The human body has a somewhat paradoxical position in the discourse of Swedish law (perhaps in legal discourse universally). The body, especially the female fertile body, has at all times been encompassed by law, in acts on abortion, sterilization, sexual offence, pregnancy allowance and so on. At the same time one rarely discusses the body in legal documents. The body seems to be somewhat unspeakable.

This paper concentrates on conceptions revealed when the body is to be accounted for within the Swedish legal system. In working with a number of official reports from the Swedish Government Inquiry Commissions on the subjects of legal assignment of sex, abortion, sterilization and sexual offence, published between 1968 and 1976, I attempt to reconstruct the system of conceptions of the body created in these reports. In this text the focus will be the ways in which these texts portray the relations between body, mind, sex and sexuality.

The governmental official report is a distinctive genre with roots in the legislative process. The Swedish government and its departments can at any time appoint a commission to analyse a certain subject and present a report on the matter. The commissions consist of politicians, scientific experts, and practitioners. They are to take notice to all aspects of the issue, juridical, economical, and practical. Most reports focus on a certain law – for instance the act on abortion or sexual abuse – and consider possible changes in the legislation. Some reports propose altogether new acts. Bills put forward by an inquiry commission are submitted to a number of institutions and organisations for consideration – the so-called consultative process – before the government proposes a bill for the parliament.

As a genre the official report is often pragmatic. The commissioners writing the report has to consider many aspects on the matter and reach consensus. The official report is written in a social context and is thus, like any other text, political or scientific, likely to be bias and ideological.

The four reports my thesis revolves around have some aspects in common. They all speak of a great shift in society’s views on sexuality, reproduction and in the conflict between the individual’s autonomy and the public interest. They all put emphasis on the newfound policy of letting the individual decide on issues concerning her own body.¹ The commissioners perceive their own proposals as part of this social shift and they stress the belief that not only the physical but also the social and psychological aspects of these issues are to be paid attention to (SOU 1968:28, 35, SOU 1971:58, 19, 122f. SOU 1974:25, 82ff. SOU 1976:9, 51ff.). However, the distinction between body and mind is still ever present. In addition all of them harbour a tendency to avoid a genuine discussion of the fact that the juridical subject to whom they refer is embodied. The discussions often shift topic, from the dilemmas attached to a project of legislating the very embodiment of the human individual, her carnality, to that of her disembodied aspects, her human rights.

The reports²
Three of the reports deal with subjects already encompassed by legislation, but the first to be published, Intersexuellas könstillhörighet (The sex of intersexuals), from 1968, creates new areas of legislation. It deals with the management of the juridical aspects of establishing an individual’s sex and with the process of sex change. The proposed bill (which was accepted with only minor changes) suggests that certain groups of people ought to have the right to change the sex they have been assigned. These groups are jointly called intersexuals and they include transsexuals and so-called somatic intersexuals (I will henceforth use the term “intersexual” referring solely to the latter group since that is the contemporary usage). All Swedish citizens have their sex established at birth and the established sex is reflected in certain documents of juridical importance. Three factors indicate an individual’s sex in the Swedish bureaucracy: the note of sex in the national registration, the last but one number in the personal number which is gender-specific and the first name.

When a child is born the midwife is to make an announcement of the birth to the local institution in charge of national registration. In this process the child’s sex is to be reported. Based on the information from the midwife a note of sex is included in the national registration and a personal-number is created for the newborn citizen (SOU 1968:28, 19, 71). The personal-number is used as a
One might say that the combination of the note on sex, the personal-number, and the first name is the individual’s juridical sex. The juridical sex is of importance in everyday life since all identification cards (passport, driver’s licence and so on) indicate the established sex. In addition the Swedish legal system is based on a gender-differentiating notion, some laws are applied differently depending on the individual’s sex.

Before the act proposed by *Intersexuellas könstillhörighet* was passed there was no concordance in dealing with individuals that wanted a change of juridical sex. Some got to change their personal-number and first name while the note indicating sex in the national registration’s log was left unchanged, others only got to change their first name. Very few got permission to change the note in the national registration. A passport or driver’s licence would thus by name and personal-number indicate one sex while the actual note of sex would indicate the opposite. Individuals that wanted to change their established sex or newborns that were difficult to assign to either sex found themselves in a sort of juridical limbo. The issue of managing sex changes has two aspects, a juridical one and a medical one. I will get back to the latter aspect further on.

*Rätten till abort* (*The right to abortion*), published in 1971, evaluates the act on abortion and proposes changes that make it easier for women to get an abortion. According to the current legislation abortion is only allowed if certain indications can be established. There must be medical, humanitarian or eugenic reasons for the operation (some social factors was thought to be relevant too, but social reasons for abortion were highly criticized and sparsely approved). The decision as to whether a woman is to be permitted to have an abortion or not is not her own to make. A physician has to evaluate her situation and give an opinion on the matter. In some cases the physician makes the decision in consultation with a colleague (preferably a psychiatrist). The physicians then have to report the case to the national board of health, Socialstyrelsen, and state the reasons for abortion. In other cases an application for permission to have an abortion is sent directly to Socialstyrelsen. Since the first act on abortion was accepted in 1938 the practice (the established implementation of the legislation) has become more and more lenient and the legislation has been changed a few times towards a more liberal position. Between 1965, when the commission was appointed, and 1971, when the report was published, the chances of getting an abortion were greatly enhanced. By the end of the 1960-ies almost all applications were accepted. But women still had to go through an evaluation and it was still the physician’s word that counted. *Rätten till abort* proposes that women ought to have more to say on the matter and that the decision of whether an operation should be conducted or not should be hers to make, with the consultation of a physician.

In the early pregnancy the woman was to make the decision in consultation with the physician – during this period she is allowed to have an abortion without stating any certain reasons, unless there are medical contra-indications – but in cases of further advanced pregnancies a local board of physicians was to make the decision and they need to pay more attention to the reasons put forward by the woman. The proposed arrangement with local boards received criticism when the report was referred for consideration. In the governmental bill put forward for the parliament the suggestion of local boards was omitted.

*Fri sterilisering* (*Free sterilization*), published in 1974, evaluates the current act on sterilization and proposes major changes. The first sterilization act was passed in 1934 and it allowed sterilization to be performed for social and eugenic reasons. The public interest had the upper hand, sterilization could be performed on individuals that were not able to give legal consent if they were found unfit for parenting, but a person unable to present legitimate reasons for sterilization could not be sterilized even if he or she wanted to. Officials at governmental authorities such as welfare institutions, reformatories or asylums had the mandate to apply for sterilization on the behalf of their clients or patients. A great number of people were sterilized under these circumstances; the majority of them were women. Historians have shown that the discourse surrounding the early sterilization acts reveal a great deal about the society’s views on sexuality, reproduction and the relation between the sexes.

