology-law) is the understanding of transphobia and discrimination against trans* people. I locate the problem of this type of discrimination in the social construction of 'sex/gender' categories. Particularly, I situate it in the definition of the norms that constitute 'woman' and 'man' as two essential and mutually exclusive categories that sustain the unequal binary organisation of society. People who transgress those norms have been labelled as 'mentally ill' by psychiatry and psychology since the end of the 19th century. The emergence of trans* activism from the 1960s and especially Trans Studies in the 1990s has allowed questioning those pathologising discourses. In the present context, we observe a tendency towards the depathologisation of trans* experiences and identities. Depathologisation is coupled with increased visibility of trans* people in the cultural domain and a more favourable public opinion towards them. However, trans* people still face serious discrimination and the norm that divides humankind into 'women' and 'men' is still very much present. Drawing on these premises I argue that the transgression of 'sex/gender' norms have been redefined nowadays so that the binary opposition between women and men is maintained as the norm. Thus, trans* people are still depicted as 'abnormal' although pathologising and psychiatric discourses are not necessarily employed today. The general objective of the thesis is to understand how this redefinition is carried out and the effects of it in two specific contexts: the legal certification of sex in the civil status of individuals in Belgium and the definition of the worker subject. The choice of these two cases responds to the fact that trans* people report facing many obstacles and discrimination in them. Based on the theoretical and methodological principles of discursive psychology and Perelmanian new rhetoric, I realised the discourse analysis of two corpora: a legislative corpus and a corpus of interviews. The legislative corpus comprises texts of Acts, bills, amendments, parliamentary debates and Circulars regulating the mention of sex in the civil status in Belgium. The second corpus includes the transcriptions of five group interviews with workers carried out with co-workers from five

work organisations in Brussels. In both cases, the identification of discursive practices and their variability allowed me to elucidate the effects they produce. Specifically, it allowed me to show that, although the identified practices seem less stigmatising, they still depict trans* people as a ‘deviation from the norm’, thereby legitimising a different legal treatment towards them and justifying the discrimination and exclusion they endure at work. Moreover, the identified practices reproduce the binary organisation of society and justify discrimination against women in the workplace. The ultimate purpose of this thesis is to promote an informed critical attitude towards those discursive practices and, in this way, to contribute to the struggle against transphobia and sexism.

Keywords: transgender ; transsexual ; discourse analysis; gender; legislation; work

Résumé

Dans cette thèse interdisciplinaire (psychologie-droit) je m'intéresse à la transphobie et la discrimination à l'égard des personnes trans*. Je situe ce problème de discrimination dans la construction sociale des catégories « sexe/genre », notamment dans la définition des normes qui constituent les catégories « femme » et « homme » comme deux catégories essentielles et mutuellement exclusives qui soutiennent l'organisation binaire et inégale de la société. Les personnes qui ont transgressé ces normes ont été étiquetées comme « malades mentales » par la psychiatrie et la psychologie depuis la fin du 19^{ème} siècle. L'émergence de l'activisme trans* dans les années soixante et notamment des Trans Studies dans les années nonantes ont permis la remise en question de ces discours pathologisants. Dans le contexte actuel, on observe une tendance vers la dépathologisation des expériences et identités trans*, accompagnée d'une croissante visibilité des personnes trans* dans le domaine culturel et d'une opinion publique globalement plus favorable à leur égard. Par contre, les personnes trans* font encore l'objet de nombreuses discriminations et la norme qui divise l'humanité entre « femmes » et « hommes » est encore extrêmement présente. Sur la base de ces prémisses, je soutiens que la transgression des normes de « sexe/genre » a été actuellement redéfinie de façon à ce l'opposition binaire entre les femmes et les hommes est maintenue comme norme. Ainsi, les personnes trans* sont encore définies comme « anormales » alors que des discours pathologisants et psychiatrisants ne sont pas nécessairement mobilisés aujourd'hui. L'objectif général de la thèse est de comprendre comment cette redéfinition est faite et quels sont ses effets dans deux contextes spécifiques : la certification légale de la mention du sexe dans l'état civil en Belgique et la définition du sujet travailleur. Le choix de ces deux cas se justifie par le fait que ce sont deux domaines dans lesquels les personnes trans* signalent beaucoup d'obstacles et de discrimination. M'appuyant sur les principes théoriques et méthodologiques de la psychologie discursive et de la nouvelle rhétorique perelmanienne, j'ai effectué l'analyse du discours de deux corpus : un corpus législatif et un corpus d'entretiens. Le corpus législatif est composé de textes de loi,

projets et propositions de loi, amendements, travaux parlementaires et circulaires régulant la mention du sexe dans l'état civil en Belgique. Le deuxième corpus inclut les transcriptions de cinq entretiens de groupe menés auprès de travailleuses et de travailleurs dans cinq organisations de Bruxelles. Dans les deux cas, l'identification des pratiques discursives et de leur variabilité m'a permis de dévoiler les effets qu'elles produisent. Spécifiquement, j'ai pu démontrer que, bien que ces pratiques semblent moins stigmatisantes aujourd'hui, elles continuent à définir les personnes trans* comme une « déviation de la norme », légitimant ainsi un traitement légal différent à leur égard et justifiant la discrimination et l'exclusion dont elles sont victimes au travail. En outre, ces pratiques discursives reproduisent l'organisation binaire de la société et la discrimination à l'égard des femmes au travail. Avec cette thèse j'espère contribuer à la promotion d'une attitude critique informée par rapport aux pratiques discursives identifiées et, par ce biais, à la lutte contre la transphobie et le sexisme.

Mots clés : transgenre ; transsexuel ; analyse du discours ; genre ; législation ; travail

Remerciements. Acknowledgments. Agradecimientos. Ringraziamenti

Mes premiers remerciements s'adressent à mes promotrices de thèse, Caroline Closon et Isabelle Rorive. Merci de m'avoir offert l'opportunité de réaliser cette thèse et surtout de m'avoir donné la liberté intellectuelle nécessaire au développement de la pensée critique. Merci de m'avoir soutenu dans ce processus et de m'avoir fait confiance quand j'ai voulu modifier le projet initial de recherche « un petit peu ». Vos relectures et vos commentaires critiques ont été un élément indispensable dans l'élaboration de cette thèse.

Je souhaite remercier aussi les membres de mon comité d'accompagnement, Annalisa Casini et Olivier Klein, pour votre écoute, votre enthousiasme à l'égard de mes travaux et vos conseils lors des réunions annuelles. Mes sincères remerciements aux professeurs Catherine Hellemans et Véronique Mottier d'avoir accepté d'être membre de mon jury de thèse. Thank you very much for taking the time to read the results of my work and for travelling from abroad to attend the defence of my thesis.

Je remercie aussi l'ensemble de collègues du centre de recherche PsyTC avec qui j'ai partagé cette aventure. Cécile, Sabine, Marie, Pierre, Lucie, Nicolas, Jade, Jan... merci de m'avoir accueillie dans le labo et de rendre l'ambiance de travail aussi agréable et sympathique. Nos débats sur les méthodologies quantitatives et qualitatives ont toujours été très stimulants. Merci Orchidée pour ton écoute et ton soutien. Je remercie également ma « petite sœur belge » Valérie, avec qui j'ai partagé tellement de bons moments, ainsi que des réflexions sur la recherche et sur la vie. Dank je wel, tu es devenue une vraie amie. Non potevo non ringraziare il mio caro amico Davide. Non so cosa avrei fatto senza di te in questi anni di tesi ! Sei stato un appoggio emotivo fondamentale (e un ottimo prof. d'italiano). I also thank my « first Belgian friend » Dirk for all our philosophical conversations about research.

Merci également à toute l'équipe de STRIGES, la structure de recherche interdisciplinaire en études de genre de la Maison des Sciences Humaines. Elle est devenue un lieu fondamental de rencontre, d'échange

et de soutien pour toutes les personnes qui travaillent sur le genre et la sexualité au sein de l'ULB, au-delà des frontières disciplinaires. Je tiens à adresser un remerciement particulier à David Paternotte et Valérie Piette pour l'énorme travail de gestion et à toutes les doctorant·e·s de STRIGES pour le soutien entre pairs et l'organisation de ces formidables Journées doctorales.

Je remercie aussi les membres de l'*Equality Law Clinic* avec qui j'ai tellement appris sur la complexité des enjeux juridiques concernant les personnes trans* et le droit à la non-discrimination. J'aimerais également remercier l'équipe de *Genres Pluriels* et en particulier Londé Ngosso pour le temps consacré à m'expliquer l'histoire des mobilisations trans* contre la Loi dite « relative à la transsexualité ». Merci aussi de m'avoir invité à présenter mes recherches lors de votre Festival en 2018. Je tiens à remercier aussi toutes les personnes qui ont participé aux entretiens et sans lesquelles la réalisation de cette thèse n'aurait pas été possible.

Un agradecimiento muy especial va para todas y cada uno de los miembros del grupo de apoyo mutuo LAICOS IAPSE de la *Universitat Autònoma de Barcelona*, este espacio único de compañerismo, solidaridad internacional, aprendizaje, escritura y debate. ¡No sé qué habría hecho sin vosotras! Probablemente estaría aún perdida debatiendo sola en el mundo de las epistemologías... Prácticamente todo lo que sé sobre investigación cualitativa lo debo a LAICOS. Gracias por leer cada artículo y cada capítulo de mi tesis con tanto amor y atención, gracias por todas las críticas constructivas y consejos, gracias por el humor y la distensión. Agradezco especialmente a Lupicinio Íñiguez, "Lupi", por adoptarme en el grupo, por cuidarnos como nos cuidas y por tu presencia y apoyo absoluto en cada uno de nuestros procesos de tesis. Gracias por compartir tus casi infinitos saberes y experiencias y aportar siempre ese toque final que nos hace replantearnos lo que dábamos por hecho.

Ya en un tono más personal, agradezco a todas mis amigas por todo lo que hemos vivido juntas en los últimos años así como las infinitas conversaciones en las que intentamos arreglar el mundo. Gracias a mis Guerrilla Girls/Artistai, Cris, Vivi, Clara por enseñarme rebeldía, solidaridad y a ser "disfrutona" incluso en los momentos más duros. Gracias a mis chicas de Usera Kañera, Elena y Fany, por mantener esta

amistad de décadas y hacerme sentir en casa cada vez que vuelvo al barrio. Gracias a todas mis amigas feministas de WALT y Chuminismos por los eternos debates políticos, quejas sobre el mal tiempo en Bélgica y las jornadas gastronómicas. En especial, agradezco a mi familia de Bruselas—Adri, Mercedes, Elisa, Lidia, Sara, Fátima y todas las demás—por cuidarnos y estar siempre ahí, especialmente en esta última etapa de encierro. Un agradecimiento especial para Laura y Gerard, que además de ser un amor, me acogieron en su casa durante mis estancias en Barcelona.

Agradezco a mi madre, Marta, y a mi padre, José, por haber contribuido a ser quien soy. Gracias por haberme apoyado siempre, incluso en mis decisiones de irme a miles de kilómetros de casa. A mi hermana Estela por este amor incondicional de hermanas y por ser la persona que mejor me conoce en el mundo. Me siento muy afortunada de tener la familia que tengo.

Grazie France per il tuo amore e sostegno in questi sette anni insieme. Grazie di essere stato sempre lì quando ne ho avuto bisogno. Grazie per incoraggiarmi sempre a seguire il mio istinto e grazie anche per dirmi quando non ho ragione, perché lo so che sono testarda. Ti ringrazio specialmente per quest'ultimo periodo in cui hai dovuto "nutrire la bestia" e prendere cura di tutto perché io potessi finire la mia tesi.

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Preface

In a recent radio interview⁴, the writer Jeanette Winterson was told that the use of autobiographical accounts was what made her writing so characteristic. She responded that every writer writes from their own experiences, but some of them just mask those experiences in their books. Indeed, how to write from somewhere else? What we directly or indirectly live is always the beginning of everything.

The same applies to research, which is just another kind of writing (and speaking) about life. It is not possible to do research from ‘the no place’ in the same way as it is impossible to look at life from nowhere. There is always a place that attaches us to the world. There is always a body. There is always an ‘I’ that is also an ‘us’.

This simple but incredibly ground-breaking idea is probably the most important contribution of feminist epistemologies to research, and the ethical and political stance that I adopt in this thesis. This epistemological perspective breaks away with the notion that there is a disembodied and ahistorical scientific subject that produces, through individual effort, transcendental, neutral and universal knowledge. As Donna Haraway⁵ put it, knowledges are always situated. They are also socially produced and the type of knowledge we produce has significant implications in people’s everyday life. This is all the more important in the case of academic knowledges, whose epistemic privilege place them as ‘more true’ than any other type of knowledge.

Just as writers write from their own experiences, researchers produce knowledge from their life trajectories, attitudes and values, but not all of them acknowledge it. From a feminist epistemological perspective, however, the only possible way to be

⁴ ‘Tomo y Lomo’. *Los monográficos literarios de Carne Cruda*, podcast n. 346, 17 October 2017.

⁵ Haraway, Donna (1991). *Simians, Cyborgs and Women. The Reinvention of Nature*. New York: Routledge.

'strongly objective'⁶ is to openly assume the stance we take in research, making explicit the location from where we produce our understandings of reality. In the end, it is about being transparent to the readers and to ourselves and recognising that researchers are also human.

This thesis is thus the result of hundreds, thousands of experiences that made me the human that I am and the circumstances that enabled the production of these knowledges.

All the real and imagined conversations I had in the last four years with other scholars, both those with whom I agreed as well as those with whom I did not so much. The former gave me critical tools to think about reality, the latter provided me with challenges to question myself.

The trans people and activists I encountered. They made me review my conceptions about gender.*

My own Otherness as a foreign researcher—although European, with a scholarship and the right to stay in the country—thinking and writing in languages that are not my own. It gave me first-hand experience that, as Eva Hoffman⁷ describes, no set of meanings can be considered definitive.

The course 'WS 102-3 Introduction to Western Feminisms' that I took exactly ten years ago during my exchange year at a Canadian university. It definitely lighted the flame of my feminist consciousness and marked a turning point in my trajectory. It gave me the words to name the 'problem that has no name'⁸.

The Spanish public education system⁹ that provided me with free education and scholarships to study abroad and learn the languages that I now use in this thesis.

My childhood, adolescence and young adulthood in a run-down and 'peripheral' neighbourhood of the South of Madrid, first constructed for poor 'internal' migrants as

⁶ Harding, Sandra (1993). Rethinking Standpoint Epistemology: What is « strong objectivity »? In Linda Alcoff & Elizabeth Potter (p. 49-82), *Feminist epistemologies*. New York: Routledge.

⁷ Hoffman, Eva (1989) *Lost in Translation. Life in a New Language*. New York: Penguin Books.

⁸ Friedan, Betty (2002 [1963]). *The Feminine Mystique*. New York : Norton Paperback.

⁹ Unfortunately, this system is increasingly under-funded due to budget cuts. The increased university fees and the reduction of grants and scholarships are expelling many people from university. Budget cuts in research have forced many of us to leave the country.

my four grandparents, then transformed for 'external' migrants from other impoverished countries. It raised my awareness of social inequalities and injustices and it helped me not to forget from where I come from.

My 'revolutionary' high school teachers who taught me to look at the past to understand the present and not to take things for granted.

A grand-mother who initiated a migratory project alone in the 1950s to work as a 'maid' in the capital. A mother who started university at 28 and pregnant with me because she had to work when she was younger. A father who told me, when I was very little, that girls are worth just as much as boys. They all sowed the seed of rebellion.

My becoming the youngest-ever member of the public library of the neighbourhood and all the children books I read instead of taking a nap. All the bed-time stories heard before going to sleep (gracias papá). It helped me preserve the sense that things can always be otherwise.

It is from here that I wrote this thesis.

Introduction and objectives

'I trained to become an assistant cook on a course managed by the VDAB [the public employment agency in Flanders]. At the end of the course, I had to complete a traineeship and the VDAB traineeship director told me I would have to apply using my legal name and gender. I felt obliged to do so because I wanted to successfully complete the course and find a job. That had a great psychological impact on me because during the course I was constantly given orders by using my male name. Once I completed the traineeship, the manager told me that I could have been employed but that other colleagues were against it because I was transgender. I was finally not employed officially because I did not satisfy educational requirements.'
(Transgender woman from Belgium¹⁰)

Figures concerning transphobia, violence and discrimination against trans* people¹¹ all over the world are alarming. According to the first trans*-specific survey carried out by the European Union Agency for Fundamental Rights (FRA) (2014), 54% of trans respondents reported discrimination and harassment in the 12 months prior to the survey. Furthermore, 2,982 killings of trans* people were reported from 2008 to 2018 worldwide (Transgender Europe, 2018b). Trans* people are discriminated against, excluded or aggressed in virtually all areas of social life, such as healthcare (e.g. Cruz, 2014; Lasso Báez, 2014), the public

¹⁰ Extracted from: Amnesty International. (2014). *The State decides what I am. Lack of legal gender recognition for transgender people in Europe*. UK: Amnesty International.

¹¹ The term 'trans* people' is used throughout this thesis as an 'umbrella term' to refer to a heterogeneous group of people whose demarcation lines are blurred. It includes terms such as transsexual, transgender, trans, transvestite, etc. Drawing on Elliot's suggestion, I use this term to 'acknowledge the heterogeneous and non-harmonious constitution of the group' (Elliot, 2009, p. 7). A theoretical definition is provided further on given that it requires the adoption of a theoretical stance.

space (e.g. Alessandrin, 2016; Whittle, Turner, & Al-Alami, 2007), employment and the workplace (e.g. Bender-Baird, 2011; Lehtonen, 2016; Moulin de Souza & de Pádua Carrieri, 2015), public services (e.g. Spade, 2015; Begun & Kattari, 2016), the justice system and prisons (e.g. Buist & Stone, 2014; Erni, 2013), educational settings (e.g. Curtis, 2016; DePalma & Jennett, 2010; Resende Alves & Costa Moreira, 2015) among others.

Simultaneously, trans* people are increasingly visible and seem in vogue nowadays. A number of celebrities, such as Caitlyn Jenner, Lana and Lilly Wachowski, have recently ‘come out’ as trans*. *National Geographic* magazine put a trans* girl on the cover of its 2017 special issue on the ‘gender revolution’¹². Several TV series, such as *Transparent* and *Sense8*, include positive trans* main characters. The 2018 Belgian drama film *Girl*—depicting the story of a trans* girl in her teenage years—has been a great success in and outside Belgium¹³, winning several awards in international film festivals. And the list goes on. In general, representations of trans* people in the public and cultural scene appear to be more positive than in previous decades (Platero, 2015). However, the increasingly positive public opinion on trans* people seems to be in contradiction with the yet high levels of discrimination and exclusion that they experience. How is this apparent incongruence to be understood?

The present thesis stems from an interest in understanding transphobia and discrimination against trans* people in the present context, which is characterised by increased social tolerance and respect towards them and a tendency towards the depathologisation of their identities. However, instead of treating trans* issues as isolated concerns affecting a minority of people, I approach them from the larger framework of gender norms and categories (Chapter 1, section 1.1.). I locate the definition of trans* people on the other side of the coin of the definition of the categories ‘woman’ and ‘man’. I argue that inequalities between women and men are based upon the establishment of both a

¹² See <https://www.nationalgeographic.com/magazine/2017/01/>.

¹³ Trans* people’s response to the film was however ambivalent. Whereas some applauded the sensibility of the film, others criticised it because of its narrow focus on genitalia and self-harm (see <https://parismatch.be/culture/cinema/188731/girl-deconseille-personnes-transgenres>).

hierarchical relationship *and* a binary opposition between them. In other words, we can only treat women differently from men—e. g. to assign them different skills, roles, resources and positions in society—if we ‘know’ they are ‘women’ and not ‘men’ (and vice versa). Therefore, the definition of the binary opposition—that is, the boundary that divides humanity into women and men—is necessary to the unequal organisation of society and the transgression of the boundary represented by trans* people destabilises that social organisation.

In this thesis I thus interrogate how the binary opposition between the categories ‘woman’ and ‘man’ and its transgression are defined. In this sense, it is important to note that I do not rely on the common ‘sex-gender distinction’ that separates the ‘truth’ of the biological body (‘sex’) from the ‘social construction’ of personality and behaviours (‘gender’). Instead, I assume a social constructionist stance also on the body, which leads me to use the term **‘sex/gender categories’** in order not to separate the two notions (Chapter 1, point 1.1.1). In this sense, the attention is turned towards the constitution of sex/gender categories.

Gender has not only identity effects but also material effects. It is indeed **a principle that organises the socioeconomic system** upon binary sex/gender categories (Chapter 1, point 1.1.2.). Feminist scholars have unveiled how society has been historically structured along gender lines, leading to an unfair distribution of resources and power in the detriment of women. However, the specific form that the gendered organisation of society takes has changed over time and across places and it interacts with other axes of social stratification such as social class, ethnicity and nationality. In other words, the type of characteristics and activities attributed to women and men are not universal, but context-dependent. Still, what remains stable in most societies and social groups is the permanent character of the binary opposition between women and men.

As a consequence, from the 19th century, people who **transgress the binary opposition have been pathologised** by psychiatry and psychology (Chapter 1, point 1.1.3.). This has been done in terms of both a sexuality disorder and an identity disorder. Although different diagnostic terms have been consecutively used over time—‘transvestism’, ‘transsexuality’, ‘gender identity disorder’, ‘gender dysphoria’—, they do

not represent actual different diagnoses. ‘Trans* terminology’ was thus initially coined to name the transgression of norms constituting the binary opposition between women and men. The depiction of something as ‘a transgression’ establishes, in turn, the norm. The voice of trans* people was neither heard nor trusted. The emergence of trans* activism and Trans Studies enabled to put into question the alleged ‘scientific’ knowledge about trans* people as well as the pathologisation of their experiences and identities.

Drawing on this framework, I situate the **research problem** in the definition of trans* people as ‘abnormal’, which in turn reproduces the binary opposition between women and men. I suggest the following **minimum definition of trans* people** for research purposes: *‘people who transgress—to varying degrees and in different ways—the socially situated norms that define the binary opposition between women and men in specific contexts’*. This definition should be understood as perpetually provisional because, should the binary opposition not be assumed, the distinction between ‘trans*’ and ‘non-trans*’ sex/gender categories would lose all sense. Following this reasoning, I state that, in spite of the fact that the psychiatric pathologisation of trans* people is increasingly questioned, they are still overall defined as ‘abnormal’. Indeed, the very continued existence and use of trans*-related terms nowadays indicate that they are still depicted as a deviation from sex/gender norms and, thus, norms constituting how to be a woman and how to be a man are still in place.

In particular, I argue that increasing positive social attitudes towards trans* people leads to the sophistication of the construction of their ‘difference’ as ‘abnormal’, which is becoming more subtle and less openly prejudiced. In turn, this sophistication reifies the permanent and unalterable binary opposition leading, as a consequence, to the maintenance of the binary organisation of society and the social exclusion of trans* people in many areas of social life, as well as violence and discrimination against them. On that basis, the **general research question** of the thesis is: *how has the transgression of sex/gender norms been redefined nowadays so that the binary opposition sustaining the gendered binary organisation of society is maintained?* In other words, which other discourses—beyond pathologisation—are employed nowadays to define trans* people as ‘abnormal’, thereby reifying the binary opposition between women and men?

To answer this question I examine **two specific cases**: the legal certification of sex¹⁴ in Belgium and the definition of the (gendered) worker subject. This choice responds to three different reasons. First, the thesis was developed within a transdisciplinary research project drawing on social/work psychology and law¹⁵. Second, the two cases allow tackling both identity and material aspects of the constitution of sex/gender categories. And third, and most importantly, the two cases relate to two major problems reported by trans* people in Belgium at the time I started my PhD project¹⁶: the medical and psychiatric criteria established by the Act regulating the modification of the legal mention of sex for trans* people at that time—the *Loi du 10 mai 2007 relative à la transsexualité* (M.B. 11 juillet 2007, 2007)—and the high level of employment discrimination they were experiencing. The two cases are fully developed in Chapter 1 and led to two **specific research questions** each.

The first case, **the legal certification of sex in Belgium** (Chapter 1, point 1.2.1.), starts with the fact that legal sex is assigned at birth to every individual in Belgium and is indicated in identity documents by means of several sex markers. The ‘mismatch’ between the legal sex markers and the physical appearance of an individual can lead to social exclusion and discrimination. However, many jurisdictions have based the modification of the legal sex upon strict medical and psychiatric criteria that go against human rights. That was the case of the *Loi relative à la transsexualité*. This Act has nonetheless been recently substituted by another Act¹⁷—hereafter

¹⁴ I employ the word ‘sex’ because this is the term used in Belgian civil status legislation and identity documents such as the birth certificate and the identity card. Even the recent *Loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d’une modification de l’enregistrement du sexe dans les actes de l’état civil et ses effets* (Moniteur Belge, 2017) talks about the registration of ‘sex’ in spite of its shift in focus towards ‘gender’.

¹⁵ This thesis was possible thank to the ULB “*Mimi-ARC*” scholarship granted by the *Région Wallonie-Bruxelles* whose aim is the promotion of transdisciplinary doctoral research. The project lies between psychology and law, but the PhD programme in which it takes place belongs to the Faculty of Psychology (ULB). Therefore, psychology remains the main discipline of the project.

¹⁶ October 2015.

¹⁷ *Loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d’une modification de l’enregistrement du sexe dans les actes de l’état civil et ses effets* (M.B. 10 juillet 2017, 2017).

Loi transgenre—removing most medical and psychiatric criteria for trans* people to modify the legal sex. However, the binary opposition has been maintained—trans* people can still choose only between two legal sexes (female or male). Therefore, 1) *how has the definition of women and men changed for trans* people between the two Belgian ‘trans* Acts’ so that the binary opposition is maintained?* Moreover, the criteria to certify the legal sex of the rest of the population have not changed, 2) *how has Belgian civil law defined the binary opposition between women and men for different categories of people over time and with what effects?*

The second case, **the definition of the (gendered) worker subject** (Chapter 1, point 1.2.2.), draws on the fact that employment is one of the social areas in which trans* people report most discrimination in Belgium. However, the few studies on attitudes towards trans* people in Belgium indicate a generally positive and non-pathological view on them. At the same time, work and employment are organised along gender lines but gender analysis of these areas usually take for granted the binary opposition between women and men, instead of examining how it is constituted within the context of work. Moreover, the worker subject is usually defined as a ‘neutral subject’ devoid of sex/gender and sexuality. Therefore, 3) *how are both the binary opposition between women and men and its transgression defined by workers nowadays?* And 4) *how do workers’ definitions of sex/gender categories interact with their definition of the worker subject¹⁸ and what are the implications in terms of inclusion or exclusion in the workplace?*

To respond to these research questions, the **general objective** of the thesis is to understand how the redefined transgression of sex/gender norms nowadays actually keeps on maintaining the binary opposition that sustains the gendered organisation of society in the two particular cases described above. The **specific objectives** can be detailed as follows:

- 1) To describe how changes between the *Loi relative à la transsexualité* and the *Loi transgenre* actually maintain the binary opposition between women and men and the implications for trans* people.

¹⁸ Although from a feminist perspective ‘worker’ is not limited to the person who receive a monetary compensation for work, here I refer exclusively to the notion of ‘employee’ since the focus of the thesis is on discrimination in employment.

- 2) To specify how Belgian legislation regulating the mention of sex in the civil status has defined the binary opposition between women and men for different categories of people over time and its consequences.
- 3) To detail how workers define nowadays the binary opposition between women and men and its transgression.
- 4) To identify how those sex/gender definitions interact with their definition of the worker subject and the implications in terms of inclusion or exclusion in the workplace.

The adoption of a feminist epistemological perspective¹⁹ impacts not only the kind of objects or subjects studied, but also—and especially—the general view on research, including the type of methodology. Indeed, feminist research is not merely the extension of traditional research in non-sexist ways, but it implies both a critical stance on the research process and a reconceptualisation of **theory, method and research topic as interdependent**²⁰ (Wilkinson, 1986a, 1986b). It thus asks for coherence between the epistemological stance assumed, the theoretical and methodological framework adopted, the method followed and the way the techniques are used. With this in mind, the first question that arose within my doctoral work concerned the adoption of a methodological framework and a method that were consistent with the epistemological stance of the thesis and the approach I developed towards the research problem—that the definition of trans* people as

¹⁹ See Preface.

²⁰ In this regard, the distinction between epistemology, methodology, method and technique is an important one. *Epistemology* is ‘a theory of knowledge that answers questions about what is Truth, who can be a knower and what can be known’ (Harding, 1987, p. 3). It is thus a set of assumptions about the social world that effects the decisions researchers make. A *methodology* is a ‘general approach towards the study of an object or process’ (Íñiguez-Rueda, 1995, p. 6). It includes the set of theoretical, conceptual and technical tools that help us conceptualise and give an answer to a research problem. A *method* concern the ‘specific pathways that allow us to carry out the analysis of the objects we want to study’ (1995, p. 6). It entails all the activities and operations required to understand the research problem. Lastly, *techniques* are ‘data collection procedures’ (1995, p. 7). The techniques are not associated to any specific methodology or method, but the way they are used depend on them.

‘abnormal’ lies at the heart of discrimination against them, which in turn reproduces the binary opposition between women and men.

To this end, I carried out a **conceptual review of the literature** concerning transphobia and discrimination against trans* people (Chapter 2). The aim of this review was to identify theoretical and methodological perspectives employed in contemporary human and social research on the topic (2005-2016), including how trans* people were defined and where the problem of discrimination was located. By looking at the implications of the different approaches identified, I detected some theoretical and methodological limitations and gaps in the literature, which oriented my decision over the methodology to be adopted in the thesis.

The **methodology** of the thesis draws on discursive psychology (DP) (Chapter 3, section 3.1.). DP is a theoretical and methodological approach to discourse analysis that focuses on language in use (*discursive practices*) and the actions carried out by language (*functions* or *effects*). Particularly, the aim of the analysis is the elucidation of the *effects* of discourse, which are not directly observable. The underlying idea is that people *do different things* when they express themselves. The actions carried out by people’s discursive practices are of two types: interpersonal and ideological. Interpersonal functions relate to actions such as arguing, apologising, explaining, making orders, etc. *Ideological* effects concern the maintenance and promotion of certain social relations by means of the different versions of reality that are conveyed. It is this second type of effects that are of particular interest in the thesis. The elucidation of the effects is carried out through the identification of *variability* within the discourse. The variability of discursive practices is inevitable because of the *dilemmatic* nature of common sense, which determines the *argumentative* nature of discourse. In this sense, the absence of argumentation is indicative of a common adherence to a particular stance, thereby revealing where the *norm* is. *Discursive practices* are thus the **research object** of DP and *the elucidation of their effects* is the **aim of the analysis**. Particularly, the analysis consisted of the identification of discursive practices, their variability and their effects in Belgian legislation regulating the mention of sex in the civil status and in workers discourses.

The thesis adopts a **case study design** (Chapter 3, section 3.2.). It consists of *two* case studies: the legal certification of sex in Belgium and the definition of the (gendered) worker subject. In both cases, the **method** to analyse the discursive practices is inspired by discursive psychology. It consists of the identification of *discursive practices* and their *variability* in order to elucidate their *effects*. However, the **procedure** followed to produce the data differs due to the particularities of each case.

The first case—the legal certification of sex in Belgium—is a **documentary study** in which a document search allowed me to retrieve all the documents pertaining to the *Loi relative à la sexualité* and the *Loi transgenre* (texts of the Acts, bills, amendments, documents reflecting parliamentary work and Circulars) as well as to identify all legislative texts regulating the certification of sex in Belgium over time. Following the step, I carried out a discourse analysis to specify the discursive practices used in the two ‘trans* Acts’ to define the binary opposition (specific obj. 1) and a content analysis to describe how sex has been certified for different categories of people (specific obj. 2).

The second case—the definition of the (gendered) worker subject—is an **interview study** in which I explored how workers express their views on sex/gender issues at work. I carried out five group interviews with co-workers from five different work organisations in Brussels. The organisations were selected according to the horizontal segregation of the Belgian labour market. I thus chose two organisations from traditionally ‘feminine’ professions, two organisations from traditionally ‘masculine’ professions and one organisation from a ‘neutral’ profession. The group interviews were audio-recorded and transcribed. Following the step, I realised a discourse analysis of the transcriptions. The analysis entailed two parallel tasks: the identification of the discursive practices used by workers to define sex/gender categories (specific obj. 3) and the specification of the discursive practices used by workers to define the (gendered) ‘worker subject’ (specific obj. 4).

The **empirical section** of the thesis is divided into two parts, each of them corresponding to a case study. In the first empirical section (Chapters 4 and 5) I present the results of the analysis of the legal certification of sex in Belgium. **Chapter 4** describes the discursive

practices used in the *Loi relative à la sexualité* and the *Loi transgenre* to define the binary opposition, whereas **Chapter 5** presents how sex has been certified for different categories of people. In the second empirical section (Chapters 6 and 7) I present the results of the analysis of the definition of the (gendered) worker subject. **Chapter 6** contains the description of the discursive practices used by the interviewed workers to define sex/gender categories, while **Chapter 7** describes the discursive practices employed by the workers to define the (gendered) worker subject. The description of the results follows the same structure in the four empirical chapters. I first describe the identified discursive practices and then I present the variability in their use and the effects they produce. They are illustrated with quotes from the materials. Giving that the particular uses of language are the focus of this type of discourse analysis, the quotes are presented in the original language (French).

An additional and shorter empirical chapter (*Addendum*) is added at the end of the second empirical section. In this chapter, I describe how my presence in the interviews, as well as the interaction between the participants, led them in a few occasions to *question* the norm that divides humankind into two mutually exclusive groups—women and men—, as well as their own definition of the worker subject. These moments illustrate how social interaction can open up alternatives that question taken for granted norms, thereby helping to promote social change.

In the last chapter of the thesis, I present the **conclusions and discussion** of the results in light of the initial claim of the thesis. I discuss how the discursive practices identified in the legal certification of sex in Belgium and the definition of the (gendered) worker still overall define trans* people as ‘abnormal’ in spite of the fact that the psychiatric pathologisation of trans* people is increasingly questioned, thereby reifying the binary opposition between women and men. I expose how this definition of trans* people have also effects on the gendered organisation of society. Following the step, I address the theoretical and methodological implications of the results in relation to both the research process in general and the way sex/gender is understood and studied in particular. The chapter concludes with some political perspectives.

The final **purpose** of the thesis is to promote an informed critical attitude towards the discursive practices that constitute trans* people as 'abnormal' and, ultimately, to highlight the inseparability of trans* and feminist struggles.

**THEORETICAL AND METHODOLOGICAL
SECTION**

Chapter 1.

The binary opposition between women and men and its transgression: Certifying the legal sex and defining the (gendered) worker subject

1.1. Definition of the research problem

1.1.1. On ‘sex’ and ‘gender’: The social construction of sex/gender categories

The idea that humankind is divided into two groups—women and men—is so taken for granted in our society that only when someone tries to move between categories, such as trans* people, we begin to question what it means to be that category (Wiggins, 2017b). As Meadow (2010) states, ‘gender is perhaps the most pervasive, fundamental, and universally accepted way we separate and categorize human beings’ (2010, p. 815). Although gender is not the only axis of social differentiation, it is probably the most ubiquitous one. In the great majority of social contexts nowadays, people are indeed assigned to the category ‘woman’ or ‘man’ at birth on the basis of the sexual characteristics of the bodies, assumed to follow the norm of sexual dimorphism. It comprises both primary and secondary sexual characteristics. Primary sexual characteristics are the chromosomes, internal and external genitalia. Secondary sexual characteristics are the size of breasts, the presence or absence of body and face hair, the distribution of body fat, the body form, the height, etc.

The concept of ‘gender’ has been—and still is—used by feminist scholars with two different meanings (Nicholson, 1994). On the one hand, ‘gender’ was developed and is still often employed as a contrasting term for ‘sex’ mirroring the culture-biology dichotomy. On the other, ‘gender’ is used to refer to *any* social construction, including the

separation of ‘male’ and ‘female’ bodies. It is this second meaning the one I assume in the thesis.

The first meaning of gender depicts personality traits and behaviours as socially constructed in distinction from the body which is treated as biologically given. Nicholson (1994) denominates this view the ‘co-track view of self-identity’ in which ‘the body is viewed as a type of rack upon which differing cultural artifacts, especially those of personality and behaviour, are thrown or superimposed’ (1994, p. 81). In other words, this notion does not question the natural existence of two biological categories—women and men—but the biological determination of skills, interests, roles and behaviours. However, as I describe below²¹, this understanding of gender initially enabled feminist scholars to denaturalise femininity (Bereni, Chauvin, Jaunait, & Revillard, 2012).

In the second meaning of ‘gender’, the distinction between ‘sex’ and ‘gender’ is considered a false one since the biological meanings of sex could be as socially constructed as gender (Butler, 1990, 1993; Scott, 2010). From a biological point of view, the sexed body is much more complex than a simple dichotomy (Fausto-Sterling, 2000). Sexual differentiation can be divided into three major components (chromosomal sex, gonadal sex and phenotypic sex) and does not necessarily follow a clear-cut binary scheme (Achermann & Jameson, 2005). Indeed, external genitalia can have different forms and lengths and the results of the karyotype test are also not necessarily binary (for instance, when chromosomes are XXY). As Ibáñez (1985) claims, classification is the most basic type of measure and measuring is always

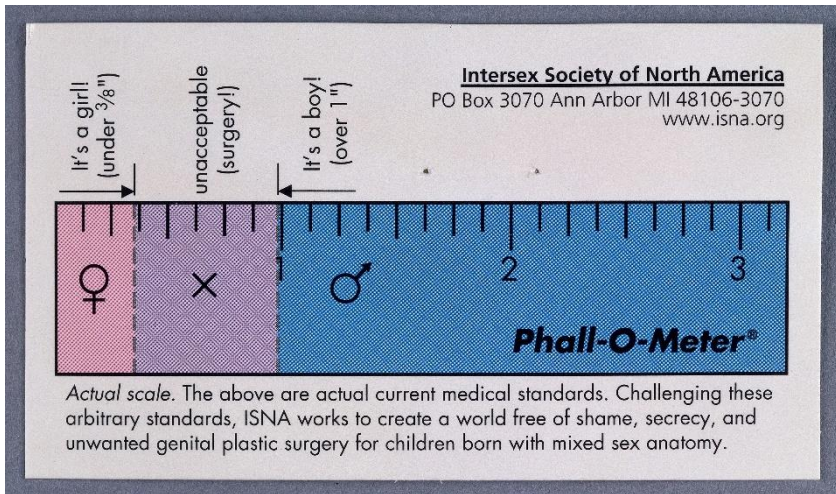
‘a subjective operation: even more, it is the marker of subjectivity. There is no measurement if there is no subject to measure. The measured world is a world seen and managed from the perspective of a subject. An objective measure is not possible’²² (1985, p. 109, translation mine).

²¹ See subsection 1.1.3. of this chapter.

²² ‘[U]na operación subjetiva: más aún, es la marca de la subjetividad. No hay medición si no hay un sujeto que mide. El mundo medido es el mundo visto y manejado desde la perspectiva de un sujeto. No es posible una medición objetiva’.

Therefore, the classification of an individual as ‘belonging’ to a sex or another is not an objective task, but a subjective endeavour: sexual dimorphism is constructed. It is important to clarify that the attention paid to the construction of ‘sexual difference’ does not mean that there are not physical differences. However, physical differences involve a continuum of organ sizes, body parts shapes, hormonal levels and chromosome types rather than two clearly distinct sets. The classification of those characteristics into two categories requires *measuring* and *establishing the criterion* to separate them (the norm). Therefore, sexual dimorphism is not to be found ‘out there’ in nature, it is a social norm. This is evident in the plastic surgery operations imposed by doctors on ‘intersex’ children (Fausto-Sterling, 2000): they actually construct sexual dimorphism (Figure 1).

Figure 1. Medical standards used to decide whether an ‘intersex’ new-born is a ‘girl’ or a ‘boy’



Source: Google images (shared by the Intersex Society of North America).

Moreover, bodily differences concerning the sexed body have been interpreted in different ways across time and place and they have not always followed a binary conception (Fausto-Sterling, 2000; Nicholson, 1994). We need thus to challenge the very idea that humankind is naturally divided into two categories (Stainton Rogers & Stainton Rogers,

2001) and examine how those binary categories come into being as natural and normative, as well as the effects of it. It was in this sense that *gender* was suggested by Joan Scott (1986) as a *useful category for analysis*²³. In her crucial article, Scott argues that we need to examine not only the different traits and roles attributed to men and women but also the construction of ‘the binary opposition itself’ (Scott, 1986, p. 1065).

Gender is thus a verb, rather than a noun (DePalma & Jennett, 2010), a ‘performance’ in the sense that it is something that is achieved (Butler, 1990, 1993), that is, something that we *do*. As Butler (1990) claims, ‘gender is not to culture as sex is to nature; gender is also the discursive/cultural means by which “sexed nature” or a “natural sex” is produced and established as “prediscursive”, prior to culture, a politically neutral surface on which culture acts’ (1990, p. 7). For this reason, I employ the term ‘sex/gender categories’ in the thesis as a ‘criticism of the separation of the two terms as independent elements’ (Martínez-Guzmán, Montenegro, & Pujol, 2014, p. 6). I thus use the term to claim the importance of *not taking the body for granted* but instead examining how its meanings are socially constructed.

It is, however, important to clarify that the social construction stance that I take on sex/gender categories does not mean that gender identity is a fiction or that there are no differences between sexed bodies. It is rather an anti-essentialist stance in the sense that I assume that the binary opposition does not exist ‘out there’ regardless of human intervention because the categorisation is an action. There is no categorisation without the subjects that categorise. Still, gender is very real in its effects and it does constitute categories and identities (Meadow, 2010). As Rubin (2003) explains,

‘to see that the terms of our identities are social constructs does not translate into the possibility of or the prescription to overcome them. A sense of self is not a will or wisp that can be denied, abandoned, or refuted simply because we become aware of its socially constructed nature’ (2003, p. 182).

²³ This expression is part of the title of her crucial article ‘Gender: A Useful Category for Historical Analysis’ in which she proposed the notion of gender as a tool to examine the historical construction of sexual difference.

Moreover, there are many physical differences between people and not all of them are attributed a meaning or are used to constitute distinct social categories. For instance, eye colour alone—not when it is combined with skin colour and other phenotypical characteristics—may be attributed aesthetic values, but people are not categorised and attributed tasks according to this physical difference. The same goes for many physical differences that ‘are out there’ but that we do not even see because we do not give them any particular meaning or relevance. We do not realise that we all have, for example, different elbow and knees sizes and shapes. Of course, the prominence of some physical differences and the practical invisibility of others are not accidental. It has to do with historical, social and political processes that have shaped the organisation of society. Feminist scholars have situated these processes within the domain of sexuality and reproduction.

1.1.2. Women and men: The (unequal) organisation of society

The categorisation of human beings into women and men has not only *identity effects*—in the sense of defining who we are—, but also *social functions*: our societies are (unequally) organised along gender lines. The UN International Research and Training Institute for the Advancement of Women (UN-INSTRAW, 2008) defines gender as a primary structural variable that affects all social processes and organises the whole socioeconomic system, conditioning dynamics at the micro, meso and macro level. In most—if not all—societies nowadays women and men are attributed and carry out different tasks and functions. Women and men have also unequal access to social and material resources and power. Data collected by UN-Women (2018) shows this tendency globally:

- Women and girls constitute the majority of the poor.
- Women devote 2.6 times more time to unpaid care and domestic work than men do.
- Women are more likely than men to report food insecurity in almost two thirds of countries.
- Women hold only 13% of agricultural land.
- 15 million girls of primary-school age will never get the chance to learn to read or write in primary school compared to 10 million boys.

- Women are just 23.7% of parliamentary seat holders (as of September 2017).

Inequalities between women and men have been the object of analysis and criticism by feminist scholars, especially since the 1970s. Prompted by ‘second-wave’²⁴ feminism, feminist scholars from different disciplines started exposing how women’s oppression was the result of a particular organisation of society over time and not a consequence of biology or any natural order. Feminist historians began to re-read history from the lens of gender to reveal how society has been historically stratified along gender lines. In *The creation of patriarchy*, Gerda Lerner (1987) established that patriarchy is a system of organising society whose historical development started in the second millennium B.C., making a radical reconceptualisation of Western civilisation. In her crucial article *Gender: A Useful Category for Historical Analysis*, Joan Scott (1986) proposed the notion of ‘gender’ as a tool to examine the historical construction of sexual difference and the social organisation of the relationship between the sexes.

One of the main focuses of feminist scholars to explain social stratification along gender lines has been the role of sexuality and reproduction within the political and economic system. From this perspective, the definition of reproduction goes beyond the biological sense to include all tasks required to sustain life. In *The Sexual Contract*, Carole Pateman (1988) explains from a political theory perspective how the social contract is actually constructed on the basis of a sexual one. The sexual contract establishes men’s political right over women as well as men’s right of access to women’s bodies by means of everyday contracts such as marriage. However, the sexual contract is concealed by setting a distinction between the public and the private as two independent spheres, which masks the fact that the public sphere actually depends on the private one. In her very acclaimed essay *The Traffic of*

²⁴ The description of the feminist movement as ‘waves’ is a social convention and it is difficult to say where a wave begins and where the other one ends. Still, the ‘second wave’ is usually situated between the 1960s and the 1980s and it addressed issues beyond suffrage and equal legal rights (main demands of the ‘first wave’), for instance, reproductive rights, violence against women, rape culture, and effective equality at work. It is usually represented by Kate Millet’s (1970) motto ‘the personal is political’.

Women: Notes on the 'Political Economy' of Sex, anthropologist Gayle Rubin (1975) coined the expression 'sex/gender system' to describe the set of arrangements by which biological sex and sexuality are transformed by society into products of human activity. She argues that women play an essential role in generating a surplus in capitalist societies because the reproduction of the workforce depends upon women's *unpaid* housework. However, women are not granted access to the resulting capital.

The arrangement of different functions attributed to each category is made possible thank to the socially imposed division of humanity into women and men, but also the construction of a hierarchy between them. In this hierarchy, women and femininity are undervalued, whereas men and masculinity are established as the norm. As Simone de Beauvoir (1976 [1949]) explains in *Le deuxième sexe*, women have been historically constructed as the Other, whereas men are the absolute subject:

« *La femme se détermine et se différencie par rapport à l'homme et non celui-ci par rapport à elle; elle est l'inessentiel en face de l'essentiel. Il est le sujet, il est l'Absolu: elle est l'Autre* » (Beauvoir, 1976, p. 14)

The constitution of men as the norm is reflected in all spheres of social life, even at the language level, where masculine forms are taken to be the 'neutral form' in many gendered languages²⁵. This is, for instance, the case of the French motto '*le masculin l'emporte sur le féminin*' taught for decades to children at school and highly criticised by feminist linguistics (see Chevalier & Plante, 2014; Viennot, 2018). 'Man' is often taken to be a neutral category, whereas 'woman' is a marked one (see Figure 2).

²⁵ This is particularly the case of all Latin languages.

Figure 2. Advertising using men as the neutral default



Source: *Sociological images*, The Society Pages (University of Minnesota)

The imposed superiority of masculinity has led to feminists efforts to revalue it. Psychologist Carole Gilligan's work was an important landmark in this sense. In *In a different voice* (Gilligan, 1993 [1982]), she refuted Kohlberg's thesis that the level of moral reasoning of girls was lower than that of boys. Gilligan proved that Kohlberg's definition of moral reasoning, depicted as universal, was actually a 'masculine' type of moral reasoning that excluded 'feminine' values such as the cultivation of relationships. Gilligan thus concluded that girls did not reach a *lower* level of moral reasoning, but had *another* type of moral reasoning, which she denominated the *ethics of care*. This example shows that inequalities between women and men are not only due to a lack of material redistribution between them, but also to a lack of symbolic recognition of women and femininity. Redistribution and recognition are indeed intertwined (Fraser & Honneth, 2003).

Although sex/gender is an organising principle of human societies, the social positions and functions attributed to women and men, as well as the meanings of femininity and masculinity, change across time and place. Historical and anthropological research has shown that the roles assigned to women and men over time have been historically transformed and they often differ from one culture to another, leading to different definitions of woman and man, femininity and masculinity (see, for instance, LeGates, 2001; Brettell & Sargent, 2012). Moreover, as I already mentioned above, the definition of sex/gender categories has not always followed a binary logic. Thomas Laqueur's (1992) work is

particularly illustrative in this sense. For instance, his research shows that in the Middle Ages the biology of the sexes was taken to be part of the same anatomy. It was rather a 'one-sex' model in which the vagina was considered to be an 'internal penis'. It is thus important to take into account the variability of sex/gender conceptions across time and place to avoid anachronisms and ethnocentric biases.

The particular social positions and functions assigned to women and men, as well as the very definition of the two categories, differ not only historically and geographically, but also according to other axes of differentiation such as race/ethnicity, sexuality, class, religion, body characteristics—the list is endless. From the 1980s, many feminist authors and scholars began to highlight the different oppressions to which some women were confronted, thereby criticising the universal stance on the 'woman subject' (in the singular) assumed by mainstream feminist perspectives at the time²⁶. These theorists revealed that too often the problems described by feminists as belonging to *all* women were actually the problems of *some* women (usually white, middle-class, heterosexual women, especially from Anglo-Saxon countries), whereas the particular ways of oppression of less privileged women remained invisible.

It is in this context that the concept of 'intersectionality' was coined by Kimberlee Crenshaw (1989) to emphasise the actual mutual construction of 'multiple oppressions'. Crenshaw argued that 'being Black' and 'being a woman' cannot be understood as two separate realities: they intersect and lead to unique experiences of oppression. This led to the emergence of Black feminism (e.g. bell hooks, 1981, 1984; Lorde, 1984; Hill Collins, 1990), Chicana feminism (e.g. Moraga & Anzaldúa, 1981; Anzaldúa, 1987), Lesbian feminism (e.g. Wittig, 1992), Islamic feminism (e.g. Mernissi, 1987; Wadud, 1999), Trans-feminism (e.g. Stone, 1991; Bornstein, 1994; Serano, 2007) among others.

In spite of intersectional differences in the definition of 'woman' and 'man', the common denominator of the definitions in most societies nowadays seems to be the (assumed) *permanent character of the binary opposition*. In other words, although the definition of 'woman' and 'man'

²⁶ Such universal notion of women still remains in some feminist perspectives nowadays.

depends on the interaction of the category with other axes of differentiation in specific contexts (such as class, ethnicity, nationality, etc.), there is generally no doubt that ‘there is such a thing as women and men’. Women and men are considered to be two mutually exclusive categories in the great majority of societies, in which each category is attributed different tasks, functions, social positions, power, and resources leading to an overall disadvantage of women.

The symbolic and material aspects of inequality are thus intimately linked. However, the symbolic aspects cannot be reduced to the devaluation of women and femininity, but they include the establishment of the difference between women and men. As Romero Bachiller (2003) explains, the establishment of a hierarchy between people requires first and foremost the constitution of difference between them: the ‘processes of differentiation and prioritising of differences that occur in a specific society permeate, intersect and articulate one another’²⁷ (2003, p. 36, translation mine). Therefore, the (unequal) gendered organisation of society is constructed upon the differentiation between women and men as two essential and permanent categories. Conversely, the differentiation has been constructed to sustain a particular (unequal) organisation of society and has to be preserved in order to maintain it. There is thus a lot at stake in the (assumed) permanent character of the binary opposition. This explains why people who challenge it are punished. Trans* people set a challenge to a social world organised upon unalterable and binary sex/gender categories. That challenge is however resisted: it is rendered invisible or punished. The pathologisation of trans* experiences and identities by psychiatry and psychology represents the punishment of that transgression.

1.1.3. Trans* people: The construction of ‘normality’ and the punishment of transgression

The permanent character of the binary opposition has been transgressed in different ways and at varying degrees by people throughout history, for instance, through cross-dressing (Bolich, 2007), and there are

²⁷ ‘los procesos de diferenciación y jerarquización de las diferencias que acontecen en una sociedad concreta se permean, entrecruzan y articulan mutuamente’.

inconsistencies in the way they were received by society. However, from the 19th century, those transgressions have been defined by psychiatry and psychology in terms of pathology (Tosh, 2016).

As Rose (1999) argues, the ‘psy’ disciplines—a term which encompasses psychiatry, psychology and psychoanalysis—have played a key role in the constitution of our contemporary regime of the self and its identity. He describes the ‘psychological complex’ as a matrix of agents, discourses and practices that is not a result of ‘objective’ science but are deeply embedded in power relations (Rose, 1979, 1985). The ‘psychological complex’ has the power to both act upon others (for instance, by restricting freedoms) and produce discursive objects and subjects. Specifically, it has the power to define ‘normality’ and to constitute all who do not fit that definition as ‘abnormal’. This has been supported by the assumed neutrality and objectivity of science much criticised by feminist epistemologies. The power of scientific disciplines such as psychiatry to establish normality and pathology was already revealed by Michel Foucault on his studies about sexuality (Foucault, 2015 [1976]) and the history of madness and mental disorders (Foucault, 1972, 1999, 2003).

The transgression of the permanent character of the binary opposition has been established by psychiatry as pathological from two different but interrelated perspectives: as sexuality disorder and as identity disorder (Tosh, 2016). Numerous terms have been used to pathologise that transgression (e.g. transvestism, transsexuality, gender identity disorder, gender dysphoria) but those terms, ‘rather than representing distinct diagnoses, they often replace a label that has come before’ (2016, p. 47). Thus, terms such as ‘transvestite’ and ‘transsexual’ were initially created by psychiatry and psychology to refer to people who did not fit in their definition of normality, thereby constituting in turn ‘normality’. Whereas ‘transvestite’ and ‘transsexual’ people received a name, the rest of the people—those who ‘fitted’—did not. The absence of a term to refer to ‘the rest of the people’ indicates that these were the norm: they did not need to be named (or ‘described’ or ‘explained’ or ‘cured’).

The pathologisation of transgression in terms of sexuality was initially constructed as fetishized behaviour. Men who were fixated on

women's attire were described by the psychiatrist Krafft-Ebing (1950 [1892]) as a fetishism of female clothing, a kind of sexual perversion. The source of concern was that men 'should' be attracted to women in general, not only to their clothes. Some decades later, Hirschfeld (2006 [1910]) drew on that theory to coin the term 'transvestite', which he defined, however, as rather men's desire for effemination. In both cases, the feeling of being the 'other sex' was described as a delusion. The first and second editions of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association (APA) included the term 'transvestism' under the deviation of sexuality section (APA, 1952, 1968), whereas the third edition included it under the newly-introduced category 'paraphilia' (APA, 1980).

The pathologisation of transgression in terms of identity began in the twentieth century with the diagnosis of transsexualism, fostered by developments in medical technologies allowing the modification of the body (Tosh, 2016). Transsexual (and intersex) issues gained relevance in the 'psy' disciplines, particularly in the 1950s and 1960s. The term 'transsexualism' was popularised by the endocrinologist and sexologist Harry Benjamin in *The transsexual phenomenon* (Benjamin, 1966), who advised hormonal intervention and conversion surgery as a treatment. In parallel, psychologist John Money was interested in intersex children and the development of their identity and roles. Drawing on Margaret Mead's notion of 'sex roles', he coined the term 'gender roles' in 1955 to emphasise the distinction between social roles and biology (Money, Hampson, & Hampson, 1955a, 1955b). He recommended early surgery to allow intersex children to learn a gender role. For his part, Robert Stoller, a psychiatrist and psychoanalyst treating transsexual people, coined the term 'gender identity' in 1964 to distinguish gender and sexuality (Stoller, 1968a, 1968b). Until then, homosexual men had been defined as 'female souls in male bodies'. Stoller thus contributed to establishing the distinction between 'gender identity' and 'sexual orientation'.

Gender was thus initially separated from *sex* in order to adapt the body of intersex and transsexual people to norms establishing what it means to be a woman or a man (Fassin, 2008). This separation subsequently allowed feminists to denaturalise femininity since it proved that gender roles were not biologically determined (Bereni et al., 2012). However, it

also reified ‘women’ and ‘men’ as two ‘natural’ and prediscursive categories (Scott, 2010). As a consequence, trans* people were constructed as a deviation from the norm and their experience of sex/gender was constituted as a mental disorder (Adrian, 2013; Martínez-Guzmán & Iñiguez-Rueda, 2010; Missé & Coll-Planas, 2010).

As a matter of fact, trans* identities have been included in the DSM since the 1980s under different labels. ‘Transsexuality’ was the term used in the DSM-III (APA, 1980), ‘gender identity disorder’ in the DSM-IV (APA, 1994) and ‘gender dysphoria’ in the current DSM-V (APA, 2013). Trans* identities have also been included in the International Statistical Classification of Diseases (ICD) published by the World Health Organisation (WHO). The term used in the ICD-10 (WHO, 1992) was ‘transsexuality’, a disorder located within the ‘Gender identity disorders’. The latest version of the manual, the ICD-11 (WHO, 2018) employs the term ‘gender dysphoria’ included under the ‘Gender incongruence’ code. In both manuals, the latest terminological changes represent a shift in focus from the *identity* to the *distress* that trans* people experience as a result of the ‘incongruence’ between their expressed/experienced gender and their assigned gender. Although this seems a less pathological stance towards trans* identities, it is important not to forget that they are still included in the most important medical taxonomic and diagnostic tools.

Trans* people have been silenced through the diagnosis of mental disorder. As Tosh denounces (2016), they have been ‘rarely heard, but often studied’ (2016, p. 66). Much previous research concerning trans* people have focused on *explaining* (and ‘curing’) trans* people; especially within psychiatry and psychology. In effect, a search of keywords in PsycINFO²⁸ shows a high number of publications dealing with ‘gender identity disorder’ and ‘gender dysphoria’ from the 1950s²⁹. The silencing of trans* people by means of a mental disorder label is possible because the labels that the ‘psy’ disciplines produce ‘take from that individual the ability to have control over their life and body’ (2016, p. 11). As a result,

²⁸ PsycINFO is the most important database of literature in the field of psychology, produced by the American Psychological Association. It also includes literature from disciplines related to psychology.

²⁹ The search was carried out in May 2018. This search is part of an ongoing study on the evolution of research topics on sex and gender matters in psychology and associated disciplines over time.

their voice is no longer believed and the ‘psy’ professional becomes the decision maker and guardian.

Trans* activism from the 1960s and the emergence of Trans Studies in the 1990s (Whittle, 2006) enabled a gradual shift in the object of inquiry from ‘explaining trans* people’ to understanding the production of normativity itself (Stryker, 2006). It was indeed in this context that the term ‘cisgender’ was coined by queer and trans* activists to render the power position of non-trans* people visible (Martínez-Guzmán, 2017). These activists gave a name to the norm and, thus, made visible the invisible³⁰. The emergence of this field of study allowed trans* scholars to produce knowledge drawing on their own experiences, knowledge that challenged widespread ‘scientific’ accounts of their lives. In other words, it allowed trans* people to move from *object of knowledge* to *knowing subject*. As a result, the pathologisation of trans* people has been increasingly questioned.

Many trans* activists and allies also started to denounce the pathologisation of trans* identities worldwide. In 2009 the ‘Stop Trans Pathologization-2012’ international campaign was launched (see Stop Trans Pathologization, 2009). It has probably been the first advocacy campaign at the international level³¹ fostering a transnational ‘awakening’ against the psychiatrisation of trans* people. The name of the campaign makes reference to 2012 because that was the year in which the fifth edition of the DSM was planned to be published³² (Missé & Coll-Planas, 2010). The campaign’s demands included the removal of ‘gender identity disorder’ and ‘gender dysphoria’ categories from the following versions of the international diagnosis manuals (DSM-5 and ICD-11) and free access to hormonal treatment and surgery (if desired) without mandatory psychiatric monitoring. Although the diagnosis has not been removed

³⁰ However, the term ‘cis’ remains controversial because it contributes to reify the dichotomy between trans* and non-trans*, which is precisely what queer and trans* activists ultimately wanted to challenge (Martínez-Guzmán, 2017).

³¹ The campaign was initiated by some trans* activists in Spain but soon spread to countries all over the world, especially in Latin America, North America and Europe. In Belgium, the campaign was supported by *Genres Pluriels* and the LGBT umbrella associations *Çavaria* and the Rainbowhouse Brussels.

³² However it was finally published in 2013.

from the latest editions of both manuals, the terminology employed now is intended to be less pathologising.

In mainstream psychological research, the interest in the study of transphobia seems to have begun in 2005, when the first scale to measure it—the ‘Genderism and transphobia scale’—was created (Hill & Willoughby, 2005). The term ‘transphobia’ appears for the first time in PsycINFO³³ also in 2005. This seems to indicate a shift from ‘explaining trans* people’ to understanding discrimination against them. However, the number of studies addressing transphobia remains low compared to the number of studies examining gender identity and related ‘problems’³⁴. Moreover, as I show in the second chapter of the thesis, many studies on transphobia and discrimination against trans* people reify the definition of ‘normality’ that constructs trans* people as ‘abnormal’.

Taking into account these considerations, it seems difficult to offer a robust definition of trans* people that do not reify sex/gender norms. Indeed, the *problem lies in the very definition of trans* people as ‘abnormal’*, which in turn reproduces norms establishing the binary opposition between women and men and leads to the social exclusion of trans* people. For this reason, I follow Bettcher's (2015) argument for leaving the term ‘trans* people’ open to multiple meanings and for offering a minimum definition for research purposes. In view of the research problem and the theoretical perspective developed above, in this thesis I define trans* people as ‘people who transgress—to varying degrees and in different ways—the socially situated norms that define the binary opposition between women and men in specific contexts’. I employ the expression ‘to varying degrees and in different ways’ to indicate that I do not consider trans* people to be a homogenous group of people with a fixed number of characteristics. The mention of specific contexts makes emphasis on the notion that those norms are not universal, but depend on the historical, geographical, cultural and social context in which they are enacted.

In spite of the movement towards the depathologisation of trans* experiences and identities nowadays, people are still classified as either

³³ See footnote 28 for a description of PsycINFO database.

³⁴ See footnote 29.

woman or man and society is still organised along gender lines. Drawing on the gender framework described above, I argue that trans* people are still defined as ‘abnormal’ in spite of depathologisation. Since the pathological discourse is becoming less and less accepted, I suggest that other discourses are now used to redraw but maintain the boundary between women and men, thereby depicting trans* people as ‘abnormal’. This leads to the general research question already presented in the Introduction: how has the transgression of sex/gender norms been redefined nowadays so that the binary opposition sustaining the (gendered) binary organisation of society is maintained?

I answer this question by examining two specific cases: the legal certification of sex in Belgium and the definition of the (gendered) worker subject. As I describe below, both cases are characterised by a tendency towards depathologisation. A new Act regulating the modification of the legal sex for trans* people in the civil status—*Loi transgenre*—has removed almost all medical and psychiatric conditions established in the previous Act—*Loi relative à la transsexualité*—and people’s general attitudes towards trans* people assume a non-pathological stance. However, trans* and non-trans* people are still legally classified as either woman or man—thus there are norms to define them—and trans* people experience high levels of discrimination in employment. These two contexts are thus particularly relevant to study how trans* people are defined as ‘abnormal’ beyond pathologising discourses. Moreover, both the civil status and employment have important impacts on trans* people’s lives, in particular on their social inclusion or exclusion.

1.2. Description of the cases

1.2.1. The legal certification of sex in Belgium

The classification of people into women and men is not only a social practice, but it is also legally established. In most, if not all, national jurisdictions, every individual is legally assigned a sex at birth, which is reflected in their identity documents. In Belgium, the legal mention of sex is part of the civil status of each individual, which is regulated by the principle of legal unavailability. This means that it belongs to the State to define and control individuals’ civil status: people cannot change it as they please. The civil status is regulated by the Civil Code. The legal sex

of individuals is indicated in identity documents by a sex marker. In Belgium, sex markers are dichotomous, that is, they admit only two sexes. Apart from the given name, which is usually feminine or masculine, there are two types of sex markers in the civil status: a letter indicating the ‘sex’ and the national identity number. The letter indicating the sex of an individual can be an F (for ‘female’) or an M (for ‘male’). The national identity number is gendered in the sense that uneven numbers are attributed to women, whereas even numbers are attributed to men³⁵. Therefore, each time we show our identity documents, everybody can know the binary category each person has been legally assigned at birth.

This visibility is problematic for people who do not identify with the legal sex assigned at birth, especially when their physical appearance does not ‘match’ it. Since identity documents serve the function of attesting who the individual is, the mismatch leads to various issues such as not being allowed to board a bus or to cross international borders (Bender-Baird, 2011), to pick up a parcel or to open a bank account (Bribosia & Rorive, 2018). Moreover, the visibility of the ‘mismatch’ between their physical appearance and their legal sex forces them to ‘come out as trans*’ and puts them at risk of discrimination (Alessandrin, 2016). In other words, the mismatch renders trans* people *visible as trans**. Although the legal mention of sex in identity documents is not the only factor contributing to the ‘outing’³⁶ of trans* people, it is a particularly important one. According to the aforementioned EU survey (FRA, 2014), 30% of trans respondents felt discriminated when they had to show their identity documents and 87% of them stated that their life would be easier if legal procedures to change the legal mention of sex were accessible. However, in many national jurisdictions in Europe, those procedures are very complicated and harmful to human dignity (see Transgender Europe, 2017). Many states made the change contingent on the fulfilment of intrusive requirements which violate

³⁵ This means that someone who modifies the legal mention of sex does not only changes the letter (F or M) that appears in all identity documents, but also her or his national identity number.

³⁶ ‘To out someone’ is a commonly used expression to describe the situation in which the trans* characteristic of an individual is known without the concerned person’s permission, particularly when the individual is not ‘visibly trans*’.

trans* people's human rights such as being diagnosed with a mental disorder or undergoing medical procedures (Amnesty International, 2014). This used to be the case in Belgium until the 1 January 2018, date in which the *Loi du 10 mai 2007 relative à la transsexualité* (M.B. 11 juillet 2007, 2007) ceased to have legal effects.

The *Loi du 10 mai 2007 relative à la transsexualité* was the first Act to regulate the modification of the legal mention of sex in Belgium. Until this Act was adopted, the only possible way to modify it was through a judicial proceeding, leading to a large discrepancy in court decisions (Simon, 2016). The *Loi relative à la transsexualité* established an administrative procedure to avoid the legal uncertainty that 'transsexual'³⁷ people used to face (Doc. n° 51 0903/001, 2004). From its entry into force on 1st September 2007 transsexual people were granted the right to modify the mention of sex and name in their civil status by means of a declaration before the civil registrar. However, the declaration had to be accompanied by medical and psychiatric certificates attesting that the concerned person had previously fulfilled several conditions. The conditions included a psychiatric monitoring, a hormone treatment, a 'real life test'³⁸, genital surgeries and sterilisation. In fact, the Act incorporated many conditions that the judges were already imposing³⁹ (Simon, 2016).

Although the Act ruled out the legal uncertainty to which trans* people were confronted until then, in practice, the legal procedures established by the Act rendered the modification of the legal sex inaccessible for many trans* people (Bribosia & Rorive, 2018). On the one hand, for some trans* people it was medically impossible to entail the body modifications legally required by the Act due to health-related issues. On the other hand, some trans* people did not want to modify their bodies to the extent established by the legislation (for instance, undergoing genital surgery and/or sterilisation) and/or did not want to be obliged to visit a psychiatrist. As a consequence of the medical and psychiatric conditions established by the Act, for many trans* people the

³⁷ Note that the Act applied to 'transsexual people'.

³⁸ This test consists in getting dressed and behaving as 'the other sex' during a period of time.

³⁹ Judges allowed the 'rectification' of the legal mention of sex only in cases in which the person 'was born in the wrong body' and had medically modified it.

legal sex assigned to them at birth remained visible in their identity documents, leading to many obstacles in everyday life as described above. Moreover, trans* activists also denounced the transphobic character of the Act which, drawing on psychiatric discourses, defined ‘transsexuality’ as a mental disorder. The elimination of the conditions set by this Act became one of the main battlegrounds for many Belgian trans* activists since its adoption in 2007⁴⁰.

In 2007, the Yogyakarta principles⁴¹, a series of principles on the application of international human rights law in relation to sexual orientation and gender identity, were adopted by an International Commission of Jurists (2007). These principles include the right to the universal enjoyment of human rights (principle 1), the rights to equality and non-discrimination (principle 2) and the right to recognition before the law among others (principle 3). The third principle emphasises that ‘no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity’. Moreover, at the supranational level several milestones in human rights and equality law had been achieved since the 2000s (Bribosia & Rorive, 2018). Some of the most important landmarks include several decisions of the European Court of Human Rights favouring the legal recognition of trans* people’s identity⁴² and a major resolution of the Council of Europe⁴³.

Influenced by this international human rights perspective on trans* people, some countries in Europe started to modify the way sex is legally certified for trans* people in the 2010s, removing most medical and

⁴⁰ *Genres Pluriels*, a trans* and intersex grassroots association, was created that same year as a reaction to the Act. To improve the Belgian legislative framework for trans* people is one of the main goals of the association (Genres Pluriels, 2008). According to one of its founders (L. Ngosso, personal communication, February 15, 2018), although other LGBT and trans*-specific associations existed already in the country at that time, *Genres Pluriels* was probably the first one to be created with an explicit political and advocacy aim, rooted in a feminist political stance.

⁴¹ They have been expanded in the Yogyakarta Principles plus 10 (YP+10) ten years later: <http://yogyakartaprinciples.org/principles-en/yp10/>

⁴² Two of the most important ones are *Christine Goodwin v. the United Kingdom* (no. 28957/95) and *Garçon and Nicot v. France* (Nos. 79885/12, 52471/13 and 52596/13).

⁴³ Parliamentary Assembly of the Council of Europe, Resolution. Discrimination against transgender people in Europe, 22 April 2015, n. 2048 (2015).

psychiatric conditions on which the certification used to rely. In the EU, six countries⁴⁴ have now legislative procedures based on gender self-determination, whereas other countries, such as France, have removed the sterilisation and medical conditions but still require trans* people to ‘prove’ their legal sex does not match their identity (Transgender Europe, 2017, 2018a) .

In Belgium, a strong coordinated response against the *Loi relative à la transsexualité* emerged right after its adoption. International human rights organisations such as Amnesty International (2014) claimed that the Belgian Act violated basic human rights, such as the right to human integrity. After seven years of civil society mobilisation, the Belgian government committed itself to replace the Act in the Governmental Agreement of 2014 (Gouvernement Fédéral Belge, 2014). To seize the political momentum, a legislative working group was set up at the end of 2015 by the trans* and intersex association *Genres Pluriels*, with the collaboration of the Equality Law Clinic⁴⁵ of the *Université libre de Bruxelles*, to develop legal strategies to move towards a modification of the Act (see Bribosia & Rorive, 2018 for a detailed description of the process). The working group was formed by different actors, including Belgian trans* and LGBT grassroots associations (*Genres Pluriels*, *Çavaria*, *Rainbowhouse Brussels* and *Arc-en-ciel Wallonie*), human rights organisations (Amnesty International Belgium and the *Ligue des droits de l’homme*⁴⁶), and master students, scholars and researchers linked to the Equality Law Clinic. The group met different political actors, organised conferences on the topic and drafted a model law (see Groupe de travail

⁴⁴ In chronological order: Denmark (2014), Malta (2015), Ireland (2015), Norway (2016), Belgium (2017) and Portugal (2018).

⁴⁵ Created in 2014, the Equality Law Clinic is a legal clinic that ‘involves a small group of Master students in law, researchers and professors, who closely collaborate with grassroots organisations, and national and transnational NGOs to produce a practical contribution that promotes equality and social justice’ (Bribosia & Rorive, 2018, p. 6). The ELC works on the structural causes of discrimination that have both a local and a global dimension. The rights of trans* people is one of its research axes:

<http://equalitylawclinic.ulb.be/projets/droit-des-personnes-transgenres.html>

⁴⁶ The *Ligue des droits de l’homme* has a new name since 10 December 2018: *Ligue des droits humains*. I can only welcome this change of name. However, in the thesis I will use its old name because I will be referring to documents before 2018 in which only the old name appears.

législation, personal communication, 2017) emerging from trans* people themselves. The model law had an important influence on the drafting of a new Act.

A new Act was finally adopted in 2017: the *Loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets* (M.B. 10 juillet 2017, 2017). Drawing to a large extent on the right to self-determination, the new Act—which from now on I will refer to as '*Loi transgenre*'—removed most of the medical and psychiatric conditions set in the previous Act. It allows 'transgender'⁴⁷ people to modify the legal mention of sex by means of two declarations before the civil registrar officer. Moreover, it only allows for the choice of binary markers (F or M) and the modification can be carried out only once.

The urgency of the removal of all medical and psychiatric conditions is evident if we pay attention to the evolution in the number of modifications of the legal mention of sex in Belgium over time. According to the data collected by the Belgian National Registry and facilitated by the *Institut pour l'égalité des femmes et des hommes* (IFHM) (2018), the number of people who modified the legal mention of sex in their civil status increased dramatically since the entry into force of the *Loi transgenre* on 1 January 2018. Whereas less than 110 people per year modified their legal sex in the period between 2008 and 2017 (time in which the *Loi relative à la transsexualité* was in place), 571 people modified it only in the period between January and September 2018⁴⁸. Although the number of modifications also increased after the entry into force of the *Loi relative à la transsexualité*, compared to the period in which the judicial procedure was in place, the increase was significantly smaller. This evolution is showed in figure 3.

The adoption of the *Loi transgenre* has undoubtedly been a step forward for the human rights of trans* people as well as for their social inclusion, removing many of the administrative issues they faced before its adoption. However, the modification of the legal sex remains within

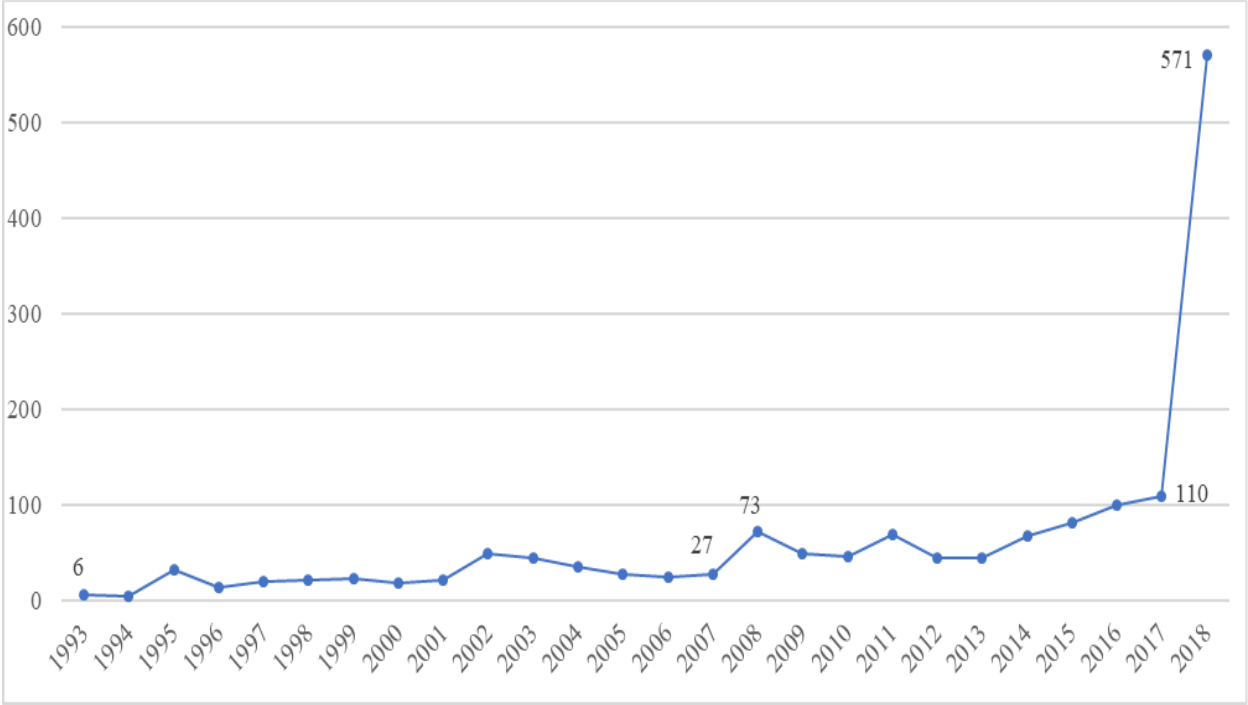
⁴⁷ Note that this new Act does not refer to trans* people as 'transsexuals' but at 'transgender' people.

⁴⁸ The available data correspond to the period from 1 January 1993 to 30 September 2018.

dichotomous sex markers and the administrative change is allowed only once⁴⁹, which maintains the legally established binary opposition. The substitution of one Act for another has still maintained the legal binary opposition. We can thus assume that the definition of the norms constituting the binary opposition—the criteria to determine whether a trans* person is legally certified as ‘F’ or ‘M’—has changed between the two Acts.

⁴⁹ Exceptionally, a second change is allowed but through a judicial procedure at the family court.

Figure 3. Number of modifications of the legal mention of sex per year (1993- Sept. 2018)



Source : Own preparation on the basis of the data treated by the IEFH (2018).

Moreover, both the *Loi relative à la transsexualité* and the *Loi transgenre* concern the way legislation has certified the legal mention of sex over time but only for trans* people. In other words, this ‘trans* legislation’ addresses the (re)definition of the binary opposition *only* when people ask to *modify* it. However, in Belgium, a legal sex is attributed to everybody *at birth* and it has been so at least since the adoption of the first Civil Code (*Code Napoléon*) in 1804. Since sex markers in the civil status of individuals are dichotomous, the attribution of sex at birth also follows the binary opposition. We can, therefore, assume that the ‘trans* legislation’ described above has incorporated changes in the way sex has been legally certified for trans* people but not for the population as a whole. This leads to different ways of certifying sex for different people over time—or different definitions of the binary opposition between women and men. It is on this basis that the two specific research questions have emerged:

- 1) How has the definition of women and men changed **for trans* people** between the two Belgian ‘trans* Acts’ so that the binary opposition is maintained?
- 2) How has Belgian civil law defined the binary opposition between women and men **for different categories of people** over time and with what effects?

1.2.2. The definition of the (gendered) worker subject

Feminist scholars have unveiled androcentric perspectives in the economy, thereby deconstructing their object of study: the economic activity understood exclusively in terms of *monetised* economy (Pérez Orozco, 2006). Those androcentric perspectives render women invisible as economic actors and underestimate the economic relevance of activities traditionally associated with femininity, such as unpaid household or community activities (Pérez Orozco, 2014). Androcentric perspectives are based on the dichotomy between the public and private spheres as well as between ‘productive’ (men’s paid work in the labour market) and ‘unproductive’ or reproductive activities (women’s unpaid work in the household) (Young, 2003).

Work is one of the key processes through which ‘gender relations are played out in contemporary societies, influencing and disciplining the ways different actors and social groups interact between public and private spheres’ (Ferguson, 2013, p. 2). Although the term ‘work’ is often

used as a synonym for employment in mainstream androcentric perspectives, from a feminist stance work includes all activities necessary to sustain life (Carrasco, 2003). The concept of ‘life sustainability’ moves the centre of economic analysis from the market to the people; from the necessity to produce goods and benefits to the satisfaction of human needs (Carrasco, 2002, p. 3). In this sense, the concept of ‘care’ is essential to understand gender inequalities. It is defined as all the activities carried out ‘to manage and maintain life and health on a daily basis, to assume the responsibility of the physical and emotional wellbeing of the bodies, both our own and that of other people’⁵⁰ (López Gil & Pérez Orozco, 2011, p. 20). In spite of their centrality to human life, care activities are not socially valued because they are not intended to produce goods and benefits, being thus often unpaid or very poorly paid⁵¹. The distribution of this type of activities between women and men influences the ways they engage with labour markets.

Indeed, work is gendered in the way it is constructed, but also in the way it materialises in labour markets. From the 1970s, employment has been deeply restructured along gender lines leading to the *feminisation of employment* (Ferguson, 2013). The feminisation of employment refers not only to the greater participation of women in the labour markets, but also to the increase in the types of work conditions traditionally associated with women (i.e. insecure and low paid as opposed to unionised and stable), leading to more ‘flexible and precarious forms of labor’ (2013, p. 4). It is also important not to equate the feminisation of employment with greater gender equality. According to Caraway (2007), the enormous influx of women into the workforce has not led to women’s smooth integration into men’s jobs, but rather to a reconfiguration of the distribution of work between women and men.

Women are still concentrated in areas traditionally associated with their gender roles (International Labour Organization, 2018). This is particularly the case of the service sector, in which women are over-

⁵⁰ ‘gestionar y mantener cotidianamente la vida y la salud, hacerse cargo del bienestar físico y emocional de los cuerpos, del propio y de los otros’.

⁵¹ The gendered organisation of society relies on the low-paid work of migrant women who work as carers, while their own families are being taken care of by other impoverished women in the country of origin, leading to global care chains (UN-INSTRAW, 2008).

represented in low-paid jobs such as cleaning and care work, whereas men dominate in better-paid jobs such as financial and business services and information and communications technology. In this sense, women's low pay is usually attributed to 'vocation', to the assumption that they use their 'natural' capacities rather than formal skills and, thus, they do not require an important monetary recompense (Perrons, 2010). It is, however, important to clarify that labour markets intersect with a wide range of inequalities beyond gender, such as class, ethnicity and nationality and, therefore not all women are in more vulnerable jobs than men. Still, labour markets are clearly gendered and gender segregation in employment 'both draws on and perpetuates gender and other inequalities' (Ferguson, 2013, p. 3). It shows how the symbolic and material aspects of gender intertwined and mutually construct each other (Romero Bachiller, 2003).

Vertical and horizontal gender segregation⁵² is a deeply rooted characteristic of education systems and occupations across the European Union, which in turn limits access to certain jobs and leads to unequal pay (EIGE - European Institute for Gender Equality, 2018)⁵³. Women are over-represented in both part-time and unpaid work, being family or care reasons the main motive why they do not seek full-time employment (EIGE, 2014). This impact their economic independence, leading to a gender gap in pensions as a result of inequalities over the lifetime (EIGE, 2015).

In Belgium, statistical data also show in which way the socioeconomic system is structured along gender lines. According to the latest data published⁵⁴ by the Belgian Labour Force Survey (Statistics Belgium, 2018), women's employment rate is lower than men's. Although women's unemployment rate is also slightly lower than men's, the participation rate of men surpasses the activity rate of women. In

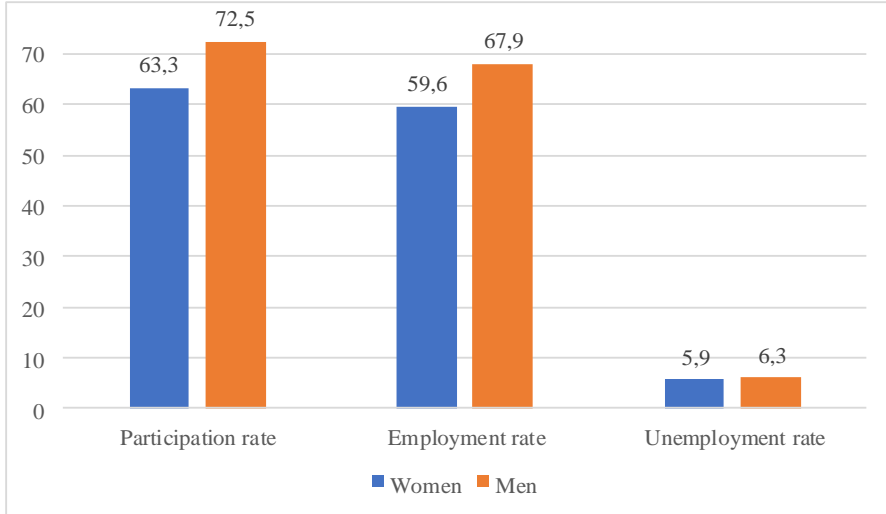
⁵² Vertical segregation refers to the concentration of women and men in particular grades, levels of responsibility or positions, whereas horizontal segregation concerns the concentration of women and men in particular sectors and occupations (European Commission, 1998).

⁵³ EIGE stands for European Institute for Gender Equality. It is the EU agency in charge of collecting, analysing, processing and disseminating data and information on gender equality issues across the EU.

⁵⁴ They correspond to the third trimester of 2018.

other words, there are fewer women than men both employed and actively looking for a job (see figure 4).

Figure 4. Participation, employment and unemployment rates of women and men (%)



Source: Own preparation based on data from the Belgian Labour Force Survey (3rd trimester of 2018)

The different participation rate of women and men in the labour market is related to the distribution of care activities. The different use of time by women and men is indicative of the way work is distributed. The most recent time survey⁵⁵ carried out by the *Institut pour l'égalité des femmes et des hommes* (2016) showed that in a weekday women dedicate on average 1 hour and 20 minutes more than men to household chores and 15 minutes more to the children. On their part, men spend 1 hour and 23 minutes more than women at paid work and, even then, they have 44 minutes of free time more than women.

The Belgian labour market itself is also gendered. This is confirmed by data concerning both vertical and horizontal segregation. Concerning vertical segregation, only 10% of members of the management boards of listed companies and 7,1% of management boards of non-listed companies were women in 2012 (De Wachter et al., 2012). Horizontal

⁵⁵ A time survey is a survey in which people are asked how they employ their daily time.

segregation is also a reality. The distribution of women and men in different professions is highlighted in the last Labour Force Survey (Statistics Belgium, 2018). Whereas women are dominant in the education and health sectors, men dominate the industrial and construction sectors.

All work-related indicators described above lead to a pay gap between women and men. In 2014 men's gross annual salary was 20,6% higher than women's, including workers of all sectors, working both full time and part time (Institut pour l'égalité des femmes et des hommes & SPF Emploi, Travail et Concertation sociale, 2017). Only 48,2% is explained by known factors. The known factors⁵⁶ carrying the greatest weight are the position, the profession and the sector of women and men in the labour market.

The analysis of the gendered organisation of work and employment has largely contributed to the understanding of the socioeconomic system. However, as Pérez Orozco & Lafuente (2013) explain, feminist economic perspectives have often relied on dichotomous and static notions of sex/gender, taking for granted the binary opposition that both structure the socioeconomic system and is structured by it. In this sense, the authors argue that understanding how it is constructed is essential to foster ruptures and resistance.

The analytical focus on static notions of women and men has put aside the question of work discrimination against trans* (and homosexual) people (Vila Núñez, 2012). This exclusion is limiting in two ways (Morán Faúndes, 2015). On the one hand, it reduces discrimination against trans* people to a symbolic problem—the lack of recognition. However, trans* people are *also* often unemployed or relegated to jobs with precarious working conditions, such as sex work. It is thus also a *material* problem. On the other hand, the exclusion of trans* people's experiences overlooks how the sphere of work is broadly organised around sexed bodies, gender and sexuality (Morán Faúndes, 2015). The workplace is delineated by symbolic and material limits that determine who works, where and how (Vila Núñez, 2012). The patterns leading to differentiation, inequalities and hierarchies found in society at large can

⁵⁶ These factors explain 43,9%, 19,5% and 14,6% of the explained proportion respectively.

also be found in the sphere of employment (Romero Bachiller, 2003). Nevertheless, it has been traditionally characterised by the idea of a ‘neutral and asexual’ workplace and a ‘neutral’ worker devoid of gender, sexuality (Vila Núñez, 2012) and corporeality (Romero Bachiller, 2003).

The inclusion of trans* (and homosexual) people in the workplace is often conditional on their invisibility and silence (Priola, Lasio, De Simone, & Serri, 2014; Vila Núñez, 2012). The alleged absence of sex/gender and sexuality in the workplace erases any difference potentially threatening the status quo. The visible presence of trans* (and homosexual) people at the workplace is a transgression that is often punished by mockery, harassment or even dismissal. Moulin de Souza & de Pádua Carrieri (2015) show that the extent of workplace discrimination is dependent on the degree to which a trans* person’s body has been modified and hence the degree of ‘trans* visibility’. On the face of it, trans* (and homosexual) people usually develop strategies such as ‘passing’ as cisgender (and heterosexual), avoiding speaking about their private life and policing themselves out of fear of being discovered (Vila Núñez, 2012).

According to several studies (FRA, 2014; Motmans, de Biolley, & Debunne, 2009; Motmans, Wyverkens, & Defreyne, 2017), employment is indeed one of the social areas in which discrimination against trans* people is the greatest, both in Europe and Belgium. By means of surveys, these studies collect information on the discriminatory, exclusionary or harming situations experienced by trans* people. ‘Official’ statistics on employment discrimination are limited because trans* people do not usually lodge a formal complaint⁵⁷. Therefore, this type of discrimination surveys is extremely valuable because they allow us to be aware of the difficult and often unfair situations trans* people face in employment, irrespective of whether they have been officially reported or not.

At the EU level, only 51% of trans* people had employment at the time of the FRA (2014) survey in 2012, the year to which the

⁵⁷ For instance, only 7% of all employment discrimination complaints that the IEFH received in 2017 concerned trans* people (Institut pour l’égalité des femmes et des hommes, 2017). As the IEFH explains, this low percentage should not be interpreted as absence of discrimination against them, but rather as lack of information about how to lodge a complaint with this gender equality body.

European data refer to. This employment rate is significantly lower than the European average (68.4%) for the same year (Eurostat, 2012). Similar figures are shown in the first national study addressing the situation of trans* people in Belgium (Motmans et al., 2009). In this study, trans* people described employment discrimination as the social area in which they are most discriminated against. It is, however, important to note that employment discrimination based on the criteria of sex, gender identity and gender expression is expressly prohibited by the Belgian legislation⁵⁸. The prohibition of employment discrimination comprises both direct⁵⁹ and indirect⁶⁰ discrimination, as well as harassment⁶¹ and sexual harassment⁶² (*Loi tendant à lutter contre la discrimination entre les femmes et les hommes*, M.B. 30 mai 2007, 2007).

In spite of the legal prohibition, trans* people report serious employment discrimination. In 2009 only 51% of trans* respondents were employed and 15.6% were unemployed (Motmans et al., 2009). In the general population, the employment rate for that year was 61.6% and the unemployment rate was 5.3% (Statistics Belgium, 2009). As a second

⁵⁸ The *Loi tendant à lutter contre la discrimination entre les femmes et les hommes* (M.B. 30 mai 2007) prohibits discrimination on the grounds of sex, which includes sex change. In 2014, the *Loi modifiant la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes en vue de l'étendre à l'identité de genre et l'expression de genre* (M.B. 22 mai 2014) equated a direct distinction on the grounds of both gender identity and gender expression with a direct distinction on the grounds of sex in order to protect trans* people who did not undergo surgery.

⁵⁹ Direct discrimination is any 'direct distinction' (described as 'the situation which occurs whenever, on the basis of sex, a person is treated less favourably than another is treated, has been treated, or would be treated in a comparable situation') which cannot be justified under Title II of the Act.

⁶⁰ Indirect discrimination is an 'indirect distinction' on the basis of one of the protected grounds (sex), which cannot be justified under title II of the Act. 'Indirect distinction' is the situation which occurs whenever an apparently neutral provision, criterion or practice, may result in a particular disadvantage for persons characterised by one of those protected grounds.

⁶¹ 'Harassment' is defined as 'unwanted conducts linked to sex with the purpose or the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.

⁶² 'Sexual harassment' is defined as 'unwanted conducts with sexual connotations, expressed physically, verbally or non-verbally, with the purpose or the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.

study shows, the situation a decade later has not changed much (Motmans et al., 2017). In 2015-2017 (the two-year period covered in the second survey), only 43,6% of trans* respondents were employed and 10% were unemployed. In the general population, the employment rate in 2016 was 62,3% and the unemployment rate was 5,3% (Statistics Belgium, 2016).

The extraordinary unemployment rates of trans* people can be explained by discriminatory practices at two different moments: when looking for a job and within the workplace (FRA, 2014; Motmans et al., 2009). Although discrimination seems to be particularly pervasive when trying to access employment, discrimination in the workplace is not uncommon. Several studies show that trans* people are not promoted, forced to resign or leave the job, and excluded from benefits, access to resources and contact with customers (Collins, McFadden, Rocco, & Mathis, 2015; McFadden, 2015; Ozeren, Ucar, & Duygulu, 2016; Priola et al., 2014). They also suffer workplace aggressions (Ozeren et al., 2016; Sangganjanavanich & Cavazos, 2010). In Belgium, the most common discriminatory practices in the workplace are enacted by colleagues (Motmans et al., 2009). These include criticism concerning the appearance, the behaviour or the opinions, the denial of their identity, mockery, misplaced curiosity, and verbal violence. In extreme cases, as illustrated by the quote that opens this introduction, people can even reject working with a trans* person.

