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# Integrity and Rights to Gender-Affirming Healthcare

Gender-Affirming healthcare (GAH) interventions are medical or surgical interventions that aim to allow trans and non-binary people to better affirm their gender identity. It has been argued that rights to GAH must be grounded in either a right to be cured of or mitigate an illness—gender dysphoria—or in harm-prevention, given the high rates of depression and suicide amongst trans and non-binary people. However, these grounds of a right to GAH conflict with the prevalent view amongst theorists, institutions, and activists that trans and non-binary people do not have a mental illness and that one can be trans and entitled to GAH without being depressed or suicidal. This paper challenges the orthodoxy that a right to GAH must be grounded in either of these ways and instead argues for a right to GAH grounded in a right to live and act with integrity. The standard view, which this paper explains and defends, is that our rights to live and act with integrity ground a right to religious accommodation in many cases such as a right to not be denied social security due to one's refusal to work a job on a holy day. This paper argues that if our rights to live and act with integrity can ground *prima facie* rights to religious accommodation, our rights to live and act with integrity ground *prima facie* rights to GAH.

## I

Gender-Affirming healthcare (GAH) interventions include the prescription of hormones (testosterone or estrogen), hormone blockers, and surgery such as top-surgery (mastectomy) and facial feminisation surgery. Many hold that trans and non-binary people have rights to GAH. But what grounds this right?

Two natural ways of grounding rights to GAH are widely discussed. First, rights to GAH may be grounded in the right to be cured of, or to mitigate, an illness that one has. On this view, gender dysphoria is an illness and rights to GAH are grounded in rights to have this illness mitigated or cured.<sup>[1]</sup>

However, it is now widely accepted that, first, trans and non-binary identities should not be necessarily tied to mental health conditions or illnesses that need to be cured.<sup>[2]</sup> (p28)<sup>[3-6]</sup> And, second, that we should not pathologise trans identities and experiences, which just increases their stigmatization and

the prevalent view of trans people as mad, bad, deceived, or deluded.<sup>[2]</sup>(p25)<sup>[7-8]</sup> (§1)<sup>[9]</sup>(ch. 2)<sup>[10]</sup>(pp15-16). We should instead see being trans as just a part of normal human variance.<sup>[11]</sup>(p481) Better research, and research and advocacy by trans and non-binary people, has led to consensus on these two claims amongst groups campaigning for trans rights, transgender health professionals, such as the members of the World Professional Association for Transgender Health, as well as other organisations and institutions including the European Parliament and the Council of Europe. Presuming, in line with this emerging consensus, that we should accept these two claims, it follows that we should reject the first grounding for rights to GAH: we should reject the view that trans people's rights to GAH are rights they have in virtue of an illness that they have.

A second natural way of grounding rights to GAH is in rights to have the harm one is experiencing mitigated: trans and non-binary people have very high rates of suicide and severe depression and GAH mitigates this depression.<sup>[2, 12]</sup>(pp26-28). However, many trans people are not depressed or suicidal. For instance, Ashley and Ells<sup>[13]</sup> explain that one can have a gender identity at odds with the gender one was assigned at birth just in virtue of experiencing gender euphoria, which involves having

“...a distinct enjoyment or satisfaction caused by the correspondence between [one's] gender identity and gendered features associated with a gender other than the one assigned at birth”. For instance, instead of being distressed by my masculine fat distribution, I might simply be overjoyed by the thought of having a feminine fat distribution [which is caused by hormones and hormone blockers prescribed as part of GAH]. (p24)

The view that one can be trans or non-binary without experiencing such distress or depression is also extremely prevalent amongst trans authors and groups; if you do not have gender-related distress, depression, or hatred of your body, that does not mean you are 'not trans enough' to be trans.<sup>[3]</sup>(p27)<sup>[14-16]</sup>. Assuming that we should accept these views, the second grounding cannot generate a right to GAH for all trans people who want and seek GAH; since some trans people want and seek GAH but are not depressed. So, there are problems with holding that rights to GAH are entirely grounded in either of these two natural ways.