The commissioners behind *Fri sterilisering* were explicitly told to examine the current legislation on the matter of public interest and the individual’s right to take part in issues concerning her own body. The report takes a seemingly unmistakable stand against the policy of giving authorities the mandate to apply for sterilization on the behalf of others. At the same time the commissioners want to keep the possibility to sterilize individuals without their explicit legal consent. They propose that
individuals that are unable to give legal consent should have a custodian appointed to them and that this custodian should be able to apply for sterilization on the behalf of the client, if an operation seems of benefit to him or her. This proposal was heavily criticised in the consultative process and was omitted in the governmental bill. The Swedish historian Mattias Tydén claims that Fri sterilisering tends to describe the misuse of authority in cases of sterilization as that of a historical fact. The report does acknowledge the ethical problems connected with the implementation of the early sterilization acts, but it puts these ethical problems at a historical distance (Tydén 2000: 223).

Although some parts of the proposed bill were criticized the main part of the changes in legislation suggested by the report was accepted. Individuals older than 25 years old need no longer apply for permission to be sterilized, sterilizations can be performed at any time, no questions asked. Those between 18 and 25 still need special approval from Socialstyrelsen and can only be sterilized if certain motives are present: medical (for women), humanitarian or a sex change.

*Sexuella övergrepp (Sexual assaults),* published in 1976, evaluates the chapter in the penal code dealing with sexual crimes. The proposed changes in legislation received a great deal of criticism; after a public discussion and much ado the bill was discharged altogether. Another commission was appointed and delivered a report in 1982. Sexuella övergrepp reflects a contradictory combination of radicalism and conservatism in its approach to the ethical aspects of sexuality and the conflict between individualism and state paternalism. While the commissioners propose a liberalization of the legislation on sexual abuse, in terms of a reduction of the range of punishment, they simultaneously propose an extension of the area of legislation, in terms of extending the definition of rape to include cases of same-sexed abuse and cases where women abuse men. In addition they want to decriminalize incestuous relations (note: in this context the term “incest” only applies to relations between adults and to voluntary relations, other incestuous relations are classified as sexual abuse of a minor or sexual abuse of an individual in the position of dependence).

The report describes a shift in the attitude towards sexuality, speaking of deliverance from a prevailing moralistic and pious outlook on everything connected to carnal lust or sexual relations. It is written in a context where courts, according to the established practice, made a distinct difference between cases of rape in which the offender and the victim knew each other – such as date rapes – and cases in which they were strangers to one another and the assault seemed as an act of random. The commissioners wanted to endorse this practice in the actual paragraphs of the penal code by stating that the victim’s behaviour prior to the assault is relevant and should be considered in such a way that the offender might receive a more lenient sentence if the victim in any way had encouraged the offender by way of dressing or behaving.

Many of the organisations and institutions giving statements on the proposed bill were sceptical to this part of the proposal. Women’s organisations, both those belonging to political parties and others, were especially critical. They demanded that the report was to be discharged altogether (Thomsson 2000). The public reacted too; petitions condemning the report were sent to the department of justice en masse. The Swedish historian Marie Lindstedt Cronberg notes that the liberalization of the attitude towards sexuality spoken of in Sexuella övergrepp (and described in historical research such as that of Lena Lennerhed’s Frihet att njuta) did not necessarily bring forth an equal liberal view on sexual abuse. Quite the opposite. The proposal of taking the victim’s behaviour into account in the very definition of rape was interpreted as an expression of a male misogynical sexuality (Bergenlöv, Lindstedt Cronberg, Österberg 2002: 57).

*Since this paper is to concentrate on the relations between body, mind, sex and sexuality, Intersexuellas könstillhörighet is the most interesting one, and thus this report is the one discussed at length. Intersexuellas könstillhörighet is the report that gets closest to the body and the questions surrounding the embodied subject. The commission’s task was to consider the management of certain cases of sex establishment. The proposed bill only concerns grown-up transsexuals and children with intersexual conditions. What was to become the act on the ratification of sex in certain cases (SFS 1972:119) only applies to these certain cases.*

Sweden was the first country in the world to pass such a law, in 1972. In order to put forth a proposed bill of legislation the commissioners had to describe the characteristics of the human sex. They had to answer some crucial questions: out of which components does an individual’s sex consist? In which way do physical sexual traits such as sex chromosomes and genitals relate to the individual’s experience of being male or female? Intersexuellas könstillhörighet deals with several of the major issues actualised when discussing sex and sexual belonging. It is an ambiguous and contradictory text.
Historical and contemporary conceptions of intersexuality and transsexuality have been discussed in several feminist studies. Scholars such as Judith Halberstam, Kate Bornstein, Bernice Hausman, Suzanne Kessler, Alice Domurat Dreger, Jay Prosser and Anne Fausto-Sterling have theorised and described the matter from a variety of perspectives. In addition a great number of autobiographical accounts of intersexuality and transsexuality have been published. Intersexuality and transsexuality are often used as examples in more general discussions of societies’ explicit and implicit notions of sex and sexuality. However, this paper is not the right forum for a proper exposition of the literature on the subject. I intend to concentrate on the textual discourse of the reports and only sparsely invoke the theoretical conclusions and openings suggested by others.

A note on the terminology of this paper: I will for the most part not use the distinction between sex and gender, out of conviction that the distinction tends to sediment the notion that sex is something naturalized and presocial and that gender is something socially and historically constructed. I am of the belief that sex (in the wider sense: as both sex and gender) is symbiotically mental and bodily, constructed and constructing, alterable and naturalized, therefore I use the terms “sex” and “sexual belonging” to include all these aspects, defined with prefixes. Some of the terms I use are already established (in medical, psychiatric and feminist theory) as gender-term, I will use them as such, to avoid confusion. I hope this stance will not be too bewildering to the readers of this text.

A hierarchy of sexual characters
In order to establish why transsexuals and intersexuals are in need of the proposed legislation the commissioners start off with a description of what is called the normal sexual development. In order to describe the abnormalities the normality needs to be defined. They refer to medical knowledge on the subject, on the development of gonads, internal and external genitals, hormonal levels, and so on so forth. From the medical discourse they adopt the distinction between different aspects of an individual’s sex, physical and mental. Henceforth they speak of the genetic sex, the somatic sex (with the subgroups gonadal sex – referring to the gonads – and genital sex – referring to the genitals), and the psychosocial sex (SOU 1968:28, 20-22, 39).

The commissioners claim that this distinction between separate factors involved in the sexual differentiation of the individual is purely descriptive and that they only use it as a way of making a complex situation more comprehensible. However, that statement says more about the attitude towards sexual differentiation and the relations between body and mind than the actual description of the sexual development does. Both the distinction of physical sexual characters from mental (and social) ones and the declaration that such a separation is purely descriptive is symptomatic for the rhetoric of the report.

One way of interpreting this diversified terminology is to view it as a way of mapping the factors relevant to an individual’s sex. However, it is not an unambiguous terminology. Especially the terms used in association with the mental aspects of the sexual differentiation are confusing. The term “psychosocial sex” refers to the individual’s sense of being female or male and her attempt to live according to the social role of the sex she identifies as. In other words the psychosocial sex is twofolded, it refers to a gender identity and a gender role. The gender role is described as an acquired behaviour, much influenced by the norms of society (SOU 1968:28, 21-22, 39). But since the commissioners usually don’t make any clarifications as to which part of the psychosocial sex they refer, it is sometimes difficult to interpret the notions and conceptions implied. In addition I will use the terms the sexed body and the sexed mind. The sexed body will be a generic term for the genetic and the somatic sex while the sexed mind includes the gender identity and the gender role.

