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“At the Time She Was a Man”: The Temporal Dimension of Identity Construction

This article examines the temporal elements of identity construction, drawing parallels between the construction of ethnographic, legal, and personal identities. The article presents a case of transsexual identity, analyzing how people reference a transsexual in order to illuminate the temporal complexity of gendered identity construction and identity in general. The study consists of a micro-analysis of scientists and lawyers talking about transsexuals in and around a legal trial, and offers a model of identity that allows for disjuncture and incongruence over time. It argues that ethnographic and legal accounts of identity rely on a negotiation between coherence and discontinuity. [ethnography; identity; temporality; gender; reference]

This article investigates processes of identity formation through detailed analyses of talk in a courtroom and a university genetics laboratory. By focusing on how pronouns and other linguistic forms are used to refer to a transsexual individual, I illustrate the temporal complexities involved in discursive constructions of identity and argue that identity construction necessarily involves disjuncture and coherence over time.

People rarely experience a coherent self in everyday life. Moreover, rather than telling “life-narratives” in which there is a self that spans the life of the individual, selves tend to be reconstructed from bits and pieces of past- and future-oriented narratives, or are merely experienced in unassembled form (McAdams et al. 2006). Amid such fragmentation, people strive for sense out of these bits and pieces (Lifton 1993; Ochs and Capps 2001). The construction of legal identities occurs in parallel fashion: the essential purpose of a trial is to reconstruct people and events as they existed at some point in the past in order to make decisions about the future. There is an analogous sense-making process in ethnographic writing. Ethnographers, in constituting the coherent identities from which we discern cultural patterns, knowledge, and so on, create identities in composite form, similar to the sense-making process of identity formation experienced by those we study. This article will illustrate how legal and ethnographic accounts rely on movements backwards and forwards in time, resulting in a negotiation between potentially problematic disjunctures and a search for coherence in identity construction.

Alternative Gender Identities and the Law

This study aligns with recent work on the creative ways in which law is being used and transformed (not without difficulty) by lesbian, gay, and transgender activists (e.g., Bower 1994; Halley 1991; Lloyd 2005; Richman 2002; Robson 2007). These authors highlight the potential instability of homosexual and transgender identities as contrasted to heterosexual identities, which are often represented in legal settings as stable and consistent. Halley (1991:352), for instance, argues that such instability constitutes a threat to heterosexual identities, and that heterosexuals therefore “predicate homosexual identity upon acts of sodomy in a constantly eroding effort to police [their] own coherence and referentiality” (Halley 1991). In that the law—and society in general—depends on rigid and well-bounded definitions of personhood, litigation dealing with such gender and sexuality issues ultimately “unsettles societal assumptions that sexual identities, including heterosexuality, are stable” (Halley 1991:1018).

Lloyd (2005:161), in her discussion of transgendered subjects and the law, similarly asserts that legal identity construction is nested in the courts’ “ardent belief in a smooth narrative of normalcy.” Such narrative “smoothness” depends in part on historical and temporal erasure, in which changes over time in one’s gender identity are obscured in the service of representing a consistent, coherent identity that fits easily into the law’s stable and bounded categories of persons. Here, I analyze a case (hereafter, “Tracy’s case”) in which a transsexual’s (Tracy) gender identity is brought into question. Tracy’s identity is far from smooth, but is constructed from shifts back and forth in time. In court, as the analysis will show, such shifts are elided in favor of representing a consistent gender identity throughout the individual’s life.

Legal anthropologists not dealing specifically with lesbian, gay, and transgender issues have similarly recognized the inherent instability within identity construction. Hirsch (1998), analyzing divorce narratives in Islamic courts, shows how speakers rarely represent a “one-dimensional gendered subject” (Hirsch 1998:31). Rather, gender identity is constituted in “multiple and contradictory ways” (Hirsch 1998), ultimately complicating what it means to be a woman and a wife in Islamic Africa. Yngvesson and Coutin (2006), in their work on adoptees returning to their homelands, problematize the notion that everyone has an original, locatable self against which identity may be defined.

Law, Language, and Identity

In response to judicial decisions regarding transgendered subjects, Lloyd (2005:160) writes, “to understand the courts’ categorization of the monstrous, subhuman, and illegitimate as one kind of phenomenon, a reader needs to detect the normal framework in which the law mediates this violence.” Language is central to the construction of this framework of normalcy. As Matoesian (2001:3) asserts, “language use, or discourse, constitutes legal realities in the social construction of . . . legal facticity.” Language is not a mere passive tool for legal professionals, but, rather, transforms facts and evidence into “relevant objects of legal knowledge,” ultimately constructing

legal subjects in and outside the courtroom (see also Lynch and Bogen 1996 for a discussion of language's role in history building). Matoesian and others (e.g., Conley and O'Barr 1990; Hirsch 1998; Mertz 2007) have adeptly identified the primacy of language in constructing and mediating gendered identities in legal contexts.

