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# Is Gender Needed for Justice?

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# IS GENDER NEEDED FOR JUSTICE?

by

MATTHEW ANDLER

Under the Direction of Peter Lindsay, PhD

## ABSTRACT

Against Sally Haslanger's influential position, I argue that gender is not needed to ensure the just treatment of sexually differentiated human bodies. Gender is only needed if the just treatment of socially important sexual differences is most effectively realized through the use of gender terms, such as "woman" or "man." In light of this aforementioned condition, I assess the following phenomena: sex differences relevant to health and medicine, reproduction, and childcare. In all of these cases, compared to gender terms, non-gender terms, such as "female," "pregnant person," or "lactating person," more simply and accurately capture the morally relevant features of socially important sexually specific phenomena. For this reason, I find that the gender is not needed for justice.

INDEX WORDS: Gender, Social Construction, Feminist Philosophy, Feminism, Queer Theory, Social Philosophy, Political Philosophy, Women, Men, Haslanger

IS GENDER NEEDED FOR JUSTICE?

by

MATTHEW ANDLER

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

Masters of Arts

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2015

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## INTRODUCTION

Consider a social, linguistic, intelligent, and asexual alien species. A just society composed of members of this extraterrestrial life form would not need gender. But what about a just society of humans? Do we need gender to ensure the just treatment of our sexually differentiated bodies?

Sally Haslanger argues that once gender equality has been realized, gender will still be needed to account for socially important sex differences in human bodies.<sup>1</sup> In short, Haslanger thinks that a just society cannot exist without some form of gender, and that gender ought to be modified instead of done away with. I disagree with Haslanger and argue that, aside from corrective and remedial concerns, gender is not needed to ensure the just treatment of sexually differentiated human bodies.

I begin my argument by distinguishing two senses of social construction: the social construction of content and the social construction of criteria. In the second section, I utilize the two senses of social construction to define gender.

Next, I provide Haslanger's argument for why gender is needed for justice. Broadly, she argues that gender is needed to account for socially important natural sexual differences in the human body.

In the fourth section, I argue against Haslanger. In my argument, I consider various phenomena that are often cited in support of the idea that gender is required to ensure the just treatment of differentially sexed human bodies. These phenomena include socially important sex differences relevant to medicine, reproduction, and childcare. I consider each phenomenon individually, arguing that none renders gender terms necessary for the just treatment of sexually

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<sup>1</sup> "Future Genders? Futures Races?" in Haslanger, *Resisting Reality: Social Construction and Social Critique*, 254.

differentiated bodies. Accordingly, I reject Haslanger's position and find that gender is not needed for justice.

Although I find that gender is not needed for justice, in the fifth section, I argue that it is possible that some gender systems may be morally permissible, as long as certain limiting conditions are met. The limiting conditions hold that gender identities ought to be non-hierarchical, that gender norms ought to be malleable instead of absolute, that gender norms ought not to restrict or disincentivize morally unproblematic activity which is fundamental to one's self or wellbeing, and that gender systems ought to allow for multiple gender identities.

Before proceeding, it should be noted that my inquiry is predicated upon the idea that gender systems can be changed. This notwithstanding, altering a gender system requires more than changing social consciousness. Additionally, "habits, skills, and dispositions"<sup>2</sup> must be unlearned and relearned. Of course, conscious activities can play an invaluable role in social reform and revolution; however, alone they are insufficient. Applied politics should be morally sensitive, and, here, I aim to determine if human societies can be just without gender.

## **1 TWO SENSES OF SOCIAL CONSTRUCTION**

In this section I will briefly explain the general distinction between the natural and social world before discussing two senses of social construction. In the next section, I will use this social constructionist framework in developing a definition of gender.

The natural world is the mind-independent reality in which all material exists and upon which everything is dependent. Social reality, a mind-dependent reality, is predicated on the independent existence of the natural world. However, social reality cannot be captured purely in

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<sup>2</sup> John Searle, *The Construction of Social Reality*, 144.

naturalistic terms. National citizenship, familial relationships, and the value of money are all explanatorily irreducible to the structure and movement of various particles.<sup>3</sup>

Some substances and entities are natural kinds: their content is given by the natural world, which humans can discover. Other substances and entities are social kinds: their content is invented and sustained by social groups: socially constructed. In the remainder of this section, I will distinguish between two senses of social construction: the social construction of criteria and the social construction of content.<sup>4</sup>

Consider the example of water. The content of the natural kind term “water” refers to what water is: for simplicity, let us say H<sub>2</sub>O. In contrast, the criteria of the term “water” are the phenomena, entities, and symbols which people can use to decide whether something is or is not H<sub>2</sub>O. Criteria may be naturally available or social constructed.

