INTRODUCTION

It is not our differences that divide us.
It is our inability to recognize, accept, and celebrate those differences."
Audré Lorde (1986)

My main argument in this paper is that when it comes to people with gender incongruence, the Norwegian state has abdicated and left it to the medical profession together with the National Register to decide who gets what, when and how. As such, the medico-legal complex, i.e. the Gender Identity Clinique (GIC), espouses the content of transgender citizenship; pointing out the ‘good’ trans (-sexual) citizens, and the ‘bad’ trans (-gender) citizens. This is parallel to the distinctions between the good homosexual and the bad homosexual as analyzed among others by Smith (1995), where being the good homosexual primarily implies not being a disturbance to the heterosexual nuclear family norms – keep your sexual ‘deviation’ to yourself; thus, “dutifully” occupying the private sphere (Richardson 2000b:268). These are described as “virtually normal” (Sullivan 1995 in Richardson 2000b:269), in the same way as the good transsexual is passing as the woman/man s/he identifies as, representing “an expression of ‘the normalization’ (op.cit:269) of gender corrected women and men.

I will show how the medical staff at the Gender Identity Clinique exercises its say over transgender peoples’ lives, and I argue that the state has contributed to the GIC’s central position. Furthermore, I want to demonstrate that the medical team has enlarged its monopoly position even further without rebut from the state, specifically the health authorities.
In the last section, I present some discussions on citizenship and flesh out the kind of rights a gender variant citizenship would imply.

A short note on terminology: the Norwegian community of individuals with gender identity dissonance is, as elsewhere, a divided community. At one side, we find those diagnosed with, under examination for or in treatment for transsexualism (F64.0), and the final post-ops. At the other side are those not willing/able to achieve a diagnosis, and/or not willing/able to access medical treatment for dysphoria caused by gender incongruence, and those defining themselves outside the gender binary or in-between the categories. Simplified I use the terms transsexual or gender-corrected women and men when denoting the first group, and transgender, gender variant individuals when referring to the second larger diverse group.

This second group holds a lower citizenship status in Norway than transsexual individuals and cisgender persons. They do not obtain welfare and health services related to their gender incongruence and are subject to specific conditions to obtain legal recognition of their gender of choice. In the hierarchy of minorities, gender variant individuals are in the lower part of the hierarchy, while the gender corrected women and man, assimilated with the cis majority, is on top (van der Ros & Motmans 2015).

THE MEDICAL SYSTEM’S CENTRAL ROLE IN TRANS POLICY MAKING

In this section, I will exemplify how the GIC has become the main actor in trans persons lives defining trans policies with regards to both access to health care and in legal issues.

First, the state decided that treatment of a seldom ‘illness’ as transsexualism (seldom as in: under 200 incidents per year) will have to be centralized to only one hospital in Norway, the University hospital in Oslo, thereby ensuring an expert center for the treatment of transsexualism. The hospital’s GIC staff understands its tasks broadly, as not restricted to psychiatric exams needed before recommending surgical treatments, the surgical treatments itself and complicated endocrinological cases, but as also having monopoly on psychiatric examinations of all people with gender incongruence issues. This extended monopoly status, tacitly authorized by the health government, brings on two other monopolizing activities.

One such monopolizing activity concerns the GIC’s stand towards medical colleagues in that the GIC does not to consent in examination for transsexualism by any other medical doctor. Furthermore, the GIC does not agree to a second opinion and would reject to act upon the verdict of such second opinion. Only about one fourth of those with gender identity issues referred to the Clinique obtain the status of transsexualism patient, and can start on the 6-8
years long patient journey. The other three fourth that are dismissed have no option of a second opinion.

The GIC does not acknowledge other clinicians’ expertise on gender incongruence, nor allow any other medical doctor, sexologist or psychiatrist to prescribe publicly funded hormone treatment, or refer patients to a public Clinique for top surgery reconstruction.