Employment discrimination against trans* people in Belgium is thus well-established. Yet, the results of the two only studies examining attitudes towards trans* people in Belgium⁶³ show a generally positive attitude towards them. In a recent study examining public support to trans* people's rights⁶⁴ in twenty-three countries (Andrew R. Flores, Brown, & Park, 2016), Belgian respondents appeared as moderately supportive⁶⁵. Moreover, 74% of respondents in Belgium agreed that trans* people must be protected from discrimination and 72.8% rejected the idea of trans* people being mentally ill. In the same vein, the study

⁶³ No other study of this kind has been found until the submission of this thesis (end of March 2019).

⁶⁴ The survey included questions regarding rights such as adoption, the modification of the legal sex in identity documents and marriage.

⁶⁵ The global score for Belgium was 63 points out of 100.

carried out by Dierckx, Motmans, & Meier (2014) detected very low levels of transphobia among the surveyed population⁶⁶. Transphobia was measured through a composite scale of 23 items taken from the *Genderism and Transphobia Scale* (Hill & Willoughby, 2005) and other scales. Although these studies do not focus on the context of employment, they illustrate recent general views on trans* people in Belgium.

If the patterns of differentiation and hierarchies found in society at large can also be found in the sphere of employment, we can thus expect that normative and trans* definitions of the binary opposition are to be found also within the workplace. Moreover, taking into account the alleged ‘neutrality’ of the worker subject, we can also assume that those normative and trans* definitions interact with the definition itself of the ‘worker subject’, leading to specific processes of differentiation and hierarchies (and exclusion) in the workplace.

On the basis of the above, two other specific research questions emerge:

- 1) How are both the **binary opposition between women and men and its transgression** defined by workers nowadays?
- 3) How do workers definitions of sex/gender categories interact with their **definition of the worker subject** and what are the implications in terms of inclusion or exclusion in the workplace?

Drawing on the reconceptualisation of theory, method and research topic as interdependent suggested by feminist epistemologies⁶⁷, I was confronted with the decision on the methodological approach to use in the thesis to answer the research questions described above. In order to situate my decision within the contemporary academic context, I carried out a conceptual review of the literature in the human and social sciences (Chapter 2). The review allowed me to identify the main methodological perspectives employed to understand transphobia and discrimination against trans* people nowadays, as well as limitations and gaps. It ultimately oriented the decision about the methodological perspective of the thesis—discursive psychology (Chapter 3).

⁶⁶ The sample’s level of transphobia was 3’99 points within a 1 to 5 range, where five indicates absence of transphobia.

⁶⁷ See Introduction.

Chapter 2.

Conceptualisations of exclusion and discrimination against trans* people⁶⁸

Which are the main theoretical perspectives used in contemporary human and social research to understand the exclusion and discrimination against trans* people? And which are the implications of the different approaches? This chapter aims at answering these interrogations through a conceptual review of the contemporary scientific study of exclusion and discrimination against trans* people.

In particular, the review answers four questions about the literature: 1) How are trans* people denominated and defined? 2) How is the problem of exclusion/discrimination defined? 3) Where is the problem located? and 4) Which theoretical perspectives and notions are used to explain the problem? These questions are based on several observations. Firstly, trans* terminology varies and is not unambiguous (Bettcher, 2015). Therefore, understandings of trans* exclusion and discrimination depend on the definition itself of trans* people. Secondly, knowledge produced by human and social sciences contributes to establishing the criteria through which a phenomenon is understood and analysed (Doménech & Íñiguez-Rueda, 2002). Thirdly, different theoretical approaches provide specific explanations of discrimination and define particular strategies to address it (Reisigl & Wodak, 2001).

⁶⁸ Some sections of this chapter concerning the terminology and definitions of trans* people identified in the literature have been published: Aguirre-Sánchez-Beato, S. (2018). Trans Terminology and Definitions in Research on Transphobia: A conceptual review. *Quaderns de Psicologia. International journal of psychology*, 20(3), 295-305.

To answer these questions, I carried out a conceptual review of contemporary scientific literature (2005-2016) on the topic 'exclusion and discrimination against trans* people'. According to Jesson, Matheson, & Lacey (2011) the literature review can be a research method in its own right. It is 'a library or desk-based method involving the secondary analysis of explicit knowledge, so abstract concepts of explicit and tacit knowledge are explored' (2011, p. 9). These authors distinguish between two types of literature review: the traditional and the systematic review. The difference between the two is that, whereas the systematic review is guided by a prescribed methodology, the traditional review can vary in format and style. Moreover, the traditional literature review is characterised by the adoption of a critical approach, not only a descriptive one. This entails critical thinking and forming an argument that can be back up with evidence and appropriate examples.

Drawing on this distinction, the type of review that I conducted was a *traditional* review; however I followed a systematic approach by working in an ordered or methodological way. Specifically, I performed a *conceptual* review, a type of traditional literature review aimed to 'synthesise areas of conceptual knowledge that contribute to a better understanding of the issues' (Jesson et al., 2011, p. 76), comparing and contrasting 'the different ways in which authors have used specific words or concepts' (2011, p. 79).

The material collection was carried out between October and December 2016 through a search of the following databases: Scopus, JSTOR, DOAJ, CAIRN and Redalyc. Scopus and JSTOR are relevant international databases containing documents mainly in English. DOAJ includes open access journals that may not be incorporated in the first two. CAIRN and Redalyc are regional databases. CAIRN is the French-speaking referring database for the human and social sciences. Redalyc is an important database from Latin America, Spain and Portugal including articles in Spanish and Portuguese. I decided to include this database because of the effervescence of Trans Studies in those geographical contexts, especially in Brazil.

I looked for articles, book chapters and books published from January 2005 to September 2016 in the field of human and social sciences. I chose this time interval because in a prior exploratory search I

found that the number of scientific papers focusing on trans* people increased notoriously from 2005 onwards⁶⁹.

The keywords and Boolean operators used to identify the documents were: 1) the term ‘transphobia’; 2) the terms ‘exclusion’ / ‘discrimination’/ ‘stereotypes or prejudices’ combined with the main terms ‘transgender or transsexual’. In Spanish and Portuguese the term ‘*travesti*’⁷⁰ was also used because, although it is barely employed as the main term to refer to trans* people in the Anglo-Saxon world nowadays, it is often used in the Latin American context. The keywords were entered in English, French, Spanish and Portuguese into the five databases. They were searched for in the abstract when this option was available⁷¹ or in the full text when it was not⁷². The number of documents found per database is shown in table 1.

⁶⁹ When entering the terms ‘transgender or transsexual’ into the Scopus search, a total number of 1,270 documents appeared as containing those words in 2016, whereas in 1966 there was only one document. The number of trans-related publications was more or less stable from 1966 to 1991 (between 1 and 48 documents per year) and experienced a modest increase from 1991 to 2004 (between 15 and 98 documents per year). However, from 2005 onwards the increase has been dramatic (from 169 documents in 2005 to 1,270 in 2016).

⁷⁰ Literally ‘transvestite’ in English (but it is used with a different meaning in Latin America).

⁷¹ Scopus and CAIRN.

⁷² DOAJ and Redalyc do not have this option and most of the documents in JSTOR do not have an abstract. This explains the particularly high number of documents found in JSTOR and Redalyc.

Table 1. Total number of documents found per database and keywords (all languages)

Keyword(s) 1	Keyword(s) 2	Scopus	JSTOR	DOAJ	Redalyc	CAIRN
Transphobia		136	41	19	153	4
Transgender OR transsexual (OR <i>travesti</i>)	Exclusion	77	176	19	440	0
	Discrimination	424	612	49	504	21
	Prejudice OR stereotype	130	511	7	688	0

After eliminating all duplicate documents (N=413), I read the title, abstract and introduction of the documents, using the following criteria for their final inclusion in the review:

- Documents written in English, French, Spanish or Portuguese.
- Documents whose main objective is to *understand* trans* exclusion. I therefore excluded: a) documents exclusively documenting it (i.e. percentages of trans* people reporting discrimination) and/or addressing its consequences (i.e. health impacts, psychological distress) and b) documents in which trans* people are only mentioned under the LGBT acronym or sexual minority umbrella but not really targeted.

The final corpus covered 69 documents (62 articles, 3 book chapters, 3 books and 1 research report). The full list of documents can be found in Appendix I. The descriptive analysis of the material was carried out by identifying the discipline and country of the first author and the year of publication. The methodology used for the conceptual analysis of the corpus was thematic analysis, a ‘method for identifying, analysing and reporting patterns (themes) within data’ (Braun & Clarke, 2006, p. 79). This type of analysis is particularly well suited to identify how different phenomena are conceptualised and explained. In this perspective, a theme represents a ‘patterned response or meaning within the data set’ (2006, p. 82), thereby capturing something important regarding the research question.

I looked for explicit definitions of trans* people and associated terminology in each document. I also looked for descriptions that define and locate the problem, and the main theoretical perspectives and notions. Whereas in most documents the terminology and definition of trans* people were explicit, the descriptions of the problem and the theoretical approaches were often implicit or tacit because they are usually taken for granted within the specific field of research. In fact, as Jesson et al. (2011) explain, examining current literature from different paradigms or academic disciplines is a very complex task. Therefore, I sometimes had to look for theoretical and conceptual assumptions and tacit knowledge within the texts.

I employed an inductive approach for developing the themes. In other words, the themes were not grounded in any theory but developed from my interaction with the material. There was not a pre-established set of themes that I searched for in the texts. However, the feminist epistemological stance that I adopt in the thesis and my approach towards the search problem guided my reading and interpretation of the material. Particularly, I looked at the different conceptualisations as socially constructed meanings that have specific implications both in terms of sex/gender and how we understand discrimination (and thus, what we can do about it). I examined how some conceptualisations in the literature actually keep on constructing trans* people as ‘an exception to the norm’. Using software for qualitative data analysis (ATLAS.ti 7 for Windows) and Excel tables, I attributed codes to units of meaning in a process of coding and recoding to define the themes.

The corpus of documents was characterised by a strong interdisciplinary nature. Fifteen human and social disciplines are represented, the more frequent of which were psychology, sociology, law, gender studies, education and human resources/organisational studies. Concerning the geographical contexts, more than half came from Anglo-Saxon countries (N=48), mainly the United States. A number of documents came from Latin America (N=11), particularly Brazil and Argentina. Continental Europe and Asian countries were also represented (N=8 and N=2 respectively). The year of publication indicated an increase in the number of articles in the last three years, with more than half of the selected documents published from 2014 to 2016

(N=37). The results are described in detail in the next four sections, each of them answering one of the four questions detailed above.

2.1. Trans* terminology and definitions

Eight themes were identified in the definitions of trans* people: identity, expression, sex-gender binary, man-woman binary, body modifications, medical diagnosis, anti-pathological claim and political claim. Most of the definitions combine two or more of these themes. The same term is sometimes used to refer to different definitions. Some documents did not include any explicit definition of trans* people (N=22). See table 2 for a summary.

Table 2. Themes, associated terminology and document(s) in which they appeared

Themes in the definition	Terminology	Document
Identity	Transgender, transsexual, trans, trans*, transpeople, transgendered (vs. cisgender)	(Adrian, 2013; Ali, Fleisher, & Erickson, 2016; Ansara & Hegarty, 2012; Bender-Baird, 2011; Broockman & Kalla, 2016; Brower, 2016; Buist & Stone, 2014; Collins et al., 2015; Cruz, 2014; Curtis, 2016; Davis, 2014; Dietert & Dentice, 2015; Erni, 2013; Gazzola & Morrison, 2014; Gerhardstein & Anderson, 2010; Grigoropoulos & Kordoutis, 2015; King, Winter, & Webster, 2009; Nadal, Skolnik, & Wong, 2012; Norton & Herek, 2013; Sawyer, Thoroughgood, & Webster, 2016; Suess, 2014; E. Tebbe, Moradi, & Ege, 2014; Tee & Hegarty, 2006; Walch, Ngamake, Francisco, Stitt, & Shingler, 2012; Winter, 2009; Worthen, 2016)
Expression	Transgender, transsexual, gender nonconforming, cross dresser, <i>travesti</i> , trans, trans*, transgendered (vs. cisgender)	(Adrian, 2013; Bender-Baird, 2011; Collins et al., 2015; Cruz, 2014; Curtis, 2016; Dietert & Dentice, 2015; Erni, 2013; Gazzola & Morrison, 2014; Gerhardstein & Anderson, 2010; Grigoropoulos & Kordoutis, 2015; Hill & Willoughby, 2005; Huffaker & Kwon, 2016; Moulin de Souza & de Pádua Carrieri, 2015; Norton & Herek, 2013; Rottenbacher de Rojas, 2012; Suess, 2014; E. Tebbe et al., 2014; Walch, Ngamake, et al., 2012)
Sex-gender binary	Transgender, transsexual, trans, queer, gender nonconforming, cross dresser, trans*,	(Adrian, 2013; Begun & Kattari, 2016; Bettcher, 2007; Broockman & Kalla, 2016; Brower, 2016; Buist & Stone, 2014; Collins et al., 2015; Connell, 2010; Cruz, 2014; Curtis, 2016; Davis, 2014; Dietert & Dentice, 2015; Erni, 2013; Franco & Cicillini, 2015; Gazzola & Morrison, 2014; Gerhardstein &

	transgendered (vs. cisgender)	Anderson, 2010; Grigoropoulos & Kordoutis, 2015; Huffaker & Kwon, 2016; King et al., 2009, 2009; Lehtonen, 2016; Missé & Coll-Planas, 2010, 2010; Morán Faúndes, 2015; Moulin de Souza & de Pádua Carrieri, 2015; Nadal et al., 2012; Nagoshi et al., 2008; Norton & Herek, 2013; Schilt & Westbrook, 2009; Stefanos Pacheco & Stefanos Pacheco, 2016; Suess, 2014; E. Tebbe et al., 2014; Tee & Hegarty, 2006; Walch, Ngamake, et al., 2012; Walch, Sinkkanen, et al., 2012; Warriner, Nagoshi, & Nagoshi, 2013; Worthen, 2016)
Man-woman binary	a) No within binary: Transgender, gender nonconforming, gender variant, queer, <i>travesti</i> genderqueer, trans b) Within binary: Transsexual, MtF, FtM	(Brower, 2016; Connell, 2010; Cruz, 2014; Davis, 2014; Franco & Cicillini, 2015; Missé & Coll-Planas, 2010; Morán Faúndes, 2015; Moulin de Souza & de Pádua Carrieri, 2015; Páez, Hevia, Pesci, & Rabbia, 2015)
Body modifications	a) Body modifications: Transsexual, MTF, FTM b) No body modifications: Transgender, cross dresser, transgenderist, <i>travesti</i> , gender nonconforming	(Dietert & Dentice, 2015; Erni, 2013; Gerhardstein & Anderson, 2010; Hill & Willoughby, 2005; Huffaker & Kwon, 2016; King et al., 2009; Missé & Coll-Planas, 2010; Moulin de Souza & de Pádua Carrieri, 2015; Nadal et al., 2012; Nagoshi et al., 2008; Norton & Herek, 2013; Rottenbacher de Rojas, 2012; Walch, Ngamake, et al., 2012; Walch, Sinkkanen, et al., 2012)
Psychiatric diagnosis	Transsexual	(Barclay & Scott, 2006)
Anti-pathologisation claim	Transgender (vs. transsexual), gender variant individuals, transsexual, <i>travesti</i>	(Adrian, 2013; Ansara & Hegarty, 2012; Bento & Pelúcio, 2012; Bettcher, 2007; Connell, 2010; Erni, 2013; Lasso Báez, 2014)
Political claim	Transgender, queer, genderqueer, trans, Ft*, Mt*	(Bailey, 2011; Franco & Cicillini, 2015; Huffaker & Kwon, 2016; Nadal et al., 2012; Norton & Herek, 2013)
No definition	Transsexual, trans people, transgender, <i>travesti</i> , FTM transsexuals, trans	(Alessandrin, 2016; Case & Stewart, 2013; Currah, 2008; Dean, Victor, & Grimes, 2016; DePalma & Jennett, 2010; Dierckx et al., 2014; Formby, 2015; Gilbert, 2009; Loutzenheiser, 2015; McFadden, 2015; Meadow, 2010; Molina Rodríguez, Guzmán Cervantes, & Martínez-Guzmán, 2015; Myers, 2010; Ozeren et al., 2016; Priola et al., 2014; Rasmussen,

The *identity* theme defines trans* people as people whose gender identity is different from the category assigned at birth. The birth-assigned category is sometimes denominated ‘sex’ and sometimes ‘gender’, indicating a conflation of the two terms in the literature.

A second theme found in the definitions is the *expression*. This refers to a physical appearance and/or behaviour differing from the traditional expressions associated with the gender category⁷³ assigned at birth.

The notion of the *gender binary* is used with two different meanings (third and fourth themes). On the one hand, some definitions use the notion to refer to the *sex-gender binary*, i.e. the idea that there is a correspondence between the gender category and biological sex, and the extent to which trans* people challenge it. On the other hand, some definitions stress the fact that certain trans* people do not see themselves as either man or woman, negating the notion that gender is a binary category (*man-woman binary*).

Terminology is used in different ways to emphasise different combinations of identity, expression and gender binary themes. In relation to the second meaning of gender binary, the term ‘transsexual’ is sometimes used to refer to people who see themselves as men or women, whereas ‘transgender’, ‘genderqueer’ or ‘trans people’ are used to refer to people who do not see themselves within those binary themes. However, on other occasions ‘transgender’ and ‘trans people’ are used as an umbrella term to include transsexual people.

Used as umbrellas, the terms ‘transgender’ (especially in Anglo-Saxon and French-speaking contexts) and ‘trans people’ (especially in Spanish and Portuguese) usually refer to people whose gender identity and/or expression differ from the category assigned at birth. Overall, these definitions emphasise the first meaning of the notion of binary: trans* people as a challenge to the notion that gender categories stem from

⁷³ In this chapter I use the term ‘gender category’ because it is the notion most employed in the literature. The expression ‘sex/gender category’ never appears.

biological sex. In the same vein, the term ‘cisgender’ is used as the opposite of transgender/trans, defining people whose identity corresponds to the category assigned at birth.

Although in many definitions the identity and expression themes are combined, a distinction is sometimes made, with certain definitions focusing exclusively on the expression theme to define trans* people as a transgression of the traditional gender expression associated with the assigned gender at birth, irrespective of whether the person identifies as trans* or not. In this sense, the nature of discrimination will not be seen in connection with a particular identity, but rather with how the person is perceived. The terminology used to refer to the expression theme alone is usually ‘gender non-conforming’, ‘gender non-conformers’ and ‘crossdresser’. However, ‘gender non-conforming’ is sometimes also used as an umbrella term.

A fifth theme in the definitions relates to whether there have been *body modifications* or whether there is a wish to undergo such, be it hormonal and/or surgical. In this sense, ‘transsexual’ is sometimes used to designate people who have undergone or wish to undergo body surgery, whereas ‘transgender’ (in English and French) and ‘*travesti*’ (in Spanish and Portuguese) are used to designate people who do not wish to do so.

A sixth theme is the *psychiatric diagnosis*. Although a minority theme in the consulted literature, two authors use the definitions of the Diagnostic of Statistical Manual of Mental Disorders (APA) and the International Classification of Diseases (WHO). Such definitions characterise trans* experiences as a mental disorder and/or as dysphoria. ‘Transsexual’ is the term used when a medical diagnosis definition is provided.

The seventh theme, the *anti-pathologisation claim*, is intimately related to the previous one. The term ‘transgender’ is used in this sense to show resistance to the medical pathologisation of trans* people, traditionally associated with the term ‘transsexual’.

The last theme highlights the notion that identity is not fixed and static, but fluid and changeable over time. It underlines a political claim against essentialist and static views of identity and gender categories and

calls for a more flexible perspective on gender. ‘Genderqueer’, ‘trans’ and ‘transgender’ are terms used to denote this *political claim*.

Finally, some documents did not provide any explicit definition of trans* people. In most cases this was due to the fact that the object of study was the construction itself of gender norms and categories. In some other cases the term ‘transgender’ was used as an umbrella for a range of terms without providing a conceptual definition. In a few cases the definition seemed to be taken for granted.

2.2. Definitions of the problem

Two types of definitions of the problem were identified in the literature. The first one concerns non-trans* people observing a mismatch between the binary gender category and the signs of gender. The second one describes the interaction of trans* people with the gendered organisation of society (table 3).

Table 3. Definitions and subcategories

Definition	Subcategory	References
Visibility of a mismatch	Genitalia	(Alessandrin, 2016; Amnesty International, 2014; Bailey, 2011; Bento & Pelúcio, 2012; Berry, McGuffee, Rush, & Columbus, 2003; Bettcher, 2007; Buist & Stone, 2014; Collins et al., 2015; Currah, 2008; Davis, 2014; Dietert & Dentice, 2015; Lasso Báez, 2014; Myers, 2010; Schilt & Westbrook, 2009)
	Identity documents	(Alessandrin, 2016; Amnesty International, 2014; Bender-Baird, 2011; Berry et al., 2003; Currah, 2008; Davis, 2014; Erni, 2013; Lasso Báez, 2014; Suriyasarn, 2016; Winter, 2009)
	Physical appearance	(Alessandrin, 2016; Bailey, 2011; Begun & Kattari, 2016; Bender-Baird, 2011; Bento & Pelúcio, 2012; Bettcher, 2007; Buist & Stone, 2014; Collins et al., 2015; Connell, 2010; Cruz, 2014; Davis, 2014; DePalma & Jennett, 2010; Dietert & Dentice, 2015; Formby, 2015; Gerhardstein & Anderson, 2010; McFadden, 2015; Moulin de Souza & de Pádua Carrieri, 2015; Myers, 2010; Sawyer et al., 2016; Schilt, 2006; Schilt & Westbrook, 2009)
	Actions	Amnesty International, 2014; Buist & Stone, 2014; Collins et al., 2015; Connell, 2010; M. Dietert & Dentice, 2015; K. Schilt & Westbrook, 2009; Kristen Schilt, 2006
	Sexuality	Amnesty International, 2014; Báez, 2014; Bailey, 2011; Bettcher, 2007; Buist & Stone, 2014; Connell, 2010; DePalma & Jennett, 2010; Moulin de Souza & de Pádua

		Carrieri, 2015; K. Schilt & Westbrook, 2009
Out/outed		(Alessandrin, 2016; McFadden, 2015)
Intersectionality		(Bailey, 2011; Cruz, 2014; Davis, 2014; Schilt, 2006; Spade, 2015)
Trans people's interaction with the gendered organisation of society	Access to services and activities	(Amnesty International, 2014; Begun & Kattari, 2016; Buist & Stone, 2014; Davis, 2014; Spade, 2015)
	Use of spaces	(Barclay & Scott, 2006; Bender-Baird, 2011; Berry et al., 2003; Davis, 2014; Myers, 2010; Resende Alves & Costa Moreira, 2015; Spade, 2015; Suriyasarn, 2016)
	Enjoyment of rights	(Alessandrin, 2016; Amnesty International, 2014; Barclay & Scott, 2006; Bender-Baird, 2011; Berry et al., 2003; Buist & Stone, 2014; Curtis, 2016; Davis, 2014; Erni, 2013; Meadow, 2010; Molina Rodríguez et al., 2015; Sawyer et al., 2016; Spade, 2015; Stefanés Pacheco & Stefanés Pacheco, 2016; Suriyasarn, 2016; Winter, 2009)

The first type of definition of the problem is described as a *mismatch* between the binary gender category—man or woman—and the signs associated to each category. If the mismatch is invisible or imperceptible—for instance, when a trans* person ‘passes’ as non-trans—no discrimination will occur. Hence the link in the literature between visibility and vulnerability, and the reason why some authors argue that the problem cannot be framed exclusively as a gender identity issue, but also as a gender expression one. In fact, someone could be excluded because they are perceived as trans* although they do not necessarily identify as such. The signs associated with the binary gender categories are genitalia, identity documents, physical appearance, actions and sexuality and are presented in the literature as interrelated.

Genitalia, especially genitalia at birth, are described as the more decisive sign of gender. Each gender category is associated with a different genital status. The perception of incongruence between the category and the genitalia can lead to exclusion and even murder, as in the case in murders of trans women committed by men after seeing their genitals during sexual encounters in the US (Bettcher, 2007; Schilt & Westbrook, 2009).

However, genitalia are not usually visible, at least not in public. Therefore, other visible signs of gender such as identity documents and physical appearance are used. *Identity documents* are a common sign of

gender. Birth certificates, IDs, passports, driving licenses, public transport passes and student cards are examples of documents where a gender marker (i.e. words such as ‘male’ or ‘female’, or the letters ‘M’ or ‘F’) usually denotes an individual’s legal gender. Since these documents have the function of attesting who the individual is, a mismatch can lead to such problems as not being allowed to board a bus (Davis, 2014) or not being selected after a job interview (Bender-Baird, 2011). Additionally, such legal classification is usually based upon genital status at birth. This explains the resistance to legal changes - especially birth certificates - and the requirement of genital surgery for a person’s legal gender to be changed in identity documents.

In relation to *physical appearance*, both visible body characteristics and clothing are important signs of gender. Men and women are expected to differ in relation to body structure, voice and secondary sexual characteristics and to dress in different ways. The perception of a mismatch between physical appearance and gender category can lead to exclusion, whereby Moulin de Souza & de Pádua Carrieri (2015) show that the extent of exclusion is dependent on the degree to which a trans* person’s body has been modified. In a similar vein, Myers (2010) describes the notorious case of Jane Doe, a trans* woman who was fired by Boeing in 1985 for wearing female clothing before having sex reassignment surgery.

This physical visibility is more remarkable in specific circumstances. In this sense, the moment of transition is usually described in the literature as a critical moment for exclusion and trans people who express themselves as neither man nor woman appear particularly vulnerable to it (Ellis et al., 2014, Ellis et al., 2016).

Actions are also relevant signs of gender, i.e. men and women are expected to act differently. For instance, as Lasso Báez (2014) explains, trans women are often forced to lie by exaggerating certain ‘feminine behaviours’ in psychiatric interviews to prove that they are ‘real women’. Some authors also describe the changes that trans men experience after transitioning in relation to how they are treated by co-workers, describing for instance how co-workers drew a boundary line for acceptable and unacceptable behaviour for men, clarifying for instance that ‘men do not slap’ (Connell, 2010, p. 42). Trans men are also

encouraged ‘to act like a man’, i.e. carrying heavy items and showing sexual desire for women (Schilt & Westbrook, 2009).

Sexuality is also a sign of gender. As noted in the previous example, the definition of ‘man’ seems to entail a preference for women as romantic and sexual partners; and the opposite for women. For example, behind the ‘trans panic defence’ rhetoric⁷⁴ lies the idea that a man who murders a trans woman is actually a victim of deception and misled into a homosexual encounter (Bettcher, 2007; Schilt & Westbrook, 2009). Thus, not only sexuality acts as a sign of gender, but also gender expression itself acts as a sign for sexual encounter (Gilbert, 2009) within a system of sexual violence where gender expression is assumed to represent genitalia and women’s sexual interest (Bettcher, 2007).

The second type of definition of the problem focuses on the *interaction of trans* people with the gendered organisation of society*. Descriptions of how society is structured along binary gender lines are highlighted. Such lines organise services and activities, spaces and the granting of rights. For instance, institutions are often gender-segregated and access to them relies heavily on legal signs of gender. Thus trans* people are sometimes put in men’s or women’s prisons or homeless shelters according to the legal gender found in their documents, regardless of their gender identity (Begun & Kattari, 2016; Buist & Stone, 2014; Spade, 2015).

Many *activities* are also organised along binary gender lines. This is particularly the case at work. Trans* people are sometimes discouraged from performing a particular task after transitioning because the task is not supposed to correspond to their gender (Collins et al., 2015; Connell, 2010). They may also face problems when confronted with gender-segregated spaces, such as changing rooms and toilets. For instance, Spade (2015) explains that trans* people are denied access to toilets suited to their gender in the workplace or educational centres.

⁷⁴ The ‘trans panic defence’ rhetoric has been used in US courts as a defense in cases in which a man murdered a trans woman after ‘discovering that she was trans’ during a sexual encounter (Bettcher, 2007). As Bettcher (2007) explains, this rhetoric reverses the situation to blame the victim and acquit the murderer.

Finally, the gendered organisation of society may also influence *entitlements* based on a binary conceptualisation of gender. For instance, legal protection in cases of discrimination seems to respond to such binary gender division when interpreting the protected criteria of sex or gender. Bender-Baird (2011) describes the difficulties that trans* people encounter to gain protection against employment discrimination in some states in the United States. Whereas in the legislative field there is a battle over the inclusion of ‘gender identity’ and ‘gender expression’ criteria⁷⁵, in the judicial field the ‘sex’ criterion⁷⁶ is usually conflated with an anatomical definition of men and women. Therefore, discrimination against trans* people is often not considered as sex discrimination, leaving trans* people unprotected.

2.3. Locations of the problem

Four locations of the problem were identified: people’s attitudes, people’s actions, and organisational and institutional practices, and ideology (table 4).

Table 4. Locations and subcategories

Location	Subcategory	References
People’s attitudes	Emotional disgust towards the category of trans people (transphobia)	(Adrian, 2013; Gerhardstein & Anderson, 2010; Grigoropoulos & Kordoutis, 2015; Hill & Willoughby, 2005; Nagoshi et al., 2008; Rottenbacher de Rojas, 2012; Walch, Sinkkanen, et al., 2012; Warriner et al., 2013; Willoughby et al., 2010; Winter, 2009; Worthen, 2016)
	Internalisation of beliefs (trans prejudice)	(Ali et al., 2016; Broockman & Kalla, 2016; Case & Stewart, 2013; Dierckx et al., 2014; Gazzola & Morrison, 2014; Gerhardstein & Anderson, 2010; Huffaker & Kwon, 2016; King et al., 2009; Lehtonen, 2016; Nadal et al., 2012; Norton & Herek, 2013; Páez et al., 2015; E. Tebbe et al., 2014; E. N. Tebbe & Moradi, 2012; Tee & Hegarty, 2006; Walch, Ngamake, et al., 2012; Winter, 2009)
People’s actions	Formal-informal	(Collins et al., 2015; Dean et al., 2016; McFadden, 2015; Ozeren et al., 2016; Priola et al., 2014)
	Discrete-continuous	(Cruz, 2014; Formby, 2015; Nadal et al., 2012; Rasmussen et al., 2015)

⁷⁵ For instance, in the Federal Employment Non-Discrimination Act.

⁷⁶ Civil Rights Act (1964).

	Distinguishable-indistinguishable	(Collins et al., 2015; Dean et al., 2016; DePalma & Jennett, 2010; Nadal et al., 2012; Priola et al., 2014; Rasmussen et al., 2015)
	Intentional-unintentional	(Dean et al., 2016; Formby, 2015; Nadal et al., 2012; Rasmussen et al., 2015)
	Individual focus	(Alessandrin, 2016; Ali et al., 2016; Bailey, 2011; Barclay & Scott, 2006; Bender-Baird, 2011; Bettcher, 2007; Case & Stewart, 2013; Curtis, 2016; Dietert & Dentice, 2015; Erni, 2013; Gerhardstein & Anderson, 2010; Hill & Willoughby, 2005; Lehtonen, 2016; Molina Rodríguez et al., 2015; Myers, 2010; Nadal et al., 2012; Sawyer et al., 2016; Willoughby et al., 2010; Winter, 2009)
	Social focus	(Ansara & Hegarty, 2012; Formby, 2015; Nadal et al., 2012; Ozeren et al., 2016; Rasmussen et al., 2015; Riggs, 2014; Schilt & Westbrook, 2009; Spade, 2015)
	Avoidance	(Alessandrin, 2016; Cruz, 2014; Dean et al., 2016); Ellis et al, 2014
Organisational and institutional practices	Administrative policies and practices	(Alessandrin, 2016; Bender-Baird, 2011; Buist & Stone, 2014; Cruz, 2014; Davis, 2014; Erni, 2013; Gilbert, 2009; Meadow, 2010; Resende Alves & Costa Moreira, 2015; Sawyer et al., 2016; Spade, 2015; Winter, 2009)
	Organisational policies - Dress codes	(Bender-Baird, 2011; Curtis, 2016; Dietert & Dentice, 2015; Myers, 2010)
	Organisational policies - Spaces	(Barclay & Scott, 2006; Bender-Baird, 2011; Curtis, 2016; Gilbert, 2009; Lehtonen, 2016; Loutzenheiser, 2015; Resende Alves & Costa Moreira, 2015; Sawyer et al., 2016; Spade, 2015)
	Organisational practices	(Connell, 2010; Dean et al., 2016; Dietert & Dentice, 2015; Formby, 2015; Lehtonen, 2016; Loutzenheiser, 2015; Priola et al., 2014; Resende Alves & Costa Moreira, 2015; Spade, 2015)
Ideology	Transphobia	(Alessandrin, 2016; Bettcher, 2007; Davis, 2014; Franco & Cicillini, 2015; Gilbert, 2009; Molina Rodríguez et al., 2015; Spade, 2015)
	Cisgenderism/Bigenderism	(Adrian, 2013; Ansara & Hegarty, 2012; Bender-Baird, 2011; Collins et al., 2015; Gilbert, 2009; Morán Faúndes, 2015; Myers, 2010)
	Homophobia/heterosexism	(Bettcher, 2007; Gilbert, 2009; McFadden, 2015; Myers, 2010; Priola et al., 2014; Spade, 2015; Stefanos Pacheco & Stefanos Pacheco, 2016)
	Sexism	(Adrian, 2013; Bettcher, 2007; Davis, 2014; Gilbert, 2009; Spade, 2015)
	Misogyny/hypermasculinity	(DePalma & Jennett, 2010; Dietert & Dentice, 2015)

The first location situates the problem in *people's attitudes* towards trans* people. According to this, people's attitudes explain transphobic behaviour. Two main concepts are used in the literature to describe those attitudes: transphobia and trans prejudice⁷⁷. 'Transphobia' was initially defined by Hill & Willoughby (2005, p. 533) as 'emotional disgust toward individuals who do not conform to society's gender expectations'. However, mirroring debates over the concept of homophobia⁷⁸, the notion of transphobia has been criticised because of its connections with irrational fear, potentially leading to the idea that transphobia is an illness. Therefore, the term 'trans prejudice' was proposed as a way of moving away from the idea of fear or illness towards the individual internalisation of beliefs about trans people. Such beliefs, termed 'trans stigma', are a 'shared belief system through which transgenderism and transsexuality are delegitimized and constructed as invalid relative to heteronormativity' (King et al., 2009, p. 19).

The second conceptualisation locates the problem in the *actions* carried out especially by non-trans people, but also by trans* people. The description of the actions carried out by non-trans people revolves around five distinctions: formal-informal, discrete-continuous, intentional-unintentional, distinguishable-undistinguishable and finally, the individual-social focus.

Formal discriminatory actions are described as actions that take place in formalised contexts such as the workplace. Firing trans* people, not hiring them or excluding them from work benefits are examples of this type of actions. Informal discriminatory actions are described as actions occurring at the interpersonal level, such as jokes, harassment, bullying and aggression. The discrete-continuous axis distinguishes between actions that take place at a particular point in time (for instance, one-off physical aggression) and actions that are repeated over time (such as harassment); whereas the distinguishable-undistinguishable axis differentiates between actions that are overt and easy to identify and

⁷⁷ Also called 'anti-trans prejudice', 'antitransgender prejudice' and 'prejudice against trans people' in the literature.

⁷⁸ In the domain of sexual orientation, the term 'sexual prejudice' has been suggested as a substitute for 'homophobia' to denote 'individual variance in the internalization of stigma and heterosexism', that is, the 'individual's degree of complicity with a biased system' (Huffaker & Kwon, 2016) instead of focusing on fear or illness.

actions that are subtle and imperceptible (such as silences and micro-aggressions). In this sense, Walch, Ngamake, et al. (2012) argue that transphobia should not be limited to overt behaviours such as the ones described in the gender-bashing subscale⁷⁹ of Hill & Willoughby (2005), since the absence of such extreme behaviours does not imply an absence of transphobia. Similar criticism is voiced by authors denouncing the assumption that transphobia is mainly associated with hate speech and murder (Riggs, 2014) and that the absence of overt and easily identifiable actions of individuals is usually taken as a sign of inclusion (Priola et al., 2014).

At the same time, a distinction is made in the literature between intentional and unintentional actions. In some cases, actions are described as resulting from an intention to cause harm, whereas in other cases the awareness and individual responsibility of the perpetrator are questioned. Finally, whereas many authors situate the problem in the concrete actions taken by individual aggressors against their victims, others argue that the problem should be framed as a social or collective issue going beyond individual behaviour and the victim-aggressor dyad.

On the other hand, trans* people are reported to show avoidance behaviour in situations in which they expect to be discriminated against, which can also have detrimental effects, for instance, refraining from applying for jobs.

The third location situates the problem in *institutional and organisational policies and practices*. In this sense, the problem is constituted by gendered practices that rely on binary gender categories and organise society and institutions. The idea of a gender binary permeates administrative policies and practices such as the legal recognition of someone's gender and the distribution of people in, for example, shelters for the homeless and prisons, organisational policies such as dress codes and the gendered organisation of spaces (toilets and changing rooms), and organisational practices such as the gendered distribution of tasks.

The fourth location situates the problem in *ideology*. Within this category I included those conceptions in which the problem is presented

⁷⁹ For instance, 'I have beat up men who act like sissies' (Hill & Willoughby, 2005, p. 543).

as socially shared assumptions and beliefs ingrained in power relations. Several concepts are proposed in the literature to describe those ideologies: transphobia, cisgenderism/ bigenderism, homophobia/heterosexism, sexism, and misogyny/ hypermasculinity. There is however a lack of conceptual clarity in the use of those terms. Scholars warn about not understanding such beliefs as individual. For instance, ‘cisgenderism’⁸⁰ is described by Ansara & Hegarty (2012) as the ‘ideology that invalidates or pathologises self-designated genders that contrast with external designations’ (2012, p. 1) specifying that it should not be seen as an individual attitude.

2.4. Theoretical perspectives and notions

Two broad theoretical perspectives, attitudinal and discursive studies, are used in the literature to explain exclusion and discrimination against trans* people.

2.4.1. Attitudinal studies

These approaches focus on the study of individual attitudes towards trans people, i.e. transphobia and trans prejudice. They all use quantitative methodology, specifically scales and experiments. The aim of these studies is to identify the elements leading individuals to internalise stereotypes and prejudices against trans* people. These studies can be placed within the area of social cognition.

Among the notions explaining the individual internalisation of trans stigma, three subcategories were identified: individual characteristics, factors external to the individual and internalisation of other types of prejudices (table 5).

⁸⁰ They distinguish two types of cisgenderism: pathologising and misgendering (Ansara & Hegarty, 2012).

Table 5. Notions explaining transphobia and trans prejudice

Notion	Variables	References
Individual characteristics	Sex or gender	(Ali et al., 2016; Case & Stewart, 2013; Dierckx et al., 2014; Gazzola & Morrison, 2014; Gerhardstein & Anderson, 2010; Grigoropoulos & Kordoutis, 2015; Huffaker & Kwon, 2016; King et al., 2009; Nagoshi et al., 2008; Norton & Herek, 2013; Páez et al., 2015; E. N. Tebbe & Moradi, 2012; Tee & Hegarty, 2006; Walch, Ngamake, et al., 2012; Warriner et al., 2013; Willoughby et al., 2010; Worthen, 2016)
	Sexual orientation	(Ali et al., 2016; Case & Stewart, 2013; Dierckx et al., 2014; Páez et al., 2015; Tee & Hegarty, 2006; Warriner et al., 2013; Willoughby et al., 2010; Worthen, 2016)
	Religiosity/religious fundamentalism	(Ali et al., 2016; Dierckx et al., 2014; Grigoropoulos & Kordoutis, 2015; Huffaker & Kwon, 2016; King et al., 2009; Nagoshi et al., 2008; Páez et al., 2015; Tee & Hegarty, 2006; Warriner et al., 2013; Willoughby et al., 2010)
	Age	(Case & Stewart, 2013; Dierckx et al., 2014; King et al., 2009; Páez et al., 2015)
	Educational level	(Dierckx et al., 2014; Huffaker & Kwon, 2016; King et al., 2009; Norton & Herek, 2013; Páez et al., 2015)
	Ethnicity	(Case & Stewart, 2013; Tee & Hegarty, 2006)
	Nationality	(Tee & Hegarty, 2006)
	Social dominance	Dierckx et al., 2014; Huffaker & Kwon, 2016; Rojas, 2012; E. A. Tebbe et al., 2014b; E. N. Tebbe & Moradi, 2012
	Right-wing authoritarianism	(Huffaker & Kwon, 2016; Nagoshi et al., 2008; Norton & Herek, 2013; Rottenbacher de Rojas, 2012; Tee & Hegarty, 2006; Warriner et al., 2013; Willoughby et al., 2010)
	Political conservatism	(Ali et al., 2016; Grigoropoulos & Kordoutis, 2015; Huffaker & Kwon, 2016; Norton & Herek, 2013; Willoughby et al., 2010)
	Tolerance to ambiguity	Huffaker & Kwon, 2016; E. A. Tebbe et al., 2014b
	Moral dogmatism	(Willoughby et al., 2010)
	Self-esteem	(Willoughby et al., 2010)
	Aggression proneness	Tebbe et al., 2014b; Warriner et al., 2013
Identifying as a feminist	(Worthen, 2016)	
Factors external to the individual	Previous contact with trans people	(Huffaker & Kwon, 2016; King et al., 2009; Norton & Herek, 2013; Tee & Hegarty, 2006; Walch, Ngamake, et al., 2012; Willoughby et al., 2010)

	Information about trans people	(Broockman & Kalla, 2016; Case & Stewart, 2013; Huffaker & Kwon, 2016; Willoughby et al., 2010)
Internalisation of other prejudices	Homophobia/sexual prejudice	Grigoropoulos & Kordoutis, 2015; Nagoshi et al., 2008; Norton & Herek, 2013; Rojas, 2012; E. A. Tebbe et al., 2014b; E. N. Tebbe & Moradi, 2012; Tee & Hegarty, 2006; Willoughby et al., 2010; Worthen, 2016
	Modern/hostile sexism	Nagoshi et al., 2008; E. A. Tebbe et al., 2014b; Tee & Hegarty, 2006; Warriner et al., 2013
	Beliefs about gender/binarism	(Norton & Herek, 2013; Tee & Hegarty, 2006)
	Beliefs on traditional gender roles	(E. N. Tebbe & Moradi, 2012; Willoughby et al., 2010)

In relation to individual characteristics, the studies examine the role of variables such as gender, sexual orientation, religiosity/religious fundamentalism, age, educational level, ethnicity, nationality, social dominance, right-wing authoritarianism, political conservatism, tolerance to ambiguity, moral dogmatism, self-esteem, aggression proneness, and feminist identity. Being male seems to be the main explanatory characteristic. Being heterosexual, being religious, being a religious fundamentalist and being older also rank high as explanations for transphobia and trans prejudice.

Ethnicity and nationality are also explored in explaining attitudes towards trans* people. For instance, on their study Case & Stewart (2013) found that ‘coloured’ participants had more negative attitudes than whites, while Tee & Hegarty (2006) found that non-British participants and non-white participants showed a greater opposition to the rights of trans* people in the United Kingdom. High right-wing authoritarianism, low tolerance of ambiguity and low self-esteem are also put forward as individual characteristics explaining transphobia and trans prejudice. Identifying oneself as a feminist, however, is negatively related to it.

Some elements external to the individual are also highlighted as explanations. Prominent among these are the previous contact with trans people and the level of information about trans issues. Drawing on Allport & Pettigrew’s interpersonal contact theory, many studies focus on the previous contact with trans* people to explain transphobia. Some

studies found that personal contact with trans* people reduces negative attitudes towards them. Certain scholars argue that previous contact with trans* people increases knowledge about them, leading to the second external factor: information. According to this, a lack of familiarity with trans issues is at the heart of prejudices, with low familiarity being due to the low visibility of trans* people and the lack of interaction with them.

Finally, individual internalisation of other types of prejudices is also highlighted as an explanatory element: in particular, the relationship of transphobia or trans prejudice to homophobia and sexual prejudice, to modern and hostile sexism, and to beliefs about gender binarism and traditional gender roles.

2.4.2. Discursive studies

Under discursive studies I included studies that focus on meaning, although some do not explicitly use the label ‘discursive’ and/or may not see themselves as coming under this field of study. These approaches are interested in the construction of meaning in relation to sex/gender categories. Most of these studies are however theoretical. The empirical ones use qualitative methodology and focus especially on the analysis of language. Six notions were identified within these approaches: gender performativity, gender norms, effects of gender norms, power, social function and change (table 6).

Table 6. Notions and subcategories related to the construction of gender meanings

Notions	Subcategories	References
Gender performativity	Gender as action	(Bailey, 2011; Bento & Pelúcio, 2012; Buist & Stone, 2014; Connell, 2010; Currah, 2008; DePalma & Jennett, 2010; Franco & Cicillini, 2015; Gilbert, 2009; Lasso Báez, 2014; Lehtonen, 2016; Loutzenheiser, 2015; Meadow, 2010; Missé & Coll-Planas, 2010; Morán Faúndes, 2015; Moulin de Souza & de Pádua Carrieri, 2015; Myers, 2010; Priola et al., 2014; Resende Alves & Costa Moreira, 2015; Schilt & Westbrook, 2009; Spade, 2015; Stefanés Pacheco & Stefanés Pacheco, 2016; Suess, 2014)
	Variability	(Bento & Pelúcio, 2012; Connell, 2010; Franco & Cicillini, 2015; Gilbert, 2009; Moulin de Souza & de Pádua Carrieri, 2015; Schilt & Westbrook, 2009; Spade, 2015; Suess, 2014)
	Language	Bento & Pelúcio, 2012; Bettcher, 2007; Buist & Stone,

		2014; Currah, 2008; DePalma & Jennett, 2010; Lehtonen, 2016; Loutzenheiser, 2015; Meadow, 2010; Missé & Coll-Planas, 2010; Vincenza Priola et al., 2014; Riggs, 2014
Gender norms	Cisnormativity/ gender binarism	(Buist & Stone, 2014; Collins et al., 2015; Davis, 2014; Dietert & Dentice, 2015; Erni, 2013; Franco & Cicillini, 2015, 2015; Gilbert, 2009; Lehtonen, 2016; Loutzenheiser, 2015; Meadow, 2010; Missé & Coll-Planas, 2010; Morán Faúndes, 2015; Moulin de Souza & de Pádua Carrieri, 2015; Myers, 2010; Páez et al., 2015; Rasmussen et al., 2015; Resende Alves & Costa Moreira, 2015; Riggs, 2014; Schilt & Westbrook, 2009; Spade, 2015; Stefanos Pacheco & Stefanos Pacheco, 2016; Suriyasarn, 2016; Walch, Ngamake, et al., 2012; Walch, Sinkkanen, et al., 2012; Worthen, 2016)
	Heteronormativity/ Hetero-cis-normativity	(Adrian, 2013; Collins et al., 2015; Dean et al., 2016; DePalma & Jennett, 2010; Franco & Cicillini, 2015; Lehtonen, 2016; Loutzenheiser, 2015; Meadow, 2010; Molina Rodríguez et al., 2015; Morán Faúndes, 2015; Moulin de Souza & de Pádua Carrieri, 2015; Ozeren et al., 2016; Priola et al., 2014; Rasmussen et al., 2015; Schilt & Westbrook, 2009; Spade, 2015; Stefanos Pacheco & Stefanos Pacheco, 2016; Walch, Ngamake, et al., 2012; Worthen, 2016)
	Supremacy of masculinity	(DePalma & Jennett, 2010; Erni, 2013; Schilt, 2006; Schilt & Westbrook, 2009; Spade, 2015) (Dietert & Dentice, 2015)
Effects of gender norms	Othering	Adrian, 2013; Ansara & Hegarty, 2012; Bailey, 2011; Cruz, 2014; Currah, 2008; Curtis, 2016; Dean et al., 2016; DePalma & Jennett, 2010; Franco & Cicillini, 2015; Gilbert, 2009; Lehtonen, 2016; Loutzenheiser, 2015; Meadow, 2010; Myers, 2010; Páez et al., 2015; Rasmussen et al., 2015; Suriyasarn, 2016; Walch, Sinkkanen, et al., 2012; Walch, Ngamake, et al., 2012; Winter, 2009
	Unintelligibility	(Bailey, 2011; Bettcher, 2007; Buist & Stone, 2014; Erni, 2013; Gilbert, 2009; Lasso Báez, 2014; Meadow, 2010; Missé & Coll-Planas, 2010; Molina Rodríguez et al., 2015; Morán Faúndes, 2015; Moulin de Souza & de Pádua Carrieri, 2015; Nadal et al., 2012; Priola et al., 2014; Resende Alves & Costa Moreira, 2015; Spade, 2015; Stefanos Pacheco & Stefanos Pacheco, 2016; Suess, 2014)
Power	Pathologisation	(Adrian, 2013; Ansara & Hegarty, 2012; Bento & Pelúcio, 2012; Buist & Stone, 2014; Dean et al., 2016; Erni, 2013; Lasso Báez, 2014; Missé & Coll-Planas, 2010; Molina Rodríguez et al., 2015; Winter, 2009)
	Institutionalisation	(Adrian, 2013; Buist & Stone, 2014; Erni, 2013; Meadow, 2010; Molina Rodríguez et al., 2015; Spade, 2015; Stefanos Pacheco & Stefanos Pacheco, 2016)

Social function	Sexuality, reproduction & nuclear family	Bettcher, 2007; Faúndes, 2015; Franco & Cicillini, 2015; Gilbert, 2009; Loutzenheiser, 2015; Meadow, 2010; Moulin de Souza & de Pádua Carrieri, 2015; K. Schilt & Westbrook, 2009
	Economic system	(Collins et al., 2015; Morán Faúndes, 2015; Myers, 2010; Spade, 2015)
	Surveillance	(Currah, 2008; Meadow, 2010; Spade, 2015)
Change	Trans alternative meanings	(Bento & Pelúcio, 2012; Franco & Cicillini, 2015; Spade, 2015; Suess, 2014)
	Critical reflection	(Collins et al., 2015)
	Legal changes	(Davis, 2014)

The first notion—*gender performativity*—conceives gender as an action, something that we do. This notion draws on Judith Butler’s work. Gender performativity refers to the idea that gender is not natural, but rather achieved through the repetition of actions. For instance, gender is done when a legal gender is attributed to someone based on their genitals at birth or when a trans man is told how to ‘behave like a guy’.

Variability of gender meanings is a feature highlighted by this notion. For instance, as some studies emphasise (Bailey, 2011; Schilt, 2006), masculinity has no fixed meaning, but changes over time and places, i.e. gender meanings are context-dependent. This is explained by the fact that gender is something that we do through repetition and repetition is unstable. Therefore, gender performativity is always an ideal rather than something that is actually achieved.

The few empirical studies carried out using this approach focus primarily on the role of *language* in the construction of gender meanings. The main idea is that language not only represents, but also produces reality. Several studies analyse the effects of language in different contexts, such as psychology, court decisions, policy, and the media. For instance, Ansara & Hegarty (2012) analyse how the language used in many psychological studies construct children with no gender-normative behaviour or characteristics as pathological or disordered. In a similar vein, Meadow (2010) discursive analysis of court decisions for gender reclassification captures how judges make and solidify gender categories themselves.

The second notion—*gender norms*—refer to the idea that some meanings about gender prevail over others. *Cisnormativity* and *gender binarism* describe the norm that establishes that there are only two natural and

immutable categories—men and women. That is, men and women are deemed to be two biological realities which are differentiated by the genital status at birth. *Heteronormativity* is conceptualised in two different ways. On the one hand, heteronormativity is described as the idea that establishes both heterosexuality and gender binary categories as the norm. In this sense, many authors rely on Judith Butler's notion of the heterosexual matrix of sex, gender and sexuality. The idea is that for heterosexuality to be the norm, it requires not only compulsory heterosexuality but also two clearly differentiated gender categories that are conflated with sex. On the other hand, heteronormativity is sometimes limited to compulsory heterosexuality, reason why some authors use the notion of hetero-cis-normativity to describe the combination of both cisnormativity and heterosexuality.

Although somehow less present, the *supremacy of masculinity* is also addressed by some authors to explain discrimination against trans* women. For instance, Dietert & Dentice (2015) analyse the difficulties faced by trans* women in a men-dominated profession such as the military, where performances of hyper-masculinity are expected. It is also noteworthy that people who transition towards the feminine spectrum report a loss of authority, recognition and remuneration, whereas the situation is usually the opposite for people transitioning towards the masculine spectrum (Connell, 2010; Schilt, 2006).

The third notion refers to the *effects of gender norms*. Two effects were identified. The first one, *othering*, relates to the process by which 'the other' is constructed as not belonging to the category of 'normal people', i.e. those following gender norms. This leads to the reification of differences and the stigmatisation of trans* people. This subcategory draws particularly on Ervin Goffman's theory of stigma. For instance, many authors argue that the pathologisation of trans* identities by psychiatry and psychology has led to stigma, depicting trans* people as mentally ill. They are therefore seen as not human (Buist & Stone, 2014) or as abnormal, non-natural or monstrous (Franco & Cicillini, 2015).

The second effect is the question of *unintelligibility*. Drawing especially on Judith Butler's work, this subcategory focuses on the idea that trans* people are inconceivable, unthinkable within existing gender norms. Regardless of how they present themselves, people seek to know their

'true' sex/gender, ultimately defined by the type of genitals they had at birth. Therefore, trans* people are not intelligible as trans* but rather reduced to actually men or women who are, as Bettcher (2007) expresses it, either deceiving others about their true sex/gender or making others believe they are a sex/gender category that they are actually not. Thus the trans* subject is not, unlike 'men' and 'women', considered to be a subject. In this regard, discrimination is framed as a 'discursive exclusion' (Suess, 2014).

The fourth and fifth notions—*power* and *social function*—are used to understand why some gender meanings prevail over others, thus becoming gender norms. This question is addressed in the literature by paying attention to both power and the social function that dominant meanings about gender serve. Many studies draw on the Foucauldian notion of power-knowledge. According to this notion, *power* defines certain knowledge as Truth, while at the same time this knowledge reinforces power, i.e. power delimits what is accepted as Truth and what is not. It also delimits what can be said and by whom. The recognised competence of psychiatrists to assess what is 'normal' gender identity and what is not (pathologisation) and the capacity of the State to determine someone's legal gender (institutionalisation) are examples illustrating the notion of power-knowledge.

At the same time, other scholars point to the *social functions* that dominant meanings about gender serve in the organisation of society, in particular reproduction and the maintenance of the nuclear family, the organisation of the economy, and surveillance. First, the fabrication of dichotomous and permanent gender categories plays a role in upholding heterosexuality, reproduction and the nuclear family, where gender acts as a sign for sexual encounter. Therefore, although gender and sexuality can be analysed separately, analysing the one without the other would not be fruitful. A second purpose of the fabrication of dichotomous and permanent gender categories is the organisation of the economy, based on the gendered division of work. Given the inseparability of gender and sexuality and that heteronormativity is functional to the economic system in terms of production and reproduction, the exclusion of trans* people is not only cultural, but also economic. Another purpose is the identification of individuals for state security and anti-terrorism reasons. This requires the unalterable correspondence between individuals and

identity documents, one reason why official recognition of gender transition revolves around the notions of permanence and irreversibility.

The last notion deals with the question of *change*: how to change meanings of gender. Some authors point to the fact that unstable repetition of gender performativity has in itself the potential for change and that trans* people are already producing alternative meanings of gender based on their own experiences. Some scholars also suggest engaging in a process of critical thinking and acting, and using anti-discrimination legislation itself to challenge sex classification systems.

2.5. Critical discussion of the literature

The results of the analysis presented above highlight the complexity of the problem at issue, both regarding the definition of trans* people, as well as the conceptualisations and explanations of the exclusion and discrimination against them. In this section, I summarise the main contributions found in the literature to understand the problem and I discuss some important implications and gaps of the identified conceptualisations.

The themes singled out in the different *terms and definitions of trans* people* used in the literature revolve around the questions of identity, expression and body modifications, the man-woman binary and the sex-gender binary, the struggle against pathologisation, and queer claims on the destabilisation of categories. The multiplicity of trans* terms and their polysemy are important issues for research in two ways. On the one hand, they represent a challenge for studies focusing on trans* people as an enduring, preformed entity. This is the case with research into attitudes towards trans* people, where the name of the category is used in questionnaires with close-ended questions⁸¹. As the analysis shows, there is a wide range of trans*-related terms that are used in different ways to stress diverse defining categories key to understanding exclusion and discrimination against trans* people. In those studies, it is thus difficult to discern the exact target of the (negative) attitude.

⁸¹ For instance, if the item is 'I am fearful of transsexuals' (Case & Stewart, 2013, p. 146), it can be complicated—if not impossible—to know what people exactly understand under the term 'transsexual' (or any other trans terms).

On the other hand, the very definition of trans* people is at the root of exclusion and discrimination and thus a discursive battleground. This battle is manifested, for instance, in trans* people's struggle against the pathologising definition of their identities and experiences. In this sense, many of the identified studies depict themselves trans* people as 'abnormal', although they do not use pathologising terminology anymore. For instance, when researchers define trans* people as people 'whose gender identity or expression is different from their assigned sex at birth' (E. Tebbe et al., 2014, p. 581), they are themselves establishing the norm that 'each sex'—because there are two—has an identity and an expression and depicting trans* people as the exception to that. This has important implications.

The scientific definition of a social category both describes and constitutes the category, and has implications for the way in which we understand the social world (Potter & Wetherell, 1987a; Stainton Rogers, 2003). According to Halberstam (2017), there seems to be a deep desire to stabilise the category 'trans*'. However, this can be problematic because clear-cut definitions of trans* people convey the notion that trans* and cisgender people are different kinds of people (Ansara & Hegarty, 2012). This can in turn lead to the idea that cisgender people are always on the side of conformity (Ortega, 2015), thereby reducing the problem of discrimination to a minority issue (Simmons & White, 2014).

Regarding the *conceptualisations of the problem*, two key issues were identified in the literature: the perception of a mismatch between the sex/gender category and the signs of gender, and trans* people's interaction with the gendered organisation of society. The different elements described in the literature as signs of gender allow detecting the issues that are at stake in the definition of sex/gender categories. These issues concern genitalia (especially genitalia at birth), identity documents, physical appearance, different actions and sexuality. Descriptions of the gendered organisation of society attract our attention towards the ubiquity of the problem since most activities and institutions are structured along binary gender lines.

However, the problem should not be limited to the *visibility* of a mismatch between the sex/gender category and the sign of gender. Attention should also be paid to the *interpretation* of the relation of both

elements as a mismatch, that is, to the construction of the binary opposition itself. If the mismatch is not interpreted as such—for instance, if ‘men and having a vagina’ is not interpreted as incongruous—then the conceptual difference between trans* and non-trans* would cease to make any sense and the question of trans* visibility would become irrelevant.

In the literature, the *problem is located* both in the expression of attitudes and actions at the interpersonal level and at the societal and institutional level. The locations of the problem allow the identification of problematic practices towards trans* people, both at the individual and social level, and the contexts in which they are carried out. These problematic practices can be discrete, intentional and distinguishable, but also the opposite. They can take place in both formal and informal relations and include actions directed towards trans* people, but also actions contributing to the binary organisation of spaces, work tasks, and institutions.

Several debates were found on how people’s attitudes and actions are understood. On the one hand, many studies locate the problem in individual actions motivated by individual attitudes towards trans* people. They appear to assume that attitudes towards the group are an individual psychological state, in so far as the attitude is treated as a self-contained and coherent internal entity whose content is fixed and predetermined. In my view, these approaches implicitly lead to a psychologisation and individualisation of trans* exclusion and discrimination which can make us lose sight of social and power issues. Moreover, attributing the problem to individual minds makes it difficult to explain discrimination at social and institutional levels. In addition, the idea of internalisation of beliefs explained by individual characteristics or external factors seems to deny people’s ability to think, reflect and argue, as well as the interests involved.

On the other hand, many studies situate the problem in the individual and conscious expression of animosity against trans* people, often with the intention to harm. As deplored by some authors (Priola et al., 2014; Riggs, 2014; Walch, Ngamake, et al., 2012), the absence of such intentional and hostile expressions is equated with equality and inclusion.

This can lead to the problem being seen as exclusive to ‘extremists’, while other expressions are overlooked.

In relation to locations of the problem at the social and institutional level, how organisational practices and institutional policies come into being is never addressed. However, this does not imply that individuals do not play any role in it. At the same time, a large number of terms are used in the literature to refer to ideologies playing a role in discrimination against trans* people (i.e. transphobia, cisgenderism, bigenderism, and others). There seems to be a lack of conceptual clarity regarding these ideologies and sometimes appear to be interchangeable. In both cases—locations of the problem at the organisational/institutional level and at the ideological level—it is often unclear to what extent individuals participate in the problem. These debates lead to the question of where to locate the problem in a way that people’s agency is not denied but the result is not seen as completely individual.

Finally, two broad *theoretical perspectives* were identified: attitudinal studies and discursive studies. On the one hand, *attitudinal studies* offer important clues to understanding trans* exclusion and discrimination. Because of their use of quantitative methods—particularly surveys—these approaches allow us to estimate the ‘temperature of a situation’. For instance, the extent to which a specific society supports a particular issue in a concrete moment in time. In addition, they also provide information about which social groups supports the issue in question and which ones not. However, these approaches present some limitations associated with their cognitivist assumptions. Attitudes are described as a single and permanent mental entity that precedes action. Their content is labelled beforehand and then looked for in people’s mind. For instance, the Transphobia and Genderism Scale (Hill & Willoughby, 2005) first defines the content of transphobic attitudes in a series of items and then ask people the degree upon which they agree with them. In my view, this leads to several shortcomings.

First, if the content of transphobia or trans prejudice is defined on an *a priori* and global basis, we may overlook transphobic claims that are not expressed in the way we expect them to do it (i.e. open hostility or negative valuing towards the group). Indeed, sometimes the difference between open and subtle prejudices is not a difference in kind, but rather

‘an ability to provide justifications, often *post hoc*, for views and positions’ (Billig, 1991, p. 134). This is especially the case of educated people and people who are well familiarised with the type of views that can be expressed in a specific cultural context.

Second, as we have seen, the use of attitudinal studies that establish differences between social groups can lead to the stigmatisation of certain populations, such as ethnic and religious minorities (Nic Giolla Easpaig, Fryer, Linn, & Humphrey, 2014). In this sense, we would be reinforcing the idea that, for example, people with a specific ethnic background are more transphobic than other people, contributing to the creation of polarisation between the ‘transphobic them’ and the ‘egalitarian us’.

Third, the change of attitudes is described as a change of cognitive schemas fostered by information about trans* issues. Familiarity with trans* issues may indeed play a role in people’s ideas about them since it can question hegemonic meanings about gender. However, this explanation seems problematic in two ways. On the one hand, it assumes that there is an evident Truth about trans* people that can be both taught and learned as if there was no battle over meanings. On the other hand, it assumes that people will unquestionably accept new meanings, without reflecting on them and their implications in specific contexts. This somehow conveys an ‘input-output’ view of human thinking.

Fourth, although there seems to be a clear connection between attitudes towards trans* people and other prejudices such as homophobia and sexism, they are first presented as independent entities with a fixed content before their statistical relations are examined. Such atomisation of prejudices makes us lose sight of the co-construction of meaning between sex/gender and sexuality.

Conversely, *discursive studies* pay attention to gender meanings. The notion of gender performativity and the focus on variability and language allow examining the construction of sex/gender categories. Thus sex/gender categories are not taken to be an objective and natural Truth but the product of social and historical practices. These approaches focus on the content of norms constituting sex/gender categories and how these norms have the effect of constructing trans* people as ‘abnormal’.

The theoretical approach of discursive studies seems to be more in line with the epistemological stance of the thesis and the general perspective that I took towards the notions of sex and gender and trans* issues than attitudinal studies. However, most of the studies that I identified within this perspective are theoretical. This coincides with Martínez & Iñiguez's (2010) remark about the limited number of empirical analyses of trans* issues carried out from discursive approaches. The few empirical studies focus on the analysis of language in use.

As a consequence of the theoretical nature of most of the studies, gender norms are described in abstract and general terms. For instance, they establish as gender norms the categorisation of human beings into two distinct categories—women and men—according to their genitalia and the fact that women and men are expected to dress and behave in different ways. But the *particular shape* that gender norms take in specific contexts and *how they are produced* are barely addressed in the literature studying the exclusion and discrimination against trans* people.

Conclusion

Drawing on the epistemological stance and research problem described in the Introduction and Chapter 1, the conceptual review that I present in this chapter led me to identify several limitations and gaps in the selected contemporary literature studying the exclusion and discrimination against trans* people. The first set of limitations concern the terms and definitions employed to refer to them. On the one hand, some studies use the name of the category to study people's attitudes towards them. However, the range of terms and definitions makes it impossible to know towards who or what exactly the attitude is directed. On the other hand, when a definition of trans* people is provided, in most studies researchers themselves reproduce norms that constitute trans* people as 'abnormal'. The second set of limitations regards the definition of the problem as the perception of a mismatch between the sex/gender category and the signs of gender. By using the notion of mismatch, this type of definitions constitute as well the norm—the absence of a mismatch—, thereby constructing trans* people as 'abnormal'. The third set of limitations relates to the location of the

problem. On the one hand, individual approaches tend to psychologise the problem, making us lose sight of social and institutional factors. On the other hand, social and institutional approaches tend to forget people's roles and agency. In relation to the theoretical approaches identified, the limitations of the attitudinal approaches include their individual focus and the (unintentional) stigmatisation of some groups of the population as particularly transphobic. By assuming that attitudes and ideologies have fixed content, these approaches do not allow us to recognise them when their expression change or becomes subtle and sophisticated—which is ultimately the aim of this thesis. Because of their focus on norms and the construction of meaning, discursive approaches allow addressing many of the limitations described above. However, most of the identified studies are theoretical and do not examine how sex/gender norms are produced in specific contexts. The thesis attempts to fill this gap by examining the construction of sex/gender categories in two specific contexts from a discursive psychological perspective. As I explain in Chapter 3, discursive psychology proposes a theoretical and methodological framework that overcomes many of the limitations specified above.

Chapter 3.

Methodology, method and procedure

In the first part of this chapter, I present the theoretical and methodological perspective of discursive psychology (DP) (section 3.1.). Particularly, I describe its core principles and theoretical notions, as well as the analytical method it suggests. I also explain how this perspective allows me to respond to the research questions of the thesis. In the second part of the chapter (section 3.2.) I present the research design, the DP founded method and procedure followed to carry out the analysis in each case study. In point 3.2.1. I describe the documentary study concerning the legal certification of sex in Belgium, whereas in point 3.2.2. I explain the interview study regarding the definition of the (gendered) worker subject. I conclude the chapter with an overview of the method (point 3.2.3.).

3.1. Theoretical-methodological framework: Discursive psychology

3.1.1. DP core principles and theoretical notions

Discursive psychology (DP) emerged within psychology in the United Kingdom in the 1980s (Martínez-Guzmán, Stecher, & Íñiguez-Rueda, 2016; Wiggins, 2017a), remarkably expanding the boundaries of the discipline. Its main contribution has been to move the study of psychological matters into the areas of language and social interaction (Sisto Campos, 2012; Weatherall, 2012). Discursive psychology, a term coined by Derek Edwards and Jonathan Potter in 1992⁸², is a ‘theoretical and analytical approach to discourse which treats talk and text as an

⁸² Edwards, D., & Potter, J. (1992). *Discursive Psychology*. London: SAGE.

object of study in itself, and psychological concepts as socially managed and consequential in interaction' (Wiggins, 2017a, p. 4). In this sense, DP is more similar to a methodology than a method, with specific core principles, theoretical notions and analytical tools (Stainton Rogers, 2003).

DP is one of the different approaches to discourse analysis, a field of study focused on the analysis of language in use and characterised by its interdisciplinary nature (Íñiguez-Rueda, 2003a). The historical background of DP consists of a variety of philosophical, social and linguistic theories, such as Wittgenstein's philosophy, Austin's speech act theory, ethnomethodology, post-structural semiology, sociolinguistics, and sociology of scientific knowledge (for a description of the specific contribution of these theoretical approaches to DP, see Martínez-Guzmán et al., 2016; Potter & Wetherell, 1987b; Wiggins, 2017a; Garay, Íñiguez-Rueda, & Martínez, 2005).

The aforementioned theories contributed to the emergence of what was called the 'turn to language' in the 1950s, term used to designate a shift in the social sciences from considering language as representation to considering language as constructive or performative. This turn provided DP with some important ideas –a focus on language in use, the notion that language does things and has functions, the importance of reflexivity. The 'turn to language' was only taken up in psychology in the 1970s in the work of scholars such as Rom Harré, Ken Gergen and John Shotter (Wiggins, 2017a). These psychologists challenged the cognitivist, experimental and individualistic approach that dominated social psychology at that time, leading to the so-called 'crisis in social psychology'. However, it was not until the 1980s that a new way of doing research arose through works such as those of Billig (1987) and Potter & Wetherell (1987a).

Discursive psychology does not reject the idea that cognitive processes exist, but it argues that these should not be the main object of study, setting an important difference with cognitivist approaches in psychology. In this regard, DP considers discourse as action rather than as representation of mental states. This distinction is not based on an ontological claim –the existence or inexistence of inner states– but on an epistemological claim about what we can know: people's inner worlds

can only be accessed through language. This notion of language is an important principle of discursive psychology. Wiggins (2017a) synthesises the main principles of DP as follows: 1) discourse is both constructed and constructive, 2) discourse is situated within a social context, and 3) discourse is action oriented.

The first principle assumes a social constructionist stance that considers that our objects of study are not independent of our representation of them (Burr, 1995). In this sense, knowledge about the world is created by social practices that are historically and culturally situated. Thus, ‘discursive practices –how we talk and write about the world– are then argued to be one of the main ways in which the world is socially constructed’ (Wiggins, 2017a, p. 9). DP is interested in analysing how notions become common sense over time, what counts as knowledge, truth or reality, and which are the different consequences of it for different people. This includes also the knowledge constructed by scientific research itself, an important research area for DP (Íñiguez-Rueda, 2003a; Martínez-Guzmán et al., 2016); hence the importance of reflexivity.

The second principle assumes that discourse is situated in three ways: within an interactional context, within a rhetorical context and within the turn-taking sequence of interaction. The interactional context refers to the immediate context of social interaction. For instance, a parliamentary debate or a conversation between co-workers are two interactional contexts. The rhetorical context underlines the notion that discourse constructs some versions of reality, whereas it undermines others; in other words, talk and text have an argumentative nature. The argumentative nature of discourse is not only an empirical observation, but also a methodological principle (Edwards, 2003). It is therefore important to examine what is being supported, but also what is being explicitly or implicitly rejected (Billig, 1991). The turn-taking sequence of interaction is also referred to as the indexicality of utterances: statements can only be interpreted by examining what comes before and what comes after the statement. Therefore, discourse is conceived as a social activity that should be examined within the specific context in which it takes place, not isolated from it. This marks a clear shift in the focus of discourse from individual cognition to social practices: if discourse is

situated in a specific context, ‘what we say is not a direct route to what we think’ (Wiggins, 2017a, p. 14).

The third principle assumes that if discourse constructs different versions of events and is situated in specific contexts, it will accomplish functions and actions by acting in and on the context. DP focuses thus on the actions that people carry out through discourse such as justifying, blaming, excusing, legitimating. This principle is intimately linked to the turn to language described above, specifically to the notion that *words do things*⁸³.

These three core principles lead to the notions of construction, variability and function (Potter & Wetherell, 1987c; Wetherell & Potter, 1988), major components of the analysis. People use language to construct different versions of reality and their accounts show significant variation depending on their function, that is, the purpose of the talk. However, this process should not be seen as intentional or deliberate since people ‘may be just doing what comes naturally’ (Potter & Wetherell, 1987c, p. 34). The analysis of variation and function allows the researcher to identify which versions of reality people construct and what actions they carry out with discourse. In this sense, the research question concerns how discourse is articulated and what is obtained through specific constructions (Sisto Campos, 2012).

Variability in discourse is articulated through particular uses of discursive or rhetorical devices, defined as ‘techniques for the construction of facts’ (Edwards & Potter, 1992). However, this does not imply that there is no regularity in discourse. As Potter & Wetherell (1988) explain, there is regularity in variability. It does imply, however, that the individual (and its assumed consistency) is abandoned as the unit of analysis. The unit of analysis is the particular use of discursive or rhetorical devices.

Therefore, DP is concerned with psychological issues and concepts traditionally studied in mainstream psychology –e.g. categorisation,

⁸³ ‘How to do things with words’ is the title of one of the best-known works of John Austin, philosopher of language who developed the speech act theory. This theory sustains that language has not only descriptive functions but also performative functions. The speech act theory is one of the foundations of DP. Interestingly, Judith Butler’s notion of gender performativity also draws on this theory.

attribution, attitudes— but it treats them as discursive practices (Edwards, 2003) carried out in the space between the speaker and the audience (Antaki, 1988). It is the *expression* of accounts ‘the reality that needs to be studied’ (Billig, 1991, p. 15). Thus, *discursive practices* are the object of study of discursive psychology. On the basis of the above, I define these practices as ‘people’s particular use of discursive or rhetorical devices when they express themselves, whether orally or in writing, performing certain functions or effects’.

3.1.2. DP analytical methodology

The aim of the analysis is to elucidate the *functions or effects* of discursive practices. Wetherell & Potter (1988) distinguish between two types of functions or effects: interpersonal and ideological. Interpersonal functions are associated with the interactional context of discourse and the turn-taking sequence of interaction. It includes functions such as disclaiming, excusing, justifying and apologising. Ideological effects are related to patterns of domination and power (Billig, 1991). In this sense, discursive practices ‘maintain and promote certain social relations’⁸⁴ (Íñiguez-Rueda & Antaki, 1994, p. 63, translation mine). It is particularly this second type of effects—the ideological ones—that are of interest to this thesis.

The functions or effects are the findings rather than the raw data. As Wetherell & Potter (1988) explain, ‘discourse analysis cannot be, in a straightforward way, an analysis of function because functions are not in general directly available for study’ (1988, p. 170). Thus, the interpersonal actions and ideologies are not necessarily located within the *content* of what is expressed in the interaction, but within its *effects*. For example, a discourse can have an apologetical function without the speaker formally saying that she is sorry. Likewise, a discourse can be racist without mentioning race whatsoever, as demonstrated by Wetherell & Potter (1992). Along these lines, the difference between open and subtle prejudices is often not a difference in kind, but rather an ability to provide justifications for views, an ability that can be enhanced through education (Billig, 1991).

⁸⁴ ‘Mantienen y promueven ciertas relaciones sociales’.

The functions of discursive practices are thus not directly available for study; however, their elucidation is possible through the analysis of rhetoric and variability. As I explained above, the argumentative nature of discourse is both an empirical observation and a methodological principle for discursive psychology. People produce some versions of reality and undermine others. This is facilitated by the fact that common sense—commonly shared knowledge—contains conflicting themes: it provides people with the ‘seeds for contrary themes’ which can conflict in dilemmatic situations (Billig et al., 1988, p. 20). Thus people constantly argue for or against different positions within dilemmatic situations. Billig’s notion of dilemmatic situations is largely influenced by the ‘new rhetoric’⁸⁵ of Chaïm Perelman & Lucie Olbrechts-Tyteca (1970) and their theory of argumentation.

Developed within the field of philosophy of law, the theory of argumentation proposes a re-conceptualisation of law and the role of judges that overcomes the notion that judges’ decisions are simply the result of formal logic. In this sense, it rejects the natural law assumption that there is a necessary and single solution to problems, like in arithmetic problems. If that was the case, machines could do the work of judges. However, judges not only follow formal logic principles, but they also determine the facts and the rules to be applied. In addition, legal texts are not unambiguous, legal sources are numerous and gaps are countless.

This theory takes an explicit stance in relation to key legal and philosophical notions such as truth, evidence and science. It rejects the application of the deductive and experimental model of mathematics and natural sciences to philosophy and law, as the Cartesian vision suggests. The Cartesian model is based on the notion of evidence—a force that imposes itself and manifests truth—and on mathematical reasoning to solve problems, what should imply the elimination of all argumentation (Perelman, 1968). In Perelman’s opinion:

⁸⁵ The ‘ancient rhetoric’ (Aristotle, Cicero), concerned with persuading and convincing, was abandoned in the XVI century. Since then rhetoric was reduced to the study of stylistic figures that embellish discourse. The study of rhetoric as the study of argumentation re-emerged in the 1950s with the work of Perelman and Oldbrechts-Tyteca (Posada Gómez, 2014).

‘Descartes’ mistake has been to believe that there are clear and distinct notions whose relations lead to self-evident propositions that can be captured through infallible intuition, that deals with simple kinds (...) But to affirm that there are simple kinds that can be perfectly known, regardless of any context and relation with anything else, corresponds to an atomised vision of reality⁸⁶ (Perelman, 1968, p. 92, translation mine).

According to the theory of argumentation, such an atomised vision of reality is insufficient because it does not take into account the different meanings of any single notion. In contrast with the interpretation and application of formalised languages such as mathematics, the interpretation and application of natural language cannot be isolated from its context and is never straightforward. Therefore, evidence is relative and changing and truth cannot be established without objection. In this sense, argumentation is not concerned with the truth of assertions, but with the adherence to them. It always implies adherence to ideas that are contradictory or competing. At the same time, values are not exempted from controversy. Whereas abstract values—e.g. justice, beauty, truth—are universal, they need to be concretised and such concretisation is a source of debate.

The theory of argumentation establishes three key notions: speaker, discourse and audience. The speaker is the person that presents the argumentation—be it orally or written. The discourse is the argumentation itself, pursuing an effect. The audience is the people to whom the argumentation is addressed. The notion of audience is fundamental in the theory of argumentation since argumentation is conditioned by the nature of the audience: the argumentative discourse is always situated in a specific context.

Arguing implies intellectual contact in which the speaker should have the desire to convince and the audience the predisposition to listen. In fact, wanting to persuade someone means refraining from giving orders

⁸⁶ *L'erreur de Descartes a été de croire qu'il y a des notions claires et distinctes dont les rapports donnent lieu à des propositions évidentes, et que ces notions peuvent être saisies grâce à une intuition infaillible, qui porte sur une nature simple (...) Mais cette affirmation de l'existence de natures simples, que l'on pourrait connaître parfaitement, indépendamment de tout contexte et de tout relation avec autre chose, correspond à une vision atomisée du réel.*

to people to gain their adherence, taking into account their reactions and adapting the argumentative discourse to them. In this sense, persuading is to bring an action. Whereas all argumentation aims at persuading, it only succeeds in convincing when it targets reason: it looks for the adherence of the universal audience, which only accepts what is reasonable. The difficulty here is to know what people agree on. The universal agreement, for instance, universal values, is unrealistic. Values are a controverted question. Some conceive reason in a quantitative way: it is a question of finding the common denominator, the objective value. However, what one speaker presents as valid for all, for another speaker it is just a particular vision, belonging to a specific time. From a qualitative point of view, the reason is however always historically and socially situated.

Therefore, social reality is ambiguous and contradictory and common sense is dilemmatic. Discourse is argumentative in the sense that, faced with contradictory or controverted ideas, people take a stance. This is in fact how 'attitudes' are defined within DP: as 'stances taken in matters of controversy: they are positions in arguments'⁸⁷ (Billig, 1991, p. 143). Attitudes are not assumed to be a coherent, permanent and unitary mental reality, but rather fragmented, contradictory and changeable practices that evolve with the argumentative context. They are thus both personal and social.

Attitudes, explanations and descriptions of the world are closely intertwined (Antaki, 1988). When people explain a situation, they are also describing it in a particular way among several possibilities and thus taking a stance, and vice versa. Therefore, the separation between the attitude (evaluation or judgement) and the object of the attitude becomes virtually impossible to sustain (Potter & Wetherell, 1987a).

The object of the attitude is discursively constructed in the course of taking a stance and, conversely, the stance taken often lies in the description of the object. For example, the description of women who sell sexual practices as 'prostitutes' or as 'sex workers' implicitly reflect

⁸⁷ It is interesting to note the double meaning of the word 'argument' in English: it means both 'a disagreement, or the process of disagreeing' and 'a reason or reasons why you support or oppose an idea or suggestion, or the process of explaining these reasons' (Cambridge Dictionary, 2018).

two different stances in that controversial matter. Description, explanation and evaluation are intertwined in the expression of attitudes. It is therefore important to examine not only the judgement expressed about the category, but also the description of the social category itself. Categorisation processes are then important discursive practices intimately related to the expression of attitudes and explanations. Influenced by ethnomethodology⁸⁸, DP focus on how ordinary people define social categories, instead of focusing on the definitions of the social sciences⁸⁹.

The rhetorical nature of discourse is also an important methodological principle in relation to the identification of social norms. If argumentation takes place when there is a controversy, the absence of argumentation around a specific issue indicates a lack of controversy. In Perelman's (1968) words, 'we do not argue because of questions that can be objectively resolved'⁹⁰ (1968, p. 90). The lack of debate is thus indicative of adherence to an idea. Following the ethnomethodological principles of competence, accountability and reflexivity (Coulon, 1987; Garfinkel, 1967), it can be said that where there is adherence, there is a norm.

Ethnomethodology assumes that everyday life is governed by social norms or rules in spite of its chaotic appearance. In other words, there is a method. It is as if everyday life was a rugby match with its set of rules establishing what players can and cannot do, when a move is considered a goal, etc. The principle of competence refers to the fact that people act according to a set of social norms or rules because they are competent members of the group. They know the rules. In terms of the rugby match, rugby players know how to play rugby; otherwise, they would not

⁸⁸ Ethnomethodology studies the methods of ordinary people (the Greek root of 'ethno' means 'people, nation'), it does not focus on the methods of the social sciences.

⁸⁹ Most of the attitudinal studies identified in the literature review (see Chapter 2) provide survey respondents with a definition of the category 'transgender' or 'transsexual' for respondents to express their attitude towards it. By so doing, these studies are imposing social sciences' descriptions of the category and orienting the evaluation of it.

⁹⁰ '[O]n ne discute par des questions qui peuvent être résolues objectivement'. However, he also claims that nothing can be objectively resolved in social reality and thus argumentation is always potentially possible. As Billig (1991) states, at the very least there is always the possibility of denying what is taken for granted.

be rugby players. In other words, they are competent members of the group. The principle of accountability refers to the notion that competent members can make their actions accountable. They can describe and explain their actions. Going back to the analogy of rugby, rugby players are accountable for their actions during the game. The last principle—reflexivity—involves the idea that norms do not precede action: norms are inherent in action. Drawing on the aforementioned example again, I am not a rugby player and I have never played rugby in my life. However, I watched a match once and by the end of it, I realised I had understood the rules by observing the variability and regularity of the players' moves. Norms are to be found within the actions themselves and actions are constitutive of norms.

Thus, reflexivity in the ethnomethodological sense refers to the reflexivity of the social practices; it does not take the usual meaning of 'reflecting about one's actions'. On the contrary, members are usually not aware of the reflexive nature of their practices. This is why Garfinkel (1967) denominates it 'uninteresting' reflexivity. In his own words:

'One matter, however, is excluded from their interests [of members]: practical actions and practical circumstances are not in themselves a topic, let alone a sole topic of their inquiries; nor are their inquiries, addressed to the tasks of sociological theorizing, undertaken to formulate what these tasks consist of as practical actions' (Garfinkel, 1967, p. 7).

If members reflected upon their practices all the time, these would be constantly hampered. Imagine rugby players constantly reflecting on their moves while playing. For this reason, reflexivity only becomes visible when members abandon their everyday 'natural attitude' towards the world (Martínez-Guzmán et al., 2016). The abandonment of that attitude is prompted by a disruption of the norms or rules. Then members have to describe, explain and/or re-negotiate them. For instance, if a rugby player breaks a rule during the match, the other players will remind the rule to the referee and will protest if the referee does not impose a penalty to the player who violated the rule. The latter would try to redefine the action to make it conform to the rule (in a professional rugby match it would not be possible to negotiate the rule itself, but this would be possible in other contexts). The principle of 'uninteresting' reflexivity is illustrated in Garfinkel's (1967) 'breaching

experiments'. These are experiments in real-life situations in which someone breaches a social norm in a specific context. Their function is to unveil the inherent norm. For instance, someone stands up in the middle of the room during a master class and remains standing. Students will ask each other what the person is doing and why and the professor will ask if she or he has any problem. Sitting down while listening to a master class is the norm. To identify the norm, it is enough to violate it.

Going back to the rhetorical nature of discourse, practices are described, explained and interrogated when a norm is breached. The breaching of the norm creates controversy between the norm and the alternatives that needs to be re-negotiated. Therefore, the identification of controversies and arguments—in both senses of the word—but also the absence of controversy helps us identify the norm. The dilemmatic nature of common sense described above lead people to constantly argue for specific positions in controversies. People's accounts, descriptions and explanations vary according to the stance that they take in the controversy. Therefore, the analysis of variability of discursive practices allows the analyst to elucidate its functions. The re-negotiation of a norm can lead to either promote and sustain it or to challenge it. It is in this sense that discursive practices perform ideological functions: they can promote and maintain, but also challenge, certain social relations. As Íñiguez-Rueda & Antaki (1994) explain, the analysis consists of 'revealing the power of language as a constitutive and regulatory practice'⁹¹ (1994, p. 63).

3.1.3. Adequacy between methodology and research objectives

In this thesis, I situate the problem of exclusion and discrimination against trans* people in the norms defining the binary opposition between women and men in specific contexts⁹². People who breach those norms—trans* people—are thus defined as 'abnormal'. Giving that norms are context-dependent and change over time, I argue that in spite of the fact that the psychiatric pathologisation of trans* people is increasingly questioned, they are still overall defined as 'abnormal'. The

⁹¹ '*Sacar a la luz el poder del lenguaje como una práctica constituyente y regulativa*'.

⁹² See Introduction.

general question I aim to answer in this thesis is thus which *other* discourses—beyond pathologisation—are employed nowadays to define trans* people as ‘abnormal’.

The theoretical and methodological framework proposed by discursive psychology allows giving an answer to this question, overcoming the limitations and gaps identified in the selected literature on the topic⁹³. Instead of taking for granted the definition of ‘trans* people’ or fixing beforehand an academic definition to assess people’s attitudes towards them, DP examines how people themselves define, describe, explain and argue about social categories, including the terms they employ to refer to those categories. This prevents researchers from reifying the norms that constitute the binary opposition between women and men. From this perspective, the task of researchers is not to define themselves the terms of the ‘mismatch’ between the category and the gender signs, but rather to determine how people define those terms.

Sex/gender is a principle that structures and organises society in a binary way. Drawing on ethnomethodological notions, gender is governed by certain *norms* that construct the binary opposition between the categories ‘woman’ and ‘man’, including the social functions attributed to each category. These norms are particularly visible when they are breached. Indeed, terms such as ‘transsexual’ and ‘transvestite’ were coined to give a name to the breaching of those norms. However, the norm was not given a name⁹⁴, which can be understood in terms of uninteresting reflexivity: we do not describe or explain what is taken for granted. Discursive practices thus perform norms constituting the binary opposition between women and men but they also re-establish it (or challenge it) when it is breached so that the binary opposition is maintained (or challenged). I denominate ‘cisnormativity’ the practices that have the effect of both performing the norm and re-establishing it.

DP allows also for a connection between the individual and the social. Indeed, it overcomes that dichotomy by considering norms and attitudes—and, hence, also definitions, descriptions and explanations—as both personal and social as well as context-dependent. Discursive

⁹³ See Chapter 2.

⁹⁴ Trans* and queer activists gave it a name—cisgender—many decades later as a political claim (see Chapter 1).

practices not only define social categories but they also legitimise, minimise, justify or promote exclusion and discrimination against them. Conversely, they can also criticise or challenge exclusion and discrimination, thereby promoting other types of social organisation. Because of its focus on discursive practices, this theoretical approach allows us to see how the gendered⁹⁵ organisation of society takes place in everyday social interaction and how this organisation is resisted. It enables us to see how norms establishing social categories and their corresponding roles are constantly produced and re-negotiated at the micro-level. I denominate⁹⁶ ‘transphobia’⁹⁷ the practices whose effects are the exclusion or discrimination of trans* people, and ‘sexism’ the practices whose effects are the exclusion or discrimination of women.

Finally, DP also allows detecting change over time, both in relation to the definition of norms constituting the binary opposition between women and men and the arguments used to re-establish them when they are breached. This perspective makes visible how specific norms constituting the binary opposition between women and men and establishing the distribution of functions between them ‘change without changing’. In other words, these norms are modified and adapted to new social contexts but they still maintain the binary opposition as a fundamental distinction. DP allows thus for the identification of more ‘sophisticated’ expressions of views on sex/gender categories that, officially adhering to common values such as equality and inclusion, actually have exclusionary effects and promote unequal social relations. This, in turn, avoids pointing at certain groups of people as more transphobic or sexist than others, thereby avoiding stigmatisation. Therefore, this theoretical framework allows us to understand how the redefined transgression of sex/gender norms nowadays actually keeps on maintaining the binary opposition that sustains the (gendered) organisation of society in two particular cases: the legal certification of

⁹⁵ Gendered aspects are of particular interest in this thesis, but they are not the only structural axis (see Chapter 1).

⁹⁶ The choice of these terms (cisheteronormativity, transphobia, sexism) is explained by their relatively common use by both scholars and lay people.

⁹⁷ Although I share the criticism of the notion of transphobia voiced in the literature (see Chapter 2, section 2.2.), I agree with Riggs (2014) that it is a useful notion because of its rhetorical effects.

sex and the definition of the (gendered) worker subject (general objective of the thesis).

DP allows to adequately respond to the specific objectives of the thesis through the identification of discursive devices in the specific contexts addressed, as well as the examination of the variability in the use of different devices to elucidate their effects, that is, what discursive practices are doing. In table 7 I present an overview of how DP analytical method responds to each specific research objective—the specific pathways that allow me to carry out the analysis. In the next section I described the research design, method and procedure in detail.

Table 7. Overview of methodology-objectives adequacy

General objective	
To understand how the redefined transgression of sex/gender norms nowadays actually keeps on maintaining the binary opposition that sustains the (gendered) organisation of society in two particular cases: the legal certification of sex and the definition of the (gendered) worker subject	
Specific objective	DP analytical method
1) To describe how changes between the <i>Loi relative à la transsexualité</i> and the <i>Loi transgenre</i> actually maintain the binary opposition between women and men and the implications for trans* people.	<ul style="list-style-type: none"> - Identification of discursive devices used to define the binary opposition in each Act - Analysis of the variability in their use both within and between Acts.
2) To specify how Belgian legislation regulating the mention of sex in the civil status has defined the binary opposition between women and men for different categories of people over time and its consequences.	<ul style="list-style-type: none"> - Identification of definitions of the binary opposition between women and men for different legal subjects. - Analysis of the variability of definitions to elucidate their effects in terms of the construction of 'normality' and 'abnormality'.
3) To detail how workers define nowadays the binary opposition between women and men and its transgression and the implications of those definitions.	<ul style="list-style-type: none"> -Identification of discursive devices employed by workers to define sex/gender categories - Analysis of the variability in their use to elucidate their effects in terms of 'normative' and 'trans*' categories.
4) To identify how those sex/gender definitions interact with the (allegedly neutral) definition of the worker subject and the implications in terms of inclusion or exclusion in the workplace.	<ul style="list-style-type: none"> -Identification of discursive devices employed by workers to define the (gendered) worker subject - Analysis of the variability in their use to elucidate the effects in terms of inclusion or exclusion of different sex/gender categories in the workplace.

3.2. Research design, method and procedure

In order to examine the discursive practices in the legal certification of sex in Belgium and the definition of the (gendered) worker subject, the thesis adopts a case study design. The case study is not a method to collect and analyse data, but an approach to the study of a particular unit of analysis: the case (Willig, 2013). Cases are ‘natural occurrences with definable boundaries’ (Bromley, 1986, p. 8). According to that definition, the thesis consists of two case studies. The research object is the same in both cases: the discursive practices. However, these practices take place in different contexts. This results in different types of materials and, thus, different methods and procedures for collecting/producing the data and analysing them in each study.