The commissioners presume that there is a specific temporal and causal relation between the different aspects of the individual’s sex. The physical characters are formed prior to mental characters and the mind is thought to be tightly united with the body, at times it is portrayed as a consequence of the physical constitution. The gender role is described as such: “The learning of this behavioural pattern begins in the first years of life and it means that qualities, attitudes and values are added to the given anatomical and physiological circumstances. There are reasons to presume that the gender role, given normal conditions, is established during the early years of childhood and that it can not be changed without serious mental effects. The further development of the gender role continues well into the youth.” (SOU 1968:28, 22)

One might think that the sexed mind is alterable in contrast to the static, once-and-for-all-given, sexed body. But as the quote illustrates this alterability proves to be only temporary. While the gender role is described as a formation that takes its time to develop, the gender identity seems to be relatively stable and static once it has been established. Once the gender identity is established it can’t be altered without causing serious mental harm. In other words the sexed mind is just as static and fixed as the sexed body. The mind is naturalized.

In conclusion, if an individual’s sexual development proceeds according to normalcy it results in a correlation between the individual’s sexed body and her sexed mind. In addition there is correlation within the sexed body and the sexed mind (the genetic sex corresponds with the gonodal and the
genital sex and the gender identity corresponds with the gender role). The body is described as the foundation that the rest of the sexual characters are to arise from and abide by. In the cases of transsexualism and intersexuality these normal conditions are disorganized. This disruption of order is the very reason as to why legislation is necessary in the first place.

Intersexuels are described as a group of individuals, mostly children, whose bodies are ambiguously sexed. In other words: the physical sexual characters don't add up, there is a discrepancy within the sexed body. Transsexuals on the other hand are said to be a group of individuals that experience a discord between the sexed body and the sexed mind. The commissioners are explicitly asked to propose a way to solve the issue of establishing and ratifying sex in these unruly cases (SOU 1968:28, 14f.).

The common case of establishing sex proceeds as follows: the individual’s sex is determined at birth by the midwife and the midwife’s assessment it solely based on the external genitals. In other words the external sexual characters are assumed to mirror and reveal the hidden sexual characters, i.e. the internal parts of the genital sex, the gonadal sex and the genital sex (in addition they are thought to reflect the future gender identity and gender role). As the commissioners themselves put it: “When it comes to the appearance of the external genitals is regularly the sole decisive factor in the sex determination that takes place immediately after the birth of the child.” (SOU 1968:28, 43). The established sex is, as we have seen, the basis for the note of sex in the national registration, which in turn is the basis for the gender-specific personal-number and the gender-specific first name.

The external genitals are the foundation of the juridical sex. Anne Fausto-Sterling (2000) and Suzanne J. Kessler (1998) have both illustrated just how important the external genitals are thought to be in the context of intersexuality and in the medical assigning of sex. Kessler has also, in a study co-written with Wendy McKenna (1985), described the emphasis placed on the external genitals in the more mundane social assignment of sex in everyday life (however since the actual genitals are not visible, secondary and tertiary sexual characters have to fill in as symbolic genitals).

The bill proposed by Intersexuellas könstillhörighet regulates situations where the sexed body can’t be the basis for the establishing of sex (either because it is ambiguous or because it is not coherent with the individual’s experience of being male or female) and thus not the basis for the juridical sex either. Some other sexual character has to be that which legitimates the establishment and ratification of sex. Question is: which one(s)?

When it comes to the transsexuals there is not much of a discussion; the gender identity is the sexual character that demands the most attention and consideration. The report is quite clear on the matter, the note in the national registration indicating sex ought to be based on the individual’s experience of being male or female. Transsexuals are described as a fairly homogenic group of individuals whose situation can’t be relieved in any other way than through a juridical and medical sex change (SOU 1968:28, 30ff. 43).

In cases of intersexuality the conditions are much more divergent. The term “intersexual” refers to a group of individuals with many different medical diagnoses. In these cases one has to consider additional factors. The child’s age and gender identity are especially crucial. The commissioners suggest (in agreement with medical knowledge) that sex assignment in infants ought to be guided by the possibilities to reconstruct the external genitals in either direction, to achieve female or male appearance. When assigning sex to older children utmost attention must be paid to the gender identity. Once the gender identity has been established it is of greater significance and substance than the appearance of the external genitals (SOU 1968:28, 24ff. 46). Hence, the physical characters are only of importance when it comes to infants with no gender identity. However, the most significant factor in these cases, more important than the genitals, is the reproductive ability. If an intersexual child has the ability to reproduce this ability has to be decisive in the assignment of sex (SOU 1968:28, 24ff).

Fausto-Sterling has shown that this still is the case in the medical management of intersexuality; a child with XX-chromosomes, uterus, ovaries and a penis is most likely to be assigned female sex on account of her ability to reproduce (Fausto-Sterling 2000: 5).

The genetic sex – in other parts of the report described as the very basis of sexual development – is not given that much consideration. The commissioners grant that a chromosomal evaluation is a vital step in the process of diagnosing the child’s condition but the genetic sex is not of immediate interest when deciding on which sex to assign. Thus they maintain that a male pseudo-hermaphrodite with XY-chromosomes, underdeveloped (sterile) testicles and female appearing external genitals ought to be assigned female sex (SOU 1968:28, 24, 34ff. 47). One might say that the genetic sex is of some importance when determining sex while quite trivial when it comes to assigning sex.

The significance of the insignificant body
As we have seen, the most important factor in the individual’s sexual constitution is thought to be the gender identity. The juridical sex is to be based on the gender identity, if it proves to be fixed and
stable. The gender identity is said to have such a strong influence on the individual and her personality that it is easier to change the sexed body than the sexed mind (SOU 1968:28, 25, 28).

The gender identity is so potent and compelling in the eyes of the commissioners that they seem to maintain that the sexed body is not to be considered in cases of transsexualism. If a transsexual already has undergone treatment to align the body with the sex she perceives herself as, these physical changes need not be paid attention to. This statement is based on the conviction that it is the gender identity that is important; a modified body must under no circumstances compensate a lack of will and ability to live and identity as a woman or man. It is not the body’s sexual characters that determine whether the individual is an authentic transsexual and actually identifies with the opposite sex or not.

Furthermore, the commissioners want to avoid situations in which individuals that don’t truly identify themselves with the opposite sex still apply for juridical and medical sex changes and are accepted on the basis of their modified bodies. Thus the proposed legislation does not demand that transsexuals applying for a sex change have had corrective surgery prior to the application (SOU 1968:28, 44). There is no paragraph stating that they have to undergo surgery after the juridical sex change either. In other words the actual proposed act on the ratification of sex contradict the very keystone it set out to upkeep, namely the social demand that the individual’s juridical sex concurs with her gender identity, gender role and sexed body.