Another monopolizing stand refers to the doctor-patient relation; the GIC strongly recommends the type of treatments and the order of the different cures necessary for the patient, mostly applying the ‘one-size-fits-all’ treatment regime. The Clinique does not look positive to patients reluctant to follow the recommended treatment, with hormonal and surgical bodily reconstructions. Reluctance to, say, genital surgery may lead to losing the diagnosis, and thus access to publicly funded treatment. This would also complicates the process of obtaining legal gender identity recognition.

One part of this treatment is the RLE – the one-year long real life experience of living in the other gender expression; i.e. a binary gender model is basis for this treatment. The patient is obliged to adopt stereotypical identities and expressions during this treatment: living in the male (or female) expression. Androgyny or gender independence are no options.

Second, the Norwegian Health authorities accepted in the late 1980ies the GID medical team’s recommendation of requesting irreversible sterilization as a condition for legal recognition of one’s gender identity. Their argument: to avoid “the potential calamity of a menstruating man, or even worse: a pregnant man” (Helsedirektoratet 2015:65). Thus, forced and irreversible sterilization became praxis, which not at any point of time was up to debate in Parliament or tested by the court of justice. This administrative praxis is still, 35 years later in effect and GIC implements it to this day.

Third, since the GIC dismisses many people as non-transsexual, several of those persons travel abroad to acquire the necessary surgical reconstructions (proxy 10-15 yearly). In order to have their gender identity legally recognized in Norway, the National Register demands a certificate on irreversible sterilization, and points to the GIC as the only instance authorized to supply one on basis of a medical examination. Once again, the state has provided the GIC with a monopoly, i.e. to ensure that also non-patients follow the sterilization condition for legal gender recognition that the GIC set up for their patients.

I understand this powerful position of the medical-legal complex (Davy 2011) in the vocabulary of the heteronormative gender binary model. The conventional medical understanding of patients with gender identity issues lies within this model, and thus the GIC dismisses gender variant persons expressing their identity issues in standings outside of the binary or in-between the categories. Their gender identity problems will not receive medical
treatment at the GIC, nor has any other public health care service the authority to admit these as people with health care needs.

Individuals with the diagnosis of transsexualism and under the auspice of the GIC people are not threatening to destabilize the binary gender model. On the contrary, those accepted by the Clinique and considered “deserving” gender identity related health care, are those underwriting the narrative of “born in the wrong body”, and stating a desire to follow the GICs treatment regime of an entire ‘body fix’ into the other gender choice in the binary.

By marginalizing any gender choice other than the male or female, the GIC is a central agent in upholding the significant power of the traditional gender discourse, strongly assisted by the Harry Benjamin Resource Center (HBRS), the organization of patients of the GIC, and the gender corrected men and women (their terminology).

In addition to government authorizing the GIC being the monopoly position in the treatment of gender incongruence, the politic-administrative system acknowledges the HBRS as the only representative for the gender incongruent community – thus rendering the large diversity of gender variant people and their various needs and interests unheard and invisible.

CITIZENSHIP - GENDERED, INTIMATE OR SEXUAL, AND GENDER VARIANT CITIZENSHIP

But without the claim to full citizenship, difference can never find a proper home.”
Jeffrey Weeks 1998:37

In this section, I look into several citizenship discussions and theoretical approaches to find aspects that can be productive for a discussion of main points in gender variant or transgender inclusive citizenship.

Gendering citizenship is a cagender project

Citizenship as an overall concept “encapsulating the relationship between the individual, state and society” (Yuval-Davis 1997:4). Yuval-Davis examines citizenship in a gendered reading –this reading is cisgendered; that goes without saying. Her scheme is to focus on intra-national ethnicities and centers on racialized citizenship relations.

