

Gender without Gender Identity: The Case of Cognitive Disability

ELIZABETH BARNES
University of Virginia, USA
Email: e.j.barnes@virginia.edu

What gender are you? And in virtue of what? These are questions of *gender categorization*. Such questions are increasingly at the core of many contemporary debates about gender, both within philosophy and in public discourse.

Growing efforts are being made to highlight the importance of *gender identity* to gender categorization. Philosophical theories of gender have traditionally focused on *gender role*—the social norms, obligations, and positions that others impose on you based on perceived gender. But the experiences of trans, non-binary, and gender nonconforming people have shown that an exclusive focus on gender role is inadequate for theorizing gender. We also need to consider a person's relationship to gender categories and gender norms. Two people might both be perceived by others as women, but while one thinks of herself as a woman the other thinks of herself as genderqueer. And this difference in gender self-identification is not merely a difference in personal feeling. A gender nonconforming woman and a genderqueer person—even if they are treated similarly by others—will often experience and navigate gender norms and roles quite differently, and this difference matters to a full understanding of gender.

In what follows, I am by no means attempting to dispute that gender identity is an important aspect of gender and gender categorization. Rather, I'm going to argue that we shouldn't swing the pendulum too far the other way. It's become increasingly common, in both popular and philosophical explanations of gender, to claim that gender identity *uniquely determines* one's gender, that is, that gender categorization is solely a matter of gender self-identification. That, I'll argue, is too strong. While gender identity *matters*, it isn't the *sole* determinant of gender.

My argument for this is straightforward: if gender categorization is determined by gender self-identification, then many cognitively disabled people won't be *capable* of having a gender. I will argue that this is unacceptable. And I think the reasons for this show us interesting things, both about what's required for a successful theory of gender and

about how cognitively disabled people are often marginalized in philosophical discussions.

1. Gender categorization

The question of which people should be classified as which gender is one that matters philosophically, politically, and practically. I'm going to call the practice of assigning gender to particular individuals in a context the practice of *gender categorization*.

There is a rich philosophical debate surrounding how to interpret gender categorization.¹ For some, gender categorization is a matter of the meaning of our gender terms (Saul 2012; Diaz-Leon 2016). For others it is a metaphysical issue—a matter of figuring out what social kinds people belong to, or what positions they occupy in a complex social structure, or what socially salient properties they instantiate, and so on (Haslanger 2000; Ásta 2018; McKittrick 2015). And for others, it's a more overtly political question—a matter of figuring out how we can best use gender classification to promote justice (Jenkins 2016; Dembroff forthcoming). I will remain neutral here on these issues. My arguments target any account that says that gender self-identification uniquely determines gender categorization.

There are lots of different ways you might *explain* the idea that self-identification determines gender categorization. You might argue that this is the best interpretation of our gender terms; you might argue that genders *just are* types of self-identification; you might argue that our political goals are best realized if we reserve terms like 'man' for all and only the people who self-identify as men; and so on. While interesting, these debates are not the target of the discussion here. My arguments target any view which has the result that gender self-identification exhaustively determines how we ought to ascribe gender in a particular context.

Gender categorization is both ubiquitous and important. How people deserve to be treated, which people can access which spaces, which people have a right to particular legal protections, and so on—these questions all involve gender categorization. Moreover, if we want to fully understand the harms of *misgendering* (Kapusta 2016), we have to have some way of saying what it is to apply gender correctly. We need an explanation of how gender categorization should be carried out in order to explain when it goes wrong.

¹ I discuss this literature in more detail in Barnes (2020)

2. Gender and gender identity

There's a rich philosophical literature arguing for the importance of gender self-identification but I'm not going to discuss that here.² I'm simply going to assume that gender self-identification matters to gender categorization and that gender self-identification is other things being equal, something we should defer to and treat as authoritative when considering gender categorization.

However, this leaves open whether gender identity *uniquely determines* (or is constitutive of) gender categorization. Deferring to gender self-identification typically involves taking a person's gender self-identification as a *sufficient condition* for gender categorization. Someone can be an x even if they don't dress or act as we expect xs to act, even if others don't typically interpret them as an x, even if they don't have the physiology most xs have, and so on—provided that they self-identify as an x. You can be a woman but regularly be assumed by others to be a man.³ You can be a man but 'perform' gender in the ways we typically associate with women and femininity. You can have female physiology but be non-binary. To allow for this variation in social role, appearance, biology, behaviour, and so on, we need to say that self-identifying as an x is at least sufficient for being categorized as an x.

But this leaves open a range of options for how strong the connection between gender self-identification and gender categorization is. There might be other aspects of gender which are also sufficient conditions for gender categorization. Or there might be a family of gender-related features, none of which are individually sufficient (or necessary) for gender categorization but which, when had together, are jointly sufficient. And so on.

But despite this multiplicity of options, it's increasingly common, both in academic discourse and in broader media discussion, to see a particularly strong view taken: the view that gender self-identification is both sufficient *and* necessary for gender categorization. The feminist educational organization Our Bodies, Our Selves, for example, in their explanation of the sex/gender distinction, states that 'gender is often understood to refer to gender identity, meaning your internal sense of yourself as female, male, or other' (Afriyic et al. 2014). Likewise, Teen Health Source explains that '[g]ender isn't about whether you were born with a penis* or vagina*, but how you feel about yourself' (2020).

² See especially Dembroff (2019), Bettcher (2009), (2013), Stryker (2006), Jenkins (2016), (2018).

³ See especially Lori Watson's (2016) discussion of her experience as a masculine-presenting woman.

Similarly, the psychology education and training organization Praxis, in their primer on sex and gender, says that ‘gender isn’t “what’s between your legs”, it’s “what’s between your ears”’. In other words, gender is how you think and feel about yourself, and how you behave or express yourself in the world’ (Testa et al. 2020). And the National Center for Transgender Equality stipulates that their preferred practice is to use ‘both the adjectives “male” and “female” and the nouns “man” and “woman” to refer to a person’s gender identity’ (2016).