But the sexed body is not discharged altogether, on the contrary. Several of the criteria forming the diagnosis of transsexualism concern the individual’s outlook on her own body. A feeling of antipathy and disgust towards the own body is said to be one of the strongest symptoms of transsexualism. An intense wish to change one’s anatomy, via surgery and hormonal treatment, to fit that of the opposite sex, is another important symptom (SOU 198:28, 26). Sociologist Anne Kroon and Eva Lundgren have a point when they claim that the very description of the transsexual condition contains an implicit demand on corrective surgery (Kroon, Lundgren 1996: 84). The commissioners do declare that a transsexual that is not willing to modify her body is not a genuine transsexual and is thus not eligible for a juridical or medical sex change (SOU 1968:28, 44, 50). So there is a demand for correlation between body and mind after all.

There is one exception from this golden role though: according to the commissioners female transsexuals only wish for the breasts to be removed and the menstruation to be discontinued, they have no wish, or at least no demand, for a penis to be constructed and the vagina to be removed. Phalloplastic surgery is said to be ill developed, there are big technical problems involved and such operations have never or rarely been performed in Sweden (SOU 1968:28, 31). Nothing is mentioned on the issue of whether this ought to prevent female transsexuals from receiving juridical sex changes or not, the commissioners seem to accept the fact that they do. Thus the legislation renders possible the existence of individuals that in every legal aspect are thought to be male whilst having female sexual organs – men with vaginas (Kroon, Lundgren 1996: 85f.).

As I said before the legislation on the management of sex change has two principal areas, it regulates the juridical ratification of sex and it regulates medical sex changes, i.e. operative treatment as a stage in the process of becoming the established sex.

So far I have mostly talked about the juridical aspect. The medical aspect is an integrated part in the establishment of sex; all individuals go through a medical evaluation. However, it is the actual surgery on the sexed body that is regulated in the paragraphs. Individuals that wish to alter their bodies to fit that of the sex with which they identify have to get permission to have such operations performed.

But not all operations destined to alter the individual’s sexual characters are regulated, only the ones that are performed on the external and internal genitals. Alterations in secondary sexual characters such as breasts, facial hair and vocal organs (diminishing of the larynx for example) are not regulated at all (SOU 1968:28, 63f.). The tendency to value some physical sexual characters higher than others, which is so obvious in the report’s discussion on the importance of the external genitals and the reproductive ability, is actualised again.

The proposed regulation establishes that operations performed to change the genitals in order to resemble those of the opposite sex are only legal under certain circumstances, namely that all other conditions needed for a juridical sex change are already met. For transsexuals this means that the applicant should have identified with the opposite sex since youth and lived in the opposite gender role for several years. In addition she must be sterilized and unmarried. The commissioners state that unless the medical sex change is followed by a juridical sex change the corrective surgery is a “meaningless [insignificant, senseless] mutilation” (SOU 1968:28, 62). Alterations of the sexed body have to be juxtaposed with other stages of sex alteration, with changes in the juridical sex and with changes in the gender role, to be significant and intelligible.

However, it is only when the operations are performed prior to the juridical sex change – when they result in a situation where the sexed body contradicts the juridical sex – that they are regulated by legislation. The exact same operations can be performed on a newly become man or woman without any special application for approval.
Socialstyrelsen maintains (in a report evaluating the legislation) that castration is not a regulated operation when performed on a transsexual that has received juridical sex change; it is rather an operation that will remove organs no longer appropriate or apt to the body (Fastställande av könstillhörighet 1978: 15f. 22). A newly become man ought not have ovaries and a female body ought not have testicles. When it comes to transsexuals operations on the genitals are described as corrective surgery, their bodies are bodies that have not yet been adjusted to their ratified sex. In the case of intersexual infants, whose sexes have been neither determined nor assigned yet, the bodies are not sexed in a juridical sense and hence there can be no situations in which operations result in a discrepancy between the juridical sex and the sexed body since the children have no notes of sex in the national registration. All and all it is obvious that the comprehension and interpretation of the sexed body is determined by the juridical sex. If the juridical sex indicates a certain sex it is illegal to change one’s sexed body in the opposite direction. At least in the medical context.

Intersexuellas könstillhörighet is a complex system of notions on body, mind, sex and sexuality. Some of them are blunt contradictory. Such is the idea that physical sexual characters affect the individual’s gender identity. This thought is actualised at several occasions. But the position of the sexed body and its ability to affect the sexed mind is ambiguous. On the one hand the commissioners are quite clear on the issue of transsexuals: individuals that think that they can bring about an authentic feeling of belonging to the opposite sex through altering their sexed bodies, are misguided (SOU 1968:28, 44). An artificially sexed body is not a stable ground for a gender identity, it can’t motivate a feeling that doesn’t already exist. The sexed body is not thought to be productive or even persuasive but only imitative and derivative in this context.

In the context of intersexuality the position of the body is the opposite. Intersexual children are said to have great help from bodies that have been sexed via surgery and hormones (SOU 1968:28, 47). This assumption falls back on the predominant idea of the nature of gender identity in the research on intersexuality at this time, namely John Money’s theory that all children are born psychosexually neutral. Money wrote several articles and books on the subject, some in collaboration with other scientists such as Joan and John Hampson. The assumption is that the sexed mind always develops in relation to the sex body: “body appearance does have an important, indirect bearing on the development of psychologic functioning, including that which we term gender role or psychosexual orientation.” (Hampson, Hampson 1961: 1415)

In other words: the same type of artificially constructed physical sexual characters are in the case of intersexuality described as functional and helpful in the process of developing a sense of being male or female while they in the case of transsexualism are described as more or less irrelevant until after the juridical sex change, they are at least not thought to have any bearing on the gender identity.

Visibility and performativity

One way of approaching these contradictive conceptions of the relations between body and mind is to focus on the intricate interface between inner and outer. Kroon and Lundgren maintain that the psychiatric evaluation of transsexuals is based on the idea that there is such a thing as an internal, stable gender identity that is to be reflected externally through the gender role and through the sexed body. Inner and the outer need to correspond to create the impression of a whole and true man or woman (Kroon, Lundgren 1996: 80).

When reading Intersexuellas könstillhörighet in search of notions of inner and outer one soon realizes that the intricacy of the system of conceptions does not stop at the division and interconnection between body and mind but also involves interactions and disconnections within the body and the mind.

The commissioners depict the normal sexual development as a process in which the genetic coding, with the help of hormones, makes itself visible on the surface of the body (SOU 1968:28, 20f.). As we have seen, the sex determination is usually made solely on the basis of the appearance of the external genitals. A correlation between inner and outer sexual characters is presumed. Deviations in the external genitals are described as resulting from the genetic coding or the hormonal balance (1968:28, 23f. 43).

The external characters seem to be perceived as consequences while internal characters are described as causes. These two types of characters are separated from one another at the same time as they are joined in the representation of the outcome: the sexed body as a concurrence of inner causes and outer consequences. The body’s internal cause, that which is described as the essence of human sex – the genetic sex – is thus dependent on the external consequences to function as the sex determining factor above all others. The inner essence is dependent on the readability of the surface and of its ability to reflect and mirror correctly.