The discursive practices carried out by Belgian Civil law legislation regulating the legal certification of sex are *limited*, since these acts and their corresponding parliamentary work are produced only by certain people (parliamentarians) within a specific context (parliament) at specific points in time. Moreover, they are officially documented, transformed in written text and accessible to the public. As a consequence, the first case study examines materials (acts, amendments, parliamentary debates, etc.) that were not produced for research purposes but existed already. The first case study is thus a **documentary study**.

Conversely, workers’ discursive practices defining the (gendered) worker subject and work relations are virtually *unlimited*. Taking into account the ubiquity of sex/gender relations (see chapter 2), these practices could potentially take place in every conversation about work-related issues and in each social interaction at work. Therefore, in the second study, I limited the boundaries of the case myself. I decided to focus on the discursive practices carried out by workers from five work organisations in Brussels during group interviews. The data I analysed in the second case are thus transcribed workers’ discursive practices. These materials have thus been specifically produced for research purposes. It is thus an **interview study**.

The particularities of the data production technique employed in each case study gave me different roles as a researcher. In the first study, I did not have to interact with the legislators or other people involved in the parliamentary work to get access to their discursive practices. I just

collected the written version of these practices, which is publicly available. However, in the second study, I did interact with the workers to produce their accounts. In this sense, I am also part of the interviews. Therefore, my presence is more evident in the second study than in the first one.

In the following two subsections I describe the method and the procedure followed in each case study. In both cases, the data collection or production procedure is presented first and the data analysis method is presented second.

3.2.1. Documentary study

3.2.1.1. Legislative corpus: search strategy

The law is not the product of an individual mind, but the result of a collective endeavour. For a text to become an Act, it first has to be proposed, collectively debated, amended, modified, approved and implemented. Texts documenting parliamentary work include the debates, contradictions, arguments and intentions that were held during the elaboration of an Act. They also reflect common sense and agreements. Following the theory of argumentation (Perelman & Olbrechts-Tyteca, 1970), in order to apply a rule, it is necessary to determine its content or sense and this is done through legal interpretation, taking into account not only the global legal order and societal questions, but also the will of legislators in drafting the Act and the debates that took place. The Acts and their respective Ministerial Circulars are texts having legal effects, but legislative sources are not restricted to them. These sources include also bills, texts documenting parliamentary work and amendments. Therefore, the specification of the discursive practices used in Belgian legislation certifying sex requires not only the examination of the text of the respective Acts and Circulars but also all documents attesting parliamentary work.

The parliamentary work for the drafting of an Act in Belgium follows several steps (Uyttendaele, 2014). The legislative process can be initiated by members of the parliament or by the government. The initial document is called '*proposition de loi*' in the first case and '*projet de loi*' in the second. The Federal Parliament of Belgium consists of two chambers: *Chambre de représentants* (Chamber of representatives) and *Sénat* (Senate). A

'proposition de loi' can be drafted by members of either the Chamber or the Senate, although the competences of the Senate are limited since the 6th reform of the state in 2014. It is always submitted to the Chamber of representatives or the Senate depending on whether the author is a deputy or a senator. Before debating about its content, it is first submitted to a vote to determine whether it can be discussed or not⁹⁸.

The *'projet de loi'* is an initiative of the government in power which formally submits it through the King. The proportional representation system in Belgium implies that different political parties are needed to form a government (no political party enjoys the majority at the parliament). Therefore, in practice, when a *'projet de loi'* is introduced to the parliament, an agreement has been achieved beforehand. The political commitment to adopt the act results in a *'projet de loi'* having much higher chances of being adopted than a *'proposition de loi'*. The government always introduces a *'projet de loi'* to the Chamber.

Following these steps, the *'projets de loi'* and *'propositions de loi'* are examined. They are first sent to the parliamentary commission in charge of the matter of the text being analysed. The parliamentarians start a general discussion, followed by a discussion and vote of each provision of the text. During the debates, parliamentarians can request the hearing of experts and table amendments. A modified text is adopted by the commission and a report covering the discussions is written. The text amended by the commission is then debated in a plenary session of the parliament. The discussion and vote are addressed to each provision of the text. Amendments can also be introduced. At the end, the text as a whole is voted and adopted if there is the absolute majority of favourable votes (although special majorities are required in specific matters).

Until 2014, the legislative process followed a bicameral procedure. In other words, the text of an act had to be approved by both the Chamber and the Senate. Since the 6th reform of the state in 2014, the adoption of the text by the Chamber finalises the parliamentary phase⁹⁹. After the adoption of a text at the parliament, it has to receive the Royal Assent by

⁹⁸ The purpose of this measure is to exclude proposals that are ridiculous or contrary to the constitution.

⁹⁹ Except where the Constitution provides otherwise.

the King to become an Act¹⁰⁰. This is a mere formal procedural step. There is no right to veto granted to the King. Afterwards, the Act is promulgated by the King and officially published in the *Moniteur Belge* (M.B.). It enters into force ten days after its publication or at a later date established in the M.B.

Moniteur Belge is the official journal of Belgium handed by the *Service Public Fédéral Justice* (Federal Department of Justice). It publishes all officially legal texts having a legal effect. The text of the Acts is always officially published in French, Dutch and German. Texts documenting parliamentary work can be found on the website of the Chamber of representatives¹⁰¹. This website publishes all kind of texts documenting parliamentary work. All documents are in French and Dutch.

In order to specify the discursive practices used in the *Loi relative à la transsexualité* and the *Loi transgenre* to maintain the binary opposition (specific obj. 1) and to describe how Belgian legislation has certified sex for different categories of people over time (specific obj. 2) I first needed to identify and collect all legislative documents related to the certification of sex in Belgium. These include all documents concerning the parliamentary work of the *Loi relative à la transsexualité* and the *Loi transgenre*, but also the identification of all other Acts and Circulars regulating the mention of sex in the civil status.

I started with the identification of all the Acts and Circulars legislating the certification of the mention of sex in the civil status. I followed a double search strategy to identify them: a standard search by keywords and a focalised search following legal reasoning. During the standard search by keywords, I looked for acts and Circulars in the database of *Moniteur Belge*. As the text of the Acts is always officially published in French, Dutch and German, I only looked for the text in French. An electronic version of the documents is available to the public on the website¹⁰² since 2003. Documents published before 1997 cannot always be found online, but are available on paper.

¹⁰⁰ This empowers the king to block the legislative process.

¹⁰¹ <https://www.lachambre.be/kvvcr/index.cfm>

¹⁰² <http://www.ejustice.just.fgov.be/cgi/welcome.pl>

I selected keywords (in French) related to the registration and/or modification of sex and search for them in the title of the documents contained in the online database of the *Moniteur Belge*. The search was carried out in November 2017. The searched keywords were the following: *sexe, genre, transgenre(s), transsexuel.le, transsexualité, identité de genre, expression de genre, minorité(s) sexuelle(s), transidentité(s), trans-identité(s), identité(s) trans, identité sexuelle, LBGT, ambiguïté sexuelle, intersexué.e, intersexuel/intersexuelle, intersexualité, and intersexuation*. The number of documents found using each keyword is presented in table 8.

Table 8. Number of documents per key word

Keyword(s) in title	Results
Sexe	10
Genre	20
Transgenre(s)	3
Transsexuel.le	0
Transsexualité	2
Identité de genre	2
Expression de genre	2
Minorité(s) sexuelle(s)	0
Transidentité(s)	0
Trans-identité(s)	0
Identité(s) trans	0
Identité sexuelle	0
LBGT	0
Ambiguïté sexuelle	1
Intersexué.e	0
Intersexuel/intersexuelle	0
Intersexualité	0
Intersexuation	0
TOTAL	40

After eliminating all duplicate documents (8), I examined which of the 32 left documents dealt with the registration and/or modification of sex. Only four of all identified documents specifically regulated this issue:

- *Loi du 10 mai 2007 relative à la transsexualité.*
- *Circulaire du 1 février 2008 concernant la loi relative à la transsexualité.*
- *Loi du 15 mai 2007 modifiant l'article 57 du Code civil en ce qui concerne la mention du sexe d'un enfant souffrant d'ambiguïté sexuelle.*
- *Loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets.*

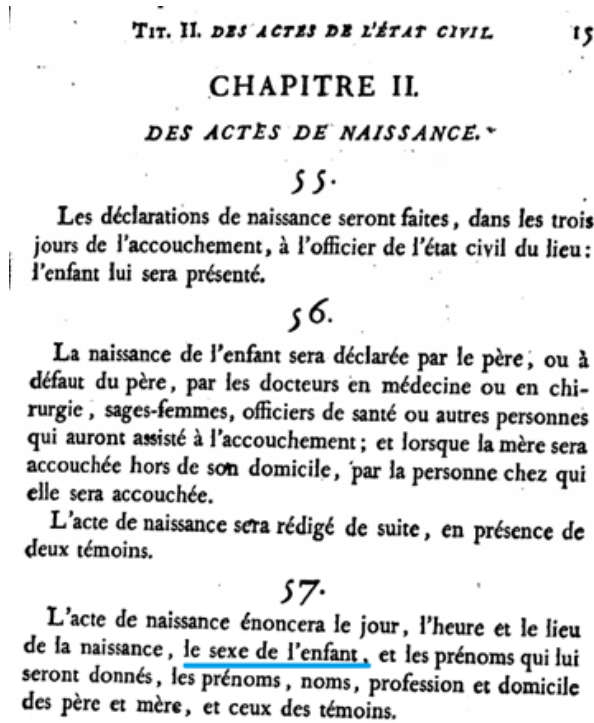
A fifth document was added latter to this list: *Circulaire relative à la loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets.* It was not initially identified in the search because it was published at the end of December 2017.

This search strategy provided me mainly with the Acts and Circulars concerning the *modification* of the mention of sex in the civil status. However, it did not identify the Acts regulating the first registration of sex. It was also possible that Acts before 1997 did not appear in the search of virtual documents. This is the reason why I decided to pursue a complementary strategy following legal reasoning.

The legal mention of sex is included in the birth certificate and is part of the civil status of individuals, a federal matter legislated by the Civil Code. The current Belgian Civil code dates back to 1804. It is the evolution of the French Civil Code, also called the 'Napoleonic Code'¹⁰³. Although the Belgian Civil Code has been adapted over time by the legislator, the legal basis remains the same. The declaration of birth and the birth certificate is presented in the *Livre I des personnes, Titre II des actes de l'état civil, Chapitre II des actes de naissance* (articles 55-62) of the Civil Code. Therefore, articles 55 to 62 of the Civil Code still regulate the mention of sex in the civil status of individuals in Belgium. Different Acts have amended these provisions and various Ministerial Circulars (hereafter: Circulars) have guided the interpretation of these Acts.

¹⁰³ At that time, Belgium was a territory annexed by France.

Figure 5. Original articles 55 to 57 of the ‘Napoleonic’ Civil Code (1804) (emphasis mine)



Starting from the latest version of the Civil Code available in January 2018¹⁰⁴ (version 77¹⁰⁵), I identified the Acts that had incorporated changes and/or added an extra article to the original *Livre I, Titre II, Chapitre II* concerning directly or indirectly the mention of sex in the civil status. Since many Acts published before 1997 cannot be found online, I consulted the paper version of the *Moniteur Belge* found at the law library of the *Université libre de Bruxelles*.

I then looked for and read the content of those Acts and I examined if they were themselves replacing others that had previously modified

¹⁰⁴ Date in which the latest law regulating the modification of the mention of sex in the Civil status for trans people (M.B. 10 juillet 2017, 2017) entered into force.

¹⁰⁵ This version was in force until 1 March 2018. There has not been any other modification of the articles 55, 56 and 57 as of the date of submission of the thesis (March 2019).

that chapter in matters related to the mention of sex. This procedure allowed me to track back all the sex-related modifications of the *Livre I, Titre II, Chapitre II* of the Civil Code. Among the Acts identified, I did not include in the corpus those introducing a modification not directly concerned with the mention of sex. Table 9 presents all the Acts identified, whether they were included in the corpus or excluded from it and the type of modification upon which I made the decision to include them or exclude them in the corpus.

Table 9. Acts modifying the *Livre I, Titre II, Chapitre II* of the Civil code and inclusion in the corpus

Name of the Act	Description of modification	Inclusion /exclusion
<i>Loi du 23 novembre 1961 modifiant l'article 55 du Code civil</i> ¹⁰⁶	Art. 55: It extends the delay to register the new-born ; not necessary to present it before civil registrar (introduction of medical certificate to attest the birth and the sex)	Included
<i>Loi du 30 mars 1984 modifiant les articles 55, 56, et 57 du Code civil et 361 du Code pénal</i>	It replaces article 57 of the original Civil Code and maintains the mention of sex	Included
<i>Loi du 31 mars 1987 modifiant diverses dispositions légales relatives à la filiation</i>	It rescinded art. 57bis + modification of art. 59 and 60 (child born during sea journey) + art. 62 (information in act of recognition)	Excluded
<i>Loi du 1 juillet 2006 modifiant des dispositions du Code civil relatives à l'établissement de la filiation et aux effets de celle-ci</i>	Modification art. 62 (act of recognition)	Excluded
<i>Loi du 9 mai 2007 modifiant certaines dispositions du Code civil en vue de faciliter la preuve de l'état des personnes à défaut d'acte de l'état civil</i>	Reestablishment of art. 61 – in case of adoption	Excluded
<i>Loi du 15 mai 2007 modifiant l'article 57 du Code civil en ce qui concerne la mention du sexe d'un enfant souffrant d'ambiguïté sexuelle</i>	It increases the delay to register the sex of the child in case of intersexuality	Included

¹⁰⁶ This Act was found through the Act of 1984.

<i>Loi du 14 janvier 2013 portant diverses dispositions relatives à la réduction de la charge de travail au sein de la justice</i>	Modification of § 4 to art. 56 : 'L'officier de l'état civil s'assure de la naissance par une attestation d'un médecin ou d'une accoucheuse'	Included
<i>Loi du 21 décembre 2013 portant le Code consulaire</i>	Introduction of a Consular Code in Belgium. Modification of art. 60 (child born during sea journey)	Excluded
<i>Loi du 5 mai 2014 portant établissement de la filiation de la coparente</i>	It adds that the name and surname of the female co-parent can also be registered	Excluded
<i>Loi du 10 mai 2007 relative à la transsexualité</i>	It adds two articles (art. 62 <i>bis</i> and art. 62 <i>ter</i>) establishing the conditions under which trans people can change the mention of sex	Included
<i>Loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets</i>	It replaces art. 62 <i>bis</i> and art. 62 <i>ter</i> establishing the conditions under which trans people can change the mention of sex	Included

This second search strategy allowed me to identify Acts not found in the initial search of keywords and to better understand the modifications of the Civil Code over time. The final list of Acts was validated by a legal scholar expert on Belgian civil law¹⁰⁷. No Act directly or indirectly regulating the mention of sex in the civil status was left out.

Following the identification of Acts, I looked for the respective parliamentary work in the website of the Chamber of representatives. Given that both the French and Dutch version of the documents are official, only the French version was sought and included in the corpus¹⁰⁸. I downloaded and read all the documents and selected the ones directly or indirectly related to the registration and/or modification

¹⁰⁷ I thank Prof. Nicole Gallus for her help.

¹⁰⁸ However, the Dutch version was sometimes consulted to verify how specific terms have been translated from the original (Belgian parliamentarians speak in the language of their choice). For instance, the Dutch term '*genderidentiteit*' (gender identity) was often translated as '*identité sexuelle*' (sexual identity) in French in parliamentary debates concerning the *Loi relative à la transsexualité* (Chapter 4).

of the mention of sex in the civil status. I also selected only the sections within each document that concerned the issue of interest. I therefore excluded documents and/or sections of documents addressing other issues, such as the modification of the Judicial Code, questions related to names and surnames or sections dealing with mere administrative matters (e. g. fees, procedures). The final list of documents and sections included in the corpus is presented in table 10.

Table 10. Final list of documents and sections of documents included in the legislative corpus

Type of document	Name ¹⁰⁹	Number of doc.	Date	Sections included
Code	<i>Code civil</i>	-	1804	Book I, Title II, Chapter II- On birth certificates, articles 55-62
Preparatory work	<i>Recueil complet des travaux préparatoires du Code civil (Tome huitième)</i>	-	1836	Livre I – des personnes. Titre II – des actes de l'état civil
Act	<i>Loi du 23 novembre 1961 modifiant l'article 55 du Code civil</i>	-	1961	All
Parliamentary work (Senate)	<i>Rapport fait au nom de la Commission de la justice</i>	321	10/05/1960	All
Parliamentary work (Senate)	<i>Projet transmis par le Sénat</i>	559	16/06/1960	All
Parliamentary work (Chambre)	<i>Rapport fait au nom de la Commission de la justice</i>	130	12/07/1961	All
Act	<i>Loi du 30 mars 1984 modifiant les articles 55, 56, et 57 du Code civil et 361 du Code pénal</i>	-	30/03/1984	All

¹⁰⁹ Original name in French.

Parliamentary work (Chambre)	<i>Proposition de loi</i>	400_N1	12/12/1979	All
Parliamentary work (Chambre)	<i>Amendement</i>	400_N2	4/02/1981	All
Parliamentary work (Chambre)	<i>Rapport (Com. Justice)</i>	400_N4	29/03/1981	All
Parliamentary work (Chambre)	<i>Projet de loi transmis par la Chambre (au Sénat) Oui</i>	676_N1	18/06/1981	All
Parliamentary work (Sénat)	<i>Rapport (Com. Justice) - Sénat</i>	637_N2	24/05/1983	All
Act	<i>Loi relative à la transsexualité</i>	➤	10/05/2007	Chapitre II: Modifications du Code Civil
Parliamentary work (Chambre)	<i>Proposition de loi</i>	Ch. 51-903/1	11/03/2004	Résumé, développements, commentaires des articles, proposition de loi (sauf chapitres IV et VI)
Parliamentary work (Chambre)	<i>Avis du Comité consultatif de Bioéthique</i>	Ch. 51-903/2	29/03/2006	All
Parliamentary work (Chambre)	<i>Amendements</i>	Ch. 51-903/3	06/06/2006	Amendements: 1, 2, 3, 6, 7
Parliamentary work (Chambre)	<i>Amendements</i>	Ch. 51-903/4	13/06/2006	Amendements: 15, 16
Parliamentary work (Chambre)	<i>Rapport fait au nom de la commission</i>	Ch. 51-903/6	30/06/2006	Tout sauf amendements non considérés précédemment
Parliamentary work (Chambre)	<i>Texte adopté par la commission</i>	Ch. 51-903/7	30/06/2006	All
Parliamentary work (Senate)	<i>Amendements</i>	3-1794/2 3-1794/2	17/10/2006	All

Parliamentary work (Senate)	<i>Avis du Conseil d'Etat</i>	3-1794/3 3-1794/3	28/12/2006	All
Parliamentary work (Senate)	<i>Amendements</i>	3-1794/4 3-1794/4	07/02/2007	All
Parliamentary work (Senate)	<i>Rapport fait au nom de la commission</i>	3-1794/5 3-1794/5	20/03/2007	All
Parliamentary work (Senate)	<i>Texte amendé par la commission</i>	3-1794/6 3-1794/6	20/03/2007	All
Parliamentary work (Chambre)	<i>Rapport fait au nom de la commission</i>	Ch. 51-903/10	17/04/2007	All
Circular	<i>Circulaire concernant la loi relative à la transsexualité</i>	-	20/02/2008	II. Directives pratiques pour les officiers de l'état civil (points 1, 2, 3, 4, 5) + Modèle d'acte et Modèle d'inscription
Act	<i>Loi du 15 mai 2007 modifiant l'article 57 du Code civil en ce qui concerne la mention du sexe d'un enfant souffrant d'ambiguïté sexuelle</i>	-	15/05/2007	All
Parliamentary work (Chambre)	<i>Proposition de loi</i>	Ch. 51-1242/1	24/06/2004	All
Parliamentary work (Chambre)	<i>Amendements</i>	Ch. 51-1242/2	29/11/2006	All
Parliamentary work (Chambre)	<i>Amendements</i>	Ch. 51-1242/3	12/12/2006	All
Parliamentary work (Chambre)	<i>Amendement</i>	Ch. 51-1242/4	28/02/2007	All
Parliamentary work	<i>Rapport fait au nom de la</i>	Ch. 51-1242/5	04/04/2007	All

(Chambre)	<i>commission</i>			
Parliamentary work (Chambre)	<i>Texte adopté par la commission</i>	Ch. 51-1242/6	04/04/2007	All
Parliamentary work (Chambre)	<i>Compte rendu intégral</i>	Ip 277	12/04/2007	All
Act	<i>Loi du 14 janvier 2013 portant diverses dispositions relatives à la réduction de la charge de travail au sein de la justice</i>	-	14/01/2013	Art. 21
Parliamentary work (Chambre)	<i>Proposition de loi</i>	Ch. 53-1804/1	13/10/2011	Discussions concernant l'art. 56, § 4 du Code civil
Parliamentary work (Chambre)	<i>Rapport fait au nom de la commission de la justice</i>	Ch. 53 – 1804/16	30/11/2012	Discussions concernant l'art. 56, § 4 du Code civil
Act	<i>Loi 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets</i>	25/06/2017		Chapitre II: Modifications du Code Civil
Parliamentary work (Chambre)	<i>Projet de loi</i>	54K2403001	4/04/2017	All except 'Analyse d'impact de la réglementation' and sections referring to the change of name, modifications of the Judiciary Code.
Parliamentary work	<i>Amandement</i>	54K2403002	2/05/2017	Amendements : 1, 2, 3, 5, 6, 8

(Chambre)					
Parliamentary work (Chambre)	<i>Amandement</i>	54K2403003	9/05/2017	Amendments : 10, 11, 12, 13, 15	
Parliamentary work (Chambre)	<i>Rapport fait au nom de la commission de la justice</i>	54K2403004	19/05/2017	All except sections referring to the change of name, modifications of the Judiciary code.	
Parliamentary work (Chambre)	<i>Texte adopté par Commission Justice</i>	54K2403005	19/05/2017	Chapitre II: Modifications du Code Civil	
Parliamentary work (Chambre)	<i>Amandement déposé en séance plénière</i>	54K2403006	23/05/2017	All	
Parliamentary work (Chambre)	<i>Amandement déposé en séance plénière</i>	54K2403007	24/05/2017	All	
Parliamentary work (Chambre)	<i>Texte adopté en séance plénière</i>	54K2403008	24/05/2017	Chapitre II: Modifications du Code Civil	
Parliamentary work (Chambre)	<i>Compte rendu intégral</i>	CRIV54 PLEN 170	24/05/2017	Discussion on bill (2403/1-6)	
Circular	<i>Circulaire relative à la loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets</i>	-	29/12/2017	1. Généralités 2. Modification de l'enregistrement du sexe	

3.2.1.2. Data analysis

In order to respond to each specific objective of the first case study, two different types of analysis were carried out: discourse analysis and qualitative content analysis. The discourse analysis was effectuated on the corpus of documents pertaining to the *Loi relative à la transsexualité* and the *Loi transgenre*. The qualitative content analysis was carried out on the whole legislative corpus.

The different nature of these two methods makes them particularly appropriate to respond to different objectives. Discourse analysis is an analytical method that does not (or at least, not only) examine the content of texts and talk, but the way language is used and the resulting constructions of reality. Discourse analysis examines particularly the actions being accomplished by language in use and its effects. I thus used discourse analysis to specify the discursive practices used in the *Loi relative à la transsexualité* and the *Loi transgenre* to maintain the binary opposition (specific obj. 1).

Conversely, qualitative content analysis, as its name suggests, is a method that describes the content of texts and talk. Its nature is thus more descriptive than analytical. Taking into account the large size of the legislative corpus, I used a DP-inspired version of qualitative content analysis to describe how Belgian legislation has certified the mention of sex for different categories of people over time (specific obj. 2). The qualitative content analysis was inspired by DP so that the appreciation of variability in the content of the corpus (assessed through the presence or absence of specific elements) allowed me to elucidate the effects of the legislation as a whole. I describe below how I carried out each analysis.

The **discourse analysis** was realised on the set of documents belonging to each Act separately. The analysis followed the linear and chronological order of the parliamentary work, starting with the bill and continuing with the amendments, parliamentary debates and successive versions of the bill until the final text of the Act was adopted. The analysis followed two main steps: the identification of discursive

practices¹¹⁰ and the examination of variability in their use to elucidate the effects.

I first examined the bill and I identified the conditions proposed to allow trans* people¹¹¹ to modify the legal mention of sex in their civil status. In other words, the conditions to change the 'F' for the 'M' or the 'M' for the 'F' in the mention of sex in the civil status and identity documents. Then I detected the controversies expressed about it (and the absence of them) by the different parties involved in parliamentary work. These parties include deputies, but also several stakeholders invited to the hearings. Then I identified discursive devices and the way they were employed by different speakers. The discursive devices include different types of arguments (Perelman & Olbrechts-Tyteca, 1970), metaphors, recurrent notions, grammatical forms and specific terminology.

Following the step, I classified the discursive devices into broad types of devices in order to facilitate the presentation of results. This classification was based on the argumentative coherence of the discursive devices. The different types of discursive devices are illustrated by the presentation of the quotes in which they appear. I selected 53 quotes from the *Loi relative à la transsexualité* and 39 quotes from the *Loi transgenre*. I chose the quotes on the basis of two criteria. The first one is that the quote contained the discursive device I wanted to describe. The second is that the quote allowed me to re-construct the rhetorical context of the debates in which the discursive devices were used. It is important to note that several discursive devices can be present in the same quote, but I usually use each quote to illustrate only one type of device. After the identification of the discursive devices, I specified the changes that had been incorporated in the final text of the Act as a result of the debates.

The analysis of the variability was performed through a comparison of the use of discursive practices within and between the two Acts. This analysis allowed me to identify not only the discursive practices

¹¹⁰ As a reminder, I define as 'discursive practices' the particular uses of discursive devices.

¹¹¹ Trans* people are denominated '*transsexuels*' in the *Loi relative à la transsexualité*, and '*transgenres*' in the *Loi transgenre*.

constructing the binary opposition between the ‘F’ and the ‘M’ and their effects, but also the evolution of the argumentative context between the two Acts. The discourse analysis is presented in Chapter 4.

The **qualitative content analysis** was effectuated in the whole legislative corpus. It is a text interpretation technique that can be applied to any type of data record and uses codes as the fundamental element to describe the characteristics of the data content (Andréu Abela, 2000). It aims not only at systematising and explaining the content of texts with the help of hints, quantifiable or not, but also at making inferences.

The analysis carried out was qualitative in nature. Whereas the quantitative content analysis calculates the frequency of certain characteristics, the qualitative one focuses on their presence or absence. The analysis proceeded with the implementation of deductive categories: categories that are developed from theory and then applied to the corpus of texts (Andréu Abela, 2000).

I drew on discursive psychology and the theory of argumentation to develop the categories of analysis. The premises supporting the content analysis were two. The first premise is that the absence of debate concerning certain ideas in a specific social and historical moment indicates adherence to them. In other words, they are taken as a norm in that specific context. The extent in which a legal topic was debated was inferred on the basis of the length of parliamentary work¹¹², the type of legal procedure and the number of stakeholders invited to hearings. The second premise is that language is action-oriented, that is, it is used to do things and has functions or effects. These functions can be identified through the examination of the variability of content. Variability can be present in relation to the type of legal subject concerned by each Act, the type of regulation of the mention of sex, the purpose of the Act, its content and the criteria upon which sex is certified.

Drawing on those premises I developed the following categories of analysis: date of adoption, date of entry into force, dates of parliamentary work, type of bill and initiator of procedure, type of legal procedure, legal subject, type of legal matter, purpose, matters regulated in relation to the mention of sex, criteria upon which the registration of the

¹¹² Although sometimes the length can be due to political reasons.

mention of sex is based, intertextuality, stakeholders consulted, and current state of the Act. The analytical categories are defined as follows:

- *Date of adoption and date of entry into force*: it provides information about the presence or absence of legislation on the specific matter over time¹¹³. The date of adoption refers to the date it was adopted by the Chamber. The date of entry into force is ten days following the publication of the Act in the *Moniteur Belge* (unless it is stated otherwise).
- *Dates of parliamentary work*: it represents the amount of time that was needed to study the issue, debate about it (including hearings with experts and concerned individuals) and amend it. The dates of parliamentary work indicate the degree of agreement of the members of the parliament concerning an Act. The less time it took, the more likely it is that there was already an agreement in the Parliament¹¹⁴.
- *Type of bill and initiator of the procedure*: whether the bill is a '*projet de loi*' or a '*proposition de loi*'. In the second case, type of parliamentarian (deputy or senator) that introduces the initial text.
- *Type of legal procedure*: it refers to whether the procedure was bicameral (it has to be discussed in the Chamber and the Senate) or not.
- *Legal subject*: this category refers to the individuals that are concerned by the Act.
- *Type of legal matter*: it described the legal matter regulated by the Act in relation to the mention of sex in the civil status. There are two possible types: the registration of the mention of sex at birth or its subsequent modification.
- *Purposes*: it refers to what wants to be officially achieved with the Act. This information can be found mainly in the explanatory statement.
- *Matters regulated in relation to the mention of sex*: this category seeks to identify the content of the Acts in relation to the mention of sex and

¹¹³ The lack of legislation does not mean that there was no law about it because there can be jurisprudence on the issue.

¹¹⁴ However, the process of argumentation could have taken place before the legislative procedure (e. g. civil society mobilisations and meetings with parliamentarians).

the changes each Act incorporated in the Civil Code in relation to that mention.

- *Criteria upon which the registration of the mention of sex is based:* this category refers to the criteria used by the Act to certify the sex of an individual.
- *Intertextuality:* it describes the relationship between the Acts; whether an Act modifies and/or is modified by the others.
- *Stakeholders consulted:* this category describes the number and type of individuals (experts, civil society, professionals, governmental bodies, etc.) consulted during the elaboration of the Act. It includes written opinions and oral hearings. This category is indicative of the degree of social controversy of a specific matter. The type of individuals consulted also indicates how the matter is framed and who is considered to be an expert in that regard.
- *Current state of the Act:* it refers to whether the Act is in force or has been replaced by another act.

The analytical categories are thus related to both the content of the Act and the process of its elaboration. I first applied these categories to each Act¹¹⁵. Following the step, I drew a comparison between them¹¹⁶. This comparison made possible to identify variability in the way the mention of sex has been regulated over time and the different legal constructions of sex according to different legal subjects. This allowed me to elucidate the cisnormative effects of the legislation when taken as a whole. The results of this analysis are presented in Chapter 5.

¹¹⁵ By ‘Act’ here I mean the text of the Act but also the parliamentary work that produced it.

¹¹⁶ See table 18 in Chapter 5.

3.2.2. Interview study

3.2.2.1. Producing workers' accounts

The data of the second case study—transcribed workers' discursive practices—were produced through *group interviews*¹¹⁷ coupled with *photo-elicitation*. The interview is fundamentally 'a qualitative data gathering technique that finds the interviewer/moderator directing the interaction and inquiry in a very structured or very unstructured manner, depending on the interview's purpose' (Fontana & Frey, 1994, p. 365). The group interview is similar to the individual interview, the primary difference being that in the former several participants are interviewed simultaneously, whereas the latter takes place within an inter-individual context (interviewer-interviewee). Photo-elicitation¹¹⁸ is the technique of 'using already existing images in research interviews' (Silver, 2013, p. 157) to foster discussion. It is a variation of open-ended interviewing in which the interview is stimulated and/or guided by images (Harper, 1994).

Norms become particularly visible when they are breached because it elicits people's response to re-establish them. This response takes the

¹¹⁷ There is some confusion in the use of the labels 'group interview', 'focus group' and 'discussion group'. Although sometimes the three notions are used as synonyms, their characteristics and purposes differ (Ruiz, 2017). The focus group and the discussion group were developed in parallel; the former in the United States and the latter in Spain. The focus group was originally rooted in market research and usually takes a more individualist approach, both in relation to the way the interview is conducted and the analysis of results. The interviewer takes a directive role and the analysis is addressed towards the identification of individual's opinions, trying to prevent group influences. In contrast, the goal of the discussion group is the collective production of the group own discourse through conversation. Faced with these two traditions, I preferred to use the term 'group interview' to mark the distinction with the two. From a DP perspective, social interaction is a fundamental element in the production and analysis of data. However, the goal is not to identify a common group discourse, but the different discursive practices and their effects.

¹¹⁸ The use of visual methods is increasing in psychological research. Photographs are particularly used in three ways depending on whether they are employed to elicit verbal data or are analysed in their own right: photo-elicitation, photo-production and photovoice (Silver, 2013). Photo-production uses photos created during research (by researchers) and photovoice uses photos created by participants themselves.

form of descriptions, definitions and explanations that argue for a particular stance within the controversy between the norm and the alternative¹¹⁹. Therefore, in order to identify the discursive practices used by workers to define sex/gender categories and the (gendered) worker subject (specific obj. 3 and 4), it is necessary to identify a context in which norms constituting sex/gender categories are breached. As previously stated, the notion of *trans** denominates itself the breaching of the norm. It is thus in settings in which *trans** is present that the construction of *trans** people as ‘abnormal’ can be studied.

Interviewer’s role in directing the interaction allowed me to create the ‘presence of *trans**’ in the interactional context of the interview. In other words, I created myself the disruption of sex/gender norms by means of the questions that I asked and the photographs that I showed to the workers. And I was able to do this because I am also a competent (but partial) member of ‘the group’ of participants. As Antaki (1988) expresses it:

‘Ethnomethodology makes a point of displaying the researcher’s thorough familiarity with the respondents culture by deliberately finding ways of upsetting it or, if that is not possible, of setting it in a context where the normality of the encounter becomes strange and alien; then its structures and its dynamics can be seen more easily’ (1988, p. 10).

The reason why I write ‘the group’ between quotes is that it is difficult to discern its limits. In fact, as in any other context, there was not a single group in the context of the interview, but many. There was, of course, an evident group of co-workers, but there were also a group of people living in Brussels, a group of French-speaking people, a group of gendered people, and so on. My membership to ‘the group’ is partial in the sense that I am not their co-worker and I do not have knowledge about their everyday work experiences. However, I am a competent member of a sex/gender category (the one placed at the bottom of the hierarchy) and

¹¹⁹ This response can also take the form of the imposition. In that case, there is no argumentation because, as Perelman and Olbrechts-Tyteca (1970) claim, argumentation aims convincing, not at imposing a view. Imposition can take place in the form of violence (for instance, a verbal or physical aggression), legal obligations, etc. People are then punished for not following the norm.

I know the norms that construct trans* people as ‘abnormal’—although I could not see many of them at the beginning of this thesis! I am also a partial member of the group because I shared with the interviewees certain ‘European’ or ‘Western’ culture (if there is any—this is also a very vague concept), I live in Brussels as they do and I can understand and speak French, their mother tongue¹²⁰. However, I am also a European foreigner in Belgium and French is not my mother tongue.

I thus consider that I occupied a double position before, during and after the interviews: as a researcher and as a layperson with certain specificities. Or rather, *a researcher with certain specificities* because, as feminists epistemologies argue, the epistemic neutral subject does not exist. Moreover, I think that this ‘double position’ was very fruitful because it allowed me to engage in a process of detachment from the sex/gender norms that produce trans* people as ‘abnormal’. My competence as a member of ‘the group woman’¹²¹ was particularly helpful, but also the fact of being a foreigner. This allowed me to engage in a process of alienation in relation to certain practices and, especially, in relation to language. Doing discourse analysis in a language that is foreign to me¹²², but nevertheless I master, was not an easy task, but it made me react in front of certain expressions, metaphors and ways of saying things that might have not surprised a native speaker¹²³. This ‘outsider’ position also allowed me to ask apparently ‘naïve’ questions to the participants on the grounds that I am a foreigner and a non-native French speaker.

In view of the above, the practices that I carried out as interviewer before, during and after the interviews are also accountable practices. These practices include the selection of workplaces and the arrangement of the interview set-up, the preparation of the questions¹²⁴ and

¹²⁰ Or rather the mother tongue of most of the participants. A few of them were native Dutch speakers but spoke in French during the interviews.

¹²¹ Following the reasoning I described before, it is not a single group either. This is also addressed in Chapter 1.

¹²² Although French shares many features with my mother tongue—Spanish.

¹²³ In fact, language both constitutes and is constituted by norms as well. As a speaker of French as second language, I know many of the French norms but not all of them.

¹²⁴ The actual questions and comments that I formulated during interviews are described in the results of this case study (Chapters 5 and 6).

photographs, and the transcription of the interviews. I describe these practices below.

➤ Selection of workplaces and arrangement of the interview set-up

Discursive practices constituting sex/gender categories take place in specific contexts, that is, within a set of social interactions. It was thus necessary to select specific contexts in which specific work relations take place. As trans* people work and thus have positive and negative experiences in a variety of sectors and professions, I decided to choose them according to the horizontal segregation of the Belgian labour market¹²⁵. Drawing on the latest statistics published¹²⁶ regarding the distribution of men and women within the Belgian labour market (Statistics Belgium, 2014), I created a classification of economic activities according to the ‘masculinisation’ and ‘feminisation’ of each occupational field. I considered an occupational field ‘masculinised’ when more than sixty per cent of workers were men, ‘feminised’ when more than sixty per cent of workers were women and ‘gender-neutral’ when the composition of the workforce was around fifty per cent of men and fifty per cent of women¹²⁷ (the classification can be found in Appendix II).

Following the step, I selected two ‘feminised’ occupational fields, two ‘masculinised’ occupational fields and one ‘gender-parity’ occupational field and I identified five workplaces in Brussels belonging to those fields (table 11).

¹²⁵ See Chapter 1.

¹²⁶ These data date from 2014 because this operation was carried out in 2015.

¹²⁷ This classification does not take into account vertical segregation within the different economic activities.

Table 11. Type of gendering, occupational field and workplace of each group interview

Group interview	Type of gendering	Occupational field (NACE nomenclature)	Workplace
1	Masculinised	Information and communication	IT service of hospital
2	Feminised	Human health and social action	Childcare facility in private sport club
3	Feminised	Education	Non-profit organisation for health promotion and health education
4	Gender-parity	General public administration	Regional public employment agency police
5	Masculinised	Defence	Intervention service of the federal

The job tasks that the workers realised in each workplace can be described as follows:

- *Childcare facility in private sports club*: the tasks consisted of taking care of children while their parents were at the gym through a variety of activities, such as cooking workshops, handicrafts or physical activities. Other activities include the organisation of birthday parties for the children.
- *Non-profit organisation for health promotion and health education*: the tasks consisted of designing projects to promote health and health education, thereby reducing social inequalities. The group of participants did not work with vulnerable population themselves, but where the bridge between front-line professionals and public institutions.
- *IT service of hospital*: some participants worked at the ‘Help Desk’ solving the technical problems of hospital employees. Others did computer development.
- *Intervention service of the federal police*: all the participants were part of the intervention service. This service responds to emergency calls and

patrols their corresponding area of the city. However, while some of them intervene directly in place, others manage the events from the office.

- *Regional public employment agency*: the participants were or had been front-line counsellors who helped unemployed people to find a job. Some of them were part of the '*cellule diversité*' at the moment of the interview, whose aim is to attend work discrimination complaints and to inform and sensitise employees to prevent discrimination in employment.

A letter presenting the study (see Invitation letter in Appendix III) was sent by email to a contact person in each workplace, asking for permission to carry out the group interview. In the letter, I explained that the study was part of an interdisciplinary PhD thesis aimed at examining '*les représentations sociales autour des genres dans le monde du travail*' and for that reason we were carrying out '*une étude qualitative auprès des travailleurs et des travailleuses de différents secteurs professionnels*'. I also wrote that the purpose of the study was: '*réfléchir et [de] proposer des pistes pour l'élaboration de programmes de sensibilisation et de formation sur la diversité des genres dans le monde du travail*'. In the letter, I also described the data collection technique as an informal conversation between a group of 6-8 people guided by a researcher. I explained that the conversation would be audio recorded and the data would be treated in a confidential way. The contact people distributed the letter among their co-workers. They also helped me constitute the groups and arrange the time and date of the interview.

The only condition to participate in the group interview was to work together: participants had to be *co-workers*. I did not set any other condition for participation in the interview. This means that I did not select the interviewees on the basis of their 'sociodemographic characteristics'. They were indeed members of 'natural groups', groups that were not constituted or manipulated by the researcher (Amezcuá, 2003). The notion of representativeness has thus here a meaning different from the statistical one. What matters is not whether individuals are 'statistically representative' of a population, but rather that they are representative of the groups they belong to in the specific context of the interaction (Íñiguez-Rueda, 2003a). In fact, after the interview some

workers told me that they felt they were in an ordinary conversation between colleagues:

C'est l'genre de conversation qu'on pourrait avoir entre nous euh, ((rire)) à nos heures perdues'.

(Audrey, group interview 5, 26 August 2016)

Before starting the discussion a data sheet was distributed to participants in which they could fill in the empty space for gender if they wished to. Based on self-reported categorisation, participants were predominantly women in the 'feminised' and 'gender-parity' occupational fields and predominantly men in the 'masculinised' ones. The composition of the groups reflects the horizontal segregation of each professional sector. No participant self-identified as trans* (either in the datasheet or during the interview), nor were they perceived as such by their co-workers.

Participation was on a voluntary basis. No remuneration was offered, but I provided some food and drinks because the interviews took place during the workers' lunch break. I carried out one group interview in each workplace. The interviews took place each time in a meeting room in their everyday work setting. Between six and eight workers participated in each interview. I performed them between the end of March and the beginning of September 2016. The length ranged from 1h13min to 1h56min. They were carried out in French¹²⁸ and audio recorded.

➤ Interview guide: preparation of questions and selection of photographs

The use of semi-directed group interviews allowed me to ask workers about their views on a series of issues concerning work relations and trans* issues without waiting for the topics to arise spontaneously. It is therefore important to note again that as an interviewer I created the reality of the interview situation and thus the data produced in the interviews are 'situated understandings grounded in specific interactional episodes' (Denzin & Lincoln, 1994, p. 353). The analysis and presentation of results must take this into consideration as well. In this

¹²⁸ French was the native language of the majority of participants and the language in which all the participants worked. A small number of participants were native Dutch-speakers, but fluent in French.

line, Potter & Hepburn (2005, 2012) recommend interview researchers not only to improve the transparency of the interview set-up but also to display more fully the active role of the interviewer.

I elaborated a flexible guide with questions (see Appendix IV) to cover a standard range of themes with each group in approximately the same order. Questions were open-ended. The open-ended interview is ‘an exchange initiated and guided by the researcher in which the subject, one hopes, provides in-depth responses to complex questions’ (Harper, 1994, p. 410). The interview was structured in six parts: welcome remarks and interview rules, introductory questions, transition questions, key questions, concluding questions, and words of acknowledgement.

The welcome remarks and interview rules aimed at welcoming the participants, creating a nice atmosphere in which they could feel at ease and explaining the dynamics of the interview. During this part, I introduced myself as a PhD student interested in *‘la question de la diversité au sein des lieux de travail, notamment en relation aux rapports de genre’*. I also described the purpose of the study (*‘comprendre les dynamiques dans le monde du travail pour promouvoir l’égalité et prévenir les discriminations’*). Before beginning a roundtable of introductions, I explained some rules and characteristics of the interview. I clarified that the material would be rendered anonymous in the transcription and that the conversation was confidential. I also emphasised that nobody should feel obliged to speak and that it was important to respect each other’s opinions. I asked them to tell their name before speaking so that I could identify their voices for the transcription (since it was only audio recorded) and I finally explained that I was not a French native speaker and that they could ask me anything if they did not understand me. Following these welcoming remarks, I gave them the floor so that they could introduce themselves and say a few words about their motivation to participate in the study.

The introductory questions had a double purpose: to get information about their jobs and to launch the conversation with some easy questions. These questions concerned their job description (for instance: *‘Votre travail consiste en quoi exactement ?’*) and horizontal segregation in their profession (*‘À votre avis, dans les services d’intervention de la police, les travailleurs sont plutôt des femmes ou des hommes ?’*).

The transition questions were designed to move towards the main topic of the interview. These are simple questions focused on their experiences and practices. For instance: *‘les hommes et les femmes réalisent le même type de tâche ? ont les mêmes responsabilités ?’, ‘les hommes et les femmes sont traité.e.s de la même façon... par les responsables du service ? par le public ? par les collègues d’autres services ?’, ‘à votre avis, quelles sont les compétences qu’une personne doit avoir pour travailler au service d’intervention de la police ?’*. I am aware that with these questions I am myself producing the woman-man binary. However, I needed to use terms that were meaningful for them. The tension between avoiding reproducing myself gender norms and make me understand by the participants was a constant struggle during the interviews.

The key questions aimed at introducing controversies in relation to the definition of sex/gender categories and work relations. A first group of questions concerned woman-man relations at work. For instance: *‘pourquoi pensez-vous qu’en général il y a plus d’hommes dans ce type de métier ?’, ‘pensez-vous que les femmes sont également/mieux/moins capables de réaliser ce travail ? pourquoi ?’, ‘pensez-vous qu’il y a de la discrimination dans votre métier ? à l’égard de qui ?’*.

A second group of questions introduced trans* issues within the interview. I started asking for a general description or definition of trans* people. Drawing on the notion that the attitude towards a social category is inseparable from the definition of the category, I did not provide any definition of trans* people to participants. Instead, I used an extensional description providing a range of terms commonly used (e.g. ‘trans’, ‘transgender’, ‘transsexual’) to elicit participants’ own definitions. I neither used nor explained social research terminology such as ‘gender identity’, ‘gender expression’, etc. For exemple: *‘Dans le domaine des genres, on peut aussi parler d’identités trans. Il y a de différents mots qui sont utilisés pour décrire les identités trans : transgenres, transsexuel, homme trans, femme trans, genderqueer, genres fluides... Je ne sais pas si vous êtes familiarisé.e.s avec ces mots ? Vous avez déjà entendu ces mots ? Lequel ?’, ‘(Si oui) Pourriez-vous donner une définition de _____ ?’*.

Following the step, I showed some photographs of trans* people to elicit discussion. Taking into account the importance of the body and ‘visibility’ in both the discursive definition of sex/gender categories and

in trans* people's experiences of discrimination¹²⁹, I employed photographs to ask questions about the specific potential inclusion of those people in the workplaces of the participants. To select the photographs, I looked on the internet for people who presented different secondary sexual characteristics, clothes and gestures according to normative conceptions of 'femininity' and 'masculinity'. I selected five photographs of different individuals¹³⁰ (see photographs below) according to those dimensions. The photographs are described in table 12.

¹²⁹ See Chapter 2.

¹³⁰ Some of the people have proved to be famous but none of the participants in the interviews knew them.

Table 12. Classification of photographs according to normative conceptions of ‘femininity’ and ‘masculinity’

Photo	Secondary sexual characteristics	Clothes and accessories	Body posture
1	Usually defined within the ‘masculine’ spectrum	Usually defined within the ‘masculine’ spectrum	Usually defined within the ‘masculine’ spectrum
	Defined muscles, short hair, facial hair, arms hair, wide jaw, square chin	White tank top showing arm muscles, no visible make-up	Right hand sustains head in a thoughtful attitude, left hand crosses chest, a little smile
2	Usually defined within the ‘feminine’ spectrum	Usually defined within the ‘feminine’ spectrum	Usually defined within the ‘feminine’ spectrum
	Thin, small breasts, thin face, long hair gathered in a bun, no body hair	Topless, necklace, earrings, no visible make-up	Standing towards the right, right arm around dog, left arm crossing the belly, no smile, looking at the camera
3	Some usually defined as ‘feminine’, some as ‘masculine’	Some usually defined as ‘feminine’, some as ‘masculine’	Some usually defined as ‘feminine’, some as ‘masculine’
	Long blond hair, no breasts, full lips, rounded face	Dark blue shirt with bare chest and shoulder, no visible make-up	Standing, arms lie on the sides, showing shoulder, no smile, looking at the camera
4	Usually defined within the ‘masculine’ spectrum	Usually defined within the ‘feminine’ spectrum	Usually defined within the ‘feminine’ spectrum
	Leg hair, short brown hair, face hair	Colourful shirt, open side skirt, high heels, lipstick, necklace, nail polished	Sitting, legs open from the knees, left hand sustaining chin, right hand on the knees, no smile, looking at the camera
5	Usually defined within the ‘feminine’ spectrum	Usually defined within the ‘masculine’ spectrum	Usually defined within the ‘masculine’ spectrum
	Blond (short) hair, thin chin, no arm hair	Straight Denim shirt, tattoos, trousers	Sitting, open legs, elbows lie on knees, a little smile, looking at the camera



Photograph 1¹³¹

¹³¹ This person is a famous athlete (Balian Bauschbaum). He identifies as a man. However, none of the participants in the interview knew him.

[I do not have the permission to reproduce this photograph, see description in table 12]

Photograph 2¹³²

¹³² This photograph was made by the famous photographer Joel-Peter Witkin ('Man with dog', 1990).



Photograph 3¹³³

¹³³ Andreja Pejic, model. She identifies now as a woman, but this photograph was taken before that.



Photograph 4¹³⁴

¹³⁴ Jacob Tobia, writer, producer and author.



Photograph 5

I showed the photographs during this part of the interview, asking the participants to describe them and to give their opinion about the hypothetical inclusion of those individuals in their workplace. It goes without saying that the attitudes expressed in relation to the photographs must be understood within the argumentative context created during the interview. For instance, participants probably would not have wondered whether the individual in the first photograph was 'actually a woman' if previously we had not talked about trans* issues. Yet, that kind of question is indicative of the way sex/gender categories are constructed.

I showed the photographs one by one starting with the photograph number 1 and finishing with the number 5 and asked the participants to describe each photo. In the first version of the interview guide employed in group interview 1 the specific question was *'quel est le genre de cette personne?'* At that moment I realised that I was myself leading them to classify people according to gender. I thus modified the question in the interview guide and just asked *'pouvez-vous décrire cette personne?'* in the following interviews. However, the participants kept on classifying the person into a sex/gender category. This is in part explained by the rhetorical context of the interview: the task to describe the photographs took place right after the discussion over the definition of trans* people. This rhetorical context made the participants put into brackets the assumption that everybody is cisgender. Moreover, they also classified people according to sex/gender categories on many other occasions during the interviews, which shows the importance of sex/gender as a primary organisational principle of society.

After their description of the people in the five photographs, I asked them about the possibility of hiring them in their workplaces and having them as colleagues. I also asked about the idea of working with any trans* person and the obstacles that a trans* individual might encounter in their workplaces. For example: *'pensez-vous qu'une personne trans serait acceptée pour travailler à la police? et ici dans votre service?'*, *'quels seraient les obstacles auxquels une personne trans serait confrontée dans ce métier? et dans votre service?'* Sometimes I also added some information, such as the type of letter ('M' or 'F') that appears in the identity documents of the person. This information is fictional.

The last set of key questions concerned workers' views on the *Loi relative à la transsexualité*. However, in the interest of readability and coherence, I decided not to include these questions and the

corresponding sections of the interview in the thesis. On the one hand, there is already a large number of issues covered in the interviews. The presentation of the results of this last part would have added another chapter to the thesis, increasing its length. On the other, these questions were designed at the beginning of the doctoral work. At that time, the *Loi relative à la transsexualité* was still in place but, as I explained, there was a governmental agreement to change it. I thus found interesting to ask workers about their opinion on that Act. However, my research object evolved and this question is not directly related to the definition of the worker subject and work relations. Therefore, I will present these results in a separate scientific paper.

The concluding questions were very general questions concerning their opinion about the social relevance of the matter and measures that in their view could be set to prevent discrimination.

I finalised the interviews by giving them the opportunity to add comments and/or express their opinion about the interview. Following the step, I gave them the debriefing letter (Appendix V) and said some words of acknowledgement. In the debriefing letter, I explained the research objective, the theoretical and political stance that I adopted in the study and the reason why I used qualitative methodology. I also gave them my university email address in case they wanted to contact me. I also told them I would send them by email the results of the analysis when it would be finished¹³⁵.

The extent to which I was successful at breaching sex/gender norms through the questions that I prepared and the photographs that I showed is evident in workers' silences and expressions of surprise¹³⁶. Statements such as *'je ne me suis jamais posé la question'* (François, group interview 1, 29 March 2016) were constantly repeated by participants throughout the interviews. These statements indicate the 'uninteresting reflexivity'¹³⁷ that the workers have towards what is established as the norm.

¹³⁵ I will send them the thesis.

¹³⁶ See Chapter 6.

¹³⁷ See point 3.1.2. of this chapter.

➤ Transcription of the interviews

The interviews were audio recorded and thus needed to be transcribed¹³⁸. Transcribing implies the transformation of oral language in written text. Contrary to what some people may think, transcribing is not a technical task but an interpretative and constructive one (Bassi Follari, 2015). The transcription must be as close to what happened during the oral interaction as possible. However, it will always have fewer details than the actual conversation. Transcribing is thus a social practice during which a series of decisions must be taken concerning what elements to include in the transcription (speech elements, para-verbal communication, contextual elements, etc.).

According to Bassi Follari (2015), the decision about the elements to include in the transcription can be taken on the basis of what is useful for the particular study. Based on his adaption of the transcription code of Jefferson (2015), the code that I employed to transcribe the interviews includes -apart from the conventional signs for pauses and secondary ideas- elements such as changes in tone of voice (higher or deeper), ideas or words without finishing, accentuated words or syllables, sudden and voluntary interruption of a word and the duration of non-conventional pauses (seconds), laughter. I included these elements because I wanted to examine participants' reactions towards the breaching of norms described above. The transcription code is described in table 13 below.

The three first interviews (group interviews 1, 2 and 3) were first transcribed by myself and then proofread by a master's student who was a French native speaker¹³⁹. The group interviews 4 and 5 were first transcribed by the master's student following some training on the transcription code and then proofread by myself. I took some notes on events taking place during the interviews -such as people leaving and entering the room, phone interruptions, and non-verbal communication that was not registered in the audio (such as particular movements the

¹³⁸ Nowadays some software allows for a direct analysis of audio or video data. However, it requires experience and a lot of practice.

¹³⁹ I thank Camille Courtois for her systematic work.

participants made with the hands) and I added this information to the transcriptions.

Participants were rendered anonymous by using fake names in the transcription of the interviews and by changing the real name of the organisations they worked for. The transcriptions can be found in Appendix VII.

Table 13. Adaptation of the transcription code of Jefferson (Bassi Follari, 2015)

Sign	Use
.	Minor change of topic or starting off a new idea
,	Short pause
?	End of a question
↑XXX↑	Changes in tone of voice (higher)
↓XXX↓	Changes in tone of voice (deeper)
...	Ideas or words without finishing, without extension of the sound
:::	Extension of a sound
<i>Italics</i>	Foreign words or argot
CAPITAL LETTERS	Voice volume higher than usual
°XXX°	Whisper
-XXXX -	Secondary ideas
« XXX »	Quotes
<XXX>	Accelerated speech
>XXX<	Slow speech
-	Sudden and voluntary interruption of a word
It's me	Accentuated word or syllable
(XXX) or [XXXX (XXX)]	Secondary ideas
(3)	Duration of non-conventional pauses (seconds)
☺	Speech while laughing
☹	Speech while crying
(())	Non-verbal or context information
(x)	Stuttering, stammering, doubting
(incomprehensible, 4)	Incomprehensible (seconds)

➤ Ethical concerns regarding the interviews

The ethical approval of the ethics committee of the Faculty of Psychology of the *Université libre de Bruxelles* was granted. The committee examined the overall description of the study and the interview setting, the invitation letter that I was going to send to the future participants and the debriefing letter that I prepared to give them after the interview (Appendix V). The participants had to give their written informed consent to the interview being audio recorded and the written version of it being used for research and teaching purposes (Appendix VI).

In spite of these precautions, some ethical issues arose during the interviews. As you may note, in the invitation letter I used the French term '*genres*' in the plural ('*autour des genres*', '*diversité des genres*'). Whereas in English 'gender' is not usually used in the plural in this context, this is common use in French. In English, it would be strange to say 'diversity of genders' or 'equality between the genders' because the notion of gender contains already a relational aspect. In French, however, '*genre*' is often used as a substitute for each category in the same fashion '*sexe*' is used: '*le genre (sexe) féminin*', '*le genre (sexe) masculin*'. Therefore, in French it admits the plural form ('*les genres*', '*diversité des genres*', '*égalité des genres*') and it is usually assumed it refers to the dichotomy 'woman and man'. However, strictly speaking, '*genres*' in the plural form does not specify how many categories it refers to. It only establishes that there is more than one.

I drew on that ambiguity to introduce the research topic to the potential participants in the letter for several reasons. On the one hand, I wanted to cover a wide range of topics concerning sex/gender categories during the interview, not only trans* issues. On the other, I was afraid that if I wrote that I wanted to study transphobia at work, the workers would not have felt concerned to participate in the interview or would have taken a defensive stance from the beginning. I did not want to frame the study as an accusation of transphobia. However, such an ambiguous description of the study made some workers feel deceived during the interview. They understood the term '*genres*' not even as a binary category, but as a synonym for 'woman'. Therefore, they assumed the interview was about the situation of women in their respective professions and workplaces. In the following quotes, the participants introduce themselves and explain their motivation to participate in the interview, illustrating that assumption:

Quentin. Euh, également chargé de projet en promotion de la santé. Et mes motivations sont, comme celles de Claire, de contribuer, mais aussi euh, euh::: la méthode du focus group m'intéresse et donc je trouvais ça chouette de l'expérimenter en tant que participant. Et puis la thématique aussi est intéressante, particulièrement dans l' travail social, où les femmes sont souvent sur-représentées. Voilà'.

(Quentin, group interview 3, 10 May 2016)

Moi c'est Stéphanie, et::: beh oui, il fallait des volontaires et étant une femme euh, c'est vrai qu' ça pouvait ☺ être sympa euh de participer à ce genre de débat ☺. Donc euh, voilà. Même chose : on a répondu présent'.

(Stéphanie, group interview 5, 26 August 2016)

Moi c'est Ginette. C'est aussi pour aider Mónica puisque Mónica demandait quelque chose, on était content de lui faire plaisir. Et puis aussi parce que c'est... dans le secteur informatique euh... je trouve que c'est un::: problème euh... assez aigu hum, donc... Voilà'.

(Ginette, group interview 1, 29 March 2016)

Quentin says that the topic ('diversité des genres'/'égalité des genres') is interesting because 'women are over-represented in social work'. Stéphanie states that 'being a woman' she finds it nice to participate in 'that kind of debate'. For her part, Ginette claims that in the informatics sector 'it is an acute problem'. They are thus implicitly framing the topic as 'work discrimination against women'.

As I explained above (see 'Preparation of questions and selection of photographs'), during the interview the questions followed a certain order, introducing first a discussion about women and men relations at work and transitioning towards trans* issues afterwards. As a result, many participants were surprised that I asked questions about trans* issues. Whereas some of them were just surprised but open to discuss these issues, others took a defensive stance. In particular, Stéphanie was apparently so troubled by this shift that she asked me directly in the middle of the interview why we were talking about trans* people:

Stéphanie : *J' peux vous poser une question ?*

Chercheuse : *Oui.*

Stéphanie : *Pourquoi vous avez votre euh::: votre interview, fin votre étude, sur l- les transgenres, transsexuels... J- je comprends pas pourquoi ?*

Chercheuse : *À votre avis ?*

Stéphanie: *Ben, c'est qu' i' doit y avoir une problématique face à ça et not-, notre boulot, parce que::: C'est ça ?*

Chercheuse : *Je réponds::: après.*

Stéphanie : *Ouais. Parce que ça, ça- Je m' demande ((Chercheuse en même temps : Je laisse, après on peut commenter euh:::)) pourquoi on accentue très fortement là-d'ssus euh. Ça va.*

(Group interview 5, 26 August 2016)

As it was the middle of the interview, I decided to leave the answer for the end of the conversation and Stéphanie seemed satisfied with it. At the end of the conversation, I explained the reasons and she told me that it was fine but that it would have been better to openly tell them from the beginning that we would have talked about trans* people. I apologised for making her feel deceived.

However, I also think that this episode is very significant in two senses. On the one hand, as you can see in the quote above, Stéphanie explains my interest in discussing trans* issues with them because '*c'est qu' i' doit y avoir une problématique face à ça et not-, notre boulot, parce que::: C'est ça ?*'. When she asks me why I ask them so many questions about trans* issues, she shows the concern that I am labelling police people as prejudiced. In fact, throughout the whole interview Stéphanie takes the stance of advocator of her profession to rebut the widespread idea that the police is not only a transphobic, but also a sexist and racist institution. In fact, she constantly claims that there is no discrimination against women and gay people in the police. This happened with her colleagues as well, but to a lesser extent. The common sense notion that all police people are prejudiced and conservative led the participants in this group to insist a lot on the idea that they are open-minded.

On the other hand, this episode also shows what is taken as the norm and what is taken as the exception. In the invitation letter, I did not mention that we would talk about women and men, I only wrote '*diversité des genres*'. The same thing happened when I introduced the study at the beginning of the interview. Still, none of them was surprised or felt deceived because I asked questions about women and men at work. However, some of them felt this way because I introduced trans* issues in the interview. In other words, trans* issues are taken to be a minority issue, something that affects only certain individuals, something that

does not concern them. It seems also something that cannot be discussed without previous warning. However, if as a researcher I warn participants about the ‘exceptionality’ of the topic to be discussed, I would be myself producing trans* as a problem. This tension opens important questions concerning research ethics in general and the interview/survey techniques in particular. This is also the reason why many discursive psychologists recommend to collect rather ‘natural data’ (i.e. data occurring in natural contexts without the researcher’s intervention) (Potter & Hepburn, 2005, 2012). However, collecting natural data, in this case, involves other types of concerns.

3.2.2.2. Data analysis

A discourse analysis was carried out to identify the discursive practices used by workers to define sex/gender categories (specific obj. 3) and to define the (gendered) worker subject (specific obj. 4). The analysis entailed several steps. First, I read all the interviews several times, I annotated remarks and noticeable terms employed by the workers and examined the overall rhetorical context of each group interview (topics discussed, agreements and disagreements, controversies, stances taken by different workers). These first readings allowed me to become familiar with the material.

Second, I identified all the excerpts in which the workers *employed* sex/gender categories. The employment of sex/gender categories in speech refers to the use of nouns directly concerning sex/gender classifications such as *femme*, *homme*, *fille*, *garçon*, *transgenre* and *transsexuel*, but also general nouns referring to people (e.g. *éducatrice*, *informaticien*, *fils*), as well as the use of personal pronouns (e.g. *elle* or *il*) and adjectives applying to people (e.g. *belle*, *beau*). Taking into account the fact that, like all Latin languages, French is a gendered language and the feminine/masculine dichotomy is embedded in its grammar (Chevalier & Plante, 2014), sex/gender categories were actually employed by the workers each time they talked about people, including themselves and each other. In other words, sex/gender categories were employed *all the time* throughout the interviews, regardless of whether they were the topic of discussion or not.

Third, taking into account the ubiquity of sex/gender categories in speech, I established a distinction between their use *tout court* during social interaction and their use within a description, explanation or evaluation. The following utterances represent both uses respectively:

Moi c'est Stéphanie, et::: beh oui, il fallait des volontaires et étant une femme euh, c'est vrai qu' ça pouvait ☺ être sympa euh de participer à ce genre de débat ☺.

(Stéphanie, group interview 5, 26 August 2016)

'Transgenre j' verrais plus ça dans la manière de, de changer son apparence tout en restant euh::: un homme ou une femme mais de changer son apparence'.

(Stéphanie, group interview 5, 26 August 2016)

In the first excerpt, Stéphanie uses the term '*femme*' *tout court* (without describing, explaining or evaluating it) to identify herself and explain why she wanted to participate in the interview. In the second, excerpt she employs the term '*transgenre*' within the description of the category. At the same time, she makes use of the categories '*homme*' and '*femme*' *tout court* in the same excerpt. This distinction of uses is based on the ethnomethodological principle suggesting that the norm is inherent to action and thus does not need to be described or explained. In the first and second utterances, the categories '*femme*' and '*homme*' are just employed without a description because the speaker assumes everybody knows what she means (the norm). The term '*transgenre*' is however described.

Fourth, I identified the excerpts in which the workers use sex/gender categories *tout court* and I analysed the gendered grammar forms being used and the characteristics of the individual to which they were applied. I focused on the use of sex/gender categories *tout court* in three particular moments during the interviews: when I asked the workers to describe the people in the photographs, when the workers talked about themselves and/or about their colleagues, and when they spontaneously shared their experiences about 'troubling moments' concerning sex/gender categories (e.g. past experiences of not knowing if someone is a girl or a boy, witnessing someone's gender transition). In order to analyse gendered grammatical forms, I paid attention to the use of the feminine or masculine form of nouns, pronouns and adjectives and the characteristics of the people to which they were applied. Taking into account the centrality of the body and the physical appearance in the attribution of people to a sex/gender category, the use of photographs

allowed me to identify variability in the use of feminine or masculine grammatical forms according to the different visible physical characteristics of the five individuals. In other occasions, the characteristics of the individuals were described by the workers themselves.

Fifth, I identified the excerpts in which the workers describe, explain and/or evaluate sex/gender categories and I retrieved the controversies. Following DP principles, descriptions, explanations and evaluations are intertwined in the expression of attitudes. Therefore they are always an argumentative practice, although they are not always presented as such. Again, if there is argumentation about an issue, it is because the norm has been breached, which in turn creates a controversy. I classified the controversies into two types to facilitate both the analysis and the presentation of results. The first type of controversies concerns the definition itself of sex/gender categories, such as ‘man’, ‘woman’ and ‘trans*’. The second type of controversies relates to the definition of the ‘worker subject’. However, it is important to note that the two types are intimately linked because the worker subject is also a gendered subject. The distinction between the two responds only to analytical purposes.

I detected the specific controversies for each type. Controversies concerning the definition of sex/gender categories aroused only when norms constituting the binary opposition were breached, particularly in relation to sexual dimorphism, physical appearance (clothes, make-up, body attitude/position), the transition between categories, sexual practices and social roles. Controversies concerning the definition of the worker subject included issues such as (gendered) work skills, roles and positions within the work organisation, interpersonal relations at work but also the physical appearance of workers. It is important to clarify that the two types of controversies are intertwined and thus the same excerpt can contain both types.

Sixth, I identified the terms employed by the workers to refer to sex/gender categories, as well as the notions, metaphors and arguments to describe them, thereby taking particular stances in the different controversies. The classification of arguments suggested by Perelman & Olbrechts-Tyteca (1970) was particularly useful for this purpose.

Seventh, I examined the variability in the use of the different discursive devices identified both in relation to the definition of sex/gender categories and the definition of the worker subject. The identification of the variability allowed me to unveil the effects of the discursive practices enacted by the workers during the interviews. The discursive devices employed to define sex/gender categories produce and re-produce a distinction between ‘normative categories’ (women and men without any qualifying adjective) and ‘deviant categories’ (trans* women and men, intersex people, lesbian women, transvestites), thereby reproducing the binary opposition. The devices used to define the worker subject establish a distinction between the ‘gender indifference’ at work (the worker subject devoid of sex/gender and sexuality), the ‘positive gender diversity’ (the gender difference that is assumed and positively valued) and the ‘problematic gender difference’ (differences that are neither accepted nor tolerated at work). The three types of difference at work and the distinction between ‘normative’ and ‘trans*’ categories are mutually constructed. The distinction between these three types of difference at work has the effect of justifying the exclusion of people who breach gender norms at work—reproducing in turn those very norms—while at the same time presenting adherence to socially valued principles such as equality and diversity.

The results of the analysis are presented in two different chapters in the empirical section II. In Chapter 6, I present the discursive devices used to define sex/gender categories. In Chapter 7, I describe the discursive devices employed to define the worker subject and how the latter intertwine with the definition of sex/gender categories presented in chapter 6. For the convenience of the presentation of results, I selected the excerpts that illustrate best the use of each discursive device and also allowed me to reconstruct the argumentative context of each group interview in the most accurate way. I selected 53 quotes to illustrate the devices used to define sex/gender categories and 54 quotes to illustrate the devices employed to define the worker subject. I use more than one excerpt to illustrate a discursive device and they come from different group interviews. This allows me to show not only the *variability* but also the *regularity* in the use of discursive devices since the same device is employed in different groups to obtain the same effect. It is important to note that several discursive devices can appear in the same excerpt,

but I only use each excerpt once. Following the description of the discursive devices in each chapter, I display the variability in their use to elucidate the ideological effects.

The research questions and objectives of the thesis focus on the norms that constitute the binary opposition between women and men. This is so because, as I explained before¹⁴⁰, the notion that humankind is naturally divided into two groups—women and men—is generally taken for granted. The interest of the analysis was thus directed towards how that binary opposition is made. However, I could observe a few moments in which the norm that establishes two mutually exclusive categories were put into question by the workers. I attributed this to the social interaction of the interview. Drawing on the ethnomethodological principles already discussed, the norm that divides human being into two mutually exclusive categories is so taken for granted that it is not seen. Indeed, there seems to be no alternative to it, it dominates practically the entire social life. The contradictions that emerged during the interviews, together with the questions that I made, rendered the binary opposition norm visible, eliciting workers' reflection upon it. Although scant, I find these moments encouraging and hopeful, the reason why I decided to include them in the thesis. These moments are presented in an additional and shorter chapter called '*Addendum*' at the end of the empirical part II.

¹⁴⁰ See Chapter 1.

3.2.3. Method overview

The method of the thesis can be synthesised as illustrated in table 14.

Table 14. Synthesis of method

Case study design			
Case I: Documentary study <i>The legal certification of sex in Belgium</i>		Case II: Interview study <i>The definition of the (gendered) worker subject</i>	
Data collection	Data analysis	Data production	Data analysis
Search strategy:	*Discourse analysis of <i>Loi relative à la transsexualité</i> and <i>Loi transgenre</i> :	Group interviews:	*Discourse analysis of workers' constructions of sex/gender categories:
- Acts and Circulars: Standard search of keywords in the <i>Moniteur Belge</i>	- Identification of discursive practices	- 5 group interviews with co-workers	- Identification of discursive practices
- Second search following legal reasoning	- Analysis of variability and elucidation of effects	- 5 workplaces chosen on the basis of horizontal segregation	- Analysis of variability and elucidation of effects
- Search of documents attesting parliamentary work in website of Chamber of representatives.	*Qualitative content analysis of whole legislative corpus:	- Semi-directed interviews	*Discourse analysis of workers' constructions of the worker subject:
Inclusion criteria:	- Application of theory-driven categories	- Questions concerning both the binary organisation of work and trans* issues	- Identification of discursive practices
- Legislative texts and sections regulating the mention of sex in the civil status	- Analysis of variability and elucidation of effects	- Interviews audio-recorded and transcribed	- Analysis of variability and elucidation of effects

EMPIRICAL SECTION I

Chapter 4.

Discursive practices constructing the binary opposition in Belgian ‘trans* legislation’: From ‘overt pathologisation’ to ‘covert psychologisation’

How has the definition of women and men changed between the *Loi relative à la transsexualité* and the *Loi transgenre* so that the binary opposition between the two categories is maintained for trans* people? To answer this question, in this chapter I specify the discursive practices used in both Acts to maintain de binary opposition (specific obj. 1). The two Acts are presented in chronological order (Sections 4.1. and 4.2.). For each Act, the results follow the logic of parliamentary work. I first describe the proposed bill and I outline the controversies expressed about it by the different parties involved in parliamentary work. Following the step, I specify the discursive devices and how they are employed by the different parties to argue in favour of or against certain positions within the controversies. The controversies are thus presented in more detail on the basis of the different positions taken by the speakers. To conclude, I describe the changes incorporated in the final text of the Act as a consequence of the argumentative process. In the third section of the chapter (4.3.), I present the variability in the use of discursive devices both *within* each Act and *between* Acts. The variability of discursive practices within an Act allows for the elucidation of their ideological effects. The variability of discursive practices between Acts indicates changes in the argumentative context surrounding the legal certification of sex for trans* people over time. This allows us to see how the norms constituting the binary opposition between the legal sex markers ‘F’ and ‘M’ have changed, while at the same time they maintain the binary opposition.

4.1. *Loi relative à la transsexualité (2007)*

4.1.1. Description of the bill

The *proposition de loi* (Doc. Ch. 51 0903/001, 2004) was introduced to the Senate by some of its members in March 2004. It was introduced to allow transsexual people to modify in a ‘simple way’ the mention of sex in their civil status and, by extension, in their identity documents. Until then, the lack of legislation concerning transsexuality obliged transsexual people to turn to court in order to have their sex change legally recognised. To remove the obstacles associated with a judicial procedure, the bill proposes an administrative procedure before the civil registrar on the basis of several medical certificates.

The category to which the bill applies is ‘the transsexual’ (*le transsexuel*). In fact, the bill is called *Proposition de loi relative à la transsexualité*, being also the title finally taken by the Act (*Loi relative à la transsexualité*). Other terms such as ‘trans’, ‘trans*’ or ‘transgender’ are never used in the parliamentary documents¹⁴¹ or in the text of the Act.

In general terms, the bill defines the ‘transsexual individual’ as someone who experiences a lack of correspondence between their anatomical sex and the ‘intimate conviction’ they have about their sex. In the explanatory statement, the proponents of the bill explain that a surgical intervention allows transsexual people to match both elements and thus the legal recognition of their sex change was just *‘le prolongement logique de cette opération’* (Doc. Ch. 51 0903/001, 2004, p. 3). In other words, the bill was introduced to simplify the legal recognition of a sex change that had already occurred. However, the analysis of the parliamentary documents highlights the difficulty to define what constitutes a ‘sex change’. In other words, where exactly the Act sets the boundary between the two sexes to allow the legal recognition of the change. The discursive devices employed to define that boundary are presented in the next subsection.

¹⁴¹ The only exception is the Dutch term *‘gendervariante personen’* (‘gender-variant people’) used twice by the *Genderactiegroep* to denounce the simplistic definition of trans* people included in the bill (Doc. Ch. 51 0903/006, 2006, p. 41 & 65). Interestingly, the term was translated into French as *‘variation de sexe’* (‘sex variation’) and *‘diversité sexuelle’* (‘sexual diversity’), making reference to sex instead of gender.

The chapters of the bill that are directly related to the modification of the mention of sex in the civil status are Chapter II '*Conditions minimales à respecter pour le traitement des transsexuels*' (Doc. Ch. 51 0903/001, 2004, p. 9-10) and Chapter V '*Modification du code civil*' (Doc. Ch. 51 0903/001, 2004, p. 12-13). Chapter II establishes the conditions for the 'treatment' of transsexual people, including the definition itself of transsexual, whereas Chapter V defines the conditions for transsexual people to modify the mention of sex in their civil status.

The elements contained within the definition of transsexual in Chapter II include dissatisfaction with their own anatomical sex, a desire to remove their primary and secondary sex characteristics through hormonal treatment and reconstructive surgery and the aspiration to live 'as the other sex role without being noticed'. Such dissatisfaction is denominated 'gender dysphoria' in the bill and must have lasted for at least two years:

« Est considéré comme transsexuel, au sens strictement médical, toute personne qui souffre d'une insatisfaction en raison de son sexe anatomique sans qu'il s'agisse d'intersexualité physique et qui souhaite être libérée de ses caractéristiques sexuelles primaires et secondaires au moyen de traitements hormonaux et d'un traitement chirurgical reconstructif et vivre, en permanence et sans être remarquée, conformément à l'autre rôle sexuel. Cette dysphorie de genre doit persister, de façon durable et ininterrompue, pendant au moins deux ans » (Doc. Ch. 51 0903/001, 2004, p. 9, art. 2).

Chapter II of the bill also establishes that the hormonal and surgical sex reassignment have to be carried out by a multidisciplinary medical team including, at least, a psychiatrist, an endocrinologist and a plastic surgeon (Doc. Ch. 51 0903/001, 2004, art. 3). The sex reassignment can only be performed in patients who can be considered transsexual '*au sens strictement médical*' (Doc. Ch. 51 0903/001, 2004, p. 9, art. 4). This excludes people with genetic anomalies, intersexuality and any clinical syndrome for which gender dysphoria can constitute a symptom. Moreover, the hormonal and surgical adaptation must be 'the most appropriate therapy' according to a psychiatrist and an endocrinologist.

Chapter II also established that surgical sex reassignment can only be performed if the patient is an adult and gives their informed consent. Furthermore, the patient must be aware of the physical, psychological

and social consequences of the surgery, especially concerning the '*stérilité irréversible*' (Doc. Ch. 51 0903/001, 2004, p. 10, art. 5). This chapter also recommends psychological help for the partner and children of the patient (Doc. Ch. 51 0903/001, 2004, p. 10, art. 6).

Chapter V stipulates that the individual who has the 'intimate, constant and irreversible conviction' that he or she belongs to 'the other sex', has adopted the 'corresponding sex role' and had undergone a 'reconstructive surgical intervention' can request the sex change to the civil registrar officer (Doc. Ch. 51 0903/001, 2004, p. 12, art. 12). The request has to be accompanied by a declaration from the doctors attesting that the individual has such conviction; he or she has been 'adapted to the desired sex' as much as possible and according to what is medically reasonable and is not able to procreate any more:

« 1° que l'intéressé a la conviction intime, constante et irréversible d'appartenir à l'autre sexe que celui qui est indiqué dans l'acte de naissance ; 2° que, sur le plan physique, l'intéressé a été adapté au sexe désiré dans toute la mesure de ce qui est possible et justifié du point de vue médical; 3° que l'intéressé n'est plus en mesure de procréer conformément à son sexe initial. »

(Doc. Ch. 51 0903/001, 2004, p. 12-13, art. 12).

The *Loi relative à la transsexualité* was adopted on 10 May 2007. The legislative process lasted more than three years. Although there was a general agreement on the need to legislate the modification of the mention of sex for 'transsexual people', the proposed bill raised many controversies, disagreements and doubts on the parliamentarians in place at that time. Many hearings were organised with experts, especially with doctors and legal scholars. The Belgian bioethical committee was also consulted. Several trans* groups were also invited to speak. These stakeholders also expressed their critical views on the bill.

The criticisms and controversies raised during parliamentary work concerned: the inclusion of a fixed definition of transsexuality and its treatment within the text of the Act (Chapter II of the bill), the exclusion of intersex people and minors, the obligation of 'sexual reassignment' surgery and the extent of physical transformation required by the bill, the requirement for transsexual people to be unable to procreate, and the establishment of an administrative procedure (*versus* a judicial one).

In the following subsection I present how both parliamentarians and experts argue about the different controversies and the particular stances taken. The presentation of results is organised around the three broad types of discursive devices identified: the mind-body distinction of notions, the medical rhetoric and the notion of ethics. In the next subsection I describe how each type of discursive device is employed in specific controversies to argue for particular stances by the different parties participating in the debate. A summary of the findings is presented in table 15 below.

Table 15. Controversies, discursive devices and changes in the *Loi relative à la transsexualité*

Controversies about the initial bill	Discursive devices employed	Changes incorporated in the final text of the Act
<ul style="list-style-type: none"> • Inclusion of a fixed definition of transsexuality and its treatment within the text of the Act • Obligation for the treating psychiatrist and surgeon to be part of the same medical team • Obligation of ‘sexual reassignment’ surgery • Requirement for transsexual people to be unable to <i>procreate</i> • Establishment of an administrative procedure (<i>vs.</i> a judicial one) • Exclusion of intersex people • Exclusion of minors 	<ul style="list-style-type: none"> • The mind-body distinction of notions (synecdoche; metaphors: the body as a prison, metamorphosis, ‘<i>chemin de croix</i>’, ‘<i>parcours du combattant</i>’) • The medical rhetoric (argument of authority; analogies: treatment of cancer, euthanasia, change of nationality) • The notion of ethics 	<ul style="list-style-type: none"> • Fixed definition of transsexuality and its treatment <i>not included</i> within the text of the Act • Obligation for the treating psychiatrist and surgeon to be part of the same medical team <i>removed</i> • Obligation of ‘sexual reassignment’ surgery <i>remained</i>. • Requirement for transsexual people to be unable to <i>conceive</i> • Administrative procedure <i>remained</i> • Intersex people <i>remained excluded</i> from the Act • Minors were <i>included</i> in the Act

4.1.2. Discursive practices

4.1.2.1. The mind-body dichotomy and related metaphors: a distinction of notions

The mind-body dichotomy is a ‘dissociation of notions’ kind of argument. According to the Perelmanian rhetoric (Perelman, 1968; Perelman & Olbrechts-Tyteca, 1970), the dissociation of notions belongs to the group of arguments that allow structuring reality through the generalisation of a particular case. The distinction of notions is used when some descriptions are incompatible: the distinction allows the prioritisation of the notions/creating a hierarchy between the notions and thus their coexistence. The first notion is disqualified, whereas the

second establishes the criterion or norm to determine what is valid and what is not in order to restore coherence.

In this instance, the particular case is the so-called ‘transsexuality’, described as a ‘phenomenon’ in which there is an incompatibility between the sex that has been assigned to an individual at birth and their personal self-classification. For instance, someone who has been assigned male at birth considers herself a woman. The incompatibility needs to be addressed to re-establish consistency. This inconsistency becomes apparent each time transsexual people have to show their identity documents, leading to problems and obstacles in their daily life. Hilde Vautmans, one of the proponents of the bill, expresses it in this way to claim for an administrative procedure to modify the mention of sex in the civil status:

« Après avoir changé de sexe, les transsexuels n’ont plus aucun droit parce que leur carte d’identité ne correspond plus à leur réalité. Ils sont pris pour des travestis qu’ils ne sont pas. Ils ne peuvent ni acheter ni louer une maison et ne peuvent pas davantage voyager. Nous estimons dès lors qu’une procédure purement administrative s’indique au lieu d’une procédure judiciaire » (CRIV 51 PLEN 224, 2006).

The mind-body distinction is used here to determine under which circumstances the Act can accept such modification, that is, when an individual’s own classification of his or her sex can be legally recognised and when it cannot. The distinction of notions is based on the contrast of two groups of terms and expressions, one related to the mind or psyche and the other to the body. This distinction is expressed in the definition of transsexual included in the bill:

« Est considéré comme transsexuel, au sens strictement médical, toute personne qui souffre d’une insatisfaction en raison de son sexe anatomique » (Doc. Ch. 51 0903/001, 2004, p. 9, art. 2).

The notion of conviction (‘*conviction*’) is the main term employed to refer to the mind or psyche, being repeatedly used during the debates and in the text of the bill. A conviction is a ‘state of mind of someone who firmly believes in the truth of what they think’¹⁴². The notion thus refers

¹⁴² Larousse dictionary

to the mind, thoughts and beliefs. Terms and expressions related to this first notion also include *'sur le plan psychique'*, *'se sentir (appartenir à l'autre sexe)'*, *'identité (sexuelle)'*, *'souhaiter (changer de sexe)'*, *'(être) déterminé'*, *'questionnement individuel'*, *'recherche de son identité'*.

Terms and expressions related to the second notion –the body– include *'sexe anatomique'*, *'situation physiologique'*, *'caractéristiques physiques'*, *'sexe biologique'*, *'sur le plan hormonal et chirurgical'*, *'sexe physique'*, *'organes reproducteurs'*, *'vagin'*, *'pénis'*, *'physiologie'*, *'sur le plan physique'*, *'apparence physique'*. The contrast between notions is also carried out through the metaphor of the body as a prison in which the person's identity is confined:

« Un transsexuel est une personne qui, sur le plan psychique, social et sexuel, évolue comme appartenant à l'autre sexe. Il est convaincu –en ce qui concerne le sexe– d'être prisonnier d'un corps qui ne lui correspond pas. Cette dualité intérieure cause un problème d'identité énorme, ce qui a des répercussions sur le fonctionnement individuel et social » (Doc. Ch. 51 0903/001, 2004, p. 5).

« [D]es personnes emprisonnées dans un corps qui, très clairement, ne correspond pas à leur identité sexuelle » (Doc. Ch. 51 0903/006, 2006, p. 59).

Within this mind-body distinction, the one that is used as criterion or norm to determine the validity of someone's sex is the body, whereas the mind is not considered enough to legally reclassify the sex of the individual. Specifically, the criterion to determine such validity are sexual characteristics, particularly genitalia. This is illustrated by the polyphonic use of the term 'sex' meaning both the category to which one belongs and the sexual organs themselves. In the following three utterances sex refers to a specific group or category of people, not to the sexual organs:

« [L]a stérilité irréversible n'est plus une condition dans le protocole de traitement de l'UZ de Gand, étant donné que les personnes de sexe masculin peuvent faire congeler leur sperme, et qu'elles peuvent procréer, si elles le souhaitent, après avoir suivi la procédure appropriée » (Doc. Ch. 51 0903/006, 2006, p. 44).

« Suffira-t-il à l'intéressé de dire qu'il a la conviction intime, constante et irréversible d'appartenir à un autre sexe que celui indiqué dans l'acte de naissance pour pouvoir

<https://www.larousse.fr/dictionnaires/francais/conviction/19012?q=conviction#1890>
3. Translation mine.

demander à changer de sexe et de prénom ? » (Doc. Sén. 3-1794/5, 2007, p. 10).

« Il faut combattre l'injustice à l'égard des transsexuels qui ne peuvent changer de sexe qu'en passant par le tribunal » (Doc. Ch. 51 0903/006, 2006, p. 58)

Les personnes de sexe masculin, whose literal meaning is 'people of male sex', could also be translated as 'male' or 'men'. In these utterances, 'sex change' does not refer to surgery but to a modification of the category to which an individual is assigned. In the second utterance, the speaker questions the possibility of sex change, meaning changing the legal category, without undergoing surgery. Sex change is used with a similar meaning in the third utterance given that court decisions concerned the change of category. Courts did not rule on any type of bodily surgery or physical modification. In contrast, in the following utterances sex is used to mean sexual organs:

« L'intervenante n'admet pas la situation dans laquelle un homme subit une opération de changement de sexe et est désigné comme femme sur sa carte d'identité, tout en conservant un sexe masculin et la possibilité de produire des spermatozoïdes » (Doc. Ch. 51 0903/006, 2006, p. 58-59)

« En ce qui concerne plus particulièrement les hommes qui décideraient de changer de sexe, on pourrait imaginer par exemple que certains souhaitent faire conserver leur sperme » (Doc. Ch. 51 0903/005, 2006, p. 7)

« Le changement de sexe s'avère donc possible et peut offrir un avenir plus agréable aux personnes transsexuelles. L'intervention chirurgicale ne signifie cependant pas encore pour autant la fin du chemin de croix » (Doc. Ch. 51 0903/001, 2004, p. 5).

In these utterances, '*sexe masculin*' does not mean the category male or man, but sexual organs –specifically the penis and testicles (organs that produce spermatozooids)– and the expression 'sex change' implies body surgery. In the second utterance the speaker implies that sex change is genital surgery by affirming that some men can still wish to preserve their sperm. This meaning is ever clearer in the third utterance in which 'sex change' and 'surgical intervention' are presented as synonyms. This rhetorical strategy consists of using the name of a part to refer to the whole (synecdoche). In other words, to be a man *or* a woman is reduced to have penis and testicles *or* vulva and vagina.

The use of the second notion of the mind-body distinction as criterion or norm to determine someone's sex/gender category justifies the need for surgery and body modifications to have one's category reclassified. The following exchange of opinions at the Senate illustrates this. Two members of the Senate are concerned that a hormonal treatment would suffice to modify the legal mention of sex without having to undergo reconstructive surgery. The minister clarifies that it is always assumed that surgery has taken place. The absence of surgery is only the exception that proves the rule:

« Mme de T' Serclaes pense que le but ne doit pas être de pouvoir demander une modification de son état civil après un simple traitement hormonal.

M. Maboux constate que le § 2, 2o, prévoit que « l'intéressé a subi une réassignation sexuelle (...) dans toute la mesure de ce qui est possible et justifié du point de vue médical ». Or, un traitement hormonal permet une réassignation sexuelle. Cela suffit-il pour que l'intéressé obtienne un acte de l'état civil mentionnant le nouveau sexe ?

La ministre relève que dans le cas de la transsexualité, on part du principe qu'une opération a lieu, sauf si cela représente un danger pour la santé de l'intéressé. Il appartient aux médecins d'en juger et la mention doit en être faite dans la déclaration. L'opération est le principe, ne pas opérer est l'exception » (Doc. Sén. 3-1794/5, 2007, p. 16-17).

Terms and expressions evoking physical transformation are widespread in the bill and parliamentary documents: 'opération', 'adapter le mieux le sexe anatomique au sexe désiré', 'subir une intervention reconstructive', 'transition sexuelle', 'réassignation sexuelle', 'adapter les caractéristiques physiques', 'opération de transformation', 'reconstruction sexuelle', 'changement physique', 'mesures de conversion sexuelle', 'opération de réassignation', 'intervention chirurgicale', 'opération de changement de sexe', 'gonadectomie', 'ovariectomie', 'transformation physique (qui les fait correspondre au sexe désiré)'.

The need of body modifications for the reassignment is also expressed through the metaphor of the metamorphosis, evoking the image of transsexual people transforming themselves from a caterpillar to a butterfly:

« [I]l est peu vraisemblable qu'un transsexuel originellement masculin se soucie, à la veille de sa métamorphose, de faire conserver des spermatozoïdes » (Doc. Ch. 51 0903/006, 2006, p. 69).

It is important to note that the need of surgery and body modifications appears in the bill not only as a condition to legally change the mention of sex in the civil status, but also as a desire of transsexual people themselves. In other words, it is taken for granted that all transsexual people feel a kind of disgust for their own body and desire to modify their sexual characteristics at all cost. Therefore, the modification of the legal mention of sex is depicted as a recognition by the law of a body change that has already taken place. This idea is clearly expressed in the summary of the bill and the definition of transsexual included in article 2 of the bill:

« Est considéré comme transsexuel (...) et qui souhaite être libérée de ses caractéristiques sexuelles primaires et secondaires au moyen de traitements hormonaux et d'un traitement chirurgical reconstructif » (Doc. Ch. 51 0903/001, 2004, p. 9, art. 2).

« Une intervention chirurgicale permet à un transsexuel de faire coïncider sa conviction intime et son apparence physique. Le changement de sexe et de prénom dans des documents tels que l'acte de naissance et la carte d'identité semble constituer le prolongement logique de cette opération » (Doc. Ch. 51 0903/001, 2004, p. 3).

The use of the body to define sex/gender categories and the need of some degree of physical transformation to be reclassified is generally accepted by all the speakers –parliamentarians and stakeholders. Only the *Gender Actie Groep* criticised the reduction of the feminine or masculine identity to some body parts, introducing in the discussions the notion of gender:

« Le législateur se raccroche à une fiction simpliste réduisant l'identité masculine ou féminine à la seule présence d'un pénis ou d'un vagin, ou de ce qui peut en tenir lieu après une reconstruction médicale. Le législateur nie implicitement l'idée selon laquelle l'identité sexuelle¹⁴³ peut différer du sexe biologique, alors que la proposition de loi à l'examen vise précisément à aider ces personnes. Le terme «transsexuel» témoigne déjà à lui seul d'une obsession à l'égard de l'aspect sexuel, alors qu'il s'agit en réalité d'un problème de genre » (Doc. Ch. 51 0903/006, 2006, p. 42).

Without challenging the mind-body distinction, the group questions the need of surgery and argues that the only valid criterion to know

¹⁴³ The original utterance in Dutch uses the term 'genderidentiteit'.

someone's sex should be the personal conviction of the individual, advancing an argument that will be used ten years later in the following Act (the *Loi transgenre*¹⁴⁴):

« Dans sa version actuelle, la proposition de loi exclut en effet toutes les personnes qui ne peuvent ou ne veulent pas subir l'opération de changement de sexe et qui ne relèvent donc pas de la définition de la transsexualité » (Doc. Ch. 51 0903/006, 2006, p. 41).

