

Georgia State University

ScholarWorks @ Georgia State University

Philosophy Theses

Department of Philosophy

5-8-2020

Towards a Distinction between Gender Identity and Gender Orientation

Avery Newman
Georgia State University

Follow this and additional works at: https://scholarworks.gsu.edu/philosophy_theses

Recommended Citation

Newman, Avery, "Towards a Distinction between Gender Identity and Gender Orientation." Thesis, Georgia State University, 2020.

https://scholarworks.gsu.edu/philosophy_theses/273

This Thesis is brought to you for free and open access by the Department of Philosophy at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Philosophy Theses by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

TOWARDS A DISTINCTION BETWEEN GENDER IDENTITY AND GENDER
ORIENTATION

by

AVERY NEWMAN

Under the Direction of Christie Hartley, PhD

ABSTRACT

Gender identity is usually thought of in psychologistic terms. But thinking about gender identity in this way often undermines the political and social agencies of queer and trans individuals who rely on the concept the most. To ameliorate this problem, I argue that we should endorse a conceptual distinction between gender identity and what I call gender orientation. The former is an agent's sincerely self-ascribed gender categorization(s), and the latter is an agent's psychological relation to gendered social practices.

INDEX WORDS: Gender Identity, Psychological Gender, Ameliorative Metaphysics, Trans-Feminism, Queer Theory, Gender Recognition Act 2004

TOWARDS A DISTINCTION BETWEEN GENDER IDENTITY AND GENDER
ORIENTATION

by

AVERY NEWMAN

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

2019

Copyright by
Avery Newman
2020

TOWARDS A DISTINCTION BETWEEN GENDER IDENTITY AND GENDER
ORIENTATION

by

AVERY NEWMAN

Committee Chair: Christie Hartley

Committee: S.M. Love

Electronic Version Approved:

Office of Graduate Services

College of Arts and Sciences

Georgia State University

May 2020

DEDICATION

To Jerm, Ditto, Scraps, Juice, and Mac for filling my life with laughter and love.

ACKNOWLEDGEMENTS

I would like to thank Christie Hartley, my committee chair, for encouraging me to take on this project. I may have never pursued my own ideas without your critical enthusiasm and guidance.

I would also like to thank S.M. Love for constantly reminding me of the practical importance of social philosophy. Your emphasis on the urgency of the kinds of issues discussed here has kept me motivated

I thank Sebastian Rand for introducing me to Catherine Malabou's work, which has deeply influenced the way I think about a range of things and made much of this thesis possible. I am also grateful to you and your oneiric counterpart for scolding me to never write in library books and telling me to listen to more Steely Dan, respectively.

I also thank all the other grad students at GSU who were willing to talk with me about my thesis and provide me with support.

I am indebted to my fellow members of Non-Binary and Genderqueer Atlanta for providing the kind of critical feedback on my ideas that no ordinary philosopher could think of. Also for snacks and friendship.

Finally, thanks to Jen Davis for unwavering emotional support during a few major life transitions that occurred in the two infinitely short years I spent at GSU. You've greatly shaped the person I've become, and I won't try to capture what your friendship means to me in a few sentences.

TABLE OF CONTENTS

	ACKNOWLEDGEMENTS	II
1	INTRODUCTION	1
2	TWO KINDS OF AMELIORATIVE PROJECTS.....	3
3	ISOLATING A CONCEPT OF GENDER ORIENTATION.....	7
3.1	Two Features of Gender Orientation: Pre-Reflectivity and Plasticity	7
3.2	Gender Orientation \neq Gender Identity	12
4	AN AGENTIAL ANALYSIS OF GENDER IDENTITY.....	14
4.1	Prioritizing Sincere Self-Ascription	15
4.2	Psychological and Political Dimensions of Agential Gender Identity	18
5	THE DIVERSITY AND RESOURCE PROBLEMS RECONSIDERED.....	22
5.1	The Diversity Problem Reconsidered	22
5.2	The Resource Problem Reconsidered: Legal Recognition and the GRA	23
	REFERENCES.....	29

1 INTRODUCTION

Recent philosophical accounts of gender identity have defined the concept in terms of an individual's internal psychological features.. Two popular examples of this are Katharine Jenkins's and Jennifer McKittrick's recent accounts. Jenkins defines gender identity in terms of a person's experiences of gender norm-relevancy. On her view, one's gender identity is a kind of 'internal map' that guides one through various gender-norms constitutive of gender as a social class (Jenkins 2018, 2016). McKittrick's view, on the other hand, defines gender identity in terms of gender-coded behavioral dispositions. On her view, a person's gender identity is determined by a set of sufficiently many, sufficiently strong dispositions to behave in gender-coded ways (McKittrick 2015).

Both of these views are undoubtedly important for understanding lived experiences of gender, but they suffer from two problems: a *diversity problem* and a *resource problem*.

First, these accounts suffer from a *diversity problem*: it is unclear how these views can account for the diverse range of gender identities possible within queer and trans-inclusive contexts. On both Jenkins's and McKittrick's views, gender terms like 'non-binary' and 'woman' name two incompatible psychological phenomena. So, how could these views account for an agent using both of these terms to describe their gender identity? This example isn't just a conceptual possibility: many people who identify as non-binary *also* identify as men or women (see §2 below). It is at least difficult for the recent views to account for the possibility of these gender identities by appealing to differences between psychological types (or in Jenkins's terms, differences between 'internal gender maps'). And this difficulty is especially concerning because an adequate philosophical understanding of the concept of gender identity should be consistent with LGBTQ+ people's understanding of the same concept.¹

¹ Versions of the diversity problem have been raised before in response to Jenkins's and McKittrick's definitions, though not under this label. See Andler's criticism that norm-relevancy mis-categorizes trans men and women who experience their bodies trans-normatively (2017); Barnes's criticism that an emphasis on gender identity problematically excludes cognitively disabled woman from the category 'woman' (forthcoming: 7-8); and

Second, these accounts suffer from a practical *resource problem*: a solely psychological view of gender identity is ill-equipped for helping trans citizens secure important social or material resources that they often need. To take just one example, binary trans citizens seeking legal recognition of their gender identity in the U.K. must present the state with a medical diagnosis of gender dysphoria, as well as documentation that “proves that they have been living as their desired gender for at least two years” (U.K. Gov’t: 30).² Evidential requirements like these severely undermine the agency that trans people ought to have over their own gender categorizations, and these requirements are *made possible* by a solely psychological understanding of the concept of gender identity — experiences of gender-norm relevancy must be *demonstrated* to the state with a medical diagnosis of gender dysphoria, and dispositions to behave in certain gender-coded ways must be made *manifest* with qualifying documentation. A philosophical account of gender identity should help trans groups *resist* rather than *reinforce* the dominant conceptual schemas of gender that serve as barriers to important social resources.

I think that the diversity and resource problems can be addressed, in part, by paying closer attention to the conceptual resources that trans and queer people use to understand themselves.³ Here, I argue that we should endorse a distinction between gender *orientation* — a name for the psychological phenomena discussed in the recent literature — and gender *identity* — an agent’s sincerely self-ascribed gender categorization(s), which is often aimed at revising their social position(s).

Dembroff’s criticism that ‘internalist’ views of gender are inadequate as accounts of critical gender categories like ‘genderqueer’ (forthcoming: 9-14).

² And satisfying these evidential requirements are far from sufficient for legal recognition. To name one other barrier, there is also a “requirement for married applicants to obtain the consent of their spouse or end their marriage” (U.K. Gov’t: 11).