In focusing on talk in legal contexts, my research is situated within a body of work that examines the micro-processes governing how courtroom interaction is carried out (e.g., Atkinson and Drew 1979; Drew 1985; Pomerantz 1987), while at the same time attending to the ways courtroom (and any institutional) interaction is governed by the structures of everyday discursive practices. The findings regarding the discursive construction of identity in Tracy's case thus have implications beyond courtroom interaction alone.

Discursively Constructed Identities

Identity categories are not static entities to which people are merely consigned. Rather, as Butler (1990:7) argues, identity is a "semiotic activity whereby individuals are made to make cultural 'sense' Those who resist the dictates of the culture by troubling its categories highlight the constructed nature of these divisions"¹ (see also Bucholtz 2003; Garfinkel 1967). People with alternative gender and sexual identities are prime examples of those who "trouble" social categories and, as such, "[disrupt] the standard dichotomous and exclusive categories" on which law relies (Richman 2002:287). In these cases, judges must stretch or create new legal categories, which in turn shape the identities of the actors involved.

Investigating gender identity, even in a specialized institutional context such as the law, requires attention to the "mundane reproduction of gender" (Kitzinger 2005a) through everyday verbal practices (see also Speer 2005). Within a given social situation, certain temporal stages of gender identification are made relevant; this relevance, significantly, is constituted locally within the interaction (Kitzinger 2005b:225–226; McElhinney 2003). Through evolving, accumulating, and interrelating interactions, during which differential stages of identity become relevant, the inherently shifting identity of a given person is constituted. At any given point in time, everything that has gone before serves as the backdrop for subsequent interactions, and ultimately makes up what is considered gender identity as a socially meaningful category.

This study will analyze gendered reference forms in order to reveal a model of gender identity that accounts for temporal complexity within both self- and other-identification. The crucial dimension of this model is *temporal continuity*, within which one's gender may be experienced or characterized as either *coherent* or *disjunctive* over biographical time. For example, a person may experience either a temporally *coherent* gender identity—the same feeling of gender throughout life—or a temporally *disjunctive* identity—having shifted gender identification at some point in life. Significantly, one may experience a temporally coherent identity at one point, and a disjunctive one at another, or may index both of these dimensions within the same interactional moment. These same tendencies are also apparent in other-identifications of gender.

Analyzing Reference, Identity, and Gender

In legal contexts, the discursive construction of identity is limited by what Bower (1994:1026) terms the “fixity of legal language.” Law, in this sense, has the power to “reduce, rephrase, and normalize identities” (Bower 1994:1019). In the data presented here, speakers are faced not merely with legal limitations on the language used, but also the limitations of the English language when dealing with people of indeterminate gender status. This article deals specifically with the means available to speakers to refer to other people—person reference. Linguistic forms for person reference potentially draw upon and make evident “all the category terms for types of persons in a culture’s inventory, by reference to which are composed a society’s understanding(s) of ‘the sorts of people’ there are, what they are like, how the society and the world work—in short, its culture” (Schegloff 1996:465). Gender identity is one of the primeval forms of categorization (Bing and Bergvall 1998; Butler 1993:7; McConnell-Ginet 2003:91). It is perhaps the most basic “sort of person” there is. What happens, however, when a society’s forms of reference do not easily map onto the actualities of gendered persons, for example, with transsexuals? In referring to transsexuals, English-speaking interlocutors are faced with reconciling a binary, gendered reference system with a referent whose identity does not conform to that system.

In English, there are few ways in which gender is explicitly linguistically encoded (Silverstein 1995); gendered names and pronouns are among the only forms of explicit gender marking (versus gender-marked articles and adjectives, as in French, for instance). These gendered reference forms are a resource by which the linguistic and social binary systems of gender categorization are upheld. By focusing on the linguistic encoding of gender in forms of person-reference (see Fox 1987) and how these forms are used and manipulated, we may see how gender categories are constituted and resisted through talk.

Legal scholarship focusing on gender and language has often highlighted how speech patterns of men and women differ and the implications of this difference for justice (e.g., Conley and O’Barr 1990; Hirsch 1998; Matoesian 2001; Mertz 2007). Rather than showcasing how gender is performed through talk, this article focuses on how gender categories are encoded in talk. The reference forms that a speaker uses (e.g., gendered pronouns) in a legal narrative reveal how gender is conceived within that narrative and the specific discursive context. In the data presented here, these gendered reference forms become complicated—they do not easily map onto the person being referenced. In this case, one can see how legal and social categories of gender identity shift, break down, and are reassembled.

Transsexual Identities: The Defense of Durativity amid Proteanism

This perspective on gender identity arises from an analysis of talk in a university genetics lab that studies sex and sexuality. The majority of excerpts quoted here come from a narrative told by the lab director, Peter,² to his lab team about a trial in which he was a witness. The remaining excerpts are taken from the trial transcript of the case in which Peter participated.

