

SEX TRANSLATED

KATHERINE CUMMINGS was born John Cummings in Aberdeen, Scotland. She has travelled widely, taken degrees in Sydney and Toronto and worked in the United States. She is a reference librarian at Macquarie University and a freelance writer. She talks to LIBBY BLAKEY about sex and the law.

THE thing that concerns me most about society's attitude towards transsexuals is that most people operate on a base of ignorance. They confuse transsexuals with a lot of other phenomena and as a result of that there is very little public sympathy for the idea of creating a real niche in society for transsexuals and changing the laws and social attitudes. There is still a very strong moralistic attitude that there is something wrong, immoral, self-centred and selfish about transsexuals which should be punished. As I said in my book, we're treated as villains but we should be treated as victims. In all the cases that I have known of transsexuals they have recognised their own need to belong to their non-genetic gender so early in their lives that they can hardly be held responsible for it. Whether it is environmental or genetic, we still don't know, but generally as it happens usually about the age of first memories, say four or five, you really can't say that this person has made a decision to be a rebel in society. They are what they are and their attitude should be recognised and catered for.

On gender, marriage and the law:

If you say that woman is someone who usually has a XX chromosome, then obviously a transsexual is something else. I'm talking here about male to female transsexuals generally when I say transsexual, although I recognise that everything I say about male to female applies equally to female to male, who in some ways have an easier road and in some ways have a much harder one; surgically it's much harder, socially to some extent it is easier. Anti-Discrimination laws do not cover transsexuals although they keep on talking about changing the law to include

transsexuals as a separate category but they still have not done it. Part of the problem we have is simply the number of legislatures that there are in Australia; the fact that there is no uniformity within Australia covering transsexual anomaly.

We are not like homosexuals who usually don't want to be mistaken for someone from the opposite sex, they are men who love men or women who love women and they are quite happy to be members of their genetic sex, but for a transsexual who really wants to be recognised as a member of the non-birth gender, it's a whole different problem and raises a lot of other questions such as the question of marriage for instance. A lot of transsexuals, particularly those who become transsexual very early in life really desperately want to set up a liaison with a member of the newly opposite sex. If that liaison is simply living together, there is no impediment and in fact they even get the same rights now as de facto wives as if they had been born in that gender. However, some do want to get married and they should have the right to do that as much as anyone has the right to get married; they want to make a public declaration of their relationship with someone and I can't see that they would harm anyone by doing so. I can't see any logical objection to amending the *Marriage Act* which is a confused Act in itself. The *Marriage Act* refers to a relationship between a man and a woman but it has not defined what a man and a woman are.

On the other hand there is that wave of transsexuals, of which I am one, who don't become gender reassigned in their

teenage or early twenties, who get married, are conventional, raise families and try and live by the rule book. Then later in life they are forced into a situation where they must go for gender reassignment, but by that time they may very well have been socialised into the situation where they either want to remain married for a long time or that marriage has broken up and they want to marry someone else who is now of their own gender, socially if not legally, so they become lesbians by force majeure, but there they are not allowed to marry either.

I think a lot of the young ones who become gender reassigned do it partly because they are exactly the same kind of transsexual that I am but also some of them become gender reassigned in order to rationalise an attraction that they do feel for members of that sex. They know that they are not homosexual in the conventional sense so they are not happy to have a love affair with a man in their male persona.

I feel sympathetic to people who try and draw the line between a woman and a transsexual because I don't think anyone owns a word and if it makes them uncomfortable to think of me as a woman then I am quite prepared to say I am a transsexual; I live as a woman, that is not to say I am a woman. It gets back to defining the term 'woman'. If you say a woman is someone who lives in a certain mode, takes a certain position in society, then yes I am a woman but I'm not going to argue the toss with someone who says "no you are not a woman because you don't have xx chromosomes, you can't bear children".

Obviously every argument is fallacious because there are women who can't have children and there are perfectly normal genetic women who don't have the pure XX chromosome and have all kinds of variations in the chromosome area. It is possible to say with a certain degree of certainty this person's a man and this person's a woman and it's quite possible to say of me, if you want to, you are not a woman you are a transsexual or even, if you want to be nasty, you are a mutilated male. This does not concern me at all because I know who I am and what I am and I have always been very open about it. I don't, as some transsexuals do, try and disappear into society and start a new life as a woman. If I had done that, and I think I probably could have done that, then no-one past that point would have known me as other than a woman.

On discrimination and other legal aspects:

I can't speak for most transsexuals but I know some transsexuals who have definitely been discriminated against. In the cases I know of they have been discriminated against because they are transsexual and not, in the case of male to female, because they are a woman. I think I was discriminated against in one job application that I put into a university. I could never prove it and tried to take it to the Anti-Discrimination Board but I found out it would not do any good anyway because I'm not covered by the Anti-Discrimination Act. In that case I was not granted an interview for the job but two people with

lesser qualifications and far less experience were, so I thought that that was fairly good evidence that I had been discriminated against for some reason unrelated to the job description.