In our daily lives, we do not need to use a microscope in order to determine if an object is or is not water. Instead, we can appeal to the object’s natural properties such as smell, viscosity, and color. In contrast to these naturally available criteria, some criteria are socially constructed. For example, when attempting to determine if an object is or is not water, we can consider if it is contained in a tall glass or a small bottle with a syringe. Socially constructed criteria vary in their accuracy and effectiveness.

Second, the content of social kind terms is socially constructed. Unlike the content of natural kind terms, the content of social kind terms is not provided by nature. Instead, the content is invented, developed, and maintained by social groups. Usually, the content of social kind

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<sup>3</sup> See especially chapter one of Searle’s *The Construction of Social Reality* as well as *Making the Social World*. The idea that social kinds are ultimately grounded in the natural world is also present in Haslanger’s work. See “Social Construction: Myth and Reality” in Haslanger, *Resisting Reality: Social Construction and Social Critique*, 213.

<sup>4</sup> This distinction is provided by Haslanger. See “Ontology and Social Construction” in Haslanger, *Resisting Reality: Social Construction and Social Critique*, 106.

terms is attributed to social actors, animals, substances, or entities in order to serve a social purpose.<sup>5</sup> For example, the content of race terms, e.g. “Black,” “Jewish,” “Latino,” etc., is socially constructed, and race terms are used to regulate group membership as well as to delineate and justify social roles.<sup>6</sup>

In certain cases, our understanding of the content of natural kind terms is influenced—although not constructed—by social forces. For example, assuming that sex is a natural kind, our gender system has problematically influenced our understanding of biological sex terms; the gender dichotomy has inhibited the development and acceptance of the theory that sex naturally exists on a spectrum.<sup>7</sup>

Gender is socially constructed, and it must be defined before we determine if it is needed for justice. In this section, I have provided a social constructionist framework, and I now move to use this framework in order to define gender.

## **2 A DEFINITION OF GENDER**

In this section I will provide a definition of gender to be used in determining if gender is needed for justice. As I aim to critique Haslanger on terms sufficiently similar her own, I will begin by providing her definition of gender, which I will then critique and develop.

Haslanger’s definition of gender consists of two parts. First, Haslanger claims that “[g]ender categories are defined in terms of how one is socially positioned, where this is a function of, for example, how one is viewed, how one is treated, and how one’s life is structured

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<sup>5</sup> Ibid., 89.

<sup>6</sup> While, here, I remain agnostic on the question of whether sex is a social or a natural kind, it should be noted that many theorists argue that the content of sex terms is socially constructed; see Butler’s *Gender Trouble*, 9-10 and Gatens’ “Power, Bodies, and Difference,” 70. In a parallel move, in *The History of Sexuality*, Michel Foucault argues that sexuality is a social kind; see especially pp. 47.

<sup>7</sup> See Fausto-Sterling’s “The Five Sexes: Why Male and Female Are Not Enough.” Fausto-Sterling also offers a comprehensive account of the social biases brought to the scientific study of sex in her *Myths of Gender: Biological Theories about Women and Men*.

socially, legally, and economically; gender is not defined in terms of an individual's intrinsic physical or psychological features"<sup>8</sup> For Haslanger, gender is not primarily bodily, mental, or even experiential;<sup>9</sup> instead, for Haslanger, gender refers to the position one occupies in a social matrix. I find this feature of Haslanger's definition appealing, as it takes seriously the social systemic nature of gender.

Second, for Haslanger, "sexual difference functions as the physical marker to distinguish the two groups, and is used in the justification of viewing and treating the members of each group differently."<sup>10</sup> In other words, a person's gender is correspondent to their "observed or imagined" sex.<sup>11</sup> Importantly, as a person's gender does not necessarily correspond to their sex; females/males are able to live their public, and sometimes even their private, lives as men/women.