Similarly, contemporary philosophical accounts of gender commonly endorse the idea that gender self-identification is a necessary and sufficient condition for gender categorization. Susan Stryker famously says, for example, that ‘a woman...is one who says she is—and then does what that means’ (where ‘does what that means’ is determined by a person’s own sense of preferred gender expression, rather than a correspondence to any particular social norms or roles) (2006, p. 10). In a similar vein, Talia Bettcher has argued for a ‘sincere self-identification’ view of gender, according to which a person’s sincere willingness to self-identify as a member of a particular gender is the sole determinant of whether they are a member of that gender (2009, pp. 111-112; 2013, pp. 240-241). Likewise, R.A. Briggs and B.R. George (n.d.) argue explicitly that the norm of making gender ‘consensual’ requires that sincere self-identification be taken as both a necessary and sufficient condition for gender categorization. And while Katharine Jenkins maintains that gender can usefully be understood both as a type of self-identification and as a type of social class, she argues that we should reserve our gender terms like ‘woman’, ‘genderqueer’, and so on, for all and only those people who self-identify as women, as genderqueer, and so on. (2016, p. 396).⁴

Let’s call such views *identity-based* views of gender categorization. Perhaps one reason for the growing popularity of identity-based views is that other aspects of gender—gender expression, gendered social roles, and so on—can vary among people with the same gender categorization. Someone can be non-binary even if others don’t generally perceive them as non-binary, someone can be a woman even if they have a very

⁴ Whether Jenkins’ view ought to count as an identity-based view of gender categorization is thus quite a complex one. Her view in many ways presents an interesting middle ground between the strongest versions of identity-based views and social position views. Jenkins thinks that self-identification is necessary and sufficient for some (many) of our most salient practices of gender categorization—those involving how we use and apply terms like ‘woman’. But she maintains that social position might be sufficient (and thus self-identification non-necessary) for other things that might appropriately be called gender categorization in a context, such as the allocation of resources, access to restricted spaces, and so on.

masculine gender presentation, and so on. And if these other aspects of gender can vary within a specific gender categorization, a simple solution to the question of gender categorization is that one is a member of some gender x if and only if one identifies as an x .

And so perhaps it's simple considerations of parsimony that lead to the view that self-identification is both sufficient *and necessary* for gender categorization. Treating self-identification as a sufficient condition for categorization typically involves a commitment to the idea that many other aspects of gender—expression, social role, and so on—*aren't* sufficient for gender categorization, since someone can have the gender expression or social role we typically associate with an x , but self-identify as a y . And so, once we've made self-identification a sufficient condition, an easy solution to the resulting puzzles we face is to treat self-identification as the single necessary and sufficient condition for gender categorization. And the resulting view has an appealing unity—we can say what specific thing we're talking about when we're talking about gender, and what it is in virtue of which people have a gender in common.

Despite the apparent elegance of this solution, however, I'm going to argue that we should reject identity-based views. While gender identity matters to gender categorization, it's not the only thing that matters. To be very clear, in making this argument I'm only targeting views that say that self-identification is both *necessary and sufficient* for gender categorization. There's lots of conceptual terrain—a lot of it currently unoccupied, unfortunately—for views of gender categorization which embrace the sufficiency condition but deny the necessity condition. And it's the necessity condition alone that's the target of my criticisms.

3. The basics of the problem

Identity-based views of gender categorization put a cognitive requirement on gender membership. One must identify as gender x in order to be classed as gender x . Identifying as gender x , at least on extant philosophical theories of gender identity, is a matter of complex social reasoning and self-understanding. It requires awareness of various social norms and roles (and, moreover, an awareness of them *as gendered*), the ability to articulate one's own relationship to those norms and roles, and so on. But many cognitively disabled people have little or no access to language. Many tend not to understand social norms, much less to identify those norms as specifically gendered. And many lack the type of social and interpersonal awareness to be able to make judgements about their own 'sense of gender'.

This won't, of course, be the case for all cognitively disabled people, and it's important to acknowledge that there is a wide range of cognitive and social experiences that fall within the broad heading 'cognitive disability'. In what follows, I don't mean to paint all cognitively disabled people with the same broad brush, or to assume that all cognitively disabled people are incapable of having a strongly felt sense of gender self-identification. One only needs to look, for example, at the vibrant drag culture among some people with Downs Syndrome to see how richly some people with cognitive disabilities experience gender via self-expression and self-identification.⁵

But the wide range of cognitive disability—and the specific ways in which cognitive disability can affect social understanding and social reasoning—make it plausible that many cognitively disabled people simply don't have this type of highly developed sense of their own relationship to gender. For example, consider how Eva Kittay describes her daughter, Sesha:

I prefer to tell you about Sesha in terms that any mother wants to speak of her child—that is, with pride in the special and singular abilities that we cherish. Had I begun to speak of her as I would have preferred — to tell you of her ability to light up any room with her smile, the warmth of her kisses, the fastness of her embrace, her boundless enjoyment of the sensuous feel of water, and perhaps most of all her abiding and profound appreciation of music — one might reasonably have asked: So why is Sesha not speaking for herself?

Sesha's inability to speak (and so to speak 'for herself') is but a synecdoche for all that she is unable to do: feed herself, dress herself, toilet herself, walk, talk, read, write, draw, say Mama or Papa. When asked about my daughter, I want to tell people that she is a beautiful, loving, joyful *woman*. But then people ask me 'And what does she do? Does she have any children?' So I have to tell them what she cannot be, given her profound cognitive limitations... The positive set of responses is truer to who she is. Knowing her capabilities, one gets a glimpse into the richness of her life and the remarkable quality of her very being. Nonetheless, the limitations shape her life and the life of her family, so we all must address them. (Kittay 2019a, p. 6, emphasis added)

⁵ See especially the Mashable documentary 'Born to Dance' (Nikolav 2019).

In what follows, I'm primarily concerned with people like Sesha. As I'll argue, I think Kittay's categorization of Sesha as a woman is both politically and morally important. And the worry I'm raising is that views which make self-identification a necessary condition on gender categorization have the result that we can't categorize people like Sesha as women (or men, and so on).