³ It’s worth mentioning that something close to the central distinction of this thesis has been suggested by trans rights activist Cristan Williams (2013; 2018). My concept of ‘gender orientation,’ however, will turn out to be substantively different from hers in two ways: (i) I view an individual’s gender orientation as plastic (not fixed or rigid) and (ii) my account of gender orientation is compatible with a strong social constructionist view of gender (see §3.1).

My argument proceeds as follows. In section two, I explain my approach as *ameliorative*. I distinguish my project from Jenkins’s recent ameliorative account of gender identity by criticizing her view for suffering from the diversity problem. Then I introduce the terms for the central distinction by drawing on analogous distinction between sexual identity/orientation. In section three, I isolate a general concept of gender orientation. Generally, a person’s gender orientation is grounded in their *pre-reflective* and *plastic* psychological relation to gendered social practices (§3.1). Since a person’s gender orientation underdetermines their gender identity (and vice versa), gender orientation is distinct from the target concept of gender identity (§3.2). In section four, I offer a new target concept of gender identity. First, I draw on Dembroff’s and Saint-Croix’s model of ‘agential identities’ to present an agential view of gender identity that prioritizes sincere self-ascription (§4.1). Then, I explain how the agential view grounds respect for gender identity in its *psychological* and *political* dimensions (§4.2). I conclude by reconsidering how the distinction between gender identity and gender orientation puts us in a better theoretical position to address the diversity and resource problems.

2 TWO KINDS OF AMELIORATIVE PROJECTS

I am operating within a framework of ‘ameliorative inquiry’ or ‘prescriptive conceptual analysis.’ Broadly speaking, an ameliorative inquiry into gender concepts is one that seeks to identify what our legitimate purposes are in categorizing people on the basis of gender, and to develop concepts that would help us achieve these ends (Haslanger 2012: 366). These kinds of conceptual analyses are important because, as Burgess and Plunkett put it, “our conceptual repertoire determines not only what we can think and say but also, as a result, what we can do and who we can be” (2013).

In my project, I will distinguish between two target concepts: gender identity and gender orientation. A distinction between these two concepts will prove to be helpful for political ends that combat trans-based oppression and resist dominant gender ideologies.

Since one of the target concepts in question is the concept of gender identity, my project bears important similarities to Katharine Jenkins's recent work on gender identity, which also adopts an ameliorative framework (2016; 2018). Like Jenkins, I am after (in part) a target concept of gender identity, and like her I am "taking the aims of the trans rights movement as [my] starting point" (2018: 715-16). But I take myself to be pursuing a different *kind* of ameliorative project than Jenkins. As Robin Dembroff points out, an ameliorative inquiry could either:

- (1) Develop revised concepts for currently oppressive social categories, with an aim to revising the schemas underlying those categories, or
- (2) Analyze concepts *already operating* in non-dominant contexts that resist oppressive social categories, with an aim to revising the schemas underlying those categories.⁴

Although I share the same political aims and motivations as Jenkins, my project differs from hers to the extent that hers is an example of (1) and mine will be an example of (2). But before giving the analysis of the new concept of gender identity, it will be worth demonstrating the limitations of Jenkins's popular view.

Interestingly, Jenkins's view cannot succeed as an instance of (2) because it suffers from the diversity problem: her view cannot account for the range of gender identities possible within trans-inclusive contexts. Consider that some members of the LGBTQ+ community self-ascribe multiple different gender terms at once. For example, consider Riley J. Dennis's self-identification as both a trans woman *and* as non-binary:

For me, I feel like I'm far enough to the 'girl' side of the [gender] spectrum to consider myself a girl, but I also feel kinda gender neutral. I don't feel like a binary trans woman, but I also don't feel like the word 'non-binary' fully describes my experience (2016).

⁴ See Dembroff's "Oppressive Categories" (manuscript). A third, probably more familiar type of ameliorative project is Haslanger's, which "focuses upon *revealing* categories as social (and oppressive), rather than natural" (Dembroff manuscript).

Riley isn't alone in identifying as a non-binary woman either, as many other members of the LGBTQ+ community, including myself, identify as non-binary women too. A few other examples of publicly-identifying non-binary or genderqueer women include: animator Rebecca Sugar, activist Laurie Penny, and journalist Suzanna Weiss, (Thorn 2019; Penny 2015; Weiss 2015).⁵ Each of these individuals offer different personal interpretations of what it means to self-ascribe these gender terms, but I assume that there is an important sense in which they share a common gender identity. The sense in which these individuals share a common gender identity is the target concept of gender identity I'm interested in, so I'll now explain why Jenkins's view cannot be an analysis of that target concept.

On Jenkins's view, one's gender identity is wholly determined by which set of gender-coded norms one experiences as relevant to oneself (2018: 728-36). So, she understands people with the gender identity 'woman' to be all and only those who experience female-coded norms as relevant to themselves (2016: 410). But she understands people with non-binary gender identities as all and only those who neither experience female-coded norms nor male-coded norms as relevant to themselves (2018: 735). So, on her view, the gender identities 'non-binary' and 'woman' name two mutually exclusive psychological phenomena, and these phenomena cannot occur at the same time in the same individual, *ex hypothesi*.

The fact that some people identify as both non-binary *and* as men or women therefore presents a serious explanatory problem for Jenkins's view, especially if Jenkins follows many trans and queer communities in taking gender identity to be sufficient for gender category membership. At best, Jenkins's view can only explain how a non-binary woman is a member of one of those gender

⁵ This identification may strike some readers as a conceptual impossibility, so it's worth emphasizing that the conceptual gender schema in question is *not* the schema operative in dominant contexts. On the dominant schema, non-binary men/women are conceptual impossibilities. But I take such an impossibility to indicate a problem with the dominant conceptual schema, not the self-identification. It is a fundamental assumption of my project that trans and queer identifications should be respected. Consider that dismissing the explanations trans and queer people give of their own gender identities because they aren't intelligible in accordance with dominant conceptual schemas is a serious epistemic injustice.

categories, but it cannot explain membership in both categories because ‘nonbinary’ and ‘woman’ name two incompatible psychological types.⁶ Jenkins’s view of gender identity is not sensitive enough to conceptions of gender identity operative in trans and queer contexts that resist oppressive gender categorizations, and so is not an instance of (2). What’s worse, if facts about gender category membership(s) are wholly determined by psychological features as Jenkins suggests, then it seems difficult to account for the agency that queer and trans people have over their own gender categorizations.⁷ If gender identity is sufficient for gender category membership, then the target concept of gender identity must better reflect the agency that queer and trans people have over their own gender categorizations, as well as the agency they have in interpreting their own psychology.

To arrive at such an account, I suggest that we provisionally distinguish the target concept of gender identity from its psychological connotations (e.g. ‘having an internal sense of oneself as woman’). To introduce the terms for such a distinction, I invite the reader to consider Dembroff’s contrast between sexual orientation and sexual identity: an individual’s sexual orientation is grounded in their dispositions to engage in certain sexual behaviors, while “sexual identity ... refer[s] to an individual’s self-identification with respect to their sexual orientation ... [so] is sensitive to the concept of sexual orientation” (2016: 6). I propose using ‘gender orientation’ to name the psychological concept of gender explored in the recent literature and reserving ‘gender identity’ for the new target concept. Below, I aim to make this contrast more salient by first offering a general view of gender orientation, followed by an agential account of gender identity.

⁶ It’s worth mentioning that Jenkins’s view also generates an exclusion problem to the extent that she takes gender identity to be *necessary* for category membership. See Barnes (forthcoming: 6-8).