In the trial, a male-to-female transsexual, Tracy, was charged with falsifying her marriage license by lying about her gender; she checked “female” on the license form. Though not the primary charges, related legal issues included state law³ that marriage must be between a man and a woman, and a state Supreme Court decision that a person’s sex is determined at birth and is not subject to change.

Tracy lived outwardly as a male throughout her childhood, although she occasionally dressed out as a girl (i.e., wore girls’ clothing in spaces where she felt safe to do so). After leaving her hometown as a teenager, she began dressing out more often and taking female hormones. At the time of her arrest, Tracy had not yet had a surgical male-to-female sex change, but was dressing full-time as a woman and consistently taking female hormones. By the time of her trial, she had completed the operation.

As an expert witness for the defense, Peter testified that the determination of a person’s gender is highly complicated and involves a number of factors, some of which can be contradictory and thus create gender dysphoria (a feeling that one is living as the wrong gender). From Peter’s testimony, the defense argued that Tracy’s male genitalia were not sufficient to determine her gender as male at the time she signed her marriage license (she was pre-op at that point). Instead, they argued, her belief that she was a female classified her as female at the time she signed the license, and thus absolved her of the charge that she was lying. In the end, though the judge maintained that Tracy’s gender was male, Tracy was acquitted of the fraud charge.

The actors whose talk is analyzed here negotiate referential practices in such a way as to reveal a tension between (1) representing Tracy as having a durative, coherent identity that spans her whole life and (2) the inability to suppress a version of her as fragmented and changing over time. Tracy’s own self-identification is subject to this tension as well; though she self-identifies as a coherent female over time, her linguistic practices throughout the trial reveal an underlying disjuncture in her gender identity. In the texts that follow, Peter represents Tracy as a negotiation of various versions of her identity—some that perdure throughout her life, and others that change over time. Through their referential practices, social actors like Peter reveal the fragmented nature of identity and, simultaneously, the search for coherence amid such fragmentation.

There is no single past to which speakers refer when referencing Tracy. Rather, there are multiple representations of her past, present, and future that serve as referential background. Just as Yngvesson and Coutin (2006:184) illustrate in regard to adoptees’ returns to their homelands, in this context, person-reference requires “multidirectional movements, not simply from present to past or future, but sometimes from one present [or past] to another”—not simply a one-to-one matching of referent to reference form, but, rather, a “network of referents” (Latour 1999:310; Yngvesson and Coutin 2006), the whole of which informs the temporal complexity of one’s identity.

Initial Reference to Tracy as a Coherent Female

The following excerpt is the opening to Peter’s narrative told to the lab. His choice of initial reference form frames his “master narrative” of Tracy’s identity as coherent

and categorically female. This master narrative holds that Tracy has felt like a woman throughout her life, never experiencing any gender discord. In this excerpt, one of the lab members prompts Peter to tell them about the case, which had happened a few weeks before this meeting.

Excerpt 1

Lab: Are you gonna tell us about the case?

Peter: Oh yeah, okay. So. Let's do a brief version of it.

In February [laughing] 2004

Lab: (You're doing the) long (version).

Peter: I'll do it in five minutes.

Lab: Okay.

Peter: **Tracy Post, Tracy Melissa Post.** Went to the clerk's office in Meadowmount county and asked the clerk for a license to marry.

Peter's initial reference form, "Tracy Post," a proper name, is at first glance unmarked in initial position, that is, the first introduction of a person in a conversation (Schegloff 1996). This implies that no extra information is revealed about the referent aside from mere identification. However, even within the category "proper name," interlocutors have choices: first name, first and last name, nickname, and so on. Because Tracy is a recognized referent among the lab team (they have talked about her in other contexts), the use of her first and last name is marked, for minimization of reference forms—here, a first name only—is preferred in conversation (Sacks and Schegloff 1979:17). Thus, despite the apparent use of an unmarked form in the initial reference position, the conversational preference for minimization means that the reference expression used—the first and last name—is in fact marked.

So what does this marking of initial reference to Tracy do? The critical move that Peter makes here is to repair his initial "Tracy Post" by adding the middle name, "Melissa." It is crucial to note that the addition of "Melissa" has no bearing on the identification of the referent. The initial "Tracy Post" was more than sufficient in this regard; among this group, "Tracy" alone would have sufficed. The repair accomplishes two extra-referential actions: First, because "Tracy" is a gender-ambiguous name, the addition of "Melissa" establishes Tracy's gender as female. Second, the use of the full proper name ("Tracy Post"), followed by the repair to her first, middle, and last name—unusual in everyday conversation—indexes legality. This is the form in which a name would appear on record, and is thus an "official identification" (Pomerantz 1987:228). This situates Peter's narrative within the legal setting and potentially aligns Peter with Tracy's legal defense that she had always felt like a woman, and thus was a woman when she signed her marriage certificate. This initial reference

choice thus characterizes Tracy's gender identity from the start of the narrative as temporally coherent.