For example, on Talia Bettcher's view, identifying as some gender *x* involves a willingness to sincerely assert that one is an *x*, where sincere assertion is what she calls an 'existential' form of self-identification—a sense that being an *x* is a central part of one's own self-conception in a way that shapes how one lives, acts, and wants to be viewed by others (2009, pp. 110-111). But many cognitively disabled people do not have access to language, and are not able to make statements such as 'I am a woman/man/non-binary person.' Likewise, many cognitively disabled people cannot plausibly form complex opinions about the gendered ways in which they want to be viewed by others, how they want to 'live' their gender, or the extent to which a particular type of gendered expression is central to their lives. Such thoughts require a sophisticated type of social reasoning—an awareness of gender norms *qua* gender norms and a strong sense of one's own relationship to those norms—that will not be possible for many with substantial cognitive differences.

On Katherine Jenkins' view, identifying as an *x* involves having an internal 'map'—a way of viewing and navigating the world—that is formed in response to the social norms and roles we associate with being an *x* (2016, p. 410). But again, many cognitively disabled people have very little awareness of or interest in social norms—which makes it implausible to think that they have a deeply felt sense of how those norms shape the way they navigate the world. In many cases, cognitively disabled people simply navigate the world quite differently than cognitively typical people, regardless of gender. And they often are unable to engage in the kind of complex social reasoning that identifies a social norm, further identifies that norm as gendered, understands that norm as applying to themselves, and then feels a relative sense of appropriateness or inappropriateness in how that norm is applied to them. That's a complex pattern of social experience, and it's the kind of experience that is likely to be unavailable to many cognitively disabled people.⁶

And finally, while Jennifer McKittrick does not endorse what I've called an 'identity-based' view of gender, she does give a philosophical

⁶ Again, on Jenkins' view this doesn't preclude us from, say, allowing cognitively disabled women access to resources usually earmarked for women. But it does preclude us from calling them women.

account of gender identity, so that view is worth rehearsing in considering the relationship between cognitive capacity and philosophical theories of gender identity. On McKittrick's view, identifying as some gender *x* involves a complex cluster of dispositions to behave in ways associated with being an *x*—including saying that you are an *x* if asked, adopting gender expressions associated with *x*, using pronouns associated with *x*, and so on (2015).⁷ Again, though, many cognitively disabled will not be able to say what gender they are if asked, or to tell you what their pronouns are. And, more specifically to McKittrick's view, many cognitively disabled people are not disposed to behave in ways we associate with being a woman/man/non-binary person: their behaviour is often socially very atypical, and not traditionally gendered. Likewise, much of the behaviour we associate with being some gender *x* involves choices of gender expression. But for many cognitively disabled people, these choices—what to wear, what name to use, how to style hair, and so on—are made, of necessity, by their caregivers and are not a personal expression of their own relationship to gender norms.

What unifies these theories of gender identity is their cognitive complexity. They all construe gender self-identification as a matter of relatively sophisticated social reasoning and understanding of oneself in relation to social norms. And for many cognitively disabled people, that type of social reasoning is simply unavailable.⁸

⁷ McKittrick's account of gender identity is a cluster concept account, so none of these dispositions are individually necessary to having the gender identity in question. But I take it that a sufficient number of those dispositions require a level of social awareness and social reasoning such that having enough such dispositions to count as having a gender identity requires significant cognitive capacity.

⁸ It's important to note, in making this point, that the sense of 'gender identity' intended in these kinds of discussions differs somewhat from the sense of 'gender identity' that's often used by psychologists. The latter typically emerges in early childhood, and is associated with, for example, being aware of physical differences between boys and girls, being aware of the difference between 'boy' things (toys, colours, and so on) and 'girl' things, being able to label themselves as a boy or a girl, and so on. The idea of gender identity typically deployed in philosophical discussions is something more developed and specific. For example, you might learn as a young child to say 'I am a girl', but realize over time that this response was imposed on you and doesn't, on reflection, accurately reflect your developed sense of your own gender. You could then truly say that, although as a child you said you were a girl, you didn't truly or sincerely identify as a girl. A two-year old child's ability to say 'I'm a girl' might count as the emergence of a gender identity in some contexts, but it's not the robust and developed sense of gender self-identification intended by identify-based views of gender. (It's one of the dispositions McKittrick mentions, but for McKittrick gender identity is a cluster of dispositions, none of which are individually necessary or sufficient.) And so even for cognitively disabled people who can understand questions such as 'are you a girl?', and respond to those questions with spoken language, it's not at all obvious that they have the sense of gender identity that's involved in these debates. And again, not all cognitively disabled people will even be able to understand a question like 'are you a girl?', much less something like 'do you think that a female gender identity authentically represents your own internally felt sense of your gender?'

The problem is simply this: if having a gender requires significant cognitive ability, then many cognitively disabled people will not have genders. This is, of course, a familiar problem for views which place a cognitive requirement on a significant social status. Views of moral significance or justice which hinge on cognitive capacity, for example, have a well-rehearsed difficulty with accommodating cognitive disability.⁹

Unsurprisingly, then, if you make having a gender contingent on cognitive ability, you will face an analogous problem. If we make gender a matter of (relatively sophisticated) self-understanding and social contract, we exclude cognitively disabled people from having genders.

4. Is this really a problem?

A defender of identity-based views might object that describing this as a problem assumes that genders are more important than they really are. After all, many people report themselves as being frustrated by gender and wishing they could be free of it. And many others happily report that they themselves have no gender—they self-identify as *agender*. Perhaps cognitively disabled people are also agender. This isn't a bad thing. Not having a gender is a perfectly good way to be, and freedom from gender is perhaps a way in which cognitively disabled people are better off, rather than a way in which they are marginalized.

Let's first consider the question of whether cognitively disabled people can be correctly described as agender. Agender people typically say of themselves that they have no gender—that none of our gender categories correctly apply to them. When people identify as agender, they are making a specific claim about their own felt relationship to gender categories. Let's leave aside the sticky question of whether 'agender' is itself a gender category. The salient point here is that, in claiming to be agender, people are making a statement about how gender categories apply to them. Imagine that gender categories are options on a survey. If you self-identify as a woman, you check the box 'woman' on the survey. If you self-identify as genderqueer, you check 'genderqueer'. And so on. If you self-identify as agender, you check 'none of the above'.