The psychosocial sex (the gender identity and the gender role) is not part of this bodily conception of sex and sexual development. It is separated from the interaction between internal and external physical characters on the basis of belonging to the mind, and is thus defined as something other than the body. At the same time the gender identity is described as something internal and essential, much
like the genetic sex. The commissioners portray the gender identity as something that makes itself visible and evident on the surface of the body in the same way they describe the manifestation of the genetic sex. It is clear that the gender identity has to be reflected on the body to be legitimate and comprehensible. “The individual’s apprehension of his or her sex influences the choice of clothes, pattern of movement, and further behaviour.” (SOU 1968:28, 43)

One might follow Judith Butler in claiming that sex (or in this context gender, since that is the word she uses for these aspects of the sexual differentiation of the individual) is something one does, that it is performative. Butler maintains that the individual creates a sense of belong to a certain sex, in the eyes of herself and in the eyes of others, by repeatedly performing certain actions. These actions and behaviours are formed by a social discourse of notions on sex, gender, sexual practice and desire (Butler 1990: ex. 43f. 178f). As an expansion of butlerian notion of performative gender it is possible to describe the position of the psychosocial sex as a kind of internal schema – a gender schema – that manifests itself on the surface of the body and in doing so moulds its very physicality. The gender schemata are thus thought to be clusters of expected behaviours, appearances, emotions and ideas, which the individual shape in compliance with social discourses.

The very purpose of the term “gender schema” is to juxtapose the notion that an individual’s sex is something that she shapes in association with society with the notion that sexual belonging is something that is (and needs to be) reaffirmed in continuous actions, in the context of the symbiotic relation between body and mind.

Several scholars have in different ways indicated that social notions of what defines the sexes – what manners and appearances to expect from a male or a female – are crucial in the psychiatric practice and theory surrounding transsexualism (Dreger 1998; Kessler 1998). In the Swedish context Kroon has shown that the discourse around transsexualism is highly influenced by common notions of men and women (Kroon 1996, 44).

As far as Intersexuellas könstillhörighet is concerned it is obvious that the sexed mind is in part individual and in part social. The sense of being male or female is not altogether a personal issue; it is not something that only concerns the individual or something that is thought to be solely psychic, hence the word “psychosocial”. The sexed mind is at the same time external and internal, individual (and to some extent private) and collective.

The sexed mind is described as a type of sexed mental essence that needs to be expressed through the body, on the body. The relations between body and mind becomes a question of the process of making something visible and evident, it is all about manifestation and performance. The only instrument the individual has at her disposal when laying claim on a certain gender identity is her own body.

A transsexual that applies for a juridical and medical sex change has to prove that her gender identity is stable and reliable before the application can be approved. The applicant must have had lived in the gender role of the sex in spe for a period of time. In addition, there has to be documentation stating that the individual is able to live in the gender role prescribed for this sex. The commissioners indicate that if the applicant does not manifest her gender identity on the body, in behaviour and appearance, one can question its authenticity (SOU 1968:28, 50, 48). There is most definitely a formal demand on the individual to alter her appearance and behaviour in order to lay claim on a certain gender identity in the juridical context (as in the social context).

It is equally clear that not all ways of expressing one’s gender identity are legitimate or significant. Only actions or behaviours that can be viewed as authentic manifestations of a stable gender identity are given such status. For instance, the commissioners state that cross-dressing is a symptom that is not unique to transsexuals. Transvestites, homosexuals and some criminals exhibit the same behaviour (SOU 1968:28, 29). Therefore the act of cross-dressing is not thought to be that significant; it is not in itself a symptom of transsexualism or even a confirmation of a certain gender identity (i.e. the one reflected in the clothing). The distinction between what is thought to be authentic expressions of gender identity and what is thought to be unauthentic expressions is vital in the psychiatric approach to transsexuals (Kroon, Lundgren 1996: 92f. 100).

Sexuality's part in the matter

Some patterns of behaviour are thought to be more significant than others in the individual’s pursuit to pass (in a juridical, psychiatric and social sense) as the sex she feels she belongs to. Sexual acts and the consequences of such acts seem to be especially charged with gender-differentiating potential. Heterosexuality plays a central part in the construction of gender-schemata. This becomes obvious in the formal demands put on transsexuals that apply for a sex change: the applicant has to be unmarried and sterilized.

These demands are set up to prevent situations in which arrangements that used to be legal and acceptable (juridically speaking) turn into anomalies following a sex change: a man becomes pregnant and furthermore mother, a legal marriage becomes a nullity since the partners are of the same sex and so on so forth (SOU 1968:28, 7f. 51f.). Although Intersexuellas könstillhörighet doesn’t mention
anything about a heterosexual norm it is obvious that the situations mentioned are anomalies according to such a norm too. The legal system is by large rooted in a heteronormative discourse. Since the evaluation of transsexuals’ eligibility for a sex change is so dependent on their ability to manifest the asserted gender identities, great emphasis is placed on conformity with the heterosexual norm when it comes to appearance and behaviour. The Swedish Supreme Court, Svea Hovrätt, proclaims in its comment on the report that one must be cautious when women with biological children apply for a sex change. The reason for caution is not the well being of the children but rather the stability of the applicant’s gender identity. Svea Hovrätt seems to mean that her alleged transsexualism is questionable on account of her being a mother (Files from the national archive: Konseljakt, Justitiedepartementet, 3 December 1971). Parenthood and the ability to conceive a child seem to be the uttermost significant signs of sexual belonging. These are sexual characters that eliminate or transgress all other sexual characters.

At least in most cases; however Intersexuellas könstillhörighet describes cases in which newly become men have become pregnant, more or less by mistake, without this affecting their gender identities (SOU 1968:28, 52). Judging from the reference to these cases the gender identity is thought to be so stable and strong that it is not influenced or persuaded even by the body’s most gender-specific and gender-differentiating characters and behaviours. The notions are contradictory, but it is safe to say that the individual’s sex is assumed to be tightly connected to and influenced by sexual acts.

The usage of a certain term reveals the association between the sexed mind and the sexuality: psychosexual orientation. The commissioners use “psychosexual orientation” interchangeably with “psychosocial sex”. It is a term that juxtaposes gender identity and sexuality in a remarkable way. With the usage of this term and with further remarks on the matter, the report establishes a connection between gender identity and sexual identity.

The assumption is that in normal cases the gender identity as well as the sexual identity follows the gonads and they are therefore consistent with one another. An individual with testicles views himself as a man and desires what is proper for a man: i.e. women. And vice versa. In other words there are three factors that ought to follow one another: out of a sexed body a sexed mind is shaped and out of the same sexed body a sexed sexuality is shaped. Even in the cases where neither the gender identity nor the sexual identity is rooted in the sexed body – the commissioners do concede to the fact that such cases exist – the correlation between gender identity and sexual identity is thought to remain intact (SOU 1968:28, 43).

Intersexuellas könstillhörighet discusses the issue of sexuality in some length. According to the commissioners most transsexuals perceive themselves as heterosexuals and have same-sexed relationships before the sex change. Furthermore transsexuals have low sex-drives (SOU 1968:28, 27). These specified sexual preferences – heterosexuality and low sex-drive – are of great importance in the diagnostic evaluation. In fact they are an implicit criteria for transsexualism.