⁷ For similar criticisms of Jenkins’s view, see Andler (2017) and especially Dembroff (forthcoming*a*). Dembroff also uses the example of non-binary women to object Jenkins, but for a slightly different argumentative end than mine. Their end is narrower: they use the example to show that internalist approaches to *genderqueer identities* fail, but I take the example to show that these approaches fail as ameliorative accounts of gender identity more generally. Also, this example isn’t the only instance of the diversity problem, as the example of Sophie and Taylor in §3.2 below is another instance of the same problem.

3 ISOLATING A CONCEPT OF GENDER ORIENTATION

In this section, I outline a few conditions I take to be important for theorizing about psychological gender under the headings of ‘pre-reflectivity’ and ‘plasticity.’ The result is a view of gender orientation that encompasses and improves upon the recent accounts of psychological gender.

3.1 Two Features of Gender Orientation: Pre-Reflectivity and Plasticity

Generally, I propose understanding gender orientation as one’s psychological relation to social practices that (explicitly or implicitly) involve gender categories and properties.⁸ Following Ásta and Dembroff, I take the exact social categories and properties involved in a given social practice to depend largely on the broader social context in which that practice takes place (2018; 2019). The socially contextual nature of gender categories and properties means that they often intersect with other social categories and properties (e.g. race, ability, sexuality, class, etc.) in interesting and sometimes problematic ways (Ásta 2018). To give just one brief example, a gender property like ‘feminine’ may not be regularly conferred onto a disabled woman whose body is routinely stigmatized as deficient in some way. Even if she participates in the same social practices (think of beauty practices) that able-bodied women participate in and to the same extent as they do, the property ‘feminine’ may not be conferred onto her in an ableist and sexist social context where ‘feminine’ is attempting to track reproductive viability. The reader should bear the intersectionality and context sensitivity of social properties in mind for my uses of ‘feminine’ and ‘masculine’ below, since these properties are not consistently operative within even the same social practices.

Two central features of gender orientation I will focus on are its *pre-reflectivity* and *plasticity*. ‘Pre-reflective’ describes how a person’s engagement in gendered social practices does not require that they

⁸ I am relying here on Haslanger’s view of social practices as “patterns of learned behavior that enable us (in the primary instance) to coordinate as members of a group in creating, distributing, managing, maintaining, and eliminating a resource (or multiple resources), due to mutual responsiveness to each other’s behavior and the resource(s) in question, as interpreted through shared meanings/cultural schema” (2018).

explicitly consider their own category membership. And ‘plastic’ describes how a person’s psychological relation to gender categories shapes and is shaped by engagement in gendered social practices. I’ll now specify each of these features in turn:

Pre-Reflectivity

One’s gender orientation is grounded in a set of sufficiently many, sufficiently strong

- (i) pre-reflective experiences of gender-norm relevancy, or
- (ii) dispositions to pre-reflectively behave in gender-coded ways.

‘Pre-reflective’ captures how a person’s psychological relation to social practices involving gender categories/properties does not require that they represent themselves or their own attitudes or conduct in accordance with the relevant categories/properties. To quote Haslanger, “agents are responsive to the world and each other in ways that are not always easily accessible to the agent or governed by intentions” (2018). So, for example, a trans woman might experience feminine-coded norms as relevant to herself before reflectively identifying as a woman (to others or even to herself). Having such experiences does not require that she represent either herself *as a woman* or the relevant norms *as feminine*. Although we can and do become reflectively aware of ourselves and our (possible) conduct as gendered in various ways, having a specific gender orientation is not a matter of such awareness. Pre-reflectivity is therefore important because it accounts for how we are responsive to gender categories and properties in ways that are not always easily accessible to us.

I view ‘experiencing certain gender-norms as relevant to oneself’ and ‘having dispositions to behave in gender-coded ways’ as two possible ways of psychologically relating to social practices involving gender categories and properties. So, with (i) and (ii), I’ve encompassed Jenkins’s and McKittrick’s psychological accounts of gender under the ‘pre-reflectivity’ heading. An upshot of this is that a general view of gender orientation can remain somewhat neutral on whether having a specific gender orientation is a matter of having certain dispositions to behave in gender-coded ways, having

experiences of gender-norm relevancy, or a combination of the two. But to be clear, experiences of gender-norm relevancy and gender-coded dispositions are not exactly the same. These phenomena can and often do come apart. First, one could experience a gender norm as relevant without having a corresponding disposition to behave in accordance with that norm. To borrow an example from Jenkins, a woman could experience a norm like ‘women ought to shave their legs’ as relevant without following that norm (2018: 730-1). Second, one could have a disposition to behave in a gender-coded way without experiencing the norm calling for such behavior as relevant. For example, an agender person socialized as a man might have a disposition to use men’s restrooms without experiencing that norm as relevant to themselves.

Having a specific gender orientation (e.g. ‘trans-feminine,’ ‘masculine,’ ‘non-conforming,’ etc.) depends on a few things. For starters, it depends on how strong one’s dispositions and experiences of norm-relevancy are, as well as how many dispositions and experiences of norm-relevancy one has. I follow McKittrick in using, ‘sufficiently many, sufficiently strong’ to highlight that having a specific gender orientation is a matter of degree (2015: 2582). Further, since (i) and (ii) come apart, a person’s gender orientation needn’t be *uniformly* ‘feminine,’ ‘masculine,’ ‘agender,’ etc.⁹ For example, a bigender person, call them Zoe, might only have dispositions to behave in female-coded ways but strongly experience masculine norms as relevant. Although gender orientation is primarily pre-reflective, I take it that an agent reflectively has what Bettcher calls ‘first-person authority’ over which set of psychological phenomena are most relevant for describing their specific orientation (2009).¹⁰ So,

⁹ I take these categories to be continuous even within the same mode of psychological relation. For example, a person could have a more or less feminine orientation just in virtue of having more or less, stronger or weaker, experiences of norms coded as ‘feminine’ within their social context. The continuity of categories associated with gender orientation is analogous to the likely continuity of categories associated with sexual orientation (see Dembroff 2016: 23).

¹⁰ Like Bettcher, I take this sort of authority to be ethical rather than epistemic (2009: 99-103). Just as one could deceive oneself with respect to one’s sexual orientation, one could deceive oneself with respect to one’s gender orientation too. For example, a trans person who grew up in a conservative, transphobic social context might struggle for years with repressing their gender orientation.

whether Zoe's orientation should be described as feminine, masculine, both, or non-conforming depends on which set of psychological phenomena Zoe herself prioritizes.

A second feature of gender orientation is plasticity.¹¹ This concept captures how one's gender orientation shapes and is shaped by engagement in gendered social practices. Specifically, plasticity names two important phenomena: one's gender orientation is often behavior- and action-guiding, and it can change over time. So, I understand gender orientation to be plastic in that:

Plasticity

One's gender orientation

- (iii) shapes one's possible conduct in social practices that implicitly or explicitly involve gender categories/properties, and
- (iv) is shaped by one's engagement in those social practices and by the social resources made available through them.

Condition (iii) describes how a person's gender orientation can function to guide them through social and material realities involving gender categories/properties. The operation of these categories/properties can be either explicit (think of gender-specific restrooms), or implicit (think of how wearing makeup in some contexts is often coded as 'feminine'). The 'map' metaphors offered by Jenkins and Ásta are instructive here for describing how one's gender orientation is behavior- and action-guiding. On these views, a social agent has an internal or subjective 'map' that they use in order to navigate various gender norms. For example, a feminine orientation may function like a 'map' that guides one through the social and material realities characteristic of women in one's social context (Jenkins 2016: 410). Having a specific gender orientation, then, partly consists in "constraints on and enablements to one's [gender-coded] behavior" (Ásta 2018: 112).

¹¹ This feature is loosely inspired by Catherine Malabou's work on the concept of plasticity in *What Should We Do with Our Brain?* and *Changing Difference* (2008; 2011).