Citizenship has been a key concept and a contested one for feminist scholars, and albeit these scholars are critical to the gender-blindness of conventional approaches to citizenship, they simultaneously bring about another type of gender-blindness: a binary gender model, or a cis gender model, lies implicit in most feminist discussions of citizenship. While feminists and
lesbian feminists comment on the heteronormative male-dominating model and Yuval Davis demonstrates how citizenship ideas are both racialized and gendered, the cis genderism in these citizenship debates, that is the underlying binary gender model, is hardly ever at order in these texts. Also among feminist scholars, as Sanger point out: “/…/ gender is still understood, both theoretically and culturally, as adhering to the dualism of male/female” (Sanders 2008:41)

The Scandinavian political cultures and structures count on a corporatist approach to power and influence in decision-making (Skjeie & Siim 2000). The expert commission established in 2014 to look into health and legal problems of individuals with gender incongruence, is a typical illustration of this. The commission had a rather large representation of organizations from the trans community: Queer Youth, LGBTs trans political advisor, the Norwegian Association of trans persons and the Harry Benjamin Resource Center; that is four out of the 18 members. This indicates a large step towards trans and gender variant integration in the state, and away from the transsexuals’ organization (HBRS) being alone on the scene.

This corporate approach to power has also colored the gender regime of the Nordic countries: originally, this regime was made up of the citizen worker and his family; “Members of the trade unions were until recently the prototypical social democratic citizens (Skjeie & Siim 2000:349). Gradually the dual breadwinner model replaced the male breadwinner, but gender regimes and gender contracts are still understood in terms of male-female relations and male domination. Citizenship debates then in the social democratic welfare states are infused by these models. Sexual minorities, as homos and lesbians, are peu-en-peu included in citizenship rights and obligations, specifically so when they imitate, or confer with the nuclear family model. Women and LBs have left the second-class citizenship status they were (dis)placed in. In Norway, individuals with other differences hold second-class positions and amongst these, we find gender variant persons. They present ‘too much difference’ to be included in conventional citizenship models. Hines points at a similar consequence of the UKs Gender Recognition Act of 2005: “Normative binary understandings of gender that underpin the legislation mean that some trans people are excluded from these new citizenship rights, whilst other remain unrecognized” (2007:5).

The citizenship model in the Scandinavian countries then has changed from a male breadwinner citizen to dual citizenship, where the citizen worker can be both women and men, and the new model has introduced the citizen father besides the citizen mother as an important agent in the private sphere. Rights and obligations have changed, and include fathers’ rights to be a caring father, with obligation to look after the child for at least four weeks during the newborn’s first year. State intervention in among others family life in Norway
(and Sweden) is larger than suggested in liberal discourses on citizenship highlighting minimum state intervention (Marshall 1950).

There may be some parallels in the discussions about male-versus-female gender regimes and cis-versus-trans centered gender regimes when finding ways to include gender variant citizens into the models.

**Trans and gender variance in sexual citizenship**

Other authors suggest to look into sexual or intimate citizenship claims and theories in order to approach transgender citizenship (Richardson 2000a, 2000b; Monro & Warren 2005; Smith 1995; Evans 1993). Some suggest that sexual citizenship includes trans people (Evans 1993), but my reading of Weeks (1998)"The sexual citizen" does not support this view.

The notion of citizenship rests on a heterosexual model – thus excluding both homosexuals/lesbians and trans/gender variant individuals. In modern western states, tolerance for diversity has become a sign of civil competence, and the boundaries of tolerance are widening. However, boundaries exist and sustain the exclusion of those “too queer” or too different from the average citizen. Stychin (1998) discusses the danger of defining rights through the vocabulary of citizenship – he points to the division between the “good gays”, i.e. those behaving like hetero citizens, marrying and establishing families and the “bad queers”, who behave in line with the disreputable myths around gay people. Women/lesbians are hardly included in these discussions.

**Citizenship is about relations between the individual, collectivities and the state**

Yuval Davis’ distinction between individual, collectivities and state may be of use when configuring transgender /gender variant citizenship ideas. (Yuval Davis 1997:6) The relation urges me to pose the question as to which trans collectivity, or part of such community, is invited to stay in contact with the state, and further: which individuals does a community include (and exclude!). The relationships between these three entities is important for understanding the differentiating of rights. The trans community in Norway (as elsewhere) is, as mentioned earlier a divided one; with those who (want to) pass, and those who won’t; those who want to be out and loud, and others who want to blend in with the cis majority; those acknowledged by the state, as individuals and as members of a specific trans (-sexual) community, and others not seen nor acknowledged.

