
Legal Discourse's Epistemic Interplay with Sex and Gender Classification in the Dewey Decimal Classification System

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ABSTRACT

The recognition of a spectrum of gendered and sexed people, along with changing social conventions, has caused disruption in the absolute and binary divisions between male and female, man and woman. *Gender* and *sex* are formally classified for many purposes; however, formal classifications can marginalize people with variable sex or those who do not identify with traditional understandings of gender. However, the instability is not a recent development, as demonstrated by historically changing conceptualizations of sex and gender in bibliographic classification, as well as in competing and interacting formal discourses. A discourse analysis was conducted on the concepts of *women* and *trans* and *intersex people* in four editions of the *Dewey Decimal Classification* system, as well as on relevant American legal discourse to investigate how institutionally endorsed epistemology and ontology work together to influence how concepts are defined and classified.

INTRODUCTION

Although classifications are human constructs, they can have serious consequences on the lived experience of people being classified, as Bowker and Star (1999) and others have shown. Formal, institutionally backed classifications maintain an epistemic authority of how things “are” or “should be,” at the risk of marginalizing people who do not fall within prescribed categories or behave or look in ways that match the necessary and sufficient conditions required for membership in a category. In particular, the fluidity of *sex*, *gender*, and *gender identity* has burst the seams of the binary categories prescribed for them. Biology seems immutable,

but as understandings of sex, gender, and gender identity have evolved, the ontological characteristics and epistemic authority used to assign sex and gender have changed through time and can reflect the values and biases of those making the determination, including in bibliographic classification. With no one “ruling body” determining sex and gender classification, both individual perceptions and formal classifications of sex and gender have been shaped by the interplay of social, scientific, medical, legal, theological, academic, and pedagogical discourses, among others. The epistemic and ontological dynamicity underscores West and Zimmerman’s (1987) definition of *sex* as “a determination made through the application of *socially agreed upon* biological criteria for classifying persons as females or males” (p. 127; emphasis added). Thus critically examining the historical epistemic underpinnings of concepts in a classification can help recognize epistemology’s role in formulating concepts and the classificatory structure.

As one of the complicit discourses, legal discourse possesses classificatory power that determines who is eligible for rights and protections. The law creates not only abstract definitions of *justice* and *equality* but also concrete determinations of sex differentiation that hold civil and even violent consequences in the lived experience of those impacted by its rulings. Like bibliographic classification, it also maintains a provisionality reflective of the opinions of a particular court, attorney, or legislative body, which also influence a multitude of other discourses, including medical, religious, and commercial, that coalesce and are communicated through mass media. As Supreme Court Justice Oliver Wendell Holmes (1881) famously wrote in *The Common Law*:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. (p. 1)

The instability reflected above and in critical classification studies both point to the discursive construction of the subjects of sex and gender in the tradition of Foucault (1990), where discourses “interplay” to form dynamic subjects rather than those that are stable, transcendent, and imposed. Subjects are products of a particular moment in time and an amalgamation of micro, discursive apparatuses of power. These discourses must be examined in their contexts to see how epistemic positions manifest in consequences for the users of systems. Legal discourse, on behalf of the state, codifies processes and procedures that define sex and gender, thus providing an articulated and invasive embodiment of ostensible social mores and values at particular temporal moments. Similarly, bibliographic classification classifies and makes accessible the knowledge communicated in

discourse. Hence this project investigates how concepts related to sex and gender are formed in legal and bibliographic discourse. It is important to distinguish here that the argument is not how legal categories influence the ways in which women or trans or intersex people perceive themselves (an argument made by Foucault in *The History of Sexuality* that is not explored here), or the social, informal perceptions of others, but rather how the concepts are epistemically formulated and codified in the law and bibliographic classification with or without the benefit of input from those being classified. Nor does the argument focus on, except to clarify historical usage and literary warrant, the nomenclature used to name the categories.

METHODOLOGY

Hjørland (2013) argues that the epistemic values of the classificationist body—those who have the authority to “know” or dictate the validity of knowledge for a domain—will be clearly evident upon examination of a classification. He writes that “ontological theory commits us to identifying and classifying a number of phenomena in a specific way—and vice versa; a listing and classification of a number of phenomena may reveal the theoretical outlook of its creator (‘show me your classification and I’ll tell you what theory you subscribe to’)” (p. 171). The relationship between *methodology* and *epistemology* must be recognized. The methodologies used to ontologically define *sex* and *gender* relate to epistemology by showing how knowledge is legitimated through the credibility of evidence or process (for example, logic, induction, and observation), identification of the authority (for example, attorney, classificationist, or subject), and subjectivity. Kleineberg (2013, p. 341) argues that the “ontological dimension should be seen as inextricably interwoven with the epistemological (including methodological) dimension,” as one shapes the other.

To test that notion, a sample of American legal discourse, including legal dictionaries, medical jurisprudence texts, case law, and legislation, was reviewed, along with four editions of the *Dewey Decimal Classification (DDC)* system to sense what kind of epistemic stances could be detected, as well as any interplay among them. The media, and pedagogical, theological, or other discourses also have impact (elsewhere, medical discourse was examined in similar fashion [Fox, 2014]), but the scope of this study was to examine legal discourse and the *DDC* as two of the “major narratives, which are recounted, repeated, and varied; formulae, texts, and ritualized sets of discourses” (Foucault, 1982, p. 56) to see how their interplay bears out in sex and gender classification.

An analysis influenced by Foucauldian genealogical discourse analysis, chosen because of its purposeful emphasis on power relationships, was conducted on the periods leading up to the publication of four editions of the *DDC* in which significant changes in sex and gender classification

occurred (1871–1885, 1958–1965, and 1971–1979). The concepts investigated included the classification and treatment of women and trans and intersex people. Men as a class are discussed in some cases for comparison of treatment; however, generally speaking, men hold epistemic power during these historical periods and are treated as the norm from which other categories deviate, and the intention here is to focus on how those without power are represented in the classification.

Foucault (1982, p. 56) calls direct discourse “internal procedures”—here, the text and structure of the *DDC*, along with introductory material, scope notes, title pages, and so on. A specific set of epistemic clues were sought during examination, such as authority, fallibility, necessary and sufficient conditions, ontology, and rhetorical space, as well as “implicature,” which Budd and Raber (1995, p. 219) identify as subtext or implied “rules” that are not expressed directly but can indicate ideology. *Ontology* here refers to literary warrant, or the idea that a classification is, or should be, based on a given collection. The collection represents what “is” or exists in the domain the classification covers. Searches for *sex* and *gender* concepts in WorldCat and Google books’ Ngram viewer on a selection of the extant literature and dominant terminology. *Rhetorical space*, a concept articulated by feminist epistemologist Lorraine Code (1995), describes spaces where “territorial imperatives” (p. ix) communicate the authority and respect to make knowledge claims. In the text of the classification, this manifests in the structure and naming of concepts (Olson, 2007). Foucault (1990) also writes that discourse analysis is meant to “discover who does the speaking, the positions and viewpoints from which they speak, the institutions which prompt people to speak about it and which store and distribute the things that are said” (p. 11). If authority determines which subjects are present and erased in formal discourse, the inclusions and erasures are evident in the rhetorical space of a classification.