« Le Gender Actie Groep plaide en faveur d'un élargissement du champ d'application de la proposition de loi, de sorte que les personnes ayant la conviction intime, constante et immuable d'appartenir à l'autre sexe que celui qui est indiqué dans l'acte de naissance mais qui ne peuvent ou ne souhaitent pas subir d'opération de réassignation sexuelle, soient traités de façon plus humaine par les instances administratives » (Doc. Ch. 51 0903/006, 2006, p. 42)

Although other stakeholders criticised the need of surgery established by the bill, they mainly did so on the basis of potential medical risks or the lack of medical means to perform a reconstruction of the sexual organs (for instance, the reconstruction of a penis for trans* men). However, as the previous two utterances show, the *Gender Actie Groep* criticised the need of surgery also by challenging the assumption that all transsexual people *desire* to get sexual reassignment surgery. They affirmed that some people could not or did not want to undergo such surgery. Nevertheless, they excluded those people from the definition of transsexuality, establishing a differentiation between transsexual people and 'gender-diverse people'¹⁴⁵. In other words, they called for an extension of the field of application of the Act, but did not seem to question the category 'transsexual'. Instead, they complexified the 'trans realm' by adding a new category: gender-diverse people.

The use of the mind-body distinction to give coherence to the contradiction presented by transsexuality sustains the description of the sex change process as particularly long, difficult and painful. The 'logic' of sex change is described as a series of steps from the 'awareness of being transsexual' to surgery:

« La prise de conscience qu'ils sont transsexuels, qu'ils ne sont pas seuls et qu'un changement de sexe est possible, représente pour eux un soulagement et peut

¹⁴⁴ The *Loi transgenre* is presented in section 4.2. of this chapter.

¹⁴⁵ 'Genderdiverse mensen' in the original quote in Dutch.

constituer un tournant dans leur vie. Il faut en moyenne un délai d'un an pour poser le diagnostic de la transsexualité. Après le diagnostic on peut entamer le traitement hormonal, qui est lié aux premiers pas vers le changement du rôle sexuel au niveau social, le « real life test ». Ce changement ne s'opère pas non plus du jour au lendemain, il faut compter un an et demi à deux ans. On peut ensuite passer aux interventions chirurgicales, qui constitue la dernière étape » (Doc. Ch. 51 0903/001, 2004, p. 5)

However, the proposers of the bill claim that difficulties and obstacles do not end there, but continue when transsexual people try to have their sex change legally recognised because of the absence of a legal framework, what obliges them to go to court. The expression '*chemin de croix*', that is, the Way of the Cross, is used to describe the sex change process. This religious metaphor refers to the path Jesus walked to Mount Calvary where he was crucified and is used to emphasise the difficulties and obstacles that transsexual people must face. Another expression used in the same sense is '*parcours du combattant*', metaphor referring to a series of obstacles installed for the physical training of recruits for the battle. This image of transsexual people as individuals who face many obstacles and suffer is the main argument for the proponents of the bill to justify the need of legislation on transsexuality and the proposal of a 'simple' administrative procedure to modify the mention of sex in the civil status:

« Si nous ne pouvons pas changer grand-chose au calvaire médical que subissent les transsexuels, nous pouvons en revanche adoucir le calvaire juridique et administratif qu'ils subissent après avoir changé de sexe » (CRIV 51 PLEN 224, 2006, p. 27-28)

« Le sentiment de se sentir plus proche d'un autre sexe que du sien est déjà douloureux en soi; il était normal que le législateur se penche sur ce dossier et essaie de faire évoluer leur situation de manière à diminuer leur souffrance » (CRIV 51 PLEN 224, 2006, p. 29-30).

« [Q]u'en signant la proposition de loi à l'examen, il cherchait, tout comme Mme Déom, à mettre fin au parcours du combattant imposé aux personnes qui souhaitent subir une réassignation sexuelle et à leur offrir un système garantissant la sécurité juridique » (Doc. Ch. 51 0903/006, 2006, p. 58)

The mind-body distinction is also used by several stakeholders such as the surgeon, the bioethical committee and one trans* group to claim the inclusion of intersex people (called '*intersexuels*') within the field of

application of the Act. They equate the situation of intersexual and transsexual people and argue that the exclusion of the former is discriminatory. The assimilation of the two situations is carried out through the use of the mind-body distinction in two different ways. A first discursive strategy emphasises the mental aspect. It focuses on the ‘personal conviction’ (here called ‘*orientation sexuelle*’¹⁴⁶) of intersexual people for whom it is impossible to determine their physical sex, assimilating the psychological situation of intersexual and transsexual people. A second strategy emphasises the body aspect. It focuses on the body of transsexual people, presenting their brain as a form of intersexuality. The following utterances illustrate the two strategies respectively:

« Les dispositions relatives à la réassignation sexuelle et au changement de nom telles que présentées ici devraient également être applicables aux intersexuels et autres personnes souffrant de malformations congénitales qui empêchent de déterminer clairement le sexe au moment de la naissance et pour lesquelles on attend l'évolution de l'orientation sexuelle » (Doc. Ch. 51 0903/006, 2006, p. 57)

« L'exclusion des personnes qui présentent à la naissance une ambivalence anatomique au point vue sexuel (l'intersexualité) n'est pas admissible. On n'aperçoit d'ailleurs pas le motif de cette discrimination. Des études scientifiques¹⁴⁷ mettent en évidence des causes neurobiologiques au transsexualisme et l'assimilent à une forme d'intersexualité physique » (Doc. Ch. 51 0903/006, 2006, p. 33-34)

However, these arguments seem not to be accepted and the exclusion of intersexual people from the field of application of the Act remained. The minister stated that, in the case of intersexual people, it was not a modification of sex but a rectification of an initial mistake, for which a rectification procedure already existed:

¹⁴⁶ ‘*Orientation sexuelle*’ is not used here with the usual current meaning of sexual preference, but as a synonym of gender identity. The term is used in this sense in several occasions during parliamentary debates. For instance: *« Tout Belge qui, sur la base de son orientation transsexuelle, a la conviction intime, constante et irréversible d'appartenir à l'autre sexe que celui qui est indiqué dans l'acte de naissance »* (Doc. Ch. 51 0903/006, 2006, p. 54).

¹⁴⁷ Five scientific articles are cited in the text. They all address sex differences regarding the brain, the bed nucleus of the stria terminalis, neurones, and the hypothalamus. The use of the medical rhetoric is addressed below.

« La ministre répond que dans le cas des intersexuels, il convient de suivre la procédure de rectification parce qu'il s'agit d'une correction de sexe rétabli rétroactivement (Chapitre XXII De la rectification des actes de l'état civil, art. 1383-1385 du Code judiciaire) » (Doc. Sén. 3-1794/5, 2007, p. 12)

This reinforces, in turn, the idea that someone's 'true sex' can be found in the body and that transsexuality is ultimately a mental condition. As a matter of fact, the medical rhetoric employed in the bill and parliamentary documents describes transsexuality as a mental disorder. This rhetoric is described below.

4.1.2.2. Medical rhetoric: transsexuality as a mental disorder

The medical rhetoric is used in the bill and parliamentary work in combination with the mind-body distinction. This rhetoric is characterised by a range of terms and expressions related to the medical domain such as 'patient', 'médecins', 'praticiens', 'experts médicaux', 'docteur', 'corps médical', 'psychiatre', 'chirurgien', 'endocrinologue', 'diagnostique', 'syndrome clinique', 'problème de transsexualité', 'problème d'identité sexuelle', 'souffrir un syndrome', 'traitement', 'intervention', 'opération', 'moyens medico-techniques', 'protocole médical', 'soins', 'certificats médicaux', 'effet curatif', 'contre-indications', 'santé'.

The incompatibility between the sex that has been assigned to an individual at birth and their personal self-classification is not only sorted out by a mind-body distinction, but also by defining the 'phenomenon' as a disorder of the mind. This is clearly stated by the proponents of the bill in their explanatory statement, in which they use the label '*trouble de l'identité sexuelle*' or *TIS* in French ('gender identity disorder' or *GID* in English):

« Le terme scientifique pour nommer ce phénomène est «trouble de l'identité sexuelle» (*TIS*) » (Doc. Ch. 51 0903/001, 2004, p. 5)

'Gender identity disorder' was the diagnostic category included in the 4th version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-4) and the 10th version of the International Classification of Diseases (ICD-10) to classify transsexuality since 1994 and 1992 respectively¹⁴⁸. The bill thus adopts a medical –specifically a psychiatrist-

¹⁴⁸ A description of the two taxonomic and diagnostic tools is presented in Chapter 1..

terminology. Whereas the diagnostic label *'trouble de l'identité sexuelle'* is used in the explanatory statement, the term that is employed in the articles of the bill is *'dysphorie de genre'* (gender dysphoria). Gender dysphoria is the label that replaced 'gender identity disorder' in the latest version of the DSM published in 2013 but, as this Act illustrates, the term was already in use before then. Although gender dysphoria places the focus on distress rather than on gender nonconformity, trans* people are still labelled with a mental disorder diagnosis. The definition of 'transsexual' included in article 2 of the bill establishes that the gender dysphoria should last for at least two years in an uninterrupted way for someone to be considered 'transsexual':

« Cette dysphorie de genre doit persister, de façon durable et ininterrompue, pendant au moins deux ans » (Doc. Ch. 51 0903/001, 2004, p. 9, art. 2)

Medicine locates its truth within the scientific discourse, whereby 'the world is the way science says it is because there is transparent and simply verifiable correspondence between our scientific descriptions and the reality they describe' (Gillett, 2006, p. 1). Medical taxonomies are founded on the scientific realist idea of natural kinds, according to which terms represent objectively phenomena naturally occurring in the world. Medical knowledge is thus taken as valid knowledge because it is 'scientific'. This is the argument in which the proponents of the bill draw to claim the existence of gender identity disorder and gender dysphoria. In the explanatory statement (Doc. Ch. 51 0903/001, 2004), gender identity disorder is described as a 'scientific term' and, when asked about the duration of the disorder during at least two years, Vautmans states that the syndrome can be medically confirmed after two years:

« [E]lle [Vautmans] s'est abondamment documentée et est arrivée à la conclusion que toute personne qui souffre de ce syndrome pendant deux ans doit pouvoir être prise en considération. Son état peut être constaté médicalement » (Doc. Ch. 51 0903/006, 2006, p. 7).

The procedure to modify the mention of sex in the civil status proposed by the bill is based on the medical definition of the phenomenon and its 'medical treatment'. The medical rhetoric, together with the mind-body distinction, is used to define transsexuality as a mental disorder or problem that must be diagnosed by a psychiatrist to define the 'adequate treatment' (hormonal therapy and reconstructive surgery). The definition

and treatment are included in chapter II of the bill (Doc. Ch. 51 0903/001, 2004, art. 2-6).

The condition to modify the mention of sex include a medical certificate confirming that the individual has the ‘intimate conviction that they belong to the other sex’, has been ‘physically adapted’ to the other sex and is not able to procreate any more. The text of the bill states that the certificate has to be issued by the ‘referring physicians’ (*médecins traitants*). Following the request of the Council of the state to clarify the specific type of doctors the bill is referring to (Doc. Sén. 3-1794/3, 2006), the government introduces an amendment to specify that the referring physicians are a psychiatrist and a surgeon:

« Dans le cadre d'un changement de sexe, deux médecins entrent en ligne de compte : un psychiatre traitant et un chirurgien traitant. L'intervention d'un psychiatre est demandée par le secteur même¹⁴⁹ (doc. Chambre, 51 0903/006, p. 31)¹⁵⁰. Un chirurgien a deux fonctions. D'une part, il évalue l'opportunité d'une opération et, d'autre part, il est responsable de l'opération » (Doc. Sén. 3-1794/4, 2007, p. 4, amendement 20).

The conviction of the transsexual person that he or she belongs to the other sex must be not only an inner and intimate belief, but also ‘constant and irreversible’. It is described as a long process of a personal search in which the transsexual individual needs to be continuously accompanied and assessed by a psychiatrist, culminating in the finding of one’s true self and thus the sex change. Several stakeholders, such as the Bioethical committee and the psychiatrist, argue that it is important to verify that the individual is sure and that the sex change request is permanent in order to avoid regrets after surgery. This is why the psychiatrist considered essential that the whole sex change procedure, including the psychiatric diagnosis, takes place within a multidisciplinary medical team. The cooperation between the psychiatrist and the surgeon would diminish the risk of feeling remorse:

« L'oratrice cite néanmoins le cas récent d'une personne qui a déclaré regretter l'opération. Cette personne avait été opérée à Gand mais évaluée dans un autre centre. Cet exemple montre le rôle essentiel de la collaboration [entre le psychiatre et

¹⁴⁹ Meaning ‘transsexual people’.

¹⁵⁰ The government is referring to the hearing of *Collectif Trans-Action*.

le chirurgien]¹⁵¹: le médecin doit pouvoir se fonder sur les éléments communiqués par celui qui lui a envoyé le patient. L'objectif ultime est d'éviter que l'intéressé ait des remords » (Doc. Ch. 51 0903/006, 2006, p. 62)

Drawing on the idea of transsexual people's inner search, the exclusion of minors is justified and defended. Several speakers asked not to perform the sex change procedure to minors, especially if it was irreversible, because young people still need to find their identity and they can take a premature decision.

Whereas the medical rhetoric is used to define transsexuality and its treatment in the text of the bill, the same rhetoric is also used by all stakeholders -with the exception of the Bioethical committee- to criticise the inclusion of such a fixed definition and treatment. In particular, criticisms concerned the inclusion of a fixed definition of transsexuality and its treatment in the text of the Act, the obligation to undergo reconstructive surgery and the requirement of being unable to procreate. Stakeholders draw on the medical rhetoric and the idea that transsexuality belongs to the medical domain to condemn the intrusion of the law in a field outside its competence. Therefore, defining the conditions for someone to be considered 'transsexual' and fixing their treatment is not the role of law. This is underlined by the three trans* collectives, the two doctors, the two lawyers and the Council of the state:

Genderstichting : « [L]a proposition de loi à l'examen vise en premier lieu à régler les aspects juridiques de la transition sexuelle. Cependant, ces articles se prononcent sur des aspects strictement médicaux (...) la proposition de loi à l'examen n'a pas pour objectif de régler le traitement médical de la transsexualité » (Doc. Ch. 51 0903/006, 2006, p. 37-38).

Dr Griet De Cuypere, psychiatre : « Il est évident que des conditions doivent être posées, pour la réassignation sexuelle, d'une part, et pour l'adaptation juridique, d'autre part. Mais il serait préférable que les conditions en matière de traitement soient posées par les médecins eux-mêmes » (Doc. Ch. 51 0903/006, 2006, p. 44).

Conseil d'état : « [I]l ressort de la jurisprudence de la Cour européenne des droits de l'homme qu'il appartient à des experts médicaux de poser le diagnostic de la transsexualité et, le cas échéant, de procéder à l'intervention opératoire; ainsi par exemple, dans son arrêt *Van Kück c. Allemagne* du 12 juin 2003, la Cour

¹⁵¹ Clarification mine.

européenne des droits de l'homme estime-t-elle que 'la détermination de la nécessité de mesures de conversion sexuelle en fonction de leur effet curatif sur un transsexuel n'est pas affaire d'appréciation juridique' » (Doc. Sén. 3-1794/3, 2006, p. 4).

In the following excerpt, the *Genderactiegroep* uses an analogy to argue against the inclusion of a fixed protocol in the text of the Act: it compares the treatment of transsexuality and the treatment of cancer:

« [I]l n'appartient pas au législateur de fixer un protocole médical dans une loi. La responsabilité du traitement incombe aux experts médicaux, qui déterminent le protocole à appliquer en tenant compte des évolutions scientifiques et sociales. C'est d'ailleurs cette procédure qui est suivie dans tout autre traitement médical. Le traitement des patients atteints du cancer, par exemple, n'est pas non plus fixé dans une loi. Dans le cas du cancer, le corps médical évalue également quel est le traitement le plus adéquat. L'essentiel est que la personne accède à un bien-être psychologique et somatique optimal » (Doc. Ch. 51 0903/006, 2006, p. 41)

The analogy is a type of argument establishing the structure of the real (Perelman, 1968; Perelman & Olbrechts-Tyteca, 1970). It consists of linking two relations –the target and the source– allowing transferring the relative value of the terms of the source to those of the target. In the case of cancer, a medical protocol is not registered in any Act: a treatment is chosen according to the specific medical needs of the patient. There is thus a case-by-case medical assessment. Establishing a relationship between the treatment of cancer and the treatment of transsexuality allows the speaker to argue against the legal definition of a medical protocol for transsexuality. Therefore, the analogy of cancer is used to describe the treatment of transsexuality like any other type of medical treatment: it should be decided by a medical expert in the best interest of the patient. According to some stakeholders such as the *Collectif Trans Action*, this should also apply to minors. The most adequate treatment should be implemented for each patient, regardless of their age.

The scientific discourse upon which the medical science is rooted is based on the notions of accumulation of scientific evidence, progress and evolution (Gillett, 2006). Therefore, the inclusion of a fixed and predefined definition of transsexuality and its treatment goes against science. If the treatment of transsexuality is delimited in the text of the Act, then transsexual people will not benefit from medical advances and medical excellence, which is a violation of patients' rights. The following

quotes from the *Genderactiegroep* and M. Kristoff (lawyer) illustrate this usage:

« [I]l n'est pas indiqué d'insérer, dans un texte de loi, une définition médicale strictement momentanée de ce qu'est un transsexuel et des conditions médicales qu'il doit remplir. Les connaissances médicales en matière de genre, de sexe sont en plein développement » (Doc. Ch. 51 0903/006, 2006, p. 41)

« [Q]u'il n'est pas nécessaire d'élaborer un cadre légal en ce qui concerne le traitement de réassignation sexuelle. L'on peut craindre au contraire, selon l'orateur, qu'une réglementation légale dans ce domaine ne soit insuffisamment souple pour tenir compte de manière adéquate de l'évolution des sciences médicales » (Doc. Ch. 51 0903/006, 2006, p. 46)

The ban on *procreating* is also criticised following the 'progress of science' kind of argument. Several speakers during the hearings pointed out to the current possibility for transsexual people to freeze their sperm and eggs before surgery, thereby being able to procreate after a sex change. It is important to note that there is a semantic difference between the terms 'procreate' and 'conceive'. Whereas procreating means 'to produce young', conceiving means 'to become pregnant or to cause a baby to begin to form' and is thus related to sexual intercourse¹⁵². In other words, after reconstructive surgery transsexual people can still procreate with the help of assisted reproduction techniques, but they cannot conceive any more. Therefore, to ask transsexual people not to be able to *procreate* anymore, as it was initially written in the bill, could entail discrimination, as stated by the Minister of Social Affairs and Public Health:

« Je pense que cette phrase [«que l'intéressé n'est plus en mesure de procréer conformément à son sexe initial»]¹⁵³ pourrait engendrer une forme de discrimination non conforme à la loi du 25 février 2003. En effet, les procédés de congélation de sperme ou d'ovule permettent à l'heure actuelle à une personne transsexuelle d'encre avoir des enfants après son opération de réassignation » (Doc. Ch. 51 0903/006, 2006, p. 28)

The medical rhetoric is also used to criticise the obligation to resort to a multidisciplinary medical team given that it violates the patient's right to freedom of choice that guarantees the best quality of care. As the

¹⁵² <https://dictionary.cambridge.org/fr/dictionnaire/anglais/procreate>

¹⁵³ Clarification mine.

Collective Trans Action states, it was already the practice at the time that a surgeon did not perform reconstructive surgery without having the favourable opinion of a psychiatrist. Therefore, it was not necessary for the surgeon and the psychiatrist to belong to the same medical team:

« On sait que la pratique actuelle exclut totalement qu'un chirurgien pratique une intervention reconstructive en vue de la réassignation sexuelle sans disposer au préalable de l'avis favorable d'un médecin psychiatre. Pourquoi exiger que le psychiatre, l'endocrinologue et le chirurgien plasticien appartiennent nécessairement à la même équipe multidisciplinaire ? (...) Les études disponibles mettent en évidence que des soins de qualité sont absolument cruciaux et que l'évolution à long terme de la personne transsexuelle est liée à la qualité de la chirurgie (...) Le meilleur moyen de garantir la qualité des soins est de préserver le droit au libre choix du praticien » (Doc. Ch. 51 0903/006, 2006, p. 33).

Drawing on the medical rhetoric, the notion of health risks is put forward to argue against the obligation of surgery, both by trans groups, doctors and lawyers. If specific bodily modifications, such as reconstructive surgery, are required by the Act, then people for whom this type of interventions is contraindicated remain excluded. Therefore, those people cannot modify the mention of sex in the civil status, as the psychiatrist explains:

« Ainsi, certaines personnes qui ne peuvent subir une opération hormonale et/ou chirurgicale pour des raisons médicales restent sur la touche. Ce type de personnes souffrant d'une forme sérieuse de TIS ne peuvent-elles donc pas obtenir une modification de leur acte de naissance ? » (Doc. Ch. 51 0903/006, 2006, p. 43-44)

However, a concern is expressed by two members of the Senate in relation to the non-obligation of surgery (Doc. Sén. 3-1794/5, 2007, p. 9 & 16). They deem dangerous to base the legal sex change only on the intimate conviction because this conviction can evolve. At the same time, the physical (hormonal) change could be reversed. To confront these fears, the Minister of justice reiterates that 'surgery is the norm' (Doc. Sén. 3-1794/5, 2007, p. 16-17).

The medical rhetoric is also used by the proponents of the bill to support the implementation of an administrative procedure for transsexual people to modify their civil status, instead of a judicial one. Many parliamentarians and stakeholders such as the lawyers M. Kristof

Uytterhoeven and M. Édouard Vieujean, express their concern about leaving the modification of the mention of sex in the civil status to the civil registrar officer, claiming that such an important change is a public order issue and it corresponds to a judge to take the decision. This is the view expressed in one of the proposed amendments:

« En effet, un changement de sexe constitue un changement d'état civil. Il s'agit d'une matière d'ordre public. Un tel changement ne peut pas simplement être acté par l'officier de l'état civil. La décision finale doit être prise par un juge et bénéficier de toutes les garanties de la procédure judiciaire » (Doc. Ch. 51 0903/004, 2006, p. 1-2).

The argument against the administrative procedure is that the civil registrar officer is not qualified to assess the medical certificates and whether the transsexual individual fulfils the requirements (note in the second excerpt the resort to the image of a 'rural officer' without resources who has to assess the medical certificates 'brought by a transsexual'):

« L'intervenante estime que l'officier de l'état civil se voit confier une tâche qui dépasse de loin ses compétences » (Doc. Ch. 51 0903/006, 2006, p. 15)

« Or la matière est grave, et j'hésite à croire que les officiers de l'état civil de petites communes rurales soient tous à même d'apprécier les certificats médicaux produits par un transsexuel. Que feront-ils en cas de doute ou lorsque le requérant se sera fait traiter à l'étranger? Comment procéderont-ils aux vérifications qui leur sembleraient nécessaires, ment s'il faut recourir à un expert? » (Doc. Ch. 51 0903/006, 2006, p. 72).

In the face of this criticism of the bill, the proponents state that the administrative procedure is one of the pillars of the proposal, aimed at avoiding further suffering for transsexual people. Drawing on a biological definition of sex change and medical authority, they claim that the judge and the civil registrar officer could not take different decisions because the transsexual individual has already changed sex and this is established in a medical certificate:

« Mme Hilde Vautmans (VLD) rappelle que les transsexuels qui s'adressent au tribunal ont déjà, de facto, changé de sexe. Le juge peut-il en l'espèce prendre d'autres décisions que l'officier de l'état civil ? La procédure précédente tient suffisamment compte des intérêts des tiers. Tout ce que le juge doit faire, c'est

confirmer, sur le plan juridique, une situation déjà établie par des documents médicaux » (Doc. Ch. 51 0903/006, 2006, p. 8).

In other words, the civil registrar officer should only verify that the required documents have been provided, delegating to doctors (a psychiatrist and a surgeon) the responsibility to assess and certify that a physical sex change has been carried out according to what was medically reasonable. This discursive strategy uses an argument of authority (Perelman, 1968; Perelman & Olbrechts-Tyteca, 1970), a type of argument of coexistence between the person and their acts based on their prestige. This type of argument is essential in areas in which there is no valid procedure to verify facts and truths. In this case, transsexuality is depicted as a medical problem requiring medical expertise in relation to both the mind and the body. Psychiatrists and surgeons possess medical knowledge in those areas respectively. Therefore, they are the ones who should assess the individual's conviction and the sex change. The civil registrar officer can only accept their authority¹⁵⁴. The following quotes illustrate the use of the argument of authority:

« [I]l faut une déclaration d'un chirurgien et d'un psychiatre pour entamer une procédure administrative de changement de sexe. Celles-ci constituent, en effet, une garantie implicite de qualité en matière de transsexualité et est nécessaire pour entamer la procédure administrative (Doc. Sén. 3-1794/4, 2007, p. 4, amendement 20).

« L'officier de l'état civil vérifie s'il est compétent et contrôle la déclaration des médecins traitants. Ce sont donc les médecins qui déterminent si on est en présence d'une conviction intime, constante et irréversible et si une opération est possible » (Doc. Sén. 3-1794/5, 2007, p. 12)

The *Collectif Trans Action* also uses the medical authority to denounce the exclusion of minors from the sex change procedure. They claim that this exclusion is discriminatory if the minor has culminated their personal search. According to this group, it is the role of the psychiatrist to determine if that was the case:

« [L]a décision doit être laissée au docteur, en concertation avec le patient, indépendamment de l'âge de ce dernier » (Doc. Ch. 51 0903/006, 2006, p. 64).

4.1.2.3. The notion of ethics

¹⁵⁴ Except in specific circumstances. For instance, if forgery is suspected.

Ethics are used to both criticise and support the condition of sterilisation to modify the mention of sex in the civil status, using an argument of value that establishes what is morally good or wrong for society. On the one hand, two trans* groups denounce the sterilisation requirement describing it as ethically dubious and inhumane. The *Genderactiegroep* claim that it is an ethical dilemma to force transsexual people to be sterilised to have their identity legally recognised. They use the ‘fear of a precedent’ kind of argument to argue against this measure. The fear of a precedent (Perelman, 1968; Perelman & Olbrechts-Tyteca, 1970) is an argument of succession based on the idea that the treatment of a particular case can establish a norm. In this case, the requirement of sterilisation for transsexual people could open the door to this requirement in other ‘medical situations’:

Genderactiegroep : « L’oratrice relève également un dilemme éthique important: comment le législateur peut-il obliger les personnes qui subissent une réassignation sexuelle à se faire stériliser avant que leur identité sexuelle psychique¹⁵⁵ puisse être officiellement reconnue ? Existe-t-il d’autres situations médicales assorties d’une telle condition de stérilisation ? Il s’agit d’un dangereux précédent » (Doc. Ch. 51 0903/006, 2006, p. 41)

The *Collectif Trans-Action* goes a step further and depicts this measure as eugenics. The description of the sterilisation requirement as eugenics is a powerful rhetoric device because it automatically leads to think about historical violations of human rights the world is ashamed of, such as eugenic practices during Nazism. Drawing on that picture, the group considers that the measure is unacceptable:

« La proposition de loi, qui exige un certificat médical d’infertilité des personnes en attente de reconnaissance légale de leur changement d’état, introduit une dimension eugénique inadmissible en l’espèce » (Doc. Ch. 51 0903/006, 2006, p. 32).

On the other hand, the proponent of the bill also uses the ethics rhetoric but she did so to support and justify the requirement of sterilisation. At first, she claimed that it is a ‘purely medical fact’, a consequence of sex change given that genital surgery is required. However, she also ends up invoking ethics as a reason why sterilisation is needed. Drawing on a biological and essentialist definition of sex/gender categories, she uses ethics to defend what is natural and acceptable for men and women:

¹⁵⁵ *Psychische genderidentiteit*’ in the original utterance in Dutch.

« L'intervenante rappelle qu'un homme produit des spermatozoïdes et une femme des ovules. Il faut en tenir compte lors du changement de sexe, sauf pour les hermaphrodites. L'intervenante n'admet pas la situation dans laquelle un homme subit une opération de changement de sexe et est désigné comme femme sur sa carte d'identité, tout en conservant un sexe masculin et la possibilité de produire des spermatozoïdes (...) En ce qui concerne la stérilisation et les possibilités de procréation, l'intervenante souligne que c'est davantage une question éthique qu'un problème médical. Une réflexion s'impose à ce sujet. Il y a des lois naturelles qui doivent malgré tout être respectées » (Statement of H. Vautmans, Doc. Ch. 51 0903/006, 2006, p. 58-59).

It seems thus that what the bill wants ultimately to avoid is the reality of a pregnant man and an inseminating woman.

4.1.3. Changes incorporated in the final text of the Act

The criticisms detailed above led to the incorporation of several changes in the final text of the Act. The whole Chapter II of the bill in which the definition and treatment of transsexuality were fixed was eliminated. The conclusion was that it was not the role of legislators to regulate the decisions of medical experts. Regarding the type of doctors, it was agreed that it was not necessary that the psychiatrist and the surgeon belong to the same medical team. However, a declaration from the two medical experts is still required for the modification of the mention of sex in the civil status:

« La déclaration d'un chirurgien et d'un psychiatre constitue une garantie de qualité implicite en matière de transsexualité et est nécessaire pour entamer la procédure administrative. Le présent projet de loi ne porte nullement sur le diagnostic et sur les effets de la transsexualité sur le plan médical. Le chirurgien et le psychiatre évaluent en toute liberté « la nécessité de mesures de conversion sexuelle en fonction de leur effet curatif sur un transsexuel ». L'officier de l'état civil ne contrôle pas les conditions matérielles mais bien les conditions formelles afin de pouvoir établir un acte authentique » (Exposé introductif Vice-première ministre et ministre de la Justice, Doc. Sén. 3-1794/4, 2007, p. 4)

Regarding the requirement of physical transformation to be certified by a surgeon, the expression '*a subi une intervention chirurgicale reconstructive*' was replaced by '*dont le corp a été adapté à ce sexe opposé dans toute la mesure de ce qui est possible*', removing the emphasis on reconstructive surgery. However, the expression '*réassignation sexuelle qui le fait correspondre au sexe opposé*' was introduced to homogenise the terminology as asked by the Council of

state. This is coherent with the idea that, although it is the role of the surgeon to judge the degree of possible physical transformation, surgery is still the norm.

The requirement of sterilisation remained in spite of criticisms. The main reason argued was that Belgian rules of filiation had to be respected. That legislation is based on the *'mater semper certa est'* principle, stating that the mother of a child is always known. In other words, in Belgian legislation, only the person who gives birth can be 'mother'. Therefore, if a trans* man gives birth he could only be the mother of the child. According to prof. Vieujean, this would be counter-productive because it would reveal 'what the Act pretends to hide: the original sex':

« C'est à bon escient par ailleurs que le projet exige que l'intéressé (e) ne soit plus en mesure de concevoir des enfants conformément à son sexe initial. Il ne s'agit en aucun cas d'une pratique eugénique car on se heurte toujours aux questions de filiation inextricables : la transsexuelle devenue homme non stérile qui accouche doit-elle être considérée comme la mère de l'enfant ? Le transsexuel devenu femme mais non stérile engendre un enfant : y a-t-il matière à reconnaissance ou recherche de paternité ? Ces situations nous semblent d'autant moins acceptables qu'elles auraient pour effet de révéler ce que l'on veut précisément cacher à jamais : à savoir le sexe originel » (Statement of Prof. Vieujean, Doc. Ch. 51 0903/006, 2006, p. 71)

There was however a terminological change. The verb 'procreate' was replaced by the verb 'conceive'. Therefore, after a sex change a transsexual individual can procreate if he or she has previously frozen their sperm or eggs. But they cannot conceive a child through sexual intercourse. The procedure remained an administrative one, as initially suggested. The field of application of the law was finally extended to minors, but not to intersex people.

4.2. *Loi transgenre (2017)*

4.2.1. Description of the bill

The *projet de loi* (Doc. Ch. 54 2403/001, 2017) was introduced by the government to the Chamber in April 2007. The bill aims at adapting the *Loi relative à la transsexualité* in order to meet human rights international obligations. Specifically, it aims at removing the requirement of sterilisation and the medical conditions established by the previous Act

by the establishment of a simplified procedure to modify the registered mention of sex in the birth certificate.

The legal subject to which the bill refers to is not the ‘transsexual’ individual anymore, but the ‘transgender’ person. In fact, the title of the bill is *‘projet de loi réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d’un changement de l’enregistrement du sexe dans les actes de l’état civil et ses effets’*. Transgender is defined as the individual who:

‘a la conviction que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement’ (Doc. Ch. 54 2403/001, 2017, p. 65).

The bill proposes a new simplified procedure for transgender people to modify the mention of sex in their civil status. The procedure consists of a declaration of the concerned individual before the civil registrar officer attesting that:

‘depuis un certain temps déjà, il a la conviction que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement et qu’il souhaite les conséquences administratives et juridiques d’un changement de l’enregistrement du sexe dans son acte de naissance’ (Doc. Ch. 54 2403/001, 2017, p. 65).

Following the step, the civil registrar officer tells the individual that the modification of the mention of sex is irrevocable, informs her or him about the administrative and legal consequences of the modification and gives her or him an information sheet. The officer provides an acknowledgement of receipt and informs the Royal prosecutor. In the absence of a negative decision on the part of the Royal prosecutor¹⁵⁶, the concerned individual comes before the civil registrar officer a second time between three and six months after the first declaration. Then he or she submits a second declaration indicating that:

‘1° que, depuis un certain temps déjà, il a la conviction que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement; 2° qu’il est conscient des conséquences administratives et juridiques qu’entraîne ce changement de l’enregistrement du sexe dans l’acte de naissance; 3° qu’il est conscient du caractère en principe irrévocable du changement de l’enregistrement du sexe dans l’acte de naissance’ (Doc. Ch. 54 2403/001, 2017, p. 6).

¹⁵⁶ A negative decision could be taken if the modification is deemed contrary to public order.

The declaration has to be accompanied by a certificate issued by a transgender association at least 14 days before the second declaration. The bill establishes a procedure to recognise the transgender organisations that can issue the certificate. The certificate confirms that the concerned individual has been informed about:

l'importance de la décision, son caractère en principe irrévocable, les conséquences sur le plan juridique et administratif et la portée sociale du changement de l'enregistrement du sexe mentionné dans l'acte de naissance, sans porter le moindre jugement de valeur' (Doc. Ch. 54 2403/001, 2017, p. 66).

The modification of the mention of sex in the birth certificate is irrevocable. Exceptionally, another modification is allowed by the family court if evidence of exceptional conditions is provided. Non-emancipated minors who have the faculty of discernment can submit the declaration as of the age of 16¹⁵⁷ assisted by their parents or legal representative. In that case, the declaration has to be accompanied by the certificate of a child psychiatrist confirming that the concerned minor has:

la conviction durable que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement' (Doc. Ch. 54 2403/001, 2017, p. 68).

The *Loi transgenre* was adopted on 25 June 2017, ten years after the adoption of the *Loi relative à la transsexualité*. The parliamentary work lasted only three months (from April to June 2017). The short duration of the parliamentary work is due to the proportional representation system in Belgium¹⁵⁸. When the government introduces a *projet de loi*, an agreement has been achieved beforehand by the majority at the parliament. This means that most discussions took place *before* the parliamentary phase, which explains the relatively small number of discrepancies.

¹⁵⁷ Minors younger than 16 years-old are not included in the bill. Thus they cannot modify the sex registered in their birth certificate anymore. This modification was *theoretically* allowed in the previous Act. However, giving the medical conditions that it established, the modification was not possible because *in practice* that type of surgeries were not performed on minors.

¹⁵⁸ See Chapter 2, section 2.2.1.

The bill was nevertheless discussed in the parliament and several hearings were organised with representatives of trans* and LGBT associations¹⁵⁹, human rights experts¹⁶⁰, the Belgian gender equality body¹⁶¹ and a child psychiatrist¹⁶². Most of the criticisms to the bill come from these actors. They concerned the simplified procedure, the obligation of the certificate of a child psychiatrist attesting the gender identity of non-emancipated minors as the age of 16, a demand for the inclusion of healthcare measures, the obligation of a certificate issued by a transgender association (including the mandatory time of reflection) and the irrevocability of the procedure (including the non-recognition of gender fluidity).

The presentation of results is organised around four broad types of discursive devices identified: the human rights argument, the principle of self-determination, the notions of *'fraude'* and *'changement irréfléchi'*, and the argument of direction. In the following subsection I describe the discursive devices employed by the different actors involved to argue in favour of certain positions within the controversies. A summary of the findings is presented in table 16.

¹⁵⁹ *Genres Pluriels*, *Çavaria*, RainbowHouse Brussels and *Arc-en-ciel Wallonie*.

¹⁶⁰ Representatives of the Equality Law Clinic (ULB) and *La ligue des droits de l'homme*.

¹⁶¹ *Institut pour l'égalité des femmes et des hommes*.

¹⁶² From the 'Genderteam' at Ghent hospital, a multidisciplinary team (psychiatrists, psychologists-sexologists, paediatricians, speech therapists, endocrinologists, urologists, plastic surgeons) specialised in 'gender transitions'.

Table 16. Controversies, discursive devices and changes in the *Loi transgenre*

Controversies about the initial bill	Discursive devices employed	Changes incorporated in the final text of the Act
<ul style="list-style-type: none"> • Simplified procedure : removal of medical criteria and sterilisation • Obligation of the certificate of a child psychiatrist attesting the <i>gender identity</i> of non-emancipated minors as the age of 16 • A demand for the inclusion of healthcare measures • Obligation of a certificate issued by a transgender association (including the mandatory time of reflection) • Irrevocability (including the non-recognition of gender fluidity) 	<ul style="list-style-type: none"> • Human rights argument and the reversal of the mind-body distinction • The principle of self-determination (analogies: getting married, bisexuality, ethnicity/religion/handic ap) • The notions of '<i>fraude</i>' and '<i>changement irréfléchi</i>' • Argument of direction (metaphor: 'a boat that capsizes'; analogy: negative reactions against same-sex marriage in France) 	<ul style="list-style-type: none"> • Simplified procedure medical criteria and sterilisation <i>removed</i> • Obligation of the certificate of a child psychiatrist attesting the <i>capacity of discernment</i> of non-emancipated minors as the age of 16 • Healthcare measures <i>not included</i> • Certificate issued by a trans* association <i>removed</i> (mandatory time of reflection <i>remains</i>) • Irrevocability (non-recognition of gender fluidity) <i>remained</i>

4.2.2. Discursive practices

4.2.2.1. Human rights argument and the reversal of the mind-body distinction

The human rights argument lies at the heart of the *projet de loi*, being the ground upon which the justification for a new Act is built by the government. The use of this device is particularly evident in the explanatory statement of the bill (Doc. Ch. 54 2403/001, 2017). The

government claims that at the international level there is a tendency on human rights towards a separation between the legal conditions to modify the registered mention of sex and the medical interventions to change sex. A large number of international legal instruments are cited to illustrate this tendency.

These instruments include the Yogyakarta principles¹⁶³, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment¹⁶⁴, the thematic document of the Council of Europe Human Rights Commissioner¹⁶⁵, several resolutions adopted by the Council of Europe¹⁶⁶, a resolution adopted by the Committee of Ministers of the Council of Europe¹⁶⁷, a resolution adopted by the European Parliament about sexual orientation and gender identity¹⁶⁸, and a recent decision of the European Court of Human Rights¹⁶⁹ estimating that the condition of sterilisation is contrary to human rights. All these legal instruments state that nobody can be forced to undergo medical procedures as a condition of the legal recognition of their gender identity. Many of them also ask for the special protection of transgender people against discrimination.

¹⁶³ Commission of Jurists. (2007). Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity.

¹⁶⁴ Conseil des droits de l'homme des Nations Unies, Rapport du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, 1er février 2013 – A/HCR/22/53.

¹⁶⁵ Commissaire aux droits de l'homme du Conseil de l'Europe, Document thématique "Droits de l'homme et identité de genre", 29 juillet 2009, CommDH/IssuePaper (2009) 2.

¹⁶⁶ Assemblée parlementaire du Conseil de l'Europe, Résolution. Discrimination sur la base de l'orientation sexuelle et de l'identité de genre, 29 avril 2010, n° 1728 (2010); Assemblée parlementaire du Conseil de l'Europe, Résolution. Mettre fin aux stérilisations et castrations forcées, 26 juin 2013, n° 1945 (2013); Assemblée parlementaire du Conseil de l'Europe, Résolution. La discrimination à l'encontre des personnes transgenres en Europe, 22 avril 2015, n° 2048 (2015).

¹⁶⁷ Comité des Ministres du Conseil de l'Europe, Recommandation du Comité des ministres aux États membres sur des mesures visant à combattre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre, 31 mars 2010 (n° CM/Rec (2010)5).

¹⁶⁸ Résolution du 28 septembre 2011 sur l'orientation sexuelle et l'identité de genre dans le cadre du Conseil des droits de l'homme des Nations Unies.

¹⁶⁹ CEDH, Y.Y. c. Turquie, 10 mars 2015.

In his introductory speech, the Minister of Justice also mentions that the sterilisation condition has been declared a violation of human rights in Europe (e.g. Sweden, Norway, Germany and Austria) and that the tendency to dissociate the modification of the registered mention of sex and medical conditions can be observed in several states (e.g. Argentina, Denmark, Malte). For her part, the Secretary of State refers to a recent decision of the European Court of Human Rights in which it determines that the sterilisation condition imposed in France is against the right to respect for private and family life¹⁷⁰.

Based on those international legal instruments, the government recognises that the procedure established by the *Loi relative à la transsexualité* is not in conformity with human rights anymore, reason why it wishes to establish a more flexible procedure. It thus adopts a self-determination approach, clarifying that *'personne ne doit poser un diagnostic médical concernant l'identité de genre de la personne intéressée. Celle-ci décide elle-même comment elle se sent'* (Doc. Ch. 54 2403/001, 2017, p. 8). The suggested procedure to modify the registered mention of sex in the birth certificate is exclusively based on the concerned individual's gender identity. Therefore, the terms of the mind-body distinction of notions employed in the previous Act are reversed: it is no longer the body, but the identity, which determines the category to which trans* people belong. This reversal is built upon the human rights opposition to the medical rhetoric, while at the same time modifications of the body are described as a 'complete transition'.

The human rights argument opposes itself to the medical rhetoric that permeated the previous Act (*Loi relative à la transsexualité*). The efforts to detach this Act from the medical rhetoric are visible in the following quotes:

'Tout Belge ou tout étranger [...] peut faire une déclaration de changement de l'enregistrement du sexe devant l'officier de l'état civil, sans devoir satisfaire encore aux strictes conditions de réassignation sexuelle médicale ou de stérilisation en vigueur jusqu'à présent. Il s'agit seulement de la conviction de l'intéressé que le sexe indiqué dans l'acte de naissance ne correspond pas à son identité de genre vécue

¹⁷⁰ Cour européenne des droits de l'homme, A.P., Garçon et Nicot c. France, 6 avril 2017.

intimement, sans qu'il faille encore établir le moindre diagnostic médical (Government, Doc. Ch. 54 2403/001, 2017, p. 16).

'[L]es interventions médicales imposées sont physiquement très lourdes, souvent irréversibles et ne sont pas nécessaires du point de vue médical. Certains transgenres choisissent, par conséquent, de ne pas se faire opérer et d'exprimer leur identité de genre exclusivement au travers de leurs vêtements et de leur comportement sans pouvoir prétendre à une reconnaissance juridique. Le projet de loi à l'examen remédie à cette situation' (Secretary of State, Doc. Ch. 54 2403/004, 2017, p. 9-10).

'Le présent projet supprime la condition de stérilisation obligatoire, celle-ci ayant été considérée comme une immixtion disproportionnée dans la vie privée et contraire à la CEDH. Qui plus est, nous créons avec ce projet la démedicalisation de l'enregistrement du sexe. Un enjeu important sur le plan symbolique. La transsexualité n'est pas un état médical' (Deputy, CRIV 54 PLEN 170, 2017, p. 46-47).

In the first quote above, the government explains that the proposed procedure entails the declaration of the concerned individual before the civil registrar officer without the obligation to fulfil the 'strict' conditions of medical sexual reassignment in force until then. The use of the adjective 'strict' indicates a value judgement on the part of the government towards the medical conditions introduced by the previous Act. Then it proceeds clarifying that the only thing that counts is the conviction of the concerned individual that the sex registered in the birth certificate does not match her or his '*identité de genre vécue intimement*'. There is thus no need to establish a medical diagnostic.

In the second quote, the Secretary of State expresses herself in the same vein. She states that the medical interventions imposed by the previous Act are '*physiquement très lourdes, souvent irréversibles et ne sont pas nécessaires du point de vue médical*', thereby giving a value judgement as well. She also claims that for that reason many transgender people decide not to get surgery and express their gender identity through clothes and behaviour. She recognises that those people cannot have their identity legally recognised, a situation that the proposed bill pretends to redress. As can be noted, the term employed in both the project and the final text adopted is 'transgender'. The term 'transsexual' is less used although it does not disappear from the documents. The novelty introduced in the

project in relation to the previous Act is that the parliament considers that not all transgender (or transsexual) people *desire* to get surgery.

The third quote illustrates the overall support of parliamentarians to the project. In this case, a deputy emphasises the need to remove the sterilisation condition, described as ‘*une immixtion disproportionnée dans la vie privée et contraire à la CEDH*’. At the same time, she underlines the importance of de-medicalising the registration of sex for transgender people from a symbolic point of view as well because ‘*la transsexualité n’est pas un état médical*’. This claim is in sharp contrast with the mental disorder definition of transsexuality effectuated by the previous Act only ten years before.

The dissociation between the modification of the registered sex and the medical conditions is highly welcomed not only by the members of the parliament, but also by the different stakeholders invited to the hearings—including the child psychiatrist. The following quotes illustrate this:

Mme Dhondt explique que son équipe souscrit pleinement à la déclaration du 19 janvier 2015 dans laquelle la WPATH indique que « tout individu a le droit de faire reconnaître sur le plan juridique son identité de genre et de disposer de documents d’identité qui correspondent à cette identité de genre ». Dès 2010, cette organisation mondiale affirmait son opposition à toute forme de chirurgie ou de stérilisation en tant que condition pour pouvoir changer de sexe sur le plan juridique’ (Child psychiatrist, Doc. Ch. 54 2403/004, 2017, p. 40).

D’un point de vue juridique, il est avéré que la loi du 10 mai 2007 “relative à la transsexualité” viole une série d’obligations européennes et internationales qui lient la Belgique. La modification du genre enregistré ne peut être réservée aux personnes qui subissent un processus dit de “réassignation sexuelle”, lesquelles restent une minorité’ (Equality Law Clinic, Doc. Ch. 54 2403/004, 2017, p. 42).

In the quote above, the child psychiatrist from the ‘genderteam’ at Ghent hospital, expresses the agreement of her team of medical professionals with the overall principle guiding the legal project. The psychiatrist mentions that her team endorses the standards of care published by the WPATH—the World Professional Association of Transgender Health¹⁷¹.

¹⁷¹ Formerly known as the Harry Benjamin International Gender Dysphoria Association. The change of name of this international association (from ‘gender dysphoria’ to ‘transgender health’) reflects a shift in the way transgender people are considered by medical professionals.

Those standards establish that everybody should have the right to have their gender identity legally recognised and that such recognition shall not be conditional upon surgery and sterilisation. In the second quote, one of the members of the Equality Law Clinic claims that the *Loi relative à la transsexualité* violated several European and international obligations and supports the idea that the modification of the registered sex should not be made contingent upon ‘sexual reassignment’.

However, the importance of the body, and more precisely sexual dimorphism, to determine sex/gender categories remain in the discourse of many parliamentarians, thereby reifying the mind-body distinction of notions. As the following quotes show, the parliamentarians accept the idea that some transgender people do not want to get surgery and the modification of the registered sex should not depend upon it. However, they also define the transition as ‘complete’ when there has been surgery:

‘Les conditions de reconnaissance médicale sont lourdes et un processus médical qui dure entre trois et quatre ans est nécessaire. Une minorité des transgenres opte pour un alignement physique complet sur l'autre sexe’ (Deputy, CRIV 54 PLEN 170, 2017, p. 39).

‘En fait, parfois, c'est depuis leur plus jeune âge qu'ils se sentent dans le corps d'un autre, parfois, dès l'âge de 8, 10 ou 12 ans. Ils étaient condamnés depuis fort longtemps à vivre toute leur vie dans le corps d'un autre, et donc à être particulièrement malheureux. C'est une des raisons pour laquelle le taux de suicides chez les transgenres est parmi les plus importants du pays [...] S'est ajouté à cela un enfermement légal. En effet, si la législation avait évolué en 2007 par rapport à la précédente, elle avait même créé de nouveaux problèmes’ (Deputy, CRIV 54 PLEN 170, 2017, p. 42-43).

‘On acte définitivement la fin de la médicalisation et de la psychiatisation et on met en avant l'autodétermination. On pourra changer de genre auprès de la commune sans même avoir effectivement changé de sexe, ce qui est très positif. C'est ce qui était demandé par les personnes concernées, les personnes transgenres’ (Deputy, CRIV 54 PLEN 170, 2017, p. 49).

The quotes above have been expressed by three different parliamentarians during the general discussion of the project. All of them express their satisfaction with the suggested procedure to modify the registered sex. And yet they all state in a way or another that to truly ‘change sex’ is to get surgery. In the first quote, the deputy affirms that

'une minorité des transgenres opte pour un alignement physique complet sur l'autre sexe'. The expression *'alignement physique complet sur l'autre sexe'* implies that transgender people who do not get surgery are only 'partially the other sex'. Note also how the notion of sex here is used to denote both the category (woman or man) and the sexual organs.

In the second quote, the deputy uses the metaphor of the body as a prison already described¹⁷² and very much employed during the discussion of the *Loi relative à la transsexualité*. He affirms that transgender people *'c'est depuis leur plus jeune âge qu'ils se sentent dans le corps d'un autre'*, establishing a distinction between the gender identity and the sexed body. The feeling of being in 'somebody else's body' is described by the deputy as a source of pain, which would in turn explain the high suicide rate among transgender people. The depiction of that tragic situation allows him to argue for a simplification of the legal procedure to modify the registered sex. His argument is that law should not add more obstacles to a situation that is already difficult enough (*'S'est ajouté à cela un enfermement légal'*). In spite of his good intentions, the deputy reproduces the mind-body distinction and the idea that the body establishes the sex/gender category of an individual.

In the third quote, the deputy applauds the de-medicalisation, de-psychiatrisation and the principle of self-determination upon which the project is grounded. However, he also frames the procedure for transgender people to modify the registered sex as an exception. He affirms that *'on pourra changer de genre auprès de la commune sans même avoir effectivement changé de sexe, ce qui est très positif'*. The expression *'sans même avoir effectivement changé de sexe'* reifies the idea that a 'real' sex change involves surgery. It constructs transgender people as an exception to the norm that establishes genitalia as the criterion upon which sex is determined. The exceptionality of the situation is evident when he says that *'c'est ce qui était demandé par les personnes concernées, les personnes transgenres'*. In other words, this Act legally accommodates transgender populations as a disadvantaged minority, as an exception to the rule. But the general certification of sex is not challenged.

¹⁷² See section 4.1.2.1.

The reversal of the mind-body distinction of notions is also evident in the proposed conditions for minors, although the lack of medical interference established for adults is not applicable to them. The bill stipulates that for transgender non-emancipated minors older than sixteen years old, a child psychiatrist must issue a certificate confirming that the minor *‘à la conviction durable que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement’* (Doc. Ch. 54 2403/001, 2017, p. 68). Therefore, the bill still established that minors have to visit a psychiatrist who will verify their gender identity. This exception is justified on the basis of the *‘répercussions considérables que le changement de l’enregistrement du sexe peut avoir pour le mineur’* (Doc. Ch. 54 2403/001, 2017, p. 10 & 16). However, those ‘considerable impacts’ are never explicitly described. It is thus not clear to what exactly the government refers to. It seems that it still associates the legal modification with body modifications that can be irreversible. The human rights argument and the de-medicalisation stance are employed by several stakeholders to criticise this measure:

‘Cette condition va encore à l’encontre des règles internationales en matière de droits de l’homme, qui condamnent cette médicalisation et diagnostic’ (Member of Çavaria, Doc. Ch. 54 2403/004, 2017, p. 36).

‘Il ne lui revient pas, au risque de recoller une étiquette psychiatrique aux personnes trans, de confirmer que “l’intéressé a la conviction durable que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement”. On ne comprend pas l’objet de cette dérogation au droit commun, sachant que l’on parle bien ici d’une procédure administrative de modification du genre enregistré et non d’opérations médicales aux conséquences irréversibles’* (Member of Equality Law Clinic, Doc. Ch. 54 2403/004, 2017, p. 42).

‘Il n’est pas nécessaire de prévoir un obstacle supplémentaire pour le jeune de seize ou dix-sept ans non émancipé doué de discernement en exigeant une déclaration établie en qualité de médecin traitant par un pédopsychiatre. Cet obstacle va à l’encontre de la vision évoquée ci-dessus de la WPATH’ (Child psychiatrist, Doc. Ch. 54 2403/004, 2017, p. 41)

In the first quote above, the member of Çavaria defines the measure as medicalisation and diagnosing and makes use of the international human rights argument to criticise it. In a similar vein, a member of the Equality Law Clinic also qualifies the measure as *‘recoller une étiquette psychiatrique aux personnes trans*’*. It is important to note that although the government

tried to distinguish this measure from a diagnostic, it is not successful at convincing trans* and human rights activists that the role of the child psychiatrist is not to impose a diagnosis on the minor. The speaker clarifies that the bill concerns only the modification of the registered sex, not medical operations, thereby confirming what the government meant with ‘considerable impacts’. In the third quote, the child psychiatrist also expresses her discontent towards the measure, which she describes as ‘*un obstacle supplémentaire*’ for the minor. She affirms that the measure is contrary to the WPATH standards of care mentioned before.

As a response to those criticisms, a deputy from the opposition suggests limiting the role of the child psychiatrist to confirming the capacity of discernment of the minor and supports her argument drawing on the analogy of euthanasia¹⁷³. She admits the example is not ‘ideal’ but affirms that in the case of euthanasia an agreement was found: the role of the psychiatrist is to certify the capacity of discernment of the minor. A member of the association *Arc-en-ciel Wallonie* criticises the analogy employed by the deputy and suggests a different one: the change of nationality. Whereas the comparison with euthanasia situates the modification of the registered sex within the medical realm, the comparison with the change of nationality it situates it within the administrative realm. Moreover, whereas both euthanasia and the change of nationality have consequences because of a change of state, the magnitude of the consequences is not comparable. The analogy with the change of nationality allows the member of the association to describe the modification of the registered sex in a more positive light and disconnected from body modifications. This exchange of views is illustrated in the following quotes:

L’oratrice propose un compromis: pourquoi ne pas proposer plutôt que le psychiatre délivre une attestation indiquant que la personne a la capacité de discernement? Même s’il ne s’agit pas d’une comparaison idéale, l’oratrice prend l’exemple de la loi euthanasie, où on a pu trouver un compromis avec des conditions spécifiques pour les mineurs’ (Deputy, Doc. Ch. 54 2403/004, 2017, p. 52).

Plutôt qu’une comparaison avec l’euthanasie, l’orateur préfère la comparaison avec le changement de nationalité qui porte aussi sur l’identité. Dans ce cas, le mineur

¹⁷³ Euthanasia is legal in Belgium, also for minors.

n'a pas besoin d'aller voir un psychiatre' (Member of Arc-en-ciel Wallonie, Doc. Ch. 54 2403/004, 2017, p. 55).

The human rights argument coupled with the reversal of the mind-body dichotomy is also employed by several members of LGBT associations and the Equality Law Clinic to ask for an expansion of the matters addressed by the Act, until then limited to Civil law. Particularly, these matters include the reimbursement of healthcare costs for transgender people and the ban on surgeries performed on intersex people. This use is illustrated in the following quotes:

'[L]e projet de loi du gouvernement se borne à traiter les questions de droit civil. C'est un choix qui se défend, et qui a le mérite de répondre à une priorité urgente, tant les violations des droits humains découlant de la procédure actuelle sont odieuses. Pour autant, l'amélioration d'autres aspects des droits des personnes trans s'en trouve remise à plus tard. C'est notamment le cas de l'accès libre et gratuit à des soins librement choisis. Il faut aussi citer la situation des personnes intersexuées, elles aussi victimes de violations majeures de leurs droits'* (Member of Rainbow House Brussels, Doc. Ch. 54 2403/004, 2017, p. 38)

'Insiste[r] sur la nécessité pour la Belgique de se doter d'un dispositif juridique complet afin de lutter de manière structurelle contre l'exclusion dont font l'objet les personnes trans et intersexuées [...] Concrètement, il importe que, parallèlement à la facilitation de la modification du genre enregistré, la Belgique s'engage à garantir aux personnes trans* l'accès et le remboursement des traitements et soins librement choisis pour développer leur identité de genre jusqu'à leur point de confort. En outre, conformément aux recommandations d'un groupe d'experts internationaux et des Nations-Unies en 2016, il est urgent que la Belgique mette fin aux violations des droits de l'homme subies par les enfants et les adultes intersexués. Pour rappel, des chirurgies normalisatrices ou traitements hormonaux sont régulièrement entrepris sur les enfants et adolescents intersexués sans leur consentement libre et éclairé et sans nécessité médicale, dans le but d'essayer de changer de force leur apparence pour les conformer aux attentes de la société [...] A cet égard, il convient notamment que la Belgique intervienne pour interdire les pratiques médicales préjudiciables sur les enfants intersexués, y compris les chirurgies et traitements non nécessaires dans leur consentement éclairé'* (Member of the Equality Law Clinic, Doc. Ch. 54 2403/004, 2017, p. 44-45).

In the first quote above, a member of the Rainbow House Brussels disapproves the fact that the bill is limited to civil law matters. Taking into account the urgency to abolish the violation of human rights

perpetrated by the previous Act, he understands the choice of the legislators. However, he criticises that other aspects of trans* people's rights are postponed. Specifically, he refers to *'l'accès libre et gratuit à des soins librement choisis'* and *'la situation des personnes intersexuées'*. With the term *'soins'* he means trans* specific healthcare (not limited to 'surgery'). He also defines the situation of intersex people in Belgium as a violation of rights.

In the second quote, a member of the Equality Law Clinic develops the claim further. She insists on the need for a comprehensive legal framework to fight against the exclusion of trans* and intersex people in a structural way. On the one hand, she asks for trans* people's access to the healthcare and the reimbursement of the cost of treatments. She clarifies however that treatments must be *'librement choisis'*, not imposed by any Act. On the other hand, she vindicates the end of human rights violations against intersex people. She reminds the audience that *'des chirurgies normalisatrices ou traitements hormonaux sont régulièrement entrepris sur les enfants et adolescents intersexués sans leur consentement libre et éclairé et sans nécessité médicale, dans le but d'essayer de changer de force leur apparence pour les conformer aux attentes de la société'*. The use of terms such as *'chirurgies normalisatrices'* and *'attentes de la société'* indicate a critical stance towards the idea of 'normal' and 'deviant' sex/gender categories. It puts into question the existence of two 'natural' categories and places the focus on their actual social construction. She defines those medical interventions as a violation of human rights, relying on the same argument employed by the government to build the current bill concerning transgender people. At the end of her intervention, she asks the government to ban those medical practices on intersex people.

4.2.2.2. The notion of self-determination

The notion of self-determination is the alleged guiding principle of the bill. In this sense, the modification of the registered sex is based on the declaration of the concerned transgender individual stating that she or he *'a la conviction que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement'* (Doc. Ch. 54 2403/001, 2017, p. 65). Note that the bill uses the term 'sex' to refer to the legal mention that is registered in the birth certificate, whereas it employs the term 'gender' to refer to the identity of the transgender individual. It is thus expected that

the gender identity of the individual ‘matches’ the legal sex registered. If that is not the case, then the concerned individual can make a declaration of that conviction in order to modify the legal mention of sex.

Medical professionals do not play any role any more, with the exception of minors¹⁷⁴. As I describe in the previous section, the adoption of self-determination is influenced by the international and European human rights framework and is very much supported by the members of the parliament. The next quotes illustrate this support:

Le Conseil de l'Europe a également approuvé, le 22 avril 2015, une résolution dans laquelle les États membres du Conseil de l'Europe sont appelés à mettre un terme à la discrimination des personnes transgenres et à abroger la législation qui limite les droits de cette catégorie de personnes. Les États membres y sont en outre appelés à fonder leur réglementation relative à l'enregistrement du sexe sur l'autodétermination (Exposé introductif Ministre de la Justice, Doc. Ch. 54 2403/004, 2017, p. 4).

Mme Fabienne Winckel (PS) se réjouit que ce projet de loi soit sur la table [...] La loi de 2007, si elle n'était pas parfaite, constituait néanmoins une première base légale pour la transsexualité. Le présent projet est un grand pas en avant pour l'intégration des personnes trans mais ce n'est qu'une étape. Ce qui doit guider ce projet de loi, c'est le droit à l'autodétermination pour toutes les personnes trans (Doc. Ch. 54 2403/004, 2017, p. 53).

Il était donc de notre responsabilité de suivre cette évolution, de reconnaître une pleine autodétermination aux personnes transgenres, de ne plus percevoir l'identité trans comme une maladie, et de considérer les personnes trans comme des personnes capables de discernement (Deputy, CRIV 54 PLEN 170, 2017, p. 50).

In the first quote above the Minister of Justice recalls that the Council of Europe adopted a resolution in which it calls on its Member States to end discrimination against transgender people and to repeal the legislation limiting their rights. Moreover, he underlines that the Member States are also asked to *‘fonder leur réglementation relative à l'enregistrement du sexe sur l'autodétermination’*.

In the second excerpt, a deputy from the opposition expresses satisfaction towards the bill. She claims that the *Loi relative à la*

¹⁷⁴ As explained above, the bill still stipulates the intervention of a child psychiatrist to assess the gender identity of minors older than 16 years old.

transsexualité was an important legal step, but recognises that it was not perfect. She supports the fact that the current bill is based on every trans person's right to self-determination. In a similar vein, another deputy from the opposition also supports full self-determination for transgender people, arguing that it is their responsibility '*ne plus percevoir l'identité trans comme une maladie, et de considérer les personnes trans comme des personnes capables de discernement*'. The expressed opinion that trans* identities are not a disorder and that trans people are capable of discernment marks a contrast with the previous Act.

All the speakers invited to the hearings support the principle of self-determination and value in a very positive way the bill, especially when compared to the *Loi relative à la transsexualité*. Some of them even insist on the fact that the principle of self-determination has been '*central dans l'histoire du mouvement LGBTQI*' (Member of RainbowHouse Brussels, Doc. Ch. 54 2403/004, 2017, p. 38). However, they also consider that several conditions imposed by the bill are actually contrary to self-determination. They thus make also use of this notion to ask for changes in the bill. Those changes concern the role of transgender associations (including the mandatory time of reflection) and the irrevocability of the modification (including the non-recognition of gender fluidity).

As the following quote shows, the bill establishes that during the 'reflexion period' between the two declarations, the concerned transgender individual has to be informed by a certified transgender association about 'all the consequences' of the modification of the registered sex. The legislators clarify that it is 'just' a formality of mandatory information, not a diagnostic or a value judgement. They also reiterate that the procedure is based on self-determination but the information during the reflexive period is mandatory. When discussing the different articles of the bill, the legislators clarify again that the role of the associations is limited to informing about the '*conséquences juridiques, sociales et psychologiques au quotidien de la vie dans l'autre sexe*'. In other words, the duty of information is not restricted to the legal consequences of the modification of the registered sex, but also the everyday social and psychological consequences of living as 'the other sex':

Pendant ce délai de réflexion de trois mois au minimum, la personne intéressée aura le temps de s'informer auprès d'une organisation de transgenres agréée sur toutes les

conséquences du changement de l'enregistrement du sexe dans son acte de naissance. Il s'agit uniquement d'une formalité d'information obligatoire, pas d'un diagnostic ni d'un jugement de valeur [...] La procédure est basée sur l'autodétermination, mais l'information (pendant le délai de réflexion) est obligatoire' (Exposé des motifs, Doc. Ch. 54 2403/001, 2017, p. 8-9).

'Son intervention [d'une organisation de transgenres] se limite à un devoir d'information sur les conséquences juridiques, sociales et psychologiques au quotidien de la vie dans l'autre sexe' (Commentaire des articles, Doc. Ch. 54 2403/001, 2017, p. 19).

This measure raised the criticism of the members of trans* and LGBT associations, the legal scholars of the Equality Law Clinic, the child psychiatrist and the director of the *Institut pour l'égalité des femmes et des hommes*. All of them considered that the interference of a transgender association in the procedure and the mandatory time of reflection were against the principle of self-determination. The following quotes illustrate this discontent:

'[I]l ne peut être question de respect total que si les autorités accordent aux personnes concernées la même responsabilité formelle. Cela ne ressort pas du projet de loi à l'examen, qui part du principe que les personnes transgenres sont un groupe de personnes devant être protégées, également contre elles-mêmes. C'est ainsi qu'il prévoit un certain nombre de "garanties" contre les décisions "irréfléchies"' (Member of Arc-en-ciel Wallonie, Doc. Ch. 54 2403/004, 2017, p. 34).

'Les organisations de la société civile concernées sont réfractaires vis-à-vis de ce rôle de "gardien". Si le projet de loi présuppose le principe du droit à l'autodétermination, l'immixtion de tiers est inutile. L'oratrice ajoute de surcroît que, si chacun est libre de s'affilier auprès d'une organisation ou d'y chercher conseil, personne ne devrait être obligé de consulter une association ou qui que ce soit' (Member of Çavaria, Doc. Ch. 54 2403/004, 2017, p. 36-37).

'En tant que personnes majeures et capables de discernement, les trans ne désirent pas être protégés davantage contre une hypothétique erreur qu'une personne cisgenre désirant se marier: on lui fait la lecture de ses nouveaux droits et devoirs, on lui fait confiance pour avoir correctement estimé l'importance de son engagement. Les personnes trans* ne veulent plus être considérées comme "vulnérables" et "incapables" de mesurer les conséquences de nos actes. S'ils ont besoin d'accompagnement, d'aide, de conseils, les trans iront les chercher eux-mêmes. Ils*

demandent à pouvoir utiliser leurs droits sans tutelle' (Member of Genres Pluriels, Doc. Ch. 54 2403/004, 2017, p. 48-49).

In the three quotes above the members of three trans* and LGBT associations invited to the hearings express their disagreement with the role attributed by the bill to transgender associations. In the first quote, a member of the association *Arc-en-ciel Wallonie* attracts the attention towards the contradiction between the principle of self-determination invoked by the bill and the actual conditions it establishes. He argues that the bill constitutes transgender people as people *'devant être protégées, également contre elles-mêmes'*, reason why it imposes a number of measures to avoid 'rash' decisions. The role attributed to transgender associations is one of them but, as I describe below, it is not the only measure in this sense.

In the second quote, a member of the association *Çavaria* rejects the role of 'gatekeeper' attributed to associations. As the previous speaker, she underlines the contradiction between the principle of self-determination and the interference of a third party—in this case, a transgender association. She argues that such interference is unnecessary. She adds that nobody should be forced to become a member and/or seek help in an association, implying that such an obligation is also contrary to self-determination.

In the third quote, a member of Genres Pluriels draws on an analogy to criticise the actual lack of self-determination imposed by the bill through the role attributed to transgender associations. He compares the modification of the registered sex with getting married. Trans* people who modify the sex registered in their birth certificate do not want to receive special protection against mistakes in the same way cisgender people who decide to get married are not particularly protected: *'on lui fait la lecture de ses nouveaux droits et devoirs, on lui fait confiance pour avoir correctement estimé l'importance de son engagement'*. In other words, cisgender people who get married are officially informed of their rights and duties and are trusted. The speaker rejects the idea implicit in the bill that trans* people are vulnerable and incapable of weighing up the consequences of their actions. In his own words, trans* people *'demandent à pouvoir utiliser leurs droits sans tutelle'*. In other words, they claim the principle of self-determination to be fully applied in the bill.

The irrevocability of the modification of the registered sex is also a reason for rejection. The bill provides that the modification is irrevocable and a second modification can only take place through a judicial procedure in which the concerned individual must demonstrate *'l'existence de circonstances exceptionnelles'* (Exposé des motifs, Doc. Ch. 54 2403/001, 2017, p. 9). As the following quote exemplifies, the exceptional circumstances are described as being victim of transphobia or as the commission of a 'mistake': *'il est en effet concevable que celui-ci [l'intéressé] se sente moins heureux depuis son opération qu'avant la transition et par conséquent que son bien-être se soit détérioré'* (Doc. Ch. 54 2403/001, 2017, p. 22-23). In spite of the de-medicalisation established in the bill, it still equates the administrative procedure with surgical interventions. Moreover, the idea of a mistake or regret keeps on describing transgender people as individuals who are not sure of their decisions.

The principle of self-determination is employed by the stakeholders during the hearings to criticise the irrevocability of the procedure. However, as the following quotes illustrate, irrevocability is not criticised on the basis of a potential regret, but on the respect of self-determined gender fluidity:

L'autodétermination en matière d'identité de genre devrait impliquer que le législateur reconnaît que l'identité de genre peut être fluide, tant dans le vécu qu'au fil du temps. Certains ne se sentent ni homme ni femme. Pour d'autres, l'identité de genre change à plusieurs reprises au cours de la vie. Selon le projet de loi à l'examen, seule une procédure judiciaire permet à une personne de procéder encore à un deuxième changement de l'enregistrement du sexe. Çavaria plaide afin que l'enregistrement de genre puisse être modifié à plusieurs reprises par le biais d'une procédure administrative' (Member of Çavaria, Doc. Ch. 54 2403/004, 2017, p. 35-36).

Il n'existe pas les hétérosexuels d'un côté, et les homosexuels de l'autre. Il y a des bisexuels, et des personnes qui évoluent, sans cesser d'être eux-mêmes. Il n'y a pas que des hommes d'un côté, des femmes de l'autre. Il y a des personnes trans, et il y a aussi des personnes au genre fluide, qui refusent une assignation binaire. Pour cette raison, la position commune adoptée avec d'autres associations, Amnesty et l'Equality Law Clinic en novembre 2016¹⁷⁵ demandait la possibilité (facultative) de se passer de l'enregistrement du genre à l'état civil. Cette perspective n'est pas*

¹⁷⁵ Here the speakers refers to the legislative working group and the model law they drafted (see Chapter 1).

irréaliste: il serait bien inacceptable d'assigner, par le biais de l'état civil, des citoyens à une ethnie, à une religion ou à un handicap. La notion d'irrévocabilité du changement du genre enregistré s'oppose profondément à la vision de la RainbowHouse. Elle découle d'une vision rigidement binaire du genre humain' (Member of the RainbowHouse Brussels, Doc. Ch. 54 2403/004, 2017, p. 38-39)

In the first quote above, a member of *Çavaria* makes use of the notion of self-determination to ask for a modification of the bill so that the registered sex can be changed several times following an administrative procedure (not a judicial one). She argues that *'l'autodétermination en matière d'identité de genre devrait impliquer que le législateur reconnaît que l'identité de genre peut être fluide, tant dans le vécu qu'au fil du temps'*. In other words, the principle of self-determination must also apply to identities that do not fall under the binary opposition (woman-man) and/or identities that evolve over time. For this reason, the speaker claims that the irrevocability of the modification of the registered sex is against self-determination.

In the second quote, a member of the RainbowHouse Brussels also draws on the notion of *'genre fluide'* to ask for, not only the removal of the irrevocability, but the introduction of the possibility of not registering any gender¹⁷⁶ in identity documents. To support his demand, he draws on two analogies. In the first one, he compares trans* and 'gender fluid' people with bisexual people and people whose sexual orientation evolve over time. He uses this analogy to sustain that, as there are not only two sexual categories ('heterosexual' and 'homosexual' people), there are not either two gender categories ('women' and 'men'). On the basis of the existence of gender categories beyond woman and man, including categories that change over time, he suggests the non-registration of gender in the civil status. In the second analogy, he compares the legal attribution of a gender in the civil status with the attribution of an ethnicity, a religion or a handicap to citizens. This parallelism allows him to establish that the attribution of a legal gender is as unacceptable as the legal attribution of the characteristics mentioned above: *'elle découle d'une vision rigidement binaire du genre humain'*. The binary classification of people

¹⁷⁶ Note that whereas the government calls it 'registered sex', the members of trans* and LGBT associations denominate it 'registered gender'.

according to gender is defined by the speaker as an imposition of the state.

4.2.2.3. The notions of 'fraude' and 'changement irréfléchi'

The notions of '*fraude (à l'identité)*' and '*changement irréfléchi*' permeate the bill and are used by the government to justify the measures criticised by the stakeholders during the hearings: the mandatory time of reflection and the duty of information by a transgender association, and the irrevocability of the procedure. Both the obligation of being informed by a transgender association and the irrevocability of the procedure are included in the bill in order to make sure that the concerned transgender individual does not take a 'rash' decision and is duly informed of the consequences of the procedure:

Pour éviter que l'intéressé fasse cette déclaration de manière irréfléchie et sans être correctement informé sur les conséquences du changement de l'enregistrement du sexe, le texte a intégré quelques garanties. L'intéressé doit déclarer qu'il est convaincu depuis longtemps que le sexe indiqué dans son acte de naissance ne correspond pas à son identité de genre vécue intimement, qu'il effectue cette déclaration en âme et conscience et qu'il souhaite les conséquences juridiques et administratives qu'entraîne ce changement' (Commentaire des articles, Doc. Ch. 54 2403/001, 2017, p. 17-18).

'Si la procédure de retour au sexe initial était aisée, personne n'irait collecter sérieusement les informations requises par la loi étant donné qu'ils pourraient ne pas hésiter à changer l'enregistrement du sexe à nouveau. Ce n'est pas l'intention du législateur. Les personnes qui souhaitent changer de sexe doivent s'être correctement informées à ce sujet et y avoir sérieusement réfléchi' (Commentaire des articles, Doc. Ch. 54 2403/001, 2017, p. 22).

In the first quote above, the government explains that some 'guarantees' have been introduced in the bill in order to avoid that the concerned individual '*fasse cette déclaration de manière irréfléchie et sans être correctement informé sur les conséquences du changement*'. The bill insists thus on the notion of 'conviction': the transgender individual needs to be convinced for a long time that the registered sex does not match her or his gender identity. The individual must declare '*en âme et conscience et qu'il souhaite les conséquences juridiques et administratives*'. In the second quote, the government explains further that if the procedure to modify the registered sex a second time was simple, then nobody would make any effort to be correctly informed. It reiterates that '*les personnes qui souhaitent*

changer de sexe doivent s'être correctement informées à ce sujet et y avoir sérieusement réfléchi'. These statements suggest that transgender people are not informed and does not reflect seriously about this administrative change.

The notion of '*changement irréfléchi*' employed by the government to justify the role of transgender associations during the mandatory reflection period and the irrevocability of the procedure contradicts the principle of self-determination. As already shown, this contradiction is underlined by the stakeholders during the hearings. However, in his introductory statement, the Minister of Justice clarifies that the principle guiding the bill is '*une autodétermination encadrée*'. In other words, a 'supervised self-determination', which is an oxymoron because if it is supervised then it is not self-determination anymore. Yet, the creation of that term allows him to show respect for the human rights perspective on transgender people—based on self-determination—while at the same time establishing certain limits to what transgender people can actually do. As the following quotes express, the supervision is justified by the fact that 'sex' is still part of the civil status of individuals and, therefore, it is necessary to prevent identity fraud:

'Comme point de départ, on a opté pour une autodétermination encadrée, qui soutient la personne intéressée de manière appropriée, sans perdre de vue qu'en droit belge actuel, le sexe est encore un élément de l'état d'une personne. La volonté de changer l'enregistrement du sexe doit être exprimée de manière sérieuse' (Exposé introductif du Ministre de la Justice, Doc. Ch. 54 2403/004, 2017, p. 5-6).

'[L]orsqu'une procédure souple de changement de l'enregistrement du sexe est organisée, un régime lourd de retour au sexe initial est prévu, pour prévenir et éviter les cas de fraude où une personne pourrait changer l'enregistrement du sexe constamment' (Commentaire des articles, Doc. Ch. 54 2403/004, 2017, p. 21).

'La fraude à l'identité est un élément essentiel de la note-cadre interfédérale de sécurité intégrale. Le parquet doit pouvoir avoir son mot à dire en l'espèce, notamment dans le cas où il s'agirait de terroristes potentiels qui voudraient suivre cette procédure' (Discussion générale, Doc. Ch. 54 2403/004, 2017, p. 17).

The first quote above is part of the Introductory statement made by the Minister of Justice in which he uses the term '*autodétermination encadrée*' to refer to the measures imposed by the bill to supervise the procedure. Giving that in Belgian law '*le sexe est encore un élément de l'état d'une personne*', the desire to modify the registered sex must be '*exprimée de manière*

sérieuse’. In the second quote, the government explains that in other countries when the procedure to modify the registered sex is simplified, the usual practice is to establish ‘*un régime lourd de retour au sexe initial [...] pour prévenir et éviter les cas de fraude*’. In the third quote, the Minister of Justice specifies that the prevention of identity fraud is an essential aspect of inter-federal ‘integral security’, especially in relation to ‘potential terrorists’. In summary, the bill depicts transgender people as volatile and not really able to take decisions without being supervised. Volatility is not accepted because the State needs to know who individuals are for security reasons. The irrevocability of the procedure targets both transgender people’s alleged instability and third parties (terrorists) misuse of the procedure.

4.2.1.1. The argument of direction

According to the typology of arguments proposed by Perelman & Olbrechts-Tyteca (1970), the argument of direction is based on the structure of reality, particularly on the relationship between two elements such as the cause and the effect. The argument of direction depicts an end—in this case, the text of the Act being discussed—as just a milestone or a step in a particular direction. Following this argument, the Act is not the definitive one, but something that brings us closer to it. Several members of the government use this argument to reject some of the changes suggested by trans* and human rights activists during the hearings:

Le ministre rappelle que “le mieux est l’ennemi du bien”. Ce projet de loi constitue un grand pas en avant. Il est important d’avancer graduellement. La sagesse a été de ne pas aller plus loin, notamment concernant l’abrogation du genre dans la législation qui arrivera sans doute un jour dans le futur. Le moment viendra pour franchir d’autres étapes’ (Minister of Justice, Doc. Ch. 54 2403/004, 2017, p. 17).

‘Ce projet de loi contient toute une série de choses extrêmement positives. La question est de savoir s’il répond à toutes les demandes. Je vais être franc: non, effectivement, il ne répond pas à toutes les demandes que nous avons entendues. Moi, j’ai toujours eu comme formule [...] qu’il ne faut pas surcharger la barque de peur qu’elle chavire. Au vu de ce qui s’est passé en France avec la loi du mariage pour tous, les manifestations et toutes les horreurs que cela a suscitées, avec la poussée de l’homophobie et tous les actes malsains, je pense que nous devons faire avancer la barque, ce que nous sommes en train de faire aujourd’hui; il faut la faire aboutir, ce que nous allons faire aujourd’hui. Certes, il y

aura encore ultérieurement des améliorations à apporter. On pourra d'autant plus en apporter qu'on aura l'expérience de la nouvelle loi proposée au vote aujourd'hui. Ce n'est pas – je l'ai d'ailleurs dit au milieu associatif – une volonté de ne pas accepter d'autres choses, mais c'est faire en sorte que la loi aboutisse, parce que le gros travail sera désormais la pédagogie vis-à-vis de l'ensemble de la population de notre pays' (Deputy, CRIV 54 PLEN 170, 2017, p. 44).

In the first quote above, the Minister of Justice affirms that *'le mieux est l'ennemi du bien'*, thereby recognising that the bill could be improved but at the same time stating that it is already good enough. Making use of the argument of direction, he describes the bill as a big step forward and underlines that it is important to advance gradually. He insists that it is 'wise' not to go further, especially in relation to *'l'abrogation du genre dans la législation qui arrivera sans doute un jour dans le futur'*. The argument of direction allows him to reject several changes suggested by trans* and human rights activists—especially the removal of the registered sex—whereas at the same time he presents the current Act as a step in a dynamic process that will 'undoubtedly' lead to more changes in the future.

In the second quote, a deputy member of the government employs the same argument in a similar vein. He admits that the bill does not respond to all the requests made by the trans* and human rights activists. However, he uses the metaphor of a boat that capsizes if too much weight is put on it (*'il ne faut pas surcharger la barque de peur qu'elle chavire'*) to emphasise the idea that it is better to make small steps. To illustrate this idea, he also sets an analogy with what happened in France after the legalisation of marriage between same-sex couples (*'la loi du mariage pour tous'*). In his words, the rapid legislative change that the Act represented in France led to *'manifestations et toutes les horreurs que cela a suscitées, avec la poussée de l'homophobie et tous les actes malsains'*. For that reason, he defends that it is better to advance slowly. Making use again of the metaphor of the boat, he asserts that the government not only has to *'faire avancer la barque'* but also *'la faire aboutir'*. In his words, *'faire aboutir la barque'* does not only mean to adopt the Act but also and especially to make it being accepted by the population as a whole; a mission that he defines as a 'big educational task'. Therefore, further changes requested by trans* and human rights activists are not incorporated into the bill on the basis that

the population might not be ‘ready yet’ for those changes and it might raise transphobia and hate speech.

4.2.3. Changes incorporated in the final text of the Act

The text of the Act was adopted on 25 June 2017. It establishes a simplified procedure to modify the sex registered in the civil status of individuals on the basis of two declarations before the civil registrar officer. It thus removes the medical conditions and sterilisation imposed by the previous Act.

The hearings with trans* and human rights activists led to the incorporation of two important changes in the bill: the mandatory certificate signed by a transgender association was removed and a child psychiatrist does not have to certify the gender identity of the non-emancipated minor older than 16 years old anymore. However, the reflection period between the two declarations before the civil registrar officer remained. For the aforementioned minors, a certificate signed by a child psychiatrist is still required by the Act but this must certify that the minor has the capacity of discernment.

The irrevocability of the procedure was maintained¹⁷⁷ on the grounds explained above (to avoid identity fraud and ‘rash’ decisions) and the possibility of removing any sex registration was not really discussed by the parliamentarians. Healthcare measures (such as the right to access trans* specific healthcare) and the situation of intersex people were not included in the final text of the Act.

4.3. Variability and effects

In this section I first highlight the variability in the use of discursive devices within the parliamentary work of each Act. This variability concerns the different ways in which the same device is employed by different speakers to achieve different functions, but also the identification of absences, that is, situations to which the discursive devices are not applied to. In parallel, I describe the variability of

¹⁷⁷ An appeal has been presented by *Çavaria* and other associations asking to remove the irrevocability of the change.

discursive practices over time in order to trace the evolution of the argumentative context concerning trans* people and their effects.

The parliamentary work of the *Loi relative à la transsexualité* (2004-2007) is characterised by the use of the mind-body distinction of notions, the medical rhetoric and the notion of ethics. The mind-body distinction of notions is used by legislators to both define the ‘phenomenon’ of transsexuality and its treatment, and to establish the conditions upon which sex change is legally recognised. The distinction of notions allows them to solve an apparent contradiction between the sex attributed to an individual at birth and the sex the individuals consider to belong to. The contradiction is solved by establishing the body—specifically genitalia—as the element determining sex. The notion of ‘sex’ is indeed employed as a synecdoche: it is used to mean both genitalia and the social category (woman or man). ‘Sex change’ thus means both to undergo genital surgery and to move from one category to the other. Therefore, a modification of the legal mention of sex in identity documents is allowed only if the transsexual person modifies their body—particularly genitalia.

Drawing on that distinction, legislators depict the process of ‘sex change’ as a difficult and long path full of obstacles. The path starts with a psychological state (‘realising that one is not the sex that has been attributed to her or him’) that needs to be confirmed by a psychiatrist. It continues with the adoption of the social role ‘of the other sex’ and hormonal treatment, and it culminates with surgery. The legal modification of the mention of sex in identity documents is an additional final obstacle in the path due to the judicial procedure in place at the time. The proponents of the bill justify the need for an Act establishing a ‘simple’ administrative procedure on that basis: the law should not add more difficulties to a path that is already hard enough. Through this discursive practice, legislators present the bill as progressive, modern and tolerant with transsexual people. However, they reinforce at the same time the binary opposition between the categories ‘woman’ and ‘man’. In this sense, transsexual people are ‘tolerated’ as long as they respect the legal definition of the binary opposition, based in turn on a medical definition.

The mind-body distinction of notions is not only employed by the legislators, but also by some trans* groups to claim the inclusion of

intersex people within the Act. The demand of these groups is that intersex people should also benefit from an administrative procedure to modify the legal mention of sex in their civil status. These groups draw on the distinction of notions to establish an analogy between transsexual and intersex people in two different ways: they either affirm that intersex people have also the conviction that they belong to ‘the other sex’ or that transsexuality is a form of intersexuality of the brain. The ideological effect of this discursive practice is double-fold. On the one hand, it reproduces a binary definition of identities and bodies and the idea that the identity must ‘match’ the body. On the other hand, it makes visible the situation of intersex people, ignored by the law until then, and demands for intersex people to be treated equally.

It is important to note that the need for surgery was put into question by practically *nobody*, not even by the transsexual organisations invited to the hearings. Indeed, the whole bill is constructed upon the idea that the administrative procedure only recognises a physical change (the ‘sex change’) that has already occurred. In other words, the norm constituting the binary opposition between women and men—sexual dimorphism—was so taken for granted at that time that there was nearly no controversy about it. It is therefore important to understand that the discursive practices of both legislators and the different stakeholders invited to hearings took place within that particular argumentative context.

Only one group, the *Gender Actie Groep*, actually challenges the idea that all trans* people *desire* to undergo genital surgery. Whereas other speakers do criticise the obligation of surgery, they do so for medical reasons. The *Gender Actie Groep* however puts into question the very idea that all trans* people need to modify their bodies at that point to feel good, to feel that they are really a woman or a man. They draw a distinction between the gender identity of an individual and their body characteristics and depict the matter as a ‘gender issue’ and not as a ‘sex’ one. Therefore, they also make use of the mind-body distinction but with a different purpose: they use it to claim that the element defining the category to which an individual belongs is the identity, not the body, and thus surgery should not be mandatory. This discursive practice represents a minority but important breaching of the norm within that

argumentative context. As a matter of fact, it became the main argument to replace this Act ten years later.

The medical rhetoric is employed by the legislators to depict transsexuality as a mental disorder. They use the term 'gender dysphoria' to refer to it, although the term 'sexual identity disorder' still appears in the texts. In this sense, the mind-body distinction of notions is used not only to set the body as the ultimate criterion to determine whether an individual is a woman or man, but also to define as a mental problem the lack of correspondence between the identity and the body.

Moreover, the medical rhetoric is based on the authoritative argument of science, a type of knowledge that is usually assumed to be objective and true because it has been obtained by a supposedly neutral scientific method. However, according to DP principles, classifying a bodily or a psychic condition as a disease involves both describing and evaluating the state of an organism. If that is so, the claim to scientific objectivity 'has to concede that the terms in which we do the science are infused with evaluations and potential sources of selective bias' (Gillett, 2006, p. 2). In fact, with this discursive practice, the legislators are implicitly establishing 'normality': identity stems from sexual dimorphism and thus should 'match it'. The use of the medical rhetoric and the constitution of transsexuality as a mental disorder has thus the function of constituting the binary categories of 'woman' and 'man' as two natural, mutually exclusive and pre-discursive categories.

The medical rhetoric is also employed by the legislators to justify the need for medical certificates from a psychiatrist and a surgeon. The obligation of surgery in order to modify the legal mention of sex justifies the role of the surgeon, who has to certify that surgery has been performed and that the individual has been sterilised. The depiction of transsexuality as a mental disorder justifies the intervention of the psychiatrist, who has to determine if the individual can be diagnosed with 'gender dysphoria'—in other words, if the individual is a 'real transsexual'. The role of the psychiatrist is legitimated by the legislators on the ground that it is necessary to prevent transsexual people from regretting the surgery. The idea that trans* people are not sure of who they are permeates the *Loi relative à la transsexualité*. They thus need professional help to both 'find themselves' and be treated. As Missé

(2014) states, transsexuality is ‘the only mental disorder that is cured through surgical operations’¹⁷⁸ (2014, p. 64, translation mine).

The medical rhetoric that pervades this argumentative context is also employed by the medical professionals and the transsexual groups with a different purpose: to demand several changes in the bill. On the one hand, these stakeholders criticise the inclusion of a fixed definition of transsexuality and its treatment within the text of the Act. They draw on the authoritative argument of science to reject the interference of the law in the medical realm. The authority of doctors is also employed to argue for an administrative procedure since it is the doctors, and not the civil registrar officer, who judge whether the transsexual individual fulfils all the conditions to modify the legal mention of sex.

The medical rhetoric is also used to claim transsexual people’s medical rights and the inclusion of minors within the Act. As patients, transsexual people should benefit from the best treatment possible without discrimination of age. Taking into account that the medical science evolves over time, the inclusion of a fixed definition and treatment for transsexuality would exclude transsexual people from receiving the best care. Moreover, medical treatments are usually adapted to each patient. On that ground, they argue that the possibility of surgery should be assessed on a case-by-case basis. These discursive practices show how several stakeholders, especially transsexual groups, use the medical rhetoric dominating the argumentative context at the time with the purpose of improving the health situation of transsexual people. However, by so doing, they also reproduce norms constituting the binary opposition.

The medical rhetoric is also used by the medical professionals to ask for the substitution of the verb ‘to procreate’ for the verb ‘to conceive’ as a condition to modify the legal mention of sex in the civil status. Drawing on the notions of science and progress upon which the medical rhetoric relies, they argue that technological advances allow transsexual people to freeze their sperm or eggs. Therefore, although they cannot conceive anymore after surgery, they can still procreate. However, the obligation of sterilisation *per se* is not put into question.

¹⁷⁸ *La transexualidad es el único trastorno mental que se cura mediante intervenciones quirúrgicas.*

Only two transsexual groups—the *Gender Actie Groep* and the *Collectif Trans Action*—actually criticise the obligation of sterilisation. They do so by drawing on the notion of ethics. They describe that condition as an ethical dilemma for transsexual people (a ‘choice’ between having their identity recognised or being able to conceive) and even as a eugenic measure. The condition of sterilisation is nevertheless not much discussed by the legislators. Most of them seem to assume that it is a logical consequence of surgery. One of the legal scholars states that sterilisation is necessary because Belgian rules of filiation are based on the principle of *‘mater semper certa est’*. However, that principle still regulates filiation nowadays and yet the sterilisation condition has been removed from the *Loi transgenre* in 2017 (it was thus possible to adapt the rules of filiation). Therefore, it seems that the sterilisation condition is rather an ideological question. This is confirmed by a brief but illustrative comment of the senator who proposed the bill in relation to the ‘natural laws of reproduction’: she claimed that it was actually an ethical rather than a medical question. The use of this discursive device has the effect of preserving the norm that only women can get pregnant and only men can inseminate—that is, that the binary opposition is defined by sexual dimorphism. It is thus interesting to note how the notion of ethics is employed by different actors to either criticise the condition of sterilisation or to justify it.

Conversely, the parliamentary work of the *Loi transgenre* in 2017 is characterised by the use of the human rights argument, the principle of self-determination, the notions of *‘fraude’* and *‘changement irréfléchi’*, and the argument of direction. The human rights argument is employed by the government to justify the need for a new Act allowing ‘transgender people’—note the change in terminology—to modify the sex registered in the civil status. This argument not only substitutes the medical rhetoric employed in the *Loi relative à la transsexualité* but it is actually defined as clearly opposed to it. The bill is proposed as a dissociation between the registered sex and all medical conditions.

The medical conditions that seemed natural and logical in 2007 are described as exaggerated, unnecessary and even as a violation of human rights in 2017. This is undoubtedly due to the emergence of trans* activism both internationally and in Belgium and the advocacy work of

many trans* people¹⁷⁹, which has had an enormous impact on the international human rights landscape. This shift is evident not only in the discursive practices employed by legislators, but also by the trans* groups and human rights activists invited to the hearings. It is interesting that what constituted a minority discursive practice in 2007—the use of the mind-body distinction of notions to claim the prevalence of the identity over the body—is a majority discursive practice in 2017.

The human rights argument used by the legislators to legitimise the removal of all mandatory medical conditions established by the previous Act is based on the reversal of the mind-body distinction of notions. According to this reversal, the criterion to determine someone's legal sex is not the body anymore, but the identity. Moreover, influenced by the national and international argumentative context, the legislators also take an overt anti-pathological stance. This shift is indicated by two important terminological changes: the substitution of the term 'transsexual' for 'transgender' and the replacement of the term 'sex' for 'gender (identity)'. The 'sex synecdoche' in which sex is used to refer to both the part—genitalia—and the whole—women or men—is not used anymore.