Kroon has pointed out that the transsexual’s ability to prove a heterosexual preference in terms of stating a wish to live as a heterosexual in the new sex, is decisive in the decision on whether the application for a sex change should be approved or not (Kroon 1996: 20f.; Kroon, Lundgren 1996: 84). Homosexual experience (i.e. relations with the opposite sex prior to the sex change) was even listed as a contra-indication for sex change according to Socialstyrelsen in 1978 (Fastställelse av könstillhörighet 1978: 42ff. 54).

Butler has coined the term the heterosexual matrix for the logic that purports that the stability of the binary genders and the social expressions for them, in fact the very genders themselves, are shaped by heterosexuality. Heterosexuality plays a great part in the social discourse and in the individual’s performance of the assigned gender (Butler 1990: 30).

Through heterosexuality – the performance of heterosexual desire and practice – an interconnection between the sexed body and the sexed mind is accomplished. An individual with a female sexed body perceives herself and is perceived by society as a woman (i.e. is endowed with a female sexed mind) when she desires someone who in the same respect is thought to be a man.

This logic is consistent with the one purport by Intersexuellas könstillhörighet. The commissioners assume that there are gender-specific sexual behaviours and preferences and that womanhood and manhood at least in part consists in expressing these behaviours and preferences. The individual makes her gender identity apparent (to herself and to the society) by following these gender-differentiating patterns of sexual desire and sexual practice. The choice of sex-partner is the most apparent display of gender identity and sexual identity.

When Socialstyrelsen responds to the report in the consultative process, the alleged interconnection between gender identity and sexual identity is exposed. Socialstyrelsen points out that the special regulation of homosexual relations is crucial in the context of transsexualism. Individuals that have not had a juridical sex change yet can encounter some problems on account of the regulations. “The gender role may include some sexual activity, which might be criminal according to the penal code.” (Files from the national archive: Konseljakt, Justitiedepartementet, 3 December 1971).
this statement, it is obvious that the manifestation of the gender identity in part consists of gender-
specific performative sexual actions.

However, there is a distinct ambiguity in the report’s discourse on sexuality when it comes to
positioning sexual preference and sexual ability in relation to the dichotomy between body and mind.
In the context of transsexuality, sexual preference is described as a mental sign of sex. The sexual
identity is thought to be supportive of the gender identity and vice versa. If a transsexual woman is
attracted to women this is interpreted as a sign of a male gender identity, as a mental indicator of the
individual’s sex. Sexual preference is expected to present the indications the body is unable to provide.
The reproductive ability on the other hand is described as a physical sign of sex. Thus it has to be
eliminated, it being one of the most vital bodily signs of sex. When it comes to transsexuals the sexed
body is not to be taken into account.23

In the context of intersexuality, sexuality is defined as physical sign of sex, as a physical ability to
perform heterosexual intercourse and to reproduce (the question of the sexual identity, a mental
character, is not mentioned or discussed). The commissioners claim that sexual adaptation may be of
more importance to the individual than the appearance of the genitals; thus it is a significant factor in
the medical evaluation of the individual’s condition and in the choice of sex (SOU 1976:9, 25). The
physical ability to perform heterosexuality legitimates the choice of sex when confronted with an
ambiguous body. Genitals that make it possible to perform heterosexual intercourse or to reproduce
prevail over all other sexual characters and they balance the body’s ambiguity. In short:
(hetero)sexually functional genitals affirm and confirm the assigned sex. The fact that functional
genitals can be used in sexual activity that doesn’t comply with the heterosexual norm seems to have eluded the commissioners.

Fausto-Sterling describes how the functionality of newly become boys’ penises are measured in
terms of the future ability to perform heterosexual intercourse and urinate standing up. In addition the
penis needs to be of such appearance that the boy can feel comfortable in the company of others. A
functional organ is a normalized organ (Fausto-Sterling 2000: 57).

Sexual acts and sexual orientation
The report on sexual abuse, Sexuella övergrepp, sketches a picture of a process of enlightenment when
it comes to the Swedish society’s views on sexuality. According to the commissioners the very
conceptions of sexuality and sexual life went through great changes throughout the mid-1900 century.
Principles such as the one that sexual activities ought to be confined to matrimonial relations and that
women in contrast to men lack sexual urge, lost value and were replaced by others. Sigmund Freud
and Alfred C. Kinsey are described as pioneers in the unshackling of human sexuality (SOU 1976:9,
51f.).24

Sexuella övergrepp seems to view the sexed body the same way Intersexuellas könstillhörighet
does, as the basis behind the sexed individual.
When discussing the criminalization of sexual relations with children the age-limit is at issue. The
commissioners consider using the entry of puberty as the differentiating factor instead of a certain age.
They outline the physiological aspects of children’s growth and claim that children enter puberty
earlier nowadays than they did before. In addition they refer to studies on adolescents’ sexual lives
claiming that the age of sexual debut is getting lower and lower (SOU 1976:9, 75, 90).25

They seem to presume that if the physiological prerequisites for sexual relations (i.e. for
heterosexual reproduction) are met, then the emotional ones are also met; assuming that emotional
maturity follows from physical maturity. The physiological and mental aspects of sexuality are
thought to mirror one another, at least in this specific context, and it is the body’s development that
forms the mind’s.

One of the major changes in the legislation on sexual crimes suggested by Sexuella övergrepp
concerns the special regulation of homosexual relations. While relations between partners of the
opposite sex in some situations have an age-limit of 18, the limit for equivalent relations between
partners of the same sex is set at 20.26 The commissioners claim that the current legislation is
discriminating and that it may contribute to the estrangement of homosexuals (SOU 1976:9, 99).
In addition they assert that the legislation is based on the so-called seduction-theory, described as a
theory loaded with subjective judgements.

The seduction-theory is named by the belief that even occasional homosexual experiences may
result in permanent homosexual orientation. Especially young men and women are thought to be
seduced into homosexuality, puberty was thought to be a vulnerable phase in life. The connection
between sexual actions and sexual preference is simple and straight, actions sediment into orientation.
But the commissioners in Sexuella övergrepp claim that it is of great importance to make a clear
distinction between sexual actions and sexual orientation (SOU 1976:9, 98). The dichotomy between
homosexuality and heterosexuality is to be taken apart and bisexuality as a sexual orientation is to be
accounted for. The bisexual actions are already accounted for since the commissioners assume that
there are men and women that live in heterosexual relationships and only act out their homosexual orientation, through homosexual actions, on occasion and behind locked doors.

Since these individuals are described as homosexuals it is quite obvious that it is the orientation, not the actions, that is significant and substantial in the constitution of the individual’s sexuality. The commissioners claim that the sexual orientation is irreversible and that actions that seemly point in the opposite direction have no concrete bearing on the orientation (SOU 1976:9, 100f. 215).

There seems to be a parallel between the position of the gender identity in Intersexuellas könstillhörighet and the position of the sexual orientation in Sexuella övergrepp. The gender identity and the sexual orientation (or sexual identity) are both described as mental constructions, they are stable and fixed, however they have to be manifested by external expressions. The gender identity and the sexual identity are dependent on continuous actions for visualization. The relation between sexual identity and sexual actions seems to be the same as the one between gender identity and gender performative actions. These actions are indispensable as proof of the internal essence (whether that essence is thought to refer to gender or sexual preference).