The legal literature constitutes discourse that Foucault (1982, p. 57) says “operate[s] . . . from the exterior,” or the discourse that is not directly associated, but has influence. Since no formal, singular definition of *sex* or *gender* exists in legal discourse, it was analyzed for ontological clues of what the legal institution considered characteristics of sex or gender during the specified time frames. The findings from legal discourse and *DDC* were then compared for epistemic commonality or departure. The “definitions” of sex and gender in legal discourse typically took two forms. First, defining occurred when a distinction must be made between those men and women who identify with their sex, usually when explaining why it is illegal for women to do the things men do, and later explaining why women ostensibly perform poorly at the things men do. To narrow the literature, the focus is on legal explanations as to why women cannot work, mostly in the context of practicing law. The second type of defining occurs when

attorneys encounter transgender practices or intersex bodies. These usually are found in cases where trans or intersex people wish to marry, vote, or practice some other sex-segregated occupation. Because of space, the findings are necessarily reduced to a few representative examples. These examples are not interpreted to be the collective opinion of the discursive community, as Budd, Hill, and Shannon (2010, p. 271) warn against interpreting each “individual as fully representing society.” Instead, they are considered publicly communicated examples of institutionally backed attitudes that contribute to wider perceptions of sex and gender, which ultimately can influence bibliographic classification.

THE PERIOD 1871 TO 1885

Women in Legal Discourse

As Dewey was devising the first edition of the *DDC* between 1871 and 1876, the first wave of white feminism focused on getting legal rights recognized—specifically, suffrage, education, and employment. In Bouvier’s *Law Dictionary* (1870), the entry “Sex” notes unspecified “physical difference between male and female animals,” which somehow produces legal differences: “In the civil state, sex creates a difference among individuals,” listing restrictions for women, such as entering into contracts or holding office (p. 517). The “Women” entry states that they are “all the females of the human species . . . who have arrived at the age of puberty” (p. 679). “Mankind” is defined as “persons of the male sex; the human species,” but clarifies that “females as well as males are included” (p. 99). Taylor and Reese’s influential *A Manual of Medical Jurisprudence* (1873), in providing guidance for determining the sex of intersex people, suggests that because women possess breasts, vaginas, uteruses, and ovaries, these render them “irritable and vain,” with “shrill and squeaking voices” (pp. 675, 679). Males, by contrast, can be taken more seriously due to the “grave tone of voice, the presence of a beard, the width of the shoulders and the narrowness of the pelvis” typical of most men (p. 669). When Lavinia Goodell applied to the Wisconsin State Bar, the chief justice referred to the female sex’s “gentle graces, its quick sensibility, its tender susceptibility, its purity, its delicacy, its emotional impulses, its subordination of hard reason to sympathetic feeling.” Furthermore, working women were prevented from “the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor;” and “when voluntary, treason against it” (*In re Goodell*, 1876). In Bouvier’s 1871 *Law Dictionary*, a husband is required to “love his wife, and to bear with her faults [no such faults in husbands are mentioned in the entry for “Wife”], and if possible, by mild means to correct them” (p. 675). Twice, the definition mentions that a husband can make decisions without his wife “controlling” him.

The definition of *wife* also notes: “A great change in favor of the wife has been produced by recent statutes in a majority of the United States”;

it also declares that “*for her protection*, the wife is rendered incapable of binding herself by contract” (Bouvier, 1871, p. 661; emphasis added). The key legal term is *incapacity*, defined as “the want of a quality legally to do, give, transmit, or receive something” (p. 695). “Incapable people” possess some quality or deficiency that renders them unable to make decisions, but not always permanently: “In general, the incapacity ceases with the cause which produces it. If the idiot should obtain his senses, or the married woman’s husband die, their incapacity would be at an end” (p. 695). However, between 1848 and 1900 the Married Women’s Property Act had been passed, eliminating the concept of women’s incapacity, yet married women and “idiots” exemplified incapacity in legal dictionaries until 1948.

Women, even those considered “capable” elsewhere, are silenced in the rhetorical space of the profession:

Single or unmarried women have all the civil rights of men . . . but they are, generally, not possessed of any political power; hence they cannot be elected representatives of the people, nor be appointed to the offices of judge, attorney at law, sheriff, constable, or any other office, unless expressly authorized by law. (Bouvier, 1871, p. 679)

If women are prohibited from serving on juries or working as an attorney or judge, they then are excluded from defining their own legal rights without voice or recourse; yet “the principal reason of this exclusion is to encourage that modesty that is natural to the female sex, and which renders them unqualified to mix and contend with men” (p. 517).

In denying Myra Bradwell’s bar application, the United States Supreme Court contended:

Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society. (*Bradwell v. State of Illinois*, 1873)

Goodell was also “protected” from the legal profession, which is

selfish and malicious, knavish and criminal, coarse and brutal, repulsive and obscene. . . . It would be revolting to all female sense of innocence and sanctity of their sex, shocking to man’s reverence for womanhood and faith in woman, on which hinge all the better affections and humanities of life, that woman should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice. (*In re Goodell*, 1876)

Thus this “law of nature,” code for “divine” law, often justified why women could not do what men do (Austin, 1832, p. 2).

Women in the DDC's First Edition

Dewey published his forty-two-page first edition anonymously in 1876, with his name only appearing in the copyright statement. It was titled *A Classification and Subject Index for Cataloguing and Arranging the Books and Pamphlets of a Library*. Throughout the preface, Dewey positions himself as a humble, hard-working librarian concerned solely with how his scheme benefits both librarians and patrons. He remarks that "it was the result of several months' study . . . of hundreds of book and pamphlets, and in over fifty personal visits to various American libraries" (p. 3), and professes that "the author has no desire to claim original invention for any part of his system." Dewey wrote that he had been influenced by a Milanese library, and that "the inverted Baconian arrangement of the St. Louis Library has been followed" (p. 10). He did not attempt to map all knowledge, as other classifiers did (Frohmann, 1994, p. 113), nor did he claim accuracy. Dewey (p. 4) admitted that "the impossibility of making a satisfactory classification of all knowledge as preserved in books, has been appreciated from the first, and nothing of the kind attempted," and that "theoretical harmony and exactness has been repeatedly sacrificed to the practical requirements of the library," which sets up his pragmatic intentions to make a "useful" classification.