Agender people might be, by their own self-conception, genderless, but this self-description is nevertheless a claim *about their relationship to gender*. To say that an agender person is genderless is not the same thing as saying that my computer is genderless, even if both claims are true.

⁹ See especially Kittay (2005), 'At the Margins of Moral Personhood'.

An agender person has a cognitive and phenomenological relationship to gender—it's just that the way they describe this relationship is that our extant gender categories don't apply to them. Your being agender is thus compatible with your gender categorization being something you endorse. We've asked you what gender categories you think should apply to you, and you've answered 'none, thanks'.

Identity-based views of gender also typically maintain that one's gender can be fluid and change across time. You might sincerely identify as agender now, but your sense of gender might change across your lifespan. If, in the future, you decide that you are instead genderqueer, then at that point you'll be genderqueer. And it's not that you were secretly genderqueer all along. It's that, on this view of gender, people get to decide for themselves, in reference to their own experience of gender. And in the process of deciding for yourself, you might make different decisions at different times.

Contrast the case of cognitive disability. In making cognitive requirements for gender, we're not merely saying that many cognitively disabled people are genderless. We're saying that they are not *capable* of having gender. If gender is or requires self-identification as a member of that gender, then many cognitively disabled people are genderless, not in virtue of their felt relationship to gender, but in virtue of their cognitive limitations. We're saying, in effect, that they're not the kind of people who can have gender. In that sense, their being genderless is more like my computer's being genderless than a self-identified agender person's being genderless.

To press this point, consider the way in which we typically speak about non-human animals. My dog has a sex, but not a gender. Likewise, my dog doesn't have a gender identity, and I don't worry whether I'm misgendering him when I tell him he's a good boy, despite his inability to inform me of his pronoun preferences. In saying that cognitively disabled people cannot have a gender *because of their cognitive differences*, we would in effect be saying that, when it comes to gender, they are more like non-human animals. And this is, of course directly analogous to ways in which views that make moral status (for example) dependent on cognitive ability equate cognitively disabled people with non-human animals (Kittay 2005).¹⁰

The claims that cognitively disabled people aren't persons, or lack moral status, or can't be members of social communities, and so on,

¹⁰ Thinking that this is a problem if, of course, perfectly consistent with thinking that we are often far too dismissive of the moral status of non-human animals, and far too quick to see any comparison with non-human animals as an insult or slight to moral worth.

have clear negative upshots. I'm going to assume that this gives us good reason to reject such claims. My goal here is to extend this line of criticism to theories of gender, and argue that the claim that many cognitively disabled people are *incapable* of having gender is a bad result.

My argument for this will proceed in two sections. First, I'll argue that a view of gender which denies that many cognitively disabled people have genders is descriptively inadequate. Second, I'll argue that denying gender to cognitively disabled people further marginalizes them, even if we grant that freedom from gender assignments might sometimes be a good thing.

4.1 *The argument from descriptive adequacy*

Let's begin with descriptive adequacy: I don't think that we can fully theorize gender and gendered oppression without including the distinctive ways in which gender shapes the experiences of cognitively disabled people. I'm going to focus, in what follows, on the experiences of cognitively disabled women, but it's important to note that the oppression experienced by cognitively disabled men also needs to be understood as gendered. Cognitively disabled men, for example, are among the groups most likely to be killed by police, for reasons directly at the intersection of their gender and their disability, and at times their race.¹¹ But in the subsequent discussion, I want to highlight the experiences of cognitively disabled women. And specifically, I want to argue that we cannot fully understand the coercion and violence experienced by women without recognizing that cognitively disabled women face oppression *as women*.

Let me first be explicit about what I mean by the claim that cognitively disabled women face oppression *as women*. In what follows, I argue that cognitively disabled women are oppressed based on the (pervasive) social significance of their female sex. Moreover, I'm going to argue that this oppression can't be reduced either to the fact that they are oppressed in virtue of their female bodies (because it involves complex patterns of social significance, not just what bodies people have and how those bodies are treated) or to the fact that they are expected to occupy a woman's social role (because many of them are not). And I am construing this distinctive form of oppression—oppression based on the social significance of their female sex—as sufficient for them to be oppressed as women. This doesn't, of course, mean that one must have female sex to face oppression as a woman; I'm just claiming that this pervasive pattern of social oppression that cognitively disabled women face is enough

¹¹ See especially [David Perry and Lawrence Cater-Long \(2014\)](#).

(in the absence of any overriding compelling reasons otherwise) to say that they are oppressed as women.

Cognitively disabled women are among the people most vulnerable to sexual abuse and rape.¹² They are sterilized without their consent.¹³ They are routinely denied access to information about sexuality and birth control (Richards et al. 2009; Fitzgerald and Withers 2013). They are even, on occasion, subjected to extensive medical procedures that will prevent the development of a typical adult female body (Kirschner, Brashler, and Savage 2007).

Moreover, this kind of treatment isn't explained simply by how we treat people with cognitive disability. A substantial body of research suggests that there are striking gender differences in the treatment of cognitively disabled people. All cognitively disabled people are at increased risk of sexual abuse, but cognitively disabled women are especially vulnerable (McCarthy and Thompson 1997; McCarthy 1998). Forced sterilization has been a common practice for cognitively disabled women, but not for cognitively disabled men (Reilly 2015; Brady 2001). Caregivers are, in general, very reluctant to provide information about sex and reproductive health to cognitively disabled people, but this tendency is more pronounced for cognitively disabled women (Fitzgerald and Withers 2013; McCarthy 2014). And so on.

In general, the bodies of cognitively disabled women are more likely to be abused and violated. And they're more likely to be abused and violated in a way that's directly related to their female sex—their reproductive organs are removed, they are raped, the idea that they might have sexual needs and desires is rarely acknowledged, and so on. Obviously, this type of social coercion—especially as it relates to women's sexuality and reproductive capacities—is not unique to cognitively disabled women. But what is distinctive about the experience of cognitively disabled women is the way in which such social coercion becomes both amplified and normalized when the women in question have less social autonomy and less ability to understand what is being done to them.