In Excerpt 2, Peter explains the defense's argument that Tracy was not lying about her gender on her marriage certificate. This excerpt occurs after Peter has explained the details of Tracy's arrest. When transitioning to the trial setting, he states that during the trial, "the story of this transsexual was revealed and was quite amazing."⁴ During Tracy's testimony, it was revealed that she has suffered enormously in her life, including sustaining abuse and rapes from her father. Her father often cited her gender identification as the reason for the abuse. Despite the harrowing experiences she has lived through, many of which could theoretically have been avoided had she continued to live as man, she has consistently insisted that she is and always has been a female. Here is Peter's rendition of the issue:

Excerpt 2

P: In **her** mind **she was a woman** and that's why **she** um, um actually said that, wrote that [on the marriage certificate], and actually the prosecutor tried to suppress all this testimony, that the emotional testimony about the rapes and things like that, saying that it's irrelevant to the case and then he was overruled because the argument was that it was relevant because despite all this violence, that happened in her life, **she** continued to say that **she** was a woman so, which means that, you know **she** could have said okay fine. I want to avoid this pain, so I'll just say whatever you tell me to say.

In this passage, Peter conveys Tracy's gender self-identification as coherent over time and categorically female. His reference expressions in this passage align with Tracy's perspective that she has always been a woman, constructing Peter's own identity as a responsible advocate for those with alternative gender identities. His continuous selection of the female pronoun to reference Tracy in this excerpt connects varying temporal frames of her female identity, portraying it as coherent: (1) Tracy at the time she testified in court ("she continued to say"), (2) Tracy in past time ("she was a woman"), and (3) Tracy in hypothetical past time ("she could have said okay fine"). A similar phenomenon occurs in Yngvesson and Coutin's (2006) discussion of adoptees' returns, in which no singular self serves as an original reference point for identity, but, rather, identity is based in a network of past, present, and future selves.

Peter positions himself as an advocate for Tracy through third-person reference choices that define her as having always been female, leaving her no alternative but to sign her marriage certificate as such. Tracy's defense attorney employs a similar strategy to bolster her case. Throughout the trial, he uses exclusively female reference forms for her, as illustrated by the following excerpts.

Excerpt 3

Attorney: From the time **she** was a **little girl she** has known **she** was a **female**.

Excerpt 4

The marriage license was signed by **her as a woman**, as **the bride**, because **Tracy** does believe **herself** to be a **woman**.

Here, the attorney's explicit assertion that Tracy has consistently felt like a female is reinforced by his consistent use of female reference forms.

Subsequent References to Tracy: Coherent versus Disjunctive Gender Identity

After Peter's initial reference to Tracy shown above, his subsequent reference forms attempt to maintain the stance that Tracy is and always has been a woman. A number of his subsequent reference forms, however, compete with this coherent portrayal of her, yielding a narrative that is referentially inconsistent. As Ochs and Capps (2001:278) write, narratives consistently reflect humans' conflict between a desire for coherence and a desire for authenticity of experience, which is inherently disjunctive. Legal and ethnographic narratives similarly exhibit this struggle between coherence and authenticity, in that they fluctuate between representing coherent stories (so that a legal precedent can be set and so ethnographic generalizations and patterns can emerge) and revealing the disjuncture of real, authentic experience.

By looking to moments when Peter repairs his reference forms, we see Peter struggling to reconcile differing versions of Tracy's identity. This phenomenon is illustrated in the following examples. Soon after the opening of the story, Peter describes a photograph Tracy's spouse's son gave to the police along with a letter, both of which eventually led to Tracy's arrest. The photograph was taken well before her arrest, when she was a young man in the military:

Excerpt 5

01 P: Two weeks later (.) based on the compl- a letter sent to the
 02 sheriff and the district attorney of Lemenworth county by
 03 the son of her spouse to be, Stevie. And the letter saying
 04 that her father— that the, his father, the son's father was
 05 going to commit the sin of marrying another man.
 06 With a picture, (a)on the
 07 envelope was a picture of uh of **Tracy as a man**, as **she** was
 08 in the military. Uh °or **he** was in the military.°
 09 Anyways, the sheriff issued an arrest warrant,
 10 popped up at **her** house on a Saturday afternoon

The proper name, Tracy (line 07), is Peter's first subsequent reference to her following the start of the story. Here, the proper name is perhaps used (even though Tracy has already been introduced) in order to differentiate Tracy from other characters introduced immediately before in the story (sheriff, district attorney, and Tracy's spouse's son) (Fox 1987:45; Givon 1983). Though the audience already knows who Tracy is, her name is not used without qualification: Peter adds the adjectival phrase, "as a man" (07). Relevant to this construction is the temporal shift that occurs in the narrative when the photo is introduced—a piece of biographical evidence, a specimen of Tracy's past, male identity. The phrase "Tracy as a man" connects the current female protagonist with this photo of her past self and thus highlights the temporal complexity of Tracy's identity.