Dewey did not include a singular class for women (nor men for that matter) other than circuitously, through "woman-education" and "woman-suffrage"—classes likely warranted by the literature. He explained that for the convenience of the user, "the most nearly allied subjects precede and follow" each other (p. 7). The only other feminine class, 618 "Obstetrics and Sexual science," is situated next to 619 "Veterinary medicine," which implies a close relationship. Dewey's source of literary warrant was the Amherst College Library collection. As an all-male institution, it is quite possible that few works on women were in the collection. A search in WorldCat for "women" in the mid-to-late nineteenth-century time frame indicates that a great deal of literature on them had been published. Much fits into the suffrage, education, home, and gynecology-obstetrics classes, as expected; however, many works addressed notable women and their accomplishments (for example, Goodrich's 1855 *Lives of Celebrated Women*). Revisions in Dewey's second edition create a place for such works.

The gender-related topics in the classification and the relative index outline the roles of a woman as dictated by warrant in combination with the classificationist's worldview. In the first edition's subject index, some feminine-identified concepts can be found, but they all relate to education, reproduction, religion, or exceptional circumstances—parallels of the headings that exist in the classification. The remaining terms include "housewifery," "midwifery," "pregnancy," "maternity," and "mothers," which are classified under "Family." "Fathers" was not included in the in-

dex or scheme. The only two terms in the classification and index that do not relate to the domestic sphere represent institutions that excluded women: “suffrage” and “education.”

Women in the DDC's Second Edition

With Dewey still editor, the classification's second edition in 1885 expanded to 315 pages, with input from “hundreds of specialists” (p. 7). His modest tone in the first edition's preface became boastful. He now referred to it as the “Dewey System” (p. 48), and his name was prominently displayed along with a laundry list of his credentials, including “Professor of Library Economy and Chief Librarian of Columbia College; Consulting Librarian of Wellesley College; Secretary[,] American Library Association; late of Amherst College Library, and Editor of *Library Journal*,” with an “etc., etc.” tacked on at the end. The publisher's note exhorted that “ten years' experience has more than confirmed the great hopes of its usefulness” thanks to “many unsolicited and enthusiastic testimonials” (p. 7). The system is useful to “some school-boy” to the “President of some Royal Scientific Society,” as well as to the “ignorant and the lerned,¹ by the most painstaking and accurate scholars, by hurried men of business” (p. 7). In response to the feedback he received on the first edition, Dewey defensively writes that “no individual is sufficiently lerned to wisely classify books on all subjects and sciences . . . [but] by the aid of specialists, the index can in time be made reasonably accurate” (p. 34). Although he “is always grateful for suggestions,” Dewey advises that “the only safe rule is to make no changes or subdivisions without submitting them to the author, who will gladly advise on such matters without charge, not on the ground of any superior wisdom,” but rather to prevent the user from inevitable “blunders” (p. 50).

Ten years' worth of feedback and literary warrant evidently indicated that space was needed for women's topics. A WorldCat search retrieves around 35,000 titles on women published between 1850 and 1885, and consequently women finally received their own classes—the infamous 396 “Women's position and treatment” and an expansion of 376 “Education of Women.” The new location, the 390s “Customs, Costumes, and Folklore,” was an odd choice, given Dewey's principle of allied topics, but he includes a disclaimer that “many minor subjects have been put under general heads to which they do not strictly belong. . . . The rule has been to assign these subjects to the most nearly allied heads, or where it was thought they would be most useful. The only alternative was to omit them altogether” (p. 25). Hierarchical force demanded that “Women's position and treatment” shared characteristics with customs, costumes, and folklore, and then also characterized women as a “minor subject”:

- 391 Costume and Care of person
- 392 Birth, Home and Sex Customs

- 393 Treatment of the Dead
- 394 Public and Social Customs
 - Including fairs; chivalry, tournaments; dueling, suicide
- 395 Etiquet
- 396 Women's position and treatment
- 397 Gipsies Nomads Outcast races
- 398 Folklore Proverbs
- 399 Customs of war
 - Weapons, war dances, treatment of captives, scalping, mutilation, burning, cannibalism, etc.

Women are allied with "Etiquette," "Outcast races," "suicide," and "Treatment of the Dead," implying some sort of relationship. "Birth, Home and Sex Customs" includes marriage, sexual relations, and concubinage.

The subdivisions of class 396 provide a more serious rhetorical space and seem to be warranted for subjects lacking in the previous edition:

- .1 Emancipation
- .2 Legal status, property, rights, etc.
- .3 Political status
- .4 Education
- .5 Employment
- .6 Woman in home
- .7 Delineation of woman in art
- .8 Delineation of woman in literature
- .9 Woman in history, politics, war—Amazons

These subdivisions acknowledge a wider range of roles for women beyond the domestic sphere and thus more recognition of women's value and desire to be emancipated. The 376 "Education of women" class expanded to include "convent education," "'fashionable' education," and the "physical and mental capacities of women" (with no parallel class for men). "Women as teachers" in 371.18 was likely warranted by the Common School reform movement of the time that advocated teaching as a female-intensive profession based on the belief in women's maternal nature and morality.

Elsewhere, the rhetorical space suggests relationships or value judgments based on the allied topics. For example, "Woman suffrage" is allied with "Slavery," and "Labor of Women" is allied with "Labor of convicts and children," thus communicating disapproval. Other new developments perhaps justifying literary warrant were the expansion of "Sexual ethics," which arranged newly included topics seemingly from good to bad: "chastity," "celibacy," "continenence" (abstaining from even marital sex), "solitary vice" (masturbation), "social evil" (sex crimes like rape and pedophilia), "adultery," "immoral art," and "immoral literature." "Mental characteristics as influenced by sex" allies with "physiognomy," "phrenology," and

“witchcraft,” showing the emerging understanding of the connection between *sex* and *mind*, although none were considered medical or scientific. A few additions to the scheme acknowledge men’s roles within the family: 173.3 “Duties of husbands and wives,” and 173.5 “Duties of parents.”

Intersex People in Legal Discourse

Legal literature on intersex people, then called “hermaphrodites,” dates as far back as Aristotle. British physician James Parsons (1741) cataloged the legal treatment that various societies had historically imposed on intersex people, including being “shut up in a chest, and thrown into the Sea” or prohibited from “convers[ing] with Men alone in any private place” (p. xxvi). Intersex people were also canonical topics in medical jurisprudence literature (a sample chapter title: “Hermaphrodites, Doubtful Sex, Monsters”) (Dean, 1866). Physicians were consulted to decide the “true sex” of their patients who wanted to legally marry, vote, or have heteronormative sex (Reis, 2009). In Bouvier’s *Law Dictionary* (1871, p. 665), “hermaphrodites [were] “persons who have in the sexual organs the appearance of both sexes. They are adjudged to belong to that which prevails in them.” It goes on to say that “cases of malformation, however, sometimes are found, in which it is very difficult to decide to what sex the person belongs” (p. 665). The phrasing shows how epistemic authority resides with physicians or attorneys who “decide” rather than with the person being “adjudged.”