Some, such as Bracanovic<sup>[1]</sup>(p99) and Go<sup>[12]</sup>(p528), have argued that trans theorists, authors, and activists cannot get what they want here: rights to GAH can only be grounded in one of the above two ways. And that means that *either we should understand being trans and non-binary as an illness or as essentially related to depression or that we should hold that trans and non-binary people who are not depressed or ill do not have a right to GAH*. This paper argues that this is not the case. It proposes that rights to GAH can be grounded in rights to live with integrity. §2 explains the widely held view that our rights to integrity

ground *pro tanto* claim rights to religious accommodation. §3-4 argue that if our rights to integrity ground *pro tanto* claim rights to religious accommodation, then our rights to integrity ground *pro tanto* claim rights to GAH. §5 discusses an objection to this view. §6 briefly discusses whether these integrity-based *pro tanto* claims rights to GAH might sometimes yield all-things-considered rights to GAH.

## II

Many states permit exemptions to laws for those with particular religious beliefs. For instance, (unlike non-Sikhs) Sikhs in the UK are permitted to ride motorcycles without wearing a helmet and to carry ceremonial daggers in public. In *Sherbert v Verner* the US Supreme Court ruled that individuals who refuse Saturday work due to their religious convictions cannot be denied unemployment compensation even though others who refuse such work without such conviction can be. Other religious exemptions involve exemptions from uniform policies (to wear headscarfs or jewellery). The most popular account of rights to religious exemptions<sup>[17-19]</sup> grounds these rights in our right to live with integrity.

To have or live with integrity, in the relevant sense, is for there to be a congruence or fit between the commitments, projects, or principles that are constitutive of one's identity or identities and one's actions.<sup>[18]</sup>(p203) One acts with integrity on this picture whenever one acts in line with one's ideal of the kind of person one should be and the kind of life that one—but not necessarily everyone else—should live.<sup>[18]</sup>(p204, p215) One marker of a commitment, project, or principle that one cannot sacrifice without sacrificing one's integrity is that one cannot sacrifice it without feeling guilt, shame, or remorse.<sup>[18]</sup>(p203) But, crucially, an agent can fail to act with integrity even if they do not judge or feel that they have violated a moral requirement or obligation by acting in a particular way but just because they judge or feel that they have failed to live their life (i) in the way that they judge they should be living it, (ii) in line with their own identity, or (iii) in line with their own view of the good life (or the good life for them).<sup>[18]</sup>(p204, pp214-215, p315 n. 49)<sup>[19]</sup>(pp4-6)<sup>[20]</sup>(pp108-118)<sup>[21]</sup>(pp1-20)<sup>[22-23]</sup>(p418).

On this account, if Sikhs have a right to wear a turban on a motorcycle and to carry ceremonial daggers in public, this is because restrictions on their doing these things compromises their ability to act with integrity; if we have a right not to be forced to work on our holy day, that is because our so working would compromise our integrity; and if we have the right to contravene a uniform policy and wear a hijab or a religious necklace, this is because otherwise we would not be able to go to school or work whilst simultaneously keeping our integrity.

### III

As I will argue, if our rights to live and act with integrity ground a *pro tanto* claim right to religious accommodation, then our rights to live and act with integrity ground a right to GAH for many trans and non-binary people. The argument here starts off with the link between GAH and authenticity, which, as we'll see in §4, links GAH to integrity.

Many trans people report that they transitioned from the gender they were assigned at birth to another gender in order to be able to live their lives authentically or to live their lives as their true or best selves—and some report that they felt they were living inauthentically before transitioning.<sup>[14](p255, p313)[24-25](p13)[26](p14, pp19-21, pp94-95, p137, p165)[27-29]</sup> And, as I'll argue,

*For many trans people, GAH is essential to their transition or the transition they desire.*

First, some trans and non-binary people see the physical and/or emotional changes that GAH provides as essential for the transition that they need in order to live authentically. For instance, Arabelle J<sup>[30]</sup> writes that '[t]o me, authenticity — finding my authentic self — meant solving my lifelong puzzle: a mismatch between my inner self and my body.' Others report that they felt that bottom surgery was required in order for them to be their true self.<sup>[31]</sup> Relatedly, some trans men feel that in order to live authentically they need the facial hair or deeper voice that they can only get with a course of testosterone.<sup>[32](ch.14)</sup> And some trans women say that without estrogen they are unable to be in touch with their emotions and live authentically in the moment.<sup>[14](p.345)[33]</sup>