In short, then, Haslanger defines gender as a social position correspondent to one's observed or imagined sex. I think that Haslanger is correct on this account; however, her definition is incomplete for two reasons. First, Haslanger's definition does not distinguish between types of social positions. As social actors, we are socially positioned in many ways. For example, if a person holds a discount at a grocery store, he is socially positioned accordingly: he is accorded a privilege, and it becomes easier for him to share food with friends and legally to obtain other goods. While Haslanger does not suggest that being a particular gender is the same kind of social position as being a discount holder at a grocery store, her definition of gender does not differentiate between these importantly different types of social positions.

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<sup>8</sup> "Gender and Race" in Haslanger, *Resisting Reality: Social Construction and Social Critique*, 229.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid., 230.

<sup>11</sup> Ibid. Haslanger's idea of "observed or imagined" sex is similar to the concept of "sex category" often used in sociological literature.

Second, while Haslanger's definition takes seriously the fact that gender is a social system (hence her definition focuses primarily, but not exclusively, on social positioning instead of lived experience), it does not capture an important feature of the social system of gender: the social surveying of the body. While my definition will maintain the central idea of Haslanger's account, i.e. that gender has a social systemic nature and socially positions persons in accordance with their observed or imagined sex, I aim for my definition of gender to delimit the type of social position that gendered social actors occupy as well as to capture a key feature of the social system of gender.

As an initial and incomplete definition, I hold that gender is a social system with three distinct and interrelated aspects: gender systems socially construct the content of gender terms, gender systems subject persons to sex-correspondent gender terms, and gender systems normatively direct social actors symbolically to communicate their sex to others. Persons, animals, objects and symbols are gendered inasmuch as they constitute or emerge from a social system of gender.

First, gender systems socially construct the content of gender terms, such as "girl" or "woman." The content of the same gender term may differ across societies on account of cultural, historical, or economic factors. Also, within a society, the content of gender terms is sensitive to features such as race or class. For example, in a capitalist society, in the working class, it is likely that the content of the socially constructed term "man" is defined by traits such as being competitive and active. In contrast, in the bourgeois class, it is likely that the content of the socially constructed term "man" is defined by a different set of characteristics, such as being sensitive and leisurely.<sup>12</sup>

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<sup>12</sup> Pierre Bourdieu's *Distinction* is in large part concerned with how class influences the content of social kind terms.

Second, gender systems subject people to sex-correspondent gender terms. From birth, bodies are deemed either male or female—or in the case of many intersex bodies, modified into bodies which are then recognized as either male or female—and are immediately subjected to the corresponding gender term “boy” or “girl.” Gender systems are able to function and sustain themselves provided that a critical mass of social actors act in accordance with the content of the gender terms to which they are subject. In other words, in order for a gender system to maintain itself, at least in principle, it does not matter whether social actors sincerely or cynically act in accordance with the content of gender terms.<sup>13</sup> While it is possible to imagine a gender system in which social actors behave in accordance with the content of gender terms without feeling like or identifying as women or men (or other genders), members of human gender systems tend to affectively identify with their gender.

Here it is possible to delimit the class of social position to which gender belongs. If a person is subject to the term “discount holder,” she is not expected to engage in any set of activities simply on account of being subject to the term “discount holder.” A person can be a discount holder and live as if she were not one. In contrast, if a person is subject to the term “woman,” she will be expected to act in accordance with the content of the term. Gender terms have prescriptive content, and subjects of the terms “woman,” “girl,” “man,” and “boy” are expected to act like women, girls, men, and boys. And, if a subject of a gender term does not act in accordance with its content, she risks negative social sanction. In other words, gender—like race, class, and sexuality—is a *prescriptively structured social position*: a type of social position

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<sup>13</sup> Here I use Goffman’s distinction between sincere and cynical social activity. In cases of sincere social activity, social actors believe that their actions are expressions of who they really are, whereas cynical social activity does not have this feature and primarily aims to shape the behavior of one’s audience. See *The Presentation of Self in Everyday Life*, pp. 17-8.

that contains and is structured by prescriptive social norms to which its occupants are subject simply because they occupy the social position.

As a demonstration, note that the following statements make sense as normative directives: (spoken to a woman) “Be a woman,” (spoken to a worker) “Be a worker,” and (spoken to a Jewish person) “Be a Jew.” The sentences are able to communicate prescriptive content because the subject term of each sentence is a prescriptively structured social position. In contrast, the following sentences do not communicate prescriptive content: (spoken to a discount holder) “Be a discount holder,” (spoken to a person with prostate cancer) “Be a person with prostate cancer,” and (spoken to a person with green eyes) “Be a green eyed person.” These sentences do not communicate normative directives because the subject term of each sentence is not a prescriptive structured social position.