Condition (iv) helps account for how one's gender orientation is formed by processes of socialization, but it also accounts for the possibility that an individual's gender orientation may change in subtle or even drastic ways as a result of improvements in the interpretive or material resources made available through certain social practices. Based on my own lived-experience and conversations I've had with other trans people, it seems especially important that gender orientation is theorized as plastic in this receptive sense. Recognizing that our psychological relation to gender can genuinely change is important for resisting the dangerous expectation for all trans people to have and always have had a deep sense of ourselves as belonging to a gender category other than the one assigned at birth. For example, Theryn Meyers is a trans woman and activist who grew up in a religious, hyper-conservative social context in South Africa. Consider her response to an interviewer's question about when she knew she was trans:

I think the very popular narrative is, 'I always knew.' But it's usually not that simple because these things are quite complicated, and internal feelings of gender are very complicated and subjective but also influenced by an outside environment. I never thought too much of my gender when I was young, but then again, I didn't have too much self-awareness when I was young. I was just frolicking around ...

[Transitioning] was a slow, gradual discovery of who I was. ... I remember working a summer job ... just to save up for facial feminization surgery. And I saved up for facial feminization surgery before I even realized I was a woman. I just knew that I didn't like my face. It's kind of interesting how non-linear these experiences can be (2019).

As a trans woman who also grew up in a hyper-conservative social context, I would be surprised if these sorts of non-linear experiences were statistically rare for trans people raised in similar contexts. To quote trans video essayist Sarah Zedig, "some people just know that they're trans, and others take years to realize that they're even allowed to ask the question" (2018). For these reasons, it is important to recognize that our psychological relation to gendered social practices can change as the practices themselves change and as the operation of the gender categories within them change.

To be clear, I don't think the conditions described under the plasticity and pre-reflectivity headings are exhaustive of a target concept of gender orientation, as embodiment also likely affects

one's psychological relation to gender categories.¹² But I hope that conditions (i)-(iv) are a promising start for a target concept:

Gender Orientation

One's gender orientation is grounded in a set of sufficiently many, sufficiently strong

- (i) pre-reflective experiences of gender-norm relevancy, or
- (ii) dispositions to pre-reflectively behave in gender-coded ways; and
- (iii) shapes one's possible conduct in social practices that implicitly or explicitly involve gender categories/properties, and
- (iv) is shaped by one's engagement in those social practices and by the social resources made available through them.

3.2 Gender Orientation ≠ Gender Identity

Although I gave some reasons for thinking that gender identity is not just a psychological type in §2, it's worth emphasizing this point again with a few more examples in light of the account above. Before considering more examples, it will be helpful to stipulate just one necessary condition that an ameliorative account of gender identity must meet.

Assume that sincere gender self-ascriptions, for the most part, are veridical and reliable indicators of a person's gender identity. This assumption is warranted by the ameliorative framework I've adopted, since it is modeled on assumptions made in queer and trans-inclusive contexts. For example, if I am mistaken for a drag queen in a queer space, my correction that 'I'm a trans woman' immediately has authority over the fact that I overextended my cut-crease. To quote Bettcher, in trans and queer contexts, "self-identifications are generally accepted at face value" (2009: 108).

¹² For instance, see Williams's discussion of an internal "experience of one's ... sexed attributes" (2013; 2018). It's worth mentioning that Williams uses the term 'gender orientation' to describe only sexed embodiment (not norms or dispositions), and that her description of sexed embodiment as "fixed" contradicts the plasticity of gender orientation. Pace Williams, the internal psychological relation a person has with respect to their sexed characteristics (and the gender-codedness of some of those characteristics) can change, and it's important to account for this kind of plasticity because many trans people describe it as a valuable part of transitioning (see Zedig 2018).

This substantive assumption is captured by Barnes's formulation of permissivism about gender terms, and by one of Jenkins's desiderata for an account of gender identity. To quote Barnes, "[when] a person says 'I am x' for some gender term, we should interpret the term 'x' in a way that makes the speaker's claim true" (forthcoming: 18). To quote Jenkins, the target concept of gender identity should make it plausible that "a person should be treated as the final and decisive authority on their own gender identity" (2018: 719).¹³ In light of Barnes's permissivism and Jenkins's desideratum, we can see that gender orientation and gender identity come apart in at least two ways.

First, it is possible for two people to have the same gender orientation and have different gender identities. For example, it's plausible that an early transition trans man and a trans-masculine non-binary person could have the same gender orientation while having different gender identities: one identifies as a man, and the other doesn't. This possibility isn't unique to transgender identities either, as sameness in orientation might occur across cis and transgender identities. For example, a hardcore feminist who identifies as a woman, call her Sophie, might have virtually the same psychological relation to feminine-coded norms as a genderqueer identifying feminist, call them Taylor. Both Sophie and Taylor may pre-reflectively experience norms characteristic of women in their social context as alienating and irrelevant to themselves, so they may even share the same set of gender non-conforming dispositions. Still, despite sharing a non-conforming orientation, I take it that Sophie and Taylor would have different gender identities if they each self-ascribed different gender categories, and that we shouldn't assume that either Sophie or Taylor must be wrong or mistaken in their respective gender self-ascriptions.

A second reason to think that gender orientation is distinct from gender identity is that two people could have the same gender identity but different orientations. A group of non-binary people

¹³ Jenkins's own view, however, doesn't seem well-suited to satisfy this desideratum in light of the diversity problem. Consider that her norm-relevancy account *does* give prima facie reasons for discounting at least one of the gender categories self-ascribed by non-binary women: they are conceptually impossible.

could have a range of different gender orientations (feminine, non-conforming, agender, bigender, gender fluid, etc.) but still have a common gender identity. I am skeptical that people with non-binary identities have (or need to have) a common underlying gender orientation. On this point, I follow Dembroff’s suggestion that an analysis of the category ‘genderqueer’ should “leave space for variation across ... the mental states accompanying felt or desired categorization outside of the binary” (forthcoming*a*). Again, this phenomenon probably isn’t unique to transgender identities, as it is likely true for identities like ‘woman’ or ‘man’ too.

This conceptual gap between gender orientation and gender identity has important implications for the recent psychological accounts of gender identity, as it shows that these accounts are inadequate in one crucial respect. Because the recent accounts try to unify discreet gender identities via some common underlying psychological types, these accounts risk getting the extension wrong for specific gender identities. Further, if having a specific gender identity is sufficient for membership in a specific gender category, then psychological accounts of gender identity risk getting category membership facts wrong too. Since the target concept of gender identity cannot be understood solely in terms of gender orientation, I turn now to an analysis of gender identity that is more likely to get extension and membership facts right while respecting the agency that trans and queer people have over their own gender categorizations.

4 AN AGENTIAL ANALYSIS OF GENDER IDENTITY

In this section, I first present an account of gender identity loosely modeled on Dembroff’s and Saint-Croix’s view of ‘agential social identities’ (forthcoming). On this view, gender identity is understood in terms of an agent’s sincere gender self-ascriptions that have a special feature called position-directed externality: allowing or accepting that *others* take you as a member of your self-ascribed gender category as a result of externalizing that self-ascription to them. Then, I explain how an agential view of gender identity grounds respect for gender identity in its psychological and political dimensions.

4.1 Prioritizing Sincere Self-Ascription

So far, I've taken for granted some assumptions that operate in queer and trans contexts. Specifically, I assumed that self-ascribing a gender category is typically sufficient for having a gender identity of the self-ascribed category, and that such self-ascriptions are sufficient for category membership. At this point, one may wonder whether self-ascription is just what it *is* for a person to have a specific gender identity. Is the target concept of gender identity just an account of self-ascribed gender categories?