Second, the social changes that GAH enables are essential to many trans and non-binary people's (desired) transition. Many trans people's desired transition involves their being generally treated by others as members of the gender with which they identify rather than the gender they were assigned at birth. That is, their not being subjected to the social norms associated with the gender that they were assigned at birth, people generally referring to them with the pronouns of that gender—not misgendering them—grouping them in with the gender with which they identify when there are such groupings, and permitting them to use spaces for the gender with which they identify rather than another gender. More concretely, many trans women want to be treated as women in public, to be thought of as women when shopping, rather than stared at and treated as weird for being in the women's clothing section or using female changing rooms; many trans men want to be seen as 'one of the guys' by other men and treated as such.<sup>[14](pp153-156)</sup>

But trans people are not generally treated in these ways socially until they look more like a member of the gender with which they identify than a member of the gender they were assigned at birth: they are not treated as a man/woman until they pass as a man/woman (at least in dominant social contexts). Passing is an important part of many people's transition because their transition involves, for them, their being socially treated as a member of the gender with which they identify and passing enables this. And it is much easier for (many) trans people to pass if they have had certain kinds of GAH and some trans people can only pass with GAH. Trans women who have significant facial hair or evidence of it—a significant grey shadow beneath the skin—are read as male;<sup>[29]</sup> GAH such as electrolysis or laser hair removal removes this (appearance), puberty blockers prevent it. Trans women who are not on estrogen and/or anti-androgens will not have, *inter alia*, a feminine distribution of fat in their faces or bodies and may struggle to pass as women for this reason. This is because we are attributed a gender by others, in part, based on whether our facial features meet the stereotypes of either gender which are to a significant extent determined by the effects of estrogen.<sup>[9]</sup>(p31)<sup>[10]</sup>(p30-32). Many trans women do not pass as women without facial feminisation surgery, but do pass with such surgery.<sup>[25]</sup> Unless they bind their breasts, which can be extremely difficult, uncomfortable, and dangerous if done for a long period of time, trans men will struggle to pass as men without top surgery. And trans men may find it easier to pass with the masculine physique, facial hair, and deeper voice that testosterone produces. In sum, to be able to be taken as a woman/man many trans women and men need GAH.<sup>[34]</sup>(p.585). So, for many trans people, GAH is essential to the transition which they desire and which enables them to live authentically, because this transition involves their being socially perceived and treated in certain ways and GAH is key to this happening.

So, there is a good case that, for many trans people, *GAH is essential to their transition or desired transition, which for many is essential to their living authentically*. Now although GAH is necessary for many trans and non-binary people's desired transition and the transition that enables them to live authentically, it is not essential for *all* trans and non-binary people's transitions or for *all* trans and non-binary people to live authentically. For instance, many non-binary people do not seek to transition physically and do not need GAH in order to live authentically.<sup>[16, 35]</sup>(p.7, ch. 3). And many trans and non-binary people want to not be treated as a member of the gender they were assigned at birth but do not want to change their bodies or access GAH in order to facilitate this change. Nor is seeking GAH something that trans people do by default; identifying as a gender other than the one that one was assigned at birth does not necessarily, or even normally, involve a desire to change one's body in a way that GAH would facilitate. But this does not cast doubt on the claim that GAH is essential for some trans and non-binary people to live with authenticity. Similarly, some Christians' authentic Christianity involves

their wearing a religious necklace at work, but other Christians' Christianity does not; some Muslims' authentic enactment of their religion or religious beliefs involves their wearing a hijab to school or work, other Muslims' authentic enactment of their religion does not. But nonetheless the wearing of religious attire at school and work is, and has been taken to be, essential to some Christians and Muslims' negotiating the world with authenticity. (§2 above) <sup>[9]</sup>(p.6).