The commissioners behind Intersexuellas könstillhörighet declare that transsexuals that have same-sexed relationships (before the sex change) don’t view themselves as homosexuals, nor do their partners. The term “homosexuality” is said to lose its conventional meaning in the context of transsexuality (SOU 1968:28, 27). But the position of heterosexuality as norm is neither questioned nor discussed. In his response to Intersexuellas könstillhörighet Bo Gerle (associate professor of psychiatry) brings up the issue of homosexuality and questions the way the issue is portrayed.

He feels that although the transsexuals view themselves as heterosexuals, this is not true of their partners. Women that live with transsexual women can’t be depicted as heterosexuals, not even after their partners have gone through sex changes and are juridically defined as men. The reason is simple: these women have sexual relationships with individuals that are unable to fully renounce the sex their bodies signify by birth, men with bodies that to some extent still are female.

Gerle suggests that even if these women perceive themselves as heterosexuals in the initial state of the relationship there is a great chance that they will eventually identify as homosexuals; influenced by the sexual contact they have with their somewhat female partners (Files from the national archive: Konseljakt, Justitiedepartementet, 3 December 1971). Thus he gives vent to a version of the seduction-theory. In his version the individual’s mental and physical experiences and emotions triggered by the partner’s sexed body are taken into account. There is a correspondence between Gerle’s faith in the body’s ability to change the very sexual identity of a partner and its ability to influence the individual’s gender identity (spoken of in Intersexuellas könstillhörighet). Sexual identity and gender identity seem to be co-positioned in the relations between body and mind, fixity and mutability, causes and consequences.

Miscellaneous remarks

Since the notions of the body displayed in the reports spoken off are contradictory and ambiguous, this paper is equally vague and bewildering. I am unable to make distinctive conclusions. This paper is to be read as an attempt at juxtaposing miscellaneous assumptions on the nature of the body and the relations between body, mind, sex and sexuality.

I conclude with a yet unexplored approach to the understanding of the body politics of these reports. Is it possible to read them as examples as to how one deals with the body in situations where the actual focus of interest is not the individual’s physicality but rather her rights and responsibilities?

In Surveiller et punir: Naissance de la prison (1975) Foucault suggests that the modern legal system’s disciplining and punishing measures are directed towards the soul (or mind) rather than the body. In the end of the eighteenth century the state started to use imprisonment as a disciplinary practice instead of corporal punishment. Although incarceration and penal servitude are penalties that affect the body, the body itself was thought to be a mere instrument in the process. The intended object of discipline was the criminal’s mind and her human rights. The purpose of a death penalty was no longer to make the criminal physically suffer as much as possible but to deprive a juridical subject of one of her rights, namely the right to live. The object of the legal system and its measures is the juridical subject and not the actual embodied person. The body is an intermediary.

Perhaps one might say that the body has a similar position in the context of the reports, as that of an intermediate, connecting link between the individual’s essence and her social surroundings. There is a tendency to refer to abstract juridical subjects. Intersexuellas könstillhörighet makes it clear that the juridical sex is the most important sexual character. Although the individual’s gender identity is said to be the foundation for the establishment of sex it is the juridical sex that is the actual object of legislation. The farthest consequence of the legislation is men with vaginas; an individual can be defined as a man if he has a male gender identity and acts accordingly even though he has female genitals. It is the juridical classification that is the imperative.

But even the juridical sex is ambiguous. A juridical sex change can never have retroactive consequences, which means that registrations prior to the sex change are kept in the bureaucratic files.
A newly become man, which according to legislation is male in everything that concerns the sex, can be registered as the mother of his children and the former wife of their father. And a newly become woman can be called before court in a paternity case. The commissioners don’t discuss this bureaucratic abstruseness at all. The governmental bill mentions it but dismisses the issue from further discussion by defining it as a question of theoretical character (Parliamentary publications: Proposition 1972:6, 53). Ines Orobio de Castro has observed the same conceptual paradox in Dutch legislation (Orobio de Castro 1993).

It seems as though it is impossible to handle the body’s volatility and mutability within the legal discourse. The body has to be fragmentised to be manageable. It has to be detached from its own complexity: sexual characters are classified and sorted neatly into hierarchies, sexual activities are separated from sexual orientation, the mental and social aspects of sexual belonging are taken into account but at the same time separated from the embodied context they form and are formed by. In this sense the reports considered in this paper are univocally monotonous.
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I will henceforth use her as a gender-neutral possessive pronoun in the same way his is used in common use of language.


In fact the gender-specific number in a personal-number is not one but three, namely the three numbers following the ones indicating the date of the birth. Lets take my personal-number – 751028-8504 – as an example. In this combination of numbers the six first numbers in my personal-number, 751028, reflect the fact that I was born on October 28th 1975 and the three following, 850, indicate that I was established to be of female sex. Since it is the last number in this sub-combination that decides whether the whole combination is odd or even, one usually says that it is the last but one number that is gender-specific, although it is the whole combination of three numbers. The very last number, 4, is a control number.

Among the scholars that have discussed the early sterilization acts, these are some: Gunnar Broberg & Mattias Tydén (1991); Mattias Tydén (2000, ); Maija Runcis (1998); Eva Palmblad (2000); Kristina Engwall (2001).

This is not altogether true, questions are asked. Before sterilization can be performed the patient has to be informed of the consequences of the operation and sign a paper that says that she is fully aware of the implications of the procedure.

In fact this established practice prevails in Swedish courtrooms. In 2003, more than 25 years after the uproar against the report of 1976, judges and counsel for the defence still actualise issues not relevant to the assault. They ask questions about the victim’s sexual habits and behaviour at the time of the assault: was she flirtatious, had she been drinking, what was she wearing? Just as journalist Maria-Pia Boëthius wrote a book in response to the report on sexual abuse, Skylla sig själv (1976), so did journalist Katarina Wennstam publish a book in response to some much discussed cases of group rape in 2002, Fläckan och skulden (2002). Both books are furious attacks on the legal system’s ways of putting the blame on the victim. The tendency to define rape in such a way that most cases of sexual abuse fall out of the definition, because the victim did not put up a sufficient amount of resistance or the offender did not use enough violence to pose a immediate threat, has gone unchanged throughout the 1900 into the 2000 century.

In Swedish the act is called "Fastställande av könstillhörighet i vissa fall". I use the word “ratification” in this context instead of “determination” or “establishing” because it indicates that the choice of sex has already been done (i.e. the establishment of sex has been done) and the bureaucratic aspect of it is the ratification, the confirmation, of this established sex. One might view the ratification as a social sanction, as an endorsement from the state. The actual establishing of sex is in the cases of transsexualism and intersexuality also an issue that is regulated by the legislation, but Intersexuellas könstillhörighet only gives guidelines on this matter (it describes which sexual characteristics are to be taken into account and given priority in the establishing of sex).