Taylor and Reese’s *A Manual of Medical Jurisprudence* (1873) describes how an intersex person, Levi Suydam, was judged to be a woman due to his sexual attraction to males, his “aversion to” and “inability to perform bodily labor,” and that he had “a fondness for gay colours, for pieces of calico” (p. 676). Using “abnormal,” “defective,” “deformity,” and “the beings” as words to describe hermaphrodites, the *Manual* stated that it is “not easy to assign a sex, but this is of minor importance” (p. 696). Elsewhere, it describes a woman who had an “abundance of beard and profuse whiskers,” and another woman acquaintance that “had so much hair upon her chin she was obliged to shave like a man,” and finally concedes that “in some cases external examination will entirely fail to indicate the sex” (p. 671). A person with no external sex organs, *A Manual of Medical Jurisprudence* concludes coldly, “must be placed among those monstrous subjects, in which there is, properly speaking, no sex, and which therefore cannot enter a marriage contract with either a male or a female” (p. 281).

Intersex People in the DDC’s First and Second Editions

In the first edition (1876) of Dewey’s classification, “Hermaphrodites” appears only in the relative index, directing catalogers to 612 “Physiology for humans.” A search in WorldCat for “hermaphrodites” between 1850 and 1871 retrieves nineteen titles in English that refer to them, including a doctoral dissertation of 1875 on the medical and legal aspects of hermaphroditism, but adds only a few more titles between 1876 and 1885. The

words “curious,” “remarkable,” or “monstrosity” appear in some titles, but not in Dewey’s classification language until the next edition.

In the second edition of the *DDC* (1885), “Hermaphrodites (man)” is still only found in the index, but now users were directed to 573.7 “Craniology” (a pseudoscience similar to phrenology) and is allied with “Dwarves and Giants” and “Monstrosities.” The connection between craniology and intersex is unclear, other than that phrenologists believed that personality, as well as femininity and masculinity, were influenced by the size and development of the skull and passed down from the mother. Undoubtedly, the alliance with dwarves, giants, and monstrosities suggests abnormality, grouped together as perceived freaks of nature.

Trans People in the DDC’s First and Second Editions

Neither “trans people,” “transvestism,” nor “cross-dressing” appear in the first two editions of the *DDC* or the legal dictionaries. The concept appears briefly only in the medical jurisprudence texts as “concealed sex,” as no one could identify any illegality unless intentional fraud or homosexual sex was committed. *A Manual of Medical Jurisprudence* stated that homosexuality “belongs in the annals of imposture rather than medical jurisprudence” (Taylor & Reese, 1873, p. 678). Despite their relative inattention at this time, during the following century, trans people would come to dominate gender-related discourse.

Summary of the Period, 1871–1885

To summarize, the ontological traits of woman, as expressed through examples in legal discourse, include that women possess innate delicacy, timidity, weakness, and piety, and that they are instinctively nurturing, maternal, and caring yet incapable and unfit for public service. These traits render women best-suited for the home and childrearing and are celebrated as positive and ideal; they are reinforced in opposition to men’s characteristics through active “othering” and presented as immutable by the “law of nature.”

The second edition of the *DDC* (1885) slightly improved its inclusiveness over the first, reflecting women’s desires to enter into those institutions from which they were excluded. However, similarly to legal discourse, Dewey’s classification system continued to minimize women’s roles outside the home, thus maintaining the “separate spheres” ideology. Regardless of how seemingly insulting or puzzling the class for women was, it would take eighty years and second-wave feminism before any changes would actually occur. Trans people were not present in either legal discourse or in the *DDC*, and intersex people were at first cast not unfavorably in Dewey’s system as just another type of anatomic category, but then later, as in legal discourse, they were allied with monstrosities and curiosities, thus beginning their jarring journey throughout the classification.

THE PERIOD 1958 TO 1965

Women in Legal Discourse

Sex and gender research exploded in medicine and psychology during the 1950s and 1960s, but the legal backdrop remained quiet. Little revision in legal dictionaries meant that outdated definitions were being used. In the 1951 edition of *Black's Law Dictionary*, the definition for *sex* was taken from *Webster's Dictionary* rather than case law, statutes, or medicine: "The sum of the peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female" (p. 1541). "Character" seems to indicate an acknowledgment of gender role, but "women" remain biological, as merely "all the females of the human species . . . who have arrived at the age of puberty" (p. 1779). Entries for "Husband" and "Wife" note that they are correlatives of each other (thus thwarting any notion of same-sex marriage). Bouvier's *Law Dictionary* (1948) nostalgically acknowledges the expansion of women's rights: "formerly, he might use such gentle force to restrain her of her liberty . . . but now this is otherwise," and warns that "any chastisement inflicted on the wife renders him guilty of assault and battery" (p. 512), which had not been a concern in the past.

The "Marriage" entry repeats that it is the "relation of one man and one woman" and "founded on the distinction of sex" (p. 1123). "Married woman," as opposed to "wife," has much more extensive definitions, mostly giving specific direction for property disputes with husbands. Women now served on juries, and although they had experienced the "enlightened emancipation of women from the restrictions and protections of bygone years . . . [the] woman is still regarded as the center of home and family life" (*Hoyt v. Florida*, 1961), which allowed the automatic exemption of women because presumed family duties superseded civic duty.

Women were unequal under the law until the Civil Rights Act of 1964 was passed, which reversed the legal definition of a woman from an unequal "other" to an equal. Eight civil rights acts were passed between 1866 and 1991, and only the 1964 act mentioned "sex," which still was only a last-minute addition. Title VII of the act prohibits discrimination against individuals of specifically protected classes, including sex, race, color, religion, and national origin, and it established the Equal Employment Opportunity Commission. The Equal Pay Act had been passed the previous year, which outlawed wage discrimination "on the basis of sex."

Women in the DDC's Seventeenth Edition

When the seventeenth edition of the *DDC* was published in 1965, Dewey had been dead for thirty years. Editor Benjamin Custer eliminated Dewey's simplified spelling and argued for the "integrity of a subject" over the "preference for practicality over theory" (Dewey & Custer, 1965, p. 43). Custer was critical of Dewey, evidenced in his description of the original

introduction as “now obsolete, and it should be read in the context of its time” (p. 61). Custer credits the convenience of the *DDC* for its popularity, but not because of “any theoretical excellence of his arrangement” (p. 13). The “sacrifices to accuracy for the sake of economy” beloved by Dewey disappeared in a maze of arcane instructions intended to restore the “integrity” of the subject. One reviewer criticized the amount of relocations and the length of the numbers, but mostly the complicated instructions and fewer cross-references, along with the “vitriolic tone” and “rigid fanaticism” of the editors (Hinton, 1966, pp. 396–401).

The editorial team’s focus on the “integrity of numbers” resulted in many overdue changes made to the system. Custer tried to correct the “haphazard groupings of terms” by placing subjects in more appropriate hierarchies, writing that “this edition emphasizes the hierarchical nature of true classification and restores the hierarchical feature of Dewey’s notation” (Dewey & Custer, 1965, p. 44). Custer repeatedly emphasized that the pace of knowledge necessitates change, and that classification is an imperfect instrument that will evolve with its times: “It appears unlikely that this or any other general classification will ever be ‘perfect,’ especially in view of the traditional dichotomy of demands for a system that will be both stable and up-to-date” (p. 61). He notes that “the faults inherent in the *DDC* are many. No serious student of classification since 1876 has failed to note them” (p. 15).