## IV

So far I've argued that, if we take trans people at their word, as we should,<sup>[36]</sup> GAH is necessary for some trans people, namely those who want it, to live with authenticity. In this section, I'll argue that there is a good case that

If GAH is necessary for some people to live with authenticity, GAH is necessary for those people to live with integrity.

This is right, I'll argue, whichever of the two most popular accounts of authenticity we accept, both of which fit with the reports of those trans and non-binary people who report that they need GAH in order to live or act authentically.

According to one popular account, authenticity is self-discovery, being true to oneself, where in order to do this one needs to 'listen attentively to an inner voice which calls on us to be human in a way that is distinctively *ours*'. Levy<sup>[37]</sup> explains that on this account, '[i]t is only by being true to what is within that we live fully meaningful lives: if I do not live authentically, "I miss the point of my life, I miss what being human is for *me*"(p310). He uses being gay as an example:

to be gay is to have an identity that diverges from the statistical norm; moreover, an identity that is heavily stigmatised. To find oneself as a gay man or woman requires the courage to hear a voice that so many other trends in the ambient culture tend to drown out, and then, having heard it, to have the courage to live in accordance with it.

Now if one must live as openly gay in order to live authentically in this sense, one must live as openly gay in order to live with integrity. For, as we discussed in §2, in order to live or act with integrity one must live or act in line with one's view of what a meaningful or good life for one looks like to one. Many trans and non-binary people need to transition from the gender they were assigned at birth in order to live with authenticity in this sense, as discussed in §3; their senses of their selves, and/or their

own particular gender identities, imply that they should live in a way different from how they would live if they lived as the gender they were assigned at birth. And, as discussed in §3, in order to transition in this way, and so to live and act with both authenticity and integrity, many need GAH.

If one is queer or trans but does not live openly as such, one can still live with integrity. For instance, suppose that you have a queer or trans identity and view a good life for yourself as one in which you are openly queer or trans but you are in a homophobic or transphobic context. Your view of a good life for oneself *in this context* may not involve your living openly as queer or trans or fully recognizing yourself as queer or trans due to the other costs to your well-being that this would involve in this context. However, the point is that if one's sense of oneself and what is a good life for one in circumstances C does require that one lives in a particular way in C, then one must live in that way in C in order to live authentically and with integrity. And many trans and non-binary people have a view of what the good life for them is that *does* involve their having GAH so that they can live a good life in their current context or circumstances.

According to perhaps the most popular alternative account of authenticity as self-discovery, authenticity is self-creation. On this view, one's authenticity lies in one's moulding oneself into the person that one judges or feels that one genuinely is; authenticity lies not in accepting our limitations but in striving to transcend those limitations that do not fit with our judgments of what a meaningful and good life for ourselves involves.<sup>[37](p312)</sup><sup>[38](p36)</sup> This understanding of authenticity also fits with the idea that many need GAH in order to live or act with authenticity for the reasons discussed in §3. For those who wish to transition to a gender other than that which they were assigned at birth wish to mould their bodies or social lives in ways they feel better fit who they genuinely are and what a good or meaningful life would look like for them. But if one needs X to act or live with authenticity in this sense of authenticity, there is at least a *prima facie* case that one needs X in order to live with integrity. Since, as I explained in section 2, to live with integrity is to live in line with one's ideal of what a good or meaningful life for one looks like. So, even if we adopt this alternative account of authenticity, it is still plausible that

If GAH is necessary for some people to live with authenticity, GAH is necessary for those people to live with integrity.

I want to discuss one final reason for holding that, since GAH is necessary for some people's (desired) transition, we should hold that GAH is necessary for some people to live with integrity. If we



understand ourselves as doing something wrong—in some not necessarily moral sense—by refraining from doing something that we want to do, this is good evidence that doing that thing is necessary for us to act with integrity. And many (but not all) trans people have an experience that they are doing something wrong by not socially grouping themselves in with the gender with which they identify or by not socially transitioning.<sup>[9](p78)</sup><sup>[39]</sup> Furthermore, in §2 I explained that one indicator that one's integrity requires that one do something is that one feels guilt, shame, or other negative reactive attitudes towards oneself if one does not do that thing. And many (but not all) trans people report feeling shame, guilt, or having negative reactions towards themselves because they have not socially or personally transitioned to the gender that lines up with their gender identity, or report having felt this way prior to their transition.<sup>[13](p314)</sup><sup>[39-41]</sup>.