On this question, Jenkins is instructive. As she points out, an account of gender identity which “*equates* gender identity with self-[ascription] ... fares very poorly at showing that gender identity is important and deserves respect ... why should we care about dispositions to utter certain sentences?” (2018: 727-8). If all it takes to have a certain gender identity is to *say so*, and if having said gender identity is sufficient for membership in said gender category, then both one's gender identity and one's gender category membership(s) seem vacuous or trivial. I think this challenge to a self-ascription model of gender identity can be met with an *agential* analysis of gender identity, so I turn to developing such a view now.

Following Dembroff and Saint-Croix, I understand an ‘agential identity’ to be a kind of social identity that forms a bridge between who we take ourselves to be and how others take us to be (forthcoming). The central feature of agential identities that I am interested in here is how these identities often help agents revise or situate themselves within certain social positions (forthcoming). I think we can understand the concept of gender identity as it operates in queer contexts in this way, and when we do, we end up with an analysis that appropriately prioritizes self-ascription over psychology:

Agential Gender Identity

S has a gender identity g just in case S self-ascribes or is disposed to self-ascribe a gender category where

- (i) (*sincerity*) S's self-ascription is sincere,
- (ii) (*externality*) S's self-ascription is made available to others in some relevant social context(s), and
- (iii) (*position-directedness*) S allows, or at least accepts, that others take S as occupying a group-associated social position as a result of fulfilling (ii).¹⁴

I now explicate (i)-(iii) in turn.

First, the gender self-ascription one makes must be sincere. This is important because it discounts ironic or malicious self-ascriptions, as well as false or coerced self-ascriptions offered in contexts where sincerely self-ascribing one's gender category would be dangerous or risky. To take the latter example, a closeted trans man in a transphobic context might self-ascribe as a 'woman' around her family because sincerely self-ascribing as a man would be dangerous. I take the primary advantage of the sincerity condition to be that it explains why coerced self-ascriptions can be discounted, and I take the possibility of discounting ironic self-ascriptions to be secondary.¹⁵

Second, it is important that an agent at least be disposed to offer their self-ascription to others. To be clear, a person's self-ascribed gender categorization(s) needn't be operative in their immediate social context, just in some relevant (possible or actual) context. Notice that externality doesn't require that a person's gender identity is made publicly available or even that they have a personal relationship to whomever they offer their self-ascription. (e.g. entering 'non-binary' on an online form satisfies the

¹⁴ Conditions (ii) and (iii) are slightly modified from Dembroff's and Saint-Croix's discussion of 'position-directed externality' (forthcoming).

¹⁵ Further, there is no special epistemic problem of how to tell when *gender* self-ascriptions are sincere as opposed to any other utterance. Skyler Jay trying to change his legal gender marker at a Georgia DMV is a sincere gender self-ascription that should be respected, and Steven Crowder pretending to be a trans woman at a women's march in order to mock trans rights activists is a malicious gender self-ascription that can be discounted if needed.

externality condition). To clarify further, the externality condition doesn't require that a trans person is 'out' in any *actual* social context either. This is because the view requires that one be *disposed* to self-ascribe in a *relevant* social context.¹⁶ So, if a closeted genderqueer person only has a disposition to make their self-ascription available to others in a queer context but not in a dominant one, then they still satisfy the externality condition, even if they haven't yet manifested that disposition in the relevant (i.e., queer) context.^{17 18}

Finally, in offering a self-ascription of a gender category, an agent must allow or accept that others take them as occupying a social position associated with the group corresponding to that category. This condition is 'what makes agential identities *agential*' because it captures the agency we have over our own social positions and social categorizations (forthcoming: 579). This feature is also what overcomes Jenkins's *reductio*: allowing that others *treat* you as a woman as a result of your saying so is far from vacuous or trivial. Saying 'I'm a woman' may be trivial in the sense that even a man could do it, but saying so and *meaning it* is a different story.

There are three crucial points of clarification here. First, as Dembroff and Saint-Croix point out, position-directedness doesn't require that one self-ascribe *under the guise* of occupying a specific social position (forthcoming: 580). So, for example, if a trans woman has the gender identity of a

¹⁶ These qualifications entail that *membership* in a gender category does not require that an agent incur significant social costs. But it might still be the case that some gender *categories* constitutively involve significant social costs. For example, Dembroff argues that 'critical gender kinds' cannot be adequately understood without reference to some significant social costs that an agent may incur as a result of resisting dominant gender ideology (forthcoming*a*). But Dembroff is clear that they do not take one's *membership* in a critical gender category to require that one incurs significant social costs. Membership conditions in a social category and the constitutive conditions of that category come apart. The category *Red Sox fan* cannot be adequately understood without reference to public displays of enthusiasm for the Red Sox and antagonism towards the Yankees, but one can still privately *be* a Red Sox fan without hating the Yankees.

¹⁷ The externality condition might make my account of gender identity too strong to always secure category membership for trans children. But I don't think we should take gender identity to be necessary for category membership in the first place, as plenty of other things (e.g. social position or gender orientation) can explain why a person is or ought to be considered a member of the relevant gender category (see Dembroff forthcoming*b*; Haslanger 2012: 221-47).

¹⁸ But if such a person didn't *manifest* their disposition to self-ascribe that category were they to enter a queer context, they would likely be violating a duty of self-realization that they have to themselves.

‘woman,’ the agential view doesn’t require that in self-ascribing that category she has also formed an intention to occupy the social position of a woman. Second, since “multiple social positions often are associated with a single social group”, position-directedness does not require that an agent allow that others take them as occupying a *specific* social position (575). So, on the agential view, a person self-ascribing as a woman doesn’t require that she accept or allow that others treat her as socially subordinate, even if a social position associated with the group ‘women’ is in fact subordinate in her social context. Also, because one could self-ascribe different gender categories associated with different groups across different contexts, a person’s gender identity needn’t be limited to just one gender term but could be accurately captured by multiple different terms at once (e.g. non-binary women). Third, position-directedness doesn’t require that one’s self-ascription have social uptake (forthcoming: 576). So, if a trans woman does come out but is told that she’s delusional or is ignored, then she is still a woman regardless of her actual social position.

Now, I’m not suggesting that this agential analysis of gender identity is the only important sense of gender identity used in trans-inclusive context. But I do think that it is the most ameliorative concept of gender identity operative in these contexts because it resists the conceptual schemas underlying transgender oppression that operate in dominant contexts. I will develop this point soon (§5), but before doing so, it’s worth asking why self-ascribed gender categories with position directed externality warrant respect/social uptake. How does the agential analysis meet Jenkins’s challenge?

4.2 Psychological and Political Dimensions of Agential Gender Identity

Here, I develop two further features of agential gender identity that ground respect for gender self-ascriptions: its psychological and political dimensions. These dimensions often overlap, but I’ll analyze them separately.

Most of the time when we offer gender self-ascriptions to others, we’re communicating something important about ourselves. Gender self-ascriptions are commonly understood as attempts

to communicate some internal ‘sense’ of oneself as belonging to a certain gender category. I think this deeply personal sense of gender identity can be captured in the following way:

Psychological Dimension: *S*’s gender identity *g* has a psychological dimension just in case *S*’s self-ascribed gender category is predicated upon *S*’s gender orientation.