Indeed, after nearly a generation, women finally were removed from the problematic 396 class. Since the placement of women in 396 violated hierarchical force, or what Custer called the “drip” principle, women, and for the first time men, were transplanted to 301.4 “Institutions and Groups,” thus positioning them as social groups. Following the drip principle meant that they were also considered “Social characteristics and problems.” “Man” seemed to be a perfunctory complement to “Woman,” as it had no subheadings. The scope note reflected the adversarial influence of second-wave feminism.

301.41 The sexes

.411 Man

.412 Woman. Scope: feminism, superiority

.412 1 Emancipation

.412 2 Careers

.412 6 In the home

.412 9 In history, public affairs, war

If “social group” takes the social sciences definition of a *group* as being “bound together by patterns of interaction,” that interaction here is sex, unsurprisingly, given the sexual-liberation movement of the 1960s. The contents of “Sexual ethics” were emptied into “The sexes” to create a hybrid in which the subclasses all relate to sexuality, and as allied topics,

the relationship between men and women is a sexual problem. The other subdivisions include:

- .413 Celibacy
- .414 Courtship 301.425 Including preparation for marriage
- .415 Sex life outside marriage; Concubinage, premarital relations, adultery, prostitution, homosexuality and other perversions

In the relative index “Sex” refers to biology (that is, the current understanding of sex) and psychology (the current understanding of gender). In “Sex psychology” the concept of gender appeared, but still under the name of sex and laden with sexuality:

- 155.3 Sex psychology
 - .31 erogeneity and libido
 - .32 sex and personality
 - .33 sex differences
 - .332 Masculinity
 - .333 Femininity
 - .334 Bisexuality
 - .34 sex relations

Masculinity and femininity refer to what we would now call “gender roles.” In the nineteenth century, the term *bisexuality* had originally referred to hermaphroditism, but by this time it had connotations of its current usage as a type of sexual orientation. WorldCat indicates that the current usage was present, but only emerging in publications during that time. It is unclear which usage is meant in the 1965 *DDC*; the index only refers to “sex difference,” whereas the term “androgyny”—which means something entirely different—does not appear. WorldCat reveals about a tenfold increase in the amount of works on women from 1850 and 1965, to nearly 300,000 volumes in English. Between 1958 and 1965, the titles include many biographies of notable women or women in particular professions or contexts, indicating women’s changing status.

Intersex People in Legal Discourse and the DDC’s Seventeenth Edition

In the 1948 edition of Bouvier’s *Law Dictionary*, a hermaphrodite was more guardedly called “a person of doubtful or double sex; one possessing, *really or apparently*, and in *more or less* developed form, *some or all* of the genital organs of both sexes” (p. 860; emphasis added). It had no referent. A medical jurisprudence article in 1960 cited current usage—“intersex” and “sex variation”—in describing medical rather than social methods of sustaining a particular sex. It stated how, historically, intersex people were “allowed” to choose their desired sex, but dismissed its value in favor of a physician’s opinion (Bowman & Engle, 1960, p. 295).

In the *DDC*, “Hermaphrodites” had been cut from the index of the controversial fifteenth edition of 1951, but “Hermaphroditism/animal physiology” was restored in the sixteenth edition (1958). In the seventeenth edition of 1965 only “Hermaphroditic reproduction” was present in the relative index, directing catalogers to see “Reproduction.” However, hermaphroditic reproduction means the ability to self-fertilize, which does not apply to humans. A search for “hermaphrodite” and “human” in WorldCat between 1958 and 1965 retrieves a significant increase in the literature, to around 140 items in English, mostly in medicine or psychology. On rare occasions the titles suggest a relationship between intersexuality and homosexuality. Google’s Ngram viewer indicates a steep spike in the use of the term “intersex” between 1960 and 1965 (the most significant spike was between 1920 and 1940). “Hermaphrodite” remains mostly static in the literature after a large decline since the nineteenth century but draws significantly more results than “intersex” (Ngram cannot disambiguate animal and human intersexuality).

Trans People in Legal Discourse

“Transvestism” and “transsexuality” were the dominant terms used within this time frame (1958–1965), and “transgender” was still a decade away from being coined. In 1952 Christine Jorgenson had the first successful sex reassignment surgery (SRS), and the media relentlessly fed social curiosity and titillation toward transsexuality (Meyerowitz, 2002). Surgeons who treated transsexuals were at risk for legal action and threatened with prosecution for inflicting “mayhem.” According to *Black’s Law Dictionary* (1951), mayhem occurs when one purposely “disables, disfigures, or renders [a member] useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear or lip” (p. 1131). A medical jurisprudence article mentions that mayhem laws were “extended to include any willful disfigurements of the body” such as castration or removal of other healthy organs or tissue, which was considered unethical (Sherwin, 1954, p. 243). Bowman and Engle (1960, p. 307) concede that the mayhem laws are a substitute “for want of a suitable modern law.” Although no one was ever charged with mayhem, many felt intimidated enough to prevent them from performing surgery, despite doing similar procedures to intersex patients (Meyerowitz, 2002, p. 122).

Arrests for trans behaviors were also due to imaginative interpretation of the criminal codes. In New York, “cross dressing was formerly punishable by section 887 of the Code of Criminal Procedure, which defined as a ‘vagrant’ (subd. 7) ‘A person, who, having his face painted, discolored, covered or concealed, or being otherwise disguised, in a manner calculated to prevent his being identified, appears in a road, or public highway, or in a field, lot, wood or enclosure’” (*People v. Simmons*, 1974). The written decision for *People v. Hale* (1960), a case in which a man was convicted

of having “made indecent, lewd, and homosexual proposals to a police officer,” cited the code’s subdivision 4 of section 887, which described vagrants as those who engage in any “lewd or indecent act” or who loiter “for the purpose of inducing, enticing or procuring another to commit lewdness, fornication, unlawful sexual intercourse or any other indecent act.” Although portions of New York’s criminal code were revised in 1967, there continued to be cases in which trans people were prosecuted as “vagrants” using section 887. For example, in *People v. Archibald* (1968), section 887, subdivision 7 was used to convict a man for “impersonating a female.” In 1960, legal scholar Morris Ploscowe, who by this time was an influential commentator on sex and the law in New York State, argued that the unenforceable and inconsistent illegality of private, consensual sex acts was a product of American prudishness and needlessly harmed trans people (pp. 217–218).