## V

I have been arguing that we have rights to GAH that are grounded in our rights to live with integrity. One important line of objection to this argument is that integrity cannot ground a positive right to anything and/or cannot ground a positive right to provision of healthcare or medical procedures. However, integrity does ground positive rights in certain cases. As I've explained, integrity is generally accepted to be the best account of rights to religious accommodation. As I've explained, the generally accepted account of rights to religious accommodation grounds these rights in rights to live with integrity. And some rights to religious accommodation, which integrity grounds, are positive rights. For instance, as discussed in §2, individuals have been granted the positive right to unemployment support so that they can live with integrity rather than being forced to work in a job that they could only do on their holy day or rather than being forced to work in a job that otherwise conflicts with their integrity, such as a vegan having to work in the meat industry.<sup>[42](column 267w)</sup><sup>[43](p154)</sup>. These are cases in which integrity grounds a positive right to unemployment support; in these cases, there is employment someone would be required to take or face losing unemployment support, but individuals whose integrity would be compromised by taking this employment are not required to take this employment or face losing their unemployment support.

But even if integrity can ground positive rights, can it really ground positive rights to the provision of healthcare and medical procedures? It might be argued that although integrity can ground rights to *access* a procedure, it cannot itself ground positive rights to medical care. Why would this be? It might be argued that there just are no cases of positive integrity-based rights to healthcare having been granted and, furthermore, this can seem reasonable, for healthcare is supposed to support the health

of people not their integrity. On this view, positive rights to healthcare are only grounded in our rights to health and harm-reduction.

There are several different avenues of response we can take here. First, a concessive response. Even if integrity cannot itself ground positive rights to GAH, if integrity can ground rights to access GAH, that would be an important step. For many states heavily restrict access to GAH. In the UK, for instance, not everyone has access to HRT. Those who want HRT face several years waiting to access HRT via the NHS. And even then, not everyone who requires HRT to live with integrity is given access to it. Whilst accessing HRT via private means outside of the NHS is extremely costly. And it is not possible to access certain forms of HRT other than through the NHS.<sup>[3]</sup>(pp62-68,pp94-95,pp148-149)<sup>[44]</sup> So, if integrity could ground, but only ground, rights to *access* GAH, this would still be an important conclusion.

Second, at least in certain jurisdictions, there are positive rights to healthcare and medical procedures that are not grounded in health and harm-reduction. For instance, in the UK everyone has a right to a vasectomy funded by the NHS if they request one; one does not need to demonstrate that one needs a vasectomy for one's health or to prevent harm coming to one in order to be provided with a vasectomy. Similarly, rights to abortion are not grounded in harm-reduction or health-based considerations, but are normally thought of as grounded in autonomy. And, in many jurisdictions, people have positive rights to an abortion in virtue of their rights to bodily autonomy rather than their rights to health. So, positive rights to healthcare are not only grounded in rights to health or health-related considerations. Given that there is a *prima facie* right to that which we need in order to live with integrity, and that considerations beyond health can ground *prima facie* rights to medical care and medical procedures, there is a *prima facie* right to GAH. (Perhaps it might be argued that vasectomies or abortions are not healthcare when they are not conducted for health-based reasons. But in this case, we can argue that procedures and treatment that are thought of as GAH are not genuinely healthcare when administered for non-health-based reasons. But nonetheless we have positive rights to such procedures and treatments when we need them to live with integrity in the same way that we have positive rights to abortions and vasectomies for non-health-based reasons).

Finally, as Minerva notes, in Brazil free cosmetic surgery is given to the poor in order to enhance their well-being and/or social and economic prospects—rather than to mitigate some harm—and in most European countries cosmetic surgery for physical features that are merely non-average—rather than associated with any medical harm—is provided by public health systems.<sup>[45]</sup>(p187) Similarly, according to Inch<sup>[5]</sup>, fertility treatment and breast reconstruction following removal of tumours ‘is not

necessarily offered due to an illness or a disorder; it is offered in order to improve one's quality of life and psychological wellbeing'(p200-201). Living with integrity enhances our general well-being.<sup>[46]</sup> And so we could have positive rights to GAH grounded in integrity because of the link between living with integrity and well-being. Just as, in Brazil and Europe, rights to general well-being generate rights to the aforementioned medical procedures.