Just as a person’s sexual identity (e.g. lesbian) is sensitive to their sexual orientation (e.g. homosexual), a person’s gender identity (e.g. genderqueer), is often (but not necessarily) sensitive to their gender orientation (e.g. non-conforming).¹⁹ The psychological dimension of agential gender identity thus captures how gender self-ascriptions are often made on the basis of important psychological phenomena, or even a deep existential sense of oneself as belonging to a certain gender category or social group.²⁰ Respecting gender identities when they have this psychological dimension is crucial for well-being and mental-health, especially for transgender groups. Empirically speaking, studies show that well-being and mental health for trans people heavily depends on our agential identities having social uptake (see Bailey, Ellis, and McNeil 2014; Toomey, Syvertsen, and Shramko 2018). And philosophically speaking, a person’s dignity or self-respect can be undermined when their social identity lacks uptake, especially in cases where coming-out is met with hate speech.²¹ Since the agential view of gender identity is sensitive to psychological and selfhood-related phenomena often underlying gender self-ascriptions, it grounds respect for gender self-ascriptions when they have this psychological dimension.

¹⁹ Following Andler’s discussion of labels used for describing sexuality, notice that sometimes the same label is used to describe both an orientation and an identity (e.g. ‘bisexual’), and sometimes different labels are used for each (e.g. ‘lesbian’ describes a sexual identity while ‘homosexual’ describes a sexual orientation) (forthcoming: 1-2). There might be a similar phenomenon with respect to labels used for describing gender: terms like ‘agender’ or ‘bigender’ can describe both an identity and an orientation, while ‘non-conforming’ might more commonly describe a gender orientation and ‘genderqueer’ a gender identity.

²⁰ See Dembroff and Saint-Croix’s notion of *kinship*: “seeing oneself as relevantly similar to other members of [a] group, where one takes this similarity to mean that one does (or should) have properties that are sufficient for group membership” (forthcoming).

²¹ See Seglow (2016) and Waldron (2012: 105-143) for the relation between dignity, self-respect, and hate speech.

The psychological dimension of gender identity is an important locus of respect, but I do not think it is the only one. In fact, it is hermeneutically dangerous to assume that respecting someone's gender identity requires that their self-ascription is predicated on their gender orientation. Consider the following testimony from Natalie Wynn, a trans woman who transitioned publicly on YouTube:

In my mid-20s I first really started paying attention to trans women and thinking about transitioning myself. But I thought that since I didn't "feel like a woman" that I never would, and I thought that I would never pass and that I would just be a hideous parody of womanhood (2018).

I'm surprised by how much HRT and full-time transing [*sic*] have improved my life. Till then I wasn't 100% sure I was trans. But any shadow of a doubt is now gone. Knowing how this feels I can never go back (2017).²²

Based on Wynn's testimony, it's plausible that her decision to transition was delayed by the worry that her gender identity wouldn't be respected in the absence of a psychological dimension that she could make clearly intelligible to others. Cases like Wynn's seem to show that it is even important to respect gender identities that aren't predicated upon gender orientation.

Rather than respecting gender self-ascriptions solely on the basis of what they might communicate about a person, we can respect them on the basis of what they *do*. To quote Dembroff:

If gender becomes based on self-identification, [conservatives] worry, the social systems that smoothly determine social expectations ... and gender-based labor divisions will become muddled and inefficient. Here, to my mind, one man's modus tollens is one queer's modus ponens (2019: 16).

What's so disruptive about agential gender identities? How could we fill this out a little further? I propose the following view, drawing further on Dembroff's work on oppressive social categories:

Political Dimension: S's gender identity *g* is political if S's self-ascribing *g* calls for revising the grounding profile of an oppressive gender category operative within S's social context.

²² Again, based on my own personal experience and discussions I've had with other trans people, I would be surprised if this kind of 'post-HRT clarity' is statistically rare.

I maintain that just as the psychological dimension of gender identity is a sufficient locus of respect, so is the political dimension. Let me explain.

According to Dembroff, an oppressive category is one with either an unjust *grounding* or an unjust *social* profile (manuscript). The grounding profile of a category determines category membership, and the social profile determines the social position of category members (manuscript). For our purposes, what's important is the grounding profile: the aspect that determines category membership, specifically membership in gender categories. I propose that for a gender identity to have a political dimension, it only needs to call for revising the *grounding profile* of an oppressive gender category. In other words, gender identities are politically laudable when they resist unjust conditions for membership within relevant gender categories.

Like position-directedness, this political dimension does not require that an agent offer a self-ascription *under the guise* of revising an oppressive gender category. So, a person's gender identity could have this political dimension even if their mental states don't include anything about unjust membership conditions. All that matters is that their self-ascription calls for revising the unjust grounding profile of a gender category operative within their social context. To take an example, consider Kai Shappley, an 8-year old trans girl living in a conservative Texas town (Them 2018). Because of a bathroom bill recently passed, her teachers at school do not let her use the girl's restroom, and Shappley frequently has accidents as a result: "other girls get to use the girl's bathroom, and I don't get to; and I'm a girl, so I should get to go to the girl's bathroom" (Them 2018). In saying, "I'm a girl" in her social context, her self-ascription calls for revising the grounding profile of the category 'girl' as it operates in that context. And since the grounding profile of the category, 'girl,' is unjust within her social context, her self-ascription has a political dimension. I maintain that even if it were unclear that Kai's gender identity had a psychological dimension, her gender identity should *still* be respected in virtue of its political dimension.

To be clear, I don't take the psychological and political dimensions to be exhaustive of all possible loci of respect for gender identity. But I do take them to ground respect in a wide range of important cases.

5 THE DIVERSITY AND RESOURCE PROBLEMS RECONSIDERED

It is now time consider how the gender orientation/identity distinction helps with the diversity and resource problems.

5.1 The Diversity Problem Reconsidered

I hope to have demonstrated how the distinction is helpful with respect to the diversity problem throughout the earlier sections, but it's worth emphasizing the following three points.

First, the agential analysis of gender identity accounts for a person using multiple gender terms at once to describe their gender identity (e.g. non-binary man). Since a person can self-ascribe multiple gender categories at once, the diverse range of possible gender identities is accounted for (provided that the agent self-ascribing multiple categories accepts that others regard them as a member of those categories). Further, since a person can allow or accept that others take them as a member of multiple social groups at once (as a result of self-ascribing certain labels), composite gender identities like 'genderqueer woman' are perfectly intelligible gender identities. But crucially, it's up to the social agent *which* group-memberships count towards their gender identities because it's up to the agent whether they *accept* that others take them as a member of the self-ascribed category.

A second way that the identity/orientation distinction helps with the diversity problem is that it captures more diverse uses of gender terms. Although these terms are always in flux, we might be able to notice, for example, that terms like 'gender non-conforming,' 'trans-feminine,' and 'trans-masculine' are more frequently used to describe gender orientations, while terms like 'genderqueer,' 'trans woman,' and 'trans man' are more commonly used to name agents' acceptances of their social

positions. Although gender terms are plastic, we might be able to notice interesting trends in light of the ordination/identity distinction.

Lastly, the conceptual gap between gender identity and gender orientation helps us see how they come apart with respect to individuals too. A woman can have a non-conforming orientation. A man can have a hyper-feminine orientation. A genderqueer can have a masculine orientation. Further, a person's gender orientation needn't even be *uniformly* 'non-conforming,' 'feminine,' 'masculine,' et cetera. An agent's relation to gender-norms, their gender-coded behaviors, social practices in which gender categories operate, and the social position the agent wants or needs to occupy is a quite complicated relation. And recognizing this complexity helps us resist the problematic assumption that a person ought to bring their gender identity 'in line with' a 'corresponding' gender orientation. These sorts of assumptions often lead to pathological or otherwise cisnormative understandings of transgender identities, but these cisnormative assumptions are undermined by the conceptual gap between gender orientation and gender identity. To explain the practical importance of this theoretical gap, I'll now discuss the implications of the orientation/identity distinction for the resource problem.