As mentioned earlier, until rather recent only one collectivity in the gender identity issues’ specter, namely the HBRS patient organization, was acknowledged by the government as the representative of the community. . This one-sided recognition has been at the detriment of other groups in the specter, whose interests are silenced and made invisible and thus do
not receive public funding. For HBRS, is has resulted in generous public funding for exercising informational tasks and support work. The informational tasks focus specifically on the “born in the wrong body” narratives, and the options for medical ‘correction’ treatment, there through cementing the gender binary, and reducing options of plural gender choices.

**A GENDER VARIANT CITIZENSHIP ACCOUNTING FOR GENDER DIVERSITY**

*Rights in transgender/gender variant citizenship*

Hines “exploring citizenship debates within the context of the gender transformations of trans women and men” brings her to conclude that the “current framework of transgender citizenship still fails to account for gender diversity” (op.cit.: 17). I would argue that we as yet do not have a framework for transgender/gender variant individuals, albeit some countries have included those gender incongruent people who choose to stay in the binary of male or female. It is those living in a territory between the male-female or outside this coordinate, I would like to claim citizenship for – i.e. those choosing for a space outside of the binary, but part of the collectivity of citizens.

Discussions around citizenship, whether the conventional debates of rights and obligations, or debates on how to enlarge the specter of rights to include sexual rights, and rights to sexual minorities, or rights on body and other intimacy questions, or whether is it feminists critiquing male perspectives on questions of citizenship, stay within the language of the gender binary. In the next section, I will look into what kind of rights would be necessary to offer in order to construct a citizenship model that is gender variant sensitive.

An important purpose in defining trans/gender variant citizenship is to acknowledge and make visible the large diversity of people, needs and interests in the community; and the destabilizing of the primacy of the binary gender model. The neither/nor, the both male and female, the gender creative and gender fluid trans positions must find social space in citizenship practices. Monro has discussed transgender diversity and underlines “the impact of social structures upon gender fluidity and plurality of gender expression” (Monro 2000:34). The binary as a rigid dichotomy is already “fundamentally disrupted by trans” (op.cit:35). We need to ask when and why gender identification is at all necessary – specifically in countries where same-sex (and maybe non-sex-fluid-sex) marriage is equalized with heterosexed relations. For what reasons is gender needed?

What rights would be necessary to claim in establishing gender variant citizenship? I use rights language when arguing for transgender/gender variant citizenship, but also suggesting a wider content of the concept of gender, opening up for a wide variety of gender identities,
not all of them defined or definable. It implies giving up on the binary gender understanding; both in the biological sense and in the mental understanding, sex/gender is more than two, and sex/gender is fluid, fragmented and unstable. Categories are temporary positions, for identity claims and in policy-making, and even then one need to be cautious to ensure wide enough categories. On the one hand I ask – parallel to Richardson: “How are various forms of citizenship status dependent upon a person’s [sexuality] gender identity?” (2000a: xx). When I maintain that in Norway citizenship for people with gender incongruence depends on a diagnosis in the “citizenship by diagnosis” argument, I refer to those being diagnosed with F64.0, and willing, and able to go through gender transformation. (van der Ros 2015) They will be accepted as a ‘good’ citizen of either male or female legal sex. They are the public health care system’s responsibility and will be offered the treatments that the GIC’s medical team deems necessary – and the team deems hormonal and surgical gender correction (sic) necessitated.

Another way of posing the question related to citizenship, and one, which Richardson prefers to follow, is: “How /…/ has rights language been used to articulate demands in the field of sexuality?” (Richardson 2000a:).

Monro suggests that social structuring, and I would argue conditions for inclusive citizenship, would be “/…/ based on the principles of equality, diversity and the right to self-determination” (2000:439). She points out that pluralization not need to pose any threat on people with conventional gender identities, nor on the institutions of family and heterosexuality. They would just mean a broadening of social choices. (Op.cit)

In a later article, Monro and Warren present a baseline for transgender rights: “/…/ the rights to freedom from psychiatric diagnosis on gender identity and to appropriate medical care, the right to equality of employment, the right to freedom from harassment and abuse, the right to self-expression and rights to relationships and parenthood” (Monro & Warren 2004:350). I will come back to several of these under headings that are more general.