Policies that allow or enforce the sterilization of cognitively disabled people, for example, have both historically and presently been targeted almost exclusively at women. While such policies are often gender-neutral in their framing, women are sterilized at far higher rates than men. (In contrast, cognitively disabled men are more likely to be given drugs to suppress their sexual desire, but the sexual desires of

¹² See, for example: Meer & Combrinck (2015); Richards et al. (2009); Mays (2006).

¹³ See, for example: Brady (2001); Stefánsdóttir (2014).

cognitively disabled women are rarely acknowledged.) These practices of sterilization are, in many cases, not justified on grounds of medical necessity, and are more likely to reflect parent or caregiver attitudes than any specific needs of the individual. And the women who are sterilized are rarely involved in or informed about the decision, even when they have the cognitive capacity to understand at least some of the issues at stake. Moreover, invasive and painful procedures like hysterectomy are often justified over simpler procedures on the grounds that stopping or preventing menstruation would be a convenience.

If we examine the history and current reality of the treatment of cognitively disabled women, it becomes clear that they face oppression in a way that is significantly gendered. Cognitively disabled women are oppressed *as women*. Acknowledging this is key both to understanding their experiences and to understanding the full spectrum of control and violence targeted at women.

It might, of course, be objected that in saying the above I am begging the question. Without doubt, cognitively disabled females face oppression that is specifically influenced by and targeted at the fact that they are *female*. But to say that cognitively disabled females are cognitively disabled *women*, and thus that the oppression they face is part of the oppression women face, is to assume exactly what is up for debate.

Arguing about the descriptive adequacy of theories of gender is tricky, because it's often unclear what, exactly, a theory of gender is supposed to explain. If I offer a theory of material objects that fails to explain (even in a revisionary way) what ordinary things like tables and chairs are, that theory is pretty clearly descriptively inadequate. With gender, it's more complicated, and there are probably no desiderata for a theory of gender that are completely uncontroversial. Moreover, in many cases theories of gender are attempts to give what Sally Haslanger has called an 'ameliorative' analysis of gender, rather than a purely descriptive analysis of gender. That is, in theorizing gender we're often describing how we think we *should* understand gender, rather than describing gender as it currently functions in most contexts—more on this in the next section.

There is probably no single thing that gender really is.¹⁴ If we give the rough gloss that gender is 'the social significance of sex', then that can vary—sex-related features have different social significance in a church in rural Alabama than they do in a queer nightclub in San Francisco. And there's probably no one analysis that can explain all the different ways in which sex-related features (and our perception of those features)

¹⁴ For a more detailed exploration of this view, see [Barnes \(2020\)](#).

can play an important social role. Moreover, part of what we're doing, when we're discussing the social significance of sex-related features, is comparing different ways of understanding their social significance and asking which is best.

Within this context, it can be hard to make claims of descriptive (in)adequacy. It's even harder when we consider that not everyone who faces oppression in virtue of having a female body is a woman—trans men and some non-binary people, for example, often face oppression and violence targeted at female sex characteristics. Nor is the expectation that one occupies a female-typical social role sufficient for being a woman, given that trans men and nonbinary people are often expected to occupy such roles.

Importantly, though, in the case of cognitively disabled women we can't explain the complexity of their gendered experience simply by saying that they are expected to occupy a female-typical social role or that they face oppression in virtue of having female bodies. It's not the case that all or most cognitively disabled women are expected to occupy female-typical social roles, simply because cognitively disabled people very often are not expected to (and do not) occupy typical social roles at all, female or otherwise. More strongly, they are often expected *not* to occupy female-typical social roles like mother or caregiver, precisely because of their cognitive difference. Likewise, it's inadequate to say merely that cognitively disabled women face oppression targeted at the female body. Consider, for example, the recent case of a cognitively disabled woman who was ordered to terminate a pregnancy by a UK court, against both her and her caregiver's wishes.¹⁵ This was not merely a state-ordered invasive procedure on a female body. The view taken by the court was that she was not capable, despite her wishes, of being a *mother*. Moreover, part of the motivation for this ruling was a failure to respect the wishes of her caregiver—her own mother—because the court viewed her caregiver as unequipped to care for a baby in addition to her disabled adult daughter. So, again, it was a judgement about appropriate motherhood. And judgements about what makes a good or fit mother aren't fully explained by social views about the female body.¹⁶

And so I think we can only understand the experiences of cognitively disabled women if we recognize them *as women*. Likewise, we can

¹⁵ For details on this verdict, which has subsequently been overturned by an appeals court, see Yonette Joseph (2019).

¹⁶ I especially recommend, on this topic, Harold Brawell's essay 'Love and Other Disabilities', about his own experience of being raised by a cognitively disabled mother (2019).

only understand the full range of women's distinctive social experiences if we include cognitively disabled women. The person who is told she cannot carry a pregnancy to term because of her cognitive disability is experiencing our entrenched social norms about women and motherhood just as much as the person who is told she's being selfish if she doesn't have children or the person who is told she's being neglectful if she doesn't breastfeed. The person who undergoes a hysterectomy without even being told about the procedure is experiencing the way we remove women from choices about their own bodies just as much as the person who is told she can't have birth control because it will encourage her to sleep around.

Thus any view which excludes cognitively disabled people from having a gender is descriptively inadequate. If gender is the social significance of sex, then cognitively disabled people need to be a part of what we talk about when we talk about gender. And any theory that denies that they have genders has, in my view, an impoverished understanding of the complex social significances of sex.

There is, of course, a difference between saying we should ascribe *gender*—of some form or other—to cognitively disabled females and saying that cognitively disabled females *are women*. I'm arguing for that stronger claim. And in making this argument, I'm appealing to things—oppression based on female sex, oppression based on norms about women—which plenty of non-women also face. And so you might worry that I'm wrongly assuming that females are women or that anyone who is treated like a woman is a woman—and thus that I'm being implicitly cisnormative.