During this time period, the United States had begun a movement toward standardization through mechanisms such as driver’s licenses, passports, and birth certificates, which required the sex to be identified (Spade, 2008, pp. 765–766). Legal codes provided no guidance for amending birth certificates, so it was inconsistently administered at the local level. Some physicians began providing letters certifying that their transsexual patients were undergoing treatment to transition so that they could amend the sex on their birth certificates (Meyerowitz, 2002, p. 165).

Trans People in the DDC’s Seventeenth Edition

In the seventeenth edition of the *DDC* (1965), “transsexuality” does not appear anywhere, but “Transvestism” is indexed, where users are instructed to see “Sexual disorders” under “Other Diseases/Psychoneuroses.” It lands in “Other disorders,” allied with a range of “sexual aberrations, manias, perversions”:

- 616.858 3 Sexual aberrations, manias, perversions
 - .858 32 Frigidity and impotence
 - .858 33 Nymphomania and satyromania
 - .858 34 Homosexuality
 - .858 35 Sadism and masochism
 - .858 39 Other disorders
- .858 4 Other character neuroses
 - .858 42 Kleptomania
 - .858 43 Pyromania
 - .858 44 Homicidal and suicidal compulsions
 - .858 45 Compulsive lying and defrauding
 - .858 8 Mental deficiency feeble-mindedness and mental retardation

The choice of “transvestism” over “transsexualism” clearly shows the influence of warrant. A search for “transsexual” between 1850 and 1965

retrieves around thirty titles, along with an assortment of archival material from underground transsexual organizations or personal papers of trans people that originated during the period though may not have been collected until later. About half of the literature is medical studies by familiar names in sexology research, but the amount of fiction and testimonials increased. "Transvestism," on the other hand, between 1850 and 1965, retrieves about three hundred titles, including serials and more archival material. The nonmedical titles often include the words "masquerade," "impersonator," or "imposter." A number of titillating titles concerning male-to-female trans people appeared during this era—for example, *Muscle Man in Silks* (1963).

Summary of the Period, 1958–1965

The feminist movement, as well as research into sex and gender, most likely spurred change in the *DDC*, but with women presented as both social problem and sexual object (which is also how they were considered in legal discourse), change would finally occur fifteen years later. Intersex people were a perennial object of study in both discourses, but in the 1950s they took a lower priority than the newer curiosity, trans people. With the intense attention on Jorgenson, *transgenderism* and *transsexualism* were in the spotlight, but the constant shifting of these terms within the *DDC* indicated uncertainty about where to classify them. Regarding trans people, it seemed that the intent of legal discourse was to protect morality, or at least to protect traditional definitions of sex in order to enforce heteronormativity.

THE PERIOD 1971 TO 1979

Women in Legal Discourse

During the 1970s, women's rights were largely legally recognized, but it did not entirely translate to social change and thus required constant litigation. Most of legal discourse acknowledges that the difficulty of women in the professions relates to social circumstances (for example, discrimination and family pressures) rather than women's ability to perform. However, a remnant of the nineteenth century—"protection"—continued to be a theme, such as in *Bowe v. Colgate-Palmolive Company* (1967) in which women though not men were terminated from their factory jobs. *Taylor v. Louisiana* (1975) made jury duty compulsory for women; although differences were recognized, they were among individuals rather than the group as a whole:

The factors which tend to influence the action of women are the same as those which influence the action of men—personality, background, economic status—and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act as a class. But, if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel?

The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. . . . Yet a flavor, a distinct quality, is lost if either sex is excluded.

Similarly, other decisions like *Roe v. Wade* (1973) take a more critical approach, minimizing morality and emphasizing the phenomenological, social-constructionist aspects. The *Roe v. Wade* decision takes into consideration

recent attitudinal change, of advancing medical knowledge and techniques, and of new thinking about an old issue. . . . One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions.

In other legislation, the 1978 Pregnancy Discrimination Act added a clause to the Civil Rights Act of 1964, stating that "on the basis of sex" also referred to pregnancy and pregnancy-related conditions.

Women in the DDC's Nineteenth Edition

Changed thinking also was reflected in the nineteenth edition of the *DDC* (1979). Dewey's "mostly obsolete introduction has been dropped," and the return to conventional spelling was completed (Dewey & Custer, 1979, p. xxii). The ALA's Feminist Task Force of the Social Responsibility Round Table had been in existence for nearly a decade, with one of its goals being "nonsexist cataloging" (Maack, 1994, p. 232). Despite this, the users' guide of the *DDC* shows the limits of the task force's influence:

While realizing that some readers will find distasteful the constant use of "he," "his," and "him," to refer generically to classifiers of both sexes, the editors . . . find any other device or circumlocution either awkward or artificial, or an intrusion upon the sense of the exposition, and they have agreed to use the traditional masculine forms in their generic sense. (p. xxxvii)

"The sexes" moved again within "Sociology." In this version, sexuality and feminism were minimized, and the space took on a demographic tone:

305.3–4 Specific Sexes

305.3 Men

Single, married, divorced, widowed, of various specific racial, ethnic, national language group or adherent to specific religion

305.4 Women

.42 Social role and status

.43 Occupations

.44 Specific kinds of women

The scope note lists specific kinds of men, but the omission of parallel subheadings for occupations and the social role and status indicates that the male norm has not yet been challenged. A WorldCat search indicates another substantial increase, to around 171,000 titles, about women published between 1965 and 1979 (including over forty items with the simple title "Women"), many about women's history and activism. In the Ngram viewer during this time frame, "woman" begins a steep climb, peaking in 1995.

Intersex People in Legal Discourse and the DDC's Nineteenth Edition

During this time frame, the Ngram viewer shows a negligible drop in occurrences of "hermaphrodite" and minor rise in "intersex." In WorldCat, "intersex" reveals about three hundred entries in English, about a third of them concerning zoology. Those works on human intersex pose it as a "problem" or "disorder." A search for "hermaphrodites" and "human" from the same period retrieves around three hundred fifty results, showing terminological transition. The titles include many urology and endocrinology texts, but have slightly more references to identity considerations, such as gender roles. The references to intersex people as "curiosities" or "monstrosities" give way to words like "freaks," "fringe," or "abnormal." The term *intersex* still did not appear in legal discourse, where *hermaphrodite* remained with the same definition from 1948, but with the addition of a Latin passage that translates as "an hermaphrodite is to be considered male or female according to the predominance of the exciting sex" (Black, 1968, p. 860) and cites seven-hundred-year-old British law—the same source for the use of "monster" (p. 1158).

In the *DDC* (Dewey & Custer, 1979), "Hermaphroditism" returned and finally earned a classification, 616.694, in "Sexual disorders." Its new alliance with "Impotence," "Sterility," and "Male Climactic disorders" removed it from reproduction and physiology to male sexuality (female sexual disorders are classified in "Gynecology"), but it was no longer considered sociopathic. Confusingly, 157 "Psychoneuroses" in psychology still included sexual disorders, and, similarly, the language toned down slightly from the previous edition:

- .7 Disorders of character and personality Examples: sexual disorders and dysfunctions, kleptomania, compulsions
- .8 Mental deficiency
- .9 Clinical psychology. Class clinical psychology of a specific condition with the subject, e.g., of homosexuality 157.7

Psychologically, it is considered "psychoneuroses," but clinically it is a "sexual-performance disorder."