Third, gender systems socially construct criteria for sex. In order for gender systems to create and maintain the link between sex and social position, social actors generally must be able to find the sex of others social actors.<sup>14</sup> Gender terms include content related to displays and performances.<sup>15</sup> As different gender terms include different display and performance content, and as females and males are subjects of different gender terms, gendered subjects tend to engage in displays and performances which allow other social actors accurately to predict their sex. In other words, gender displays and performances are socially constructed criteria for sex.

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<sup>14</sup> See the second chapter of Frye’s *The Politics of Reality: Essays in Feminist Theory* for an account of “sex-marking” and “sex-identification.”

<sup>15</sup> For Butler’s idea that gender is performative, see *Gender Trouble*, especially pp. 191, where she claims “[g]ender ought not to be construed as a stable identity or locus of agency from which various acts follow; rather, gender is an identity tenuously constituted in time, instituted in an exterior space through a *stylized repetition of acts*. The effect of gender is produced through the stylization of the body and, hence, must be understood as the mundane way in which bodily gestures, movements, and styles of various kinds constitute the illusion of an abiding gendered self.” I find appealing many features of Butler’s account of gender as performative, and I agree that gender traits are not originally expressions of a pre-given gendered self. My account also highlights the fact that, once constituted as a particular gender, social actors must engage in gender performances and displays in order to maintain their social position.

If a social actor thinks that a person is female, then it is likely that the social actor will treat the other person as a woman. If a social actor takes someone up as a male, then the social actor will usually treat the other person as a man. In contrast, social actors often experience anxiety when they do not know the sex of persons with whom they must interact, as it is unclear which set of gender norms to follow. Social actors whose gender displays and performances, or lack thereof, do not effectively communicate their sex to others are faced with negative social sanctions ranging from discrimination to exclusion and severe physical violence. While gender displays and performances are effective criteria for sex, they usually do not replace the socio-normative authority of sex itself (except to a degree in progressive social contexts). For this reason, social actors who are able to “pass” as women but are sexed male or who are convincing as men but have female biologies are often on guard to ensure that knowledge of their sex does not become public.<sup>16</sup>

In sum, gender is a social system. Persons, animals, objects, and symbols are gendered inasmuch as they play a role in or emerge from gender systems. In order for a social system to be a gender system it is necessary that it satisfies the following two conditions. First, a social system is a gender system only if it is generally successful in subjecting humans to sex-correspondent gender terms. Second, a social system is a gender system only if social actors who are subjects of gender terms (i) are placed in a prescriptively structured social position, (ii) which normatively requires its occupants to engage in displays and performances that, as socially constructed criteria for sex, allow other social actors accurately to predict their sex.

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<sup>16</sup> See pp. 314-6 in Kendall Thomas’s “Afterword: Are Transgender Rights *Inhuman* Rights?” in *Transgender Rights* for a brief description and account of the dangers which transgender persons face upon the discovery of their biological sex. Also, see *Herculine Barbin: Being the Recently Discovered Memoirs of a Nineteenth-Century Hermaphrodite* for a fascinating historical look into the ultimately failed attempts of a person to hide her, what would now be called, intersexuality against the efforts and tactics of religious and medical institutions.

An important implication of my definition of gender is that sex need not acquire social meaning as gender. This is the case because it is possible (although it remains to be seen whether it is desirable) for sex to be taken up socially in such a way that the subjects of sex terms are not socially positioned in prescriptively structured social positions. Accordingly, the slogan “gender is the social meaning of sex” is overbroad. Although sex need not take on social meaning as gender, Haslanger thinks that it ought to. I move to explain her reasoning.

### 3 HASLANGER’S GENDER MINIMALISM

In this section I will provide an account of Haslanger’s *gender minimalism*, my term for the theory that gender ought to exist as a thin, instead of a thick, social position.<sup>17</sup> Haslanger explains the distinction between thick and thin social positions, claiming, “some social positions carry with them more demanding norms, expectations, and obligations than others; some carry more privileging entitlements and opportunities than others. ‘Thin’ social positions carry very little social weight. ‘Thick’ social positions can empower or disempower the groups standing in those positions.”<sup>18</sup>

Gender minimalism is contrary to *gender eliminativism*. Gender eliminativism is my term for the theory that, in a just society, gender ought not to exist. Haslanger’s argument against gender eliminativism is as follows: human bodies are not sexually uniform; human sexual differences, especially reproductive differences, are salient to matters of justice; accordingly, although gender ought to be significantly altered from its current form, it ought to be retained as a socially constructed term for purposes of justice.<sup>19</sup> In other words, Haslanger thinks that

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<sup>17</sup> Haslanger claims, “[I]n a just society, gender (in some as yet unknown form) should constitute a thin social position,” see “Future Genders? Future Races?” in Haslanger, *Resisting Reality: Social Construction and Social Critique*, 254.