Another possible explanation for Peter's use of the initial form ("Tracy") in subsequent position is that the referent has actually shifted. The "Tracy" revealed in the photo (an apparent man) is a different person than the present, female Tracy, and thus requires a new initial reference form. Even if the referent remains the same, the initial form in subsequent position may cast the referent in a different light (Schegloff 1996:452).

The utterance that follows, "as she was in the military" (lines 07–08), serves as a temporal anchor. It anchors the unmarked reference form "she" to the time in which Tracy was in the military, thus indexing not just a photo of her, but also the biographical entity of her past male identity. The construction facilitates the connection of a past, male referent and a current, female one. Within one referential construction, we have temporally distinct identities compacted.

The construction "Tracy as a man, as she was in the military" provides an unstable referent. That is, Eric (Tracy's former name) was a man, but Tracy is no longer Eric. Peter's immediate repair of this construction in line 08 displays its inherent instability, as he struggles to reconcile two temporally disparate characterizations of the same referent:

Tracy as a man, as she was in the military. **Uh, or he was in the military.**

The repair is necessitated by the introduction of her biographical male identity. That is, though Tracy presently identifies as always having felt like a woman, there were times in her life when she acted, dressed, and carried herself in conventionally masculine ways. The inconsistency between a presently constituted identity and a lived past self, as shown in the photograph, illustrates the protean (Lifton 1993) nature of identity.

Through the repair, Peter has arrived at a pronoun that is concordant with the past, masculine portrayal of Tracy ("he"), but he has done so by sacrificing his alignment with Tracy's identification as a lifelong female. Peter's use of the unmarked female reference forms conflict with Tracy's historical male self, made relevant by local contingencies (here, the photo) within the narrative. With this reference to Tracy as "he," authenticity has triumphed over coherence (Ochs and Capps 2001). Immediately after this repair, however, Peter returns to the default reference form and thus his alignment with Tracy's identification as a coherent female: "popped up at **her** house" (line 10).

Excerpt 6 comes later in Peter's narrative, as he describes elements of Tracy's life that emerged in her direct testimony. In this excerpt too, Peter displays trouble maintaining the default female reference forms amid contingencies within the narrative.

Excerpt 6

01 P: At age eighteen **she**
 02 joins the military **she** stays three years, in
 03 Air Force intelligence. Uh, **she**, um, is honorably
 04 discharged, **she** then marries a woman, **at the time**
 05 **she was a man**. Um, **she** doesn't allow her, **he**
 06 doesn't allow **her** wife to touch **his** penis. The
 07 marriage is short-lived about three months. Then
 08 **she** marries again, another woman, they have a son.
 09 Who I haven't seen but I'm told is support(ive/ed).
 10 They stay married for a few years I don't know
 11 exactly. They divorce. Then **he as a boy, as man**,
 12 marries a **third** time, divorces again after another
 13 few years.

Here, Peter describes the conditions of Tracy's three marriages. He maintains the unmarked reference form "she" through the start of this passage (lines 01–05). In maintaining this form however, he portrays Tracy as a homosexual ("she then marries a woman") (line 04)), for to leave out "a woman" and merely say "marries" would assume a heterosexual relationship (Kitzinger 2005a, 2005b). Tracy, however, has never identified as a homosexual. In order to maintain his alignment with Tracy's self-identification, Peter adds the clause, "at the time she was a man" (lines 04–05). Here, the need to align with Tracy's self-identification has overcome the potential cognitive dissonance of the construction "she was a man." In addition, "at the time," like the photo in the previous example, serves as a temporal anchor, grounding the protagonist of this account as Tracy's historical male self.

In lines 05–06, Peter's gendered reference forms become increasingly scrambled:

05 Um, **she** doesn't allow her, **he**
 06 doesn't allow **her** wife to touch **his** penis.

First, there is the repair of "she" with "he" in line 05, which is followed by a reversion to the female possessive pronoun "her" (line 06) and a subsequent embedded correction (Land and Kitzinger 2005:374) of that possessive with "his" (line 06). Here, Peter's portrayal of Tracy as a coherent female is threatened by the impending anatomical anomaly: the penis. Peter is faced with discord between the gendered

pronoun and the anatomy being described. Peter attempts to maintain the female form after the first repair with “her wife,” a construction that is at least cognitively allowable. However, “her penis” might prove too much of a stretch, and thus the male pronoun is used.

The repair of pronouns in lines 05–06 may also be attributed to issues of intelligibility. Peter has introduced two characters into the story at this point—Tracy and the wife. Gendered pronouns are one way in which these characters may be kept separate (Foley and van Valin 1984), and thus the repair to “he” may be made in order to keep Tracy distinct from the wife. However, as has been made evident, reference to Tracy is more complicated than a one-to-one matching of gendered pronoun to referent. Therefore, intelligibility is most likely not the only factor in play.