Drawing on the reversal of the distinction of notions, the human rights argument opposes itself to the medical rhetoric that dominated the previous Act. However, the body, and more precisely the assumed sexual dimorphism, is still present as a criterion to determine whether someone is a woman or a man. This is evident in deputies' definition of the transition as 'complete' when surgery has taken place and the conditions imposed on minors. The bill proposed that a child psychiatrist must certify the gender identity of the non-emancipated minor older than 16 years old. The logic that lied behind this condition was that of 'sex change' as surgery, an important consequence against which minors must be protected.

The reversal of the mind-body distinction is also employed by trans* and human rights activists to ask for the inclusion of extraordinary measures in the text of the Act. On the one hand, they ask for the reimbursement of healthcare costs. The activists pay special attention not to link healthcare measures with mandatory surgeries, underlying that it

¹⁷⁹ See Chapter 1.

was up to the concerned individual to decide the extent they want to modify their body. On the other hand, they also ask for a ban on surgeries performed on intersex people at birth. Given that the body is not anymore the criterion upon which the legal sex is determined for trans* people, ‘normalising’ surgery imposed on intersex people—whose goal is the artificial creation of sexual dimorphism—does not make sense and is against human rights.

The principle of self-determination is shared by all the speakers. The government specifies that the bill relies on that principle, reason why the procedure is based on the declarations of the concerned individual and not on the declarations of the medical professionals (except for minors). However, during the hearings all the stakeholders underlined the contradiction between the principle of self-determination and several measures established by the bill, namely the declaration of a transgender association and the irrevocability of the procedure. It is thus interesting how the stakeholders use the same discursive device employed by the legislators to ask for changes in the bill.

The legislators reiterate that transgender identities are not to consider a mental disorder and that transgender people have the capacity of discernment to decide for themselves, reason why the new procedure to modify the legal mention of sex is based on the principle of self-determination. However, the trans* and human rights activists elucidate the contradictions between the alleged self-determination principle and the conditions established by the Act. On the one hand, the gatekeeper role attributed to transgender associations is very much criticised because it constitutes a new form of control. This measure is described by the legislators as ‘just a formality’, making sure that the role of the association is not that of posing a diagnosis or judging the trans* person. However, medical control is to be substituted by the monitoring of the associations.

On the other hand, the irrevocability of the procedure, coupled with the limitation of legal sex markers to two (‘F/uneven number’ or ‘M/even number’), do not recognise ways of categorising oneself that fall outside the permanent binary opposition. As the stakeholders highlight during the hearings, the ‘supervised self-determination’ suggested in the bill has the effect of constructing trans* people (again) as people who are

not sure of who they are and as in need of the protection of the State. They found their arguments on a series of analogies (such as that of marriage) through which they make visible the variability of the discursive practices employed by the legislators and thus their ideological effects. The true application of the self-determination principle would require that the bill allows for several modifications of the registered sex because not all trans* people identify as either a woman or a man in a permanent way, thereby putting into question the permanent character of the binary opposition. Instead of constituting women and men as two essential and mutually exclusive categories in terms of the body, it does so in terms of the identity: there are only two possible and necessarily stable identities.

The legislators draw on the notions of *'fraude'* and *'changement irréfléchi'* to justify those measures. In the first case, the possibility of fraud is not attributed to trans* people themselves but to third parties—such as terrorists—who may take advantage of the self-determined procedure. Avoidance of identity fraud is presented as something essential for security reasons given the legal mention of sex is defined as an essential element of the civil status of individuals. However, if the national registration number was not gendered, the possibility of identity fraud would be reduced. This alternative was not discussed by the legislators. Neither was it questioned the importance of sex markers to identify an individual. The possibility of not including any mention of sex in the civil status is mentioned only by one of the trans* groups. It remains thus a minority position within this argumentative context. The use of the notion of *'fraude'* has the effect of constituting 'woman' and 'man' as two stable and thus identifiable categories subject to the monitoring of the State.

In the second case, legislators alleged it is important that trans* people are convinced of their decision and know 'all the consequences' of the modification of the registered sex. The notion of 'supervised self-determination' is an oxymoron that is used only for some administrative changes and not for others. As some stakeholders highlight, this notion is not employed, for instance, when people get married. If that was the case, divorce would not be allowed on the basis that people need to be convinced of their decisions and be aware of the consequences of their acts. In spite of the explicit anti-pathological stance adopted by the

legislators, a notion of irrationality and nonsense remains in the new Act. The notion of *'changements irréfléchis'* still refuses to acknowledge trans* people capacity of discernment. This is evident in the terminology constantly employed: *'conviction intime'*, *'déclarer en âme et en conscience'*, *'être bien informés de toutes les conséquences'*, *'avoir sérieusement réfléchi'*. The legislators do not trust trans* people's decisions, reason why the State has to establish measures to prevent them from making mistakes.

Some demands of the trans* associations and human rights activists are included in the final text of the Act. The gatekeeper role attributed to transgender associations is removed. However, the irrevocability of the procedure, the two declarations and the reflective period between them are maintained. Therefore, although trans* adult people's decision is not monitored by an association anymore, it remained monitored by the State, which allow them to modify the mention of sex only once and within the limits of the binary opposition. The evaluation by a child psychiatrist of the gender identity of transgender minors is removed, but it is substituted by the evaluation by a child psychiatrist of the capacity of discernment of the minor. In other words, the psychiatrist does not have to verify that the trans* minor truly identifies as a woman or a man, but that the minor is mature enough to understand it. If trans* adults are not recognised by the legislators as being fully able to know who they are and what they want, then trans* minors have to be specially monitored given the 'instability' that characterises childhood.

Demands such as the irrevocability of the procedure and the expansion of the number of matters covered by the Act are not finally included on the basis of the argument of direction. According to this argument, changes have to be carried out slowly in order to avoid a negative reaction on the part of the general population. The legislators leave other modifications to future Acts. The discussion of the real need for a legal mention of sex in the civil status is thus 'postponed'. Therefore the legal definition of the binary opposition between women and men remains in spite of the legislative changes.

Conclusion

How has the definition of women and men changed for trans* people between the two Belgian ‘trans* Acts’ so that the binary opposition between the two categories is maintained? The analysis of the discursive practices shows that the overt pathologisation of trans* people in the *Loi relative à la transsexualité* has been transformed into ‘covert psychologisation’ in the *Loi transgenre*, which remains suspicious of trans* people’s capacity of discernment. In turn, the biological essentialism embedded in the former Act has been replaced by ‘identity essentialism’ in the new Act, in which the definition of the binary opposition is defined in terms of identity. Therefore, for trans* people, the definition of women and men as two different biological realities has been reformulated as two different identity essences, thereby maintaining the binary opposition between women and men. The two Acts analysed here apply only to ‘trans* legal subjects’ and thus, the described changes apply only to them. In the next chapter, I address how the binary opposition has been defined *for the rest of society* over time and the implications of different definitions.

Chapter 5.

Legislation certifying sex in Belgium over time: Medicalising sex at birth and psychologising its modification

In the previous chapter, we have seen how the legal definition of the binary opposition between women and men has changed over time *for trans* people* in Belgian legislation while maintaining the binary opposition. In this chapter, we focus on the way legislation has defined the binary opposition over time, also when it is first attributed at birth. I describe how Belgian legislation has certified the mention of sex for different categories of people over time (specific obj. 2). To this end, I first carried out a qualitative content analysis on all Belgian legislation regulating the mention of sex in the civil status of individuals¹⁸⁰. The analysis was effectuated by applying to each Act a series of deductive categories developed from the DP theoretical framework adopted in the thesis¹⁸¹. These categories were the following:

- Date of adoption and entry into force
- Dates of parliamentary work
- Type of bill and initiator of procedure
- Type of legal procedure
- Legal subject
- Type of regulation of the mention of sex
- Purposes
- Matters regulated in relation to the mention of sex
- Criteria upon which the registration of the mention of sex is based
- Intertextuality
- Stakeholders consulted
- Current state of the Act

¹⁸⁰ See Chapter 2, section 2.2.1.

¹⁸¹ See Chapter 2, section 2.1.

Following the step, and drawing on the DP notions of variability and effects, I examined how these categories differed from Act to Act in order to elucidate the effects of the legislation as a whole. In other words, the effects that I present in this chapter refer to the entire body of legislation regulating the mention of sex in the civil status. The focus of this chapter is thus on the overall constitution of sex/gender norms in legislation by the comparison of how the legal mention of sex is regulated for different people. This comparison allowed me to identify the circumstances under which the norm is not mentioned—and thus, taken for granted—and the circumstances under which the norm is explicit and/or debated.

In the first section of the chapter (5.1.) I describe the qualitative content of each Act following a chronological order. A synthesis can be found in table 17 at the end of the section. After the description of each Act, I describe the variability in the content of the Acts to elucidate the effects of the legislation as a whole (section 5.2.).

5.1. Legislative developments: from the ‘Napoleonic Code’ to alleged self-determination

A Civil Code and six Acts have regulated the mention of sex in the civil status in Belgium over time. The ‘*Code napoléon*’ established the procedure to declare the birth of a child and the elements that the declaration must contain—including the mention of sex—since its entry into force in 1807. This information can be found in the *Livre I des personnes, Titre II des actes de l’état civil, Chapitre II des actes de naissance*. Six Acts have successively incorporated changes to that section of the original Code, still in force. The original title of the Code and the Acts is presented in table 17. A short name for each Act is also proposed in order to ease the reading. The names have been coined by taking up keywords from the original title. From now on, I will refer to the Code and different Acts with these names.

Tableau 17. Original titles and short names of each Act

Original title	Short name
<i>Code civil. Livre I des personnes, Titre II des actes de l'état civil, Chapitre II des actes de naissance</i> (Code civil, 1804)	« <i>Code Napoléon</i> »
<i>Loi du 23 novembre 1961 modifiant l'article 55 du Code civil</i> (M.B. 16 janvier 1962)	« <i>Loi modifiant l'article 55</i> »
<i>Loi du 30 mars 1984 modifiant les articles 55, 56, et 57 du Code civil et 361 du Code pénal</i> (M.B. 22 décembre 1984)	« <i>Loi modifiant les articles 55, 56 et 57</i> »
<i>Loi du 10 mai 2007 relative à la transsexualité</i> (M.B. 11 juillet 2007)	« <i>Loi relative à la transsexualité</i> »
<i>Loi du 15 mai 2007 modifiant l'article 57 du Code civil en ce qui concerne la mention du sexe d'un enfant souffrant d'ambiguïté sexuelle</i> (M.B. 12 juillet 2007)	« <i>Loi concernant l'ambiguïté sexuelle</i> »
<i>Loi du 14 janvier 2013 portant diverses dispositions relatives à la réduction de la charge de travail au sein de la justice</i> (M.B. 1 mars 2013)	« <i>Loi réduction de la charge de travail en justice</i> »
<i>Loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets</i> (M.B. 10 juillet 2017)	« <i>Loi transgenre</i> »

5.1.1. 'Code Napoléon' (1804)

Adopted in 1804, the Book I, Title II, Chapter II of the Code (articles 55-62) have addressed the question of the declaration of birth and the birth certificate since its entry into force in 1807¹⁸². Its purpose was to regulate the civil status of all individuals. The type of information that the birth certificate must contain, including the sex of the child, is addressed only in article 57. The other articles address when, where and

¹⁸² Although tracing the origins of the Civil Code is beyond the scope of this thesis, it is important to note that it was not the first legislative norm to introduce the mention of sex. According to Houbré (2014) the Civil Code took up what was already established in the *Décret du 20 septembre 1792 qui détermine le mode de constater l'état civil des citoyens* founding modern civil status. This decree provided for the specification of sex in the civil status for the first time, whereas it was not mentioned in the preceding *Déclaration du Roy du 9 avril 1736* regulating church records held by the priests.

how the birth must be declared (article 55), by whom (article 56), the procedure that must be followed when a new-born is found (article 58), the procedure when a child is born on a boat (article 59-61) and the Act of recognition of the child¹⁸³ (article 62). Therefore, the most relevant articles to understand the registration of sex are articles 55, 56 and especially 57. It is important to note that these articles have been modified by the consecutive Acts. The qualitative content analysis carried out here examines the first version of the Civil Code (*Code Napoléon*).

The original article 55 stated that the birth had to be declared within the three days following the delivery and the new-born had to be presented before the civil registrar officer. Article 56 stated that the birth of the child had to be declared by the father and, in the absence of the father, by a doctor, midwife or any other health professional who assisted the birth. Following the step, the birth certificate was written in the presence of two witnesses.

Only article 57 addressed specifically the type of information that the birth certificate had to contain. This included the day, time and place of birth, the *sex of the child* and the given names and other information such as the names, surnames, professions and address of the father, the mother and witnesses:

L'acte de naissance énoncera le jour, l'heure et le lieu de la naissance, le sexe de l'enfant¹⁸⁴, et les prénoms qui lui seront données, les prénoms, noms, profession et domicile des père et mère, et ceux des témoins'.

(Code civil, 1804, p. 15).

Therefore, the Civil Code established already in 1804 that the sex of the child had to be registered in the birth certificate. However, the text itself does not mention the criteria upon which the registration of the mention of the sex of the child was determined, who determined it or how many possible sexes could be registered.

The drafting of the *'Code Napoléon'* was carried out by a commission of jurists under the rule of Napoleon. The compilation of the

¹⁸³ Act by which someone reports that a maternity or paternity bond exists between her or himself and the child.

¹⁸⁴ Emphasis mine.

preparatory work carried out by the French Council of State (Fenet, 1836) shows that the definition of sex was not specifically debated during the drafting work of the Code. However, the use of utterances expressing opposition, such as *'l'un ou l'autre sexe'* and *'le sexe le plus faible'* (referring to women) as opposed to *'le sexe le plus fort'* (referring to men), indicates a binary classification of sex expressed through the categories 'woman' and 'man'. Therefore, the binary opposition was already present in legislation at the time.

The use of the possessive pronoun in *'son sexe'* indicates that sex was described as a characteristic stemming from an individual (i.e. someone has a sex), not as a characteristic ascribed to them (i.e. someone is attributed a sex):

« Il en sera dressé un procès-verbal détaillé qui énoncera en outre l'âge apparent de l'enfant, son sexe¹⁸⁵, les noms qui lui seront donnés l'autorité civile à laquelle il sera remis. Le procès-verbal sera inscrit sur les registres » (Fenet, 1836, p. 260-261).

The criteria upon which the registration of the mention of the sex of the child is determined were not mentioned and no discussion about it appears in the preparatory work of the Code.

5.1.2. *'Loi modifiant l'article 55'* (1961)

The *Loi modifiant l'article 55* was adopted on 23 November 1961 and entered into force on 2 January 1962. It was a *proposition de loi* initiated by the Senate. The parliamentary work was relatively short (from the beginning of 1960 till the end of 1961). The purpose of this Act was to extend the delay to declare the birth of a child. It applied to all citizens. The delay of three days established by the *'Code Napoléon'* was deemed too short, especially when the birth took place before a public holiday. This Act established that Saturdays, Sundays and public holidays were not to be included in the 3-day delay, thereby modifying the article 55 of the Civil Code. No expert or external body was consulted.

Although this Act did not explicitly address the registration of sex but the delay to declare the child, it was the first time in which the role of the doctor in the registration of the birth is mentioned. During

¹⁸⁵ Emphasis mine.

parliamentary work, the possibility not to present the child before the civil registrar officer was debated (Doc. Ch. 38 130/002, 1961). According to a member of the Chamber, the practice of presenting the new-born was practically abandoned, being replaced by a medical certificate verifying '*la réalité de la naissance et le sexe*' (1961, p. 2). However, it was also argued that the officer had the right to see the child anyway. The obligation to present the new-born at the civil registry was thus not removed.

The medical certification of sex was already a common social practice, although it was not explicitly regulated by this Act. However, as it was the case of the '*Code Napoléon*', the criteria upon which the registration of the mention of the sex of the child is determined were neither explicitly mentioned nor debated.

5.1.3. *Loi modifiant les articles 55, 56, et 57* (1984)

The *Loi modifiant les articles 55, 56 et 57* introduced several changes in the Civil code. It was adopted on the 30 March 1984 and entered into force on 1 January 1985. It was a *proposition de loi* initiated by the Chamber. It followed a bicameral process. The period of parliamentary work was quite long (more than four years). The main purpose of this Act was to allow the mother to declare the birth of the child and to eliminate the obligation to present the child before the civil registrar officer. The Act applies to all citizens. Given the type of changes discussed, the permanent commission of the civil status was consulted. This Act modified the articles 55, 56 and 57 of the Civil Code. It replaced the modification of article 55 carried out by the previous *Loi modifiant l'article 55* described above.

Invoking gender equality principles, this Act allowed for the first time women to declare themselves the birth of their child. As a consequence of this change, the delay to declare the new-born was extended up to 15 days in order to allow the mother to recover from the delivery in case she wanted to declare the child herself before the civil registrar officer. At the same time, the doctor, midwife or any other person who assisted the birth had to inform the civil registrar officer about the birth on the first working day following the birth.

This act also eliminated the obligation to present the child before the civil registrar officer. As it was argued by the proponents of the Act, that practice had been actually abandoned long before (Doc. Ch. 44 400/001, 1979). It was then officially replaced by a medical certificate attesting the birth signed by a doctor or a midwife. If this was not possible, then the civil registrar officer could still go personally to meet the new-born.

Other modifications incorporated concerned the information to be included in the birth certificate. It removed the obligation to register information such as the name of the witnesses and the profession of the parents. The mention of sex was however not eliminated. As in the previous Acts, the criteria upon which sex is certified were neither mentioned nor discussed.

5.1.4. *Loi relative à la transsexualité* (2007)

The *Loi relative à la transsexualité* was the first Act allowing the modification of the mention of sex in the civil status in Belgium. Until this Act was adopted, the only possible way to modify it was through a judicial proceeding. Trans* people had to follow a court proceeding in which the judge could either allow the change or deny it. This led to a large discrepancy in court decisions. In the cases in which the change was allowed by a judge, it was not carried out as a modification of the mention of sex, but as a rectification¹⁸⁶.

This Act was adopted on 10 May 2007 and entered into force on 11 July 2007. It was a *proposition de loi* initiated by the Senate and followed a bicameral procedure (it was discussed in the Senate, in the Chamber and then again in the Senate). The parliamentary work was long, lasting more than three years (11 March 2004 - 10 May 2007). As opposed to the previous Acts, the bill was much debated and other bodies, experts and civil society groups were consulted. The opinion was asked to the Bioethics advisory committee, the deputy prime minister and minister of Interior, the deputy prime minister and minister of Finances, the minister of Social Affairs and Public Health. There were also hearings with

¹⁸⁶ Whereas the modification becomes effective only from the moment it is granted, the rectification is a retroactive action. The idea underpinning the rectification is that there has been a mistake that should be corrected. In this case, the mistake concerns the attribution of sex at birth.

several experts including a psychiatrist from the ‘genderteam’¹⁸⁷ at Ghent hospital, a surgeon, a lecturer in law from the *Katholieke Universiteit Leuven*, and a professor emeritus in family law from the *Université de Liège*. The opinion of the Council of State was also asked. Representatives of trans* groups¹⁸⁸ were also heard: two members of the *Collectif Trans-Action*, a member of the *Genderstichting*, and a member of *Genderactiegroep*. It was in force until 1 January 2018, when it was substituted by the *Loi transgenre*.

Whereas the previous three Acts concerned all citizens, the *Loi relative à la transsexualité* only applied to the ‘transsexual’ individual. ‘Transsexual’ and ‘transsexuality’ are the terms employed in this Act. The purpose of the Act was to avoid legal uncertainty for transsexual people by the establishment of an administrative procedure to recognise their ‘sex change’ (Doc. Ch. 51 0903/001, 2004). It added two articles (62*bis* and 62*ter*) in the Civil Code (*Livre I des personnes, Titre II des actes de l’état civil, Chapitre II des actes de naissance*) to legislate this issue¹⁸⁹. It is important to note that the Act was designed as the legal recognition of a physical change that had already taken place¹⁹⁰.

The article 62*bis* established the rules for transsexual individuals to modify the mention of sex in the birth certificate. The person concerned had to declare before the civil registrar her or his ‘*conviction intime, constante et irréversible d’appartenir au sexe opposé à celui qui est indiqué dans l’acte de naissance et dont le corps a été adapté à ce sexe opposé dans toute la mesure de ce qui est possible et justifié du point de vue médical*’ (M.B. du 10 juin 2007, p. 37823). Drawing on the medical discourse, the conviction that they ‘belong to the other sex’ is defined in this Act as a mental disorder. This declaration had to be accompanied by a declaration from a psychiatrist and a surgeon attesting that:

‘1. que l’intéressé a la conviction intime, constante et irréversible d’appartenir au sexe opposé à celui qui est indiqué dans l’acte de naissance; 2. que l’intéressé a subi une réaffectation sexuelle qui le fait correspondre au sexe opposé, auquel il a la conviction d’appartenir, dans toute la mesure de ce qui est possible et justifié du

¹⁸⁷ See footnote 165 (Chapter 4).

¹⁸⁸ None of these groups seem to exist nowadays.

¹⁸⁹ This law also regulated other issues such as the modification of the given name(s) (modifying other laws, such as the *Loi du 15 mai 1987 relative aux noms et prénoms*). However, those changes are beyond the scope of this thesis.

¹⁹⁰ See Chapter 3, section 3.1.

point de vue médical; 3. que l'intéressé n'est plus en mesure de concevoir des enfants conformément à son sexe précédent' (M.B. du 10 juin 2007, p. 37823-37824).

In summary, this Act legislated for the first time transsexual people's right to modify the mention of sex in their civil status. However, they had to comply with some conditions: undergoing a psychiatric assessment, a hormonal treatment, genital surgeries and being sterilised. These conditions define the binary opposition as the conviction of belonging to a sex (the opposite), but especially the possession of certain sexual characteristics of that sex (namely, secondary sexual characteristics, genitalia and gonads). In other words, sexual dimorphism. It is the first time that the criteria upon which the registration of the mention of the sex is made are explicitly mentioned and discussed.

5.1.5. *Loi concernant l'ambiguïté sexuelle*' (2007)

The *Loi concernant l'ambiguïté sexuelle* was a *proposition de loi* initiated by the Chamber of representatives. It was adopted on 15 May 2007 and entered into force on 22 July 2007. This means that this Act and the *Loi relative à la transsexualité* were contemporaneous: both were discussed over the same period of time. It also followed a bicameral procedure and parliamentary work was long (24 June 2004–1 May 2007). The Act extended the delay to register the sex of a child up from 15 days to three months in case of intersexuality, thereby modifying the article 57 of the Civil code, previously modified by *Loi modifiant les articles 55, 56, et 57*. It is still in place nowadays.

This Act regulates the registration of sex in the birth certificate for children '*souffrant d'ambiguïté sexuelle*'. This term, employed recurrently in the Act, is used to name children who '*viennent au monde avec une anomalie à classer dans le champs de l'intersexualité*' (Doc. Ch. 51 1242/001, 2004, p. 3). The initial purpose was to extend the delay to declare the birth of the child in those cases. Following the modifications of the Civil Code introduced by the *Loi modifiant les articles 55, 56, et 57*, the delay to declare a new-born was 15 days. The proposers of this Act argued that the delay was too short in the case of children 'suffering from sexual ambiguity' because additional medical exams were needed to determine their sex.

During parliamentary debates, a deputy states that in the birth certificate '*le sexe ne peut être que masculin ou féminin*' (Doc. Ch. 51

1242/005, 2004, p. 9). Therefore, the customary practice until then established that a sex was randomly chosen by the parents of the child at the time of the birth declaration. The sex was rectified afterwards if necessary following a rectification procedure¹⁹¹. Instead of extending the time to declare the birth of the child, this Act allows the parents to delay the registration of the sex of the child. In other words, the birth of the child must still be declared within the 15 days following birth, but the sex can be registered later on. This is why the modification introduced by this Act concerned the article 57 of the Civil Code (defining the information to be registered in the birth certificate) and not the article 55 (establishing when the birth must be declared).

By means of a medical certificate attesting the intersexuality of the child, parents have up to three months to register the sex. According to the medical experts consulted, three months is the time required to obtain the results of the karyotype¹⁹² test. It is thus the karyotype what is established as the criterion to determine the sex of the child.

However, some members of the Parliament feared that the use of this type of test spread and insisted on the fact that

‘en temps normal, la détermination du sexe est effectuée sur base des seules caractéristiques sexuelles morphologiques extérieurement visibles. Dès lors, afin de s’assurer qu’un examen médical approfondi ne soit possible qu’en cas d’incertitude sur le sexe et que l’examen médical classique reste la règle dans les autres cas, il serait utile de ne pas mentionner de façon trop détaillée une référence aux déclarations médicales et à leur contenu dans la loi’ (Doc. Ch. 51 1242/005, 2004, p. 8).

In other words, a karyotype test can be carried out only in ‘case of doubt’ on the sex of a child according to sexual dimorphism. In ‘normal’ cases, sexual dimorphism is enough to determine the sex of the child. It is important to note that it is in this Act and the *Loi relative à la transsexualité* that the criteria upon which the registration of the mention of the sex is determined are explicitly addressed and debated for the first time. In this case, there is even an explicit distinction between ‘normal’ and ‘abnormal’ sex. In ‘normal’ cases, the legal definition of sex relies on

¹⁹¹ Art. 1383 to 1385 of Judicial Code.

¹⁹² Number and appearance of chromosomes in the nucleus of an eukaryotic cell.

visible sexual dimorphism. In ‘abnormal’ cases, the legal definition of sex is based on the chromosomes.

5.1.6. ‘*Loi réduction de la charge de travail en justice*’ (2013)

The *Loi réduction de la charge de travail en justice* was adopted on 14 January 2013 and entered in force on 1 September 2013. Its purpose was to reduce the workload of the Ministry of Justice. It thus covers a broad range of issues that are not related to the matter of concern of the thesis. However, I deemed its inclusion in the corpus worthwhile because it eliminated the possibility for the civil registrar officer to visit the newborn (modifying the article 56 of the Civil Code, previously modified by the *Loi modifiant les articles 55, 56, et 57*). Therefore the medical certificate has been established as the *only* certification of sex for all citizens. The criteria upon which the registration of the mention of sex is determined or the content of the medical certificate are neither mentioned nor discussed in the Act.

5.1.7. ‘*Loi transgenre*’ (2017)

The *Loi transgenre* was adopted on 25 June 2017, entering into force the following 1 January 2018. Whereas the *Loi relative à la transsexualité* and the *Loi concernant l’ambiguïté sexuelle* were discussed for more than three years, the parliamentary work of this Act lasted less than two months (4 April 2017–24 May 2017). The speed with which it was adopted and the relatively little debate between members of the parliament are explained by the fact that it was a *projet de loi*. In other words, the Act was initiated by the government itself and thus had great chances to be adopted. Moreover, as previously explained, a Governmental Agreement (Gouvernement Fédéral Belge, 2014) had already promised in 2014 to modify the *Loi relative à la transsexualité*. Therefore, much of the discussion probably took place before the parliamentary phase. It followed a unicameral procedure, being thus discussed only in the Chamber.

As it was the case of the parliamentary work on the *Loi relative à la transsexualité*, many stakeholders were called for the hearings also in this

occasion. However the type of stakeholders differed. They were mainly trans* and LGBT associations from all over the country (*Arc-en-ciel Wallonie, Cavaria, Rainbowhouse Brussels* and *Genres pluriels*) and public institutions working on the field of human rights and gender equality (*Institut pour l'égalité des femmes et des hommes* and the Equality Law Clinic from the *Université libre de Bruxelles*). No surgeon or legal expert on family law¹⁹³ was consulted this time. However, a child psychiatrist from the *Kindergenderteam* of Ghent Hospital was heard. The Council of State was also consulted.

This Act is in place nowadays, replacing the *Loi relative à la transsexualité*. Particularly, it modified the articles 62*bis* and 62*ter* of the Civil Code (introduced by the *Loi relative à la transsexualité*) and added a new article 62*bis*/1. The Act applies to 'transgender' individuals, being the term 'transsexual' practically absent. The purpose was to comply with international human right standards concerning transgender people and to facilitate the modification of the mention of sex (Doc. Ch. 54 2403/001, 2017). At the international and European level, several human rights actors such as the international commission writing the Yogyakarta principles, the Council of Europe and the European Court of Human Rights, called national states to end discrimination against trans people, including State measures such as psychiatrisation and forced sterilisation.

Invoking the principle of self-determination, this Act removes the medical conditions set by the *Loi relative à la transsexualité* to modify the mention of sex, replacing them by two declarations of the concerned individual before the civil registrar officer and a reflective period of three to six months between the two declarations. In the declarations, the concerned individual must state that he or she has '*la conviction que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement*' (M.B. du 25 juin 2017, p. 71465). Therefore, the criteria upon which the mention of sex is determined are also defined: the 'gender identity intimately experienced'.

¹⁹³ The representatives of the *Institut pour l'égalité des femmes et des hommes* and the Equality Law Clinic have a legal background, but they were only consulted as experts in anti-discrimination law.

The Act preserved however the requirement of a declaration of a child psychiatrist for non-emancipated minors older than 16 years old¹⁹⁴. In this declaration the psychiatrist must attest that the minor has capacity of discernment. In any case, it is allowed to modify the mention of sex in the civil status only once¹⁹⁵. It thus maintained the irrevocability of the procedure and the permanent character of the binary opposition. A synthesis of the characteristics described above is presented in table 18.

¹⁹⁴ Minors younger than 16 years old cannot modify the mention of sex.

¹⁹⁵ Exceptionally, it can be modified a second time following a judicial procedure. In that case, the concerned individual must prove that the first modification entailed several problems, for instance, discrimination.

Table 18. Summary of the qualitative content analysis of the Acts

	<i>'Code Napoléon'</i> (1)	<i>'Loi modifiant l'article 55'</i> (2)	<i>'Loi modifiant les articles 55, 56, et 57'</i> (3)	<i>'Loi relative à la transsexualité'</i> (4)	<i>'Loi concernant l'ambiguïté sexuelle'</i> (5)	<i>'Loi réduction de la charge de travail en justice'</i> (6)	<i>'Loi transgenre'</i> (7)
Date of adoption	21 March 1804	23 Novembre 1961	30 March 1984	10 May 2007	15 May 2007	14 January 2013	25 June 2017
Date of entry into force	13 September 1807	2 January 1962	1 January 1985	11 July 2007	22 July 2007	1 September 2013	1 January 2018
Dates of parliamentary work	?	3 February 1960 – 23 Novembre 1961	12 December 1979 - 23 March 1984	11 March 2004 - 10 May 2007	24 June 2004 – 1 May 2007	13 October 2011 – 14 January 2013	04 April 2017 – 24 May 2017
Type of bill & initiator of procedure	<i>Code</i> Commission of jurists under the rule of Napoleon	<i>Proposition de loi</i> G. Ciselet (Senate)	<i>Proposition de loi</i> Bourgeois (Chamber)	<i>Proposition de loi</i> Vautmans et al (Senate)	<i>Proposition de loi</i> Lejeune (Chamber)	<i>Proposition de loi</i> Becq et al (Chamber)	<i>Projet de loi</i> Government (Chamber)
Type of legal procedure	N/A	Bicameral	Bicameral	Bicameral	Bicameral	Unicameral	Unicameral
Legal subject	All citizens	All citizens	All citizens	The transsexual individual	The child suffering from sexual ambiguity	All citizens	The transgender person
Type of legal matter	Registration of sex at birth	Registration of sex at birth	Registration of sex at birth	Subsequent modification of the registration of sex	Registration of sex at birth	Registration of sex at birth	Subsequent modification of the registration of sex
Purposes	To regulate the civil status of individuals	To extend the delay to declare the birth of a child (3 days until then)	To allow the mother to declare the birth & to eliminate obligation to present the child at the civil registrar	To introduce an administrative procedure before the civil registrar officer to recognise sex change	To extend the delay to declare a child suffering from sexual ambiguity	To reduce the workload within the system of justice	To comply with international human right standards & to facilitate the modification of the mention of sex

	<i>'Code Napoléon'</i> (1)	<i>'Loi modifiant l'article 55'</i> (2)	<i>'Loi modifiant les articles 55, 56, et 57'</i> (3)	<i>'Loi relative à la transsexualité'</i> (4)	<i>'Loi concernant l'ambiguïté sexuelle'</i> (5)	<i>'Loi réduction de la charge de travail en justice'</i> (6)	<i>'Loi transgenre'</i> (7)
Matters regulated in relation to the mention of sex	Art. 55: birth to be declared within the 3 days following the delivery & new-born to be presented before the civil registrar officer; Art. 56: birth of the child to be declared by the father (in his absence, by a doctor, midwife or any other health professional who assisted the birth); Art. 57: birth declaration to include the sex of the child	Saturdays, Sundays and public holidays not included in 3-day delay	Mother allowed to declare birth; delay extended to 15 days; introduction of medical certificate	It sets the conditions for transsexual people to have their sex change legally recognised (psychiatric assessment, sexual reassignment & sterilisation)	It extends the delay to declare the sex of a child 'suffering from sexual ambiguity' (up to 3 months)	It removes the possibility for the civil registrar officer to visit the new-born. Medical certificate is the only certification of sex	It removes the medical conditions set by (4) to modify the mention of sex in the civil status. Drawing on the principle of self-determination, it establishes 2 declarations before the civil registrar officer & a reflective period (3 to 6 months) between them. For the non-emancipated minor older than 16 years old, a certificate from a child psychiatrist is required
Criteria upon which the registration of the mention of sex is based	Criteria neither mentioned, nor debated. New-born presented to civil registrar officer	Criteria neither mentioned, nor debated. Medical certification of the sex of the child is a customary practice	Criteria neither mentioned, nor debated. Medical certificate now established by law, but civil registrar officer can still visit the child	Intimate conviction of belonging to a sex ('the opposite') & possession of certain sexual characteristics of that sex (genitalia, gonads, hormones & secondary sexual characteristics). Medical certificate.	- Under 'normal conditions': morphological sexual characteristics externally visible - Intersexuality: karyotype (chromosomes)	Criteria neither mentioned, nor debated. Medical certificate is enough, civil registrar officer cannot visit the child	Gender identity intimately experienced (alleged self-determination)

	<i>'Code Napoléon'</i> (1)	<i>'Loi modifiant l'article 55'</i> (2)	<i>'Loi modifiant les articles 55, 56, et 57'</i> (3)	<i>'Loi relative à la transsexualité'</i> (4)	<i>'Loi concernant l'ambiguïté sexuelle'</i> (5)	<i>'Loi réduction de la charge de travail en justice'</i> (6)	<i>'Loi transgenre'</i> (7)
Intertextuality	Modified by (2), (3), (4), (5), (6) & (7)	It modifies art. 55 of (1)	It modifies art. 55, 56 & 57 of (1)	It adds two articles (62bis & 62ter) in (1)	It modifies art. 57 of (1)	It modifies art. 56 of (1) [previously modified by (3)]	It modifies art. 62bis of (1) [inserted by (4)], it adds an art. 62bis/1 in (1) & replaces art. 62ter of (1) [inserted by (4)]
Stakeholders consulted	N/A	None	Permanent commission of civil status	<ul style="list-style-type: none"> - Bio-ethical committee - Deputy prime-minister & minister of the Interior - Deputy prime-minister & minister of Finances - Minister of social affairs & public health - Psychiatrist (Ghent hospital) - Surgeon (Ghent hospital) - Lecturer in law (<i>KU Leuven</i>) - Professor emeritus in law (<i>Université de Liège</i>) - Council of state - <i>Collectif Trans-Action</i> - <i>Genderstichting</i> - <i>Genderactiegroep</i> 	Medical experts consulted before the drafting of the bill (no hearings during parliamentary work)	General director of <i>Agence pour la Simplification Administrative</i>	<ul style="list-style-type: none"> - Council of State - <i>Arc-en-ciel Wallonie</i> - <i>Çavaria</i> - <i>Rainbowhouse Brussels</i> - Child psychiatrist (<i>Kindergenderteam</i>, Ghent Hospital) - Equality Law Clinic (ULB) - <i>Genres pluriels</i> - <i>Institut pour l'égalité des femmes et des hommes</i>
Current state	In force	Replaced by (3)	In force	Replaced by (7)	In force	In force	In force

5.2. Variability across Acts and effects

In Belgium, the mention of sex has been included in the civil status of individuals since the adoption of the Civil Code (*Code Napoléon*) in 1804. The Acts that have modified the Code over time can be classified into two types according to the legal matter regulated by the Act: the registration of sex at birth or its subsequent modification. The first Act introducing changes in the registration of sex at birth was adopted in the 1960s (*Loi modifiant l'article 55*). This Act established that Saturdays, Sundays and public holidays were not included in the three-day delay to declare the birth of the child. The Act mentions that the medical certificate attesting the birth and the sex of the child was already a common practice, but it does not remove the obligation to present the child before the civil registry officer. In the 1980s, the *Loi modifiant les articles 55, 56 et 57* allowed the mother to declare the birth of the child and extended the delay to declare it from three to fifteen days. The presentation of the child before the civil registrar officer was officially substituted by a medical certificate attesting the birth and the sex of the child. However, the officer could still visit personally the new-born. These two Acts introduced changes in the conditions under which the birth of a child had to be declared. However, they did not specify the criteria upon which the sex of the child was certified. Neither did the *Code Napoléon*.

It was not until 2007 that an Act allowing the modification of the registration of sex was adopted (*Loi relative à la transsexualité*). This Act established the criteria that transsexual people had to meet in order to modify the mention of sex in their civil status. These criteria included the intimate conviction of belonging to 'the opposite' sex and the possession of certain sexual characteristics of that sex (genitalia, gonads, hormones and secondary sexual characteristics). The 'mismatch' between the identity and the body was depicted as a mental disorder. The compliance with the criteria had to be attested by medical certificates. Although transsexual people could rectify the mention of sex through a judicial procedure before 2007, the modification has not been recognised as a right in legislation for more than two hundred years. It was also in 2007 when an Act addressing the registration of the mention of sex of intersex children (*Loi concernant l'ambiguïté sexuelle*) was adopted for the first (and

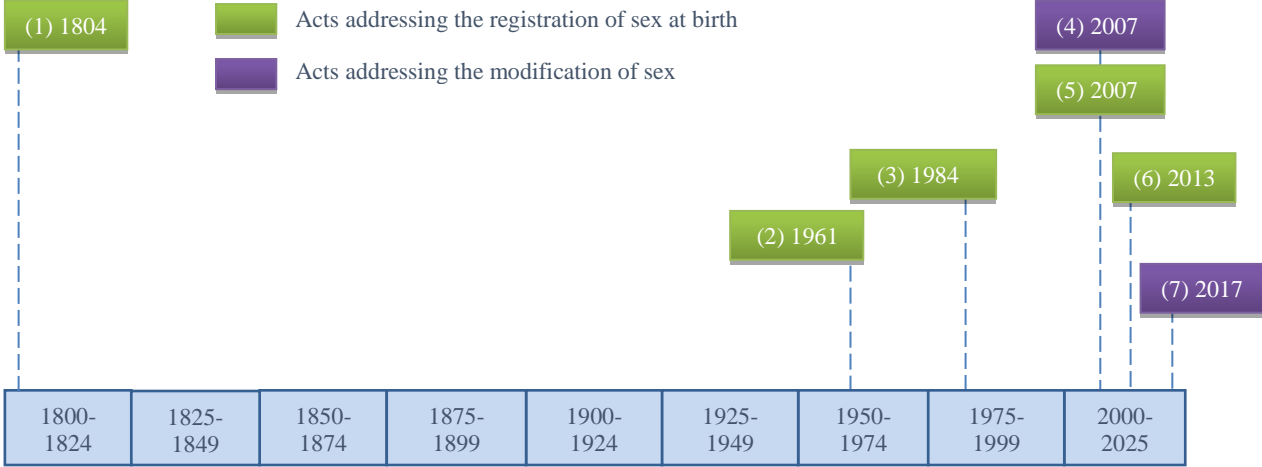
only¹⁹⁶) time. This Act allowed to declare the birth of the child within the established 15-day delay, but extended the delay to register the sex up to three months in case of intersexuality. The criterion upon which sex is certified in those cases is the karyotype. The belated adoption of legislation on these matters is quite significant, especially if we take into consideration that trans* and intersex people have always existed¹⁹⁷. In fact, legal sex changes have been documented by the National Registry of the Population since 1993 (Institut pour l'égalité des femmes et des hommes, 2018).

In the 2010s, two other Acts were adopted. The *Loi réduction de la charge de travail en justice*, adopted in 2013, prohibit the civil registrar officer to visit the new-born, thereby establishing the medical certificate as the only certification of sex at birth. The criteria upon which it is certified at birth are not described in this Act either. In 2017, the *Loi transgenre* replaced the *Loi relative à la transsexualité* and the criteria it established to modify the registered mention of sex for transgender people. The gender identity intimately experienced is the criterion upon which the new mention of sex is based. This Act removes the medical certificates previously required by the *Loi relative à la transsexualité*, establishing two declarations of the concerned individual before the civil registrar officer. The belated adoption of a first Act regulating the modification of the mention of sex contrasts with its replacement 'only' ten years later. Although it may seem long for the people who were directly concerned by the Act, the extent and speed of the change are striking if we take into account the whole historical journey. The chronological evolution of the Acts is presented in figure 5. In the figure, a distinction is made between the Acts addressing the registration of sex at birth and the Acts addressing the modification of sex later in life.

¹⁹⁶ Until the date of submission of this thesis (end March 2019), the *Loi du 15 mai 2007 modifiant l'article 57 du Code civil en ce qui concerne la mention du sexe d'un enfant souffrant d'ambiguïté sexuelle* is the only existing legislation on that matter.

¹⁹⁷ It is not my intention to be anachronistic. The terms employed and the way trans* and intersex people have been conceptualised by society have changed over time. But there have always been people who transgress the norms establishing the definition of the binary opposition in different times and places.

Figure 5. Chronological evolution of legislation



- (1) *Code Napoléon*
- (2) *Loi modifiant l'article 55*
- (3) *Loi modifiant les articles 55, 56, et 57*
- (4) *Loi relative à la transsexualité*
- (5) *Loi concernant l'ambiguïté sexuelle*
- (6) *Loi réduction de la charge de travail en justice*
- (7) *Loi transgenre*

In spite of the fact that the registration of sex in the civil status of individuals has been mandatory since 1804, the criteria upon which the sex of the child is determined have never been addressed by any of the Acts regulating this matter *for the general population* at birth. These criteria were not initially described in the Civil Code, neither were they specified in the following Acts modifying the Code. The fact that these criteria were not mentioned in the Civil Code or debated during its preparatory work leads us to think that they were taken for granted and thus, there was no need to specify them. However, given that the Civil Code stipulated that the child had to be presented before the civil registrar officer, we can imagine that the sex of the child was certified or verified by the officer relying on external genitalia. This certification was thus probably based on visible sexual dimorphism.

This conclusion is confirmed by the scientific literature on the field. Houbre (2014) explains that the French Civil Code (*Code Napoléon*) followed the norm that divides humankind into women and men, a tradition inherited from Roman law. However, whereas such a division was only a *legal norm* in Ancient Rome, it was treated as a *natural fact* in the French Civil Code (Thomas, 1991). In Roman law, the binary division of the sexes was not a natural presupposition, but a binding norm. The ‘hermaphrodite’ was considered a real mix of genders by the ancient medical tradition, but they were ultimately considered a woman or a man from a legal point of view, depending on the type of genital organs that prevailed. This endeavour was part of the legal organisation of life: the legal definition of the roles, rights and duties of women and men, regardless of the truth of the natural fact. The French Civil Code assumed the sexual dimorphism inherited from Roman law without explicitly mentioning the body and/or intersex people (Houbre, 2014).

The consecutive Acts incorporating changes in the declaration of birth—*Loi modifiant l'article 55*, *Loi modifiant les articles 55, 56 et 57*, *Loi concernant l'ambiguïté sexuelle*, *Loi réduction de la charge de travail en justice*—enact a progressive move towards the legal reliance on the medical determination of the sex of the child. During the parliamentary work of the *Loi modifiant l'article 55* (M.B. du 23 novembre 1961) it was already mentioned that in practice the presence of the new-born before the civil registrar officer had been substituted by a medical certificate. However, this practice was still not legislated. In contrast, the last Act adopted on

this matter, the *Loi réduction de la charge de en justice*, erases the possibility for the officer to visit the child, relying completely on the medical certificate. Whereas this shift is reasonable from the point of view of the officers' workload, it is also meaningful to understand the type of criteria that prevail to determine the mention of sex for the general population and the authority attributed to the medical professionals in this regard.

Law's reliance on medical criteria to determine the sex of the child is such that the specific criteria are never described by the Acts addressing the registration of sex at birth for the general population. The non-interference of the law in the medical domain attributes to medicine and medical experts the 'truth' of sex. The only time in which the criteria are mentioned was during the parliamentary work of the *Loi concernant l'ambiguïté sexuelle*. This is the only occasion in which the medical procedure to determine the sex of the child was described, setting a distinction between the procedure under 'normal circumstances'—sexual dimorphism—and 'in case of intersexuality'—no sexual dimorphism.

These procedures were described to justify why an extended period of three months was needed to register the sex of an intersexed child¹⁹⁸, emphasising that the karyotype test had to remain an exception to the regular procedure. In fact, it was also explicitly mentioned during parliamentary work that the description of the procedures and the content of the medical certificates did not have to be detailed in the text of the Act. Given the presumably high cost of karyotype tests, we can imagine that the intention of the legislator was to avoid that all parents request such a test.

The medical authority is invoked by the legislators to justify the additional time of three months allowed to register the sex of the intersexed child in the birth certificate. The legislators draw on medicine to determine the 'true sex' of the child by means of a karyotype test whose results take three months. The legislators set thus a distinction between the previous situation in which the sex of the child was 'chosen at random' by the parents and medicine's ability to determine the 'true sex' of the child. The medical rhetoric used by the legislators confers to the sex attributed by doctors the value of truth. This is done through the authoritative argument of science and the omission of the medical

¹⁹⁸ It seems that the results of the karyotype test take three months to be obtained.

professionals as actors in the determination of sex. Such an omission confers to the decision a sense of objectivity. However, the classification of the child as ‘female’ or ‘male’ has to be discussed and negotiated for a decision to be taken¹⁹⁹. The classification of an individual as ‘belonging’ to a sex or another is not an objective task, but a subjective endeavour. It is thus remarkable that a decision with such important consequences (the sex that is certified by doctors is subsequently registered in the civil status of the individual) is finally taken in such a haphazard way from the legal point of view. Moreover, the legislators clarify that the karyotype test should be carried out only ‘in case of sexual anomaly’. The use of these discursive practices has the effect of effectively constructing sexual dimorphism and it implicitly legitimises the performance of ‘normalising’ surgery on intersexed babies.

The little interference of the law in the initial determination of sex is in clear contrast with the law’s involvement in the modification of it. Whereas the criteria upon which sex is initially certified are not explicitly regulated by any Act—the law relies on the medical judgement—, the criteria allowing the modification of the registered sex are. These criteria are explicitly described only in the two Acts specifically applying to trans* legal subjects : the *Loi relative à la transsexualité* (M.B. du 10 mai 2007) and the *Loi transgenre* (M.B. du 25 juin 2017).

Law’s reliance on medical criteria to determine the sex of an individual is also evident in the case of the *Loi relative à la transsexualité* (M.B. du 10 mai 2007) as this Act requested medical certificates from a psychiatrist and a surgeon in order to allow the modification of the mention of sex in the civil status. However, as opposed to the initial registration of this mention, in this case the content of the certificate was explicitly included in the Act. In other words, the criteria upon which the sex of a(n) (transsexual) individual is certified are legally regulated for the first time and this, only when the registration of sex is modified. These criteria were defined by the Act in broad terms ‘not to interfere with future medical and scientific progress’²⁰⁰, but sexual dimorphism was still present. Indeed, the medical certificate issued by the surgeon had to state that the concerned individual ‘*a subi une réassignation sexuelle qui le fait correspondre au sexe opposé*’ (M.B. du 10 juin 2007, p. 37823) and that she or

¹⁹⁹ See Chapter 1, subsection 1.1.1.

²⁰⁰ See Chapter 4, point 4.1.2.2.

he *'n'est plus en mesure de concevoir des enfants conformément à son sexe précédent'* (M.B. du 10 juin 2007, p. 37824). Although the extent of sexual reassignment was to be assessed by the medical experts according to the health status of the individual and the latest medical developments, hormonal treatment inducing the characteristics 'of the opposite sex' and genital surgery were defined as the norm. This reifies sexual dimorphism. The condition of sterilisation also reifies such dimorphism in terms of the reproductive system and the pregnant body.

In addition to sexual dimorphism, the *Loi du 10 mai 2007 relative à la transsexualité* (M.B. du 10 mai 2007) also fixed as condition to modify the mention of sex that *'l'intéressé a la conviction intime, constante et irréversible d'appartenir au sexe opposé à celui qui est indiqué dans l'acte de naissance'* (M.B. du 10 juin 2007, p. 37823). This 'identity criterion' is only established in the Acts whose legal subject are trans* people. In this Act, this identity was defined as a mental disorder. Moreover, the conviction had to be verified by a psychiatrist. In other words, the Act required that a medical expert assessed the identity of the transsexual person to guarantee she or he is really sure of belonging 'to the other sex'—and hence, a 'true transsexual'.

The *Loi transgenre* removed almost all medical conditions to modify the mention of sex in the civil status²⁰¹. This Act is allegedly based on the principle of self-determination, which means that only transgender people can determine their identity, not medical professionals. Therefore, the criteria upon which the mention of sex is defined in this case is the alleged 'self-determined' gender identity of the individual. However, several measures are introduced in the text of the Act to monitor transgender people and prevent them from 'making mistakes'²⁰².

There is thus a clear contrast between the lack of legal definition of the criteria upon which the mention of sex is registered at birth and the legal endeavour to define them when the mention is to be modified. This indicates that the idea that the natural and permanent character of the binary opposition—the norm that humankind is naturally divided into two categories—is taken for granted and legislation only specifies the

²⁰¹ For minors older than 16 years old, a certificate from a child psychiatrist is still required.

²⁰² See Chapter 4.

definitions of the norms constituting the binary opposition for people who breach them. This contrast becomes also evident with the fact that no experts, legal bodies or civil society have been consulted in the elaboration of the Acts regulating the registration of sex at birth²⁰³. However, many stakeholders were invited to hearings and/or to provide their written opinion on the matter of modifying the mention of sex. Twelve individual or collective actors were consulted during the elaboration of the *Loi relative à la transsexualité* (M.B. du 10 mai 2007) and eight during the elaboration of the *Loi transgenre* (M.B. du 25 juin 2017). Whereas the stakeholders consulted in the former were mainly doctors, legal experts and politicians, the stakeholders consulted in the latter were mainly trans* and LGBT associations and human rights advocates.

The variability present in the legislation regulating the mention of sex in civil status has both ideological and practical effects. On the ideological level, the variability identified across the Acts institutes cisnormativity. It establishes women and men as natural categories and a correspondence between the characteristics of the so-called biological sex and gender identity. Although the most recent *Loi transgenre* (M.B. du 25 juin 2017) represents in itself a shift, it constitutes an exception to the rule when the whole legislative framework regulating the mention of sex in the civil status is taken into account. As in many other countries, this change has been based on the legal accommodation of transgender populations as a disadvantaged minority, but it has not changed the way gender is certified for all members of society (Cooper & Renz, 2016).

The analysis of the variability across Acts helps us understand how cisnormativity is produced. First, the legislation sets a distinction between Acts aimed at the general population and Acts aimed at specific ‘abnormal’ populations. The legal subject of the former is an ‘unmarked’ subject (*la personne*, *l’enfant*), whereas the legal subject of the latter is a ‘marked’ subject (*le transsexuel*, *la personne transgenre*, *l’enfant souffrant d’ambiguïté sexuelle*).

Second, the initial certification of the sex that is registered in the civil status is not directly regulated by any Act, but it increasingly delegates on

²⁰³ In the parliamentary work of the *Loi concernant l’ambiguïté sexuelle* (M.B. du 15 mai 2007) it is mentioned that doctors had been previously consulted, but they were not invited to any hearing during the elaboration of the act.

medical judgment over time. However, the modification of sex during a lifetime is explicitly regulated and very much debated. It is noteworthy that not a single expert has been consulted during the parliamentary work of the Acts regulating the certification of sex at birth, whereas so many have been consulted during parliamentary debates to modify it later in life. Indeed, the only case in which the process of initial attribution is slightly mentioned regards the registration of the sex of an intersex child, being literally called ‘an exception’.

Third, the medical criteria upon which sex is determined at birth are only mentioned for people whose body challenge sexual dimorphism—namely, intersex children. It is in the Act regulating this matter that the criteria upon which sex is determined in both ‘normal’ and ‘abnormal’ cases are explicitly described. Thus, ‘normal sex’ is defined as visible genitalia that falls under sexual dimorphism. In the case of bodies that breach the norm of sexual dimorphism, sex is exceptionally determined on the basis of chromosomes, deemed to possess the ultimate truth about sex.

Fourth, notions related to identity (*‘conviction intime, constante et irréversible d’appartenir au sexe opposé’, ‘identité de genre vécue intimement’*) are employed as criteria only in the Acts aimed at trans* people. In other words, the mind-body distinction of notions is only applied to trans* people. Gender identity seems not to be an issue for the rest of society. Just as only homosexual people seem to have a sexual orientation, only trans* people seem to have a gender identity. It is thus just assumed that the norm is to identify with the sex attributed at birth.

This variability across Acts has a double effect. On the one hand, it reifies sexual dimorphism as if human bodies were naturally classified into two classes, erasing intersex realities. The process through which the classification is actually produced is silenced. Genitalia are never mentioned except for intersex and transsexual people. On the other, the correspondence between ‘biological sex’ and gender identity is naturalised and rendered invisible as a universal norm instead of presenting it as one possibility among others. Cisnormativity is an instituted mechanism that not only polices and punishes people who move away from gender norms, but it also functions as a prescriptive and regulatory model for all (Martínez-Guzmán, 2017).

On the practical level, if we pay attention to the Acts that are currently in force²⁰⁴, the legal mention of sex is not unambiguous. It is constructed upon different criteria for different subjects. Whereas for some trans* people²⁰⁵ the legal mention of sex only reflects the identity in binary terms, for intersex people it is indicative of the chromosomes and for the rest of the people it reflects their visible genitalia. Taken into account the performative power of law (Butler, 1997), the different constructions of legal sex can have important practical implications in situations in which the legal mention of sex is used as having a single meaning (a cisnormative interpretation of the mention of sex). For instance in the health sphere, trans* men who modified the registered mention of sex after the 1 January 2018, date of entry into force of the *Loi transgenre*, can be overlooked in cervical cancer screening campaigns if the legal mention of sex is taken to mean ‘genitalia’. In this case, trans* men have an M for male in their civil status, but they have not necessarily undergone surgery and thus have a uterus. Similar examples could be imagined in many other domains.

A very much debated and controversial domain is that of segregated statistical data based on the registered mention of sex. The advocates of these data claim their usefulness to prove gender inequality and discrimination against women. The interest of this type of data is not to analyse biological differences, but social differences between the categories ‘woman’ and ‘man’. And yet, strictly speaking, what these data inform us about is mainly the type of genitalia at birth²⁰⁶. In practice, we cannot know if those people self-identify, express themselves and/or are perceived and treated according to their legal sex. Therefore, sex-segregated data can be useful when used as a heuristic, but they do not actually allow us to understand what is specifically at stake. The usefulness of these data lies in the assumption that an individual who has been attributed the female sex at birth will self-identify and be identified by others as a woman and will ‘behave’ and be treated as one of them. In other words, it relies on and reproduces ‘cisnormativity’.

²⁰⁴ *Code civil, Loi modifiant les articles 55, 56, et 57, Loi relative à la transsexualité, Loi concernant l’ambiguïté sexuelle, Loi réduction de la charge de travail en justice* and *Loi transgenre*.

²⁰⁵ Those who modified the registered mention of sex under the *Loi transgenre*.

²⁰⁶ Given that most of the population do not modify the registered mention of sex. In Belgium, 1625 people have modified it from Jan. 1993 to September 2018.

Conclusion

How has Belgian civil law defined the binary opposition between women and men for different categories of people over time and with what effects? The legal modification of sex *for trans* people* has been first overtly pathologised and then covertly psychologised, but in both cases it draws on the ‘lack of correspondence’ between the identity and the body. Nowadays, the identity is the criterion that ultimately defines whether trans* people are legally women or men. However, the legal definition of the binary opposition for the *general population* at birth—the definition of the categories ‘woman’ and ‘man’ without adjectives—does not ever mention identity. For the general population, the mind-body distinction is not employed because there is no ‘incompatibility’—no breaching of norms—to which it could be applied: it is just assumed that people are naturally divided into two categories and they do not have such a thing as a ‘gender identity’. The identity definition of the binary opposition only matters for people who modify later in life the legal sex that has been attributed to them at birth. Simultaneously, the legal classification of all people at birth relies on the norm of sexual dimorphism. However, this norm is only mentioned when it is breached: the case of children ‘suffering from sexual ambiguity’. The legislation does not explicitly mention the norm of sexual dimorphism as the criterion to determine the legal sex of ‘normal’ people, but it increasingly delegates the determination of sex in the hands of the medical professionals. Therefore, whereas the modification of the legal sex has been psychologised, its determination at birth has been increasingly medicalised. As only intersex people have sexual characteristics in the legislation, only trans* people have a gender identity. The normative definition of the binary opposition between women and men is only adapted to them as the ‘exception to the norm’. This has in turn the effect of reifying the binary opposition that constitutes women and men as two natural and ontological essences characterised by two clearly distinct bodies and two different identities.

EMPIRICAL SECTION II

Chapter 6.

The production of sex/gender categories in workers accounts: normative and trans* categories

Patterns of difference and hierarchies that structure society as a whole can also be found at work. Particularly the binary opposition between women and men organises the sphere of employment and the different tasks and positions attributed to women and men in the workplace. Still, the definition of norms constituting the binary opposition changes according to specific contexts. In this chapter I address the question of how the binary opposition between women and men and its transgression are defined by workers nowadays. To answer this question, I identified the discursive devices employed by co-workers from five organisations in Brussels to describe sex/gender categories (specific obj. 3) and I examined the variability in their use to elucidate their effects²⁰⁷.

As already described²⁰⁸, I employed five photographs of different people to elicit discussion. The photographs were selected according to their secondary sexual characteristics, clothes and accessories and body posture. As a reminder, a summary of the characteristics of the people in the five photographs can be found below (table 19).

²⁰⁷ See Chapter 3, subsection 3.2.2. for a complete description of the method.

²⁰⁸ See Chapter 3, subsection 3.2.2.1.

Table 19. Characteristics of the people in the photographs

Photo	Secondary sexual characteristics	Clothes and accessories	Body posture
1	Medium shot, defined muscles, short hair, facial hair, arms hair, wide jaw, square chin	White tank top showing arm muscles, no visible make-up	Right hand sustains head in a thoughtful attitude, left hand crosses chest, a little smile
2	Medium shot, thin, small breasts, thin face, long hair gathered in a bun, no body hair	Topless, necklace, earrings, no visible make-up	Standing towards the right, right arm around dog, left arm crossing the belly, no smile, looking at the camera
3	Medium shot, long blond hair, no breasts, full lips, rounded face	Dark blue shirt with bare chest and shoulder, no visible make-up	Standing, arms lie on the sides, showing shoulder, no smile, looking at the camera
4	Full shot, leg hair, short brown hair, face hair	Colourful shirt, open side skirt, high heels, lipstick, necklace, nail polished	Siting, legs open from the knees, left hand sustaining chin, right hand on the knees, no smile, looking at the camera
5	Full shot, blond short hair, thin chin, no arm hair	Denim shirt, tattoos, trousers	Sitting, open legs, elbows lie on knees, a little smile, looking at the camera

The discursive devices are presented in two sections (see table 20 below for a summary). The first section of the chapter (6.1.) displays the use of feminine or masculine grammar forms by the workers, particularly when they describe the photographs, talk about themselves and/or each other, and shared their experiences about ‘troubling moments’ concerning sex/gender categories. The analysis focuses on the categories *in use*: in which circumstances feminine or masculine forms are used (or avoided). The second section (6.2.) presents the discursive and rhetorical devices employed by the workers to *describe* the categories. The third section (6.3.) highlights the variability in the use of the identified discursive practices in order to elucidate their ideological effects. The chapter finishes with a summary of the main conclusions.

Table 20. Summary of discursive practices

Sex/gender categories in use				
The use of gendered grammar: <i>il</i> or <i>elle</i> ?		The avoidance of gendered grammar		Misgendering
The description of sex/gender categories				
Distinction of notions: mind-body & appearance-reality	The name of a part to refer to the whole (synecdoche): 'sexe'	The argument of authority: the natural science rhetoric	Dead metaphors: 'homme habillé en femme', 'femme qui joue le rôle de l'homme'	The socio-cultural argument

6.1. Sex/gender categories in use

In this subsection I present the discursive practices in the use of sex/gender categories in workers speech, that is, the categories in use. These practices include the use of gendered grammar, the avoidance of gendered grammar and 'misgendering'.

6.1.1. The use of gendered grammar: *elle* or *il*?

The participants implicitly defined people as either man or woman by the use of feminine or masculine forms of third-person personal pronouns, nouns and adjectives. For instance, when I asked the participants to describe the people in the photographs²⁰⁹ and no extra information was given about them²¹⁰, the third-person singular *masculine* form of the personal pronoun (*il*, *lui*) was systematically used to describe the people in photographs 1 and 4, whereas the *feminine* form of the pronoun (*elle*) was used to describe the people in photographs 2 and 5. The use of *il/lui* or *elle* was accompanied by the correspondent masculine or feminine

²⁰⁹ In the first interview I asked them to 'describe the gender' of the person in the photograph. At that moment I realised that I was myself leading them to classify the people according to their gender. I thus modified the question and just asked 'to describe the person' in the following interviews.

²¹⁰ After showing all the photographs, I added some information in some cases, such as the type of letter ('M' or 'F') that appears in the identity documents of the person. This information is fictional.

forms of adjectives in each case. The following excerpts illustrate this use:

[Quote 1]

Charlotte : *Ouuuuuuh... ! ((Incompréhensible))*

Valérie : *Charlotte, elle a dit quoi ?*

Patricia : *« Qu'il est mignon ! ».*

Chercheuse : *D'autres impressions sur cette euh, cette personne ?*

Amélie : *Il a l'air sympa.*

Valérie : *Oui, regard ..., photogénique et euh...*

Amélie : *Charmeur... Petit sourire...*

(Group interview 2, 4 May 2016)

[Quote 2]

Amélie : *Elle a déjà moins l' sourire hein.*

Patricia : *Stricte.*

Valérie : *Pas l'air sympa ((Rire))*

Amélie : *Beh j' pense, la photo numéro 2, qu'elle soit déjà en noir et blanc... donne moins d' vie déjà... en tout cas, par rapport à la photo 1, moins de vie, elle a l'air plus stijf²¹¹, elle a l'air plus... sévère, comme ça...*

Valérie : *Stricte, sérieuse...*

Patricia : *Moi j' trouve qu'elle est... provocatrice.*

(Group interview 2, 4 May 2016)

Both excerpts belong to the same interview (group interview 2) and show the interaction between the participants when describing the people in photographs 1 and 2. In the first quote, Charlotte, who left the room some minutes before I showed the first photograph, enters the room and makes an exclamation when she sees it, making an inaudible comment. When asked what she has said, she repeats that 'he is cute', using the masculine form of the adjective (*mignon*). Other participants add to the description using also the masculine form of the third-person personal pronoun (*il* in '*il a l'air sympa*') and adjectives (*charmeur*). In the second quote, the participants describe the person in the second photograph in opposition to the one in the first photograph using the feminine form of the pronoun (*elle*) and adjectives (*stricte, sérieuse, provocatrice*). The implicit definition of people as either man or woman is also carried out by participants by the use of masculine or feminine nouns, for instance, in relation to professions: '*je suis animatrice*' (Laura,

²¹¹ Dutch term meaning 'stiff' in English. The French translation is '*raide*'.

interview 2, 4 May 2016), *'je suis conseiller emploi'* (Gabriel, interview 4, 11 May 2016).

The participants also defined people as man or woman in an explicit way by the use of the words *'homme/garçon'* or *'femme/fille'* and the verb *'être'*. For instance, they use the utterance *'c'est un homme'* to describe the people in photographs 1 and 4 and the utterance *'c'est une femme'* to describe the people in photographs 2 and 5. This type of utterances was used by the participants to describe themselves and each other in the interaction as the following excerpts show:

[Quote 3]

Moi c'est Stéphanie, et::: beh oui, il fallait des volontaires et étant une femme euh, c'est vrai qu' ça pouvait ☺ être sympa euh de participer à ce genre de débat ☺.

(Stéphanie, group interview 5, 26 August 2016)

[Quote 4]

Ibrahim : Pour moi ici <il y a pas de> différence. Mais, <je suis pas une femme alors je peux pas...>. Moi je crois que ici elles sont traitées de la même façon. Parce que « égalité, fraternité »

((Rires))

Chercheuse : Tout le monde est d'accord ?

Simon : Beh on va avoir l'avis de la femme qui est ici...

((Rires))

Ginette : Je suis pas tout à fait d'accord...

((Rires))

(Group interview 1, 29 March 2016)

In quote 3, one of the participants, Stéphanie, explains why she accepted to take part in the interview. She argues that it could be nice to participate to *'ce genre de debat'* – meaning a debate about gender issues at work - because she is a woman (*'étant une femme'*). In quote 4, Ibrahim argues that he cannot know if women are discriminated in his workplace because he is not a woman (*'je suis pas une femme'*). Another participant, Simon, suggests asking the opinion of *'la femme qui est ici'*. Ginette understands that the utterance refers to her and responds.

From a discursive psychological perspective, to say that someone 'is a woman' or to use the feminine form of the personal pronoun (*elle*) to refer to someone is not only a descriptive act, but also a performative act since the description of a category creates the very category that is being described. According to the typology of speech acts proposed by Searle

(1976), this type of utterance is a representative act whose purpose is to represent a state of affairs as real. The speaker asserts or denies something as the two previous excerpts show. Given that the masculine or feminine forms of language are inherent to French grammar; all French speakers who follow French grammatical rules constitute people as either man or woman when they/we speak. In other words, the norm of two sex/gender categories is embedded in language and it just appears ‘natural’ to use the masculine *or* the feminine forms of language to refer to a specific person.

In quote 5 below, Quentin explains that in one occasion he and his friends knew that someone was a girl because a colleague referred to this person with the feminine form of the third-person pronoun (*‘elle’*). This person was an employee at a restaurant where they usually ate. They had been wondering for a long time whether the person was a girl or a boy because there were no ‘body signs’ (*‘Il n’y avait au-, aucun ((rires)) aucun signe euh... euh... aucun signe... dis-, cor-, corporellement’*, group interview 3, 10 May 2016). And finally they got the answer: the concerned person was a girl because someone referred to her as *‘elle’*. This example evidences the power of language to constitute sex/gender categories:

[Quote 5]

Chercheuse : *Et quelle était la réponse ?*

Quentin : *Euh:: C’était une... fille*

Chercheuse : *Comment tu l’as su ?*

Quentin : *Parce que:: on l’a appelé, en disant « elle ». Euh, on:: Voilà son collègue a dit « ah mais elle est toujours comme ça », voilà.*

(Group interview 3, 10 May 2016)

6.1.2. The avoidance of gendered grammar

The use of the masculine or feminine forms is not random; speakers (usually) know when they have to employ the masculine or the feminine form to refer to someone: there are norms. However, the norm seems so natural that it is often difficult to see it. Following the ethnomethodological principles already described²¹², the best way to identify a norm is to violate it. In the story told by Quentin above, he explains that it was not possible to know whether the individual was a

²¹² See section 2.1. in Chapter 2.

man or a woman because there were no ‘body signs’. This implicates that people are men or women according to dichotomic body shape: what it is usually called ‘sexual dimorphism’. However, bodies not always fall into a clear sexual dimorphism. For instance, during the interviews, the participants did not know what form of language to use to describe the person in photograph 3. The hesitation is marked by exclamations of surprise, a remarkably long period of silence and/or laugh in all the interviews after I put that photograph on the table. The following excerpts show this hesitation (note that the number in brackets indicates the number of seconds of silence):

[Quote 6]

Chercheuse : *Troisième photo.*

(15)

Chercheuse : *Une description ?*

((Rires))

(Group interview 3, 10 May 2016)

[Quote 7]

Chercheuse : *Cette photo-là, photo numéro 3 ?*

(3)

Isaac : *Il r’ssemble à Britney Spears. °Comme ça de loin°.*

Chercheuse : *°Je mets comme ça, c’est plus facile°. ((Elle tourne la feuille))*

Gabriel : *Moi j’ trouve la personne maigre, vraiment maigre, et... culturellement, chez nous, les personnes qui sont vraiment très très maigres, sont les personnes qui sont, qui ont soit une, difficulté::: ou, fin c’est... c’est c’est, c’est, ouais être mal dans sa peau quoi.*

(Group interview 4, 11 May 2016)

[Quote 8]

Chercheuse : *>Troisième photo:::<.*

Plusieurs : *Ab !*

Stéphanie : *A:::h ((Rires))*

Antonio : *On en vient...*

David : *Allez Nico, c’est pour toi ça.*

Audrey : *Ouais mais vu l’ sujet et vu la::: prééminence euh, j’ me pose ☺ une question ☺*

Antonio : *Ouais. Y a un problème ouais.*

Stéphanie : *Mais la, la mâchoire est fort carrée quand même hein.*

Audrey : *Ouais !*

Stéphanie : *Y a une pomme d’Adam ? ((Rires))*

(Group interview 5, 26 August 2016)

As the excerpts above show, the participants avoided the use of gendered personal pronouns such as *'elle'* and *'il'* to describe the person in photograph 3. Instead, they used the term *'la/cette personne'* as Gabriel does in the excerpt of interview 4 above (quote 7). Although this term has a feminine grammatical gender, it can be used to describe both men and women. The workers also describe the body characteristics of the person in an impersonal way (i.e. without mentioning the subject). In the previous excerpt of interview 5 (quote 8), three participants used this device. Audrey says that she wonders (whether the person is a man or a woman) *'vu la proéminence'* (referring to Adam's apple), Stéphanie says that *'la mâchoire est fort carrée'* and then asks if there is an Adam's apple (*'y a une pomme d'Adam?'*). Note that they could have framed those utterances differently by using the third-person personal pronouns but then they would have had to use either the masculine or the feminine form (e.g. *'il/elle a une proéminence'*, *'il/elle a une mâchoire fort carrée'*, *'il/elle a une pomme d'Adam'*).

This excerpt also shows how the workers try to determine whether the person of photograph 3 is 'a man or a woman' on the basis of the individual's physical characteristics. Some characteristics would make this person a man (Adam's apple, square jaw), whereas others would make this person a woman (blond hair, bare shoulder). The masculine or feminine grammar forms (including the use of the nouns 'boy/man' and 'girl/woman') are used on the basis of a binary categorisation of sexual characteristics. Outside the feminine/masculine pair, no grammar form exists to designate sexed bodies that do not clearly fall into that binary categorisation. In fact, the workers had to deploy certain strategies to avoid the common use of gendered pronouns, nouns, adjectives. The norm implicit in these practices is that there are two clearly distinct human bodies and thus human beings are necessarily either men or women according to that sexual dimorphism.

6.1.3. Misgendering

The use of the masculine or feminine forms of pronouns employed by the workers to talk about people who moved between sex/gender categories also constitutes a norm. When the workers knew about the transition of an individual from a category to another, they almost always

designated that person using the feminine or masculine forms of language according to the category assigned at birth. These acts are denominated ‘misgendering’ in the literature, defined as the ‘use of gendered language that does not match how people identify themselves’ (Ansara & Hegarty, 2014, p. 260). This discursive practice can be observed in the following quotes:

[Quote 9]

Dirk : *J’ai aussi pendant mes études un, un homme de ma classe qui est devenu une femme. Et il était déjà un peu féminin je trouve, d’abord.*

Chercheuse : *Un peu ?*

Dirk : *Féminin. Dans son tête, je trouve.*

Chercheuse : *Physiquement ou dans la... ?*

Dirk : *Mentalement et physiquement. Ouais. Et puis il a... un été il est... revenu et voilà.*

Jean : *Et il l’a fait pendant ces cours et tout ? Pendant son cursus ?*

Dirk : *Euh non, non c’était, c’était une vacance en fait. Il est vraiment revenu comme, comme une femme. Voilà.*

(Group interview 1, 29 March 2016)

[Quote 10]

Laura : *Moi, j’ai l’image du beau-père de Kim Kardashian... ((Rires))*

Chercheuse : *Qui ?*

Laura : *Du beau-père de Kim Kardashian... qui a changé de sexe il y a pas longtemps. Voilà.*

((Plusieurs rient))

(Group interview 2, 4 May 2016)

In quote 9, Dirk speaks about someone who identifies as a woman using the term ‘*un homme*’ and the masculine form of the third-person pronoun (‘*il*’). Dirk uses the masculine form even to speak about the post-transition moment (‘*il est vraiment revenue comme une femme*’). Note also that he does not say that ‘he’ became a woman, but that ‘he’ returned (to school) ‘like a woman’; implying that she was not really one. In quote 10, Laura speaks about Caitlyn Jenner. She refers to her as the ‘*beau-père*’ of Kim Kardashian, a masculine noun. Caitlyn Jenner, previously called William Bruce Jenner, appeared in the cover of the magazine *Vanity Fair* in June 2015. The title of the cover was ‘Call me Caitlyn’; clearly stating that she is a woman.

Confronted with a controversy regarding which sex/gender category to use to refer to the person after the transition—either the one attributed

at birth or the one the individual identifies with—the participants used the one attributed at birth. Apart from being a disrespectful practice towards these people, this practice accomplishes an action: it establishes that people *are* the category they have been attributed at birth. This is not explicitly said but the norm is embedded in the action.

6.2. The description of sex/gender categories

The categorisation of people as either man or woman is so taken for granted and comes so naturally that most times we do not realise how we do it (practice) or what it is that we are doing (norms). In fact, when I asked the participants to define ‘man’ and ‘woman’, they could not really answer, arguing that they had never asked themselves that question (*‘Ce, ce sont des questions, honnêtement, que j’ me suis jamais posées...’* –François, group interview 1, 29 March 2016). The meaning of these terms seems to be self-evident. However, these practices and norms become more evident when the norm has been transgressed and people have to discuss and argue to re-establish it. In this subsection I describe the discursive practices and devices workers use to define and explain sex/gender categories. These practices include the use of the distinction of notions (mind-body and appearance-reality), the synecdoche *‘changer de sexe’*, dead metaphors (*‘homme habillé en femme’*, *‘femme qui joue le rôle de l’homme’*), the natural sciences’ argument of authority and the socio-cultural argument.

6.2.1. Distinction of notions: mind-body and appearance-reality

The distinction of notions belongs to the group of arguments that structure reality (Perelman, 1968; Perelman & Olbrechts-Tyteca, 1970). The distinction of notions is used when descriptions are considered to be incompatible. The distinction allows for the establishment of a hierarchy between the notions and thus for their coexistence. The first notion is disqualified, whereas the second establishes the criterion or norm to determine what is valid and what is not in order to restore the coherence. This type of argument is used by workers to describe *trans** men and women. The distinction of notions takes two forms in the interviews: the mind-body distinction and the (physical) appearance-reality distinction.

The mind-body distinction was steadily employed by the workers to describe and define what is a trans* person. In their own words, trans* people are *'des hommes qui se sentent femmes et des femmes qui se sentent hommes'* (Simon, Group interview 1, 29 March 2016) and who transform themselves consequently. One of the participants described the main character of *The Danish girl*²¹³ as *'un homme qui, qui voulait s' transformer en femme'* (Gabriel, Group interview 4, 11 May 2016). These utterances seem to contain within themselves an important incompatibility. How can a man be a woman? How can a woman be a man? This incompatibility is solved by means of the 'mind-body' distinction of notions.

As it can be noted in the first utterance, Simon speaks about men who *feel* they are women and about women who *feel* they are men. Note that he could have described trans* people in many different ways. For instance, he could have said that a trans* person is 'a woman who has been categorised as a man at birth' and vice versa, but he did not. Nor did any of the workers interviewed. Instead, they used the opposition between what *we feel we are* and what *we are*. In the aforementioned utterance, the verb *'se sentir'* (e.g. *se sentir une femme*) evokes the psychological realm, the realm of the feelings, the beliefs and the identity as opposed to what we are (e.g. *être un homme*). The mind is thus the first notion of the distinction.

The second term of the distinction is the body: the biological realm, the realm of the material. In this sense, everybody is born a man or a woman, because everybody is supposed to have a male or a female body. The following quotes illustrate this distinction:

[Quote 11]

[U]ne jeune fille qui est... qui est née *fille* et qui se sent::: garçon

(Isaac, group interview 4, 11 May 2016)

[Quote 12]

<Ben donc j' dirais> c'est, c'est euh::: Fin voilà, donc une personne est née homme ou femme et se rend compte que euh::: ce n'est pas l'identité euh::: qu'el-, que il ou elle souhaite et donc décide de, de changer euh, euh:::

(Claire, group interview 3, 10 May 2016)

²¹³ 'The Danish girl' is a 2015 film directed by Tom Hooper, based on the 2000 novel of the same name by David Ebershoff, and inspired by the lives of Danish painters Lili Elbe and Gerda Wegener. The film tells the story of one of the first known person undergoing 'sex reassignment' surgery.

In quote 11 above, Isaac was talking about the main character of *Boys don't cry*²¹⁴, that he described as a girl who is born a girl but feels like a boy. In a similar vein, in quote 12 Claire defines a trans* person as someone who is born a man or a woman and who realises that is not the identity he or she *desires*. In that sense, it is worth noting that the identity of trans* people was sometimes described by the participants as a desire or a choice, as if they could decide what identity they want to have, as it depended on their will. This is reflected in the expression '*vouloir se sentir (homme ou femme)*', employed in different occasions by workers to describe trans* people.

However, the mind-body distinction was not always presented as a choice. Some other times it was described as a kind of metaphysical experience in which a male or female self is confined in a woman's or man's body. For instance, Amélie described it as '*qu' ça soit homme ou femme, de... d'être dans un corps qui n'est::: pas l' sien*' (Group interview 2, 4 May 2016). How can anybody be in a body that is not his or hers? The mind-body distinction seems to be so common that this kind of utterance does not surprise us. In a similar vein, Gabriel describes the main character of the aforementioned film *The Danish girl* in the following way: '*il était, euh:::, né femme dans un corps d'homme*²¹⁵' (Group interview 4, 11 May 2016). He describes this experience as not being anywhere at home as migrants do, who feel at home neither at the country of destination nor at the country of origin:

[Quote 13]

Fin, ça m' fait penser en fait aux immigrants de première génération, dans l' sens euh où je suis issu d' l'immigration – fin mes pa- mes parents au- ont im- immigré – et, on est pas chez nous là où on va, on est plus chez nous d' là d'où on vient.

(Gabriel, Group interview 4, 11 May 2016)

Drawing on this mind-body distinction, trans* experiences are described by the workers as difficult and painful situations in which trans* people look for their own self. These experiences are in fact described as a permanent search of identity.

²¹⁴ 'Boys don't cry' is a 1999 biographical film directed by Kimberly Peirce. The film is a dramatization of the real-life story of Brandon Teena, an American trans man.

²¹⁵ Note that although Gabriel presents the main character as a 'woman self' inside a 'man's body', he still uses the masculine pronoun *'il'* to refer to this person.

The mind-body distinction is used to distinguish between trans* and ‘hermaphrodite’ (or ‘intersexual’) people. During the interview, François initially described trans* people as people that, from a hormonal or biological point of view, are *‘pas suffisamment à 100% d’un côté ou 100% de l’autre. On est vraiment entr’ >deux types<...’* (Group interview 1, 29 March 2016), emphasising the bodily aspect. Ginette did not agree with that description, that for her corresponded to ‘hermaphrodite’ people, and reiterated that in her view the trans* question took place first and above all in the mind:

[Quote 14]

Ginette : *Moi j’ pense que c’est, c’est vraiment un phénomène mental.*

Ibrahim : *Oui c’est mental pour moi.*

François : *Tu penses ?*

Ginette : *Ab oui ! Qu’après elles prennent des, des mesures médicales pour, pour mieux se s... pour pour avoir une apparence qui correspond à leur mental...*

(Group interview 1, 29 March 2016)

Therefore, whereas ‘hermaphrodite’ people (also denominated ‘intersexual’ in the group interview 3, 10 May 2016) are neither men nor women from a biological point of view, trans* people are. However, their mind does not correspond to their body and consequently they change their body to make it match with their mind. The ‘mind-body’ distinction establishes not only that trans experiences are first and foremost a mental phenomenon, but also the logical order in which things take place. First, trans people realise their identity do not match their body, then they start dressing ‘as the other sex’ and following the step they take hormones and get surgery.

The body marks the limit between the aforementioned categories (trans*, hermaphrodite/intersexual); being what ultimately sets the boundary between a man and a woman. In this sense, hermaphrodite/intersexual people are defined as being two sexes whereas trans* people are really the other sex only after getting surgery. Thus, the body, and more specifically genitalia, is the notion of the distinction that prevails and restores the coherence. An individual is supposed to be a man or a woman depending on their genitalia. The two sexes of the intersex individual are presented as an anomaly, as the exception that confirms the rule. The following quotes illustrate the prevalence of the body over the mind:

[Quote 15]

Mais bon elle [Caster Semenya] était plutôt euh, euh intersexuelle dans:::, voilà, quelque chose de:::, de half en half²¹⁶ comme on dit euh ((rires)). [...] Beh, finalement, elle pouvait pas euh courir dans la catégorie femme parce qu'elle était vraiment pas, vraiment pas, pas, p-, pas totalement femme.

(Sébastien, group interview 3, 10 May 2016)

[Quote 16]

C'est tout à fait un produit de la nature. Oui mais la nature a ses aberrations hein !

(Ginette, group interview 1, 29 March 2016)

[Quote 17]

Chercheuse : [...] *est-ce que on peut être un homme, avec un vagin ?*

(3)

Catherine : *J' suppose qu'on l'enlève quand on est vraiment un homme. Une fois qu'on a terminé sa::: Je suppose que c'est transformé ?*

(Group interview 4, 11 May 2016)

[Quote 18]

En même temps euh::: ((Son)) y a plus rien euh ((Sorte de sifflement, elle bouge les mains comme si elle coupait un pénis)). Du moment qu'y a plus rien. C'est dev'nu réellement une femme. C'es- c'est une femme.

(Stéphanie, group interview 5, 26 August 2016)

In quote 15 Sébastien defines the intersex athlete Caster Semenya as being 'half and half', not really or not totally a woman, and Ginette explains in quote 16 that 'hermaphrodite' people are 'natural' but describes them as a natural anomaly, as a deviance (*'la nature a ses aberrations'*). In quotes 17 and 18, both Catherine and Stéphanie claim that an individual truly becomes a man or a woman when their genitalia have undergone surgery. That operation is described as the end of the process of transition.

The second distinction of notions is the (physical) appearance-reality distinction. This distinction is set upon what we see, the physical appearance of an individual, and what the individual truly is. The (physical) appearance-reality distinction was employed by the workers when they described trans* people. For instance, Isaac explains that when he was younger there was a girl in the changing room with them (boys) who tried to look like a boy, doing 'as if' she was a boy—implying that she was not a boy in spite of the efforts:

²¹⁶ Expression meaning 'half and half' in Dutch.

[Quote 19]

C'était une fille euh, qui avait fait c' qui fallait pour ressembler au mieux à un garçon et donc elle ét- Elle était avec nous, c'est marrant parce que elle était avec nous dans les vestiaires des hommes et elle bandait euh... sa poitrine. Elle avait des bandages autour d' sa poitrine et::: elle faisait comme si elle était un garçon quoi.

(Isaac, group interview 4, 11 May 2016)

The workers employed different linguistic devices to set this distinction, such as the use of the conditional tense (*on dirait un homme*) and expressions indicating first impressions such as *'a priori'*, *'à première vue/au premier regard'*, *'visuellement'*, *'vraisemblablement'*, and *'expression apparente'*. The idea is that appearances are deceptive and the truth is hidden behind.

The (physical) appearance-reality distinction was often used by the workers when I asked them to describe the five photographs, but there were some differences in the way the five were described. The people in the photographs 1 and 2 were mainly described as simply a man and a woman, respectively. However, the workers also expressed doubt about whether the two individuals were actually 'what they looked like'. The workers described the visible body characteristics as well as the clothes and gestures of the two individuals in the photographs to claim that the first one was a man and the second one a woman. However they also said that they were maybe 'wrong'. In the following excerpt the workers were talking about the person in the second photograph and claimed that it was a woman 'at first sight', implying that there can be a hidden truth:

[Quote 20]

Ibrahim : *Fin sur le visage on pourrait dire que c'était p't-être un homme avant hein.*

Simon : *C'est possible hein. Mais à première vue c'est une femme.*

François : *A première vue comme ça voilà. Au premier regard...*

(Group interview 1, 29 March 2016)

This is probably a consequence of the overall argumentative context of the interview, as I had previously asked questions about trans* people. In fact, after discussing the physical features of the individual in photograph 2, Audrey claims that she is having doubts because we had the conversation about trans* people some minutes before. Otherwise she would have said from the beginning that it was a woman:

[Quote 21]

Mais, bon, c'est parce qu'on a eu cette conversation parce que, j' pense que si on avait pas eu la conversation, moi j' l'aurais pas dit d'emblée ou alors si de:::, si la poitrine était couverte, qu'on avait pas eu la conversation, j' l'aurais pris pour une femme moi quoi.

(Audrey, group interview 5, 26 August 2016)

Although the workers probably wondered if the people in the first two photographs were or not trans* because of the argumentative context of the interview, what is important is that the category they attribute to them is not dependent upon what they see in the photographs, that is, their physical appearance, the gender embodiment these two people present, but a somehow deeper truth. This truth seems to be the type of genitalia. When I proposed the hypothesis that the person in the first photograph had a vagina, the workers responded that then the individual was actually a woman although he looked like a man and probably wanted to be a man:

[Quote 22]

Jean : Non, moi pas. Moi je me dirais « alors c'est une femme ». Mais c'est simplement parce que c'est... biologiquement c'est une femme, tu vois ?

Ginette : Ben...

((Ils parlent à la fois))

Ibrahim : Enfin moi, j' saurais qu' c'est une femme, parc' que on voit clairement qu'elle veut devenir un homme.

Jean : Oui, non, mais...

François : Beh, moi je dirais en fonction de son comportement. Son comportement ben voilà...

Jean : Oui, d'accord mais si après ça une personne te d'mande si c'est un homme ou une femme, tu répondras quoi ?

François : Voilà, si tu la vois comme ça voilà, tu, tu la vois, tu la vois, tu vois qu'y a un vagin, voilà tu s'ras forcé de dire que c'est madame.

(Group interview 1, 29 March 2016)

The workers had a similar reaction when I proposed the hypothesis that the individual in the first photograph has an 'F of female' in the identity card. For instance:

[Quote 23]

Chercheuse : D'accord. Et si... Je rajoute un peu d'information. Si je vous dis que la photo:::, que la personne de la photo numéro 1, dans ses papiers d'identité,

dans la mention « sexe » il y a F de « féminin », est-ce que cela change quelque chose à la description que vous avez fait tout à l'heure.

[...]

Charlotte : *Ce serait triste que ce soit une femme...*

((Les femmes rient))

[...]

Amélie : *Et c'est une femme qui veut être un homme.*

Pedro : *Mais pour moi, l'apparence c'est d'un homme.*

(Group interview 2, 4 May 2016)

In the two previous examples, the workers defined what the individual in the first photograph 'actually is' according to the genital organs. In quote 22, I directly mentioned the genitalia. In quote 23, however, I only mentioned the legal sex of the individual. The interviews took place in 2016, a year and a half before the new act to modify the mention of sex²¹⁷ was adopted. Therefore, the workers knew that the legal mention of an F (for female) or an M (for male) corresponded to the civil status at birth, which is based on the type of genitalia. In both situations, the (physical) appearance-reality distinction is employed to describe the individual as 'actually a woman' who wants to be a man, a woman with the physical appearance of a man.

The (physical) appearance-reality distinction was used by some workers also to set the distinction between the category 'transgender' (also called 'transvestite' sometimes) and 'transsexual'. According to this distinction, transgender would be the individual who changes his or her appearance without modifying their body –especially their genitalia–; whereas transsexual people modify their body, thus becoming a woman (if they previously were a man) or a man (if they previously were a woman). For instance, in the following excerpt Stéphanie distinguishes between just changing one's appearance and really changing the body:

[Quote 24]

Stéphanie : *Euh:: ben pour le transgenre, fin j- p-, peut-être que j' me trompe mais, pour moi transsexuel et transgenre c'est pas tout à fait la même chose.*

Chercheuse : *Mm mm ?*

²¹⁷ Loi du 25 juin 2017 réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets. *M. B., 10 juillet 2017, 71465–71469.*

Stéphanie : *Transgenre j' verrais plus ça dans la manière de, de changer son apparence tout en restant euh::: un homme ou une femme mais de changer son apparence. Et pour transsexuel c- c'est, c'est au niveau vraiment de::: du, du physique quoi. Donc euh, prise d'hormones euh, j' présume euh changement d' sexe euh, poitrine ou pas poitrine euh, je sais pas moi. °Ce qu'on:::°, c' qu'on décide euh, de dev'nir quoi, tout simplement.*

(Group interview 5, 26 August 2016)

6.2.2. The name of a part to refer to the whole (synecdoche): 'sexe'

The term 'sexe' was employed by the workers in a synecdoche during the interviews. The synecdoche is a type of metonymy, a figure of speech in which a thing or an idea is designated with the name of something else based on the relationship between the two (García Barrientos, 2000). For instance, the utterance 'to earn one's bread' is a metonymy in which the word 'bread' replaces the idea of the money one needs to pay for food, a place to live, etc. In this case, the type of relationship in which the metonymy is based is a cause-effect one (you earn money to buy bread, a basic commodity). As a type of metonymy, the synecdoche is based on the relationship between the whole and its parts. It consists of mentioning a part for the whole or conversely the whole for one of its parts. In this sense, the word 'sexe' was employed by the workers to refer to both genitalia (a part) and the categories man and woman (the whole). The specific meaning the term 'sexe' takes in each occasion can only be understood within the context of the interview. I specify these uses below.

On the one hand, the term 'sexe' is used by the workers to refer to the genitals without the need to mention the words 'penis/testicles' and 'vulva/vagina'. In this case, the word 'sexe' is followed by an adjective (e.g. 'sexe masculin') or a nominal group working as an adjective ('sexe de garçon'). For instance:

[Quote 25]

Alors je sais pas si, euh... - j' connais pas la matière hein - le, la greffe d'un sexe masculin - je sais pas si ça existe hein -, la greffe ou le, je sais pas moi des attributs, je sais pas. Je sais pas quand euh:::, ça s' passe comment ?

(Sébastien, group interview 3, 10 May 2016)

[Quote 26]

Comment est-c' qu'i's incarneraient, enfin comment ils se s-, comment ils se sentent par rapport à leur physiologie entre guillemets, euh... >naturelle< ou:::? Quand j' dis « physiologie naturelle » c'est qu'on naît avec un sexe de garçon ou on naît a-, a-, avec un sexe de fille.

(Isaac, group interview 4, 11 May 2016)

In quote 25 above, Sébastien was wondering about the 'sexual reassignment' of trans* men, claiming that he was not sure it was possible to do *'la greffe d'un sexe masculin'*. In this utterance, the word *'sexe'* replaces the word *'pénis'*. It is obvious that he could not be speaking about a transplant if he was using the word *'sexe'* to mean the category 'man' or 'woman'. It is also important to note the use of the adjective *'masculin'*, meaning 'that which belongs or is related to men'²¹⁸. As a matter of fact, the other participants knew he was referring to a penis because he was talking about trans* men and qualified the sex as masculine. In fact, this use was confirmed some seconds later in the interview. Marie answered that she had watched a video about that kind of transplant, to which Sébastien responded *'Une greffe euh d'un sexe, d'un pénis ?'* (Group interview 3, 10 May 2016). In a similar vein, Isaac explains in quote 26 what he meant when he said *'physiologie naturelle'*. As in the previous example, the other participants knew he was referring to the genital organs since he was describing a physiological aspect. The qualification of the genitals as *'de garçon'* or *'de fille'* made it clear he was referring to penis/testicles in the first case and vulva/vagina in the second. In this case, the whole is used to describe the part.