<sup>18</sup> “Social Construction: The ‘Debunking’ Project” in Haslanger, *Resisting Reality: Social Construction and Social Critique*, 126.

<sup>19</sup> “Future Genders? Future Races?” in Haslanger, *Resisting Reality: Social Construction and Social Critique*, 253-4.

socially constructed gender terms are needed because natural sex differences in the human body meet the demands of the *social importance condition* and the *sex relativity condition*. For Haslanger, if any phenomenon meets the demands of both conditions, then gender ought to be minimal, instead of eliminated.

The sex relativity condition holds that only biological differences in human bodies that are primarily related to sex justify the use of socially constructed gender terms. For example, the cases of reproductive, genital, and certain chromosomal differences pass the sex relativity condition, but the case of skin color does not.

In order for a phenomenon to meet the requirements of the social importance condition, it must be important to matters of social justice, broadly understood. For example, disability meets the requirements of the social importance condition, but hair color does not.

For Haslanger, some sex differences in the human body, such as reproductive capacities, pass both the social importance and sex relativity conditions. For this reason, she holds that gender terms are required for the purposes of justice.

#### **4 CRITIQUE OF HASLANGER'S GENDER MINIMALISM**

In the previous section I provided Haslanger's argument for gender minimalism. In this section, I will critique Haslanger's view that even in a just society gender is required to ensure that socially important sexual differences are justly treated.

So far, I've interpreted Haslanger as providing two conditions that need to be met in order for a phenomenon to render the use of socially constructed gender terms necessary for justice: the social importance condition and the sex relativity condition. Here, I argue that a third condition must be added to the set. Gender is only needed for justice if there do not exist other terms that can be used in equally or more effectively ensuring the just treatment of sexually

differentiated bodies. As the most effective term will be the most precise and simplest, I refer to the aforementioned requirement—that gender must be the most effective possible term in ensuring the just treatment of sexually differentiated bodies—as the *categorical simplicity condition*.

To be clear, in some contexts, gender terms may be useful or efficient in accounting for socially important sex differences in the human body. However, if, compared to gender terms, equally or more effective terms are available, then gender is not needed for justice. This notwithstanding, even if there do not exist any phenomena which satisfy the demands of the categorical simplicity condition, using socially constructed gender terms may, perhaps, be morally permissible provided that certain limiting conditions are met, as will be explored in the next section.

If even a single phenomenon is found which meets the demands of the sex relativity, social importance, and categorical simplicity conditions, then gender would be needed for justice. While I do not think that any such phenomena exist, if any are found, I would suggest that the following material be reframed as a demonstration of precisely how thin gender can be. Here I will assess whether any of the following phenomena meet the demands of all three conditions: (1) sex differences relevant to health and medicine, (2) roles to be played in reproduction, such as pregnancy and childbirth, and (3) sex relative roles in child care.

It should be noted that it is not possible to logically derive a complete set of socially important sex relative phenomena. However, in her argument for gender minimalism, Haslanger primarily considers phenomena related to reproduction,<sup>20</sup> and in what follows, I will assess a

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<sup>20</sup> Ibid.

wider set of phenomena than Haslanger originally provided. I now move to assess each phenomenon.

First, do sex differences relevant to health and medicine meet the demands of the sex relativity, social importance, and categorical simplicity conditions? Males and females have distinct biologies and, accordingly, different health related needs. However, although sex is a medically important term, the same is not necessarily true for gender. In unjust societies, women may experience medical problems that are largely caused by their social position as women, e.g. body dysmorphic disorders. These sorts of problems are best treated when medical personnel are aware of the underlying social cause of the condition and when patients are made aware of why they may feel compelled to engage in unhealthy or self-destructive practices. So, in unjust societies, for some medical conditions, gender ought to be used as a medical term.