Trans People in Legal Discourse

The publicity and research attention paid to trans people during the 1950s and 1960s found its way to the courts in the 1970s. The terms *transvestite*, *transsexual*, and *cross-dress* did not appear in the 1968 edition of *Black's Law Dictionary*, and the lack of precedent continued to cause trans people to be prosecuted under tangentially related laws, such as those for homosexuality, vagrancy, and prostitution, all of which were illegal (p. 1386). A 1971 law review article, "Transsexuals in Limbo," articulates this dilemma: "the law has not faced the question of defining an individual's sex. The paucity of legal precedents for transsexuals leaves a void that is likely to be filled with inappropriate medical or moral judgments until laws are changed or interpreted so as to recognize this human phenomenon" (p. 236).

For example, a trans person was arrested under a century-old law intended to prevent farmers from dressing as Indians (Matto, 1972, p. 104). Trans prostitutes were treated as "double deviants" by the police, who harassed them and subjected them to strip searches (Wojdowski & Tabor, 1976, p. 201). Matto's 1972 *Criminology* article reports that transsexuals' greatest crime is "the possession of an undesirable unique characteristic that is sanctioned by society in general," but that tolerance would grow because it "does not represent any real threat" (p. 98). The trans people are subjected "to arrest whenever he appears in public wearing the clothes of his choice, but also forces him to face potential harassment and ridicule. . . . Although his behavior is not in any way disruptive or destructive, the transsexual is subjected to legal and emotional punishment because his psychological development does not match his chromosomal makeup" ("Transsexuals in Limbo," 1971, p. 253). The fear of prosecution for mayhem also continued. Surgeon Richard Green (2010) describes his risk assessment for SRS circa 1968:

[The university attorney] conceded that I would be vulnerable to prosecution for mayhem. The penalty if convicted was up to 10 years in prison. Furthermore, since this proposed act involved two of us, a psychiatrist and a surgeon, it constituted conspiracy. The penalty was now up to 14 years. But, the university counsel reassured me, the University would pay our legal bill. [The patient] had her surgery. We were not prosecuted. (pp. 1459–1460)

As the number of sex changes increased, the designation of sex on identification documents became an area of dispute. In 1965, a request by the New York City Board of Health resulted in the following conclusions: "male-to-female transsexuals are still chromosomally males while ostensibly females"; and "it is questionable whether laws and records such as birth certificates should be changed and thereby used as a means to help psychologically ill persons in their social adaptation" (Swartz, 1997, §3). As of 1968, only Illinois had a provision for amending birth certificates, specifically relating to SRS: the Illinois Vital Records Act (Ill. Ann. Stat.,

1967). Prior to this, other states had procedures for correcting "errors" (whereby a clerk would cross out the original designation and write the new one above it) and other ways for "altering" (whereby a new certificate was issued) (*Anonymous v. Weiner*, 1966; Holloway, 1968, pp. 288–289). The concern was that legal fraud could be committed by concealing one's true identity; however, fraud requires "intent to deprive another of his right, or some manner to do him an injury," with proven damages (Black, 1968, p. 789). But by the early 1970s, several states' statutes allowed individuals to change the sex designation on their birth certificates; for example, Arizona Revised Statute (1969) and Louisiana Revised Statute (1971).

In many states, the sex of both spouses needed to be clear in order to avoid accidentally validating same-sex marriage. In 1970, a British case, *Corbett v. Corbett*, determined that gonads, chromosomes, and external genitals could establish the true sex, identifying postoperative transsexuals with their birth sex despite gender identity or surgical treatment. With the lack of a U.S. precedent, *Corbett* was influential in the United States (*B. v. B.*, 1974). In *Anonymous v. Anonymous* (1971) the decision used quotation marks around the pronouns, thus undermining the gender identity of the defendant; for example, "'she' made 'herself' available." Another case, *M.T. v. J.T.* (1976), designated sex as being determined by marriage rather than by birth, the decision stating that

if the psychological choice of a person is medically sound, not a mere whim, and irreversible sex reassignment surgery has been performed, society has no right to prohibit the transsexual from leading a normal life. Are we to look upon this person as an exhibit in a circus side show? What harm has said person done to society? The entire area of transsexualism is repugnant to the nature of many persons within our society. However, this should not govern legal acceptance of a fact. The Committee is therefore opposed to a change of sex on birth certificates in transsexualism. (p. 83)

Moreover, in this case, the concealed identity of the parties involved implies a degree of shame regarding the topic of the proceedings.

Trans People in the DDC's Nineteenth Edition

In WorldCat, around six hundred results for "transsexualism" appear in English, including eleven dissertations. Trans titles include works on self-help, the psychological aspects of postoperative life, religion, marriage, and the law; also, the search revealed a continued association with homosexuality. Despite the literary warrant, in the nineteenth edition of the DDC (1979), "Transvestism" remained the terminology but changed from an "other" sexual disorder to "Sexual Deviations." "Transgender" still does not appear in the Ngram viewer, but it indicates that "transsexual" started increasing in use in 1970.

Summary of the Period, 1971–1979

The rapid changes in the gender classifications in the *DDC* after eighty years should naturally be caused by changes in the literature; however, other influences are also involved. As civil rights legislation made women legally equal to men, the nineteenth edition of the *DDC* balanced the entries in 305; yet it continued using sexist pronouns purportedly for convenience and smooth syntax, just as hidden discrimination continued in workplaces. Representation was restored for intersex people, although now their classification as a male disorder is only slightly preferable to being relegated to a category to which they share nothing in common. Transsexualism, despite overwhelming literary and legal warrant, remains subsumed with transvestism in the *DDC*.

DISCUSSION

Spade (2011) writes that “time and again the law has changed, been declared newly neutral or fair or protective, and then once more failed to transform the conditions of disparity and violence that people were resisting” (p. 27). To this end, the discursive analysis and its products showed a difference between professed and enacted epistemologies; in other words, domains may communicate an epistemic ideal, but espoused practice or results may differ. The dominant enacted epistemology expressed through the identified examples in legal discourse, at least until the Civil Rights Act, is positivistic, where the authorities or “enunciative modalities” (Foucault, 1972, p. 50) observe women within the context of social conventions to find or intuit “facts” about them and then create deductive conclusions based on observations originating from within limited experience (a priori knowledge discounted). Budd (2001) calls positivism “deterministic scientism” and criticizes its propensity to create absolutist theories from limited observation (p. 96). The subjectivity of the object is discounted because it cannot be verified; it results in a reverse version of Spivak’s (1993, p. 5) notion of “strategic essentialism.” Rather than women creating a strategic alliance to gain otherwise unattainable political power, they instead are essentialized or “othered” for the purpose of restricting their political power. Another type of essentialism evident is the “conferalist” variety—an antirealist position that holds that essentialism is “conferred” rather than “real.” Conferred qualities arise from societal values that are “expressed in our conceptual practices” rather than by what is “real” (Sveinsdottir, 2008, p. 136). The quality of “piety in women,” for example, characterizes what Sveinsdottir calls prototypical “ideal versions” (p. 139).