On the other hand, the term *'sexe'* is also used by the workers to refer to the categories 'man' and 'woman'. The term *'sexe'* is employed by the workers with this meaning when they were talking about the legal mention of sex in identity documents and the change of category, as the following quotes illustrate:

[Quote 27]

[O]k on peut se dire qu'à un moment donné quelqu'un est un homme ou une femme. Mais, si maintenant on voulait aller à l'extrême avec l'histoire des transgenres, qu'est-ce qui pourrait empêcher qu'une personne décide un jour d'avoir un sexe « A », et puis l'autre jour un sexe « B » et puis... trois ans après il veut rechanger il passe au sexe « A »... tu vois ?

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<https://www.larousse.fr/dictionnaires/francais/masculin/49693?q=masculin#49595>

(Jean, group interview 1, 29 March 2016)

[Quote 28]

Ibrahim : *Mais il faut pas... comme j'ai dit, va y avoir bientôt un troisième euh...*

Pierre : *Critère sur la carte d'identité.*

Ibrahim : *... Il y aura un état trans.*

Pierre : *Je n' sais pas ce que c'est exactement.*

Ginette : *Un, un sexe administratif.*

(Group interview 1, 29 March 2016)

In the previous excerpts, the term 'sexe' refers to the category to which a person belongs. In the first case (quote 27), Jean wonders what could prevent people from moving from one category to the other several times ('*un jour d'avoir un sexe « A », et puis l'autre jour un sexe « B » et puis... trois ans après il veut rechanger il passe au sexe « A »*'). When he uses the expressions 'un sexe "A"' and 'un sexe "B"', he is referring to the categories man and woman that he mentioned previously ('*à un moment donné quelqu'un est un homme ou une femme*'). In the second excerpt (quote 28), the workers are talking about a possible third criterion for trans* people in the identity card, '*un sexe administratif*' that would not be any of the two current ones (male/female). As in the previous case, it is clear that the word 'sexe' is used here to designate a category and not genitalia. In this case, the part is used to describe the whole.

This synecdoche is also used to define trans* people as people who 'move from one sex to the other' or 'who change sex'. However, there is a certain ambiguity in relation to what 'sexe' specifically refers to in this context. In fact, the expression '*changer de sexe*' is used to refer to both things: to change the category and to modify the genitalia. These uses are illustrated in the following quotes:

[Quote 29]

Claire: *Mais donc une personne trans euh, pour moi est soit une personne, fin est une personne qui, euh, soit pass::e d'un, d'un sexe à l'autre, soit euh lais-, fin voilà euh, euh::, fin... a les deux genres ou:: je sais-, oui, je sais pas donc...*

Chercheuse: *Et ça veut dire quoi passer d'un sexe à l'autre ?*

Claire : *<Ben donc j' dirais> c'est, c'est euh:: Fin voilà, donc une personne est née homme ou femme et se rend compte que euh:: ce n'est pas l'identité euh:: qu'el-, que il ou elle souhaite et donc décide de, de changer euh, euh::*

(Group interview 3, 10 May 2016)

[Quote 30]

Chercheuse : *Donc c'est ça « changer de sexe » pour vous ?*

Marie : Ben c'est vraiment subir une, une, une opération qui transforme le sexe. Les ☺ parties génitales quoi, le... ☺ ((Rires)).

(Group interview 3, 10 May 2016)

[Quote 31]

Donc euh moi en tant que conseillère emploi, j'en ai rencontré plusieurs. Donc j'en-j'ai rencontré des gens qui avaient déjà changé de sexe, qui étaient épanouis et qui en ont parlé librement avec moi. C'était euh un camionneur qui est devenu une femme. Et qui était resté camionneur. Et qui savait, qui avait gardé les couilles apparemment parce que elle savait bien s' défendre auprès des employeurs, qui voulaient pas engager les femmes. Elle avait gardé si tu veux le caractère un p'tit peu euh, un peu agressif comme ça pour se faire engager.

(Catherine, group interview 4, 11 May 2016)

In quote 29, Claire defines trans* people as people who '*soit passe d'un sexe à l'autre, soit a les deux genres*'. When I ask her what it means to move from one sex to the other, she explains that it is when someone who is born a man or a woman realises that is not the identity he or she desires and decides to change. The use of the terms 'man' and 'woman' and the mention of the identity indicate that when she describes trans* people as moving 'from one sex to the other', she means a movement between the categories man and woman. It is important to note that she uses the term '*sexe*' and '*genre*' as synonyms to allude to the categories 'man' and 'woman'. However, in quote 30 when I ask what it means to change sex, Marie answers that it is really getting surgery to transform sex, that is, genitalia. As a matter of fact, '*changer de sexe*' means both to get genital surgery and to change the category. The name of the part is used to refer to the whole and vice versa.

The use of this synecdoche is even clearer in quote 31 in which Catherine is describing someone she met '*qui avait déjà changé de sexe*'. She describes that person as a '*camionneur* (thus, a man) *devenu femme*'. She is therefore using the expression '*changer de sexe*' to describe the movement between categories, in this case from man to woman. At the same time she alludes to the genital operation when she says that the concerned person '*avait gardé les couilles apparemment*'. In this utterance, Catherine is playing on words since a man changing sex gets surgery (and thus, his testicles are removed) but at the same time '*avoir les couilles*' is an expression meaning 'to show courage'²¹⁹, usually associated with men. By

²¹⁹ 'Avoir des couilles : manifester du courage, de la fermeté' (Dictionnaire Larousse).

this pun Catherine is saying that although that man became a woman, she kept men's bravery (and perhaps also the testicles).

The use of this synecdoche (re)constructs people with vagina and vulva as necessarily women and people with penis and testicles as necessarily men. Women and men are thus defined as two clearly distinguishable *biological* categories, differentiated according to their genitalia. It is thus in this sense that to change sex means both to move between categories (man or woman) and to change the type of genitalia since the category is reduced to this body part.

6.2.3. The argument of authority: the natural science rhetoric

The rhetoric of the natural sciences is employed by the workers on numerous occasions as a form of authoritative argument. The argument of authority (Perelman, 1968; Perelman & Olbrechts-Tyteca, 1970) is based on the coexistence between the prestige of a person and their acts. In this case, the individual –the scientist– is absent from discourse, but their product –science– is seen as an unquestionable authority whose power consists in ‘its conflation of knowledge and truth’ (Aronowitz, 1988, p. 7). Science is in this sense taken to be a body of stable, certifiably ‘objective facts’, the ‘pinnacle of human achievement’ (Prelli, 1989, p. 1). The terminology of the natural sciences abounds in workers’ discursive practices, especially biological terms (e.g. ‘*physiologie naturelle*’, ‘*transformation biologique*’, ‘*valeurs*’, ‘*mesures*’, ‘*détermination du sexe biologique*’, ‘*chromosomes*’, ‘*scientifique*’, ‘*génétique*’, ‘*code AND*’). The authority of the natural science rhetoric relies on the truth-revealing role attributed to it and its presumed objectivity.

This rhetoric is used by the workers to argue for the ‘inescapable truth’ of two natural categories: men and women. As the following quotes illustrate, binary sex is defined as something that is just ‘out there’, an external reality independent of all human action and interpretation:

[Quote 32]

Quand j' dis « physiologie naturelle » c'est qu'on naît avec un sexe de garçon ou on naît a-, a-, avec un sexe de fille. [...] Naître fille ou garçon c'est d'abord physiologiquement naître fille ou garçon. Donc y a une donnée ph::ysique à laquelle on échappe pas. Et qui arrive et, on échappe pas. Le reste c'est une construction, le

reste c'est... l'endroit où tu as baigné, où tu as grandi, ((Inspiration)) etc. Mais y a d'abord cette, cette notion physiologique qui vient.

(Isaac, group interview 4, 11 May 2016)

[Quote 33]

Pour revenir, à::: l'histoire de Caster Semenya, quand j' disais euh il av- elle avait la morphologie d'un homme, et que::: y avait des doutes sur son sexe, c'était point de vue morphologique de ses attributs euh sexuels. Donc euh, il fallait analyser euh... son sexe, puisqu'i:::, il a, elle, cette personne avait un sexe qui::: était entre les deux. [...] Y a une différence au début, entre euh... un sexe masculin, un sexe féminin, et c'est::: voilà, c'est des différences fondamentales qui s:::'accroissent, après, et qui deviennent des différences de genres et qui sont déterminées socialement. Mais c'est vrai qu'il y a:::, y a cette question-là de « homme - femme », avec une description biologique euh... euh::: je n' sais pas moi, universelle ?

(Sébastien, group interview 3, 10 May 2016)

In quote 32, Isaac uses the rhetoric of the natural sciences to describe girls and boys as two different natural categories from a physiological point of view. According to him, we are simply born girl or boy (*'on naît fille ou garçon'*) and we cannot elude that 'physical fact'. In quote 33, Sébastien also uses that rhetoric to describe the intersexed athlete Caster Semenya. He describes her as having '*morphologie d'homme*' and only scientific analysis could determine her true sex. Sébastien describes the difference between the masculine and the feminine sex as fundamental, and men and women as two universal biological categories. In both cases, the workers describe the categories of men and women as an objective fact, the objective substrate upon which gender differences are built afterwards. In other words, whereas imperatives concerning how men and women ought to behave are due to education and society, there is still an objective reality called 'men' and 'women'. In this case, sex is employed as the natural reality upon which gender is socially constructed.

The natural sciences' rhetoric is also employed by the workers to establish a distinction between the objective reality of the categories 'man' and 'woman' and the desire or choice of the individual. In the following excerpts (quotes 34 and 35), both workers –François and Demba– affirm that there is a scientific way to determine if someone is a man or a woman. François describes a biological point of view that takes into account numeric values and measurements, things that are quantifiable like hormones. When asked what was for him 'a real

woman' or 'a real man', Demba alludes to the chromosomes, arguing that that is the scientific way to determine whether someone is a man or a woman. Then both of them mark the distinction between the scientific knowledge—people are scientifically either man or woman—and what people feel they are or want to be. The use of the natural sciences rhetoric allows these workers to present themselves as open-minded while at the same time privileging the 'truth of the body' over self-categorisation:

[Quote 34]

Non je, je pense vraiment que d'un point de vue biologique, moi j' t'ai répondu d'un point de vue biologique, moi pour moi quand on parle de trans moi je l' situe vraiment au niveau biologique. Je suis pas dans, dans c' qui se passe ici dans, dans la tête, je parle vraiment d'un point de vue, voilà... on a des valeurs, on les mesure et dès qu' quelque chose qui est quantifiable... moi j', j' parle des hormones. Après c' qui se passe dans l'esprit des gens et l'envie de, d'agir... c'est vrai qu'on a tous quand même un... un...voilà, ici on est quand même, on a quand même tendance plutôt à agir en tant que mâle, hein ((Rires)) et euh et voilà... et moi je ne quantifiais pas cette partie-là, pas du tout. Je parlais vraiment juste d'un point de vue biologique.

(François, group interview 1, 29 March 2016)

[Quote 35]

Demba : *Je sais pas... physiquement ? Ou scientifique ? Ou comment ? Parce que si on a un chromosome XY on le sait que c'est un garçon...*

Chercheuse : *Donc c'est les chromosomes ?*

Demba : *Scientifiquement ! Mais maint'nant... mentalement ou psych- je sais pas. Parce qu'y a des gens qui disent qui se sentent plus femme ou plus homme euh... On respecte le choix, ou sa volonté...*

(Group interview 1, 29 March 2016)

Regarding quote 34 above, it is interesting what François adds: '*c'est vrai qu'on a tous [mâles] quand même un... un...voilà, ici on est quand même, on a quand même tendance plutôt à agir en tant que mâle*'. In other words, people tend to behave 'according to their sex'. Note that he uses the word '*mâle*', a biological term, to describe behaviour and roles. As opposed to the quotes above in which there was a distinction between sex as biology and gender as social construction, in this case sex and gender are conflated.

Finally, the natural sciences' rhetoric is also used to justify the existence of the two categories —man and woman— on the basis of 'natural functions and roles'. In other words: reproduction. The

biological terminology is used to situate men and women within nature and the animal kingdom, where there are male and female individuals. This rhetoric is used to reject a social or cultural reading of the differences between men and women, established again as a natural truth. Men and women exist in nature in order to reproduce the species. The workers appeal to *'le code de la séduction'*, *'un instinct basique'*, *'une attirance primaire'*, and the *'rôles fondamentaux naturels différents'* to defend the naturalness of the two categories since 'only women can get pregnant'. Two distinguishable natural categories are needed in order not to make a mistake when one wants to reproduce. This rhetoric not only establishes the two biological categories as a fundamental truth, but also heterosexuality. This use is illustrated in the following quote:

[Quote 36]

Ibrahim : *Ouais c'est la société qui a donné ces normes fictives.*

Pierre : *C'est la société qui a donné les noms...*

Ginette : *Ben c'est pas fictif, hein ? Dans le genre animal y a, t'as des mâles et des femelles, hein euh... °ça fait partie de la nature°.*

[...]

François : *C'est, c'est... c'est géné... Si, si vraiment on va vraiment dans le loin, on est des animaux, on est génétique, c'est le code de la séduction euh...*

Ginette : *Tout à fait.*

François : *T'es un homme, t'es une femme... on peut se r'produire, vas-y c'est, yoplaboum ! on y va quoi. En gros c'est ça, hein... Si, si on réfléchit au sens le plus basique du, du terme, c'est ça hein ? C'est... « vas-y, j' peux ? je peux ? je peux ?... ah non, tu peux pas ». ((Rires))*

Ginette : *C'est exactement ça. Moi je suis persuadée que... qu'il a raison.*

Ibrahim : *Suffit de regarder dans notre code ADN, c'est écrit.*

Chercheuse : *C'est une question de reproduction ?*

Ginette : *Oh, c'est un instinct basique.*

François : *J' pense que c'est un instinct basique oui.*

Jean : *Oui et l'attirance, mais une attirance primaire quoi.*

[...]

Ginette : *Il y a quand même des rôles fondamentaux naturels différents entre la femme et l'homme ! ☺ ça on peut rien y changer ! ☺ Ben c'est la femme qui portera les enfants quand même ! Une grossesse, jusqu'à présent, c'est chez la femme hein ? ((Rires)) Et ça, c'est la nature, c'est comme ça. C'est pas culturel !*

(Group interview 1, 29 March 2016)

6.2.4. Dead metaphors: *'homme habillé en femme', 'femme qui joue le rôle de l'homme'*

According to Perelmanian rhetoric (Perelman, 1968; Perelman & Olbrechts-Tyteca, 1970), the metaphor is a condensed analogy. The analogy is an argument establishing the structure of the real. It consists on linking two relations –the target and the source– allowing transferring the relative value of the terms of the source to those of the target. It takes the form A is to B (source) as C is to D (target). Perelman (1977) gives the following example: *'la vieillesse est à la vie ce que le soir est au jour'* (1977, p. 133). It has thus four terms (two relations between two terms are compared). The metaphor, however, has only two terms, for instance *'la vieillesse du jour'* to describe the night or *'le soir de la vie'* to describe the old age. However, we can identify the analogy that lies behind the metaphors.

The dead metaphor is a metaphor whose repetitive use has led to forget its metaphorical content (Kövecses, 2010). The argumentative strength of this type of metaphor is that the audience does not perceive it as a metaphor and assumes it as a description of the natural state of affairs. According to Lizcano (2006), dead metaphors

‘reveal the most sophisticated layers of popular thinking, those whose instituting activity was frozen a long time ago but nevertheless, keep on shaping the world we live. What is more, the more they are dead, the more they inform about that world because they establish what is taken for granted, that on what we count and thus cannot be told: the so-called facts, ideas and things themselves’²²⁰ (2006, p. 65, translation mine).

Dead metaphors have lost the power to shock the audience, being assumed as a natural description of the world. However, as Kövecses (2010) claims, these metaphors are “‘alive” in the most important sense—they govern our thought: they are “metaphors we live by”” (2010, p. 12).

²²⁰ *[Las metáforas muertas] revelan así las capas más solidificadas del imaginario, aquellas en las que su cálida actividad instituyente hace tiempo que se congeló pero que, no por ello, deja de dar forma al mundo en que vivimos. Es más, cuanto más muertas, más informan de ese mundo, pues ellas ponen lo que se da por sentado, lo que se da por descontado, aquello con lo que se cuenta y que, por tanto, no puede contarse: los llamados hechos, las ideas, las cosas mismas'* (Lizcano, 2006, p. 65).

A very common dead metaphor used is *'homme/garçon habillé en femme/fille'* and its mirror *'femme/fille habillée en homme/garçon'*. This expression is so widespread that it is hardly seen as a metaphor. But what does *'homme habillé en femme'* exactly mean? This dead metaphor is a condensed analogy. The analogy behind it is: men dress in the way A and women dress in the way B, a man dressed in the way B is dressed as a woman. Therefore, through the use of this metaphor, the participants actually enact the norm concerning how men and women must dress.

This metaphor was used by participants in three particular situations during the interviews. A first situation concerns personal experiences told by participants in which someone mistook the sex/gender category of somebody because of the clothes they were wearing. A second situation is when participants define trans* people. A third situation is when they describe the person in photograph 4. The following quotes illustrate the three situations respectively:

[Quote 37]

J'ai une p'tite fille qui s'habille comme un garçon. Et donc qu'on prend toujours pour un garçon. Et je me sens:::, chaque fois obligée de dire « ah non c'est une fille ».

(Marie, group interview 3, 10 May 2016)

[Quote 38]

Je n' connais pas d' personne transgenre personnellement mais j'en ai d'jà aperçu dans la rue, dans les restaurants, où on voit clairement que c'est un homme et qu'il est habillé en femme et qui::: voilà, qui s'affirme comme ça, ou l'inverse ou:::

(Véronique, group interview 4, 11 May 2016)

[Quote 39]

Valérie : *((Prénom incompréhensible)) aussi, et il a été engagé.*

Amélie : *Oui, oui... Mais il est pas arrivé habillé en fille.*

Valérie : *Pas habillé comme ça.*

(Group interview 2, 4 May 2016)

In quote 37, Marie explains that people usually perceive her daughter as a boy and she has to correct them by telling them that 'she is a girl'. The use of the verb *'avoir'* in this utterance also constitutes a representative act in line with *'c'est une fille'*. By saying *'j'ai une p'tite fille'* Marie is saying that her daughter is a girl, being the word 'daughter' and 'girl' the same in French (*'fille'*). In quote 38, Véronique explains that although she has personally never met a transgender person, she has seen some in the streets and restaurants. She recognised them because *'on voit clairement que*

c'est un homme et qu'il est habillé en femme'. In quote 39, the group was discussing whether the person in photograph 4 would be hired in their company. Valérie was saying that they had a colleague who was homosexual and who was hired in spite of that, assuming that the person in the photograph is homosexual. Amélie then answered that it was true but the colleague was not dressed like a girl (*'il est pas arrive habillé en fille*'), implying that the person in photograph 4 was.

Although this may not be their intention, the use of this dead metaphor establishes that men and women must dress differently. We do not know what type of clothes the people described in the first two quotes were wearing. Therefore, we cannot know exactly which pieces of clothes and accessories were established to be for men or for women in those particular contexts. Nevertheless, in the third type of situation –the description of the person in photograph 4– we can see the pieces of clothes and accessories the person is wearing: a colourful shirt, a tube skirt open until the thigh, black high heels, a necklace, a bracelet and earrings of a certain style. The person has painted nails and wears red lipstick. Therefore, the norm is that people categorised as men do not use that type of clothes and accessories. They do not use that kind of make-up either. The gender embodiment of men is not that one. If it is, they are qualified as *'un travesti'* or as homosexual. In other words, a particular kind of man, a man who dresses as a woman.

The rhetorical strength of the metaphor *'un homme habillé en femme'* is even more evident when compared to the similar but different metaphor *'un homme déguisé en femme'*. In fact, it is worth noting that most participants suddenly and voluntarily interrupted themselves when they were going to employ the word *'déguisé'*:

[Quote 40]

C'est un homme qui se déguise- qui s'habille en femme ou...

(Simon, group interview 1, 29 March 2016)

[Quote 41]

Chercheuse : *Et à votre avis, c'est la même chose transgenre et transsexuel ? Pour vous, c'est la même chose ?*

(7)

Amélie : *Ben, moi j' m' demande s'il y en a pas un où c'est plus euh:::, où y a la transformation physique qui a été opérée et l'autre où c'est juste euh... un homme qui se déguise, qui, qui se:::, pas, pas qui s' déguise parce que c'est pas... oui mais...*

Plusieurs : *qui se travestit.*

Amélie : *qui s' travestît en femme, quoi.*

(Group interview 2, 4 May 2016)

The previous quotes illustrate the way the verb '*se déguiser*' is not pronounced completely or it is rejected by the participants, being substituted by '*s'habiller*' or '*se travestir*' during the interaction. '*Se déguiser*' has a marked connotation of performance, falsity and parody. Employing the metaphor '*homme qui se déguise en femme*' to define people outside the context of entertainment can be easily perceived as prejudiced because the audience is more aware of the comparison being made than in '*homme habillé en femme*'. '*S'habiller*' and '*se travestir*' are more neutral verbs related to the action of getting dressed and that is where its rhetorical strength lies.

Whereas the metaphor '*un homme habillé en femme*' was employed by the participants to describe the person in the photograph 4, the metaphor '*une femme habillée en homme*' was never used to describe people in the photographs. However, another similar metaphor was employed to describe the person in photograph 5: '*jouer le rôle de l'homme*'. This metaphor does not refer exclusively to the clothes but the general attitude, as the following quote shows:

[Quote 42]

Chercheuse : *Vous pouvez décrire les photos ?*

Patricia : *Pour moi la 5 c'est une femme. Et... Et la 4 c'est un homme.*

Amélie : *Moi, j'ai un peu un doute euh...*

Charlotte : *((Par rapport à la photo 5)) Mais ça c'est, c'est une femme qui joue l' rôle de l'homme. Ça... c'est une lesbienne, quoi. Non ? Moi j' vois ça comme ça hein.*

(Group interview 2, 4 May 2016)

In quote above 42, Patricia describes the person in photograph 4 as a man (*'la [photo] 4 c'est un homme*) and the person in photograph 5 as a woman (*'la [photo] 5 c'est une femme*). However, Amélie expresses doubt about the second statement. Then Charlotte explains that it is a woman but a specific kind of a woman: one who plays the role of the man, a lesbian. The notion of 'role' here does not refer to occupation or activity since there is no sign about it in the photograph. It refers to clothes and/or the body position, being also described as a masculine woman (*'une femme masculine*'). The analogy sustaining this metaphor is 'women

dress and move in a way X, men dress and move in a way Y, this woman dresses and moves in a way Y, therefore she dresses and moves like a man'. The metaphor thus tells that women do not dress and move like the person in photograph 5. And if they do, they are a particular kind of woman: a lesbian. In other words, a woman who dresses and moves like a man, likes women just as a man.

In spite of the fact that both the person in photograph 4 and the person in photograph 5 are described as not dressing and moving following the norm for men and women respectively, the person of photograph 5 is systematically defined as more natural than the one in photograph 4. In fact, the person in photograph 4 is described as exaggerated, as a provocation, as a performance to make laugh:

[Quote 43]

Cette personne-là s'est dit « oh, ben j' vais m'habiller comme ça pour la photo. Je vais provo-, un peu jouer euh::: la provoc' euh ». Fin, et c'est exagéré. Euh::: Il s'est un peu stéréotypé oui.

(Véronique, group interview 3, 10 May 2016)

[Quote 44]

Est-ce qu'il fait ça pour rire ou est-ce que c'est vrai euh. Il va avoir des moqueries quoi. Ça r'ssemble plus à des travestis qui travaillent dans les boîtes de nuit pour faire rigoler là. Qui s' déguisent en femme euh, tu vois ?

(Catherine, group interview 4, 11 May 2016)

As described above, the '*homme habillé en femme*' and '*femme habillée en homme*' metaphors establish the appropriate clothes and accessories for men and women. But when and how is someone defined as a man or a woman? In the previous examples, the person in photograph 4 was always called with the masculine forms of language for men and the person in photograph 5 with the feminine ones for women. As no other information had been added about the people in those two photographs (for instance, in relation to their identity or their legal civil status) the use of the masculine or feminine forms of language was based on the 'visible presence' of these people. In other words, what the participants could see from them: the body parts that are not covered by clothes such as the face, the neck and the hands, the body shape, the clothes and the body position. Therefore, they were called 'man' or 'woman' according to the visible body parts and the body shape:

[Quote 45]

Parce que- Oui, parce qu'il, il a gardé euh, un côté euh masculin, avec la barbe, les poils sur les jambes. Mais un costume de femme.

(Catherine, group interview 4, 11 May 2016)

[Quote 46]

Mais j' dirais donc que, sur les photos 4 et 5 c'est euh... euh::: uniquement::: les vêtements et les, et la position, qui fait euh... passer un message différent. Fin j' sais pas comment expliquer mais... Fin pour moi, c' qui::: donc on voit clairement là, sur la photo 4 que c'est un homme, que sur la photo 5 que c'est une femme, mais les vêtements et la manière dont la personne pose euh font penser euh... au sexe opposé. Voilà.

(Claire, group interview 3, 10 May 2016)

[Quote 47]

Donc pour la photo 4 et 5 j'ai vraiment l'impression de... que chaque sexe, entre guillemets, incarne pleinement, l'autre polarité. °Vous voyez ?° Donc la numéro 4 il a:::, y a vraiment une féminité prononcée. Et dans la 5 y a effectivement une posture qu'on pourrait qualifier de masc- très masculine euh, dans un visage euh... quoique féminin, un p'tit peu féminin, mais... qui a un qui- Y a, y a une polarité opposée qui est très prononcée aussi. Donc c'- Oui. Dans les deux, i- i's expriment- En fonction de leur sexe, initial, entre guillemets, physiologique, ben ils incarnent l'autre polarité, euh pleinement apparemment hein !

(Isaac, group interview 4, 11 May 2016)

In quote 45, Catherine describes the person in the photograph 4 as a man. His beard and hairy legs gives him a masculine side in spite of the fact that he wears a 'woman's costume'. In quotes 46 and 47 both participants defined the people in photographs 4 and 5 as a man and a woman respectively because of the bodily signs they could see (*visage féminin, sexe physiologique*) but their clothes and gestures are described as those of 'the other sex' (*'les vêtements et la manière dont la personne pose euh font penser euh... au sexe opposé', 'en fonction de leur sexe, initial, entre guillemets, physiologique, ben ils incarnent l'autre polarité'*). The categories man and woman are thus defined on the basis of visible body characteristics.

6.2.5. The socio-cultural argument

The socio-cultural argument relies on the idea that the different roles of women and men are socially attributed, especially through differential education since childhood. According to this argument, not only the roles that women and men accomplish in society but also their skills are a product of culture, not nature. The socio-cultural argument was

employed by the workers especially when they discussed women's traditional caring and nurturing roles. For instance:

[Quote 48]

Dans l'éducation, dans les rôles sociaux qu'on attribue, on va valoriser beaucoup plus rapidement, chez les filles bein, tout ce qui est euh relationnel : le fait de prendre soin, d'être proche, d'avoir une attention, d'être... voilà.

(Quentin, group interview 3, 10 May 2016)

[Quote 49]

C'est une question d'éducation. (2) J' pense que, on reste bien dans l'éducation::: euh que ce sont les femmes qui doivent s'occuper des enfants.

(Thérèse, group interview 4, 11 May 2016)

[Quote 50]

Ginette : *Ben... moi ça faisait partie de mon éducation.*

Ibrahim : *Ben, voilà... sinon...*

Ginette : *Euh... tenir une maison, tenir un ménage. ☺ Ça c'était important pour ma mère. Moi ça m'intéressait pas ! ☺*

Ibrahim : *Ben, voilà.*

Dirk : *Je pense que juste l'idée comme ça. C'est des idées reçues.*

Ginette : *C'est culturel bein.*

(Group interview 1, 29 March 2016)

The three previous quotes the workers point at the role of education in the attribution of different roles to women and men. In quote 48 Quentin underlines the way girls' relational attitudes and skills are reinforced through education. In the same line, Thérèse complains about the fact that women are educated to take care of children in quote 49. In quote 50, Ginette explains that she was taught by her mother how to keep a household, although she was not interested in it at all. She explains that it is a cultural and educational question (*'ça faisait partie de mon éducation', 'c'est culturel'*). Dirk adds to that by defining this attribution as just an idea, as beliefs (*'des idées reçues'*), implying that it does not correspond to reality. A similar notion, the notion of *'cliché'* was also employed by the workers in the same vein. The word *'cliché'*, a term that comes originally from photography²²¹, is used to describe the repetition of common and old-fashioned ideas. The term is used as a synonym of stereotype, implying that the cliché is not true. For instance, in the

²²¹ In French, a *'cliché'* is also a developed photographic strip with negative images.

following excerpt Antonio, a policeman, claims that the idea that the man is strong and his function is to intervene (in a police operation) violently and the woman is sensible and her function is to calm things down is a *cliché*:

[Quote 51]

Non pas vraiment, fin, c- c' qu' y a c'est qu'on rentre souvent dans les clichés, on va dire : « voilà, l'homme, c'est, c'est l' gros macho musclé, et euh qui va pour tout casser, et la femme qui est là pour consoler la, la veuve euh... et l' pleurer on va dire ».

(Antonio, group interview 5, 26 August 2016)

The socio-cultural argument is employed to describe the relationship between biology and socialisation in a way that Nicholson (1994) denominates the 'coatrack view of self-identity'²²². In other words, this argument does not question the natural existence of two biological categories—women and men—but the biological determination of interests, roles and behaviours. This is illustrated in the following quotes:

[Quote 52]

Si j' peux parler. Euh::: Moi je pense que c'est plutôt une construction sociale. Donc euh, c'est pas du tout déterminé euh::: biologiquement, eum::: Fin voilà, c'est dans ce qu'on a déjà dit : dans l'éducation euh:::, dans::: fin et ça commence dès, dès l' plus jeune âge fin, même dès la naissance ☺ ou même avant ☺ Eum:::, où on::: fin voilà... euh:::, quand on sait qu'on est face à une fille ou un garçon, ben on va euh, agir différemment, on va eu::: m, imaginer des choses pour cette personne qui euh:::, qui vont être vraiment déterminées à partir du:::, du genre de la personne quoi. Je pense aux, aux jeux : tout bêtement les jeux euh, les jeux d'enfants déjà ils déterminent euh... fin voilà euh, un peu le, les intérêts que chaque, chaque euh:::, chaque genre va avoir quoi.

(Claire, group interview 3, 10 May 2016)

[Quote 53]

Y a une différence au début, entre euh... un sexe masculin, un sexe féminin, et c'est::: voilà, c'est des différences fondamentales qui s:::'accroissent, après, et qui deviennent des différences de genres et qui sont déterminées socialement.

(Sébastien, group interview 3, 10 May 2016)

In quote 52 above, Claire claims that the different interests and behaviours of women and men are not biologically determined but the product of social construction. She explains that these differences are due to education because girls and boys are treated differently since they

²²² See Chapter 1, point 1.1.1.

are born. This would determine their different interests afterwards. It is important to note, however, that whereas she rejects the idea of a biological determination of personality and behaviour, she takes for granted that human beings are naturally divided into two categories (*'quand on sait qu'on est face à une fille ou un garçon, ben on va euh, agir différemment'*). In quote 53, Sébastien explains that there is an initial and fundamental difference –sex difference– which increases and becomes gender differences because of social determination. As in the previous case, he describes the natural existence of two categories as an unquestionable fact, while admitting the role of society in increasing that fundamental difference. In the two quotes, the term 'gender' (*'genre'*) is employed to refer to social and cultural aspects, whereas the term 'sex' (*'sexe'*) is used to describe the material reality of the two categories.

6.3. Variability and functions

The French language is *'un système grammatical à deux termes'* (Chevalier & Plante, 2014, p. 30), compelling all French speakers to display their own sex/gender category (e.g., *'je suis animatrice'*), as well as the sex/gender category of the others (e.g. *'il est charmeur'*). Everybody is to be assigned to one of the two categories of the binary opposition–man or woman, male or female–because there is no readily available way to escape this linguistic dichotomy (yet?). This is clear in workers' use of sex/gender categories in speech, especially when I asked them to describe the people in the photographs. The use of the third person singular personal pronoun obliged the workers to attribute a sex/gender category to those individuals by means of one of the two existing forms (*'elle'* or *'il'*).

The attribution of people in the photographs to a sex/gender category was not random; there was an agreement in the use of the masculine form *'il'* to describe the people in photographs 1 and 4 and the feminine form *'elle'* to describe the people in photographs 2 and 5²²³. As they did not have any extra information²²⁴ about those individuals

²²³ Only in one occasion (group interview 2, 4 May 2016) the workers expressed a doubt regarding the person in photograph 5, wondering if the individual was a 'masculine woman' or a 'feminine man'. The conclusion they reached was that it was a 'masculine woman'.

²²⁴ E. g. how those people identify themselves and/or the letter (M for male or F for female) that appears in their identity documents.

beyond what they could see in the photographs, they attributed a category depending on their visible presence; particularly their visible body features (body shape, face shape, presence of body hair, muscles, and/or breasts). Other visible aspects such as clothes and accessories and body posture were described as belonging to ‘the other sex/gender category’ in the case of people in photographs 4 and 5. Visible body features were thus the determinant element upon which the attribution of a sex/gender category was carried out in those four cases.

This rapid and consensual attribution of people to a sex/gender category may lead to the assumption that those categories exist regardless of how we think and talk about them. As Chevalier & Plante (2014) explain, the pervasiveness of this grammatical classification system has been mistakenly taken as a law of nature. In fact, as I described above, the natural sciences’ rhetoric was employed by the workers to claim the natural existence of two sex/gender categories. The categorisation of people as woman or man is an action, but it is so taken for granted that it is not usually identified as such. The action behind categorisation becomes apparent when norms are transgressed, for instance when an individual cannot be immediately classified as a woman or a man based on visible body features. In those cases, the criteria upon which the binary opposition is defined become concrete.

This was the case when the workers had to describe the person in photograph 3. After the initial astonishment, they described that person avoiding the attribution of a sex/gender category. Instead of using feminine or masculine pronouns, they used other linguistic forms, such as the impersonal voice (*‘y a une pomme d’Adam’*) and the generic noun *‘la personne’*—applicable to both women and men. Moreover, they enumerate a series of visible cues regarding the body (blond long hair, Adam’s apple, lack of breasts, the shape of the face), the clothes (a shirt), the make-up and the posture (a bare shoulder) to ‘determine’ if it was a woman or a man. Although these cues were treated by the workers as naturally determining the binary opposition, they were actually producing the categorisation themselves. The individual in photograph 3 ought to be necessarily a woman or a man. The norm is thus that people are unavoidably *either* women *or* men on the basis of an assumed sexual dimorphism.

Another case in which the norm is transgressed is when people move between categories. These people were referred to with different trans*-related terms. In these situations, people were designated with the sex/gender category attributed to them at birth instead of the category they identify with. The norm implicit in this 'misgendering' practice is thus that people *are* the sex/gender category they have been attributed at birth (presumably according to a binary classification of their genitalia at birth), regardless of their identity and their current appearance.

According to the ethnomethodological view underlying discursive psychology, norms are not something that precedes action but they are inherent to practices. The previous situations are an example of it. This conveys norms an implicit character. For this reason, norms are more easily identified when individuals transgress them. In those cases, people are confronted with a controversy between the norm and the alternative before which they are usually compelled to 'take a stance', to use Billig's (1991) terminology. The use of discursive and rhetorical devices indicates the presence of controversy and indicates how the norm is re-established. In this way the norm becomes visible.

A first discursive device used by the workers is the distinction of notions. This argument was used to set two types of distinctions: the mind-body distinction and the appearance-reality one. The mind-body distinction was used to describe trans* people as 'men who feel and/or want to be women' and 'women who feel and/or want to be men'. An incompatibility seems to lie in this fact because people are essentially either women or men. The use of the mind-body distinction allows the workers to distinguish between what people 'think or feel they are' (their mind or identity) and what they 'really are' (their body). Therefore, if 'a man wants to be a woman' he should ultimately modify his body. The same thing goes for 'a woman who wants to be a man'.

This distinction establishes thus the body as the valid criterion determining whether someone is a woman or a man. The body is considered a valid criterion to determine the binary opposition because of a presumed sexual dimorphism. However, human bodies do not fall into two clear-cut categories; they rather constitute a continuum of bodies with different sexual characteristics. The categorisation of human bodies into two clear-cut categories is also an action. However, instead of recognising the diversity of sexed bodies, the workers described

intersex people as an anomaly, reproducing the norm of sexual dimorphism upon which the binary opposition rely²²⁵.

The mind-body distinction not only prioritises the body but it also establishes that one should identify to the sex/gender category assigned at birth. In fact, the mind-body distinction is never used by the workers to describe cisgender women and men. In other words, the distinction between the mind and the body is only employed to describe people who do not agree with the way they have been categorised, as something needing explanation. Cisgender people, however, are never described in those terms; in fact, they seem not to have a gender identity. Not only trans* people are implicitly depicted as the only people having a gender identity but this identity is sometimes described by the workers as ‘a choice’ and/or as a ‘search for identity’. Therefore, whereas cisgender people simply ‘are’ a man or a woman, trans* people ‘decide to be’ a woman or a man. This attributes agency to trans* people to ‘decide’ who they are, ultimately making them responsible for their ‘choice’.

The second distinction of notions is the appearance-reality one. This distinction creates a contrast between what we can see (the appearance) and the truth. In other words, it establishes that there is a deeper truth behind the appearances. The workers used this distinction when they suspected someone to be trans*. In those cases, having the appearance of a woman (or a man) was not enough to assert that the individual was indeed a woman (or man) because nowadays biomedical technology (hormones, surgery) enables modifying the body. The ‘truth’ thus lies in the genitalia of the individual at birth. In spite of their appearance, people are women or men according to the type of genitalia they have. However, the appearance-reality distinction was not applied *systematically* and to *anybody*, but only to people under certain circumstances. For instance, the workers recurrently employed the word ‘woman’ or ‘man’ to designate their colleagues at work without expressing any doubt that the colleagues were ‘really’ those categories. The distinction between appearance and reality was however employed when trans* people became the topic of the conversation. The implicit norms stemming

²²⁵ The fact that intersex new-borns often get genital surgery to actually fabricate a ‘male sex’ or a ‘female sex’ was not discussed during the interviews. The norm of sexual dimorphism is without doubt inherent to this action since this type of surgery is often unjustified (Mason, 2013).

from this practice are, on the one hand, that someone is a woman or a man depending on the type of genitalia and, on the other, that the identity and physical appearance always ‘matches’ the type of genitalia. In other words, the norm is that everybody is cisgender unless something advises you differently.

The prominence of genitalia to define the binary opposition becomes evident in the use of the term ‘sex’. Sex is employed to allude to both the genitalia (e.g. *‘le sexe masculin’* to refer to the penis) and the categories woman and man (e.g. *‘passer d’un sexe à l’autre’* to refer to the movement between categories). This is a synecdoche in which sometimes the whole is employed by the workers to define the part and sometimes the part is employed to define the whole. This reproduces the norm that the categories woman and man are determined by the type of genitalia and the type of genitalia determines the categories. This is particularly visible in the expression *‘changer de sexe’*, defined as both a change of category and genital surgery. Moreover, the term ‘gender’ is sometimes used as a synonym of ‘sex’ (e.g. *‘une personne qui a les deux genres’*), indicating a conflation between the terms.

The norm that divides human beings into two ‘natural’ categories on the basis of an assumed sexual dimorphism is reinforced by workers’ use of the natural sciences’ rhetoric. This rhetoric relies on the idea that science is an ahistorical and objective description of the world, which in turn attributes an important authority to science. Drawing parallelism between the animal realm and the human realm, the natural science rhetoric is employed by the workers to describe women and men as a natural product, each of them assuming a natural role in life (i.e. different tasks in reproduction). Moreover, this rhetoric is also used to present heterosexuality as the natural type of sexuality *par excellence*. The sexual attraction between women and men is described as biologically—even genetically—determined (e.g. *‘suffit de regarder dans notre code ADN, c’est écrit’*). The use of this rhetoric is in clear contrast with the idea that we can freely categorise ourselves as a woman or a man (i.e. to express an identity that differs from the category attributed at birth) because we are ‘a woman or a man in spite of ourselves’, unwillingly.

The discursive devices employed by the workers not only set the body—particularly genitalia at birth— as the valid criterion determining whether someone is a woman or a man, but they also stipulate how

women and men must dress, move and express themselves. This is carried out through the use of metaphors such as *'homme habillé en femme'* and *'femme qui joue le rôle de l'homme'*. These metaphors are employed by the workers only to allude to people who are perceived as a transgression of the norm; people who do not dress and/or act according to the attributed sex/gender category. Indeed, it would seem redundant to say *'un homme habillé en homme'* because it is just taken for granted that 'men dress like men'. In this way, these metaphors reproduce the norm defining the binary opposition in terms of expression: women and men also must express themselves in different ways. Moreover, the repetitive use of these metaphors made us forget their metaphorical content. Therefore, it seems just 'natural' that women and men dress and move differently. The use of these dead metaphors allows the workers not to appear as the ones imposing the norm, but as just describing a natural fact.

Finally, the socio-cultural argument was employed by the workers to describe the social roles and interests differently attributed to women and men. These roles and interests are described by the workers as a consequence of the differential education that women and men receive and internalise. It is thus framed as a social and cultural problem. However, this rhetoric is never used to designate the social construction of the categories woman and man themselves, nor the different elements used to define them (i.e. the social interpretation of sexed bodies as two clear-cut categories, the way each type of body must dress and move, and express femininity or masculinity). According to this argument, the binary opposition between women and men is a natural fact determined by biology (sex); however, the behaviours of women and men are determined by culture (gender). In this sense, sex and gender are used as two distinct terms with different meanings. The use of this rhetoric allows the workers to present themselves as not sexist, as the idea of different natural roles is not generally accepted nowadays. But paradoxically, in an effort to move away from biological determinism, the socio-cultural argument—and the sex-gender distinction it proposes—reinforces the centrality of biology and the notion that women and men are *essentially* two different types of people.

Moreover, the use of the socio-cultural argument to explain only *some* characteristics attributed to women and men implicitly constructs *other*

characteristics as natural. These ‘natural’ characteristics are thus bodily characteristics and the overall gender expression (clothes, make-up, accessories, gestures, attitudes). The sex-gender distinction does not allow seeing that, actually, getting dressed, using make-up, moving and/or modifying one’s body in a way or another (e.g. the use of hormones, getting on a diet, waxing, shaving) are also actions that are not less socially constructed than social roles are. Whereas social roles relate to the different functions that women and men are attributed in society, actions such as getting dressed and using make-up concern the production of sex/gender difference itself.

Conclusion

How are both the binary opposition between women and men and its transgression defined by workers nowadays? The analysis of the discursive practices of workers reveals that the definition of the boundary dividing women and men includes not only the norm of sexual dimorphism, but also norms regarding the identity and bodily expression (clothes and accessories, body gestures). The three elements are inseparable and mutually construct the binary opposition between women and men. However, norms concerning the identity and bodily expression of women and men are never explicitly mentioned; they are just taken for granted for women and men ‘without adjectives’ (normative categories). Identity and expression norms are described as important only for trans* people, that is, when they are breached. The workers draw on the sex-gender dichotomy to affirm that sexual dimorphism is the only norm defining women and men, whereas they define interests, skills and role as a social construction transmitted through education. However, the sex-gender dichotomy has the effect of reifying the binary opposition between women and men. Not only it presents them as two natural categories but it also limits social construction to social functions and relationships, not including the interpretations of the identity, the body and its possible expressions. Therefore, it naturalises the notion that there are two natural categories with distinct identities and bodily expressions. People who breach those norms are depicted as different kinds of ‘flawed’ women and men (women and men ‘with an adjective’: trans* man, lesbian woman, transvestite, masculine woman), but women and men after all. Bodily

expressions characterised as 'feminine' are particularly penalised. People who breach sex/gender norms are not described as mentally ill, but they are nevertheless depicted as 'instable', 'lost', 'ridicule' or 'homosexual'. As I show in the next chapter, this has serious consequences for their acceptance at work.

Chapter 7.

Workers' definition of the (gendered) worker subject: Indifference, positive diversity and problematic difference²²⁶

How do workers definitions of sex/gender categories interact with their definition of the worker subject and what are the implications in terms of inclusion or exclusion in the workplace? In this chapter, I present workers definition of the (gendered) worker subject. I describe how they take stances on specific issues such as horizontal gender segregation in their respective professions and organisations, the way men and women are treated by their colleagues and/or superiors, and their views on working with a trans* colleague. The workers used a broad range of discursive and rhetorical devices that I classified in three sets of practices according to the type of construction being accomplished: gender (and sexual) indifference, useful diversity, and the problematic difference (see table 21 below). I present the three sets of practices in the first three sections of this chapter (sections 7.1. to 7.3.). In the fourth section (7.4.), I discuss the variability of these practices and their functions or effects. In the last section, I summarise the chapter by way of a conclusion.

²²⁶ Some of the results presented in this chapter have been published in: Aguirre-Sánchez-Beato, S., & Closon, C. (2018). Trans-Inquiring into Gender and Sexuality Constructions in Belgian Workplaces. Tensions between indifference, diversity and difference. *Dutch Journal of Gender Studies*, 21(4), 341 - 359.

Table 21. Summary of discursive practices

The construction of gender (and sexual) indifference				
Use of epicene nouns & ' <i>je-m'en-foutisme</i> '	The notion of skills	The private/public dichotomy	The notion of respect I: respect of liberal values	Use of disclaimers: 'I'm not prejudiced'
The construction of useful diversity				
Natural(ised) differences		The notions of ' <i>équilibre</i> ' and ' <i>complémentarité</i> '		
The construction of the problematic difference				
The notion of respect II: respect of norms at work	Humour and jokes	The avoidance of 'misunderstandings'	The inversion of responsibility	Use of disclaimers: 'Fear of the different'

7.1. The construction of gender (and sexual) indifference

The discursive practices that I describe in this section construct the worker subject, and thus the relationships between colleagues, as devoid of gender and sexuality. The workers present themselves as people who treat equally all their co-workers, irrespective of their sex/gender and sexual practices. Gender and sexuality issues are described as completely irrelevant in the work sphere. The discursive practices of workers to achieve the construction of gender (and sexual) indifference are: the use of epicene nouns and '*je-m'en-foutisme*', the notion of skills, the private/public dichotomy, and the notion of respect. I detail these practices below.

7.1.1. The use of epicene nouns and *'je-m'en-foutisme'*

A first discursive device employed by the participants is the use of epicene nouns to refer to their co-workers and/or potential future co-workers. Epicene nouns are words that have only one form for both male and female referents. From a grammatical point of view these nouns are feminine or masculine because in French grammar nouns are necessarily feminine or masculine. However, their grammatical gender is invariable and their use is not gendered. They usually refer to a group of people. Some examples of these types of nouns are *'le personnel'* and *'la population'*.

This is the case of *'une personne'*, a grammatically feminine word used by the workers to allude to both women and men. Note that this practice was also carried out to avoid defining the individual in photograph 3 as either a man or a woman, as already explained²²⁷. The workers employ the epicene noun *'une personne'* and its derivatives to describe their colleagues and/or future colleagues as just human beings, not as women or men. This use is noticeable in the following quotes:

[Quote 1]

Parce que c'est pas non plus la différence entre filles et garçons. Et moi et Kevin, par exemple, Kevin il est grand, il est, il peut faire des choses beaucoup plus physiques que moi. Donc c'est déjà que, on est des garçons et on est complètement différents. Donc Kevin et moi on est différents, à la fin on est des personnes et::: chacun avec notre différence mais le but c'est de faire un grande équipe et de travailler tous ensemble.

(Pedro, group interview 3, 10 May 2016)

[Quote 2]

Mais on va pas parler différemment à un homme qu'à une femme. On va parler différemment d'une personne et à une autre.

(Pierre, group interview 1, 29 March 2016)

[Quote 3]

Moi je pense que... qu'il se soit transformé en homme ou qu'il se soit transformé en femme, après c'est ce qui:::, c' qu'il est. Fin, j' veux dire, c' qu'il::: On, on engage la personne, pas parce que c'est une femme, ou parce que c'est un homme. Qu'elle ait changé de sexe... ben, ça n' change pas grand-chose, en tout cas pour m-, de mon point de vue, ça change pas grand- chose.

(Amélie, group interview 3, 10 May 2016)

²²⁷ See in Chapter 6.

In the first quote above, Pedro, one of the few men working in the child care facility and the only man in the group interview 2, uses the epicene noun '*personnes*' to clarify that people have different skills, but this is not explained but the fact that they are women or men. He draws on a comparison between himself and another colleague, Kevin—described as a bigger and stronger boy—to make the claim that although both of them are boys, they are completely different ('*on est des garçons et on est complètement différents*'). Following his reasoning, if two boys are different, then people, in general, are different ('*à la fin on est des personnes et::: chacun avec notre différence*'). Pedro recognises that people have different skills, but he describes them as individual differences.

In the second quote, Pierre, an IT worker, also describes differences—in this case, differences in treatment—as individual or personal. He explains that in his workplace they do not speak differently to men and women, but '*d'une personne et à une autre*'. In other words, they have a particular way to speak to each individual, and this does not follow a gendered pattern.

In the third quote, Amélie, a worker in the childcare facility, uses the epicene noun '*la personne*' to claim that the fact that someone has 'changed sex' does not have any relevance at work. She explains that it does not matter whether the individual became a man or a woman, because '*on engage la personne, pas parce que c'est une femme, ou parce que c'est un homme*'. Through the use of that utterance Amélie constructs the worker subject—the one who is hired—as devoid of sex/gender. In other words, a worker is first and foremost a generic person; the fact of being a woman or a man and the fact of 'changing sex' are unimportant.

The use of the epicene noun '*(la/une) personne*' is often combined with the use of the nouns '*collègue*' and '*travailleur*' to achieve the same effect: to present the worker subject as a subject devoid of sex/gender. However, the words '*collègue*' and '*travailleur*' are not epicene nouns. It is important to note that whereas the noun '*(la/une) personne*' is invariable from the point of view of grammatical gender²²⁸, terms like '*collègue*' and '*travailleur*' are variable. In other words, both the feminine and the masculine form exist. In the first case, only the article varies ('*un/le collègue*', '*une/la collègue*'); in the second, both the article and the word ending do ('*un/le*

²²⁸ The masculine form of '*la personne*' does not exist.

travailleur, '*une/la travailleuse*'). Thus these terms are not epicene. However, the masculine form is used by the workers as a form of epicene noun, that is, a noun whose use is devoid of gender. This is illustrated in the following quotes:

[Quote 4]

Mais, où je suis certaine, que l'attitude de l'employeur, qui était une attitude... tout à fait, fin qui s'adressait à un travailleur, et pas à un homme ou une femme, euh avait fait en sorte. Parce qu'elle avait eu sa transformation... pendant qu'elle était déjà engagée, donc elle est passée euh de femme à homme pendant, dans cette même euh entreprise.

(Catherine, group interview 4, 11 May 2016)

[Quote 5]

Mais, mais, mais moi, moi j'étais plu... j'étais de l'avis de Ibrahim. Voilà, je... je travaille avec Ginette, je travaille avec Fátima, je, j'ai déjà travaillé avec Anne... et, et, et moi, un collègue c'est un collègue. Je, je, je... je ne fais pas de différentiation mais... voilà... moi, moi, je me sens d'égal à égal et je me suis jamais posé de questions...

(François, group interview 1, 29 March 2016)

In the fourth quote, Catherine, a worker in the regional employment agency, is describing the case of a trans* man she met in her counselling work. Catherine describes the attitude of the employer towards the transition of his employee as positive and explains that in fact the employer '*s'adressait à un travailleur, et pas à un homme ou une femme*'. The use of the noun '*travailleur*' in clear contrast with the categories '*homme*' and '*femme*' constructs the worker subject as 'neutral' from the point of view of sex/gender. This is so even though '*travailleur*' is employed in its masculine form. Note also the repetitive use of the feminine pronoun '*elle*' to refer to this trans* man, used even to speak about the post-transition situation (*'elle avait eu sa transformation... pendant qu'elle était déjà engagée, donc elle est passée euh de femme à homme*'). This is another example of 'misgendering'²²⁹.

In the fifth quote, François, an IT worker, responds to Ginette's complaint of unequal treatment towards women in their IT service. François defends himself by stating that he has worked with many women (he gives a series of feminine names) and he treats everybody equally. Like in the previous quote, François describes the worker subject

²²⁹ See point 6.1.3. in Chapter 6.

as devoid of sex/gender through the use of the expression ‘*un collègue c’est un collègue*’. Although he uses the masculine form of the noun, he employs it with a generic meaning.

The discursive practices described above are complemented by the so-called ‘*je-m’en-foutisme*’ or the expression of indifference through the utterance ‘*je m’en fous*’ and its variations. It can be translated into English as ‘I don’t care’. This expression is used by the workers to show indifference towards the fact that a colleague is trans* and/or homosexual. It is important to note that although I did not ask myself any question about sexuality issues at work, the workers frequently used the analogy of ‘having a homosexual colleague’ to describe their views on working with a trans* colleague. The following quotes show this use:

[Quote 6]

°On s’en fout quoi°. Y a p’t-êt’e des gens qu’ ça va choquer et qu’ ça va ennuyer mais euh::: Fin nous d’ toute façon en c’ qui nous concerne euh nous on est censé rester neutre donc euh::: que ce soit::: Dans notr’ métier que ce soit transgenre ou pas euh, homo ou pas euh, pff ça change rien pour nous hein:::

(Stéphanie, group interview 5, 26 August 2016)

[Quote 8]

Maint’nant j’ pense que le problème des transgenres, et entre guillemets de l’homosexualité on va dire en, en général, bon tout c’ qui pourrait poser problème effectivement chez nous, c’est qu’ voilà souvent des pff, dans toutes ces professions-là, comme une comme on a, chez les pompiers ou n’importe où, c’est dans les vestiaires on va dire. J’ veux dire c’est c’t a priori-là qui pourrait r’sortir, sinon au niveau du travail j’ pense pas que... Et encore, maint’nant ça dépend effectivement, moi c’ que j’ veux dire, y en a qui ont:::, fff qui vont connaître des amis, a:::llez, j’ connaissais des amis homos, sachant très bien ben, i’s m’ verraient tout nu – façon d’ parler, ff – j’ m’en foutrais ((rire)). Donc euh...

(Antonio, group interview 5, 26 August 2016)

In quote 6, Stéphanie employs the expression ‘*°On s’en fout quoi°*’ to describe her indifference and that of her colleagues regarding trans* people and homosexual people in the police force. She says that in their profession they have to ‘*rester neutre*’, meaning that they have to treat everybody equally. Thus being ‘trans* or homo’ does not change anything.

In quote 8, Antonio asserts that the ‘problem’ that trans* and homosexual people can pose in the police is to be found in the dressing room. Note the analogy he draws between trans* and homosexual

people, and the definition of their presence in the police as a problem: *‘j’ pense que le problème des transgenres, et entre guillemets de l’homosexualité on va dire en, en général, bon tout c’ qui pourrait poser problème effectivement chez nous’*. He says that this is also the case in other professions such as the firefighters, implying professions in which workers can see each other naked in shows and dressing rooms. He does not explicitly explain what exactly the problem would be, but he states that it can be problematic to work with a trans* or homosexual individual only because of the dressing rooms. However, he says that it depends on the individual. For instance, he would not care if a homosexual colleague sees him naked (*‘j’ connais des amis homos, sachant très bien ben, i’s m’ verraient tout nu – façon d’ parler, ff – j’ m’en foutrais’*). Therefore, although working with a trans* or a homosexual person could be a problem for some colleagues in relation to the dressing rooms, this is not a problem for him. He does not care.

The use by the workers of the epicene noun *‘la/une personne’*, the pretended generic nouns *‘collègue’* and *‘travailleur’*, and the *‘je-m’en-foutisme’* construct the worker as a neutral subject in terms of sex/gender and sexuality. According to these discursive practices, the workers do not care whether their colleagues are women or men, trans* or cis, homosexual or heterosexual. The only thing that matters is that colleagues do their work correctly. The focus on work is visible in the use of the notion of skills that I describe in the next point.

7.1.2. The notion of skills (*‘compétences’*)

The notion of *‘compétences’* was used by the workers to emphasize the importance of individuals’ skills over their sex/gender. The workers employed the notion of *‘compétences’* at different moments during the interviews, performing through it different functions. In line with the construction of a worker subject devoid of sex/gender and sexuality, a first use of the notion of *‘compétences’* presents workers’ skills as not determined by sex/gender, but as different individual skills:

[Quote 9]

En même temps, j’ pense, je pense à ce qu’on dit par rapport aux compétences des garçons ou des filles, j’ trouve que c’est... fin, je trouve que c’est assez stéréotypé aussi. Parce que je trouve qu’un homme peut avoir une part euh, euh... j’ vais pas dire féminine, mais plus à l’image de, de... d’être maternant et d’être contenant pour

un enfant, comme une fille peut être::: énergique, amener quelque cho-... J' pense que c'est plutôt une histoire de profil.

(Patricia, group interview 2, 4 May 2016)

[Quote 10]

Moi je pense qu'il y a absolument aucune compétence qui est euh::: liée à une euh, à une nature biologique. Euh::: on est tous euh construits et on se renforce avec l'environnement social. Y a certaines choses, parfois, des prédispositions, un caractère va être encouragé ou freiné dans une direction. Donc euh, des compétences spécifiquement genrées, moi je suis pas du tout d'accord avec ça. J'ai fait des::: études de psychologie, on était trois garçons dans tout l'auditoire. Euh::: y avait énormément de filles fatalement. Euh et y en a qui avaient l'air d'être d'excellentes euh futures psychologues et d'autres ☺ d'horribles ☺, voilà. Et c'est vrai dans toutes les populations, qu'elles soient femmes ou pas.

(Quentin, group interview 3, 10 May 2016)

In quote 9, Patricia, the head of the childcare facility, considers that it is stereotypical to say that women and men have different skills (*je pense à ce qu'on dit par rapport aux compétences des garçons ou des filles, j' trouve que c'est... fin, je trouve que c'est assez stéréotypé aussi*). To support this argument, she claims that in her view a man can be *'maternant et [...] contenant pour un enfant'* and a girl can be *'énergique'*. In other words, she inverts the skills usually attributed to men and women; since women are usually described as motherly and caring²³⁰, whereas men are usually depicted as energetic. She concludes that it is a matter of profile: people have different skills. Note however that she explicitly avoids describing men as feminine (*'un homme peut avoir une part euh, euh... j' vais pas dire féminine*) and she does not really describe men as *'maternant'* but as something similar to it (*'mais plus à l'image de, de... d'être maternant'*). *'Maternant'* is an adjective that concerns the mother and only women are mothers. Therefore she uses the expression *'à l'image de'* to apply this adjective to men: men are neither feminine nor motherly, but they can be something similar. Therefore, although she describes skills as neither feminine nor masculine, she is implicitly saying that actually there are differences between women and men.

In quote 10, Quentin, a worker of the health promotion association, overtly claims that skills are not biologically determined (*je pense qu'il y a absolument aucune compétence qui est euh::: liée à une euh, à une nature biologique*).

²³⁰ The expression *'être contenant pour un enfant'* cannot be literally translated into English. The expression relies on a visual metaphor of someone cradling a child.

He explains that we are all constructed and highlights the role of the social environment in this construction, using the socio-cultural argument²³¹. To support his argument he gives the example of his graduate studies in psychology, during which they were only three boys. He explains that although there was a big majority of girls, not all of them would be good psychologists (*‘Euh et y en a qui avaient l’air d’être d’excellentes euh futures psychologues et d’autres ☺ d’horribles ☺’*). In other words, girls do not have the skills to be good psychologists just because they are girls. The establishment of differences among girls themselves and/or among boys themselves is a common discursive strategy employed to prove that differences between girls and boys are not innate (see also Quote 1 above).

In spite of that, Quentin also mentions that sometimes there are some ‘predispositions’ or a character that are subsequently encouraged or repressed (*‘Y a certaines choses, parfois, des prédispositions, un caractère va être encouragé ou freiné dans une direction’*). The French word ‘*prédisposition*’ is defined as a ‘disposition, tendency, natural aptitude for something’²³² (Larousse, 2018b, translation mine) and ‘*caractère*’ as a ‘set of permanent affective dispositions according to which someone reacts to their environment and form their personality’²³³ (Larousse, 2018a, translation mine). Thus, both terms contain a sense of what is innate, inherent, and natural. Although Quentin claims that skills are not biologically determined but socially constructed, he nevertheless describes that construction as based on some essential differences (that are afterwards exacerbated or suppressed by the social environment). He is thus using the ‘coatrack view of self-identity’ (Nicholson, 1994)²³⁴.

Intimately linked with the above, the notion of ‘*compétence*’ is used by the workers not only to claim that there are no natural masculine or feminine skills, but also that all work functions and/or tasks can be

²³¹ See point 6.2.5. in Chapter 6. You may note that this argument is employed mainly by the workers of the health promotion association and the regional employment agency.

²³² *‘Disposition, tendance, aptitude naturelle à quelque chose’*.

²³³ *‘Ensemble des dispositions affectives constantes selon lesquelles un sujet réagit à son milieu et qui composent sa personnalité’*.

²³⁴ See point 1.1.1. in Chapter 1 for the definition and point 6.2.5. in Chapter 6 for its use by workers.

carried out by both women and men. This is illustrated in the next quotes:

[Quote 11]

Ça dépend de ce qu'on choisit de faire mais... quand on a les compétences pour une chose, qu'on soit un homme, qu'on soit un homme ou une femme, on le fait bien.

(Pierre, group interview 1, 29 March 2016)

[Quote 12]

Pedro : [...] *Parce que je, je pense que, par exemple moi, j'ai travaillé presque une année et demi avec des, avec des bébés nageurs. Et moi je travaillais tout le temps avec les bébés dans l'eau et il n'y avait pas de souci. Donc euh::: par exemple, on était que des garçons pour faire le cours des bébés nageurs. Donc euh je pense qu'on peut le faire.*

Chercheuse : *Mais c'était pas les changer, c'était plus une activité sportive.*

Pedro : *Non, non. C'était une activité sportive mais ici à la crèche, j'ai déjà fait des changements de bébés, ça me dérange pas du tout donc, moi je pense qu'on peut faire exactement le même boulot que une, qu'une femme.*

(Group interview 2, 4 May 2016)

In quote 11, Pierre, an IT worker, claims that anybody –irrespective of whether you are a man or a woman– can do well any type of job as long as you have the skills (*quand on a les compétences pour une chose, qu'on soit un homme, qu'on soit un homme ou une femme*). Pedro makes a similar claim in quote 12. He builds his claim on the fact that he has already worked with babies in an activity called *'bébés nageurs'*²³⁵. In fact, as he explains, all the workers doing this activity were boys; which proves that boys can work with babies (*on était que des garçons pour faire le cours des bébés nageurs. Donc euh je pense qu'on peut le faire*). When I rebut that they were not changing the babies ('s diapers) but doing a sportive activity (*Mais c'était pas les changer, c'était plus une activité sportive*) what I am implicitly saying is that although they were working with babies, they were still doing an activity usually attributed to men. He replies that it was indeed a sport activity but he has already changed diapers at the nursery and 'it doesn't bother him at all' to do it (*ici à la crèche, j'ai déjà fait des changements de bébés, ça me dérange pas du tout*). Therefore, they –boys– can do exactly the same job as women.

²³⁵ This swimming pool activity aims at improving the motor and sensory functions of very young children.

The notion of ‘*compétence*’ is also employed by the workers to claim that, in their respective organisations, people are hired and/or should be hired only on the basis of their skills, regardless of whether they are a woman or a man, a trans* person and/or a homosexual person. However, the notion is used in this regard to serve different functions: cautioning about the risks of gender quotas, denying transphobia and homophobia in the workplace, and denying accusations of receiving special treatment at work. The next quote illustrates the use of the notion of ‘*compétence*’ to serve the first function described –a warning against the use of gender quotas:

[Quote 13]

Cela dit, c'est vrai que jouer le, le côté, euh comment dirais-je euh sexué, des::: engagés d'Actiris, euh::: ça peut être important mais, il faut aussi mettre cela en rapport avec les compétences. Euh::: n'engager que des hommes ou que des femmes parce que ils sont uniquement hommes et femmes, pour moi ça n'a pas vraiment de sens. Euh... quand j'ai un collègue devant moi – à titre personnel – euh que ce soit d' l'animation ou que ce soit au sein d' la discrimination ou peut- être un autre service, que je peux côtoyer, euh... le côté euh homme- femme ne joue pas. Voilà, c'- c'est des collègues, tout simplement.

(Édouard, group interview 4, 11 May 2016)

In quote 13 Édouard, who works at the regional employment agency, is describing the effort his organisation does to hire as many women as men. In his view, balance is important. However, he thinks it makes no sense to hire people just because they are men or women (*‘n'engager que des hommes ou que des femmes parce que ils sont uniquement hommes et femmes, pour moi ça n'a pas vraiment de sens’*) and he warns that ‘*compétences*’ should be taken into account (*‘il faut aussi mettre cela en rapport avec les compétences’*). He claims that when he is with a colleague from any service in the organisation, the fact that the colleague is a man or woman is irrelevant. Note that he also uses the term ‘*collègue/s*’ as a generic noun (*‘le côté euh homme-femme ne joue pas. Voilà, c'- c'est des collègues, tout simplement’*). Through this use, Édouard is establishing the skills as the only valid criterion to hire someone and implicitly raising suspicion towards the use of gender quotas. The implicit suspicion is the widespread notion that quotas infringe the meritocratic system upon which the work sphere is supposed to be based, a suspicion that usually ignores obstacles and discrimination.

The notion of ‘*compétences*’ is used by the workers in a similar vein to describe the potential recruitment of a trans* person in their organisations (quotes 14 and 15):

[Quote 14]

Du moment qu'elle a les capacités, de pouvoir travailler en crèche, de pouvoir travailler... fin, dans un autre domaine. Du moment qu' les compétences qu'il a, les compétences qu'on r'cherche il les a ou elle les a... J' vois pas c' que ça...

(Amélie, group interview 2, 4 May 2016)

[Quote 15]

Jean : *Tu vas pas mettre un transgenre à la sécurité ici, tu vois ? ça, ça n'arrivera juste jamais. Mais en informatique, ça peut arriver.*

François : *Tu dois passer des tests pour être dans la sécurité. Donc, si la personne arrive à faire les, les tests...*

(Group interview 1, 29 March 2016)

[Quote 16]

Il faut prendre la personne telle qu'elle est. Parce que::: elle a des compétences et euh::: son identité, ben c'est... faut respecter qui elle est. Et euh, au niveau professionnel, je pense pas qu'une personne, quand elle travaille avec des enfants, va justement montrer que voilà, elle a p't-être une tendance euh... plus féminine... fin, être attirée par les femmes, plutôt que par les hommes. Ça n'a aucun impact. Ça, ça n'a rien à voir au niveau professionnel.

(Patricia, group interview 2, 4 May 2016)

In quote 14, Amélie explains that there is no reason not to hire a trans* person as long as they have the skills required to work there (*Du moment qu'elle a les capacités, de pouvoir travailler en crèche, de pouvoir travailler... fin, dans un autre domaine*). This quote is the continuation of the quote 3 presented above in which she claims that her organisation hires ‘a person’ and not a man or a woman, alluding that the sex change is unimportant. Note the emphasis on both gender forms of the third person pronoun (*il, elle*) to accentuate the unimportance attributed to the sex/gender of the individual versus the importance attributed to the required skills (*Du moment qu' les compétences qu'il a, les compétences qu'on r'cherche il les a ou elle les a...*). Similarly, Jean recognises in quote 15 that a trans* person would not be hired as security staff at the hospital where they work, acknowledging that the person could be discriminated against because of the fact of being trans*. François, however, declined that interpretation of reality and claimed that it only depends on whether the

individual is able to pass the required tests to work at the security (*Tu dois passer des tests pour être dans la sécurité. Donc, si la personne arrive à faire les, les tests*). He thus presents a ‘neutral’ worker whose sex/gender is not going to be taken into account by the future employers, ignoring or denying the possible obstacles this person could encounter to be hired.

In quote 16 Patricia is talking about the individual in photograph 5 and the hypothetical recruitment of that person to work at the childcare facility. In the quote, she is explaining why there would be no reason not to hire that person, as long as the person has the required skills. Patricia establishes a distinction between the skills of this person and her ‘identity’ (the individual is described as a woman) and claims that it is important to respect ‘who she is’. It is not clear what Patricia refers to until the next sentence. She is describing her as a woman attracted to women (*elle a p’t-être une tendance euh... plus féminine... fin, être attirée par les femmes, plutôt que par les hommes*) even though this information cannot be found in the photograph. The way this is expressed is also striking (*tendance plus féminine*, *attirée par les femmes, plutôt que par les hommes*); it is in fact presented as something out of the rule, exceptional.

Note, however, that although Patricia says that they should respect this identity, she also explains that people are not going to show this ‘tendency’ when they work with children (*au niveau professionnel, je pense pas qu’une personne, quand elle travaille avec des enfants, va justement montrer que voilà, elle a p’t-être une tendance euh... plus féminine...*). Therefore, the fact that she is attracted to women has no relevance at work but because this is not shown. Patricia depicts it as something private, not belonging to the professional sphere. As I describe below, the private-public dichotomy is another discursive practice commonly employed by the workers to underline the irrelevance of people’s (trans*)gender identity and (homo)sexual orientation at work

Finally, the notion of ‘compétences’ as the only thing that matters at work is also employed by some women in men-dominated professions to claim that they did not receive any special treatment to be promoted at work. This is the case of the two women working at the police, as the following quote illustrates:

[Quote 17]

Il faut qu’ les gens sachent qu’on fait exactement les mêmes examens que nos amis euh masculins à part, à part au niveau sportif où on a un p’tit, un p’tit, une p’tite

ravette en moins à faire qu'eux, mais on fait les mêmes examens, on doit avoir les mêmes compétences, on doit répondre aux mêmes critères, et euh, si on y répond pas ben euh, on passe pas d' grade. Donc euh, c'est fini hein la promotion canapé::: ou tapis rouge euh::: Bon p't-être pas la promotion ☺ canapé chez certains mais ☺ l' tapis rouge en tout cas, pour la passation de grade euh, ça c'est terminé. Le grade que l'on a c'est parce qu'on est arrivé à l'avoir. Voilà.

(Stéphanie, group interview 5, 26 August 2016)

In quote 17 Stéphanie denounces the fact that people think that women in the police are promoted because they have sex with their superiors and/or because they receive special treatment. This is conveyed with the expressions '*promotion canapé*' in the first case and '*(promotion) tapis rouge*' in the second. '*Promotion canapé*' alludes to the couch in which sex is supposed to take place and '*tapis rouge*' to the red carpet put before very important people or celebrities for them to walk. Although she leaves a shadow of doubt in relation to the '*promotion canapé*' in some cases²³⁶, she uses the notion of '*compétences*' to claim that women are promoted because of their own merits ('*Le grade que l'on a c'est parce qu'on est arrivé à l'avoir*'), as they do the same exams, have to prove the same skills and fulfil the same criteria as men ('*on fait les mêmes examens, on doit avoir les mêmes compétences, on doit répondre aux mêmes critères*'). Therefore, the notion of '*compétences*' is employed here to vindicate women's equal capacities.

7.1.3. The private/public dichotomy

The neutral worker subject is also constructed by the workers upon a private-public dichotomy, that is, a distinction between workers' private life and their life at work. In this sense, (trans*)gender identities are described as a personal issue that remains outside the domain of work. The accounts set a contrast between professional life and private life. Therefore, knowing or 'discovering' that a colleague is trans* does not change anything at work because it is something that belongs to the private sphere. Interestingly, comparisons between trans* identities and homosexuality ('discovering that a colleague is gay') are used in order to

²³⁶ She does not develop the argument and she uses the adverb '*certain*' in the masculine form, not in the feminine form ('*certaines*'). It is not clear to whom she is referring to. Moreover, later in the interview, her colleague Audrey criticises about the widespread idea that women in the police use their '(female) charms' to get what they want.

stress the separation between private and public spheres. This practice is illustrated in the following quotes:

[Quote 18]

Ginette : *Pour moi ça change strictement rien. Pour moi ça fait partie de... sa vie privée, de son... de son euh... jardin secret à elle et je n'ai pas à y pénétrer, à y rentrer...*

[...]

François : *Je, je, je... On va prendre une analogie. Voilà. On apprend que tel ou tel collègue est gay. Honnêtement ça, ça change rien. Tu dis « qu'est-ce que ça change ? », ça change pas grand-chose hein. Voilà... C'est de la sphère privée, voilà... c'est pas...*

(Group interview 1, 29 March 2016)

[Quote 19]

Amélie : *C'est c' qu'on parle, on a eu l'exemple euh:::, un ami qui, qui a travaillé ici avec nous à la crèche... qui est homosexuel, mais j' pense que tant que les choses ne sont pas dits aussi... enfin, ne sont pas dites, c'est pas::: concret pour les employeurs. Et puis, lui, effectivement, il avait les compétences pour travailler, il a... autant euh avec les:::, fin, y a, ça a jamais posé de problème ni quoi que ce soit. Euh, les clients n'ont jamais::: s-*

Valérie : *su ?*

Amélie : *Non, c'est pas ça. Ils n'ont jamais euh éprouvé une inquiétude ou euh une gêne ou quoi que ce soit...*

Chercheuse : *Mais les gens le savaient qu'il était homosexuel ?*

Charlotte : *Ça se voyait, hein.*

Amélie : *Ça s' voit mais, j' veux dire, ce n'est pas quelqu'un qui va crier ça sur tous les toits. Euh::: Il a sa vie ici, il a sa vie en dehors... et il fait bien la part des choses. Donc euh:::*

(Group interview 2, 4 May 2016)

In quote 18, Ginette claims that knowing that a colleague is trans* would not change anything for her because that is part of the person's private life or 'secret garden' where she does not have to enter (*ça fait partie de... sa vie privée, de son... de son euh... jardin secret à elle et je n'ai pas à y pénétrer, à y rentrer...*). François supports Ginette's claim by drawing an analogy with the fact of 'discovering' that a colleague is gay. He argues that it would not change anything at work because it belongs to the private sphere.

In quote 19, Amélie also draws on the analogy of the 'gay colleague' to claim that the fact that a colleague is trans* does not matter at work. In this case, she explains that in the past they had a colleague who was

gay and that was not a problem at all. Nevertheless she clarifies that the colleague did not say it, at least not officially, and thus the employers did not really know about it (*'qui est homosexuel, mais j' pense que tant que les choses ne sont pas dits aussi... enfin, ne sont pas dites, c'est pas:: concret pour les employeurs*). She interrupts herself when she was apparently going to say that the clients never knew about it –the sentence is completed by Charlotte (Amélie: *Euh, les clients n'ont jamais:: s- Valérie : su ?*). However, she rectifies and says that the clients did not express any kind of concern or embarrassment because of it. I then ask if people knew that he was homosexual, Charlotte responding that it was obviously 'visible' that he was gay (*'Ça se voyait, hein'*). Amélie agrees with the fact that it was 'visible' but she nuances it by stating that he was not trumpeting it because he made a distinction between his professional life and his personal life (*'Ça s' voit mais, j' veux dire, ce n'est pas quelqu'un qui va crier ça sur tous les toits. Euh:: Il a sa vie ici, il a sa vie en dehors... et il fait bien la part des choses'*). Note also that Amélie uses again the notion of 'compétences' to set the criterion upon which a worker is assessed, diminishing the importance of sex/gender and sexuality issues at work (*'Et puis, lui, effectivement, il avait les compétences pour travailler'*).

7.1.4. The notion of 'respect' I

The notion of 'respect' is used by the workers in two different ways during the interviews. Both usages enact adherence to principles and values that are socially accepted. However, the first usage—that I describe here—expresses adherence to liberal values such as equality and freedom, and the second usage—that I describe in section 7.3.—expresses adherence to certain norms at work. I decided to present the two uses in different sections of this chapter to underline the different actions being accomplished –namely, the construction of gender (and sexual) indifference and the construction of the problematic difference at work. In this subsection, I present how the use of the notion of 'respect' constructs gender and sexual indifference at work, while at the same time allows the workers to present themselves as advocates of socially valued principles. The next quotes illustrate how the workers use the notion of 'respect' to show adherence to individual freedom:

[Quote 20]

François : *Voilà, si tu la vois comme ça voilà, tu, tu la vois, tu la vois, tu vois qu'y a un vagin, voilà tu s'ras forcé de dire que c'est madame. Mais maintenant sur son comportement, beh tu, tu devras t'orienter, ne serait-ce que par respect pour elle. Fin, tu peux pas... si, si elle, si, si il a envie qu'on parle de lui en « il » et qu'on l'appelle euh...*

(Group interview 1, 29 March 2016)

[Quote 21]

Chercheuse : *qu'est-ce qui définit « un vrai homme » ou « une vraie femme » ?*

Demba : *Je sais pas... physiquement ? Ou scientifique ? Ou comment ? Parce que si on a un chromosome XY on le sait que c'est un garçon...*

Chercheuse : *Donc c'est les chromosomes ?*

Demba : *Scientifiquement ! Mais maint'nant... mentalement ou psych- je sais pas. Parce qu'y a des gens qui disent... qui se sentent plus femme ou plus homme euh... On respecte le choix, ou sa volonté...*

(Group interview 1, 29 March 2016)

[Quote 22]

François : *Y a des gens qui racontent leur vie privée, y a des gens qui n' disent rien du tout. Moi j' respecte. Fin, j' vois pas en quoi est-ce qu'il aurait une obligation de m' révéler quoi que ce soit. S'il a envie d'en parler il en parle, s'il a pas envie d'en parler il n'en parle pas.*

(Group interview 1, 29 March 2016)

In quotes 20 and 21, both François and Demba use the notion of 'respect' when talking about the identity of a trans* person. In both cases, they set a distinction between what the person 'really is' from a biological and/or scientific point of view and what the person 'wants' or 'chooses' to be. In quote 20, François is speaking about the individual in photograph 1 and the hypothesis that the individual had a vagina. According to François, if that was the case, the individual would be a woman (*Voilà, si tu la vois comme ça voilà, tu, tu la vois, tu la vois, tu vois qu'y a un vagin, voilà tu s'ras forcé de dire que c'est madame*). However, he also says that one will have to treat the individual according to how they want to be treated. He frames it as a question of 'respect' (*Mais maintenant sur son comportement, beh tu, tu devras t'orienter, ne serait-ce que par respect pour elle*).

In quote 21, I ask what is a 'true man' or 'a true woman' because that expression was used by a participant before that. Demba answers that from a scientific point of view that is defined by the chromosomes (*Je sais pas... physiquement ? Ou scientifique ? Ou comment ? Parce que si on a un chromosome XY on le sait que c'est un garçon...*). However, he also sets a

distinction between the scientific definition and the psychological one: what the person ‘says’ she or he is (*Mais maint’nant... mentalement ou psych-je sais pas. Parce qu’y a des gens qui disent... qui se sentent plus femme ou plus homme euh...*). Therefore, he claims that they respect the person’s ‘choice’ or ‘will’ (*On respecte le choix, ou sa volonté...*). Note that in the two quotes, François and Demba employ the distinction of notions (appearance-reality in the first one, mind-body in the second)²³⁷ to assert that what really defines the person’s sex/gender is the body. Nevertheless, the use of the notion of ‘respect’ allows them to adhere to the principle of individual freedom according to which everybody can do or be whatever they wish. Note also that trans* identity is described as a will or a choice.

In a similar vein, in quote 22 François answers my question about whether or not trans* people should say at work that they are trans*. Drawing again on the principle of individual freedom, he says that he respects whether (trans*) people want to speak about their private life or not (*Y a des gens qui racontent leur vie privée, y a des gens qui n’ disent rien du tout. Moi j’ respecte*). By the use of the word ‘people’ in that utterance he is equating trans* people to any other worker who chooses to share private issues at work or not. Note however that he defines trans* identities as something belonging to the private sphere and as something to be ‘revealed’ as if it was a secret (*Fin, j’ vois pas en quoi est-ce qu’il aurait une obligation de m’ révéler quoi que ce soit*).

The notion of ‘respect’ is also used as a claim for equal treatment by a woman working in the police. In quote 23 below, Stéphanie is explaining that in police operations some men (citizens) do not talk to her because she is a woman and prefer to speak with her male colleague. She defines this situation as a ‘lack of respect towards a human being’ (*moi j’estime que c’est un manque de, de respect euh, envers la- envers l’être humain tout simplement*). Note that she uses again epicene nouns (*l’être humain*, *une personne*) to emphasise that it is a general principle of respect and that she must not be treated differently because she is a woman (*la moindre des choses c’est quand on, on s’adresse à une personne c’est d’avoir une réponse, que l’on soit un::: homme ou une femme, qu’importe*). In contrast to the previous quotes (20-22), here Stéphanie does not use the notion of

²³⁷ See point 6.2.1. in Chapter 6.

‘respect’ to prove that she is open-minded and tolerant, but to ask for the right to speak, for equality in treatment:

[Quote 23]

On, on a quand même tendance euh:::, à revendiquer quand même le fait qu'on a l' droit à la parole... Parce que bon, moi j'estime que c'est un manque de, de respect euh, envers la- envers l'être humain tout simplement. Et puis bon on, on représente quand même jusqu'à présent encore euh, l'ordre si on peut encore dire ça comme ça, la moindre des choses c'est quand on, on s'adresse à une personne c'est d'avoir une réponse, que l'on soit un::: homme ou une femme, qu'importe.

(Stéphanie, group interview 5, 26 August 2016)

The second use of the notion of ‘respect’ expressing adherence to certain norms at work is described in the subsection 7.3. (The construction of the problematic difference).

7.1.5. Use of disclaimers: ‘I’m not prejudiced’

A disclaimer is ‘a verbal device employed to ward off and defeat in advance doubts and negative typifications which may result from intended conduct’ (Hewitt & Stokes, 1975, p. 3). Through the use of disclaimers, people seek to define their behaviour as not discriminatory and/or prejudiced. During the interviews, the workers employed two types of disclaimers. These disclaimers concern the fact that men stare at women at work and people gossip about trans* and homosexual people just because ‘they are not common’, and that ‘other people’ hold prejudices, based on the notion of progress. I describe the two types of disclaimers below.

This disclaimer is used by the workers to rebut any potential accusation of being prejudiced while at the same time admitting that there are prejudices in society and people are discriminated against. The disclaimer is built upon a distinction between the speaker and ‘the others’. Therefore, whereas there are people who are prejudiced, the speaker is not. This is clearly illustrated in the following quote:

[Quote 24]

Ginette : *Je crois qu'il y a des a priori à ce niveau là...*

François : *Moi j'ai zéro préjugés là-dessus. Vraiment. Zéro.*

Chercheuse : *Pardon ?*

François : *Je n'ai pas de préjugés là-dessus. Mais, mais je peux concevoir que des gens aient des préjugés hein euh... Il y a des gens qui ne sont pas engagés parce qu'ils sont blacks donc euh...*

(Group interview 1, 29 March 2016)

In quote 24, Ginette is talking about her experiences of discrimination as a woman working in the IT sector and concludes that there are still many prejudices. François reacts to that statement and says that he does not have any prejudice at all in that regard (*'Moi j'ai zéro préjugés là-dessus. Vraiment. Zéro*). He emphasises the word 'zéro' and repeats the words 'vraiment' and 'zéro' to give strength to his claim. However, he concedes that there are people who are prejudiced. The example of people who are not hired because they are Black is a proof that people are prejudiced (*'Mais, mais je peux concevoir que des gens aient des préjugés hein euh... Il y a des gens qui ne sont pas engagés parce qu'ils sont blacks donc euh...'*). The use of this disclaimer allows François to defeat any possible doubt concerning his participation in the sexist practices that Ginette is describing, while at the same time admitting that those practices can exist.

This type of disclaimer is used in all the group interviews, but in each interview there are different 'others'. 'The others' are old people and people from other countries (group interview 1, IT service), the children and their parents (group interview 2, childcare facility), the population and other professionals of the network (group interview 3, health promotion association), future employers (group interview 4, employment agency) and population from other cultures and religions (group interview 5, police). The following quotes show the use of this type of disclaimer:

[Quote 25]

Oui moi j'ai déjà eu des différences, mais plus euh par rapport à, à la culture des gens. Donc dans les milieux musulmans euh::: un homme qui voit une femme débarquer ben il a pas forcément envie d' parler euh, avec elle.

(Audrey, group interview 5, 26 August 2016)

[Quote 26]

François : *Moi, ce que j'aimerais bien faire c'est... ici je pense qu'on est de plus en plus ouverts, il y a de moins en moins d' tabous. J'aimerais poser la même question à ma grand-mère ou à mon grand-père.*

((Rires))

Plusieurs : *Oui...*

François : *ça s'rait pas du tout les mêmes réponses. Donc je pense quand même que les mentalités évoluent.*

(Group interview 1, 29 March 2016)

[Quote 27]

Stéphanie : *Y a beaucoup d' gens qui restent archaïques hein quand même.*

Audrey : *Mm mm.*

Stéphanie : *Euh non mais c'est vraiment c'est:: limite euh période des dinosaures hein, c'est:: c'est impressionnant. Mais c'est en minorité. Moi j' trouve.*

(Group interview 5, 26 August 2016)

In the three quotes above, a distinction is established by the workers between themselves and the others. In quote 25, Audrey explains that she has been treated differently because she is a woman but she attributes this different treatment to some people from the population (not to her colleagues). She explains this fact because of people's culture, specifically because they are Muslim (*'Donc dans les milieux musulmans euh:: un homme qui voit une femme débarquer ben il a pas forcément envie d' parler euh, avec elle'*). In quote 26, the workers were discussing how they would react if they knew that a colleague is trans* when François says that he would like to know what his grand-mother or grand-father think about it. He answers his rhetorical question by claiming that the responses of his grandparents would be very different from the ones the group is giving; implying the former would be more prejudiced than the latter. Through this comparison he defines the group of workers (including himself) as neatly more-open minded than previous generations (*'ici je pense qu'on est de plus en plus ouverts, il y a de moins en moins d' tabous. J'aimerais poser la même question à ma grand-mère ou à mon grand-père'*) and states people's mentality evolves.

The notion of progress is embedded in these claims. According to this notion, things in the past were always worse than in the present and they can only evolve to improve in the future. This notion is also used by Stéphanie in quote 27. In this quote she defines people who laugh at trans* people as archaic and as belonging to the dinosaurs era (*'Y a beaucoup d' gens qui restent archaïques hein quand même', 'Euh non mais c'est vraiment c'est:: limite euh période des dinosaures hein'*). The use of this hyperbole or exaggeration is very effective to situate those people in the past and define them as people who have not evolved enough in

comparison to them (the group). However, prejudiced people are described as a minority.

7.2. The construction of useful diversity

In this section, I describe the discursive practices that construct sex/gender ‘useful differences’ at work. In contrast to the construction of the irrelevance of gender within the sphere of work, the workers define differences between women and men in relation to their personality, interests and activities. These different characteristics are either presented as natural or naturalised. The notions of ‘*équilibre*’ and ‘*complémentarité*’ are employed to describe differences between women and men as a positive contribution to work. It is important to note that the construction of useful diversity is only carried out by the workers to refer to the categories ‘woman’ and ‘man’.

7.2.1. Natural(ised) differences

During the interviews, the workers made use of differences between women and men to explain certain matters taking place in the workplace. In the following quote, Isaac describes an incident he had when he was the only man of the team in his previous job:

[Quote 28]

Donc y avait deux collègues. Donc elles fonctionnaient très bien ensemble mais avec moi ça marchait pas. (2) Et je comprenais pas. J’ suis parti vraiment encore, dans cette euh... voilà. Et j’ai pas, j’ai pas vraiment eu d’information donc, in fine je suis resté sur l’idée d’ me dire : « ben oui ce sont des différences homme-femme, peut-être que les femmes préfèrent faire leur petite popote entre elles. Et que les hommes aiment plutôt être confrontés ». Et je reste là-d’ssus quoi.

(Isaac, group interview 4, 11 May 2016)

In quote 28, Isaac explains that two of his female colleagues worked very well together, but not with him and he wondered why; he could not understand. The explanation he found was that it was due to differences between men and women (*‘in fine je suis resté sur l’idée d’ me dire : « ben oui ce sont des différences homme-femme, peut-être que les femmes préfèrent faire leur petite popote entre elles. Et que les hommes aiment plutôt être confrontés »*). According to Isaac, the fact that they did not talk to him is explained by men-women differences in work relationships: whereas women prefer to work among

themselves, men prefer to be confronted. Note that there can be many reasons why those colleagues did not talk to him. However, he draws on differences between women and men to explain the incident, probably motivated by the fact that he was the only man. By so doing, he contributes to construct those very differences and to somehow naturalise that women and men are actually different. Note also the different ways women and men are described; whereas women do *'leur petite popote'*, men *'aiment plutôt être confrontés'*. The French expression *'faire la popote'* literally means 'to cook for oneself in a simple way'. In other words, men cooperate and discuss with other people; women only do small tasks among themselves.

Differences between women and men are not only naturalised but also presented as just natural on some occasions. This is particularly the case of caring skills, traditionally attributed to women. This is especially illustrated in the following quote in which Amélie was stating that the childcare sector is much feminised:

[Quote 29]

Amélie : *Les quelques garçons qu'on a eu, qui ont travaillé chez nous, sont très bien, pour tout c' qui est animation... Mais dès qu' c'est la petite enfance, on sent qu' c'est moins euh, ils se sentent moins à l'aise ou euh::: euh et beaucoup sont par...tis, entre guillemets en, euh à, à côté d' ça aussi euh::: Parce que c'est ::: voilà, c'est... ((rire)) ☺ ils nous r'gardent un peu avec le bébé comme ça parce qu'ils savent pas trop quoi faire ☺ [...]*

Chercheuse : *Et tout le monde a cette impression ? Selon votre expérience ?*

Laura : *Euh::: oui. Ben oui, c'est vrai que::: ((rire)) encore y a pas longtemps euh::: quand Paul est venu travailler, il a carrément refusé d' changer un, un bébé. Alors qu'on est censés tous euh ::: savoir le faire donc c'est... donc c'est vrai qu' les, que les garçons en général, sont... sont réfractaires avec les bébés. ((Rire))*

Chercheuse : *Et pourquoi vous pensez que c'est comme ça ?*

Pedro : *Parce que le côté féminin de::: de l'équipe, c'est l'instinct maternel et hum, je pense qu'elles sont, qu'elles sont plus proches au bébé, c'est plus facilement. Parce que j'ai eu aussi le cas, de, d'avoir des bébés, qui ont peur d'être avec moi. Et par contre je passe le bébé à l'une de mes collègues et à ce moment-là ça va plus facilement. Donc je pense que::: le visage féminin ressemble plus à, à sa mère, et ::: ça lui donne plus de confiance au moment de :::, par exemple de le tenir ou je sais pas, quoi.*

(Group interview 2, 4 May 2016)

In quote 29, Amélie explains that the few boys who worked in their childcare facility did so within the entertainment activities. However, they felt less comfortable working within the domain of the early childhood and many of them left the job because of that (*Mais dès qu' c'est la petite enfance, on sent qu' c'est moins euh, ils se sentent moins à l'aise ou euh::: euh et beaucoup sont par...tis, entre guillemets en, euh à, à côté d' ça aussi*). She gives a concrete example to illustrate that uncomfortable feeling: they – boys– look at them –girls– with the babies and they do not know what to do (*☺ ils nous r'gardent un peu avec le bébé comme ça parce qu'ils savent pas trop quoi faire ☺*). Note that she tells the example laughing. The laugh somehow reinforces the idea that a man working taking care of babies is something ridiculous. When I ask the opinion of the others, Laura says she agrees and gives another example: a boy who was hired and refused to change a baby(s) diapers (*encore y a pas longtemps euh::: quand Paul est venu travailler, il a carrément refusé d' changer un, un bébé*). However, she also adds that they are all supposed to do any task (*Alors qu'on est censés tous euh ::: savoir²³⁸ le faire donc c'est...*). As I described above in this section, the workers used the notion of competence to underline that skills are not gendered, but individual. The workers of the childcare facility made emphasis on the fact that they should all be able to do any type of task. However, Laura finishes her speech affirming that boys are reluctant to work with babies (*c'est vrai qu' les, que les garçons en général, sont... sont réfractaires avec les bébés. ((Rire))*). Note that she also laughs while she is explaining this.