To make the terminological situation even more complex, the term “psychosexual orientation” is added to the group. “Psychosexual orientation” is used interchangeably with “psychosocial sex”, but it seems to have more in common with “gender role” than with “gender identity”. Intersexuellas könstillhörighet does not discuss the terminology, but one of the commissioners, the psychiatrist Jan Wålinder, had done so in his dissertation. Wålinder uses “gender identity” and “gender role” in his dissertation. The former is defined (with reference to Robert Stoller) as the individual’s apprehension of her own sex, as her mental sense of being male or female. The latter is said to include all the aspects of an individual’s behaviour that aim at depicting her as male or female, among other things sexuality in terms of “eroticism”. Wålinder refers to Joan and John Hampson when he describes the connotation of gender role and it seems as though Intersexuellas könstillhörighet might have acquired the confusing foursome gender identity/gender role/psychosocial sex/psychosexual orientation from the Hampsons, via Wålinder’s dissertation. This is Wålinder’s exposition of the matter: “Gender role, or ‘psychological sex’ as the Hampsons also call it, is one of the several components of sex. [...] these components are: (1) chromosomal sex, (2) gonadal sex, (3) internal anatomic sex, (4) external anatomic sex, (5) hormonal sex, (6) sex of assignment and rearing, and (7) gender role, or psychosexual identification.” (Wålinder 1967: 4, 30)

Inlämnningen av detta beteendemönster börjar redan under första levnadsåret och innebär, att egenskaper, attityder och värderingar adderas till de givna anatomiska och fysiologiska förhållanden. Det finns skäl att antaga, att könsrollen under normala förhållanden är etablerad under de tidiga barnaåren och inte kan ändras utan allvarliga psykiska men. Könsrollens vidare utveckling pågår ända upp i ungdomsåren.”

"I praktiken är ju utseendet hos de yttre genitalia regelmässigt ensamt avgörande för den könsbestämning som sker direkt omedelbart efter barnets födelse.”
In the case of transsexualism the medical evaluation has to be done to rule out the possibility of physical or mental illness, if an individual’s wish to change sex is found to have pathological grounds it is thought to be problematic and the individual is not eligible for a sex change.

The conditions that transsexuals have to meet to be eligible for a sex change are the following: she has to have identified with the opposite sex since youth and have lived in the gender role of this sex for some time (a period of 1-2 years is mentioned). She must be expected to continue to live in this gender role. In addition, she has to be unmarried and sterilized (or sterile on account of other reasons). And she has to be 18 years of age. The conditions for intersexuals are not as many, they have to have unmarried too (although this was decided in the governmental bill, the report didn’t discuss the issue) and they have to have an established intersexed condition. The report says that a new sex can be ratified if the individual has a deformation in the genitals that make it hard to establish her sex and the new sex is in compliance with the gender role. (SOU 1968:28, 7)

The whole sentence in Swedish: “Om förutsättningar för fastställande av den eftersträvade könstillhörigheten inte föreligger, kommer ingreppet endast att innebära en meningslös stympling, som sannolikt försätter individen i en ännu svårare situation än förut.”

The term "psychosexual" or "psychosexual orientation" is used by Money et al. and by the commissioners in Intersexuellas könstillhörighet. On the usage of the term: see note 7. The term connotes the connection between gender identity and sexual identity, as will become apparent further on in this paper.

"Individens uppfattning om sitt kön sätter sin prägel på klädedräkt, rörelseschema och uppträdande i övrigt.”

This is a very short and not altogether sufficient note on Butler’s complex theories. Her usage of the distinction between gender and sex creates some problems in the context of this paper, problems that I have not taken much notice to at this point being.

In this text I pay no attention to the many questions and objections raised when claiming that something physical is shaped by something mental. I focus on the superficial aspects of this moulding, on a stylization of the body through patterns of movement, mimicry, behaviour, clothing, make-up etc. Yet it is my conviction that the actual physical body in some senses is formed and shaped by our conceptions of sex and sexuality in a more fundamental way. Historians like Londa Schiebinger, Thomas Laqueur, Ludmilla Jordanova, and others, have pointed out that concepts of the body do shape our ways of portraying and relating to it, the significations we give it and the ways in which we make it comprehensible. I think that Butler’s understanding of the body as materializing, developed in Bodies that matter (1993), is very interesting, but this is not the place to explore that matter further.

Some examples: marriage is a juridical arrangement that only couples of opposite sex can enter, only heterosexual couples can receive joint custody of a child, only heterosexual couples can adopt children or be admitted help with insemination etc. Some of these inequalities are being altered as we speak, but the legal system is still heteronormative.

One ought to observe that the practice surrounding the psychiatric evaluation of transsexuals has changed a great deal since the legislation was first instated. It is no longer as bluntly heteronormative as it used to be. That is not to say that the everyday notions of what is to be expected of a man or woman have changed that much or that they have lost importance in the psychiatric assessment of the transsexual’s ability to live in the gender role of the sex she identifies as. And even if the practice has changed, the report of 1968 is still a juridical document that practitioners (of many professions) can refer to when it comes to the interpretation of the legislation.

There is an obvious conflict within juridical discourse between the instability of the concept of sexual belonging and the relative stability of the concept of parenthood; question is on what common ground these two concepts meet in the future legislation relevant to transsexuals, on the issue of insemination, adoption and sperm- and egg-donation.

One of the other reports, Sexuella övergrepp, verbalises this assumed interconnection between gender identity and sexual identity in a remark on the effect of sex hormones on the fetal brain (a neuro-endocrinological premise done much research on): “If this hormonal influence fail to occur, different types of intersexual individuals and aberrant sexual behaviour originate.” (SOU 1976:9, 216)

"I könsrollen kan ingå också en viss sexuell aktivitet, som skulle kunna bli straffbar jämfört med brottssakalar.”

Although Kroon and Lundgren have proven that the individual’s ability to bodily enact the sex she identifies as is crucial in the psychiatric evaluation of transsexuals. Key factors are body frame, musclearity, body hair, tone of voice, distribution of fat etc. The importance of a suiting body is evident. For example: if a newly become woman (according to Kroon and Lundgren this specifically concerns male transsexuals) is unable to eliminate the secondary sexual characters indicating the prior sex, such as large hands and big feet, she might compensate by putting emphasis on the tertiary sexual characters, i.e. on the patterns of movement, way of dressing, tone of voice etc. (Kroon, Lundgren 1996: 87ff. 93)

The report’s reasoning seems like a typical example of what Michel Foucault describes in Histoire de la sexualité: La volonté de savoir (1978), it carries the assumption that there is such a thing as a true, veracious sexual expression (i.e. a liberal, diversified, affirmative attitude) that has been unchained after ages of suppression. The recognition that all attitudes towards sexuality are surrounded and formed by political and moral discourses seems to have escaped the commissioners (although they do admit that the juridical category defining sexual offences is shaped by moral values and thus fluctuating). (SOU 1976:9, 27)

This consideration was abandoned after some discussion, on account of the difficulties one would encounter when trying to find some physical characters that could be said to signify the actual occurrence of puberty.

These situations are: when someone over 18 years of age has a sexual relation with someone under the age of 18 (or 20 in cases of homosexual relations) and the younger partner is in a position of dependence, when someone over 18 years of age has a sexual relation with a partner under the age of 18 (or 20 in cases of homosexual relations) in exchange for money or promise of money.