5.2 The Resource Problem Reconsidered: Legal Recognition and the GRA

Often, trans groups lack meaningful access to important social resources. To take just one example, I'll focus on the social resource of legal recognition in the U.K., by using the example of the Gender Recognition Act 2004. The GRA is the legislation that allows transgender people in the U.K. to change their legal gender marker. As discussed in a recent public consultation, the GRA is problematic in (*at least*) two ways: (i) it requires that a trans citizens satisfy three evidential requirements in order for the state to recognize their gender identity, and (ii) the GRA does not recognize non-binary identities at all (U.K. Gov't 2018: 51-3). It's worth explaining each of these problems in some detail before analyzing them in light of the orientation/identity distinction.

There are three requirements considered ‘evidential’ by the U.K. Gov’t that trans citizens must satisfy to have their gender identity legally recognized. First, applicants must provide two medical reports “evidencing gender dysphoria and/or treatment” (U.K. Gov’t 2018: 30). The first report must be a diagnosis of gender dysphoria by a registered psychologist or doctor who specializes in gender dysphoria (2018: 30). The second report must describe “any treatment that the applicant has undergone or is planned for the purpose of modifying their sex characteristics” (2018: 30). Second, applicants must “collect documentation that proves the trans person has been living for at least two years in their acquired gender” (2018: 30). Some examples of qualifying documents include driver’s licenses, passports, letters from banks, utility bills, and academic certificates (2018: 31). This evidence, both the medical diagnosis and documentation, is then sent to panel, whom the applicant never meets, who decide whether legal recognition will be granted. Third, applicants must “provide a statutory declaration of [their] intention to live in their acquired gender until death” (2018: 30). This requirement is meant to “reflect the important legal consequences of gender recognition” and function “as a safeguard if the system is abused” (2018: 33-34). Finally, there are no provisions for legal recognition of non-binary genders. And in the consultation, the state made it clear that at this time they “do not bring forward any proposals to extend the GRA to provide legal recognition to a third, or non-binary, gender” (2018: 52).

In light of the orientation/identity distinction, we can recognize the current state of the GRA as unjust in the following four ways:

1. Generally, we assume that whether we should treat someone as a member of a certain social category depends on whether they are *actually* members of that category.²³ In light of this assumption, the earlier sections help us see that the medical diagnosis requirement is misguided because it actually *fails* to respect this assumption. Gender orientation is not always sufficient

²³ For arguments against this assumption, see Dembroff (manuscript; 2019).

for gender category membership, so facts about membership aren't always grounded by psychological features relating to gender (e.g. gender dysphoria). To be clear, the reason that gender orientation is not always sufficient for category membership is *because there is a conceptual gap between the two concepts* (e.g., a woman can proudly have a non-conforming orientation and still be a woman). Agential gender identity, on the other hand, *is* sufficient for gender category membership in trans-inclusive contexts. And since we can ameliorate injustices in dominant contexts by implementing concepts used in non-dominant ones, we ought to take agential gender identity as sufficient for category membership in dominant progressive contexts as well as trans-inclusive ones. So, assuming that facts about treatment turn on facts about membership, we should look to a person's agential gender *identity* — their accepting that a person take them as a member of the gender category they've self-ascribed — to determine whether they ought to be treated as a member of that category. In the present case, treating, say, a trans woman *as a woman* includes legally recognizing her as one.

Further, the medical diagnosis requirement is unjust to the extent that it requires trans citizens' gender identities to have a psychological dimension *at all* (in order for their gender identity to be legally recognized). One reason this situation is unjust is because cisgender citizens don't have to prove any such psychological dimensions in order to access the same social resource. But the problem isn't *just* that it's unfair to require transgender citizens to submit medical or psychological evidence to the state when cis citizens don't have to meet this requirement — although it is. The problem is *also* that these citizens must prove that their gender identity is predicated upon a *specific* gender orientation: *one that is intelligible in accordance with the dominant cisnormative schema*. Consider that in the U.K., gender dysphoria is described by

the NHS as a “*mismatch* between a person’s gender identity and their biological sex” (2019).²⁴ The state’s requiring trans applicants to satisfy this description problematically assumes that a person’s gender orientation ought to correspond with their agential gender identity and social position. The relevant aspect of gender orientation here is a person’s experiencing and following²⁵ gender-norms like ‘women ought to have vaginas’ and ‘men ought to have penises.’ Not all trans people experience such norms as relevant, *but this has no bearing on questions about actual category membership because those facts aren’t determined wholly by dominant conceptual schemas*. A trans-inclusive concept of agential gender identity, not a cis-normative concept of gender orientation, is the concept we should turn to in order to settle questions about category membership.²⁶

2. An agential understanding of gender identity shows the state that requiring evidence of certain dispositions (here, the disposition to identify oneself to the state as ‘male’ or ‘female’) is misguided. It’s often unclear what legitimate purposes the state has in categorizing a person’s gender at all. So, the contexts in which trans people offer gender-self ascriptions in the qualifying government documents may not count as *relevant contexts*. So, the externality condition may not be met with the qualifying documents, even if the gender self-ascription is sincere. Further, there are other institutional barriers worth considering that make meeting the documentation requirement difficult. Consider that getting one’s gender marker changed on

²⁴ Recall the second report requiring that applicants detail “medical treatment that [they have] undergone or is planned for the purpose of modifying their sex characteristics” (2018: 30).

²⁵ This understanding of gender dysphoria is present in the U.S. too: consider the APA’s use of the phrase “*the other gender*” in its diagnostic criteria for gender dysphoria: “[gender dysphoria is exemplified by] a strong desire for the primary and/or secondary sex characteristics of *the other gender*” (2016).

²⁶ To give just one example of a trans-normative experience of bodily gender-norms, consider Buck Angel’s, a trans man, interpretation of his sexed body: “I don’t have to have a penis. I don’t have to have it. I don’t have to have it to be a man. It’s not necessary. It’s a misconception completely” (2014). Angel’s trans-normative experience of his body in no way undermines his membership in the category ‘man.’ See Andler using this same example to criticize Jenkins’s definition of gender identity (2017: 889-90).

one's passport in the U.K. requires either: a gender recognition certificate (the certificate awarded *after* successfully getting through the process described in the GRA), a new birth certificate showing your correct gender (again, this is also awarded *after* going through the process described in the GRA), or a letter from your doctor "confirming that your change of gender will likely be permanent" (U.K. Gov't 2020). This example shows that many trans citizens are expected to bootstrap their way into a new social position, and this is especially bad in light of the agential analysis of gender identity: the state's barriers to the social resources instrumental for changing one's gender-associated social position *systematically discriminate against having a transgender identity in the agential sense*.

3. The requirement for trans citizens to declare that they intend to live as their declared gender until death ignores one of the central features of gender orientation: plasticity. Although gender identities needn't have a psychological dimension, they often do. When gender identities do have this dimension, they are sensitive to various psychological features: psychological features which are themselves *plastic* and so subject to change. Although a person's gender orientation is usually stable throughout their life, *we should not expect of that a person's psychological relation to gendered social practices will not or cannot change*. Given that gender identities are often predicated upon gender orientations, we cannot rule out the possibility of a person's gender identity changing too. So, since requiring trans people to declare that they intend to live as their self-ascribed gender until death ignores the complex and plastic relation that individuals have to gendered social structures, this requirement is should also be abandoned.
4. Finally, the government's failure to extend any legal provisions to genderqueer people discriminates against having a genderqueer identity in the agential sense. Again, if we want our social categorization practices to track facts about membership, then the state should legally

recognize an already extant gender category.²⁷ The state not offering legal recognition to genderqueer groups deprives many genderqueers of a valuable social resource that most citizens have automatically, and that is unjust.