Following the conversation, I ask why they think it is like that. Pedro –the only boy participating in the interview and working at that moment in the childcare facility– explains that girls have the ‘maternal instinct’ and they feel close to babies (*Parce que le côté féminin de::: de l'équipe, c'est l'instinct maternel et hum, je pense qu'elles sont, qu'elles sont plus proches au bébé*). To support his argument, he explains that he has been in the situation in which babies are afraid of him when he holds them; however, when he passes the baby to a female colleague, the baby calms down (*Parce que j'ai eu aussi le cas, de, d'avoir des bébés, qui ont peur d'être avec moi. Et par contre je passe le bébé à l'une de mes collègues et à ce moment-là ça va plus facilement*). According to Pedro, this happens because the ‘feminine face’ looks like the baby’s mother’s face (*Donc je pense que::: le visage féminin ressemble plus à,*

²³⁸ In Belgian French, the verb ‘savoir’ is sometimes employed as a synonym of ‘pouvoir’.

à sa mère, et ::: ça lui donne plus de confiance au moment de :::, par exemple de le tenir ou je sais pas, quoi'). Thus, Pedro uses the natural sciences rhetoric²³⁹ to justify why there are more girls than boys working in the childcare facility.

Whereas in some occasions the workers overtly describe differences between women and men as natural, in other occasions these differences are presented as a social construction or a product of society. However, in those cases differences are nonetheless implicitly naturalised. This is the case of the following quote:

[Quote 30]

Parce que c'est::: ça participe à l'identité de l'individu et donc euh en société euh::: on sait pas toujours comment se comporter par rapport aux gens, et connaître euh::: son genre ben c'est une façon déjà de pouvoir orienter sa propre attitude, fin c'est comme ça que j' le conçoit en tout cas, et de pouvoir euh enga- fin avant cette étape relationnelle, une forme de politesse dans l'espace public euh, euh voilà, et quand on connaît pas les gens, et l'identité de genre en fait partie, parce que y a tout un tas de codes sociaux qui sont attribués. Et euh, voilà donc c'est important dans cet aspect-là et c'est important à titre plus individuel, dans une euh... On parle de construction identitaire, euh::: voilà, dans n'importe quelle société euh, en fonction des, des rôles et des genres qui sont attribués, euh cette identité va nous permettre de nous::: investir, en tou-, peu à peu, dans la fonction qu'on aura dans la société.

(Quentin, group interview 3, 10 May 2016)

In quote 30, Quentin explains that it is important to know the gender of people in order to know how to behave towards them: we adapt our attitude according to that (*en société euh::: on sait pas toujours comment se comporter par rapport aux gens, et connaître euh::: son genre ben c'est une façon déjà de pouvoir orienter sa propre attitude*). He defines it as something belonging to the relationships realm, as a form of politeness in the public space (*cette étape relationnelle, une forme de politesse dans l'espace public*). In other words, when we relate to unknown people in the public space, it is important to know their gender identity in order to know how to treat them because there are many social codes attributed to it (*quand on connaît pas les gens, et l'identité de genre en fait partie, parce que y a tout un tas de codes sociaux qui sont attribués*). Note that although he attributes these differences to society, he does not question them but finds them useful to know how to treat strangers.

²³⁹ See point 6.2.3. in Chapter 6.

Moreover, he explains that gender is also important at the individual level because it is part of the construction of identity. Therefore, we construct ourselves according to the gender roles attributed by society which allows us to gradually fulfil the function we will have in society (*'On parlait de construction identitaire, euh::: voilà, dans n'importe quelle société euh, en fonction des, des rôles et des genres qui sont attribués, euh cette identité va nous permettre de nous::: investir, en tou-, peu à peu, dans la fonction qu'on aura dans la société'*). Although he recognises that this is a societal attribution, not a natural function, he normalises differences between women and men and the different treatment they receive.

7.2.2. The notions of 'équilibre' and 'complémentarité'

The notion of 'équilibre' and 'complémentarité' are employed by the workers to prove how positive it is to have both women and men in their organisations. The notion of 'équilibre' is used to denote a balance between women and men in terms of the number of workers from each category that are hired and/or are part of a team. The term 'mixité' is also used in the same sense. The notion of 'complémentarité' and its variations are employed to stress the value that gender balance has for the organisations because the different skills of women and men complement each other. This discursive practice is employed specially in the groups corresponding to female dominated occupations (childcare facility, regional employment agency) to underline the advantages of hiring men. This is illustrated in the following quotes:

[Quote 31]

C'est vrai que, là j'ai mis une offre d'emploi, et... on va dire que 80% des CV que je reçois ce sont des filles. Alors c'est vrai que, moi j'fais, pour l'instant, la manière dont j'analyse ça c'est que je commence par les garçons parce que j' voudrais, avoir eu::: pour essayer de mettre un équilibre au niveau de l'équipe parce que je trouve que c'est beaucoup plus intéressant, euh par rapport aux stages quand on tient un groupe y a deux animateurs et je trouve que d'avoir le duo fille-garçon est vraiment profitable par, pour le travail.

(Patricia, group interview 2, 4 May 2016)

[Quote 32]

[L]a venue de Pedro au sein euh de, de l'équipe. Bon, avec son potentiel y a déjà plein d'activités qui ont pu être créées au sein du département. Hein, à savoir, il y avait justement le côté sportif qui fait que... c'est une possibilité aussi pour nous, quand maintenant il y a un professeur qui manque::: au, un cours collectif et autre,

ben Pedro est vraiment notre atout, parce que grâce à ça ben on peut remplacer comme ça, au pied levé. D'autres ne pourraient pas faire... comme lui. [...] Depuis que Pedro s'occupe::: des anniversaires, au niveau de l'animation même [...] ben on voit que les anniversaires rencontrent un vif succès. [...] Que jusque-là, quand les anniversaires n'étaient faits que par des filles, en soi, et bien, c'était systématiquement euh soit on allait prendre un autre professeur qui allait donner djembé, cirque, ou autre, mais pas vraiment une animation pure que l'animatrice allait donner. Et ça, ça change euh::: déjà toute l'animation de l'anniversaire du fait que c'est donné par un garçon.

(Valérie, group interview 2, 4 May 2016)

[Quote 33]

[M]oi j'ai été engagé dans un service qui était à 100% féminin. Et, mon futur responsable de l'époque m'a dit clairement : « voilà, ce s'rait bénéfique, euh::: qu'on puisse, avoir une certain- un certain équilibre entre hommes et femmes dans l' service, et tu s'ras engagé, c'est un défi pour toi », il me l'a présenté comme ça : « Tu s'ras le seul homme du service ». Et euh... beh j'avais pas mesuré tellement la, tellement, tellement la problématique et pour moi y en avait pas nécessairement, donc j'ai, j' suis arrivé dans ce service 100% féminin, j'ai été très bien accueilli, ça s'est très bien passé. Puis au fur et à mesure le service est dev'nu de plus en plus mixte. [...] J' pense que on, on se rend compte, en tant qu'organisme de::: du côté bénéfique, euh de la mixité.

(Gabriel, group interview 4, 11 May 2016)

The quotes 31 and 32 belong to the group interview carried out with the workers of the childcare facility at the sports center. In the interview there were five women and one man –the only man working in the team. In quote 31, Patricia, who is the team coordinator and the person in charge of hiring new people, explains that 80% of the CVs she receives belong to girls. However, she claims that a girl-boy couple is more interesting to lead the workshops and more valuable for work (implying, it is more interesting and valuable than a couple of girls) (*'c'est beaucoup plus intéressant, euh par rapport aux stages quand on tient un groupe y a deux animateurs et je trouve que d'avoir le duo fille-garçon est vraiment profitable par, pour le travail*). This justifies the fact that she starts analysing boys' CVs because she wants to 'achieve a balance' within the team (*'la manière dont j'analyse ça c'est que je commence par les garçons parce que j' voudrais, avoir eu::: pour essayer de mettre un équilibre au niveau de l'équipe*).

In quote 32, Valérie reports all the positive things the team has won thanks to the fact that now there is a boy –Pedro. According to her, many activities could be created thanks to his skills ([L]a venue de Pedro au

sein euh de, de l'équipe. Bon, avec son potentiel y a déjà plein d'activités qui ont pu être créées au sein du département). She gives two concrete examples. On the one hand, his sport skills now allow the team to replace immediately a sport teacher who misses work (*'il y avait justement le côté sportif qui fait que... c'est une possibilité aussi pour nous, quand maintenant il y a un professeur qui manque::: au, un cours collectif et autre, ben Pedro est vraiment notre atout, parce que grâce à ça ben on peut remplacer comme ça, au pied levé'*). This implies that before Pedro's arrival, none of the other workers (all women) could replace a sport teacher that easily. Note that she specifies that nobody could do it like him (*'D'autres ne pourraient pas faire... comme lui'*).

On the other hand, Pedro is also very good at entertaining children during birthdays. It is thank to him and his skills that now birthdays activities are a success. Note that she establishes again a girl-boy distinction in relation to entertaining skills. She explains that when birthdays were carried out only by girls, they used to call a male sport teacher²⁴⁰ to do specific activities with the children, but girls did not entertain the children themselves (*'Que jusque-là, quand les anniversaires n'étaient faits que par des filles, en soi, et bien, c'était systématiquement euh soit on allait prendre un autre professeur qui allait donner djembé, cirque, ou autre, mais pas vraiment une animation pure que l'animatrice allait donner'*). However, now entertainment during birthdays has positively changed thanks to the fact that it is carried out by a boy (*'Et ça, ça change euh::: déjà toute l'animation de l'anniversaire du fait que c'est donné par un garçon'*). It is striking that instead of describing these differences as *individual* (as it was the case when they argued that gender was not irrelevant at work), they define them as differences between girls and boys.

A similar situation is described in quote 33. Gabriel, a worker of the regional employment agency, describes his experience when he was the only man in the team. His future manager uses the notion of man-woman balance to hire him because he judges it is beneficial. However he also warns him that he will be the only man in the service and that could be 'a challenge for him' (*'Et, mon futur responsable de l'époque m'a dit clairement : « voilà, ce s'rait bénéfique, euh::: qu'on puisse, avoir une certain certain équilibre entre hommes et femmes dans l' service, et tu s'ras engagé, c'est un défi pour toi »*). The manager depicts working exclusively with women as a

²⁴⁰ Appart from the childcare facility, the sport centres also offers sport activities for children and adults.

difficult thing to do for a man. However, Gabriel explains that for him it was not a challenge and says that actually everything went very well, he was very well received (*'beh j'avais pas mesuré tellement la, tellement, tellement la problématique et pour moi y en avait pas nécessairement, donc j'ai, j' suis arrivé dans ce service 100% féminin, j'ai été très bien accueilli, ça s'est très bien passé*). Gabriel also explains that the department has become more 'mixed' over time and that the agency really sees the positive aspects of diversity for the organisation (*'J' pense que on, on se rend compte, en tant qu'organisme de::: du côté bénéfique, euh de la mixité*). He uses the words 'mixte' and 'mixité' to describe the type of diversity in which there are men and women. However, these terms have also the connotation of putting together two things that were previously segregated or separated, thereby reifying the woman-man dichotomy.

Whereas the notions of 'équilibre', 'complémentarité' and their variations were employed to support the recruitment of a man in all-women teams and/or organisations, this argument was not used to support the recruitment of women in all-men teams and/or organisations. This is particularly clear in the next quote, belonging to the group interview with IT workers at the hospital. This quote is particularly interesting because of the *non*-use of this discursive device in a situation that is the reversal of the situation in quote 27: Jean, the person in charge of hiring people for the Help Desk²⁴¹, clarifies that only around 10% of the CVs he receives are from women and explains why he did *not* hire any of them:

[Quote 34]

Simon : *Maintenant, faudrait voir au niveau des, des personnes qui décident qui on engage. Donc, par exemple, Bruno... ou, ou toi Jean quand tu as dû sélectionner des, des personnes pour le Help Delsk, euh... qu'est-ce qui motivait, parce que je suppose qu'il y a eu des candidatures de... "de la gent féminine"*.

Jean : *Il y a eu des candidatures de la gent féminine. Maintenant qu'est-ce qui a fait pencher la balance ? Je crois que...*

Ginette : *Oui, qu'est-ce qui a motivé le fait qu'on a pris un homme au lieu d'une femme, ☺ alors qu'on a déjà tant d'hommes ☺*

Jean : *C'était que... toutes les femmes qui ont postulé étaient toutes en, en reclassement de quelque chose... euh... et c'était pas des, des gens qui avaient... fin <je vais pas dire la fibre informatique mais je veux dire>, c'était parce que là à un*

²⁴¹ The Help Desk is the IT consultation service. They solve the problems that any worker at the hospital has with their computers. The participants of the interview described it as a male-dominated service.

moment donné elles s'étaient retrouvées sans emploi pendant x temps qu'elles avaient dû repartir sur une formation et donc ça faisait depuis un, deux, trois ans qu'elles s'intéressaient à l'informatique, alors que les autres s'y intéressaient depuis plus de temps. C'était entre autres ça. Y avait pas de candidat qui me disait « beh oui, moi ma passion c'est l'informatique depuis toujours ». Y avait pas de femme dans ce cas-là.

Chercheuse : Parce que ça c'est important...

Jean : Ben, c'est toujours mieux, oui.

Pierre : La motivation dans le travail.

Jean : Oui. Et puis en termes de nombre de CV fin j'ai pas les chiffres en tête mais on devait être à un sur dix, fin... une proportion comme ça tu vois, donc euh... fin...

(Group interview 1, 29 March 2016)

In quote 34, after agreeing that there are no 'feminine' and 'masculine' skills, Simon wonders why then there are not more women hired to work at the Help Desk. He assumes they have received applications from women and asks Jean, who is in charge of recruiting, why he did not hire any of them. Jean recognises that there have been some applications from women (*Il y a eu des candidatures de la gent féminine*). Note the use of the expression '*la gent féminine*' by both workers to refer to women. This expression depicts women as belonging to a homogenous class of people and its use denotes a little bit of irony. Jean starts justifying what made 'tip the scale' (in favor of men) (*Maintenant qu'est-ce qui a fait pencher la balance ? Je crois que...*) when he is interrupted by Ginette, who has repeated several times during the interview that women are not treated as equals in their organisation. She wants to know the reason why a man was hired instead of a woman, whereas 'there are already so many men' (*Oui, qu'est-ce qui a motivé le fait qu'on a pris un homme au lieu d'une femme, ☺ alors qu'on a déjà tant d'hommes ☺*). Note that she is implicitly using the notion of '*équilibre*' to denounce the fact that there are more men than women in the Help Desk. It is also important to note that she laughs when she says that. By laughing she avoids the claim to sound as a serious accusation since it would be too harsh to accuse a colleague of discrimination.

If women and men are able to do the same job, if some women did apply to work at the Help Desk and if there are already many men working there, then it would have seemed logical to tip the balance to favor the recruitment of a woman. However, this has not been the case

and Jean has to justify his decision to avoid that the group interprets it as discrimination. He explains that the women who applied were in vocational retraining after being unemployed for a while (*'c'était parce que là à un moment donné elles s'étaient retrouvées sans emploi pendant x temps qu'elles avaient dû repartir sur une formation'*). Informatics was not the first choice of these women but something they studied later in life. According to Jean, these means that they have been interested in informatics only for some years, not for a long time as men (*'et donc ça faisait depuis un, deux, trois ans qu'elles s'intéressaient à l'informatique, alors que les autres s'y intéressaient depuis plus de temps'*) and as a consequence they have less the 'informatics streak' (*'C'était que... toutes les femmes qui ont postulé étaient toutes en, en reclassement de quelque chose... euh... et c'était pas des, des gens qui avaient... fin <je vais pas dire la fibre informatique mais je veux dire>'*). Thus, the reason why Jean finally hired a man was that, according to him, none of the women showed a true passion for informatics from the beginning (*'C'était entre autres ça. Y avait pas de candidat qui me disait « beh oui, moi ma passion c'est l'informatique depuis toujours ». Y avait pas de femme dans ce cas-là'*).

Jean is implicitly saying that a good IT worker is someone who is passionate for computers and who have always known they wanted to work in IT. When I exclaim *'Parce que ça c'est important...'* with a touch of irony, he immediately responds that it is indeed better. He is supported by Pierre who mentions 'motivation at work', as implying that it is clearly an important factor (*'La motivation dans le travail'*). Jean finishes his defense by stating that there were not many applications from women anyway, as if there was no real choice (*'Et puis en termes de nombre de CV fin j'ai pas les chiffres en tête mais on devait être à un sur dix, fin... une proportion comme ça tu vois, donc euh... fin... '*).

The notion of *'équilibre'* is not employed in the interview with the group of the police to support the recruitment of more women either. In the following quote we can see how Stéphanie describes the fact that men outnumber women in their team not as a case of discrimination, but as a necessary situation. Audrey agrees with that but qualifies it to vindicate the role of women in the police using the notion of complementarity:

[Quote 35]

Stéphanie : *Oui donc je disais que de manière générale dans le groupe d'intervention y a effectivement plus d'hommes, que de femmes. Moi personnellement je l' >vois pas comme< que'que chose de discriminatoire. C'est tout simplement voilà, faut quand même rester réaliste, c'est un métier euh::: assez euh::: parfois musclé et, bon même si on est des femmes qui ((incompréhensible)) dedans ben j' pense que c'est important d'avoir euh, d'avoir aussi euh notre gent masculine euh. Ça s' ressent dans pas mal d'interventions. D'où le fait que, par exemple, même si j'suis une femme je trouve que des équipes euh qui seraient uniquement composées de femmes, c'est pas une bonne idée. Ça c'est, c'est mon idée. °Peut-être que toi ((à Audrey)) tu as une autre idée ?°*

Audrey : *[...] Mais euh::: Stéphanie parle d'intervention musclée mais la p-... effectivement j' suis d'accord avec son point d' vue, mais j' trouve aussi qu' y a énormément d'interventions, où une femme peut calmer euh::: peut calmer les choses et c'est p-, et, voilà, chacun, chacun a son, a sa plus-value quoi.*

(Group interview 5, 26 August 2016)

In quote 35 Stéphanie recognises that there are more men than women in the intervention team, but she does not describes that as discrimination. She explains that the reason is just that it is often a 'vigorous' profession (she uses the word '*musclé*' implying that one needs to have a lot of muscles to do it). It is thus important to be realistic and recognise it is important to have men because it makes a difference in police interventions (*C'est tout simplement voilà, faut quand même rester réaliste, c'est un métier euh::: assez euh::: parfois musclé et, bon même si on est des femmes qui ((incompréhensible)) dedans ben j' pense que c'est important d'avoir euh, d'avoir aussi euh notre gent masculine euh. Ça s' ressent dans pas mal d'interventions*).

She supports this argument by clarifying that 'even though she is a woman', she thinks it is not a good idea to have all-women teams in interventions (*D'où le fait que, par exemple, même si j'suis une femme je trouve que des équipes euh qui seraient uniquement composées de femmes, c'est pas une bonne idée*). This reinforces the idea that this situation is not discriminatory against women if even a woman agrees with it. She then asks Audrey, as the other woman participating in the interview, what she thinks about it.

Audrey agrees with the fact that men are needed in 'vigorous interventions'. However, she also suggests there are many interventions in which a woman can 'calm things down' (*Stéphanie parle d'intervention musclée mais la p-... effectivement j' suis d'accord avec son point d' vue, mais j' trouve aussi qu' y a énormément d'interventions, où une femme peut calmer euh::: peut calmer les choses*). She concludes that everybody (implying men and women) has

an added value (*'voilà, chacun, chacun a son, a sa plus-value quoi'*). Therefore, Audrey eventually uses the notion of complementarity to claim the value of women within the police, although she does not necessarily vindicate gender balance.

7.3. The construction of the problematic difference

In this section, I describe the discursive practices that the workers used to construct the problematic difference at work. These include the notion of respect of norms at work, the use of humour and jokes, the avoidance of 'misunderstandings', the inversion of responsibility and the use of disclaimers. These discursive practices describe some differences as problematic at the workplace, but at the same time, the workers avoid presenting themselves as prejudiced. The responsibility is placed either on the people who embody those differences (namely, trans* and homosexual people, and women in male-dominated professions) or on the 'conservative other'.

7.3.1. The notion of respect II

As I described in section 7.1, the notion of 'respect' is used by the workers in two different ways to express adherence to principles and values that are socially accepted. Whereas the first use expresses adherence to liberal values such as equality and freedom, the second use I describe here expresses adherence to certain norms at work. These norms concern ways of gender expression in the workplace, especially ways of dressing. The use of the notion of 'respect' was employed by the workers in this sense when they were discussing whether the individual in photograph 4 could be hired in their respective organisations. The answer was always no. However, this refusal was not presented as prejudice but as a problem of the concerned individual because of the non-respect of the norms or standards of the organisation. In other words, the refusal was justified. This practice is illustrated in the following quotes:

[Quote 36]

*Et là, j' pense que, en plus quand c'est des questions de tenue vestimentaire, de::
Voilà, c'est, c'est vrai, moi j' me dirais « bon, qu'est-ce qu'il va nous 😊 faire 😊 »*

((Rire)). *Voilà, de s' dire « il est un peu p't-êtr', ou elle est un peu euh voilà, déjan:::té, un peu euh... p't-être être un peu hors norme euh » mais, voilà. Pas toujours respecter, parce que, j' vois bien, ben voilà, y a quand même... une série de règles, euh::: plus ou moins claires voilà, qui permettent, qui nous permettent à tous de::: vivre ensemble euh:::, euh de commencer nos journées de travail en même temps, de:::*

(Marie, group interview 3, 10 May 2016)

[Quote 37]

Stéphanie : *S'il se maquille pas le visage...*

Nicolas : *Ah ouais, s'il se maquille pas, non.*

Stéphanie : *Efféminé euh.*

Olivier : *Mais si maint'nant i' laisse le::: Envisagez le rouge à lèvres ou autre euh ((rire bref)), ça va:::, ça va pas passer.*

Stéphanie : *Oui ! Voilà. Non. Il va devoir enl'ver ses:::, ses fringues euh, de femme oui.*

Olivier : *Y a::: un peu d' déontologie dans:::, pour le:::, le travail donc euh...*

(Group interview 5, 26 August 2016)

In quote 36 Marie explains that when she sees the way the individual in photograph 4 is dressed she wonders how he will behave at work ('*quand c'est des questions de tenue vestimentaire, de::: Voilà, c'est, c'est vrai, moi j' me dirais « bon, qu'est-ce qu'il va nous ☺ faire ☺ »*'). She describes the individual as wacky and outside the norm ('*« il est un peu p't-êtr', ou elle est un peu euh voilà, déjan:::té, un peu euh... p't-être être un peu hors norme euh »*'). Therefore she argues that he may not respect the rules that allows for a good functioning of work, for instance starting the working days at the same time ('*Pas toujours respecter, parce que, j' vois bien, ben voilà, y a quand même... une série de règles, euh::: plus ou moins claires voilà, qui permettent, qui nous permettent à tous de::: vivre ensemble euh:::, euh de commencer nos journées de travail en même temps, de:::*'). Note that she draws a parallelism between respecting dress norms and respecting workplace norms and argues that as the individual in photograph 4 does not respect the first ones, he will probably not respect the second ones either.

In quote 37, policewomen and men describe the individual in photograph 4 as effeminate ('*Efféminé euh*') and claim that he should remove the make-up and 'women's clothing' in order to be hired in the police. This is expressed through the use of the conditional tense ('*S'il se maquille pas le visage...*', '*Mais si maint'nant i' laisse le::: Envisagez le rouge à lèvres ou autre euh ((rire bref))*') and the expression ('*ça va pas passer*'). In other

words, if the individual in the photograph 4 wears make-up and is dressed in that way he would never be hired in the police. Note that the expression *'fringues de femme'* describes him as 'a man dressed as a woman'. As explained before²⁴², this metaphor establishes how women and men should dress. Moreover, not only the workers affirm that the individual could not be hired as he is, but one of them also describes his appearance as a lack of work ethic (*'Y a::: un peu d' déontologie dans:::, pour le:::, le travail donc euh...'*). Thus the problem is not prejudices against that individual, but the individual's lack of ethics, his lack of respect for norms at work.

The norms that should be respected and followed at work are also depicted as general norms that apply to anybody, norms not limited to gender and sexuality. According to this, the violation of norms concerning the appearance of women and men is compared to any type of violation of the appearance standards of the organisation. This is particularly clear in the following quote of group interview 2:

[Quote 38]

Patricia : *J' pense que l'orientation de sexe n'est pas un::: n'est pas un critère de sélection. Mais je pense que c'est plutôt au niveau de l'extravagance et::: les signes extérieurs de::: (6)*

Laura : *Les anneaux dans le nez ? ((Rire nerveux))*

Patricia : *Oui, voilà. Par exemple, Laura... Bon, vas-y explique.*

Laura : *Ben, j'avais euh::: un piercing dans le nez, un anneau. Et euh, ben j'ai dû l'enlever. Snif, tristesse.*

Patricia : *[...] Euh::: si elle [la personne] suit le standard de la société, je pense que ça pose pas de souci. Après si cette personne-là veut mettre en avant le fait que... elle aime avoir euh des... un style de maquillage, ou un style de bijoux, ou un style de coiffure même, parce qu'on a eu, euh, quelqu'un qui se coiffait d'une certaine manière et voilà euh, ça n'allait pas, il fallait euh::: voilà... que la coiffure soit dans le même style que le standard, de l'uniforme, ça devait faire un tout. On fait partie d'une chaîne donc... y a des standards. [...]*

Chercheuse : *Je comprends.*

Valérie : *J' dirais qu' c'est, qu'ici c'est toléré mais tant qu' vous::: êtes discret.*

(Group interview 2, 4 May 2016)

In quote 38, Patricia, the person responsible for the recruitment in the childcare facility, explains that the 'sex orientation' of the applicants is

²⁴² See point 6.2.4. in Chapter 6.

not a selection criterion, but rather the extravagance/eccentricity and ‘external signs’ (*‘J’ pense que l’orientation de sexe n’est pas un:::… n’est pas un critère de sélection. Mais je pense que c’est plutôt au niveau de l’extravagance et::: les signes extérieurs de:::’*). By ‘orientation de sexe’ she actually means sexual orientation. Note that she is speaking about the individual in photograph 4 and that he was previously described by the group as homosexual, as explained before²⁴³. Thus she clarifies that the assumed homosexuality of this person is irrelevant, but the visible appearance is important. She is about to describe the type of visible signs that are not accepted in their organisation but she does not finish the sentence. This is marked by a silence of six seconds during which she is looking for the way to describe these signs. At this moment, Laura helps her and gives an example of unacceptable visible sign: a nose-ring (*‘Les anneaux dans le nez? ((Rire nerveux))’*). The giggling indicates that it may be Laura who had that visible sign. This is confirmed by Patricia, who invites her to tell what happened. Laura then says that she had a nose-ring and she regrets she had to remove it (*‘Ben, j’avais euh::: un piercing dans le nez, un anneau. Et euh, ben j’ai dû l’enlever. Snif, tristesse’*). The onomatopoeic expression ‘snif, tristesse’ stresses the fact that she did not want to remove her nose-ring but made an effort to respect the norms of the organisation anyway.

This example helps Patricia reiterate the idea that ‘the problem’ of the individual in photograph 4 is not that ‘he is a man dressed as a woman’ but that signs of his sexual orientation are ‘too visible’. If the person follows ‘the standards’ of the organisation, his sexual orientation is not a problem (*‘Euh::: si elle [la personne] suit le standard de la société, je pense que ça pose pas de souci’*). However, if the individual wants to vindicate his personal style, that will not work (*‘Après si cette personne-là veut mettre en avant le fait que… elle aime avoir euh des… un style de maquillage, ou un style de bijoux, ou un style de coiffure même, parce qu’on a eu, euh, quelqu’un qui se coiffait d’une certaine manière et voilà euh, ça n’allait pas’*). Note that she does not mention sex/gender issues at all as if the problem was not that the individual is a man. She depicts it as general styles of make-up, accessories and haircut that are not compatible with the organisation’s standards, regardless of the fact that the individual is a man or a woman. According to Patricia, everything should have the same style as the uniform, forming a harmonious set because they are part of a chain and

²⁴³ See point 6.2.4. in Chapter 6.

there are some standards to respect (*'il fallait enb::: voilà... que la coiffure soit dans le même style que le standard, de l'uniforme, ça devait faire un tout. On fait partie d'une chaîne donc... y a des standards'*). Note that she makes use of the idea of 'imposed standards' to justify the exclusion of this individual from the workplace. In other words, she is not the one reproducing the norm that a man should not dress like a woman; she is just respecting the organisation neutral standards. This is supported by Valérie's affirmation *'J' dirais qu' c'est, qu'ici c'est toléré mais tant qu' vous::: êtes discret'*. Thus you can be homosexual or trans* as long as it is not 'too visible' at work. In other words, you should 'pass' as heterosexual and cisgender in the workplace. You should respect the norms.

7.3.2. Humour and jokes

Humour is a very efficient mechanism because it allows communicating things without explicitly saying them. Therefore an individual can make, for instance, a transphobic remark and avoid at the same time appearing as transphobic because they can always argue that was not what they meant and/or that was not their intention. The mechanism that makes that humour and jokes work –they make laugh– is based on presuppositions and implicatures, central concepts in Gricean pragmatics (Grice, 1989). The presuppositions of an utterance are the pieces of information that the speaker assumes in order for their utterance to be meaningful within the specific context of the conversation. Based on Grice's (1981) cooperative principle²⁴⁴, the conversational implicature is an inference that the hearer is *compelled* to make if they are going to continue to retain that the speaker is cooperative. When a speaker makes a joke he or she presupposes a shared knowledge with the audience that he or she does not tell but suggests. It is only when the hearer understands the implicature that the utterance makes him or her laugh.

During the interviews, humour was used by the workers to implicitly talk about things that usually are not openly discussed, especially sexuality issues at work. As I explained in section 7.1., the workers describe the workplace as a space devoid of gender and sexuality. The worker subject is not depicted as a sexual subject, sexuality being

²⁴⁴ 'Make your contribution as is required, when it is required, by the conversation in which you are engaged'.

something that belongs to the private sphere. However, the analysis of the use of humour and jokes reveals that sexual references are ubiquitous during the interviews. Or rather, *heterosexual* references. As the following quotes show, the workers do not explicitly speak about their heterosexual preferences, but they suggest them continually. Note that quotes 39 and 40 the workers are referring to the individual in photograph 1:

[Quote 39]

Ibrahim : *Ben, déjà s'il vient habillé comme ça à un entretien euh...*

((Rires du groupe))

Ginette : *Je l'engage tout de suite !*

((Rires du groupe))

(Group interview 1, 29 March 2016)

[Quote 40]

Chercheuse : *Je vais commencer par... Cette photo...*

((Plusieurs femmes rient))

Valérie : ☺ *Patricia, il faut dire spontanément ce qu'on a en tête ☺*

((Les femmes rient))

[...]

Patricia : *À mon avis, il est trans.*

Chercheuse : *Pourquoi ?*

Valérie : *Trop beau pour être vrai ?*

((Rires du groupe))

(Group interview 2, 4 May 2016)

[Quote 41]

Antonio : *Je pense qu'entre hommes y aura p't-être moins d'intérêt.*

Chercheuse : *Pourquoi ?*

Antonio : *Beh pff, voilà::: entre hommes ben voilà ((Rires du groupe)). J' veux dire moi j' suis commissaire voilà, y a une nouvelle stagiaire qui arrive : « bonjour mademoiselle, ah oui oui, ah oui vous êtes bien jolie ah. Vous voulez un bic ? ah ouais pas d' souci, tenez l' bic », voilà. David va arriver hein : « Salut David, ah oui ? beh non allez ».*

((Rires du groupe))

(Group interview 5, 26 August 2016)

In quotes 39 and 40 above, women show sexual interest for the individual in photograph 1, who is described as a man, as I explained before²⁴⁵. In quote 39, Ibrahim complains that the man cannot dress like that for a job interview (*Ben, déjà s'il vient habillé comme ça à un entretien*

²⁴⁵ See point 6.1.1. in Chapter 6.

eub...). He presupposes that everybody knows one should dress in a formal and elegant way for a job interview and that the clothing the man is wearing – a tank top showing his muscled arms – is neither formal nor elegant. Therefore, that clothing is not appropriate for a job interview, being too sexy, and the man would not give a good impression. The hearers laugh at the idea that a man presents himself dressed like that for an interview there. However, Ginette says abruptly that she will hire him immediately (*Je l'engage tout de suite !*), which makes the group laugh even more because she contradicts the implicature Ibrahim made before (that a man dressed like that would not make a good impression in a job interview). She assumes the group understood Ibrahim's joke and plays with that shared knowledge to imply that she likes him.

In quote 40, when I uncover the first photograph all the women laugh but initially they do not say anything. They just laugh. This laugh substitutes something they do not want to say out loud. In fact, Valérie then says to Patricia: ☺ *Patricia, il faut dire spontanément ce qu'on a en tête* ☺. This comment prompts even more laughter in the women. If that simple utterance makes the women laugh it is because it implies that they cannot actually say what they have in mind, the first thing that came to their minds when they saw the photograph. Valérie is assuming some shared information that she does not need to explicitly say for the others to understand what she means. The assumption is quite vague but it is clearly related to the fact that they all are attracted to men and they find the man in photograph 1 handsome, sexy, or attractive. The conversational implicature would not make laugh if they were all assumed to be lesbians.

Later in the same quote, Patricia says that in her opinion he is trans (*À mon avis, il est trans*). When I ask why, Valérie responds *Trop beau pour être vrai ?* which prompts again the laughter of the women. Apart from drawing again on the assumption that they are all heterosexual, this joke also draws on the distinction of notions described before²⁴⁶: the appearance-reality distinction used to define trans* people. Valérie assumes the shared knowledge that, in spite of their physical appearance, trans* men are not real men. The implicature is that the man in

²⁴⁶ See point 6.2.1. in Chapter 6.

photograph 1 is so handsome that he cannot be real, reason why the women laugh.

In quote 41, Antonio was arguing that female colleagues receive a special treatment in the police because they ‘use their charms’ (I describe this argument below) and claims that male colleagues do not receive the same treatment because ‘among men there is less interest’ (*Je pense qu’entre hommes y aura p’t-être moins d’intérêt*). When I ask him what he means, he just says (*Beh pff, voilà::: entre hommes ben voilà*), an utterance that prompts the group’s laughter. In other words, he does not need to finish his sentence because he assumes everybody knows what he means –that men are not attracted to other men. In fact, the consecutive laughter of the group confirms that. To illustrate further what he means he gives an example. If he is a police chief and there is a new female trainee, he is going to pay attention to her and ask her if she needs anything; however he would ignore David, a male colleague. He emphasises the different treatment to the female and male colleagues by simulating a direct speech in which he asks many questions to the female colleague and just ignores the male colleague (*J’ veux dire moi j’ suis commissaire voilà, y a une nouvelle stagiaire qui arrive : « bonjour mademoiselle, ah oui oui, ah oui vous êtes bien jolie ah. Vous voulez un bic ? ah ouais pas d’ souci, tenez l’ bic », voilà. David va arriver hein : « Salut David, ah oui ? beh non allez »*). The example makes laugh the group because of the assumption that David is being ignored because he is a man and does not have ‘charms’, whereas the female trainee does.

In the three quotes above, the workers manifest their sexual preferences in front of their colleagues in a subtle way and assume heterosexuality as the normal expression of sexuality at work. The imagined transition of a male colleague is also the object of jokes and laughter. The transition towards the feminine spectrum is depicted as something exceptional and somehow ridiculous or funny, as the following quotes show:

[Quote 42]

Chercheuse : *Et pourquoi vous pensez que, qu’une personne transgenre poserait problème euh, par exemple pour être embauchée à la police ou::: acceptée euh ?*

Antonio : *Mais, moi j’ peux parler d’ mon... cas – mais j’ suis pas transgenre hein !*

((Rires du groupe))

(Group interview 5, 26 August 2016)

In quote 42, I ask why in their opinion it would be problematic to hire a transgender person in the police. I ask this question because they previously said that some colleagues would not accept to work with a transgender person. Antonio starts answering to my question by saying that he can talk about ‘his case’ and immediately he clarifies that he is not transgender (*‘Mais, moi j’ peux parler d’ mon... cas – mais j’ suis pas transgenre hein !’*). This prompts the laughter of the group. Antonio assumes that everybody knows that he is not transgender and that he actually meant he can talk about ‘his point of view’ (not ‘his case’). The group laughs because they understand what he is referring to. It is taken for granted that he is not transgender and his clarification is thus unnecessary. That is why it makes laugh. It would be funny to think that he is actually transgender.

In the same vein, jokes are done by the workers around the idea of a (male) colleague having ‘a secret to reveal’ as in the following quote:

[Quote 43]

Nicolas : *En fait tu David dois dire que’que chose ((rire)) ☺ T’imagines ? ☺*
((Rires du groupe))

Chercheuse : *J’ai pas compris !*

Audrey : ☺ *Ben en fait le but c’est qu’il a un secret et ☺ il doit nous dévoiler aujourd’hui quoi.*

Nicolas : *((en même temps)) Oui oui. Il fait semblant de rien mais lui il est au courant de tout et... ((Rire du groupe))*

David : *J’ vais dévoiler bientôt mon secret !*
((Rires du groupe))

(Group interview 5, 26 August 2016)

In quote 43, Nicolas tells David that he has something to tell them and laughs (*‘En fait tu David dois dire que’que chose ((rire))’*). Ben finishes his turn asking the rhetorical question ‘*T’imagines ?’* while laughing. This prompts the laughter of the group because everybody understands what he is implying. This joke draws again on the appearance-reality distinction described before²⁴⁷. In other words, in spite of David’s appearances, he has to confess the ‘truth’, what he actually is –transgender. As in the previous quote, everybody laughs at the funny idea that he is actually

²⁴⁷ See point 6.2.1. in Chapter 6.

transgender. At that moment I am lost in the conversation and say that I do not understand (why everybody is laughing), implicitly asking for an explanation. Audrey then responds that he (David) has a secret that he is going to reveal (☺ *Ben en fait le but c'est qu'il a un secret et ☺ il doit nous dévoiler aujourd'hui quoi*). She says that laughing, clearly understanding what Nicolas is implying. At the same time, Nicolas affirms that David pretends he does not understand but actually knows very well what they are talking about (*Oui oui. Il fait semblant de rien mais lui il est au courant de tout et...*). David finally accepts the game and 'admits' he is going to reveal his secret (*J' vais dévoiler bientôt mon secret !*), which prompts again the laughter of the group. David is clearly joking, reason why his utterance makes laugh. The joke would not be funny if the group thought it could be possible that David was actually a trans* person. Everybody assumes he is not and they find ridiculous the idea of the colleague being trans*.

The jokes about the transition of a male colleague are also accompanied by heterosexual remarks as in quote 44 below. In this case, François says to Pierre that he would not mind 'if he does it' (*Toi ((à Pierre)) tu l' ferais ça ne me dérangerais pas*). He is imagining the transition of Pierre because Ginette previously asked what would be their reaction if a current colleague transitions. François then adds that it would be ok if Pierre transitions because then he would return 'with a beautiful blond (woman)' on the train after drinking their beers (*Quand tu viendras boire des bières avec moi... Voilà, je retournerai avec une jolie blonde dans l' train...*). All the group laughs at these utterances. He is implying that he would not mind Pierre's transition because then he would go back on the train 'in good company'. François assumes some common knowledge with the hearers: that he likes women and that Pierre neither is a woman nor is becoming one.

[Quote 44]

François : *Toi ((à Pierre)) tu l' ferais ça ne me dérangerais pas.*

((Tout le groupe rit))

François : *Quand tu viendras boire des bières avec moi...*

((Tout le groupe rit))

François : *Voilà, je retournerai avec une jolie blonde dans l' train...*

((Tout le groupe rit))

(Group interview 1, 29 March 2016)

Note that jokes about the transition of a current colleague always concerned a *male* colleague who transitions towards the *feminine* spectrum and were often accompanied by heterosexual remarks as the ones described above. These jokes were exclusively done in the male-dominated groups corresponding with the male-dominated professions (informatics and police). There was no joke about a female colleague's transition towards the masculine spectrum.

7.3.3. The avoidance of 'misunderstandings'

The workers argue that trans* people should say at work that they are trans* in order to 'avoid misunderstandings'. These misunderstandings are related to *heterosexuality* questions as the following quotes illustrate:

[Quote 45]

Mais justement. Si t'es bien intégrée dans l' groupe au début par exemple c'est une femme et tu l' dis pas. Alors cette femme est un homme en fait, tu l' dis pas. Après tu vas tomber sur des gars comme Ilias ou Ben ou quoi qui vont se mettre en tête d'homme à fond et puis après ☺ ils vont s' rendre compte que c'est pas une femme ! ☺

((Rires))

Ibrahim : C'est ça, c'est là qu'il va y avoir un problème.

((Rires))

(Ibrahim, group interview 1, 29 March 2016)

[Quote 46]

Sur la carte c'est Michel, Michel avec un « l », comme un homme, et::: elle se pré-Voilà, dans quelle chambre on l'a met ? J' veux dire, ça l-, le problème il va rev'nir ici aussi dans l' sens où, voilà, on va dire : « ah ouais, c'est une f:::emme qui était un homme avant, donc on va l' mettre dans quel vestiaire ? ». Et ff, s- si elle va dans les douches avec les filles alors quoi, fin voilà. Donc c'est tout un::: Moi j' pense que c'est ça et en::: étant objectif,

(Antonio, group interview 5, 26 August 2016)

In quote 45, Ibrahim responds to Simon who previously said that the most important thing for a worker is to be integrated into the team and the fact of being trans* is irrelevant. Ibrahim answers that *that* is precisely the problem. He says that if a (trans*) woman is well integrated and does not say that 'she is actually a man', then some (male) colleagues will try to flirt with her and they will realise that 'she is not a woman' (*Mais justement. Si t'es bien intégrée dans l' groupe au début par exemple c'est une femme et tu l' dis pas. Alors cette femme est un homme en fait, tu l' dis pas. Après tu vas*

tomber sur des gars comme Ilias ou Ben ou quoi qui vont se mettre en tête d'homme à fond et puis après ☺ ils vont s' rendre compte que c'est pas une femme ! ☺). This utterance prompts the laughter of the group. Note that Ibrahim describes the (trans*) woman of his example as 'actually a man', making use of the appearance-reality distinction once again. Note that he laughs when he describes the moment in which the (male) colleagues 'realise' that she 'is not a woman' and defines this as a problem (*'C'est ça, c'est là qu'il va y avoir un problème'*), making the group laugh. As it was previously explained, this joke makes laugh because Ibrahim assumes a common knowledge with the audience and the group understands what he means: that then the (male) colleagues are actually flirting with a man, something that is funny and ridiculous because of the assumed heterosexuality.

Similarly, in quote 46 Antonio argues that a trans* woman should say that she is trans* at work. He gives the example of a trans* woman that he knows who has not changed her identity documents. Therefore her name is written in the masculine form²⁴⁸. She had to be hospitalized once and the staff did not know in which room they should put her (*'Sur la carte c'est Michel, Michel avec un « l », comme un homme, et::: elle se pré- Voilà, dans quelle chambre on l'a met ?'*). What he implies is that the woman is actually a man (she did not change her identity papers, thus she did not undergo hormonal treatment and surgery²⁴⁹) and it can lead to misunderstandings if she is put in a room with women.

He reinforces his claim by translating the example to their workplace: the 'problem' of a woman 'who was a man before' working in the police. He wonders which changing room she will use and what would happen if she goes in the showers with the girls (*'J' veux dire, ça l-, le problème il va rev'nir ici aussi dans l' sens où, voilà, on va dire : « ah ouais, c'est une f:::emme qui était un homme avant, donc on va l' mettre dans quel vestiaire ? »*). Et ff, s- si elle va dans les douches avec les filles alors quoi, fin voilà'). Although he describes this woman 'as a man before', he is actually implying that she is still a man. Therein lies the problem. If he considered that she is a woman, there will

²⁴⁸ In French, the name 'Michel/Michelle' is pronounced in the same way, but it is written differently depending on whether it is the masculine form (Michel) or the feminine form (Michelle).

²⁴⁹ The interviews were carried out before the *Loi transgenre* (2017) came into force. It was thus mandatory to get hormonal treatment and genital surgery to modify the name and the legal mention of sex.

not be any problem because a woman can just go to women's changing rooms and showers. If there is a problem it is because he is implicitly considering that she is a man and it would be problematic for 'him' to be together with women in spaces in which they can all be naked.

Note that the claim that trans* people should say at work that they are trans* in order to 'avoid misunderstandings' is based on the assumption that heterosexuality is the norm. When I asked the participants in the police why they separate women and men in searches, changing rooms and showers, they responded it was to 'avoid misunderstandings':

[Quote 47]

Stéphanie : *Pour éviter les quiproquos peut-être euh, pour éviter*

Chercheuse : *Pour éviter ?*

Stéphanie : *Les quiproq- les quiproquos.*

Chercheuse : *C'est quoi ça ?*

Antonio : *Les malentendus.*

Stéphanie : *Oui les malentendus. Et pour éviter euh:::, pour éviter euh à mon avis euh, p't-être même des, des*

Antonio : *Le harcèlement.*

Stéphanie : *des des, des gestes, et le harcèlement. Ou que un collègue soit euh... beh soudainement soupçonné d'avoir chipoté la d'moiselle.*

(Group interview 5, 26 August 2016)

They affirm this is done '*pour éviter des quiproquos*', '*pour éviter des malentendus*'. Antonio also says it is to avoid '*le harcèlement*', acknowledging a potential abuse of power (presumably on the part of police officers towards people being searched and/or men towards women). Stéphanie repeats '*le harcèlement*' but also adds '*Ou que un collègue soit euh... beh soudainement soupçonné d'avoir chipoté la d'moiselle*'. By advancing this prompt alternative she is implicitly diminishing the probability that harassment occurs, bringing the attention rather to the possibility that a (male) colleague is suddenly suspected of touching or fondling a girl. The expression '*soudainement soupçonné*' implies a false accusation or an accusation that is not substantiated.

The idea that seems to lie behind the 'avoidance of misunderstandings' is an irrepressible attraction of men towards women, a 'natural attraction' in line with the natural science rhetoric described

before²⁵⁰. This is the reason why women and men have to be separated, and a trans* woman –who is described as being actually a man– should say ‘what she is’ to avoid men being brought to a homosexual encounter and women being harassed. However, as I explain below, the problem is not placed on men’s actions, but it is often placed on women’s seductive power.

7.3.4. Inversion of the subject responsible for the action

The inversion of the subject responsible for the action is a discursive strategy employed by some of the men interviewed to justify men’s sexual gaze and behaviour towards women. In spite of the fact that it is men who look at women and carry out the actions, women are deemed responsible for men’s behaviour. This discursive device is used by male workers in order to justify certain actions that could be seen as problematic, presenting themselves as actual victims (of women, of work discrimination). In the following quotes this inversion is used to both justify men’s ‘interest’ in women in the workplace and criticise the special treatment that women are alleged to receive at work:

[Quote 48]

Ibrahim : [...] *Le physique de la femme aussi ça fait quelque chose hein euh...*

François : *Moi j’ai pas de préjugés.*

Chercheuse : *C’est-à-dire ?*

Ibrahim : *Ben j’veais dire, si quelqu’un euh... si y a une euh... je veux dire, les gens s’ils la regardent, forcément qu’ils se, qu’ils doivent se dire euh... Voilà c’est pas commun qu’il y a des femmes par exemple au help desk ou quoi, qu’elle est jolie, on voudra la... ils voudront la... la questionner, lui poser plein de questions...*

Pierre : *oui, c’est ça.*

Ibrahim : *essayer de la draguer un peu... et tout. La retarder dans son travail et tout.*

(Group interview 1, 29 March 2016)

[Quote 49]

David : ((Rire)) *Mais euh, souvent j’ai remarqué y a certains chefs qui aiment bien euh, certaines collègues féminines. Et euh, j’ pense que c’est un peu plus facile de demander quelque chose à un chef lorsqu’on est une femme, que lorsque, qu’on est*

²⁵⁰ See point 6.2.3. in Chapter 6.

un homme. Sauf si on est vraiment bien vu par le chef, j' pense que la femme aura un peu plus facile à avoir c' qu'elle a:::

Chercheuse : *Le chef est un homme ?*

David : *Oui, c'est ça ouais. Fin non ! J' parle pas du mien bein ! Mais j' parle de manière générale bein. ((Rires du groupe)) J' parle de manière générale. La femme a un peu plus, de facilité à avoir c' qu'elle veut je pense. Tandis que l'homme euh, ff ((souffle)) y a qu'à d'mander mais c'est pas sûr que ce, ça s'ra accepté bein.*

Chercheuse : *D'accord. Et pourquoi vous pensez que c'est comme ça ?*

David : *Ben, j' sais pas. Elle utilise un p'tit peu, j' sais pas, ses charmes euh:::, pour euh...*

(Group interview 5, 26 August 2016)

In quotes 48 and 49, the two workers employ the inversion of the subject responsible for the action, taking the responsibility away from men. In quote 44, the IT workers were discussing why there are fewer women doing technical tasks in informatics and some of them said it was due to prejudices. At that moment, Ibrahim claims that *'Le physique de la femme aussi ça fait quelque chose bein euh...'*. In other words, women's physical appearance has also something to do in it. When I ask him what he means, he develops his argument. He says that 'people' will necessarily look at her because it is not common to see a woman working at the Help Desk and if she is beautiful they will necessarily want to ask her questions (*'Ben j'avais dire, si quelqu'un euh... si y a une euh... je veux dire, les gens s'ils la regardent, forcément qu'ils se, qu'ils doivent se dire euh... Voilà c'est pas commun qu'il y a des femmes par exemple au help desk ou quoi, qu'elle est jolie, on voudra la... ils voudront la... la questionner, lui poser plein de questions...'*). Note that he talks about 'people' in general, but if it is not common to see 'a woman' in the Help Desk it means that people who look at her are men. He is talking about men's gaze. If men look at her it is because she is beautiful and it is not common to see a beautiful girl working there. Therefore it is unavoidable; women's physical appearance has this effect on men. Pierre agrees with Ibrahim. Then the latter adds *'essayer de la draguer un peu... et tout. La retarder dans son travail et tout'*. With this inversion, Ibrahim normalises the fact that men want to 'conquer' beautiful girls at work, even keeping them from working properly.

In quote 49, David responds to my question regarding whether women and men are treated equally at work. He claims that women receive a more favourable treatment than men on behalf of the bosses. He explains that some bosses like some female colleagues (*'Mais euh,*

souvent j'ai remarqué y a certains chefs qui aiment bien euh, certaines collègues féminines) and it is easier for a woman to get what she wants at work than for a man (*Et euh, j' pense que c'est un peu plus facile de demander que'que chose à un chef lorsqu'on est une femme, que lorsque, qu'on est un homme. Sauf si on est vraiment bien vu par le chef, j' pense que la femme aura un peu plus facile à avoir c' qu'elle a:::').* When I ask if he is talking about a male boss, he answers affirmatively but clarifies he is not referring to *his* boss; he describes a general situation (*Oui, c'est ça ouais. Fin non ! J' parle pas du mien hein ! Mais j' parle de manière générale hein. ((Rires du groupe)) J' parle de manière générale*). According to David, it is easier for 'the woman' to get what she wants, whereas the man can ask but it is not sure his request will be accepted (*La femme a un peu plus, de facilité à avoir c' qu'elle veut je pense. Tandis que l'homme euh, ff ((souffle)) y a qu'à d'mander mais c'est pas sûr que ce, ça s'ra accepté hein*). Note the emphasis he puts on the word '*femme*', used in the singular form as if women and men were homogenous categories, and how he sets a contrast between a woman's request and a man's request. This contrast is underlined by a deep sigh after *tandis que l'homme euh, ff*, expressing with intensity how difficult it is for men to get a request accepted. When I ask him why this is so, he answers *Ben, j' sais pas. Elle utilise un p'tit peu, j' sais pas, ses charmes euh:::, pour euh...'* Although he initially doubts, he finally says 'the woman' uses her charms (implying: 'to get what she wants'). Therefore, it is not the male bosses' fault, but women's responsibility because they use their sexual power to get their requests accepted. The responsibility of the action is placed on women. In this way, male colleagues are depicted as victims of unfair treatment at work and potential cases of sexual harassment towards women on the part of the bosses are ruled out.

The inversion of responsibility is employed also to vindicate the need to separate women and men in some circumstances, particularly police searches. In the following quote, Antonio explains why:

[Quote 50]

Moi j'aime bien donner des exemples hein mais, imaginons... je suis un homme et je suis en intervention et je dois arrêter une prostituée, j' dois faire sa fouille. Beh... voilà. J- j' rentre dans l' cliché évidemment mais, la prostituée qu'est-c' qu'elle va faire si j' dois la mettre nue pour une fouille judiciaire... voilà. Elles vont sûrement p't-être essayer d'en profiter, elles vont essayer d' me séduire ou::: voilà, et vice versa si c''t un homme ou u... vis-à-vis d'une femme. Donc déjà déontologiquement parlant y a que'que chose qui va pas, fin pour moi, qui n' va pas. Parce que::: y a

toujours entre guillemets cette >tentation< de ou euh::: cett- Des deux côtés on va dire hein, qu' ce s:::- Si c'est un collègue un peu bête, il va s' laisser tenter on va dire, ou alors il va accepter certaines faveurs, et la f- et:::, de l'autre côté la:::, l'autr' personne va essayer d'influencer le jug- le jugement du collègue et:::, donc euh... ou de la collègue. Donc j' pense que c'est déjà p-, rien qu' pour ça à la base qu'y a une euh... une voie d' séparation à c' niveau-là, au °niveau des sexes°.

(Antonio, group interview 5, 26 August 2016)

In quote 50, Antonio gives an example illustrating why women and men should be separated for the searches –a woman must be searched by a woman and a man by a man. He gives the example of a police man who has to detain a prostitute and do the search to her (*'Moi j'aime bien donner des exemples hein mais, imaginons... je suis un homme et je suis en intervention et je dois arrêter une prostituée, j' dois faire sa fouille'*). He then explains what *she* would do if he has to put her naked for the search: *they* (prostitutes) will try to take advantage of it and will try to seduce him (*'la prostituée qu'est-c' qu'elle va faire si j' dois la mettre nue pour une fouille judiciaire... voilà. Elles vont sûrement p't-être essayer d'en profiter, elles vont essayer d' me séduire ou::: voilà'*). He argues that it is a deontological problem because there will always be that 'temptation' (*'Donc déjà déontologiquement parlant y a que'que chose qui va pas, fin pour moi, qui n' va pas. Parce que::: y a toujours entre guillemets cette >tentation< de ou euh::: cett-'*). Therefore there is always the risk that the police man, if he is a little bit 'silly', will 'succumb to the temptation' and accept certain favors on the part of the prostitute who will try to influence him (*'Si c'est un collègue un peu bête, il va s' laisser tenter on va dire, ou alors il va accepter certaines faveurs et la f- et:::, de l'autre côté la:::, l'autr' personne va essayer d'influencer le jug- le jugement du collègue'*).

Note that the responsibility of the actions is put on the prostitutes; they are the ones trying to take advantage of the situation, the ones seducing the 'silly' policeman who finally succumbs to temptation. The notion of temptation denotes a stimulus that induces the desire of something. In this case, women are the ones inducing the sexual desire of the policeman. Drawing on the example of a prostitute is not accidental giving that they are sex workers. Succumbing here means for the policeman to have some kind of sex with the woman. Nothing is said about the power imbalance present in the described situation and the (probably higher) possibility for the prostitutes or any other women detained to be sexually assaulted by a policeman. The responsibility is reversed. Thus, men and women have to be separated to prevent

policemen from being deceived by women (*'Donc j' pense que c'est déjà p-, rien qu' pour ça à la base qu'y a une euh... une voie d' séparation à c' niveau-là, au °niveau des sexes°*).

Note also that in spite of the fact that all the examples draw on the assumed 'women's sexual power', Antonio adds the hackneyed phrases *'et vice versa si c't un homme ou u-... vis-à-vis d'une femme'*, *'Des deux côtés on va dire hein'*, *':::, donc euh... ou de la collègue'*. By adding these phrases, he avoids describing men as the only people being potentially deceived as it can also happen to female colleagues. In any case, heterosexuality is taken as the norm. Otherwise, a police man could also be 'tempted' by a man who is arrested and a police woman by a woman.

7.3.5. Use of disclaimers: 'Fear of the different'

This disclaimer²⁵¹ is used many times to justify a certain type of gazes and/or comments towards women or trans* and homosexual people at work. Instead of describing these practices as problematic, the workers belittle and normalise them. According to the workers, the gazes and/or gossip are due to the fact that the concerned individual attracts the attention and/or their appearance 'shock' people. These practices are ultimately defined as 'just human'. For instance, sexual stares at women in the IT service are justified as follows:

[Quote 51]

Jean : *Mais tu sais que... par exemple pour les femmes dans le côté technique, allez c'est aussi parce que le regard des autres est différent. Par exemple si on prend le cas de... on a eu hein déjà des techniciennes... femmes. On en a une, etc. Euh ben... par exemple le... fin elle subissait, elle subissait le regard des hommes quand elle faisait le même travail que tout le monde. Je prends l'exemple tout bête, elle était vraiment technicienne. Mais donc elle va en-dessous d'un bureau pour réparer un ordinateur et ben on sait très bien que les autres la regardaient et... fin elle savait qu'il y avait ce regard. À tel point qu'à un moment donné elle se disait « beh ok maintenant je vais me mettre un tablier blanc pour aller sortir, pour aller faire les interventions » euh... ce qui n'a aucun sens quoi...*

Pierre : *Parce que c'est pas commun de voir ça, c'est tout.*

François : *C'est vrai que dans l'imaginaire... j' pense que c'est un métier de... C'est comme si, c'est comme si toi maintenant tu étais... t'allais travailler dans une crèche. Tu vois ? Ça serait, ça serait aussi interpellant.*

²⁵¹ See subsection 7.1.5. for a definition of 'disclaimer'.

(Group interview 1, 29 March 2016)

In quote 51, Jean is advancing a possible reason why there are least women in technical positions within their IT department and he recognises that women who accomplish technical tasks (not the ones who are at the office) are 'looked at differently' (*'pour les femmes dans le côté technique, allez c'est aussi parce que le regard des autres est différent'*). In fact, he is implying that they are subject to the sexualised gaze of men while they are working (*'Eh ben... par exemple le... fin elle subissait, elle subissait le regard des hommes quand elle faisait le même travail que tout le monde'*). Jean gives the example of a woman technician who goes under a table to repair a computer and knows men are staring at her and decides to wear an apron to do her work (*'Mais donc elle va en-dessous d'un bureau pour réparer un ordinateur et ben on sait très bien que les autres la regardaient et... fin elle savait qu'il y avait ce regard. À tel point qu'à un moment donné elle se disait « beh ok maintenant je vais me mettre un tablier blanc pour aller sortir, pour aller faire les interventions »*). The allusion to the apron implies that she has to cover herself (her body) to do her job. According to Jean the situation does not make any sense, he describes it as somehow something unfair. However, Pierre claims that men stare at her only because it is not common to see 'that' –implying 'a woman doing that job' (*'Parce que c'est pas commun de voir ça, c'est tout'*). François supports that claim by making a parallelism between that situation and a man working at a childcare facility (*'C'est comme si, c'est comme si toi maintenant tu étais... t'allais travailler dans une crèche. Tu vois ? Ça serait, ça serait aussi interpellant'*). According to François, it would be as shocking as a woman doing technical IT tasks. Therefore, if both situations are comparable, it is not a sexist practice. And especially they cannot be held responsible for anything because it is just normal to look at what is not common.

This type of disclaimer is also employed to justify the stares at 'men dressed as women'. As the following quote illustrates, these stares are excused on the ground that it is not common:

[Quote 52]

Charlotte : *Mais même en dehors euh, si, si moi j' croise un mec déguisé en femme dans la rue, j' vais quand même être un peu euh... fin, ça, ça va m'interpeller quoi. C'est pas habituel.*

Valérie : *Alors imagine un enfant !*

Charlotte : *Ben l'enfant justement, ben, ça va p't-être plus lui poser de problème. Parce que il va:::, il va s' dire « oh, bob ». J' j' sais pas.*

Valérie : *Ben, ça s'ra tout d' même un p'tit peu::: ↑« Ah, tiens Maman c'est étonnant : c'est un garçon, il a mis une jupe »↑.*

(Group interview 2, 4 May 2016)

In the interaction before quote 52, the workers of the childcare facility were explaining why the individual of the photograph 4 would not be hired to work in their organisation. They said that it is because of the children: they would ask too many questions. This brings Charlotte to claim that also in the street if she passes by 'a man disguised as a woman', that would attract her attention because 'it is not common' (*'Mais même en dehors euh, si, si moi j' croise un mec déguisé en femme dans la rue, j' vais quand même être un peu euh... fin, ça, ça va m'interpeller quoi. C'est pas habituel'*). Note that in this utterance she openly uses the verb 'to disguise'. Valérie then adds that it would be even worse for children, implying that they would be even more surprised than adults. When Charlotte concedes that maybe children would be less shocked, Valérie asserts again that they would be surprised by imitating the voice of a child who speaks about it to their mum (↑« *Ah, tiens Maman c'est étonnant : c'est un garçon, il a mis une jupe* »↑). Therefore, even a child would notice it. In this interaction, the comments about the person are described as a normal reaction, whereas the fact that 'a man wears a skirt' is defined as problematic.

The use of this type of disclaimer is also used to justify workers' reactions to people who are 'visibly trans*'. According to this disclaimer, the problem is not the fact that someone is trans*, but the fact that the trans* experience is visible. For instance, when there is a doubt about whether an individual is actually a man or a woman (quote 53) or when someone is transitioning (quote 54):

[Quote 53]

Ben moi je pense que si c'était juste une question de papier chez nous euh::: Ffff ((souffle)) Je sais même pas si on l'aurait remarqué. Hein ? Fin, c'est parce qu'on fait les entretiens d'embauche donc j' sais même pas si on aurait r'marqué qu' c'était une fille sauf, après, une fois que la personne apporte ses papiers peut-être, où là on aurait dit « tiens » euh voilà, ça nous aurait sans doute interpellés mais, si on avait été dans l' processus, nous connaissant, je pense que on aurait euh voilà, embauché la personne ((inspiration)) Maintenant, quelqu'un où on voit, où y a vraiment un doute comme ça, je pense que euh voilà, ça amène euh::: comme... pour

plein de choses voilà euh différentes, ça nous renvoie à quelque chose d'un peu euh... qui fait peur en fait. Pa'ce que la différence j' pense euh fait peur, de la même manière que euh::: ben si on embauche euh::: j' sais pas moi quelqu'un euh... Fin moi, j' prends ça comme exemple, après j' veux choquer personne, mais quelqu'un qui aurait le visage tout brûlé ben, j' pense que ça nous f'rait aussi euh voilà, que-
 (Marie, group interview 3, 10 May 2016)

[Quote 54]

Chr : *Alors je m' t-, j' me trompe alors. Ce s'rait pas::: transgenre vu qu' c'est plus vestimentaire, ce s'rait plus transsexuel. Dans, dans la transformation, peut-être. Voilà. Ce qui, ce qui serait visible, à l'œil nu.*

Chercheuse : *Mm mm.*

(2)

Chr : *Ouais franchement, ouais. T' imagine en plein Cureghem un:::, un un collègue euh transsexuel, ou une femme ou un homme qui est en transformation euh, euh non. C- D'office i' va y avoir des, des ennuis, c- c'est évident. C'est évident.*

Chercheuse : *« En transformation » vous voulez dire euh::: ?*

Chr : *En, en changement physique, oui ou en prise d'hormones, je sais pas moi, c'est ☺ pas mon truc ☺.*

(Group interview 5, 26 August 2016)

In quote 53, Marie is talking about the individual in the first photograph. She is responding to the hypothesis that the mention of sex in the civil status of this person is an F (for female). She explains that if it was 'only a matter of papers', they would probably not even notice during the interviews that the 'individual is a girl', not until they see the identity documents (*je pense que si c'était juste une question de papier chez nous euh::: Ffff ((souffle)) Je sais même pas si on l'aurait remarqué. Hein ? Fin, c'est parce qu'on fait les entretiens d'embauche donc j' sais même pas si on aurait r'marqué qu' c'était une fille sauf, après, une fois que la personne apporte ses papiers peut-être*). Note that Marie defines the individual in photograph 1 as a girl because that is what the identity document says²⁵², in spite of the physical appearance. But she clarifies that they would not notice the individual 'is a girl'. In other words, the individual is not 'visibly trans*'; therefore that individual would probably be hired. However, she establishes a distinction between the individual in photograph 1 and someone who would be visible as trans*, for whom they 'could have a doubt' (*Maintenant, quelqu'un où on*

²⁵² When the interview took place, the *Loi relative à la transsexualité* was still in place and, as it was described in Chapter 3, it was not possible for trans* people to modify the legal mention of sex without modifying the genitalia.

voit, où y a vraiment un doute comme ça'). In that second case, it would be difficult to hire the individual because 'difference scares people' (*ça amène euh::: comme... pour plein de choses voilà euh différentes, ça nous renvoie à quelque chose d'un peu euh... qui fait peur en fait*). Marie compares the difference that trans* people embody with other kinds of 'shocking' visible difference. She gives the particular example of hiring someone whose face is completely burned (*Pa'ce que la différence j' pense euh fait peur, de la même manière que euh::: ben si on embauche euh::: j' sais pas moi quelqu'un euh... Fin moi, j' prends ça comme exemple, après j' veux choquer personne, mais quelqu'un qui aurait le visage tout brûlé ben, j' pense que ça nous f'rait aussi euh voilà, que-*). With this analogy she stipulates that people are scared of differences in general. This allows her to defeat in advance doubts about being prejudiced against trans* people.

In quote 54, Stéphanie is saying that it would be a problem to have a transgender person with the police uniform because it would shock people, especially the population. Then she clarifies that 'transgender' is not the right term because she means people who modify their body, not only the clothes. She uses then the term 'transsexuel' to designate the physical 'transformation' (*Alors je m' t-, j' me trompe alors. Ce s'rait pas::: transgenre vu qu' c'est plus vestimentaire, ce s'rait plus transsexuel. Dans, dans la transformation, peut-être*) and she clarifies that she is referring to the 'transformation' that is 'visible to the naked eye' (*Voilà. Ce qui, ce qui serait visible, à l'œil nu*). In other words, she is not speaking about the type of physical transformation that cannot be seen (such as genital surgery maybe). In fact, when I then ask her what she means with *'une femme ou un homme qui est en transformation'*, she specifies that she talks about people who are changing physically, taking hormones (*En, en changement physique, oui ou en prise d'hormones*).

According to Stéphanie, the individual who is 'visibly in transition' could shock the population and that is the reason why it would be problematic to have a transsexual colleague in the police. She gives the example of a transsexual colleague patrolling in *Cureghem*, a neighbourhood of the municipality of Anderlecht (Brussels). She claims it is clear the transsexual colleague would have problems with the population if she or he is visible as a transsexual (*T' imagine en plein Cureghem un:::, un un collègue euh transsexuel, ou une femme ou un homme qui est en transformation euh, euh non. C- D'office i' va y avoir des, des ennuis, c- c'est*

évident. C'est évident). Through this disclaimer, the workers set the problem in the bodies that do not fall into the normative binarism, showing acceptance of trans* people as long as they are not 'visibly trans*'. Moreover, the choice of that neighbourhood and no other is not accidental. It draws on the knowledge shared with the different speakers about the characteristics of the different neighbourhoods in which this team works²⁵³. *Cureghem* is a working-class neighbourhood with high rates of non-Europeans migrants. As I describe below, the distinction between the 'egalitarian us' vs. the 'prejudiced them' is also a quite common disclaimer employed by the workers.

7.4. Variability and effects

The variability of discursive practices described in this chapter constructs the worker subject and relationships at work in three different ways. The first construction depicts workers as subjects devoid of sex/gender and sexuality and relationships between them as egalitarian. The second construction establishes the type of sex/gender differences that are considered natural and even profitable at work and certain differences in treatment are normalised. The third construction defines the type of sex/gender differences that are not acceptable at work and justifies their exclusion. From the perspective of mainstream social psychology, this would be interpreted as a lack of coherence on the part of the workers. However, common sense has a dilemmatic nature (Billig et al., 1988) and, as Potter & Wetherell (1987a) state, the variability found in people's discourse is explained by the fact that people carry out actions when they express themselves. Thus the different discursive practices have specific functions or effects. It is in this sense that attitudes are not a coherent and homogenous entity. In this section, I describe the effects of the different discursive practices accomplished by the workers during the interviews.

The workers use epicene nouns such as '*une personne*' when they describe workers' skills and the way workers are treated in the workplace. This discursive device is employed to make emphasis on the fact that

²⁵³ She could have chosen a neighbourhood such as 'Parvis de St. Gilles', a middle-class neighbourhood with Belgian and European migrants.

people's sex/gender is irrelevant in the work sphere. This use defines workers as human beings, not as women or men. If the worker subject is just a human being, then there are no differences between workers. Thus all workers necessarily receive equal treatment and can carry out any type of task. This device is employed to claim there is equal treatment between women and men, but also to argue that the trans* experience of a worker is unimportant. The workers interviewed assert that they do not work with any trans* person, therefore they could not affirm that trans* people are treated equally at work. However, they assure that a trans* individual would be treated as any other worker in their respective organisations. If the worker subject is neither a woman nor a man, then the transition of a worker between categories has no importance.

The use of epicene nouns is accompanied by the use of the expression '*je m'en fous*' and its variations, expressing indifference towards the fact that a colleague is trans* and/or homosexual. In line with the use of epicene nouns, this expression denotes the little importance that sex/gender and sexuality have in the sphere of work. It is so unimportant that the workers assure they do not care. Moreover, the notion of individual freedom is often implied in this expression. In this sense, the workers do not mind if a colleague is trans* and/or homosexual because everybody 'can do what they want'. However, this indifference is stated only when they speak about trans* and/or homosexual people. The expression is never employed to express indifference towards the fact that a colleague is cisgender and/or heterosexual. In fact, it is taken for granted that everybody is cisgender and heterosexual. The indifference is thus framed as tolerance towards deviations from the norm.

Giving that the sex/gender and sexuality of the worker subject are irrelevant at work, the workers brought the attention towards the notion of '*compétences*'. The skills are described by the workers as the key element determining whether a worker can be hired and do a job. On the one hand, skills are depicted as not essentially feminine or masculine. Thus women are not particularly good at doing some things and men are not particularly good at doing some other things. Differences in skills and capacities are described as *individual* differences, not as differences between women and men. The workers use this notion to argue that anybody can do any type of job.

On the other hand, differences between women and men are sometimes recognised but described as a consequence of differential education. In other words, women and men have different skills but this is due to a social or cultural construction; they are not *natural* different skills. However, the social construction argument draws on the ‘coatrack view of self-identity’ (Nicholson, 1994). In this view, the natural existence of two biological categories upon which personality and roles are constructed is not called into question. In fact, although the workers describe feminine and masculine skills as a social construction, they also establish different *predispositions* for women and men (note that Patricia avoids describing men as ‘feminine’, and Quentin speaks about an initial character that is later encouraged or repressed by society). This allows them to defend that both women and men can be good at any type of job, while at the same time maintaining the idea that women and men are different kinds of people.

The notion of skills is also employed to state that people in their organisations are hired exclusively on the basis of their skills. Therefore the only thing that matters for an individual to be hired is to have the necessary skills to the job. This argument is employed by the workers on different occasions to accomplish different actions. A first action is to warn against the possible misuses of quotas. The notion of skills is employed in this sense to support the idea that sex/gender is irrelevant at work. If sex/gender has no importance, then people should not be hired on the basis of their sex/gender category, but on the basis of their skills. A negative consequence implicitly denounced here is that people might be hired only because they are women. Another action is to defend the idea that a trans* or homosexual person could be hired if they have the required skills. The notion of skills here is put forward as the only determining element.

It is also important to note how the notion of skills is juxtaposed with the fact that a worker is trans* and/or homosexual. The interviewed workers claim that an individual can be a very good worker if he or she has the required skills and this *in spite of the fact* that the individual is trans* and/or homosexual. Again, this use is never employed to advocate that a cisgender and/or heterosexual person can be a good worker (e.g. ‘the important thing is that he has the skills, in spite of the fact that he is heterosexual’).

Whereas the two aforementioned actions conceal the obstacles and discriminatory practices that women, trans* and homosexual people often face to be hired, a third action employs the same notion to challenge sexist practices. This is the case of women working in the police. Stéphanie employs the notion that women and men have the same skills to vindicate that women in the police are promoted thank to their own merits. In other words, she does not employ this notion to ignore discrimination at work, but to challenge the widespread idea that policewomen are promoted because they receive special treatment. The different uses of the notion of skills illustrate very well how variability in the expression of attitudes accomplishes actions that have different functions or effects.

The workers also draw on the private/public dichotomy to argue for the separation between workers' private or personal life and their public life at work. According to this dichotomy, sex/gender identity and expression, and sexuality belong to the private sphere of workers. This contributes to construct workers as devoid of sex/gender and sexuality and to emphasise the irrelevance of these issues in the workplace. However, although all types of sex/gender and sexualities are described as belonging to the private sphere, it is especially trans* identities and homosexuality that are described as something private. They are issues that can be 'discovered' by other colleagues at work and some personal aspects that the concerned individual should decide to openly share at work or not.

In this sense, an analogy with heterosexuality ('discovering that a colleague is heterosexual') is never made by the workers to stress the distinction between the private sphere and the public one. Likewise, there is no analogy with the fact of 'discovering that a colleague is cisgender'. This implicitly constructs cis identities and heterosexuality at work as the norm: workers are cisgender and heterosexual unless it is stated otherwise. Moreover, if trans* identities and homosexuality are something private, their expression at work can be problematic if it is 'too visible'. Thus the private/public dichotomy allows the workers to present themselves as open-minded and tolerant towards trans* and homosexual people, while at the same time defining the boundaries of what is acceptable at work. In other words, trans* and homosexual

workers can do whatever they want in their private life, but they have to be ‘discrete’ at work.

The last discursive practice employed to construct ‘gender and sexuality indifference’ at work is the notion of respect. This notion is used in this sense to show adherence to liberal values such as individual freedom and equality. The second use that I discuss below constructs what I called the ‘problematic difference’ through the vindication of the respect of certain norms at work.

Respect for individual freedom is expressed within the argumentative context of work relations with trans* people. The notion is used by the workers to claim that they would respect both the ‘chosen’ gender identity of a trans* colleague and their decision to come out at work. The workers assert that they would treat the individual as she or he wants to be treated (either as a woman or as a man). However, this notion is used to set a contrast between what the individual *chooses to be*—which would be the object of respect on the part of the workers—and what the individual ‘actually is’. In other words, the use of the notion of ‘respect’ allows the workers to present themselves as open-minded and respectful of liberal values, whereas at the same time defining being a woman or a man as a biological fact through the distinction of notions.

The notion of respect is also employed to establish the coming out of a trans* person at work as an individual choice. The workers define trans* identities as a private issue, as something that can be revealed or not. Through the notion of ‘respect’, they frame the question of ‘coming out’ as something that is irrelevant at work. If people can choose whether to say at work or not that they are trans*, then being trans* at work does not matter. However, cisgender identities are never described in this way. The workers never say that someone can choose to come out as cisgender (or as heterosexual). If this is so it is because cisgender identities (and heterosexuality) are again assumed to be the norm. If everybody is assumed to be cisgender, then cisgender identities are a public issue, not a private one, which reproduces cisheteronormativity (and heteronormativity) at work.

Whereas in the previous uses the notion of respect is employed to present themselves as egalitarian while at the same time reinforcing cisheteronormativity and heteronormativity, the same notion is also used to

challenge sexism. This is again the case of women in the police. The notion of respect is used in this sense to ask for equal treatment. Women in the police reported that sometimes citizens do not talk to them because they are *police women*, which is described as a lack of respect towards human beings. In this sense they ask for respect regardless of the fact that they are women or men.

Generally speaking, the construction of gender and sexuality indifference expresses liberal principles such as equality and freedom that seem in contradiction with exclusion and discrimination. The equality principle is particularly relevant in this context. However, we should not look at the expression of egalitarian notions here as hypocrisy or as a strategy to manage the impressions we make on others. In fact, it is rather a *self*-justification since being prejudiced has become a social taboo (Billig, 1991). Liberal principles are indeed so rooted that they have become common sense (Wetherell & Potter, 1992). However they are not the only element present. In this sense, Billig et al. (1988) propose the notion of ideological dilemmas to denote the way in which common sense is organised through contrary themes. It is thus essential to reveal how the articulation of those dilemmas or contrary themes seems to maintain cisgenderist, sexist and heteronormative practices at work.

The equality principle seems to be understood through the notions of meritocracy and neutrality. On the one hand, everybody is deemed able to develop any kind of skill and to perform well at work. Therefore, if someone is excluded from work it is because they do not have the adequate skills or they do not work well. On the other hand, the idea that 'we are all equal' at work equates equality with neutrality. By presenting equality as neutrality, masculine, cisgender and heteronormative norms that prevail at work are masked. These discursive practices are specially employed by men in situations in which they can be suspected or accused of discrimination against women. It is also used by all the interviewed workers to defend themselves from potential accusations of prejudice against trans* and homosexual people. The equality principle is exceptionally used by some women to challenge sexist ideas.

The identification of the variability of the abovementioned practices shows how they overall reproduce norms about sex/gender and sexuality. Specifically, the variability was identified in relation to absences: these practices are often employed to talk *only* about trans* and

homosexual people at work, being cis and heterosexual people absent. This implicitly constructs cis and heterosexual people as the norm. Norms become even more evident when we analyse what type of differences are valued and which are repressed.

In contrast with the construction of 'gender and sexuality indifference', the second set of practices construct what I denominated 'positive diversity'. Positive diversity refers to differences that are attributed to women and men only. These differences are not only naturalised, but also very much appreciated and presented as something positive for the organisation. The naturalisation of differences between women and men is carried out through the rhetoric of the natural sciences. This is particularly the case of caring skills, traditionally attributed to women, and physical skills such as being good at sports and being strong, traditionally attributed to men. These different skills are depicted as something inherent to the different nature of women and men through the natural science rhetoric (e.g., the use of terms such as 'instinct') and by treating those differences as a mere fact (e.g. it is 'just a fact' that men are stronger than women). Sometimes differences between women and men are not presented as *natural*, but are nonetheless *naturalised*. The socio-cultural argument is employed in this way. Although gender differences may be presented as a product of society, they are still described as useful: we need to know whether people are women or men in order to orientate our behaviour towards them. Therefore, although differences are depicted as social construction, they are also legitimised.

The naturalisation of differences between women and men is employed by the workers to explain why there are few men in female-dominated professions such as the childcare facility and few women in male-dominated professions such as the police intervention team, profession described by the workers as strength-centred. If differences between women and men are natural, then it is just *normal* that there are fewer men changing baby's diapers than women and fewer women using their strength in the police. Thus, the naturalisation of differences allows the workers to explain the current 'imbalance' in their professions without necessarily pointing at it as a problem. In turn, it also constructs skills as 'feminine' or 'masculine', thereby reinforcing the binary opposition.

The notions of *'équilibre'* and *'complémentarité'* are also used to construct the 'positive diversity' at work. Drawing on the idea of natural/ised differences between women and men, a balance in the number of women and men at work is presented as something positive. If women and men have different skills, then they can complement each other because they make different contributions to the organisation.

This discursive device was especially used to underline the importance of hiring *men* in female-dominated professions. Workers in female-dominated professions such as the childcare facility and the regional employment agency made a special emphasis on the valuable skills that men contribute with in their organisations. This was, for instance, the case of the only man working at the childcare facility. However, a similar description of women's potential contribution was not observed in the male-dominated professions. Male workers in the IT team and the police did not stress the positive things that women could bring to their organisations. Only *policewomen* did claim the different but positive role that women can play in the police. The importance of gender balance and complementarity was diminished by IT workers, who argued that passion and motivation at work were more important than that. As women are described as overall less interested in computers than men, the gender imbalance is justified and normalised.

The contrast between women's attitude towards men working in female-dominated professions and men's attitudes towards women in male-dominated professions is quite sharp. This phenomenon is described in the literature as the 'glass escalator' (Simpson, 2004; Williams, 1992). It describes the fact that men in traditionally female professions are more valued by their colleagues than women in traditionally masculine professions are. This is related to issues such as social value and prestige. Historically professions carried out by men have been seen as more important and prestigious than professions carried out by women. In fact, some studies show that when women become the majority in a profession's workforce, the working conditions and salary of that profession worsen (Ferguson, 2013).

The stress that workers place on differences between women and men in the construction of 'positive diversity' at work clashes with the construction of 'gender indifference' presented above. Whereas the first set of discursive practices depicts the worker subject as devoid of

sex/gender, the second set of practices describes this same subject as gendered. Whereas the former describes skills as individual, the latter describes them as women's or men's skills. The construction of 'positive diversity' lies on another important principle: the principle of diversity. This principle seems in contradiction to the idea that the worker subject is a neutral subject. If all workers are alike—that is, if there are no differences between them—then gender diversity within work organisations is a non-sense. However, the construction of gender indifference and the construction of positive diversity have different functions.

The first construction is used by the workers to state that they do not discriminate (they treat everybody equally, regardless of sex/gender and sexuality), thus expressing adherence to the equality principle. The second construction is employed by the workers to explain why in some professions there are more women than men or more men than women. It is also used to support the recruitment of men in female-dominated professions. These actions could not be carried out if the worker subject was depicted as devoid of sex/gender. It is important to note that the use of the natural/ised differences between women and men reproduces the construction of women and men like different kinds of people; however it is also sometimes employed by women to claim a place in male-dominated professions. Taking into account that women's 'inherent differences' are usually employed to justify their exclusion from certain professions, some women use that same argument to value 'feminine skills' and the way they can differently contribute to work.

It is nonetheless striking that the need for gender balance was never framed by the workers as a social justice issue, but only as a productive matter. Balance is thus important because women and men have different skills that complement each other and such complementarity can be very beneficial at work. But it is never framed as a way to fight the obstacles that women encounter to be hired or the concentration of women in less-valued and thus less-paid professions such as care-related jobs (childcare, nurses, NGOs, teachers). As Abu-Laban & Gabriel (2008, p. 168-169) state, the notion of 'employment equity' has been substituted for 'managing diversity'. In this sense, the notion of *diversity* has become a keyword in the human resources policies of many organisations. However, the main focus of these policies is not social

justice, but how diversity ‘sells’. Diversity is currently used to attain different markets and clients. The biased use of this notion is evident when we analyse the types of differences that are presented as valuable or profitable and the ones that are not. In other words, not all the types of differences are useful to ‘sell diversity’. In fact, the workers never described the differences that ‘visible’ trans* and homosexual people embody as positive diversity. These differences are rather described as problematic at work.

The third set of practices constructs what I called the ‘problematic difference’. As opposed to ‘gender and sexuality indifference’ and ‘positive diversity’, these practices not only establish sex/gender and sexuality differences among workers, but they also define them as not acceptable within the sphere of work. These differences are mainly related to overt expressions of gender embodiment that are not considered normative. In other words, these differences concern ways of expressing femininity and masculinity that are not accepted. These comprise ways of dressing, including the type of accessories and make-up, ways of moving and posing, a general body attitude and physical modifications to ‘feminise’ or ‘masculinise’ the body.

The first discursive practice constructing the ‘problematic difference’ is the second use of the notion of respect. As opposed to the first use in which respect for individual freedom and equality was expressed, here the notion is employed to claim for respect of certain norms at work. These norms are described as neutral norms applying to everybody. To reinforce this idea the workers make some analogies—for instance with someone who wears piercings, tattoos or hairstyles that do not match the ‘company’s standards’—to depict those norms as *not* related to sex/gender. However, the same type of clothes or hairstyle are acceptable for a woman and not acceptable for a man. Therefore, these work norms *are* gendered. This is the case of the individual in photograph 4. This person is always described as ‘a man dressed as a woman’ and sometimes also as ‘homosexual’. The gender embodiment of this person is described by the workers as not acceptable at work. However, the workers never explain that norms stipulating how women and men should dress and move are a social construction; the socio-cultural argument is never employed in this situation. They do not acknowledge either that they may be prejudiced against this type of

gender expression. Rather they frame the situation as a lack of respect for certain norms or rules at work; or even as a lack of ethics.

A non-normative gender expression seems to be particularly problematic in the case of people who are read as men. Their expression of femininity is problematised. However, women's expression of masculinity seems to be more accepted. The individual in photograph 5, who is depicted by the workers as a masculine woman, is described as someone who could be hired in their organisations. Her gender expression, although defined as masculine, is not a problem. Masculinity seems to be the norm in the sense that it is taken to be a universal way of gender expression (both women and men can dress in a masculine way—for instance, they both can wear trousers and a shirt); whereas femininity is marked as specific, being allowed only to women. In other words, if masculinity is the norm, a feminine man represents a violation of the norm. Even a 'too feminine' woman would be so in certain contexts²⁵⁴.

Although the gender expression of the person in photograph 5 is generally accepted, she is often described as a lesbian. In the same vein, the individual in photograph 4 is often described as gay. However, in the photograph, there is no information about these two people's sexual interests or practices. This is indicative of the way sex/gender and sexuality mutually construct each other. In fact, the definition of 'woman' not only entails a certain type of body (vulva, vagina, breasts) and a certain type of gender expression ('feminine'), but also a sexual attraction towards men; and the 'opposite' for men.

The problematisation of this type of gender expression at work is in contradiction with the practices that construct the worker subject as devoid of sex/gender and sexuality, and with the expression of respect for individual freedom. However, the workers reconcile both by expressing respect for people's differences *as long as* those differences are not particularly visible at work. In other words, a homosexual man would be hired as long as his homosexuality is not 'too visible', that is, as long as he is not 'too feminine' and does not 'act as a homosexual' at work. 'Trans*' people could be hired as long as they pass as 'cisgender'.

²⁵⁴ It is interesting how women have to embody 'masculinity' in order to be taken seriously. For instance, women politicians.

The second type of practice constructing the ‘problematic difference’ is humour and jokes. As I explained in section 7.3., this discursive device allows the workers to communicate ideas without explicitly telling them. This is particularly the case of the expression of sexuality at work. Humour and jokes are especially useful in this sense since sexuality is something that is supposed to belong to the private sphere. Therefore, it would be questionable to make overtly sexual comments between co-workers. However, humour and jokes allow the workers to express this kind of comments in a subtle way that seems acceptable at work. In fact, most of the jokes that workers make have sexual connotations. Or rather, *heterosexual* connotations. The workers never openly said something like ‘I am heterosexual’ but this was not necessary because it was implicit in their jokes. It is also important to clarify that I am referring to the discursive practices of workers during the interviews in front of their colleagues; this does not mean that the workers actually only have heterosexual practices outside work. However, it is a fact that all of them implicitly presented themselves as heterosexual during the interviews. It is in this sense that I am interested in the discursive practices that construct heterosexuality as the normative sexuality within the context of work.

In the construction of ‘gender and sexuality irrelevance’ I showed how the workers describe sexuality as something that belongs to the private sphere. The public/private dichotomy was employed especially when they talk about homosexual colleagues. The workers used this distinction to claim that the fact that a colleague is homosexual is irrelevant at work and that homosexual colleagues could decide whether to speak about their homosexuality or not. Yet, heterosexual colleagues seem not to be confronted with such a decision; they make heterosexual allusions all the time in the form of jokes. In fact, heterosexual workers do not have anything ‘to reveal’ because heterosexuality is the norm. In this case, the jokes have a clear sexual connotation; but heterosexuality is not limited to sexuality. It is also a common practice to tell your colleagues that the day before you went somewhere with your boyfriend or your girlfriend, for instance. Heterosexual people may not tell sexual details at work (hence the use of jokes to make allusions), but they generally talk about their private lives and what they do with their partners. However, they do not see it this way because to be in a heterosexual relationship is the norm and they may not feel they are

revealing anything that cannot be revealed. Through the use of humour and jokes the workers not only present themselves as heterosexual, but they also convey the notion that all their colleagues are heterosexual.

Heterosexual remarks are often intertwined with cisgender assumptions and transphobic comments within jokes. For instance, women's claim that the individual in photograph 1 is trans* because it cannot be true that a man is that handsome. This implies that trans* men are not real men. This contrasts with the idea that people are the sex/gender category that they 'decide' to be. Moreover all the workers are assumed to be cisgender; otherwise jokes concerning the transition of a (male) colleague would not be funny. It would be interpreted as a gaffe.

It is also remarking that jokes are always made concerning the transition of a male colleague to become a woman. On the one hand, as I explained before, the feminisation of a man seems to be a strong violation of the norm, since masculinity is assumed to be a neutral way of expression whereas femininity is marked as particular. This type of transition is implicitly defined as ridiculous and funny by the workers. On the other, jokes about the transition of a male colleague are accompanied with remarks about flirting with the woman the colleague would become. Once again heterosexual comments are implicitly made within the context of work. As it was the case for homosexuality, the trans* identity or experience of a colleague is depicted as a 'secret to be revealed'. However, cis identities and experiences are never described in those terms, nor are they object of jokes. These jokes and the use of humour have the effect of establishing heterosexuality and cis* identities as the norm at work in a way that does not appear as prejudiced because it is not openly stated.

The third type of practice constructing the 'problematic difference' is the argument of 'the avoidance of misunderstandings'. The workers use this device to argue that trans* women should say that they are trans* in order to 'avoid misunderstandings'. This argument draws on the appearance-reality distinction to define trans* women as 'actually men'. Thus, the misunderstanding is assumed to take place when someone who is 'apparently a woman' enters spaces where only women are usually allowed and/or when male colleagues try to flirt with her at work. If she is described as 'actually a man', then a man is supposed to be entering women's spaces and male colleagues are actually flirting with a man.

Therefore, the ‘avoidance of misunderstandings’ problematises homosexuality while at the same time defines women and men according to their anatomy at birth. This is in contradiction with the workers’ affirmation that they would respect trans* people’s identity.

If those situations are defined as problematic it is because of the assumption that heterosexuality governs them. In fact, the ‘avoidance of misunderstandings’ is also employed by the police workers to explain why in certain spaces such as changing rooms and showers women and men are segregated. The explanation draws on heteronormativity. Men are assumed to be uncontrollably attracted to women and vice versa. It is for this reason that they should be separated, given that the work sphere is supposed to be devoid of sexuality. However, this explanation does not take into account the fact that women can be also lesbian and men can be also gay.

The separation of spaces for women and men in practices such as police searches is also explained by the fact that men can sexually harass women. However, this explanation is quite marginal. The police workers rather focused on the fact that men could be unfairly accused of harassment by women. This brings us to the third type of practices constructing the ‘problematic difference’: the inversion of the subject responsible for the action. This discursive device is employed to justify men’s sexual gaze and behaviour towards women. According to this, women are directly or indirectly responsible for the ‘male gaze’²⁵⁵, either because they use their charms or because their body unavoidably attracts the attention of men. This explains why men want to ‘flirt with women at work’ and why women receive a ‘special treatment’ in the form of ‘privileges’, for instance when a boss likes a female colleague and treats her ‘better than he treats men’. This device draws on assumed heterosexuality and on ‘natural’ feminine characteristics. It allows men to present themselves as victims, avoiding the definition of this type of situations as sexual harassment and abuse of power or authority. The ‘avoidance of misunderstandings’ and the ‘inversion of the subject responsible for the action’ are only employed by the workers in group

²⁵⁵ Notion coined in feminist theory and visual arts to describe the act of depicting women and the world from a masculine and heterosexual perspective presenting women as sexual objects (see Mulvey, 1975).

interviews 1 and 5, which correspond to the masculinised professions (IT department and police intervention team).