## VI

I've been arguing that we have rights to GAH grounded in rights to live with integrity. There are further issues to explore here, such as exactly when these claims are decisive; do the costs of certain forms of GAH outweigh integrity-based claims to GAH as the costs of certain forms of religious accommodation outweigh claims to it? Thorough investigation of these issues will have to wait for further work. But I will briefly explain that there is a good *prima facie* case that sometimes integrity-based claims to GAH are decisive.

The most well-developed view about when *A*'s *pro tanto* integrity-based claim to *X*, e.g. religious accommodation, gives rise to an all-things-considered justification that they should be given *X* is that *A* should be given *X* if the following conditions are met:

- (i) There is some, at least minimal, degree of conflict between the laws of *A*'s society regarding *X* and *A*'s integrity (e.g. these laws make it difficult for *A* to live with integrity by restricting their ability to do something they need to do to act or live with integrity or enabling such restrictions);
- (ii) *A* faces a significant loss of integrity without *X*; and
- (iii) It is not excessively costly to give *A*, and those with similar claims, *X*.<sup>[18]</sup>(pp222-228)<sup>[19]</sup>(p5-16,p18-19).

Some integrity-based claims for access to GAH and provision of hormone replacement therapy (HRT) will meet these conditions. As I argued in §3, without GAH, such as HRT, many face a significant loss of integrity; (ii) is met.

I'll discuss the other conditions with regards to the conditions in the UK at the moment. As I explained in §5, in the UK not everyone has access to HRT via the NHS, some forms of HRT cannot be accessed privately, and accessing HRT privately is extremely costly. So, (i) is met. Regarding (iii), the costs of providing access to HRT to everyone who needs it to live with integrity are at most very low.

The cost here would just involve the administration of regular blood tests to safely monitor those taking a course of HRT. And funding certain forms of HRT for everyone who needs it to live with integrity is not costly either. For instance, the National Institute for Clinical Excellence<sup>[47]</sup> estimates that an annual course of oral estrogen costs the NHS approximately £30. The NHS currently funds other much more expensive treatments including treatments that do not have a medical, harm-reduction-based, disorder-based, or integrity-based rationale. For instance, everyone has a right to a vasectomy on the NHS if they request one. In other countries vasectomies cost upto \$1000. So, the cost to the NHS of a vasectomy may well run to hundreds of pounds. (iii), then, seems to be met. So, in some cases our rights to live with integrity may well give rise to *all-things-considered* claims to GAH and make a lack of access to or provision of GAH unjustifiable.

## VII

It has seemed to many, such as Bracanovic<sup>[1]</sup> and Go<sup>[12]</sup>(p528), that rights to GAH can only be grounded in rights to harm or illness mitigation or cure. This conclusion is at odds with the views of our rights to GAH articulated by trans theorists, authors, and activists. And seemed to yield a dilemma: either we should understand being trans and non-binary as an illness or as essentially related to depression or we should hold that trans and non-binary people who are not depressed or ill do not have rights to GAH. In this paper I've proposed that, in fact, rights to GAH can be grounded in our rights to live with integrity. I argued that rights to live with integrity can ground rights to access and be provided with goods (§2, §5). Many (but not all) trans and non-binary people need GAH in order to live authentically (§3), and in virtue of this many trans and non-binary people need GAH in order to live with integrity (§4). So, integrity grounds a *prima facie* right for many trans and non-binary people to access and be provided with GAH. And this *prima facie* right may well yield an all-things-considered right in certain cases (§6). This means that trans people do not need to have an illness or be suffering from a particular form of harm or distress in order to have rights to GAH and that we have rights to GAH even if we are not suffering from gender dysphoria. No one is 'not trans enough' to have a right to GAH on this view. And there is a good case that all trans people whose desired transition involves GAH have at least an important *prima facie* right to GAH.

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