As time passes, the language referring to women in legal discourse changes from patronizing to insulting, whereas the language toward trans people moves from insulting to suspicious. and the very idea of being intersex confounded the legal community. Early on, so-called women’s char-

acteristics, such as delicacy, were celebrated, but by the mid-to-late twentieth century the social obligations toward home and family took the blame. "Weak" or "incompetent" replaced "delicate" or "maternal," blaming the double biological imperatives of reproduction and physical weakness. Methodologically, the knowledge of these traits is based on observation by the men who serve as enunciative modalities within the profession, and are applied absolutely through logical deduction and attributed to the positivistic "law of nature" or the circular "law of the land" (for example, trans people are immoral because they are different and women cannot vote because it is illegal). What they observe consists of social norms within the experience of a privileged white circle, broadly considered. Grosz (1994) calls this type of metaphysical essentialism "naturalism," where "women's nature is derived from God-given attributes that are not explainable or observable simply in biological terms" (p. 84). Despite this, rights eventually were recognized by those who still relied upon observation but used an inductive approach, focusing instead on the individual observed in each situation. Thus these individual cases provided opportunities over time for women to join in knowledge-generation and the observed reality of the domain.

The *DDC* reflects that women were erased from the 1876 edition, ghettoized in the 1885 edition, and pathologized, sexualized, and problematized in the 1965 edition. The frequent changes in the *DDC* for intersex people (in every edition from the fifteenth to the nineteenth) convey indecision of just where to place the classification, as reflected in the literature. Intersex people changed in the *DDC* from anatomically variant to pathologized deviants, whereas in legal discourse, the opposite occurred. Intersexuality as a sexual disorder, of course, is contingent on the definition of "normal," and the authorities making decisions are decidedly observers rather than knowing subjects. The placement of trans people could be attributed to convenience or even confusion rather than accuracy, but the "integrity of the subject" principle implies a belief in the accuracy of the hierarchical force. Custer's "drip principle," while professing to reflect reality, results in the (perhaps) unintended consequence of providing no disclaimer for difficult-to-classify concepts, such as intersex or trans people. It leads to a deterministic epistemology whereby being a woman mandates domesticity, motherhood, and exclusion from institutions; trans people are deviant or disordered; and intersex people are medical mysteries.

Dewey based his structure on warrant in combination with his lived experience as a librarian and a privileged, heteronormative white man. According to Code (1995, p. 44), the transformation from subject to object reduces a person to a collection of observable traits. If an authoritative "enunciative modality," such as Dewey via his classification, perceives women or trans people to be absent from intellectual life, then absence

is the observable feature and therefore how they are defined. If authority determines which subjects we can speak about and what subjects are erased in formal discourse, the inclusions and erasures are manifested in the rhetorical space of a classification. In law, women are posed as having innate and immutable characteristics that “other” them from men; intersex people are “othered” through their inscrutability; and the law searches for a way to make being trans illegal. The choice of traits and the implication of condemnation reflect the goal of the classification system (Olson, 1999).

To their credit, both Dewey and Custer (1965, 1979) repeatedly acknowledge the fallibility and artificiality of both knowledge and discipline-based classifications and the resulting consequences to the classificatory structure. Dewey professes a pragmatic, critical, and realist approach by showing a “concern with causality and the identification of causal mechanism in social phenomena” (Wikgren, 2005, p. 15). The positivism demonstrated in legal discourse involves accepting conditions as they are, because they are observed that way. Although Dewey may not have had experience with trans or intersex people other than through the literature, he certainly was exposed to women; he “experienced” them performing work within his field and thus his perceptions were informed by this. In 1886 he wrote: “Women have usually poorer health and as a result lose more time from illness and are more crippled by physical weakness when on duty”—a sentiment found in legal discourse. However, he went on to say that “this is a fault of circumstance, not necessarily of sex,” and “a strong, healthy woman is worth more than a feeble man for the same reason that a strong man gets more than a weak woman” (p. 20).

Despite his mixed record in action, Dewey acknowledged the role of societal norms and took a phenomenological approach in which he “bracketed” assumptions. However, he still was influenced by social structures, which limited, phenomenologically speaking, his critical assessment of intention. Budd et al. (2010) describe Bhaskar’s approach to critical realism as “epistemological fallibilism,” which includes “intransitive objects”—unchanging things in a mind-independent reality—and “transitive objects”—things defined at specific points in scientific history (p. 272). Dewey’s recognition of the fallibility of his definitions was evidenced by repeated professions of the imperfection of his scheme (transitive objects); his ontological justification comes from literary warrant (intransitive objects). Custer also recognized the mutable nature of knowledge, but attempted to change the professed epistemology from a pragmatic and utilitarian approach to one that “reflects reality” more accurately, both ontologically (for example, better representation of relationships) and epistemically (for example, recognition of the fallibility of knowledge). The authoritative, intentional, and cognitive aspects are professed to some degree, but ultimately are sacrificed to the pragmatic goal of efficiency

and the rationalist requirement that values “conceptual clarity and evidence and which prefers deductive methods rather than inductive methods” (Hjørland, 2004, p. 135).

CONCLUSION

The *DDC*'s Aristotelian, logical structure necessitates a rationalist approach resulting in mutually exclusive classes, yet the changes to gender classification manifest the influence of external discourse. Hjørland explains that “rationalism looks at our concepts as inborn structures, which match and classify our perceptions” (p. 135). In fact, the concept of bibliographic control contradicts the idea of subjectivity, engaging absolutism in order to smooth exceptions and influencing our ways of thinking. Legal discourse shows how to combat entrenched rationalism with inductive approaches. Ultimately, this research led back to the inevitable and unavoidable questions in critical knowledge organization: Should a classification be useful or accurate? Useful for whom? What is being “accurate”? In the editions examined, the *DDC*, unsurprisingly, to some degree replicates the biases relating to sex and gender evident in legal discourse, a consequence both of the literature and wider social conventions. It brings to light the roles of emotion, uncertainty, and self-interest in influencing the epistemic stances taken in classification.

NOTE

1. Dewey ardently supported spelling reform, helping to found the Spelling Reform Association in 1876. The use of simplified spelling in the *DDC* began minimally, but gradually increased, culminating in the thirteenth edition (1932), which included a fourteen-page explanation of simplified spelling and was edited by another reform advocate, Dorkas Fellows. Starting with the fourteenth edition (1942), the *DDC* slowly returned to conventional spelling until the remaining simplified spelling was finally dropped in the nineteenth edition (1979) by editor Benjamin Custer.

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