The legal problems, as I said earlier, are to some extent related to the multiple legislatures in Australia and in various ways

South Australian. They put through an Act which says in effect that a person who was born in South Australia and has the operation can then get a new birth certificate in South Australia which gives them effectively the right to do everything a woman can do, including marriage though I don't think that has been tested yet. There are other things like institutional rules which still relate to gender of birth, so that legally I could be thrown into a male jail. In fact they have taken an administrative decision which says that post-operative transsexuals would go to a female jail while pre-operative transsexuals would go to a male jail which is very confusing.

The provisions of Medicare are also confused because the operation comes to a theoretical halt in the middle of a one session operation. It stops being covered by Medicare and starts to become cosmetic, so that the government will underwrite the mutilation of the male but will not pay for the creation of the female organs. So in a sense, some civil servant has decided that all that transsexuals really want is to be castrated. They don't recognise the fact that what transsexuals want to do is to live life as a woman, fully. You can't do that just by removing the male organs.

So there is all this kind of confusion going on. I understand the question of legal status of transsexuals is

on the agenda for the annual meeting of Attorneys General every year and every year it is just pushed off into the 'too-hard basket'. All the States effectively have to agree on uniform treatment for transsexuals. The question of which gen-



Katherine Cummings.

Photo: Colin Beard.

they all impinge on the life of a transsexual. A lot of my documentation is State documentation, my driving licence for example. There is only one piece of gender reassignment legislation in Australia. It is called the *Sexual Reassignment Act* and it is

der I belong to has not yet been decided. For most purposes I'm still legally a male. Theoretically I could marry a woman but I could not marry a man. There was a case in Victoria and Cummings, J. actually made the ruling that, for the purposes of that case, the rape victim was to be considered female. In another case in NSW there were two people arrested for prostitution - and female prostitution is not a crime but male prostitution is - they were both transsexuals, one of them was pre-operative and one of them was post-operative. The post-operative one was considered a woman and got off, the pre-operative one was considered to still be a man and was charged. There are still problems in the area of sex laws.

On transsexualism:

If it could be recognised that it is a medical condition, which I firmly believe, then surely we could lose a lot of the stigma that is generally associated with it. For example, if a person suddenly decides to have gender reassignment the reaction is 'how awful', but if you say that person suddenly developed mature age diabetes it becomes something that should be treated with sympathy, compassion, changes in the law if those are necessary, medical support, counselling, all the things that at the moment are just about nonexistent for transsexuals. This is also relevant to the way a transsexual is perceived within his or her own social group, including the family. It would be less likely for a marriage to break up because the husband developed cancer or diabetes or some other disease or even a social problem like alcoholism. Marriages do break up on these things but usually because of the behaviour of the person who is suffering from the condition if they are violent or irresponsible or wasting the family's resources unforgivably. If a person simply has a problem like alcoholism but continues to operate responsibly as a husband and father then surely the proper response is support, care and nurturing rather than abandoning. In many cases the transsexual finds as soon as their position becomes publicly known they are in fact abandoned by the persons they are closest to and most important to them.

On discrimination as a woman in the workplace.

I think that partly because I was over 50 when I had gender-reassignment I had established my relationships with most of the people I know and particularly those I worked with. Of course I work in the profession of librarianship which is highly feminised, although it is true that it is only recently that women have started to be given the top jobs. But even so, as a professional colleague I think that I was treated in exactly the same way when people started to know me as a woman as I had been as a man and I don't think anyone has ever down-graded my thinking, or conversation or influence because they see me as a woman. Apart from anything else, I'm still as assertive as I ever was and I know that I argue in exactly as logical a way as I ever did. I have always tried to be as equal-handed in my treatment of women as I was before, but I recognise too that I've been socialised in many ways to take things out of women's hands and do them for them. At every opportunity they should be treated exactly equally but I'm sure that in areas such as in feminist theory I would still be considered fairly reconstructed, because I've been socialised into attitudes which are very hard to overcome. I think I start to see them more and more now but I think I would have seen them more and more if I continued being a man. I think society is starting to realise that women have been getting the short straw for centuries. Clearly I did not see

women as being in the subordinate position in the sense that it would have prevented me from doing what I did. If I really believed that I was going to step back or go down or become subordinate it would have been reasonable not doing it. I never really believed that.

Last Word on sex and the law:

I am a very broad-minded person when it comes to matters of sex. I think that as long as no-one's being injured, no-one's being harmed, anything can be accepted between consenting adults. I think where the law comes into it is more a question of whether those relationships should be given the sanction of some kind of formal relationship. It is reasonable to say that we are getting past the stage of needing any kind of formal arrangements, the defacto situation has become so highly developed that in fact any de jure situation has its parallel to the defacto situation but as long as people want to have it, as long as it makes a difference to things like inheritance or property law, there is a value in keeping some kind of formality. I think it's still true no matter how good the defacto provision is, because it is easier for blood relatives to overturn a will and defacto partners should have de jure protection. I guess you could sum up my general attitude on sex by saying: "anything that turns you on, baby!"

The author's autobiography, Katherine's Diary, is published by William Heinemann ■

SUBSCRIBE

Subscriptions to *Polemic* are now for three issues in one calendar year.

The rates are as follows:

Student Subscribers	\$10
Individual Subscribers	\$15
Libraries and Organisations	\$30

Requests for subscription should be sent to the Subscriptions Editor, *Polemic*, Sydney University Law Society, 173-175 Phillip St. Sydney 2000. Telephone 225 9204.