What is permitted, or not, by law or praxis reflects views about what people have a right to do with their bodies. How does that relate to trans bodies’ needs and wishes? This question points to two types of reflections: a) about a person’s autonomy; what s/z/he can be allowed about providing public services and funding; i.e. what is recognized as reasonable and legitimate public responsibilities, and on what grounds. What are the justifications for offering, and not offering certain health care services, or for offering health care or not to certain individuals? What does that tell us about justice – and thus about (transgender/gender variant) citizenship? In this thought, I will outline what rights we can identify.
Richardson presents an analytic schema, to contribute to emerging debates in sexual citizenship and in understandings of citizenship more generally. She explores the notion of sexual citizenship in terms of sexual rights, and distinguishes between three main types of rights claims: conduct-based, identity-based and relational-based rights claims. (Richardson 2000a). I am not sure a similar distinction is fruitful for looking into transgender rights claims; it appears to me that most of the claims fall into the identity-based category. I can think of some right claims that relate to the relation between the state and the gender variant person: such as claims of protection against violation of one’s human rights. For gender variant citizenship rights I see the following claims as relevant, some of these are similar to those Richardson mentioned for sexual citizenship rights:

The right to self-definition;

This claim entails the right to self-identification of one’s gender and, second to have this self-identification acknowledged legally: i.e. legal recognition of this gender

When sex/gender is relevant to be mentioned (and often, one may wonder why the sex-question is asked: why f.i. travel agents need to know whether the passenger is male or female (and often no other choices are given), a person should have the right to define, and not necessarily go for the sex assigned at birth. An additional claim is that there need be more options than the conventional male/female options. If nothing else then at least providing an ‘other’ category. One may also discuss the option to tick of a “don’t want to answer” box.

The rights to autonomy

The claim here is specifically autonomy over one’s body, meaning the right to control and have agency over one’s physical appearance. Gender incongruent individuals must decide for themselves how much/little bodily changes they feel needed to appear as the gender /non-gender they want to express. For some this will imply genital reconstruction; for others hormone treatment or only some slight facial changes may be sufficient. Moreover, whatever treatment a gender variant chooses, or not chooses, legal recognition of the choice (or the non-choice) must be given either way. As one activist puts it at her blog: «Medical treatment in response to gender recognition. Not: Gender recognition in response to medical treatment» Vreer Serenu, lest 25.02.2012).

The right to self-expression; i.e. to gender expression in accordance with one’s gender identity

“The ability to be ‘out’ and publicly visible is /.../ crucial to the ability to claim rights” according to Richardson (2000a:120); the same can be claimed for gender variant people. The right to self-expression contains also access to health care services such as f.i. removal of facial hair to feminize one’s looks. As is now, these kind of services are defined as cosmetic
when applied to gender variant people, and thus not supplied (but publicly funded for transsexual patients).

**The right to self-realization**

Something seems wrong with my gender:
- Born in the wrong body?
- Living in the wrong culture?
- Or living out the wrong guess?

“What is important to emphasize, in the context of a discussion of sexual citizenship, is the distinction to be drawn between claims for tolerance of diverse identities and active cultivation and integration of these identities without ‘normalizing distortion’.” (Richardson 2000a:122) This is as true for gender variant and gender corrected women and men.

It may be fruitful to think through what can be the cause of experiencing discomfort of incongruence, and what right claims this would bring on. The normalization urge, the wish to pass, may for some be the result of low tolerance for gender diversity. They may not so much be born in the “wrong” body, as living in the “wrong culture”; a culture that is not tolerant to other options than straight male and female ones. Gender creativity is a threat to such a culture, and gender creative individuals will be subjugated.

For others, the wrong body narrative does not feel quite correct or comfortable; they may experience their gender dissonance because of being forced to live according to the wrong guess, i.e. the sex assigned at birth.