One way to revise the problematic conceptual schemas reflected in policies like the GRA is to reform those policies themselves. As trans rights groups like Stonewall U.K. are already advocating, the GRA could be reformed to recognize gender identities with a more streamlined model of self-declaration (2019). This model would not require presenting evidence of one's gender orientation to the state, and it would extend legal recognition to non-binary gender identities (2019). Such a reform would amount to replacing a psychological, orientation-based concept of gender identity with the agential concept that is already operative in queer contexts. Hopefully, such a replacement would be effective for combating the conceptual schemas underlying transgender oppression more broadly.

²⁷ There are various knock-on effects of such a move that might be beneficial too. Genderqueer identities could be treated more seriously and with more respect, visibility of the genderqueer population may be improved, and dominant modes of gender categorization might be disrupted too.

REFERENCES

- American Psychological Association (2016) “What is Gender Dysphoria?”
 <<https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>>, accessed 26 October 2019.
- Andler, M. (forthcoming) “The Sexual Orientation/Identity Distinction?” in *Hypatia*.
- . (2017) “Gender Identity and Exclusion: A Reply to Jenkins,” in *Ethics* 127: 883-95.
- Angel, B. (2014) “Buck Angel Talks about Life as a Transsexual Porn Star,” *SBS.com*
 <<https://www.sbs.com.au/news/thefeed/story/buck-angel-talks-about-life-transsexual-porn-star>>, accessed 4 Feb 2020.
- Ásta (2018) *Categories We Live By: The Construction of Sex, Gender, Race, and Other Social Categories*.
 Oxford: Oxford University Press.
- [Bailey, L.](#), [J. Ellis, S.](#) and [McNeil, J.](#) (2014) “Suicide risk in the UK trans population and the role of gender transition in decreasing suicidal ideation and suicide attempt” in *Mental Health Review Journal*, Vol. 19 No. 4, pp. 209-220.
- Barnes, E. (forthcoming) “Gender and Gender Terms” in *Nous*.
- Bettcher, T.M (2009) “Trans Identities and First-Person Authority” in “*You’ve Changed*”: *Sex Reassignment Surgery and Personal Identity*, edited by L. Shrage, pp. 98-120. Oxford: Oxford UP, 2009.
- Burgess, A. and Plunkett, D. (2013) “Conceptual Ethics I” in *Philosophy Compass*, Vol 8(12): 1091–1101.
- Dembroff, R. (manuscript) “Oppressive Categories”. (forthcoming) “Beyond Binary: Genderqueer as Critical Gender Kind” in *Philosopher’s Imprint*.
- . (forthcominga) “Beyond Binary: Genderqueer as Critical Gender Kind” in *Philosopher’s Imprint*.
- . (forthcomingb) “Real Talk on the Metaphysics of Gender” in Takaoka & Manne (eds.) *Gendered Oppression and its Intersections, and issue of Philosophical Topics*.
- . (2016) “What Is Sexual Orientation?” in *Philosophers’ Imprint* 16(3): 1-27.
- Dembroff, R. and Saint-Croix C. (forthcoming) “‘Yep, I’m Gay’: Understanding Agential Identity” in *Ergo*.
- Dennis, R. (2016) “Yes, you can be non-binary AND a woman,” YouTube video by Riley J. Dennis:
 <<https://www.youtube.com/watch?v=BkZnFVbSKKo>>, accessed 14 December 2019.
- Haslanger S. (2018) “What is a Social Practice” in *Royal Institute of Philosophy Supplement* 82: 239.

- . (2012) *Resisting Reality*. Oxford: Oxford University Press.
- Jenkins, K. (2018) “Toward an Account of Gender Identity” in *Ergo* 5(27): 713-44.
- . (2016) ‘Amelioration and Inclusion: Gender Identity and the Concept of Woman’, *Ethics* 126(2): 394-421.
- Malabou, C. (2008) *What Should We Do with Our Brain?*. Translated by Sebastian Rand. Fordham University Press: New York.
- . (2011) *Changing Difference*. Translated by Carolyn Shread. Polity: Cambridge.
- McKittrick, J. (2015). “A Dispositional Account of Gender” in *Philosophical Studies* 172(10): 2575–2589.
- Meyers, T. (2019). “Transitioning with Theryn”. *Ordinary Folk*,
<<https://anchor.fm/ordinaryfolk/episodes/Transitioning-with-Theryn-e9eb9q/>> accessed 21 December 2019.
- National Health Services (2019) “Overview: Gender Dysphoria”
<<https://www.nhs.uk/conditions/gender-dysphoria/>>, accessed 26 October 2019.
- Penny, L. (2015) “How to Be a Genderqueer Feminist” in *Buzzfeed*,
<<https://www.buzzfeednews.com/article/lauriepenny/how-to-be-a-genderqueer-feminist> >, accessed 14 December 2019.
- Seglow, J. (2016) “Hate Speech, Dignity, and Self-Respect” in *Ethical Theory Moral Practice* 19(5): 1103-1116.
- Stonewall U.K. (2019) “Gender Recognition Act”, <<https://www.stonewall.org.uk/gender-recognition-act>>, accessed 14 December 2019.
- Toomey R.B., Syvertsen, A.K., Shramko S. (2018) “Transgender Adolescent Suicide Behavior” in *Pediatrics*, <<https://pediatrics.aappublications.org/content/early/2018/09/07/peds.2017-4218>>, accessed 14 December 2019.
- Them (2018) *Kai Shappley: A Trans Girl Growing Up in Texas*,
<<https://www.youtube.com/watch?v=cuIkLNsRtas>> accessed 26 October 2019.
- Thorn, J. (2019) “Rebecca Sugar”. *Bullseye with Jesse Thorn*,
<<https://maximumfun.org/episodes/bullseye-with-jesse-thorn/rebecca-sugar/>>, accessed 10 December 2019.
- TSER, Trans Student Educational Resources. (2019) “LGBTQ+ Definitions”,
<<https://www.transstudent.org/definitions>>, accessed 30 December 2019.

U.K. Government (2018) *Reform of the Gender Recognition Act- — Government Consultation*, London: LGBT Policy Team.

———. (2020) “Change your name or personal details on your passport,” <<https://www.gov.uk/changing-passport-information/gender>>, accessed 4 February 2020.

Waldron, J. (2012) *The Harm in Hate Speech*. Cambridge: Harvard University Press.

Weiss, S. (2015) “9 Things People Get Wrong About Being Non-Binary”, in *Teen Vogue*, <<https://www.teenvogue.com/story/9-things-people-get-wrong-about-being-non-binary>>, accessed December 2019.

Williams, C. (2013) “Gender Orientation, Identity, and Expression” in *TransAdvocate*, <https://www.transadvocate.com/gender-orientation_n_8267.htm>, accessed 16 April 2020.

———. (2018) “TransAdvocate 101” in *TransAdvocate*, <https://www.transadvocate.com/trans-activism-101_n_21273.htm>, accessed 16 April 2020.

Wynn, N. (2018) *Autogynophilia*, Ch. 6, “ContraPoints: An Erotic Life”, YouTube video by ContraPoints: <<https://youtu.be/6czRFLs5JQo?t=1066>> accessed 9 August 2019.

———. (2017) ‘I’ve been surprised...’ tweet by user @ContraPoints on 28 September: <<https://twitter.com/contrapoints/status/913423709377089536?lang=en>> accessed 9 August 2019.

Zedig, S. (2018) ‘A Video About Transitioning’. YouTube video by ‘let’s talk about stuff.’ <<https://www.youtube.com/watch?v=3PClMhVAQWg>> accessed 26 October 2018.