The last type of discursive practices constructing the 'problematic difference' at work is the use of disclaimers. Two types of disclaimers are used by the workers to ward off any possible attribution of discriminatory or prejudiced practices. The first one relies on the idea that some kind of differences, such as the fact of being a woman in a male-dominated profession or being trans* and/or homosexual, are 'uncommon'. According to the workers, those atypical differences necessarily lead to stares and gossips about the individuals who embody them, but there is no wrong or bad intention on these actions. It is 'just human'. On some occasions negative reactions towards uncommon differences are explained through the idea of 'the fear of difference', thus legitimising those reactions. Once again the fact that someone is 'visibly trans*' or 'visibly homosexual' is problematised given that if it was not visible then the atypical difference would not exist. Someone is 'visibly trans*' when they are in the process of physical transition (for instance, taking hormones) and/or when they do not clearly identify as a woman or man. This disclaimer allows the workers to justify certain inappropriate behaviours at work while at the same time reproducing masculine, cisgender and heterosexual practices at work without appearing as sexist, transphobic or homophobic.

The second type of disclaimer relies on the distinction between me/us (the speaker/s) and them (other people) as well as the notion of progress. According to this notion, the past is always worse than the present and the future is always better. This is especially the case of people's way of thinking: in the past, there were more prejudices (against women, homosexual people and trans* people) than nowadays. Therefore, people who are prejudiced belong to the past, they are primitive and close-minded. The workers argue that atypical differences can be a problem at work not because the workers are prejudiced but because other people (clients, population, children, other professionals) are. Therefore, the exclusion of visible trans* and homosexual people from the workplace is justified by blaming others who are not as open-minded as the interviewed workers.

The construction of the 'problematic difference' is mainly related to the inclusion of women in male-dominated professions, as well as the

presence of trans* and homosexual workers in any of the examined professions. The ‘problem’ of women, trans* and homosexual people in male-dominated workplaces is intimately related to heteronormativity and, particularly, men’s interest in women. Sexual harassment against women and the exclusion of trans* people draw on heteronormativity, although the responsibility of the action is hardly ever put on men. It is rather women and trans* women (depicted as ‘actually men’) who deceive men. The visibility of trans* people is not accepted but it is justified as a normal reaction of fear or as the problem of other prejudiced people. In a similar vein, the visibility of homosexual workers actually relies on a type of gender embodiment (physical appearance and/or gestures) that is defined by the workers as unacceptable at work.

The construction of the ‘problematic difference’ seems at odds with the construction of ‘gender and sexuality indifference’ and the construction of ‘positive diversity’. However, workers’ expressed attitudes are not necessarily contradictory. As I described throughout this chapter, the variability of discursive practices carried out by the workers have different functions or effects. Whereas they express adherence to socially valued principles such as individual freedom, equality and work ethics, they also set the boundary between the ways of doing gender that are acceptable at work or not. This is also explained by the fact that values and principles are usually abstract, as Perelman & Olbrechts-Tyteca (1970) argue. Therefore, most of the people agree with them in abstract terms. But those values and principles have to become concrete when they need to be applied to specific situations. It is thus in those specific situations that values become subject of debate. This is exactly what happens during the interviews. When the workers expressed their views on the relationship between women and men at work and the potential inclusion of trans* and homosexual workers, they all agree with important values such as equal treatment, equal opportunities and skills, and freedom. It is when they describe or explain specific situations that they construct some differences as positive and natural (differences between women and men) and other as problematic (femininity in male-dominated spaces and the violation of binary, cisgender and heterosexual norms at work). However, the workers hardly ever recognised that they could be prejudiced. The range of discursive practices described in this chapter allowed them to present themselves as tolerant and open-

minded, while at the same time reproducing sexism, cisnormativity and heteronormativity in the workplace.

Conclusion

How do workers' definitions of sex/gender categories interact with their definition of the worker subject and what are the implications in terms of inclusion or exclusion in the workplace? The analysis of workers' discursive practices presented in this chapter allowed us to identify three types of definition of the worker subject. The first type is a worker subject devoid of sex/gender and sexuality. The second type is a worker subject that exists in two forms—as a woman or as a man—each of them having different skills and roles. The third type is a heterosexual and masculine worker subject. The first definition is used by all workers to present themselves as tolerant and egalitarian, adhering to principles of equality and respect. Alternatively, it is used by women in 'male jobs' to claim their right to work there. The second type is employed to legitimate the distribution of tasks and functions between women and men (presented as positive complementarity), while at the same time valuing men's contributions to 'female jobs' (the opposite is hardly mentioned). The third type is used by all workers to justify the exclusion of trans* and homosexual people from the workplace as well as the different treatment and harassment towards women at work.

Addendum

Becoming aware of the binary opposition: Questioning one's own practices

In this additional and shorter chapter, I present the moments in which the workers become aware of the norm that establishes that humankind is divided into two mutually exclusive categories—women and men—as a result of the conversational interaction. The binary opposition between women and men had been object of workers' uninteresting reflexivity until the interview took place. It became visible during the interviews in relation to the need to classify people as either 'woman' or 'man', the definition of 'man' and 'woman' (including the need for trans* people to undergo genital surgery) and their own definition of the worker subject. The realisation of this norm in the course of the interviews is marked by exclamations of surprise and/or a self-reflection questions indicating that the norm had not been apparent to them until then.

Workers' questioning of the need to classify people as either woman or man is illustrated in the following excerpts. In quote 1, Ginette is referring to my question about the classification of the person in photograph 3, whereas in quote 2 Claire is alluding to the story previously said by Quentin in which he finds out that the person working at the place where they eat was a girl²⁵⁶:

[Quote 1]

Ginette : Mais qu'est-ce qui nous met mal à l'aise par rapport à... quand on voit une personne et qu'on n' sait pas, qu'on n' sait pas déterminer à son apparence si c'est une femme ou un homme, qu'est-ce qui... qu'est-ce qui... Bon, parce qu'on est déjà tous arrivés devant cette situation, qu'est-ce qui nous met mal à l'aise par rapport à ça ?

²⁵⁶ See quote 5 in Chapter 6.

François : *C'est, c'est... c'est géné... Si, si vraiment on va vraiment dans le loin, on est des animaux, on est génétique, c'est le code de la séduction euh...*

Ginette : *Tout à fait.*

François : *T'es un homme, t'es une femme... on peut se r'produire, vas-y c'est, yoplaboum on y va quoi. En gros c'est ça, hein... Si, si on réfléchit au sens le plus basique du, du terme, c'est ça hein ? C'est... « vas-y, j' peux ? je peux ? je peux ?... ah non, tu peux pas ». ((rit))*

Ginette : *C'est exactement ça. Moi je suis persuadée que... qu'il a raison.*

(Group interview 1, 29 March 2016)

[Quote 2]

Euh, j' trouve ça marrant parce que ça montre à quel point on a besoin de savoir le genre de la personne euh:: Et si on sait pas on::... fin voilà. Alors que en soi on ☺ s'en fout d' savoir si ☺ si euh cette personne est une fille ou, un homme. Fin je trouve que c'est un exemple assez parlant qui montre que, qui, que voilà, c'est en tout cas une question qui est là et::

(Claire, group interview 3, 10 May 2016)

In quote 1, Ginette wonders why we feel uncomfortable when we cannot 'determine' whether someone is a woman or man (*Mais qu'est-ce qui nous met mal à l'aise par rapport à... quand on voit une personne et qu'on n' sait pas, qu'on n' sait pas déterminer à son apparence si c'est une femme ou un homme*). Note that she uses the expression '*déterminer à son apparence*', implying that the source of discomfort relates to not being able to know what the person really is—a woman or a man—behind their appearance. She is not questioning that people are either woman or man. Still, her astonishment is marked by the self-reflection question whose beginning is repeated several times (*qu'est-ce qui... qu'est-ce qui...*). She repeats the question again after affirming that everybody has been in that situation (*Bon, parce qu'on est déjà tous arrivés devant cette situation, qu'est-ce qui nous met mal à l'aise par rapport à ça ?*), thereby implying that it is a question unfrequently asked while it is not infrequent to meet someone who cannot easily be classified as a woman or a man.

The conversation, however, turns quickly towards the natural sciences argument already described²⁵⁷. François answers the question of Ginette by affirming that the explanation is to be found in the natural laws of reproduction: we need to know if someone is a woman or a man in order to reproduce. He draws on the rhetoric of the natural sciences to explain

²⁵⁷ See Chapter 6, point 6.2.3.

it by comparing humans to animals (*‘on est des animaux, on est génétique, c’est le code de la séduction euh...’*). As if his argument was not sufficiently clear, he adds a staging of the situation. The utterance *‘T’es un homme, t’es une femme... on peut se r’produire, vas-y c’est, yoplaboum ! On y va quoi’* describes an encounter between a man and a woman who can reproduce precisely because they know they are a man and a woman. The onomatopoeia *‘yoplaboum !’* refers to the sexual encounter. He reiterates the same idea by stating that it is a very basic explanation and dramatizes it again. The utterance *‘C’est... « vas-y, j’ peux ? je peux ? je peux ?... ah non, tu peux pas ».* ((rit))’ depicts a scene in which a man²⁵⁸ wonders whether he can reproduce with the people he encounters. He can reproduce when he encounters a woman (*‘j’ peux ? je peux ? je peux ?’*), whereas he cannot when he encounters a man (*‘... ah non, tu peux pas’*). Ginette agrees with this explanation. The potential questioning of binary opposition norm is thus stopped and the idea of ‘natural binary categories’ is finally re-established.

In quote 2, Claire is surprised because the story Quentin told made her realise the extent to which we need to know someone’s gender *‘alors que en soi on ☺ s’en fout d’ savoir si ☺ si euh cette personne est une fille ou, un homme’*. In this utterance, she sees a contradiction between the aforementioned idea that gender is irrelevant (and thus we should not treat people differently because of it) and the urge to know whether someone is a woman or man. That contrast surprises her (note the expression *‘j’ trouve ça marrant’*) and makes her wonder why then it is so important to know someone’s gender (*‘Fin je trouve que c’est un exemple assez parlant qui montre que, qui, que voilà, c’est en tout cas une question qui est là et:::’*). It can be said thus that the conversational interaction led her to question the norm –‘it is normal to know whether someone is a woman or a man’. Although, she does not question that people are actually woman or man either, the other workers did not argue that it was natural to know.

The definition of ‘man’ and ‘woman’ is questioned in the following excerpts. In quote 3, Quentin is answering to my question *‘Est-ce qu’on peut être euh un homme avec un vagin ?’*, whereas in quote 4 Isaac is

²⁵⁸ I assume that the subject of the action François is depicting is a man because he is using the first person singular personal pronoun *‘je’* as if he was the subject (although it is clearly just an example).

responding to my question 'Mais est-ce qu'on pourrait changer de::: homme à femme par exemple, sans se faire opérer?'. In both cases, the question aroused as a result of what had been said before by the workers.

[Quote 3]

Moi j' trouve la question un peu étrange. Parce que euh::: Qu'est-ce qu'être un homme quoi ! J' veux dire aujourd'hui euh::: fin, c'est c'est un peu euh, je trouve que c'est difficile d'y répondre euh, pas tellement, on peut argumenter sur c' qu'on voit ou pas mais, j' veux dire, être un homme aujourd'hui c'est quoi, c'est faire preuve de::: comportements masculins ? C'est-, être un homme souvent c'est assumer les choses euh:::, avoir de l'honneur, etc- Y a plein d' choses qui sont liées à être un homme, qui sont pas juste réductrices à la dimension sexuelle, et donc euh j' trouve ça bizarre d'essayer de catégoriser la personne juste sur base de ses attributs sexuels. Euh, aujourd'hui on demande aux hommes aussi de faire preuve euh voilà de, d'attention::: euh, de tendresse et tout ça, des choses qui sont plutôt connotées au féminin euh::: régulièrement. [...] euh::: voilà, et donc euh tout ça questionne la dimension de « qu'est c' qu'être un homme ». Et donc moi je, je saurais pas répondre à votr' question tout simplement.

(Quentin, group interview 3, 10 May 2016)

[Quote 4]

Moi je me, moi j' me pose une question euh c'est que, ici il y a énormément le, la pression de la société, de l'environnement, donc n:::os semblables. Maintenant si on pouvait permettre à ces gens-là, euh de garder son sexe tout en pouvant modifier::: un aspect physique, ou même caractère fin, j' prends la photo, c'était la numéro 3, c'était le garçon qui était très efféminé, ben de garder toutes ses caractéristiques, même sa- entre guillemets son sexe - et qu'y ait pas vraiment cette pression. Ça se s'rait intéressant d' voir : est-ce qu' y aurait ce besoin de, de, de changer d' sexe a- Parce que j'ai l'impression que la pression d' la société avec la moralité et les règles qui régissaient- C'est, peut-être même la société qui n'accepte pas finalement, mais lui dans son entièreté i' s'accepterait peut-être complètement comme il est, et il aurait aucun problème avec ça. C'est p't-ê- Donc l'environnement, et donc c'est justement c' que tu disais Gabrielathan, c'est une adaptation à l'environnement.

(Isaac, group interview 4, 11 May 2016)

In quote 3, Quentin is surprised by the question 'Est-ce qu'on peut être euh un homme avec un vagin?' because the question implies that there is such a thing as a robust and univocal definition of 'man'²⁵⁹. The surprise is expressed by the expression 'Moi j' trouve la question un peu étrange. Parce que euh::: Qu'est-ce qu'être un homme quoi !'. He argues it is difficult to answer

²⁵⁹ It is however interesting that the workers never questioned themselves about the 'definition of trans* people'.

that question in our time: a simple answer could draw on the physical appearance (*on peut argumenter sur c' qu'on voit ou pas*) but nowadays the definition of man cannot be reduced to that. He gives different examples of things that may be associated to 'being a man' such as *'faire preuve de::: comportements masculins'*, *'assumer les choses'* and *'avoir de l'honneur'* to support the idea that the definition of man cannot be reduced to sexual characteristics (*'Y a plein d' choses qui sont liées à être un homme, qui sont pas juste réductrices à la dimension sexuelle, et donc euh j' trouve ça bizarre d'essayer de catégoriser la personne juste sur base de ses attributs sexuels'*). Note that he is not stating that 'being a man' means showing masculine behaviour, taking responsibility of things and being honoured because these characteristics appear in a rhetorical question. He is thus questioning that those characteristics actually define men: men are more than that. He reinforces this argument by adding that characteristics traditionally associated with femininity, such as tenderness, can also apply to men: *'aujourd'hui on demande aux hommes aussi de faire preuve euh voilà de, d'attention::: euh, de tendresse et tout ça, des choses qui sont plutôt connotées au féminin euh::: régulièrement'*. In other words, a robust definition of 'man' is impossible to make because men are many different things that cannot be reduced to a type of genitalia or certain specific behaviours. He challenges the idea of a possible answer to the question and thus concludes he simply cannot answer my question (*'donc euh tout ça questionne la dimension de « qu'est c' qu'être un homme ». Et donc moi je, je saurais pas répondre à votr' question tout simplement'*).

In quote 4, Isaac confirm there is a lot of pressure from society and peers and wonders what would happen if society allowed trans* people to modify their physical appearance and personality without undergoing genital surgery (*'Moi je me, moi j' me pose une question euh c'est que, ici il y a énormément le, la pression de la société, de l'environnement, donc n:::os semblables. Maintenant si on pouvait permettre à ces gens-là, euh de garder son sexe tout en pouvant modifier::: un aspect physique, ou même caractère'*). Note that he introduces his reflection by stating that he has a question and by using the conditional tense, thereby 'disrupting' uninteresting reflexivity on this matter and setting an alternative to the norm (*'maintenant si on pouvait permettre à ces gens-là, euh de garder son sexe'*). Here the expression *'garder son sexe'* refers to genitalia and not to the category woman or man because he sets a contrast between not modifying the sex and modifying the physical appearance and personality. He draws back to the person in photograph

3—that he describes as ‘*le garçon qui était très efféminé*’—to illustrate what he means: what would happen if society did not put pressure on him and just left him stay the way he is (implying ‘feminine’) while keeping his genitalia (*‘ben de garder toutes ses caractéristiques, même sa- entre guillemets son sexe - et qu’y ait pas vraiment cette pression’*). He then wonders whether the individual would still feel the urge to undergo genital surgery (*‘Ça se s’rait intéressant d’ voir : est-ce qu’ y aurait ce besoin de, de, de changer d’ sexe’*). His reasoning arrives to the conclusion that the pressure of society, through morality and rules, leads trans* people to undergo surgery and, without it, trans* people might just accept themselves the way they are (*‘Parce que j’ai l’impression que la pression d’ la société avec la moralité et les règles qui régissaient- C’est, peut-être même la société qui n’accepte pas finalement, mais lui dans son entièreté i’ s’accepterait peut-être complètement comme il est, et il aurait aucun problème avec ça’*). The other workers supported his conclusions.

Finally, workers question their definition of the worker subject and their own practices in the workplace. In the three quotes below, the workers reflect about the way they expressed themselves concerning the inclusion of trans* people at work:

[Quote 5]

Ginette : *Maintenant, moi j’aimerais savoir... (3) ... Demain on a un collègue donc, qui... un collègue qu’on connaît depuis toujours, et qui euh... qui entame un processus de changement de genre. Euh...*

Pierre : *Pourquoi pas ?*

François : *Ah, ça f’ra bizarre...*

Pierre : *ça fera bizarre...*

François : *On va, on va être surpris, on va être surpris c’est clair et net. Faudra un p’tit temps.*

Ginette : *... et, face à lui, comment, comment on...*

Ibrahim : *Tu veux dire quoi, c’est quoi, qu’on verrait tout son processus de changement, c’est ça ?*

Ginette : *Oui...*

Pierre : *Fatalement, on va poser des questions. Comment ça se passe euh, pourquoi...*

(Group interview 1, 29 March 2016)

[Quote 6]

Gabriel : *J’ voudrais juste réagir au fait que, chaque fois on prend des:::, des corps de métier, etc. où c’est toléré, tolérable.*

Catherine : *Oui, c’est vrai.*

Gabriel : *Mais ça voudrait dire qu'on a déjà nous-mêmes nos propres a priori sur des corps de métier où c'est intolérable. J' suis en train d' penser par exemple à tous les métiers pédagogiques : est-ce que – je, je mets des, j'ouvre des guillemets – est-ce que vous voudriez que le professeur de votre enfant en bas-âge soit une personne comme ça ? J'ai pas d'enfant hein, donc là je, je m', pose pas la question non plus, mais j' pense qu'il faut s' poser sa ques- la question à soi-même en s' disant : « mais quelle sera ma réponse ? », déjà premièrement, et deuxièmement, euh, enfin j' crois qu' y a des cas, y a vraiment des cas où y a des personnes sont dans l'enseignement et qui sont dans des situations pareilles, euh est-ce que c'est, faut-il plus les tolérer ou moins les tolérer en fonction d' leur corps de métier ? C'-, c'est la question qu' j' me pose.*

(Group interview 4, 11 May 2016)

[Quote 7]

Ben on choisit des gens, qui nous r'ssemblent ou qui, avec lesquels on sent une euh, une affi-, une affinité, une complexité possible dans l' cadre du travail. Et où avec des gens qui sont plus distants, y aura plus de travail à faire euh... sur soi, etc, et on est p't-être pas prêt à l' faire euh non plus quoi. [...] En tout cas ça nous questionne aussi euh, sur co- comment on juge etc. [...] Pour... une association qui euh, qui est quand même issue de, d'un esprit euh::: d'interculturalité etc. euh les questions soulevées ici euh, ° nous interrogent en tout cas°.

(Sébastien, group interview 3, 10 May 2016)

In quote 5, Ginette wonders how they would behave if a colleague 'they have always known' suddenly starts a gender transition (*'Maintenant, moi j'aimerais savoir... (3) ... Demain on a un collègue donc, qui... un collègue qu'on connaît depuis toujours, et qui euh... qui entame un processus de changement de genre. Euh...'*, *'... et, face à lui, comment, comment on...'*). Note that she also uses the expression *'maintenant moi j'aimerais savoir...'* to hypothesize about an alternative to the norm. She formulates this rhetorical question to transpose the abstract discussion about the inclusion of trans* people at work to the concreteness of the inclusion of trans* people in *their* workplace. François and Pierre claim it would be strange and recognise they would be surprised (*François : Ah, ça f'ra bizarre...// Pierre : ça fera bizarre...// François : On va, on va être surpris, on va être surpris c'est clair et net. Faudra un p'tit temps*). At the end, Pierre admits that they would ask questions to the colleague concerning how and why it happens (*'Fatalement, on va poser des questions. Comment ça se passe euh, pourquoi...'*). The use of the adverb *'fatalement'* implies inevitability but also conveys a sense of regret of something that should not be made. Ginette question launches a self-questioning of their own practices at work –how they

would treat a trans* colleague. However, the conversation soon turned towards jokes concerning the idea of a ‘male colleague becoming a woman’²⁶⁰.

In quote 6, Gabriel is talking about the group’s reactions concerning the person in photograph 4. They had previously said that that person could be easily hired to work in a hairdressing salon or in the artistic world. He suddenly realises that when they define the kinds of profession in which that person could be ‘tolerated’ or ‘tolerable’, they are implicitly stating themselves in which professions it would be ‘intolerable’ to hire that individual (*Gabriel : J’ voudrais juste réagir au fait que, chaque fois on prend des:::, des corps de métier, etc. où c’est toléré, tolérable. // Catherine : Oui, c’est vrai. // Gabriel : Mais ça voudrait dire qu’on a déjà nous-mêmes nos propres a priori sur des corps de métier où c’est intolérable*). Catherine, who had not realised it until then, agrees with him. Gabriel continues his questioning by using the example of educational professions. On the one hand, he asks the group if they would like that ‘someone like that’ (implying the person in photograph 4) was the teacher of their children (*est-ce que – je, je mets des, j’ouvre des guillemets – est-ce que vous voudriez que le professeur de votre enfant en bas-âge soit une personne comme ça ?*, *J’ai pas d’enfant [...] « mais quelle sera ma réponse ? »*). Through the use of these rhetorical questions, Gabriel is actually making the point that they would probably not accept it themselves, thereby acknowledging his/their own prejudices. On the other hand, he argues that there really are people like that in the educational sector and asks again, rhetorically, if these people should be more or less ‘tolerated’ depending on the profession (*y a vraiment des cas où y a des personnes sont dans l’enseignement et qui sont dans des situations pareilles, euh est-ce que c’est, faut-il plus les tolérer ou moins les tolérer en fonction d’ leur corps de métier ? C’-, c’est la question qu’ j’ me pose*). This questioning is particularly relevant if we take into account that this interview was conducted with employees of the regional employment agency who help workers find a job.

In quote 7, Sébastien is alluding to the group claim that it would be problematic to work with a (visibly) trans* person. He admits that they choose people who are ‘similar them’—implying non-trans* but also with no other differences—to work with them in the association (*Ben on choisit*

²⁶⁰ See Chapter 7, point 7.3.2.

des gens, qui nous r'ssemblent ou qui, avec lesquels on sent une euh, une affi-, une affinité, une complexité possible dans l' cadre du travail'). However, he recognises that working with people who are different requires a work on oneself that they are not always willing to do (*'avec des gens qui sont plus distants, y aura plus de travail à faire euh... sur soi, etc, et on est p't-être pas prêt à l' faire euh non plus quoi'*). He recognises it questions the way they judge people in general terms, thereby acknowledging that they may be prejudiced. This insight is particularly important if we take into consideration that the association in which they work has people's social inclusion as a mission and, as he explains himself, it was founded upon an intercultural spirit (*'En tout cas ça nous questionne aussi euh, sur co- comment on juge etc. Pour... une association qui euh, qui est quand même issue de, d'un esprit euh::: d'interculturalité etc. euh les questions soulevées ici euh, °nous interrogeant en tout cas°'*).

The moments described above show how the social interaction taking place during the interviews led workers to realise some norms. The norm that divide humankind into two natural and mutually exclusive groups was so taken for granted that the workers had not noted them until then. It was the breaching of the norm which enabled the norm to become 'visible'. These norms concerned the need to classify people as either 'woman' or 'man', the normative definition of sex/gender categories (including the need for trans* people to undergo genital surgery) and the normative definition of the worker subject.

The breaching of norms was allowed by the interaction between the participants (including myself): contradictions between different positions in the argumentation became apparent. For instance, the contradiction between the alleged irrelevance of gender and the need to know someone's gender. The breaching of norms was also fostered by the use of questions by both the workers and myself. Drawing on Billig (1991), the 'human capacity for critical thinking [...] is based on the faculty for negation' (1991, p. 47). In other words, we can always negate what is taken for granted, thereby opening an alternative space. In this sense, when we ask a question about a specific issue, we are implicitly suggesting that what we take for granted might actually be otherwise. Therefore, when I ask the workers, for instance, if a man can have a vagina, I am implicitly saying that it might not be necessary to have a penis to be a man.

The breaching of the norm, however, do not always lead the workers to argue in favour of a modification of it. This is particularly the case in the group interview 1 (informatics) during which the questioning of the norm is followed by arguments favouring its reproduction. For instance, when Ginette wonders why we feel the need to know someone's gender, the group finally agrees that it is a matter of natural reproduction, thereby constituting binary sex/gender categories as two natural entities. On the second occasion, they admit they would ask many questions to a colleague who transitions, as implying it is something they should not do. However, immediately afterwards, they make sexually-connotated jokes about an hypothetical (male) colleague's transition.

In groups 3 (health promotion association) and 4 (regional employment agency) the questioning of the norm leads to a stance open to a modification of the norm. This is the case for the normative definition of 'woman' and 'man'—particularly the idea that the definitions is limited to genitalia and fixed personality and/or behaviour—and the definition of the worker subject. The workers realised the distinction they made between the 'acceptable' and the 'unacceptable' difference in the workplace (e.g. in relation to the professions towards which they orient trans* people and the type of people they usually hired). This reflections made them realise their own definition of the binary opposition between women and men and acknowledge its effects regarding the exclusion of some people from the work sphere. I do not think it is a coincidence that this questioning is stronger in groups 3 and 4 than in the other groups taken into account that their mission is to promote social equality. Moreover, they also use less often arguments that naturalise differences between women and men in terms of skills and roles.

Finally, I would like to underline the power of asking questions to encourage critical thinking by presenting some reflections of the participants. At the end of each interview, I asked the workers about their opinions on the interview, leading to a meta-reflexion on the process. Laura (quote 8 below) asserted that she has been reflecting a lot since the beginning of the interview, reason why she did not speak a lot. She also claims that it was difficult to find the words to express herself. The observation of 'not finding the words' to express themselves was often made in the course of the interviews. In fact, stuttering, making

pauses, extending a sound and other signs of doubting abounded in workers speech, specially when we were discussing trans* issues. Indeed, they could not find words to describe the norm because it was just taken for granted and, thus, there was no need to describe it or explain it. Marie (quote 9 below) also claims that the interview made her reflect, leading her to see things in a different way and to realise that they are 'bourré d' préjugés'. She affirms that from now on, if they are confronted with that situation in the future (implying, a decision about hiring a visibly trans* person), they will ask themselves questions differently. They would take the time to reflect and question themselves—also concerning other type of differences:

[Quote 8]

Ben moi je:::, je réfléchis à tellement d' choses depuis l' début, du coup je:::, j' commence à avoir du mal à::: réfléchir ((rire)). ☺ C'est pour ça que je ne parle pas beaucoup ! ☺ J' suis un peu euh... [...] J'arrive plus à rassembler mes mots.

(Laura, group interview 2, 4 May 2016)

[Quote 9]

Mais euh::: moi j' trouve que ça... Fin moi ça m'fait réfléchir et j' pense que::: ça amène quand même à voir... (1) les choses autrement et à s' dire qu'on est... bourré d' ☺ préjugés ☺ et... ((rire)) J' crois qu'on verra plus les ch- fin::: j'ai l'impression, qu'on va plus voir les choses d' la, d' la même façon. Si on avait, si on était confronté à ça j' pense que::: on s'poserait les questions différemment. En tout cas on se poserait euh, on prendrait le temps de réfléchir et d' se questionner. Et, sur ça mais, du coup, sur d'autres types de différences aussi euh...

(Marie, group interview 3, 10 May 2016)

In conclusion, these moments show how social interaction can open up alternatives that question norms that are usually taken for granted, thereby helping to promote social change.

CONCLUSIONS AND DISCUSSION

On critical thinking and social change: Collective responsibility and the embracement of contradictions

The present context is characterised by greater visibility of trans* people in the public and cultural scene, increased positive attitude towards them and a tendency towards the depathologisation of their identities. However, the binary opposition that divides humankind into two mutually exclusive categories—women and men—is still very much present nowadays and gender is still a principle that organises society upon a binary and hierarchical relationship. Drawing on these premises, I argued that the transgression of the binary opposition between women and men is redefined nowadays so that trans* people are less pathologised but the binary opposition is nonetheless maintained²⁶¹. Using discursive psychology (DP) as theoretical and methodological framework²⁶², throughout this thesis I show how the transgression of sex/gender norms is defined nowadays in two contexts—the legal certification of sex in Belgium and the definition of the (gendered) worker subject—and the effects of this definition. The **general conclusion** of the thesis is that trans* people are still depicted as ‘abnormal’ in spite of the absence of pathological discourses—trans* people are not described as ‘mentally ill’ anymore—and the binary opposition between women and men is maintained.

In this last section of the thesis, I first present the main conclusions of each empirical chapter, thereby underlining how I respond to the specific research objectives. Afterwards, I discuss the results in light of how they help us understand transphobia and discrimination against trans* people, as well as the gendered organisation of society. I also

²⁶¹ See Chapter 1.

²⁶² See Chapter 3.

define the scope of the results. Following these steps, I discuss the theoretical and methodological implications of the thesis in relation to the research process in general and the way sex/gender is understood and studied in particular. I conclude with some political considerations about what we can do to promote a more just and equitable society.

In spite of recent legislative changes on the way sex is certified for trans* people in Belgium, the binary opposition between women and men has been preserved. This is evident because the mandatory attribution of a binary sex marker—the ‘F’ and an uneven national registration number or the ‘M’ and an even national registration number—remains the only possible option. Via the identification of discursive practices and their variability within and between the *Loi relative à la transsexualité* and the *Loi transgenre* in **Chapter 4** I show how the binary opposition has been maintained in the two Acts in spite of the removal of almost all medical and psychiatric conditions (specific obj. 1).

In the *Loi relative à la transsexualité* the binary opposition between women and men was built upon the mind-body distinction and the medical rhetoric. In this distinction, the incompatibility between the identity of the individual and the category assigned to her or him at birth is solved by the separation between the mind and the body. The body had to ‘match’ the mind to solve the incompatibility established by the distinction of notions. Thus, the body—particularly, the assumed sexual dimorphism—was the element used to define the legal sex of the individual. ‘Transsexualism’—the term employed in this Act—was defined as a mental disorder (‘gender dysphoria’ or ‘gender identity disorder’) that could be ‘treated’ via body modifications, especially genital surgery. Hence, the Act attributed a crucial role to medical professionals, who had the authority to determine transsexual people’s ‘true’ identity and the type of body modifications to be performed. Sterilisation was just assumed as ‘normal’ given that the binary opposition between women and men was defined upon sexual dimorphism and that the required genital surgery certainly led to sterilisation.

The reversal of the mind-body distinction—that privileges the identity over the body—was a minority discursive device in 2007 employed only by one trans* collective to ask for the elimination of mandatory surgery. Over time, this reversal has been increasingly used in the human rights landscape, leading to growing international opposition to the medical

rhetoric and the authority attributed to medical professionals to determine trans* people's identity. The focus on identity has thus led to a strong anti-pathological stance in which trans* people claim their right to be heard and to take their own decisions under the right of self-determination.

The reversal of the mind-body distinction of notions dominates parliamentary debates concerning the *Loi transgenre* in 2017, in force since the 1 January 2018. Now the criterion to certify the modification of the legal mention of sex for 'transgender people'—the new term adopted in this Act—is the identity. In accordance with this, the new Act allegedly assumes self-determination as the principle guiding the new procedure in accordance with international and European human rights law. On this basis, the Act eliminates (nearly) all medical conditions established by the previous Act, thereby removing the role attributed to medical professionals (except for the child psychiatrist). However, it establishes several measures to prevent transgender people from taking 'rash decisions' and thus 'making a mistake'. In spite of the open anti-pathological claim expressed by the legislators, the notion of '*changements irréfléchis*' and the measures proposed to avoid them still carry the idea that the transgression of the permanent binary opposition between women and men is an exceptional 'psychological state' and that trans* people's capacity of discernment cannot be fully trusted. Thus, their decisions have to be monitored. The gatekeeper role initially attributed to transgender associations was eliminated as a consequence of the criticism raised by trans* and human rights activists, but the other measures—the obligation to make a second declaration after a three-month reflection period and the irrevocability of the procedure—remained²⁶³. For transgender minors older than 16 years old, the child psychiatrist still has to certify that they have the capacity of discernment to understand their identity²⁶⁴.

²⁶³ Exceptionally, a second modification is allowed through a judicial procedure in the Family Court. The second modification must be justified on substantial grounds. The legislators give as example of 'substantial grounds' the fact that the trans* person realises that the change 'was a serious mistake' and regrets it or that she or he experiences serious transphobia since the modification took place. Again, it is important to note that the modification only implies an administrative change. However, it seems that legislators refer to 'greater' changes such as body modifications.

²⁶⁴ Under 16 years old, the modification of the legal mention of sex is not allowed.

Therefore, for trans* people, the binary opposition between the sex markers 'F' and 'M' in identity documents is not defined anymore in terms of sexual dimorphism (two different bodies), but in terms of 'identity dimorphism' (two different identities). The breaching of the binary opposition between women and men is not depicted by Belgian legislation anymore as a mental disorder, but as a particular psychological state that still needs to be supervised and controlled. The previous medical control has been substituted by State control in the form of two declarations, a reflection period between them and the irrevocability of the procedure, plus a psychiatric certificate for minors between 16 and 18 years old.

The shift from doctors' authority to state authority is particularly evident when we look at the content of the declarations delivered by the psychiatrist and surgeon established in the *Loi relative à la transsexualité* and the content of the second declaration delivered by the concerned transgender individual established in the *Loi transgenre* (table 22). The second declaration follows a first signed declaration in which the concerned individual states that '*depuis un certain temps déjà, il a la conviction que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement et qu'il souhaite les conséquences administratives et juridiques d'une modification de l'enregistrement du sexe dans son acte de naissance*' (art. 3). The civil registrar officer informs her or him that the procedure is in principle irrevocable.

Table 22. Content of declarations

Loi relative à la transsexualité

(M.B. 11 juillet 2007, 2007, p.

37823-37824)

–Content of the declarations issued by the psychiatrist and the surgeon–

‘1° que l’intéressé a la conviction intime, constante et irréversible d’appartenir au sexe opposé à celui qui est indiqué dans l’acte de naissance ;’

‘2° que l’intéressé a subi une réassignation sexuelle qui le fait correspondre au sexe opposé, auquel il a la conviction d’appartenir, dans toute la mesure de ce qui est possible et justifié du point de vue médical ;’

‘3° que l’intéressé n’est plus en mesure de concevoir des enfants conformément à son sexe précédent’.

Loi transgenre

(M.B. 10 juillet 2017, 2017, p. 71466)

–Content of the *second* declaration issued by the concerned transgender individual–

‘1° qu’il a toujours la conviction que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement ;’

‘2° qu’il est conscient des conséquences administratives et juridiques qu’entraîne la modification de l’enregistrement du sexe dans l’acte de naissance ;’

‘3° qu’il est conscient du caractère en principe irrévocable de la modification de l’enregistrement du sexe dans l’acte de naissance ;’

Extraordinary measure for minors :

Le mineur non émancipé doué de discernement peut, à partir de l’âge de seize ans, faire la déclaration prévue par le présent article, en remettant une attestation établie par un pédopsychiatre qui confirme que l’intéressé dispose d’une faculté de discernement suffisante pour avoir la conviction durable que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement’.

The second and third statements of the declarations established in the *Loi relative à la transsexualité*, concerning surgery and sterilisation respectively, have been removed in the *Loi transgenre*. They now include ‘being aware’ of ‘all the consequences’ of the modification of the legal mention of sex and of the fact that the procedure is irrevocable. However, the first statement has not changed much. The expression ‘*a la*

conviction intime, constante et irréversible' in the *Loi relative à la transsexualité* has been replaced by '*a toujours la conviction*' in the *Loi transgenre*. The expression '*d'appartenir au sexe opposé à celui qui est indiqué dans l'acte de naissance*' has been transformed into '*que le sexe mentionné dans son acte de naissance ne correspond pas à son identité de genre vécue intimement*'. This second formulation explicitly introduces the notion of identity in the *Loi transgenre*, the cornerstone of the new Act. However, the Act still depicts the breaching of the binary opposition as an exceptional psychological state against which the State 'must guarantee' that trans* people are really sure of which of the two identities they identify to once and for all. The state assumes an even more important role in the case of trans* minors, for whom a psychiatrist has to intervene. By means of the shift from sexual dimorphism to identity dimorphism, Civil law ensures that the binary opposition between women and men is maintained for trans* people as well, in spite of the fact that they move between categories.

Yet, the two Acts analysed in Chapter 4 apply only to trans* people, that is, to people who modify the sex/gender category to which they have been assigned at birth. The question remains how legislation has defined the binary opposition not only when there is a modification but also when it is first attributed at birth (specific obj. 2). In **Chapter 5** I respond to the question by conducting a qualitative content analysis of all Belgian legislation regulating the mention of sex in the civil status of individuals.

In the legislation, the *legal certification of sex at birth* has been and is constructed upon sexual dimorphism—the notion that the human body falls into two 'natural' and clear-cut sexed categories. Sexual dimorphism is thus the norm defining the binary opposition between women and men. However, this norm is not mentioned in any of the Acts regulating this issue at birth with one exception: the 'child suffering from sexual ambiguity'. The failure to mention this norm gives it a natural character and the value of truth. As described by ethnomethodology, the norm resides within the action and there is no need to describe it or explain it. It is 'self-evident'. Note that words such as 'sexual characteristics' or 'genitalia' are never mentioned in the Acts regulating the certification of sex at birth in 'normal cases'. It is only mentioned in the Act regulating what according to the legislation constitutes an 'abnormality': the new-

born whose body cannot be classified according to the norm of sexual dimorphism. In that case, 'true sex' is to be found in the chromosomes.

While the norm constituting the binary opposition between women and men in 'normal cases' is not explicitly mentioned, there is an increased move towards the medicalisation of the certification of sex at birth for all. The role previously played by the civil registrar officer, the parents or the witnesses has been progressively substituted by the role of doctors, the only actors who can certify the sex of the child nowadays. Law's exclusive reliance on the medical opinion makes it legitimate and gives it the value of truth. Medical authority is based on the idea that science is a neutral accumulation of knowledge in which human and social aspects do not intervene. The increased *medicalising* of the certification of sex at birth is in clear contrast with the invoked de-medicalising of the modification of the legal sex in the course of life (the case of 'transgender' people).

The *legal modification of sex in the course of life* is however set on the distinction between the mind and the body²⁶⁵. People who modify the mention of sex later in life are denominated 'transsexual' or 'transgender' respectively in the two Acts regulating this issue. In the first case ('transsexual people'), the 'lack of correspondence' between the sex attributed to the individual at birth—based on the norm of sexual dimorphism—and her or his identity was considered a mental disorder. The mind-body distinction initially privileged the body: sexual dimorphism was the norm defining the binary opposition and hence also the new sex of the transsexual individual, who had to undergo surgery and sterilisation to modify the legal sex. Law's reliance on medical authority played an important role in it.

In the second case ('transgender people'), it is considered that the 'lack of correspondence' is not a mental disorder, but just a 'gender identity intimately experience'. The mind-body distinction now privileges the mind: (nearly) all medical conditions have been removed. However, in the absence of medical control, the modification is now controlled by the state, which has established several measures to make sure transgender people do not commit 'terrible mistakes' when they modify

²⁶⁵ See Chapter 4.

the legal sex. Indeed, the modification is only allowed once, leading to a construction of the binary opposition in terms of identity.

Then, Civil law legally establishes the norm that constitutes human beings into two mutually exclusive categories—‘women’ and ‘men’—, the norm of sexual dimorphism to determine whether someone is a woman or a man, and the norm that one is and remains that category in the course of life—remember that the modification of the legal sex is considered an exception. These legal norms apply to every individual born in the country²⁶⁶. They are thus ‘universal’ and transversal in the sense that they are not limited to any specific social context, but operate in all of them each time we use or show our identity documents.

The establishment of these legal norms would not matter that much if sex/gender norms were actually limited to them. In other words, the mandatory legal classification of people as ‘women’ or ‘men’ would be unimportant was it only an innocent classification of human bodies aimed at identifying people without any other social consequence. However, as I demonstrate in the second empirical section of the thesis, norms defining the categories ‘woman’ and ‘man’ are not limited to sexual dimorphism. They also include how each category must dress and express itself, move, speak, behave, feel and think; what activities and roles are appropriate to each of them and how those activities are differently assessed and valued. Therefore, when we show our identity documents, the person in front of us does not read the sex markers ‘F’ or ‘M’ as exclusively meaning ‘a simple human being with a vagina or a penis’. That person reads these markers as ‘woman’ or ‘man’, two social categories that are not limited to sexual dimorphism. The person will interact differently with us according to all the norms that constitute these two categories in specific contexts. Thus, although how women and men must dress, move and behave is not regulated by legislation, the legal certification of sex has inevitable social consequences because it interacts with other sex/gender norms in particular social contexts.

The notion that the definition of ‘woman’ and ‘man’ is actually not limited to sexual dimorphism is evident in the context of work and the definition of the (gendered) worker subject. Moreover, this definition

²⁶⁶ The modification of the legal mention of sex applies also to foreign residents under certain conditions (*Loi transgenre*, Art.3).

also shows how the gendered organisation of society both constitutes and is constituted upon the binary opposition between women and men. In the work realm, norms defining the binary opposition between 'women' and 'men' intersect with norms defining the 'worker subject' and this intersection establishes *who* can work *where* and *doing what*. In **Chapter 6** I detail how workers define the binary opposition between women and men and its transgression (specific obj. 3) via the discourse analysis of the interviews' transcripts. Particularly I identified the variability of workers' discursive practices when they both used and described sex/gender categories.

The use of gendered grammar to refer to sex/gender categories in speech constantly enacts the binary opposition. In this sense, the norm is to be found within the action itself: the binary opposition is embedded in grammar and thus everybody is assigned to either the category 'woman' or the category 'man'. However, feminine or masculine forms are not randomly used to refer to different people, but systematically employed according to the visible sexual characteristics²⁶⁷ of individuals' bodies. These uses enact the norm of a permanent sexual dimorphism constituting the binary opposition at birth. This is even clearer in the case in which the norms are breached. On the one hand, when the norm of sexual dimorphism is breached (e.g. photograph 3), workers avoid the use of gendered grammar. This avoidance indicates that the workers could not assign the individual to a binary category on the basis of visible sexual characteristics, thereby reifying the norm of sexual dimorphism. Indeed, the workers have to make a conscious effort not to use gendered grammar, that is, they have to make an effort not to follow 'normal' grammar, leading to the use of infrequent expressions. The discussion over the feminine or masculine character of the individual's sexual characteristics shows how sexual dimorphism is actually negotiated and established for people who fall in the 'middle' of the sexed bodies continuum.

On the other hand, when someone moves between categories, most of the time the workers refer to the individual with the category assigned to her or him at birth, an assignation that is based on sexual

²⁶⁷ Genitalia were never visible.

dimorphism²⁶⁸. This was the case even when the individual has modified the visible sexual characteristics to remain within sexual dimorphism. In other words, this ‘misgendering’ practice enacts the norm that the permanent sexual dimorphism that counts to define the binary opposition is the one at birth. Since not everybody’s body follows the logic of sexual dimorphism and not everybody remains within the sexual characteristics that had at birth, the enactment of these norms implicitly and unavoidably defines people who breach them as ‘abnormal’.

The description and explanation of sex/gender categories show us where the norms constituting the binary opposition between women and men have been breached. Indeed, the categories ‘woman’ and ‘man’ are never defined or explained²⁶⁹, only trans* people are. Woman and man are two self-evident categories that need no explanation; they are usually just employed in conversation with an apparently obvious meaning. However, definitions and explanations of trans* people make visible the norms that constitute ‘woman’ and ‘man’ as two distinct and essential categories.

As it was the case in legislation, the distinction between the mind and the body is only employed to describe *trans** women and men. The distinction is never applied to women and men ‘without adjectives’: as they do not move between categories, they do not need to have a specific gender identity that explains the move between them. They do not need to be explained. The distinction between the identity of the individual and what the individual actually is (the ‘natural’ body) reifies sexual dimorphism at birth as the norm constituting the binary opposition between women and men. At the same time, people who breach that norm are psychologised. The non-compliance with the norm is depicted as a psychological issue. Indeed, trans* women and men are described as in permanent search of themselves, of their identities; whereas women and men ‘without adjectives’ are just women and men—as if people who do not move between categories did not struggle with their gender identities. Therefore, although the mind-body distinction is not used to define trans* identities in terms of pathology anymore, it still used to define them as something ‘abnormal’.

²⁶⁸ See Chapter 5.

²⁶⁹ Except for when I explicitly asked them to define them.

In the same line, the distinction between appearance and reality is only employed when someone is ‘suspected’ to be trans*, i.e. suspected to have moved between the binary opposition. In this case, the distinction is used to set a difference between the physical appearance of an individual and ‘a deeper truth’—the individual’s ‘true’ sex/gender. Given that sexual dimorphism can now be reconstructed through hormones and surgeries, the norm constituting the binary opposition cannot be just sexual dimorphism anymore. The appearance-reality distinction is thus used to *redefine* the norm: the binary opposition is defined as sexual dimorphism *at birth*. In the case of women and men ‘without adjectives’, the distinction is not applied because it is taken for granted that the individual just ‘is what we see’. Therefore, everybody is taken to be ‘just a woman or a man’ unless some information indicates the move between categories. If this move is ‘discovered’, that is, if the ‘reality behind the appearances’ is disclosed, then *trans* people are depicted as deceptive*. It is thus understandable that many trans* people often conceal this information.

The term ‘sex’ is employed in a synecdoche to refer to both the part (genitalia) and the whole (category). This is evident in the expression ‘sex change’ used to describe both genital surgery and the move between the binary opposition. The use of this synecdoche enacts the norm that sexual dimorphism, particularly genitalia, define the binary opposition between women and men. Therefore, people necessarily need to get genital surgery if they are to ‘truly’ move between categories. In the cases in which people do not undergo surgery, the appearance-reality distinction of notions applies: they are taken to ‘look like’ a woman or a man, but they are not really one of them. However, as it was the case of the previous discursive devices, the synecdoche is only used to describe trans* people (people who ‘change sex’ in both senses of the term). The term ‘sex’ is only applied to women and men ‘without adjectives’ to refer to the whole (the category), as if women and men did not have genitalia. Indeed, when I explicitly asked the workers to define ‘woman’ and ‘man’ they remained silenced and ashamed. Only after some seconds of laughs and embarrassment, they answered that it depended on the type of genitalia. As it was the case in legislation, although genitalia is ultimately the criteria upon which the binary opposition between women and men is defined, they are never mentioned to describe women and men, only

trans* people. As a consequence, the failure to mention genitalia as the norm defining women and men depicts trans* people as having an issue with genitalia, thereby reifying that very norm.

The natural science rhetoric is ultimately used to explain the fundamental purpose of the binary opposition between women and men. This purpose is described in terms of natural reproduction: women and men have ‘different tasks’ in human reproduction. The *natural science rhetoric* depicts thus heterosexuality as the norm of human sexuality. As heterosexual reproduction needs two different types of sexual organs—namely, penis/testicles and vagina/ovaries/uterus, the natural science rhetoric equates once again women and men with the type of genitalia at birth. Moreover, it implicitly *defines other types of sexuality as ‘unnatural’*.

Metaphors such as *‘homme habillé en femme’* or *‘femme qui joue le rôle de l’homme’* indicate however that the binary opposition is not only defined upon sexual dimorphism, but also upon a set of norms establishing how women and men must dress, move and express themselves following a binary pattern. In the expression *‘homme habillé en femme’*, the term *‘femme’* does not refer to ‘female’ sexual characteristics of the body, but to certain clothes and accessories that are deemed ‘feminine’ and thus a man should not wear. In a similar way, when a woman is said to *‘jouer le rôle de l’homme’* it does not imply that she can ‘inseminate’—to take up the ‘fundamental purpose’ of sexual dimorphism—but that she moves and behaves and dresses as men do, thereby establishing a distinction between two different ways of expression according to the norm of sexual dimorphism. When someone with ‘feminine’ sexual characteristics expresses ‘masculinity’ through clothes, accessories and body attitude, the individual is sometimes depicted as a ‘lesbian’, but also just as a ‘masculine woman’. However, when someone with ‘masculine’ sexual characteristics expresses ‘femininity’ through clothes, accessories and body attitude, the individual is often depicted as ‘gay’ but also as ‘ridiculous’, ‘a performance’, ‘a disguise’. Therefore, the breaching of the norm defining how women and men must dress, move and express themselves is less acceptable when the individual adopts a ‘feminine’ expression.

The socio-cultural argument is used to describe some characteristics and roles of women and men as a social construction product of

education. According to this argument, girls and boys—‘we know they are girls or boys because of sexual dimorphism’—are educated in different ways, leading them to develop different skills and interests and to occupy different roles in society. Therefore, there is nothing ‘natural’ in the different skills, interests and social roles of women and men. This argument establishes thus a distinction between the ‘unquestionable evidence’ of the binary opposition between women and men—based on assumed sexual dimorphism (‘sex’)—and *some* characteristics and roles socially attributed to them (‘gender’). However, not all characteristics and social roles are described in terms of socio-cultural influences. The norm of sexual dimorphism and norms establishing how women and men must move, dress and express themselves—that is, all norms concerning the body—are not described as a social construction. The term ‘gender’, when employed in contrast with ‘sex’, is limited to skills, interests and roles. Therefore, the separation between sex and gender operated here actually enacts both the norm of sexual dimorphism and related norms concerning bodily expression that define the binary opposition between women and men, thereby rendering them clearly identifiable as two distinct categories of human beings. Moreover, people who breach those norms are depicted, in the first case, as a ‘medical anomaly’ and, in the second case, as ‘homosexual’, ‘weird’, ‘exaggerated’ and/or ‘disguised’, especially those in the feminine spectrum.

In **Chapter 7** I describe how workers’ definitions of women and men interact with their definition of the worker subject, as well as the implications in terms of inclusion or exclusion from the workplace for different sex/gender categories (specific obj. 4). The discourse analysis was carried out through the identification of workers’ discursive practices defining the worker subject and their variability. The discursive practices employed by the workers define the norm of a ‘neutral’ worker subject devoid of sex/gender and sexuality; while at the same time define norms that constitute the binary opposition between women and men workers and a hierarchy between them. In this sense, the discursive practices identified set a distinction between ‘gender indifference’ at work, the gendered differences that are valued in the workplace and the ones that are unacceptable. This legitimises horizontal segregation and unequal treatment to women and men and excludes from the workplace

all differences that do not conform to norms establishing the binary opposition at work.

Several discursive devices are employed to establish the norm of a 'neutral' worker subject. The use of epicene nouns (*la personne*) and expressions such as *'je m'en fous'* are employed to define the 'worker' as a social category devoid of sex/gender and sexuality. The 'worker' is not a woman or a man, is not heterosexual or homosexual: the worker is just a worker. This neutral definition of the category 'worker' is possible because of the use of the public-private dichotomy. It is obvious that also workers are assigned to a sex/gender category but this assignation is described as irrelevant in the workplace. It is also evident that workers are sexual beings, but they are expected to 'leave those aspects at home', they belong to private life. These devices are employed to claim that women and men, heterosexual and homosexual people, and trans* people are all treated equally at work. There is no different treatment according to sex/gender or sexuality.

The notion of skills (*compétences*) is employed in two ways. On the one hand, it shows adherence to the equal opportunity principle according to which job applicants are treated equally and in a fair way. In this sense, they are only assessed according to their skills, the only characteristic that matters at work. On the other hand, the notion is also used to explain why there are fewer women in men's jobs such as informatics: they do not have the skills because of the education they received. The use of this notion depicts employment as a fair play in which all candidates start or could start from the same position in a very meritocratic way. However, it conceals the multiple obstacles, barriers and discrimination to which many people are confronted. At the same time, women in 'male jobs' such as the police draw on this notion to highlight the fact that they were hired because of their own merits.

The notion of respect is used to express tolerance for individual freedom. Through the use of this notion, the differences that a trans* worker might present are irrelevant because everybody can do as they please in their private life. It is then up to each individual to 'reveal' things about their life. The notion of progress is used in this sense as a disclaimer. It is used to affirm that there is sometimes employment discrimination against some people such as women and trans* people,

but it is perpetrated by certain individuals: those who belong to the past. This belonging to the past is described in terms of age (older generations are more prejudiced than younger ones), ethnicity/religion (people from minority cultures/religions are more prejudiced than the rest of society) or just according to the general scheme 'the egalitarian *us* vs. the prejudiced *them*'. All in all, these discursive devices re-enact the norm of equal treatment at work.

However, the discursive practices of workers also constitute the binary opposition between *women and men workers* and a hierarchy between them at work, thereby contrasting with the idea that sex/gender and sexuality issues (the 'private' realm) and work issues (the 'public' realm) are independent of each other. This binary opposition is constituted upon several norms relating to the skills and roles of women and men at work, the bodily expression at work, and sexuality.

The binary opposition between women and men workers in terms of roles is constructed through the naturalisation of differences between them and the notion of complementarity. Women's and men's skills and functions at work are naturalised by means of the natural science rhetoric also employed to describe the 'fundamental purpose' of the binary opposition. These skills concern especially caring skills in the case of women and strength in the case of men and are used to justify the fact that most workers in the childcare facility are women and most workers in the police are men. The notion of complementarity depicts women's and men's skills as different but useful together. Therefore, it is positive to have both women and men workers to find 'a balance'. The notion of complementarity is especially employed by women in 'female jobs' to underline the value of having men workers and also by women in 'male jobs' to underline the actual contribution of women. These discursive devices reify the binary opposition between women and men by attributing them different natural or naturalised skills. Moreover, it justifies horizontal segregation.

The notion of respect, previously used to express tolerance for individual differences, is also employed to ask for the respect of certain 'work norms'. These norms are described as neutral and general rules that apply to anybody. However, they are actually gendered since they relate to the types of bodily expression—which includes clothes,

accessories and postures—allowed at work according to visible sexual characteristics. Whereas bodily expressions described as ‘masculine’ are accepted for both women and men, bodily expressions described as ‘feminine’ are tolerated only for women. Masculine expressions are thus taken to be universal, while feminine expressions are marked as particular. Still, a ‘masculine’ expression in a ‘woman’ and a ‘feminine’ expression in a ‘man’ are depicted as a sign of homosexuality, thereby reproducing another norm constituting the binary opposition between women and men: the norm of heterosexuality. Moreover, the notion of respect is employed here to show tolerance for ‘this kind of difference’ as long as it is not particularly ‘visible’. Thus, in using this notion in this way, the workers are establishing two norms that define the worker subject: the worker subject has different bodily expressions according to the norm of sexual dimorphism—although ‘masculine’ expressions are accepted for both—and the worker subject is heterosexual.

Jokes and humour are used by the workers to covertly express things that are not supposed to be overtly said at work, particularly in relation to sexuality. As already described, the public-private dichotomy relegates sexuality to the private sphere. However, (hetero)sexuality permeates all the interviews. Through jokes, all workers implicitly present themselves as heterosexual without openly say it. Indeed, it is not necessary to say it because it is taken for granted: the worker subject is assumed to be heterosexual unless stated otherwise. The use of jokes also allows them to define trans* women and trans* men as ‘not real’ women and men, as people having ‘a secret to reveal’. Had this statement been openly stated, it would have been qualified as transphobic.

In a similar vein, the transition of a male colleague towards the feminine spectrum is often used to cause a laugh. Again, ‘masculinity’ is established as the norm. Therefore, the ‘feminisation’ of a ‘man’ is depicted as ridiculous, as denigrating. Jokes also enact a particularly pervasive sexualisation of women at work by men. The view of women in sexual terms is only expressed by men in the male-dominated groups. In this sense, the trans* woman worker is described as a ‘problem’ because this can lead men colleagues to a homosexual encounter. All in all, these jokes and humorous statements define the ‘normal’ worker subject as either a man or a woman according to assumed sexual dimorphism whose bodily expression ‘matches’ that dimorphism and

who is heterosexual. Although the worker subject can be either a woman or a man, women are *sexualised* workers whereas men are just workers.

The sexualisation of the 'female' worker is also evident in the use of the notion of 'misunderstandings' and the inversion of responsibility. The notion of 'misunderstandings' is employed again within the heterosexual norm to assert that trans* women should say that they are 'trans*' for two reasons. On the one hand, to prevent men from having an affair with actually 'another man', something that must be avoided. On the other, to prevent women from sharing the toilets or being naked in front of a woman 'who is actually a man'. In both cases, the use of this notion reifies the norm defining women and men as two separate entities according to sexual dimorphism, clearly identifiable as such and as heterosexual. This depicts trans* women as a 'problem' at work. At the same time, the inversion of responsibility is employed by men to blame women for using their 'sexual power' to attract men and use them to get privileges. Women in the masculinised groups however challenged that inversion of responsibility. Disclaimers are employed to justify the 'male gaze' and gossiping about trans* and homosexual colleagues on the ground that it is 'not common' to see women, trans* and homosexual people in the workplace.

In conclusion, the results of the analysis of both legislative and workers' discursive practices show that in both contexts studied—the definition of the legal sex in legislation and the definition of the worker subject—trans* people are not depicted as mentally ill anymore, but they are still described as 'abnormal' in different ways. This reifies, in turn, the binary opposition that defines women and men as two essential and natural categories. Although many biological explanations of differences between women and men have been replaced by identity notions or socio-cultural explanations, there is still an essentialist definition of the two categories that naturalises their differences. Indeed, although it is often assumed that the definition of 'women' and 'men' as two distinct categories relies exclusively on the norm of sexual dimorphism, the definition includes many other norms that mutually establish what is a 'normal' woman and what is a 'normal' man. These norms include the identity, the body expression (both sexual characteristics and clothing/accessories), sexuality, interests, skills and roles: all are depicted in terms of femininity or masculinity. The work sphere is structured

upon these sex/gender norms in relation to the distribution of tasks and roles, but also in relation to who is accepted as worker subject and who is excluded from the workplace. The exclusion of some people from the workplace is not framed as prejudice and discrimination. Instead, it is legitimised by depicting the breaching of sex/gender norms as an intromission of private issues in the public sphere, as a lack of respect for ‘neutral’ work norms and organisational standards, and as deception leading to potential ‘misunderstandings’.

These results help us understand trans* people’s high rate of unemployment in Belgium and how the exclusion of trans* people from the workplace operates. Moreover, the results shed light on the apparent contradiction between the levels of discrimination reported by trans* people in Belgium and the few studies examining attitudes towards trans* people in the country. According to these studies, Belgian respondents show low levels of transphobia (Dierckx et al., 2014); they also show a generally positive view of trans* people, reject the idea that trans* people are mentally ill and agree that trans* people must be protected from discrimination (A. R. Flores, Herman, & Mallory, 2015). This contradiction can be understood in terms of ‘ideological dilemmas’ (Billig et al., 1988; Billig, 1991).

The dilemmatic nature of social life is clearly observed in relation to trans* issues nowadays. On the one hand, the avoidance of prejudices and bigotry is a social norm²⁷⁰ since they are socially connected to lack of rationality and barbarity (Wetherell & Potter, 1992; Billig, 1987). Political activism carried out by trans* people for decades as well as the emergence of Trans Studies has rebutted psychiatric and psychological arguments depicting trans* people as mentally disordered. The pathologisation of trans* people is thus now a synonym of prejudice and thus, something to avoid. The rejection of the pathologisation and mandatory psychiatrisation of trans* people is even included in international and European human rights sources of law, such as the

²⁷⁰ It is important to note that this norm is being *partly* broken in many contexts by ‘new’ extreme right political parties nowadays. While they have started to publicly express overtly transphobic, sexist, racist or homophobic views, they also frame them as ‘not prejudiced’ but rather as ‘freedom of expression’ or ‘justice’. They are thus still partly governed by this social rule. Billig (1991) shows this already in his analysis of arguments in 1980s fascist propaganda in the UK.

Yogyakarta principles (International Commission of Jurists, 2007, 2017) and some major resolutions of the Council of Europe (e.g. Council of Europe, 2015).

However, it is important not to forget that the definition of trans* people as mentally ill emerges within the ‘psy’ disciplines as a response to the breaching of norms constituting the binary opposition between women and men. In spite of the criticisms towards the pathologisation of trans* people, the division of human beings into two mutually exclusive and essential categories is still a norm. Therefore, people—in this case, legislators and workers—have to employ other arguments and discursive devices to avoid pathologisation, while still preserving the definition of women and men as two fundamental and natural categories. The identified ‘absence of transphobia’ in the Belgian sample mentioned above is thus probably a reflection of the theoretical and methodological perspective used by the study—how transphobia was defined and studied—rather than an actual absence of it. Indeed, transphobia was defined as the specific *content* of a series of fixed items in a survey. Taking into account the evolution of the argumentative context described here, it is very likely that respondents considered those items as transphobic and thus did not agree with them. However, we should not look at the avoidance of transphobic claims as hypocrisy or as a strategy to manage the impressions we make on others. In fact, it is rather a *self*-justification since being prejudiced has become a social taboo (Billig, 1991).

On the other hand, the avoidance of discrimination is also a social norm. Norms of equal treatment and non-discrimination permeate the field of work. We can see this in workers’ definition of the worker subject as a subject devoid of sex/gender and sexuality. This definition is not an accurate description of social life but it rather acts as a moral imperative: ‘we must treat all workers equally, as if they did not have sex/gender and sexuality’. Moreover, the avoidance of discrimination is not only a social norm, but also a legal norm. Harassment, direct and indirect discrimination in employment on the grounds of sex, gender identity and gender expression are punishable acts under Belgian law²⁷¹. Therefore, workers have to find strategies to justify the exclusion of trans* people from the workplace and to prevent this exclusion from

²⁷¹ See Chapter 1.

being framed as harassment or discrimination. This explains why Belgian respondents agree with the idea that trans* people must be protected from discrimination. Indeed, they do not describe their failure to accept ‘visible’ trans* and homosexual people at work as potential discrimination.

The discursive practices described in this thesis show how legislators and workers manage to avoid the mental disorder argument nowadays while still depicting trans* people as ‘abnormal’. They also illustrate how the exclusion of workers who transgress sex/gender norms is actually justified and legitimated without denominating it ‘discrimination’. The pathological argument is absent in the current legislation and the workers’ speech examined in the thesis. Nevertheless, this does not mean that the argument is not employed any more. It is still probably used in specific contexts, maybe combined with *new* arguments. Yet, the absence of the pathological argument in the two contexts studied is indicative of a significant argumentative shift in relation to trans* people.

At the same time, the discursive practices that I identified and present in the thesis are probably not the only ones describing trans* people as ‘abnormal’. They represent the discursive devices employed in a *delimited* legislative corpus and in the speeches of *some* workers throughout five group interviews of more or less two hours. Still, the identified discursive devices can be said to be commonly used nowadays. The first evidence of this is the fact that some discursive devices—such as the mind-body distinction, the ‘sex’ synecdoche and the similar notions of fraud and deception—are employed by both the legislators and the workers²⁷². Yet, these actors are, in principle, unrelated and the discursive practices were carried out in different contexts and at different moments in time. The second evidence of the common use of these discursive devices is that *we all* have probably ever employed some of them—if not all of them. As competent members of society, we all enact norms that constitute women and men as two distinct human categories and we share the descriptions and explanations of the breaching of those norms.

²⁷² Other discursive practices are not employed in both contexts because they are specific to each of them. For example, the law does not regulate how women and men must dress, but norms at work do. Thus, the metaphor ‘*homme habillé en femme*’ is not used by the legislators, but it is employed by the workers.

These norms are so taken for granted that often we do not ‘see them’; we do not realise that we are employing them or what it is that we are doing when we employ them—which are the *effects*. We only realise them when they are made *visible*, which is the ultimate purpose of the thesis.

The ‘invisibility’ of norms has important **theoretical and methodological implications for the research process**. Researchers are also members of society and, as such, we share and reproduce the norms that govern the social contexts in which we live. Science’s reproduction of social norms has been much described by critical disciplines such as science and technology studies (e.g. Kuhn, 1962; Latour & Woolgar, 1986 [1979]; Harding, 1986; Haraway, 1991) and the social psychology of science (e.g. Íñiguez-Rueda & Pallí-Monguilod, 2002; GESCIT, 2007).

Psychological science is not exempted from the reproduction of social norms. As researchers from other disciplines, psychologists are also part of society and share with its members norms and knowledge. This is also the case for sex/gender and sexuality norms. As Stainton Rogers & Stainton Rogers (2001) claim:

‘[I]f [...] cultural knowledge of gender and sexuality is central to constructing our identities and if studies being carried out are also the main source of psychological ‘knowledge’ about gender and sexuality, then there is a self-fulfilling prophecy in operation. The knowledge that psychologists ‘discover’ in their research is not about ‘universal laws of human behavior’ in relation to gender and sexuality. It is simply an account of the historically and culturally specific conventions, expectations and assumptions that operate about gender and sexuality within the domain psychologists study’ (2001, p. 178-179).

Psychological knowledge on sex/gender and sexuality is thus not universal knowledge about human behaviour, but rather knowledge about context-specific norms that are also shared and often reproduced by psychologists themselves. Psychology’s reproduction of norms is even more important when we take into consideration the recognised authority of the ‘psy’ disciplines to define ‘normality’ and ‘transgression’, as well as their power to tell people how to behave and what to believe. We have already seen the role played by the ‘psy’ disciplines in the constitution of trans* people as mentally ill.

The definition of trans* identities as a mental disorder is now less frequent in psychology and there seems to be a shift in the discipline from studying ‘trans* people’ to studying ‘transphobia and discrimination against them’. However, conventional psychological knowledge still depicts them as ‘abnormal’, thereby reproducing the sex/gender norms that constitute the binary opposition between women and men. This is evident in the psychological scientific papers identified in the literature review²⁷³ in which trans* people are described as experiencing a ‘mismatch’ between the gender identity or gender expression and the category assigned at birth, that is, sex. Indeed, the mind-body and appearance-reality distinctions of notions employed to *explain* trans* people emerged within the ‘psy’ disciplines. This contributed establishing the distinction between *sex* as ‘biological truth’ and *gender* as ‘socially constructed culture’. As I explained above, this distinction actually reifies women and men as two essential and mutually exclusive categories. It is also this distinction which is mostly employed in the contexts that I studied in the thesis, which shows the extent to which scientific knowledge constitutes social life.

Moreover, conventional psychologists also establish norms defining what constitutes ‘transphobia’ and what does not nowadays. This allows them to define people who, for instance, express overtly negative views on trans* people as ‘transphobic’, while at the same time they do not qualify researchers’ views as such in spite of the fact that they also construct trans* people as ‘abnormal’. As already underlined²⁷⁴, this has the effect of constructing certain social groups (‘them’—usually minority groups) as particularly prejudiced, while depicting ourselves (both the researchers and the majority group to which they/we usually belong) as non-prejudiced and egalitarian. However, as it was previously explained²⁷⁵, the difference between open and subtle prejudices is often not a difference in kind, but rather an ability to provide justifications for views (Billig, 1991). This ability can be enhanced through formal education and cultural capital, something that researchers and majority groups possess but other social groups often do not.

²⁷³ See Chapter 2.

²⁷⁴ See Chapter 2.

²⁷⁵ See Chapter 3.

The understanding that the things studied in psychology could not be ‘objective’ and ‘universally’ defined—in part as a consequence of the ‘turn to language’ that took place in the human and social sciences²⁷⁶—led to the emergence of critical perspectives within the discipline (e.g. Kitzinger, 1988; Burman, 1994; T. Ibáñez & Íñiguez-Rueda, 1996; Parker, 1999), usually referred to as ‘critical psychology’ or ‘discursive psychology’ (Stainton Rogers, 2003). Instead of aiming at ‘discovering the truth’ about human nature and thus establishing norms, these perspectives operate a shift towards the study of how knowledge is constituted—including scientific knowledge.

If researchers are constituted by the same norms they study, being thus initially ‘invisible’ for them, the question that arises is how to make them then visible in research. In other words, how to ‘know what we do not know’ as researchers and how to act fully responsible if ‘we are opaque to ourselves’ (Rasmussen et al., 2015, p. 8). Indeed, not only the effects of the discursive devices used by the legislators and the workers were not immediately identifiable for me at the beginning, but I also contributed reproducing the norm myself in many occasions during the interviews²⁷⁷. It has been only through the interaction with other knowing subjects—both academic and non-academic, including the participants of the interviews—that it was possible for me to make the norm visible. It has been through the contrast of different practices constituting knowledge—the ‘variability of discursive practices’ that DP proposes as an analytical principle—that I could elucidate the norms that I was enacting myself, which in turn allowed me to adequately analyse the corpus. In this sense, Rasmussen et al. (2015) propose to reconceptualise ‘responsibility’ from individual to *relational* responsibility. Within this relational definition of responsibility, changes in norms are only possible if we acknowledge the limits of individual knowledge and accept that new knowledges are constructed through *social interaction*.

In research, responsible knowledge construction means adopting an open stance towards self-questioning and self-criticism and interacting

²⁷⁶ See Chapter 3.

²⁷⁷ For instance, when I showed the photographs during the first interview I asked the workers if they could describe the gender of the individual. Via this question, I was enacting myself the norm that everybody is to be classified according to gender. In the following interviews I just asked if they could ‘describe’ the individual.

with other social actors, especially those who could challenge the norms that we take for granted. These actors include other scholars, particularly those working under paradigms, methodologies and disciplines different from ours, but also 'lay people', mainly the people concerned by the topics we study. Responsible knowledge production also implies examining the social implications of research. These characteristics coincide with many of the fundamental elements of critical psychology, which should be understood as a research practice rather than as a discipline or subdiscipline. Íñiguez-Rueda (2003b) summarises those elements as follows:

- The reestablishment of the social relevance of research.
- The adoption of a transdisciplinary perspective leading to permeability with other human and social sciences.
- The acceptance of theoretical and methodological diversity.
- A commitment to social change.
- Openness towards new conceptualisations of the human and the social.

The research focus on how knowledge is constituted thus prevents the researchers from enacting and reproducing norms themselves and leads them to pay attention rather to how norms are defined and produced in specific research contexts. Therefore, it is not the researchers who define beforehand a particular content as transphobic or sexist, but they look for transphobia and sexism as the *effects* of specific practices. This approach allows researchers to detect how the expression of transphobia and sexism changes over time while still producing hierarchical and exclusionary effects. It is thus important not to take sex/gender categories for granted and rather examine how 'normality' and 'transgression' are constantly re-defined through social practices. This often implies questioning many of the well-established concepts of the social sciences, including the sex-gender dichotomy.

In this sense, the results of the analysis have some important **theoretical and methodological implications for the way sex/gender is understood and studied**. The analysis of the discursive practices used by the legislators and the workers show that the sex-gender dichotomy is employed to de-naturalise only *some* aspects of femininity and masculinity, but it actually reifies the binary opposition

between women and men. According to the sex-gender dichotomy, the only norm that defines women and men as two distinct categories is sexual dimorphism. Everything else is cultural artefacts and thus accessory. In fact, the sex-gender dichotomy is just another distinction of notions in which a hierarchy between two notions is established to allow for the coexistence of two descriptions considered incompatible. It is important to remember that the distinction emerged within the domain of the 'psy' disciplines to restore the coherence between the body and the social roles in cases of 'transsexuality' and 'intersexuality' and was later taken up by feminists to de-naturalise femininity. Therefore, the distinction between sex and gender was initially used to institute the inseparability of body and roles.

Indeed, the results of the analysis clearly show that sexual dimorphism is *not* the only norm defining the binary opposition. If that was the case, it would be irrelevant how 'women' and 'men' dress, what type of accessories they wear, how they move, how they express themselves, what tasks they carry out, etc. To give a concrete example, a 'man' wearing a skirt at work would not be defined as a 'man dressed as a woman' or as a 'transvestite'. If sexual dimorphism was really the only norm defining women and men, he would be 'just a man', without any other qualification. However, this is not the case because the definition of 'man' and 'woman' includes more norms than just that of sexual dimorphism. In other words, woman and man are not two natural categories but two *social categories*. It is thus necessary to examine how these social categories are constituted as two essential and mutually exclusive categories without establishing a divide between the body (the 'truth of nature') and the interests, roles and skills (the 'artificiality of culture').

In addition to DP, a promising perspective for future research that can help overcome that divide is Membership Categorisation Analysis (MCA), the analytical approach to identity taken up by Harvey Sacks (1992). The specific contribution of MCA is that it provides 'a systematic procedure to describe the social organisation of categories of people in relation to one another and with respect to the activities people do on the basis of verbal accounts' (Díaz, 2018, p. 22). In this sense, MCA understands social categories as always bounded to the activities they do, that is, there is a mutual construction between the category and the

activities. The recurrent use of a category set such as sex/gender categories in everyday practices tells a lot about the social organisation of gender relations in society; and changes in the use of the category set are part of changes in gender relations in everyday life (Díaz, 2014). In the same line, Stokoe (2006) claims that gender can be studied empirically by looking at its categorical reference in talk-in-interaction to see how gender categories are relevant for the making of some activities. Drawing on both MCA and conversation analysis, she illustrates with some empirical examples how speakers use gender categories to accomplish some actions, for instance, nominating someone to carry out a particular task because ‘she is a woman’. It allows seeing how speakers constantly use, renegotiate, or challenge the definition of gender categories.

MCA is thus a particularly useful approach to see how the definition of a social category includes the activities the category carries out, which in turn allows us to understand how gender structures society in everyday interaction. However, what seems to lack in this perspective is the attention paid to the body, both sexual characteristics and body expression (clothes, accessories, gestures). If we want to avoid the reification of the binary opposition between women and men, we cannot take the body for granted. Otherwise, we would be falling in the ‘sex vs. gender trap’. This implies paying attention not only to how sex/gender categories are used in everyday interaction and how they are associated to specific activities, but also how these categories are differently used according to people’s different body characteristics and expressions. Patterns in the use of categories in everyday interaction vary on the basis of the visible body. This means that we need *visual methods* that allow us to interrogate the interpretations of the body and how social categories are constituted as a mutual construction between the visible body—including body characteristics and expression—and the activities and roles bounded to the category. All these elements constitute who people are, that is, their identity.

The use of photographs during the interviews proved to be a very useful resource to examine how people are classified according to the visible body expression and how that classification determined who could work, where and how. For instance, the person whose body

characteristics did not follow the norm of sexual dimorphism²⁷⁸ was not classified as either a woman or a man by the workers. They avoided gendered grammar and did not know how to describe or relate to the individual. This makes evident the extent to which the binary opposition organises society. Conversely, the person with defined muscles, beard and leg hair who was wearing a skirt, high heels and lipstick²⁷⁹ was described by the workers as a ‘man dressed as a woman’. All the workers stated that the individual could not be hired to work with them. However, some of them explained that the person could well work in the world of performing arts or as a hairdresser.

The use of photographs is of course not the only possible resource. Instead of using audio-recordings, video-recordings can be employed. Participant observation with a systematic note-taking of patterns of interaction on the basis of body characteristics and expressions is another alternative. The challenge for researchers is to give an account of visible physical variability with all its nuances, without reifying sexual dimorphism. This implies describing body characteristics and body expression in their most essential details, without qualifying them of ‘feminine’ or ‘masculine’. An example of this type of description is provided just above: a person ‘with defined muscles, beard and leg hair who was wearing a skirt, high heels and lipstick’. If as researchers we describe this individual as ‘a man dressed as a woman’, we will constitute the sex/gender categories ourselves.

As already explained²⁸⁰, the attention paid to the construction of ‘sexual difference’ does not mean that there are no physical differences between people. Indeed, there are many but they constitute a continuum rather than two clear-cut categories. Moreover, not all physical differences have been accorded a social meaning. The importance accorded to sexual differences is related to historical, social and political processes that have moulded the organisation of society.

Tracing the historical organisation of society upon sexual differences is beyond the scope of this thesis. However, as many feminist scholars have underlined, the control over (women’s) sexuality and reproduction

²⁷⁸ See photograph 3.

²⁷⁹ See photograph 4.

²⁸⁰ See Chapter 1.

have been central for the structuring of society over time. Sexuality and reproduction have determined, for instance, alliances between families, inheritance rights and the distribution of wealth and power. As already described²⁸¹, the organisation of work—understood as all the activities necessary to maintain life—and by extension, the organisation of employment, have also been organised upon sexual differences. The fact that some human beings can get pregnant, deliver and breastfeed (‘women’) has been used to attribute them a particular function in society that includes those actions, but also goes beyond them. By extension, ‘women’ have been constituted as a category bounded to both sexuality and all care activities and, according to the results of the thesis, it seems it is still the case. This is particularly evident in workers’ discursive practices during the interviews: the ‘woman’ worker subject is sexualised, heterosexuality is assumed to be the ‘normal’ sexuality at work, and women’s caring skills are still naturalised. At the same time, the ‘neutral’ worker subject is still defined in masculine terms (it is indeed a man; the ‘woman’ worker subject is a ‘marked subject’, not a ‘neutral’ one) and ‘men’s skills’ such as strength and leadership are also naturalised.

It is important to note however that the forms of social organisation that have been constructed upon sexual differences should not be taken as the ‘logical consequence’ of those differences. Indeed, there has not been a single form of social organisation across time and space but different ones; although there has probably been an unequal distribution of resources and power among ‘different’ sex/gender categories in all of them. Therefore, these forms of social organisation are not the ‘natural’ consequence of sexual differences but rather the *social* consequence of a particularly hierarchical organisation of society based on those differences. In other words, the unequal and hierarchical organisation of society needs two social categories to which it can attribute different skills, interests, roles and positions in society. The classification of sexual differences into two clear-cut sets has thus been established by a specific type of social organisation. The good news is that a different and horizontal organisation of society is possible. That organisation would require not only challenging the binary opposition between women and men, but also re-examining which are our priorities as a society, to which

²⁸¹ See Chapter 1.

activities we give value and how we can re-organise them and cooperate so that there is an egalitarian and common sharing of resources, time and power. This would also require placing people's needs at the centre of the economy.

Not only particular forms of hierarchical organisation have turned sexual differences into sexual dimorphism, but also the visibility of sexual dimorphism is necessary for the hierarchical organisation of society. If social categories are bounded to activities and if they are attributed different functions in society, then it is essential to be able to identify to which category people 'belong'. The body—particularly 'sexual dimorphism'—operates as a visual cue for sex/gender categories. Again, this explains why during the interviews the workers did not know how to treat the person whose body did not follow the norm of sexual dimorphism²⁸². The 'visual aspect' of social categories is thus essential for the constitution of difference. We treat people differently according to the visible cues of the body, be it sexual characteristics, 'racial' characteristics, characteristics linked to age, etc. Sometimes this visual element is not the body. In that case, other signs of distinction are required. For instance, at hospital doctors and nurses wear different clothing so that they are recognisable. A more dramatic example would be the mandatory badges with triangles of different colours imposed by the Nazis upon Jews, homosexual people, political prisoners, prostitutes, and many other categories of people.

Therefore, people need to be not only classified as 'different', but also identifiable as such in order to be treated differently. In this sense, sexual dimorphism is essential. Whereas primary sexual characteristics²⁸³ are not usually 'visible' in most public contexts²⁸⁴, secondary sexual

²⁸² See photograph 3.

²⁸³ The chromosomes, internal and external genitalia (see Chapter 1).

²⁸⁴ Except for places where it is tolerated to be naked, such as nudist beaches or saunas, or some public showers and changing rooms. As already explained, primary sexual characteristics are also 'visible' when we show our identity documents with the exception of trans* people who modified the mention of sex in their civil status after the adoption of the *Loi transgenre* (1 January 2018). Their identity documents now indicate their identity.

characteristics²⁸⁵ are usually ‘visible’ or can be guessed through the clothes. However, they are distributed along a continuum and thus they are not always easily ‘classified’ into sexual dimorphism. Clothes, accessories are then taken as a sign of sexual dimorphism. This is indeed how the workers tried to determine whether the individual whose body did not follow the norms of sexual dimorphism was a woman or a man. They looked not only at secondary sexual characteristics but also at the presence of makeup and the style of the clothes.

It is thus ironic that, while one of the main functions of clothing is to conceal the body, clothes actually reveal people’s genital status. As Bettcher (2014b) expresses it, ‘clothed gender presentation represents naked gender presentation through euphemistic means’ (2014b, p. 392). Indeed, in ‘Western’ societies women can wear the same type of clothing as men—they can now wear trousers, shirts, jackets. However, being the same type, the shape of the ‘feminine’ clothing differs from that of the ‘masculine’ one, being usually tighter, more transparent and having less quantity of cloth. This ‘feminine’ type of clothing conceals genitalia but allows to see or sense secondary sexual characteristics more than ‘masculine’ clothing. Indeed, ‘female attire’ is usually taken as a sign for sexual encounter (Gilbert, 2009). Conversely, ‘masculine’ clothing is more restricted than the ‘feminine’ one—men are not allowed to wear skirts, dresses, blouses, make-up, heels, etc. Whereas ‘masculine’ clothes are the norm, ‘feminine’ clothes are marked as particular. This was also underlined by the workers’ discursive practices when describing the photographs.

Not only primary sexual characteristics are concealed and the secondary ones not always fall into the norm of sexual dimorphism, but they can all be modified in the course of life. If people modify their primary and/or secondary sexual characteristics in a way that disrupts the norm of sexual dimorphism, how to identify then ‘at first sight’ who is a woman and who is a man? This breaching of the norm is usually restored by setting a distinction between the ‘appearance’ and the ‘reality’, as it was the case in the interviews with the workers. A ‘true’ woman is thus someone who ‘is born a woman’, identifies as ‘a woman’,

²⁸⁵ The size of the breasts, the presence or absence of body and face hair, the distribution of body fat, the body shape, the height (see Chapter 1).

looks and behaves like ‘a woman’. And ‘the opposite’ goes for a ‘true’ man. There is thus something like ‘an essence’ that is assumed to remain in spite of body modifications.

It is however important to note that ‘trans* people’ are not the only ones modifying their bodies. The sexed bodies of ‘women’ and ‘men’ are not more ‘natural’ than those of ‘trans* people’. Women shave or wax their legs, remove the hair of the moustache, go on diets, do exercise to shape particular parts of their bodies, some get breast augmentation surgery, etc. Men go to the gym or exercise to develop defined muscles, go on diets, take care of their beards or regret not having facial hair, some get penis enlargement surgery or undergo breast reduction surgery. Similarly, ‘women’ and ‘men’ also take care of their gender image, choose the clothes they wear and how they present themselves to others. And yet, as Julia Serano (2007) denounces, this is only depicted as ‘a performance’ in the case of trans* people—especially trans* women.

If human beings are by norm either woman or man and if this classification relies on visible cues, then people who move between categories are confronted with the dilemma of either following norms of sexual dimorphism and binary body expression or being ‘unintelligible’, as Butler (1990) puts it. If one does not have ‘the physical appearance of a woman or a man’ then people do not know how to treat you or what activities are bounded to you. Thus, for many people moving between sex/gender categories body modifications represent the possibility of being socially intelligible. However, this reifies the norms constituting the binary opposition between women and men. This tension is brilliantly condensed in Teo Vall’s quote at the beginning of the thesis: *‘Passing [as ‘cisgender’] is both necessary and perverse: it gives you peace but it makes you invisible as trans*’*.

The need to be ‘invisible as trans*’ is indeed the reason why, for many people, body modifications can be a question of survival. As already described²⁸⁶, the breaching of sex/gender norms is often punished with violence and discrimination. The exclusion of ‘visible’ trans* people from the workplace can be understood in these terms. Workers cannot oblige ‘visible’ trans* people not to be visible—i.e. make

²⁸⁶ See Chapter 1.

them follow sex/gender norms of body dimorphism and expression. However, workers can prevent 'visible' trans* people from being part of their workplace and thus become a worker subject. The inclusion of 'visible' trans* (and homosexual) people in the workplace would imply modifying the current normative definition of the worker subject that equates 'worker' with a masculine and heterosexual subject. Thus, their exclusion preserves the gendered definition of the worker subject as well as the gendered organisation of work and workplaces.

The need to be 'invisible as trans*' is also the reason why facilitating the access to the administrative procedure allowing the modification of the legal mention of sex was also a crucial matter. Undeniably, the removal of medical and psychiatric conditions fostered by the new *Loi transgenre* renders 'trans* invisibility' easier to achieve for many trans* people, who can now modify the legal mention of sex once by means of their own declarations before the civil registrar officer.

However, this Act does not fully solve the problem of discrimination against trans* people because of two reasons. On the one hand, the legal definition of sex remains within the binary opposition between women and men. Yet, some trans* people do not identify or express themselves within the binary. On the other hand, the legal definition of sex is not the only norm constituting the categories 'woman' and 'man'. There are also norms establishing how women and men must look like, dress, express themselves and move in specific contexts. Therefore, a trans* person who does not follow those norms can be discriminated against even though she or he identifies within the binary and has conformably adapted the legal mention of sex in the civil status. The 'non-conformity' to sex/gender norms can be an act of political resistance to those norms, but also the result of a lack of financial resources to 'conform'. This explains why, in the hearings of the *Loi transgenre*, human rights activists asked for comprehensive legislation on trans* issues that includes the reimbursement of the body modifications they decide to undergo as well as structural measures against discrimination.

Norms constituting the binary opposition between women and men have particularly negative effects for people who move between categories and people whose body do not follow the norm of sexual dimorphism. However, we are all treated differently and attributed

different tasks and roles and interests according to this binary and hierarchical opposition. Whereas this opposition benefits some, it limits and harms many people, especially those who are defined as ‘women’ and/or have ‘feminine’ characteristics. In the end, the fundamental question is whether it is possible to put an end to the supremacy of ‘the masculine’ over ‘the feminine’ without disrupting the binary opposition itself. The answer to this question is not simple and has led to many heated debates between some feminists and some trans* activists (see, for instance, Bettcher, 2014a)—and it still does. However, I will try to elaborate an answer on the basis of the research work carried out in this thesis and reflect on some **political considerations**.

Although the definition of ‘woman’ and ‘man’ is said to be limited to sexual dimorphism—this is indeed the *legal* definition included in the civil status of all citizens at birth—in the thesis I have shown that, in reality, this is not the case. Women and men are more than just sexual dimorphism: there are many other norms constituting the binary opposition in specific contexts. Still, sexual dimorphism is necessary to define women and men as two mutually exclusive categories. What this ultimately means is that a great number of norms about how to act, dress, move, think, feel, desire and behave are established upon the alleged sexual dimorphism. Not only sexual dimorphism is not as ‘dimorphic’ as it seems, but in most cases—except for body processes strictly linked to sexuality such as pregnancy—the organisation of society upon it is completely unjustified. It is enough to substitute the words ‘woman’ for ‘person with vagina’ or the word ‘man’ for ‘person with penis’ to realise that the definition of the two categories goes beyond sexual dimorphism to include many other norms: which spaces to occupy, which activities to do, which products to use, which feelings to have.

The terms ‘woman’ and ‘man’ are thus actually employed as heuristics, as shortcuts used to organise social life in a particular and unequal way. But they do not have a single meaning and thus most of the times they lead to unfair unequal treatment. For instance, why people have been allowed to vote or not, to drive or not, to inherit or not, depending on the type of genitalia? In other words, the terms ‘women’ and ‘men’ are used as a proxy for the organisation of society for matters that are most of the time completely unrelated to the sexual

characteristics of human bodies. And this is so because, as explained previously, the organisation of society is not only binary but also hierarchical and unequal. Therefore, the disruption of the binary opposition between women and men ultimately means questioning *both* the unequal organisation of society and the construction of the binary opposition itself.

From some feminist political perspectives, there is a certain fear of losing the political subject of feminism if the subject ‘woman’ is deconstructed (Hesse-Biber, 2012). Indeed, how to organise political action against women’s oppression if there is no such thing as ‘women’? However, the subject ‘woman’ (as well as the subject ‘man’) has always been partial and unstable. This has been underlined, for instance, by Black women, Latino women or migrant women, as well as by historical and anthropological perspectives that show the different meanings the category has taken over time in different places. Although I can understand the fear, I think that the dismantling of inequalities and discrimination involves considering both processes—the construction of a ‘fundamental difference’ between women and men and the creation of a hierarchical relationship between them and between their characteristics—as intimately related. In other words, both the binary opposition between women and men and the hierarchy between them need to be addressed *simultaneously*.

If we only focus on improving women’s situation and on positively valuing femininity, we essentialise the categories ‘woman’ and ‘man’ by assuming that they are just two ‘natural categories’. We thus run the risk that different and unequal treatment continues on the basis that ‘we are indeed different kinds of humans’. That is, the essentialisation or naturalisation of the binary opposition can still be used to justify unequal treatment. This is particularly relevant because, as we have seen, the norms that constitute the categories ‘woman’ and ‘man’ are not limited to sexual dimorphism, but include also how to live life overall. Moreover, we harm people who do not fall within the normative definition of ‘woman’ and ‘man’.

Conversely, if we only focus on disrupting the binary opposition, we run the risk that the ‘neutral’ norm adopted to dismantle the binary will be a masculine norm for all. In the thesis we have seen how ‘masculine’

values, activities, body expressions, gestures and so on are treated as universal; they are already taken to be the norm. 'Masculine' activities are also often more socially valued and better remunerated than 'feminine' activities²⁸⁷. Taking into account that 'femininity' is marked as particular, the exclusive focus on disrupting the binary opposition also leads to the unequal treatment of 'feminine' people and activities.

The question that arises then is how to dismantle *simultaneously* the binary opposition between women and men and the hierarchy between them, particularly since the actions taken in one sense or the other are sometimes contradictory. For instance, the establishment of a quota for women in professions in which they are particularly under-represented relies upon the binary opposition between women and men. At the same time, the elimination of gender-segregated data can lead to overlooking inequalities such as the gender pay gap. To answer this question, it is important to take into account that no action or measure is permanent. An action can be useful in a specific context in a particular moment in time and stop being so in the future or not be useful in other types of contexts. Other actions can then take over. Actions and measures are not fixed, they are in constant motion. In this sense, political action can be based on a set of specific and contextualised actions that go beyond an assumed initial common identity. Indeed, as Butler (1990) explains, common identity can be the result of concrete actions and, at the same time, not all common actions have the purpose of articulating a type of identity. The 'unity' that arises to carry out specific political actions can just 'disappear' once the political goal has been achieved.

I think it is also important to consider that 'simultaneously' does not necessarily mean 'within the same action or measure'. The dilemmatic nature of social life applies also here. Therefore, there cannot be any 'absolute solution' that could be applied to each and every situation. We need to live with the contradictions that emerge from the actions we take in each specific context. In my opinion, the important thing is *not to turn our backs to those tensions* but to fully accept them because they are the source of critical thinking. It is through the acceptance of contradictions that we can put norms into question and promote social change to improve people's lives. We have seen this at the end of the interviews

²⁸⁷ Care activities are a particularly flagrant example of this, but it is not the only one.

with the workers²⁸⁸. It is the realisation of contradictions that emerged in social interaction—or rather, *because of it*—what allowed the workers to question their taken-for-granted definition of ‘man’ and ‘woman’, as well as their definition of the worker subject. Just as researchers need to interact with other knowing subjects to make the norm visible, we all need to interact with other people—especially those with whom we do not agree—to make emerge the contradictions that lead to social change.

The simultaneous dismantling of the binary opposition between women and men and the hierarchy between them implies asking ourselves what we mean each time we use the categories ‘woman’ and ‘man’, what kind of shortcut we are doing. In this sense, the ‘continuous search of self’ usually attributed to trans* people can be understood as rather a questioning of the definition of the two categories. Trans* people may be the ones asking the ‘right questions’ because what they have been told about the differences between women and men do not necessarily apply to themselves. Maybe we should all be asking ourselves those questions. This can lead not only to question norms but also to think of creative ways of dealing with the contradictions in a permanent movement. In the end, the ultimate political objective would be that sex/gender—as well as any other axis of social differentiation—cease to be a principle that *unequally* organises society. In the meantime, political action can be based on partial common experiences and the recognition of contradictions and tensions to promote social change.

²⁸⁸ See *Addendum*.

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