A right to claim another assignment in one’s legal papers could solve such experiences of dissonance. Again, the options must be more than male/female, for some the ability to tick of a box for “third sex” would feel right, for others an option “other” would be more correct; and one could suggest to open up for a “both” option as well; allowing two pictures at id cards requesting pictures.

Gender equality should, one, involve gender variance in addition to male and female equality, and second should include an ‘equal right to be different’. “Pakulski argues that the concept of cultural citizenship involves ‘the right to be “different”, to re-value stigmatised identities, to embrace openly and legitimately hitherto marginalised lifestyles and to propagate them without hindrance’ (Pakulski, 1997: 83, in Richardson 2000a:121). Only then, self-realization can be realized.

**The right to publicly funded health care related to one’s gender incongruence and potential gender dysphoria**

Under several of the rights claims, the right to different types of health care for gender variant people is implicit. Here I want to focus it explicitly as a right, not only for those diagnosed at a
GI Clinique, but also for those identified with gender identity issues that need some sort of health care by other doctors with competence in this field. Quite recent, the American College of Physicians voiced this kind of claim in a Policy Position Paper: “/…/ recommends that public and private health benefit plans include comprehensive transgender health care services /…/ (Daniel & Butkus 2015)

Relational-based rights for gender variant persons

When it comes to relational-based rights: since Norway has legally equalized same-sex marriage with hetero marriage relations, a trans person does not (any more) need to divorce and start a legal partnership relation with the person s/he was married to. However, recently a trans woman colleague told me that since she and her wife married in the church, once the trans woman gets her correct id card (and that is still on the condition of sterilization), she will not be able to keep to the same marriage contract, for the Norwegian church does not (yet) accept same-sex marriage. Citizenship stumbles here, also for those adhering to the gender binary.

A second cluster of relational rights concern the state-individual relation where the right to be protected by the authorities against violations of one’s human rights, and the protection against discrimination on the grounds of gender variance are the rights discussion thus far. Right to welfare services are implicit in some of the identity-based claims, but could be posted here explicitly as well, pointing to specifically trans/gender variance related needs to welfare services as an independent state-individual relation-based right.

A common justification for claiming such rights is an essentialist ‘born this way’ argument as Richardson points out: “The assertion that /…/ identity constitutes an important aspect of the argument for civil and social rights /…/ has been a feature /…/ of the pursuit of rights by transvestites and transsexuals, as well as, if to a lesser extent, some bisexual and transgender activists”. (Richardson 2000a:118) The transsexual narrative goes that way: “born in the wrong body” i.e. born that way, and it is a crucial criterion for the needed diagnosis F64.0. Many gender variant persons do not necessarily feel born in the wrong body, but they certainly feel the doctor’s guess at birth was wrong and does not correspond with their gender identity. They may be able to live with/in the body they were born with, optionally with some adjustments, but want to express another gender identity.

SUMMARY AND CONCLUSIONS

After showing the medico-legal primacy in defining, and restraining, individuals with gender identity dissonance, to pursue their own life projects, but insisting on a binary gender model
for its patients, the paper aims at exploring a transgender citizen model open to gender diversity, plurality of genders as well as including choices of non-gender identities.

Recent praxes – with Norway as empirical case – show that gender variant people are second-class citizens, mainly due to the medical-legal complex reinforcing and constructing its patients according to the binary gender model.

A gender variant inclusive and sensitive citizenship model implies a “basic and difficult reordering of society” (Monro & Warren 2004:354).

Primarily, I would suggest that gender variant sensitive rights are universal – i.e. good for all kinds of different people. However, gender variant individual will also claim differentiated rights – because many trans experience oppression, subjugation and have specific needs. A central issue with differentiated rights, for gender variant persons and other groups, is that such rights does not impede other people’s autonomy and self-determination. Monro & Warren warn us here: “The balancing of the needs of diverse groups against the good of the whole is an important theme for transgender citizenship” (2004:358. I would add: this is the case not only for transgender citizenship but as well for sexual, or intimate or multicultural citizenship.

The paper presents and discusses a number of rights – based on the principles of equality, diversity and the right to self-determination (Monro 2000).

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