But I don't think I am. What I'm arguing is two-fold: (i) we have good reason to say that cognitively disabled females have gender; (ii) we have good reason to say, more specifically, that they are women. The case for (ii) is admittedly more complicated than the case for (i). I'll discuss this more in §5, but the basic gist is this: *in the absence of compelling reason otherwise*, the broad pattern of social oppression that is evidence for (i) is also evidence for (ii). We have good reason to say that cognitively disabled females have gender, and for many such people we lack reason to say that they have unknown genders, precisely because we have reason to say that they lack gender identity entirely. In such cases, I argue, it makes sense to default to the social significance of their female sex. That is, I'm arguing that if someone is female and is oppressed as a woman, this gives us a *pro tanto* reason to categorize them as a woman. This *pro tanto* reason is *easily outweighed* if the person identifies as some other gender. In the case of people who seem not to experience

gender identity, though, we lack such outweighing reasons, and so we can appeal to a social role categorization.¹⁷

In evaluating whether this is cisnormative, it's important to emphasize that *the people in question are not cis*. Nor are they trans. (One lesson of including cognitively disabled people in the conversation about gender is that the cis/trans dichotomy, at least as commonly understood, is not exhaustive.) To be cis, on the common definition, is to have a gender self-identification which matches the gender you were assigned at birth. We are talking here, though, about people who don't have any gender self-identification. And we lose something important from the conversation about gender—and about women—if we leave these people out. Self-identification matters greatly to our understanding of gender categorization. But the experiences of cognitively disabled people highlight ways in which it can't be the *only* thing that matters.

4.2 *The ameliorative argument*

The case for saying that cognitively disabled people have genders is stronger than a simple claim about descriptive adequacy. Recall that many philosophical analyses of gender are targeted, at least in part, on the ameliorative question of how we *should* or *ought* to understand gender. And specific appeal is sometimes made to this type of ameliorative approach in order to justify the claim that we should understand gender as—or at least reserve gender terminology for—a type of self-identification (Bettcher 2013, pp. 240-241; Jenkins 2016, p. 396). But the experiences of cognitively disabled people show that the ameliorative question—the question of what a better or more just understanding of gender might be—needs to consider and include people who lack gender identities.

To press this point, let me now turn to the second part of my argument. Views of gender which deny that cognitively disabled people have genders are not merely descriptively inadequate—they are harmful. And so, if we're considering questions like 'what is gender?' or 'what

¹⁷ A referee worries that this might imply that, for example, a trans person who became cognitively disabled in an accident might suddenly lose their gender, because they have lost their capacity to self-identify with a gender and thus we've lost a compelling defeating reason not to assign their gender based on their sex. But I think this worry can be addressed. In the case of acquired cognitive disability, we tend to honour the choices a person made in life and respect the cognitive capacity they once had. If your given name is Daniel but you always hated it, so you changed it to John and John was your name for years, it's obviously appalling (and untrue) if the moment you wind up in a coma I start calling you Daniel on the basis that I 'lack a compelling reason not to'. The choices you made previously and the feelings you had previously give me a compelling reason to continue calling you John—that's still your name.

determines gender categorization?’ from an ameliorative angle, we have particular reason to oppose views that make gender categorization entirely a matter of self-identification. I will argue that denying gender to cognitively disabled people harms them in two ways: it makes it harder for us to understand the gendered aspects of their experiences and it contributes to their social marginalization.

As I’ve already discussed, cognitively disabled women face unique—and uniquely gendered—types of violence and oppression. And I think that fully understanding these experiences requires understanding that cognitively disabled women are women. We don’t, for example, have a good grasp of why cognitively disabled women are so much more likely to be sterilized or sexually abused than cognitively disabled men until we consider gender. But the point here extends beyond understanding the gendered dimensions of oppression. As Kelley Johnson and Rannveig Traustadottir note in their landmark book, *Women with Intellectual Disabilities: Finding a Place in the World*: ‘Sometimes the needs and wants of women with intellectual disabilities are not known by those around them because other people do not see them as *women*’ (2000, p. 10, emphasis in original). In the extensive work they have done with cognitively disabled women, Johnson and Traustadottir chronicle the complex ways in which these women’s experiences are shaped by their gender, and the complex ways in which those gendered experiences are often obscured. As they rightly point out, feminist discussions of gender have routinely struggled with intersectionality. In ignoring the experiences of women of colour, working class women, and so on, they have failed to fully theorize gender. And, crucially, the experiences of women with cognitive disabilities have been among those most at the margins of feminist discourse. This leads, inadvertently though still harmfully, to work which fails to take into account the distinctive experiences of cognitively disabled women (and their caregivers, who also tend to be women). Eva Kittay argues, for example, that feminist work has (in many cases, rightly) valorised the idea of independence for women—financial independence, legal independence, and so on. But in doing this, it risks devaluing the lives of people for whom independence is not an option, as well as the caregiving work (the ‘labour of dependence’) undertaken by so many women. It also, Kittay argues, obscures the ways in which none of us are truly independent—we all rely on the care and labour of others, much of it invisible—and the ways in which dependencies, within a caregiving relationship, can be valuable.¹⁸

¹⁸ See especially her *Love’s Labor* (2019b).

As Johnson and Traustadottir eloquently put the problem:

If we believe that feminist analysis and theory should include all the diversity of women's lives and experiences, it is important to examine why women with intellectual disabilities remain so marginal in the discussions of feminists... The key factor here may be that these writers theorize from their personal experience to develop insights into what it means to be a woman... For women who have intellectual disabilities such theorizing has been more problematic... Some women are not able to explore or convey their experiences [of gender] at all because of the nature of their disabilities, and others find it difficult to do so. Further, the intellectual and academic communities have not been accepting of women with intellectual disabilities, and developmental impairment is more likely to restrict the possibilities of expressing experiences in a way that the gatekeepers of what is 'proper' find acceptable. (Johnson and Traustadottir 2000, p. 13)

Contemporary discussions of gender have—rightly—begun to pay more attention to gender identity. And they often note—again, rightly—that failure to discuss gender identity has been a way in which the experiences of trans, nonbinary, agender, and gender nonconforming people have been obscured (Jenkins 2018). But in correcting this lapse, we risk an overcorrection. If we make gender identity the sole determinant of gender membership, we commit exactly the same error—we prioritize the way some people experience gender over the way that others do.