In line 08, Peter resumes the default female form in “she marries again” and here, the clarification, “another woman,” is syntactically further removed from the female reference form (“she marries again, another woman”) than in line 04 (“she then marries a woman”). This syntactic removal distances Tracy herself from the idea of a homosexual marriage and may account for the lack of repair to the male pronoun in this case.

In line 11, we have the first example of a male reference term appearing outside the context of a repair on the unmarked female form:

- 11 exactly. They divorce. Then **he as a boy, as man,**
 12 marries a **third** time, divorces again after another
 13 few years.

Because Tracy was initially referenced as a female, “he” as a reference form is marked. However, there is no repair in this instance. This may be because the referent has been cast in this passage (Excerpt 6 as a whole) as the male version of Tracy, despite the female pronouns used. Another potential explanation for using the male pronoun is to solve the problem of Tracy being indexed as a homosexual (i.e., if Peter had said “she marries a third time”). Peter does not have to specify in this case that Tracy (as “he”) married a woman, for heterosexuality is implied in stating that a male is marrying (Kitzinger 2005a, 2005b).

Though Peter does not repair the “he,” it is not used without qualification. He anchors the male pronoun in the past with “as a boy,” connecting the male pronoun with Tracy’s childhood. In this way, Peter avoids renouncing his identification with Tracy’s present, adult identity. Throughout Peter’s narrative, the male pronominal reference form is never used without similar qualification. Excerpt 7 provides an additional example:

Excerpt 7

- 01 Um, at age seven **she**
 02 Starts saying, **she she** says to her brother that when
 03 **He** grow—when when **she**, well, **he as a boy**, grows up,

04 **She** wants, **she** wants to be a girl and marry a man.

In line 03, Peter deviates from the default female reference forms with “he,” though immediately repairs it with “she.” However, he reverts back to the male form, doing so with the same qualification as in Excerpt 7: “as a boy.” Again, it seems that male pronominal reference must be accompanied with a temporal anchor to Tracy’s childhood.

The repair, “well, **he** as a boy” (line 03), while attempting biographical accuracy, again undercuts Peter’s commitment to Tracy’s self-identification. The subsequent reference—“**she** wants” (line 04)—puts him back in alignment with her. This example is further complicated by the fact that the reference deals with a past version of Tracy (Eric) as a boy who is projecting to her future self as a female.

In summary, Peter generally maintains the default female reference forms throughout his narrative, aligning himself with Tracy’s self-identification as a female throughout her life. However, when faced with local contingencies such as (1) a picture of Tracy’s biographical male self, (2) Tracy’s male anatomy, or (3) marriage and its embedded assumptions about sexuality, which serve to reframe Tracy in a particular way, Peter displays difficulty in maintaining his commitment to Tracy’s self-identification. His struggle is evidenced by his use of self-repairs and marked reference forms.

In the examples given above, reference terms are infused with temporality. More than simply identifying a particular referent, they paint a portrait of Tracy as she was at a particular moment in her life. Such past-evoking referential forms, when used in conjunction with representations of Tracy’s present self, present a fluctuating and discontinuous view of her gender identity. McConnell-Ginet (2003) astutely predicted the significance of this temporal issue in stories told about transsexuals. Narrators, in these cases, “must make choices: to use the pronouns consistent with the person’s publicly claimed identity at a particular time may well lead to the use of different pronouns at different stages, thus visibly/audibly fracturing personal identity” (McConnell-Ginet 2003:93). Over the entirety of Peter’s narrative, shifting reference forms mark shifts in temporal orientation regarding Tracy’s identity. Peter’s interactional construction of Tracy thus indexes the struggle between Tracy’s current identification of her past identity as a woman and her biographical past identity, which, in practice at least, was as a man.

In this final example from the laboratory setting, Peter reflects on why representing this struggle is so difficult. He locates the difficulty in the category of sex itself: it is his belief that sex is inherently composite, incongruent, and potentially conflicting. This excerpt occurs near the end of Peter’s narrative, at which point he describes his own expert testimony at the trial:

Excerpt 8

01 P: with um, uh, essentially, so my testimony going through all:

02 the argument that um, um, uh, you can’t define sex in a simple

03 manner, eh, and that therefore, there is a—a large number of

- 04 people who are incongruent in respect to various definitions of
05 sex whether it's, you know, chromosome, gonad, uh, hormones,
06 and brain. And that she was just an example of that.

Peter depicts sex here as composite, involving various elements: gender identity, gonadal sex, genitalia (both internal and external), chromosomal sex, genetic sex, hormonal sex, and brain sex. Within this composite perspective, one's sex may be internally congruent or incongruent. Peter's formulation of sex as multifarious and thus potentially incongruent also aligns with the defense's argument in the trial. They contend that the court's current definition of sex is too simplistic to support the charge that Tracy signed the "wrong" sex.