In contrast, just societies or genderless societies would not need to use gender for medical purposes. Gender terms are medically unnecessary unless, compared to sex terms, they are simpler or more efficient. However, if sex differences are motivating the need for differential health and medical treatment, then gender terms can only indirectly account for what sex terms can capture directly and more accurately. In other words, appealing to a patient's gender to gain knowledge of their sex is unnecessary. Furthermore, doing so may cause errors of fact, as gender tracks perceived or imagined sex—not sex itself.

Second, do the roles played in reproduction, such as pregnancy and childbirth, meet the demands of the sex relativity, social importance, and categorical simplicity conditions? As a matter of justice, persons who bear children are owed certain goods,<sup>21</sup> such as fair leave from

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<sup>21</sup> In the second chapter of *Justice, Gender, and the Family*, Susan Moller Okin argues that the moral treatment of persons who mother or care for children cannot be achieved solely through the ideals of generosity and benevolence. Instead, she argues, and I agree, that morality demands that the treatment of the aforementioned groups ought to conform to standards of justice.

work as well as financial compensation for performing labor essential to the continuation of society.<sup>22</sup>

Although pregnancy is sex relative and socially important, socially constructed gender terms—or even sex terms—are not needed to ensure the just treatment of persons who bear children. To begin, a significant portion of females and of women do not have reproductive capacities. Accordingly, neither sex nor gender effectively picks out which bodies have the capacity to bear children which do not. Furthermore, gender terms cannot capture the social and moral significance of bearing children. The roles played in reproduction do not meet the demands of the categorical simplicity condition. Instead of using a gender term to ensure just treatment, it is possible to use a more specified term such as “child bearing person.”

Third, do the roles played in childcare meet the demands of the sex relativity, social importance, and categorical simplicity conditions? In answering this question, it is useful to divide childcare roles into two categories: necessarily sex relative roles and incidentally sex relative roles. Many parental activities, such as giving care or enacting discipline, are currently gendered, such that females and males tend to have different roles. However, these roles are only incidentally sex relative, and do not meet the demands of the sex relativity condition. Only childcare roles directly involving the sexed body are necessarily sex relative. There is only one: breastfeeding.

A just society ought to allow certain accommodations to persons who are nursing children. For example, persons who are breastfeeding ought to be entitled to more lenient break schedules at work. However, socially constructed gender terms are neither the simplest nor the most effective terms available for use in ensuring the just treatment of persons who are nursing

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<sup>22</sup> See Joan Williams' *Unbending Gender* for an account and critique of current models of gender justice as well as various policy recommendations.

children. The reasoning here is parallel to the line of argumentation above which demonstrates that gender terms are not needed to ensure that childbearing people are justly treated. Not all females are currently lactating, and, even if we adopted an understanding of sex that directly and primarily distinguished between lactating and non-lactating humans,<sup>23</sup> gender terms would only indirectly account for what sex terms could directly and more accurately capture. Additionally, neither sex nor gender terms get at the social and moral significance of breastfeeding. Persons who are breastfeeding deserve relevant accommodations because they are nursing children, not on account of their gender or because they are lactating. The only necessarily sex relative role in childcare, breastfeeding, does not meet the demands of the categorical simplicity condition.

In this section, I considered various *prima facie* socially important sex differences and assessed if they met the demands of the sex relativity, social importance, and categorical simplicity conditions. I examined the following phenomena: sex differences relevant to health and medicine, pregnancy and childbirth, and sex relative roles in child care. I found that none of these phenomena met the requirements of all three conditions. Accordingly, unless any unmentioned phenomena exist which meet the demands of all three conditions, then, except perhaps for corrective purposes, socially constructed gender terms are neither needed nor maximally effective in ensuring the just treatment of differentially sexed human bodies. Gender is not needed for justice.

I aim to have demonstrated the gender terms are not needed to ensure that sexually differentiated bodies are justly treated. My position is important because it allows us to imagine—and potentially to create—just societies free of gender. As we do not know of any

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<sup>23</sup> “Gender and Race” in Haslanger, *Resisting Reality: Social Construction and Social Critique*, 244.

human societies without gender, it is possible that non-gendered societies would be quite different from our own.

So far in this section, I have suggested that specified terms, such as “child bearing person,” can be more effective than gender terms in ensuring the just treatment of sexually differentiated human bodies. While, in the next section, I will argue that it is possible that societies may not be morally obligated to eliminate gender, provided that certain limiting conditions are satisfied, here I would like briefly to explicate some potential benefits of using the specified terms.