It's common, for example, in popular discussions about gender to read statements like this: 'Everyone—transgender or not—has a gender identity. Most people never think about what their gender identity is because it matches their sex at birth.'¹⁹ But it just isn't true that *everyone* has a gender identity.

This brings me to the second major way in which denying gender to cognitively disabled people is harmful—the way in which it alienates or 'others' them from cognitively typical people. Someone might object to what I've said so far as follows. Yes, denying gender to (many) cognitively disabled people does make them different from most cognitively typical people. But it doesn't follow that this difference is in any way *bad*. After all, gender is an oppressive social system, and freedom from it is something many people desire and work towards. Kate Bornstein famously

¹⁹ Taken from the Frequently Asked Questions of the Trans Equality website (2016).

likens gender to a cult—something that indoctrinates us and something we need to free ourselves from (2016). If we take this approach to gender, what's so bad about saying that some people are lucky enough to be excluded from it entirely?

While tempting, this line of reasoning seems to me too quick. Although we might argue that gender is something that we ultimately want to get rid of, there's no denying that, in the world we actually inhabit, gender is deeply socially significant. If it weren't, misgendering wouldn't be a big deal, gender identity wouldn't be an 'existential' type of self-identification, gender nonconformity wouldn't be punished, and so on. And when considering whether it's harmful to say that cognitively disabled people are incapable of having gender, we have to consider this reality as it is.

In our world, gender matters. And to say that someone is incapable of having gender is to say that they differ in very deep and significant ways from almost all other people. We already have a tendency to view cognitively disabled people as almost sub-human (Crary 2018). In saying that they (like non-human animals) do not and cannot have genders we only further their distance from the rest of us.²⁰ And that distance is striking—and hard to justify—given the multiple ways in which cognitively disabled people's experiences are quite obviously gendered.

5. Consensual genders, unknown genders

Briggs and George (manuscript) endorse the view that self-identification should determine gender. They state that '[r]ecognized membership in categories like woman and man should be adjudicated based on the communicated wishes of the person being gendered, not the perceptions and projections of outsiders.' But they add that:

it's worth noting explicitly that the activist 'party line' is not that nonverbal infants (or people who have otherwise never communicated a gender self-identification) have no gender, but only that their membership in gender categories is unknown. (Briggs and George n.d., p. 8)

²⁰ As Butler (1990) famously argues, gender norms often 'establish what will and will not be intelligibly human'. We can think that this isn't the way the world should be while acknowledging that it's the way the world is, such that denying gender to cognitively disabled people furthers our tendency to see them as less than fully human.

In a similar vein, Kate Bornstein writes:

The first question we usually ask new parents is: ‘Is it a boy or a girl?’. There is a great answer to that one going around: ‘We don’t know; it hasn’t told us yet.’ (2016, p. 46)

Could the solution to our problem for identity-based views be that cognitively disabled people have unknown genders? I don’t think so.

By their own lights, identity-based views can’t say that cognitively disabled people have genders, but that we don’t (and can’t) know what they are. That’s because such views say that gender self-identification is necessary for belonging to that gender. And again, many cognitively disabled people simply won’t have this robust type of gender self-identification. And so they will lack the feature which solely determines gender categorization. Given this, it doesn’t make sense to say that they have unknown genders. If they lack the feature that it takes to be a member of a gender, then they lack gender. Again, the analogy to non-human animals is both apt and troubling. It’s not that my dog has a gender that I’m unable to know. It’s that he doesn’t have a gender, and I can easily know this. If we set cognitive criteria for gender membership, the same will be true of many cognitively disabled people.

Further, the considerations that might motivate us to say that a young child has a (currently) unknown gender don’t seem to apply in the case of cognitive disability. The idea is that we don’t want to assume that a young female is a woman because we don’t want to impose that gender on them, and because we don’t want to misgender them. Sure, most females are women and most women are female, but this person might identify as something else. This is the crux of treating self-identification as a sufficient condition for gender categorization: it is enough, to be classed as an x, that you self-identify as an x, and so if we don’t (yet) know how you self-identify we shouldn’t assume you aren’t an x. But some cognitively disabled people can’t have a robust sense of self-identification with a gender category, at least as this is described on most philosophical accounts. There is, for this group of people, quite simply no secret ingredient. There’s no hidden fact that could make their gender determined but unknown. And what I am arguing is that for this class of people, it makes sense—indeed, it is important—to classify their gender according to the social role they occupy based on the (profound) social significance of their perceived sex. You can occupy the social role of a woman and yet not be a woman, because gender self-identification can be sufficient for gender categorization. But in the absence of such components of gender—in the absence of the *possibility* of such

components—we have good reason to categorize people who occupy the social role of a woman as women. Gender identity matters to gender categorization, but social role can matter too.

And this brings me to a deeper problem with the ‘unknown gender’ response. It is politically troubling to suggest that we don’t know what gender cognitively disabled people are. Cognitively disabled women are women. Their experience of the world is shaped by this fact, and, as Johnson and Traustadottir forcibly argue, we have often failed to understand those experiences because we so often fail to recognize them as women (2000). This has materially contributed to a failure to adequately understand and address the specifically gendered realities they face. Most studies of cognitively disabled people, for example, fail to mark or segregate data based on gender, often obscuring significant gender differences in how cognitively disabled people experience the world. And campaigns to counter violence against women or the coercive control of women’s bodies often fail to include cognitively disabled women, even though they are amongst the people most at risk of such violence and coercion. Advocates for cognitively disabled women—those who spend time with them and love them and learn about their lives—are often adamant that recognizing them as women and including them within feminist discourse about women is vital. Given all of this, it seems unmotivated—indeed, it seems patently false—to insist that we don’t know whether they are women because they can’t tell us.