Tracy's Self-Identification in Court

As argued above, Peter's attempt to portray Tracy as a lifelong female indexes his alignment with her own self-identification. Throughout her trial, Tracy asserts that she is and always has been a woman. Her self-identification in court cannot be disconnected from institutional constraints, however. Tracy is being channeled, through her direct testimony, into a legally-defined gender identity, which may or may not correspond to how she presents herself in other social situations. In this legal context, then, her self-reference cannot be isolated from the format of the discourse in which she participates. The defense attempts to establish that Tracy is and has always been a woman, and thus was not attempting to deceive when she signed her marriage license as a female. This presentation of her is as a temporally coherent female. Her testimony involves exploration into painful, traumatic experiences in her life in order to prove that despite such trauma, she persisted in asserting her femaleness. Even amid this institutional construction of her as a coherent, categorical lifelong female, however, hints of a composite, disjunctive gender identity leak through.

In Tracy's direct testimony, after she states her full legal name—Tracy Melissa Post—and date of birth, the following colloquy occurs.⁵

Excerpt 9

- 01 Attorney: And, **Miss Post**, I would like to take you back to your early
02 childhood memories. Can you tell us, what is the first thing
03 you remember about being a **little person**?
04 Tracy: I remember a lot of confusion at a very early age. And I am
05 going to, I have to say just prior to seven years old because
06 it was quite a while before that and I can't pinpoint exactly
07 what age.
08 A: And help us understand what was the nature of this confusion

09 that you felt as a **little person**?

10 T: Well, my father kept trying to impress upon me **as being a male**,

11 a boy, and I felt none of that. I felt **as being a girl**.

In lines 01–03, the attorney first asks Tracy about her childhood. Though he uses the female address term “Miss” in line 01, in line 03 he de-genders his question, asking Tracy not what it was like to be a girl, but, rather, a “little person.” Because of the gender attribution (Speer 2005) achieved through “Miss,” “little-person” is marked. By using this formulation, the attorney invites Tracy initially to portray her own gender identity to the court. The attorney’s use of “little person” may also reflect an institutional constraint—that an attorney may not ask leading questions during direct examination. Since the whole case is about gender, eliciting a specific gendered response (e.g., “What was it like being a little girl?”) could be considered leading.

Tracy then explains the confusion she experienced as a child, but this confusion did not originate from which gender she felt herself to be. Rather, the confusion stemmed from the fact that she identified as a female but was “impressed” by her father to be a boy (lines 10–11). As a young child, then, Tracy’s categorically female self-identification clashed with her father’s equally categorical identification of her as a male.

Excerpt 10 is drawn from near the end of Tracy’s direct examination, when the attorney questions why she signed the marriage license as a female:

Excerpt 10

01 Attorney: Would you tell this honorable court why you signed **as a female**?

02 Tracy: Because **I am**.

03 A: Are you **a woman**?

04 T: Yes **I am**.

05 A: **Have you been a woman** from the day you were born?

06 T: I believe **I am**, yes.

07 A: And have you ever thought of yourself **as a man**?

08 T: Never.

Here, Tracy asserts that she is and has always been a woman. Through the verb tenses in this line of questioning, Tracy connects her present female self to her past self. In line 03, Tracy is asked if she is currently a woman, and she answers in the present tense. In line 05, the attorney uses the perfect tense to ask Tracy about her identity through the duration of her life, beginning with her birth. Tracy responds in the present tense, “I believe I am, yes” (line 06), thus linguistically solidifying the concurrence between her past and present identity.

In Excerpt 11, Tracy relates that, when arrested, she was told to sign her former legal name, “Eric,” on the arrest order:

Excerpt 11

01 T: They finally took the handcuffs off me and showed me that paper.

02 I had to sign some form that the sheriff had there and insisted

03 I had to sign it **Eric** and I refused. **I was not Eric.**

04 A: And why did you refuse to sign as Eric?

05 T: Because **I am not Eric.**

In this passage, Tracy again links her past and present female identity as *not Eric* through a combination of past and present tense copulas (lines 03 and 05). She was and is not Eric, but Tracy.

Throughout her testimony, Tracy claims to conceive of herself as a coherent, categorical female. She also reveals, however, that she has experienced her identity as disjunctive and contradictory. The following excerpts display the inner contradiction she has dealt with in attempting to reconcile her conceived and experienced selves:

Excerpt 12

“So I tried to learn to live **in two worlds**, one when I was in the woods playing either by myself or with Bobby, and one when I was at home.”

Excerpt 13

“I was able to fantasize each time **being the female** in the relationship and so I married her to make sure that he [the baby] really did have somebody to know **as a father**. And that was a struggle for me because the term **father** contradicted how I was feeling.”