First, however, it is important to note that negative connotations may attach to the specified terms, especially if they are used in patriarchal societies. This notwithstanding, while the specified terms have the potential to become problematic, so do minimalist gender terms. In both cases it is important to ensure that the connotations of the relevant terms remain neutral or positive. If our society were to begin using specified terms for purposes of justice, feminist analysis would be needed to seek out problematic narratives and associations attached to the newly highlighted social positions.

Although the specified terms have the potential to become problematic, they may be useful, liberating, or transformative—although not necessarily and universally preferable. The negative connotations attached to specified terms often stem from their connection with gender.<sup>24</sup> Indeed, this is a central finding of gynocentric feminism: regardless of whether or not the feminine is culturally constructed or essential to females qua their bodies, feminine values, traits, and ways of being and knowing are devalued. If the specified terms are or become devalued, it is primarily because of the degradation of the gender terms to which they are still attached.

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<sup>24</sup> Notably, gender is not the only structure that works to attach extra-biological meaning to sexual body parts and processes. For this idea see Gatens’ “A Critique of the Sex/Gender Distinction,” 9-10.

If the social position of gender were made thinner or eliminated, then the link between the specified terms and the negative connotations of feminine gender terms would be weakened or erased. If gender were a thinner social position, then the specified terms would be less prone to degradation. Importantly, using specified terms, instead of gender terms, would make gender into a thinner social position. This is the case because, as Butler holds, gender is created and sustained by “the citational accumulation and dissimulation of the [symbolic] law that produces material effects.”<sup>25</sup> In other words, gender is created through social actors “doing gender,” in which they create, maintain, and modify the reality of gender through their everyday activities.<sup>26</sup> Accordingly, it is possible to “undo gender,”<sup>27</sup> which would, in part, require reframing presently gendered activities and processes in neutral terms. So, although many of the specified terms are presently reified and degraded, this may not be the case after they are put into use.

## 5 LIMITING CONDITIONS OF MORAL GENDER SYSTEMS

In this section I will argue that it is possible that societies may not be obligated to eliminate gender as well as generate a set of limiting conditions for moral gender systems. While I aim to show that certain forms of gender may be morally permissible, I think that gender is culturally unappealing inasmuch it grants our biological sexual characteristics an unwarranted weight.<sup>28</sup> In any case, while culturally critiquing gender is an important task, here I aim to explicate a moral framework.

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<sup>25</sup> Judith Butler, *Bodies That Matter: On the Discursive Limits of Sex*, xxi.

<sup>26</sup> See West and Zimmerman’s influential article, “Doing Gender.”

<sup>27</sup> See Francine Deutsch’s “Undoing Gender,” in which she argues that inasmuch as gender is constructed through doings, it can be “undone.”

<sup>28</sup> In “Thinking Sex,” pp. 149, Gayle Rubin identifies this aspect of modern western sexual ideology as the “fallacy of the misplaced scale,” and argues that sex is given an undue weight so that sexual deviance may be more severely sanctioned.

The idea that gender ought to be abolished is fairly common in feminist and queer literature. For example, in a widely influential article, Gayle Rubin claims, “[t]he dream I find most compelling is one of an androgynous and genderless (though not sexless) society, in which one’s sexual anatomy is irrelevant to who one is, what one does, and with whom one makes love.”<sup>29</sup> Although I share Rubin’s ideal, I hold that societies may not be morally obligated to eliminate gender. I will argue that this is the case notwithstanding the fact that, even in thin gender systems, gender influences life opportunities and limits freedom.

By definition, society is limiting; it is, in part, a series of normative and symbolic conventions to which we are psychically and materially subject, through which our interactions with others, ourselves, and the world are fundamentally structured and intractably constituted. Importantly, as Hobbes demonstrated, without social limitation, freedom is null.<sup>30</sup> Social limitations are necessary for the existence of language and culture, without which many of our activities would be impossible or meaningless.<sup>31</sup>

Gender can take many forms, some of which are yet to be realized. While many forms of gender are morally impermissible, others may actually work to increase freedom and autonomy by providing symbolic and normative material through which social actors can understand and act in the world. Accordingly, it is possible that certain forms of gender may be morally permissible.

As it would be practically impossible to provide a universal and necessary set of conditions for moral gender systems, in the remainder of this section, I will generate a set of

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<sup>29</sup> “The Traffic in Women: Notes on the ‘Political Economy’ of Sex,” pp. 61, in *Deviations: A Gayle Rubin Reader*.