This leads us to the broader issue of whether gender can ever be appropriately applied to those who don’t choose or endorse it. Briggs and George argue that our norms for gender categorization should be based on the idea of *consensual gender*. The norm of consensual gender maintains that one should never ascribe gender to another person without their normatively valid consent. And this, of course, has repercussions for who we ascribe gender to and in what circumstances. As Briggs and George put it:

The view is that communicated sincere self-identification is necessary and sufficient to justify ascription of category membership or non-membership. A commitment to consensual gendering is first and foremost a claim about our political responsibilities with respect to our labelling practices, but it is in principle possible for the resulting pattern of membership and non-membership ascriptions to be wholly accurate. (n.d., pp. 8-9)

As I hope is clear by now, I think a norm like this is helpful and appropriate in many contexts, but not in all of them. Although it is a

well-intentioned corrective, I think it fails as a general norm, and the experiences of cognitively disabled people show why. It's important to realize that ascribing gender to someone without their consent can be harmful. But likewise, failing or refusing to assign gender to someone can also be harmful. And when we are considering the experiences of cognitively disabled people, the issue of consent becomes complicated.²¹ Both ascribing and withholding gender ascriptions are normatively significant, and for many cognitively disabled people neither will be consensual. Gender can *never* be fully consensual for everyone. Withholding a gender ascription from someone is a way of applying gender norms to them just as much as assigning a gender ascription is, and some cognitively disabled people cannot voice their consent to either option. Simply withholding gender ascription in cases where a person cannot communicate a self-identification doesn't make gender fully consensual.

This is, of course, compatible with thinking that our ultimate goal for the future should be to ascribe gender only when a person asks for it. But this involves making it the case that gender is less socially important—and less pervasive—than it currently is. That may be the world we should aim for, but it isn't the world we inhabit. The present, actual social significance of gender means that withholding gender ascription isn't always liberation, and can be a way of harming people.

6. Summing up

I've argued that the experiences of cognitively disabled people are gendered in a way that makes it both morally and philosophically important for us to recognize them as women and men. And so we cannot treat self-identification as the sole determinant of gender categorization, or the sole criterion for gender ascription. In saying this, I'm not disputing the importance of gender self-identification, or norms which give such self-identification a central role. Rather, I'm simply arguing that in correcting the lack of attention we've often given self-identification, it's important that we don't overcorrect. Self-identification matters to gender categorization, but other things matter too.

This leaves us with the question of what determines gender categorization. And I don't have a complete answer to that question. I'm arguing that it shouldn't be self-identification alone, but I haven't offered

²¹ There's a complex debate, for example, about whether cognitively disabled people can consent to sex, and whether giving cognitively disabled people access to sex is permissible if and only if they can offer morally valid sexual consent (in the terms we generally frame consent).

a positive theory beyond that. And that raises a worry—made salient by the helpful comments of an anonymous referee—that any resulting picture will inevitably be cisnormative, because it will result in trans people being members of their gender by exception, or as ‘borderline cases’²²—sexed social role is somehow the ‘default’, and trans identities are the exception. I don’t, in this paper, have a positive theory to offer which counters this worry.

But to gesture toward what such a theory might look like, I offer The Sorting Hat Analogy. And I’m using this analogy in particular in part because it’s striking how the author’s own fictional creation contains resources to help understand something which she herself so adamantly refuses to understand. In the *Harry Potter* universe, there are four ‘houses’ that each have characteristic features associated with them. The Sorting Hat places every Hogwarts student in their house. In this process, the Sorting Hat considers various of your natural characteristics, but it also, crucially, considers what house you want to be placed in. Harry has many of the features associated with House Slytherin—he is talented, ambitious, a rule-breaker, and so on. But he desperately doesn’t want to be in Slytherin, he wants to be in Gryffindor, and so the sorting hat places him in Gryffindor. Importantly, though, this doesn’t mean that Harry is a borderline Gryffindor or a Gryffindor by exception. Harry is a *paradigm* Gryffindor. And that’s because his self-identification as Gryffindor isn’t just one among many in a grab bag of features he can have; the fact that he wants to be in Gryffindor changes and reshapes the nature of the characteristics (ambition, rule-breaking) that would otherwise put him in Slytherin. At the same time, though, you don’t have to have beliefs or desires about your house in order to be placed in a house. If a student was unable to form beliefs about which house they belonged to, the Sorting Hat could default to their other characteristics and still place them. And, perhaps most importantly, all of this is consistent with thinking that true justice for Hogwarts would involve dismantling the house system. We can, that is, think it’s important both that Harry be placed into Gryffindor, and that someone without any beliefs or desires about houses also get a house assignment, while still thinking that ultimately the house system is dumb and should be torn down.

This analogy is, of course, incomplete and imperfect. But the general idea is that we can maintain *both* that gender identity isn’t merely one among many features that matter to gender—that gender identity is

²² A worry raised in [Bettcher \(2013\)](#).

special, and structures other aspects of gender—and that someone can have a gender without having a gender identity.

I think Julia Serano's suggestion is apt here:

Instead of saying that all gender is this or all gender is that, let's recognize that the word gender has scores of meaning built into it. It's an amalgamation of bodies, identities, and life experiences, subconscious urges, sensations, and behaviours, some of which develop organically, and others which are shaped by language and culture. Instead of saying that gender is any one single thing, let's start describing it as a holistic experience. (Serano 2013, p. 107)

There is probably no single thing that gender is, and probably no single way of ascribing gender that is correct for everyone in all cases. When we're considering things like gender categorization and the application of gender terms, I think Stephanie Kapusta is right when she urges that 'however [these terms are] deployed, it is ethically and politically desirable to remain critically aware of the moral contestability—and hence the revisability—of many of [their] deployments' (Kapusta 2016, p. 514). And that's what this paper has been an attempt to do. However we deploy gender categorization, it's important that we don't forget the experiences of cognitively disabled people, and don't obscure or erase those experiences simply because they are less salient to us.²³

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²³ Many thanks to Rachel Ades, Matt Andler, Liam Kofi Bright, Ross Cameron, Robin Dembroff, Eva Kittay, Katharine Jenkins, Sally Haslanger, Adele Perera, Jennifer Saul, Jason Turner, Lori Watson, and audiences at Berkeley, Arizona, UNC Asheville, and WOGAP.

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