Excerpt 14

Tracy: And when I did have intercourse I kind of had it **in my mind that I was the female** and **the penis** was going in and out of me and that’s the way I dealt with it.

Question: And so in your mind while you were having sex with your second wife sporadically, your fantasy was that you were **the female**?

Tracy: Yes.

In Excerpt 12, Tracy’s inconsistent identity is related to place, or spaces in her experienced life. Excerpt 13 reveals Tracy as having felt inner contradiction regarding roles she has played throughout her life. In Excerpt 14, finally, Tracy talks about having felt contradiction between her bodily and psychosocial experiences, in that she had a penis and was expected to use it, while in her mind she maintained that she was a woman. Note that she does not refer to her body part as “my penis,” but, rather, “the penis,” thus creating distance between her female identity and male body. By

emphasizing the disjuncture underlying her gender identity, these examples reveal the complexity of Tracy's conceptualization of herself "in the face of multiple social identities" (Harris 1989:602), which ultimately produces, like Hirsch's (1998:219) women in court, a "contradictory gendered speaker."

Representing Ethnographic, Legal, and Personal Identities

This examination of person-reference has revealed actors' attempts to portray identity as cohesive even as the discontinuity of actual lives creeps in. There is the coherent, durative identity, which Peter and Tracy attempt to maintain. But inherent in identity is also fragmentation and inconsistency. These contrasting versions of identity are negotiated within face-to-face interaction, as well as within legal and ethnographic accounts of identity. The foundation of identities, then, is neither coherence nor fragmentation, but a negotiation of the two.

The analysis reveals that an essential part of identity—temporal orientation—constantly shifts (Throop 2003). At one moment in time, we may be constructing others or ourselves as they or we now are, while in the very next we are reconstructing past identities that we see as irrelevant to the present self. As the analysis above has shown, we may in fact index these different aspects of identity simultaneously at any given interactional moment (Barrett 1999).

In a legal context, the parties, jury, and legal professionals are charged with constructing coherent versions of identities out of temporally fragmented narratives. In court, Tracy is forced to present her gender identity as either male or female. This distinction must also remain consistent over time, for the state law, as mentioned above, does not allow one's gender to change from the time of their birth. So also do English reference forms require that one's gender be represented in either/or fashion.⁶

Alternative gender identities disrupt both linguistic and legal binary categories of gender identity. Tracy's identity reveals temporal disjunctures, which unsettle the stable, coherent categorizations on which legal normalcy relies. Inconsistency is not merely an attribute of transgender identities, however. That is, the conflict between a desire for authenticity of experience and coherence in narrative is a feature of identity in general.

In court, coherent narratives are generally considered the most authentic; however, an account can appear "too" authentic, and may thus be dismissed as contrived or invented. In this way, the conflict between authenticity and coherence in identity narratives is present in legal narratives as well. In parallel fashion, ethnographic accounts of identity require adherence to both coherence and disjuncture through time. Ethnographers (e.g., Hirsch 1998; Yngvesson and Coutin 2006) have begun to represent the fragmented and inconsistent nature of identities and have unsettled binary gender distinctions in ways that legal narratives cannot (e.g., Herdt 1996). But at the same time, ethnographers create composite identities out of multiple and diverse identities, ultimately constituting coherent identities from which we discern cultural patterns, generalizations, and knowledge.

In sum, ethnographers, along with legal actors, construct simulacra of coherent, temporally consistent identities. But, because they and we talk about real practices and experiences, the fragmentary nature of experience and its multifarious temporal orientations cannot be subdued.

Notes

I would first like to thank the editors and anonymous reviewers for their detailed and helpful comments on previous drafts. I would also like to thank Elinor Ochs, Alessandro Duranti, Candy Goodwin, John Heritage, and Steve Clayman for their invaluable input on earlier versions. Finally, I would like to thank Justin Richland for getting me into all of this.

1. See Brubaker and Cooper (2000) for a thorough discussion of differing theories of identity.
2. All names have been changed in an attempt to protect the identities of the participants.
3. I am not identifying the state in which the trial took place so that I may attempt to conceal the identities of my informants.
4. Though not in the scope of this analysis, the demonstrative reference form used here, “this transsexual,” serves to convey Tracy as an archetype, a narrative trope.
5. The trial transcript used here was created by a court stenographer and thus its analysis will not involve elements often included in a conversation analysis or linguistic anthropology transcripts, such as pauses, intonation, and emphasis.
6. There have been attempts to introduce a third gender category, though they have generally been problematic (Hall and O’Donovan 1996; Herdt 1996). This is due largely to the deep entrenchment of binary gender categorization in discourse, as evidenced in and constituted in part through the constraining binary structure of person reference. The Intersex Society of North America discourages the assignment of a third gender category: “We advocate assigning a boy or girl gender because intersex is not, and will never be, a discrete biological category any more than male or female is, and because assigning an ‘intersex’ gender would unnecessarily traumatize the child” (www.isna.org).

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