<sup>30</sup> See especially chapters thirteen and seventeen of the *Leviathan*.

<sup>31</sup> In *The Elementary Forms of Religious Life*, Émile Durkheim claims, “the individual takes from society the best of himself, everything that gives him a distinctive personality and a place among other beings, his intellectual and moral culture. Take away languages, the sciences, the arts, and moral beliefs, and he falls to the level of brutishness,” pp. 257.

limiting conditions which can be used to determine if a gender system is immoral. I will argue that a gender system is immoral if it does not meet any of the following conditions: (1) gender identities ought to be non-hierarchical, (2) gender norms ought to be sufficiently flexible, (3) gender norms ought not to repress morally unproblematic activity which is either (i) fundamental to one's self or (ii) wellbeing, and (4) gender systems ought to allow for various gender identities, including those that statistically abnormal. As many people obtain pleasure from and value their thick gender identities,<sup>32</sup> I aim for the set of limiting conditions to replace Haslanger's gender minimalism. Accordingly, if a thick gender system meets the demands of all four limiting conditions, then it may be moral.

First, gender identities ought not to be hierarchical. Needless social hierarchy harms individuals and groups in low social positions. However, not all social hierarchy is needless and immoral. Moral forms of social hierarchy are either based in necessity or legitimate merit. In contrast, immoral forms of hierarchy do not exist out of necessity or as a result of legitimately earned merits. As I have shown, gender is not needed for justice. Additionally, gender is not needed for material or economic purposes. Furthermore, one's observed or imagined sexual characteristics themselves do not warrant merit, although, as explained in the previous section, the activity of reproduction does. As gender hierarchy is neither needed nor earned through legitimate merit, gender ought to be non-hierarchical.

Second, gender norms ought to be sufficiently flexible. In other words, the norms associated with the social position of gender should not be rigid and absolute. This is the case because the social norms associated with gender are based in cultural convention instead of moral necessity. Certain social norms should be rigid, such as social norms that prohibit immoral

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<sup>32</sup> See Butler's 2014 interview with the Transadvocate.

and harmful activity. However, gender norms do not serve such a purpose. Although culture enables a huge array of valuable human activity, the limitations of certain forms of culture are morally impermissible. While this may sound unpalatable at first, consider a culture that systematically censors certain forms of art, e.g. Jazz, without justification. Such a culture is oppressive and ought to be reformed. So, while it is important to critique culturally imperialist practices and judgments, we can accept that certain forms of culture are morally impermissible. If rigid gender norms limit freedom beyond what reasonably can be allowed as a side effect of the freedom of culture itself, then inflexible gender norms are morally impermissible.

A blurry line separates the forgivable side effects of the freedom of culture itself from oppressive culture. While a theorist must take special care to ensure that she does not unduly impose one set of cultural standards upon another, a distinction exists between moral and immoral cultures. Here, we are brought to the third condition: gender systems ought not to restrict morally unproblematic activity which is (i) fundamental to one's self or (ii) wellbeing.

Regarding the former part of this condition, consider a woman who values and engages in physical activity such that coercing her to be inactive would be like forcing her to be a different person. While interaction with culture allows one to realize worthwhile human freedom, such a good is of no value to oneself if obtaining it requires that one is another.

The latter part of this condition holds that gender systems ought not to restrict or disincentivize non-immoral activity that is important to one's wellbeing. For example, a gender system ought not to restrict or disincentivize homosexual sexual activity. Regardless of whether or not the desire to engage in homosexual activity is an innate and essential aspect of oneself, moral forms of sexual activity ought not to be disincentivized. This is the case because the freedom to one's own sexual life, including the freedom to abstain, is a crucial part of a

flourishing human life. Accordingly, if we accept that indirect harms are harms, then gender norms, and not merely hate crimes, ought not to restrict or disincentivize activity which is important to one's wellbeing.

The fourth limiting condition holds that gender systems ought to allow for multiple genders, including those that are statistically abnormal, such as a-genderism, various queer identities, and transgender gender identities. While I will use the previous limiting condition to argue for this point, it is important to highlight this topic specifically, as it is fundamental and often ignored by important LGBTQ political organizations, movements, and theorists.

In the moral assessment of genders, it is irrelevant whether or not there is an essential feminine, masculine, transgender, a-gender, or gender queer way of being and identifying. Instead, it is important that many persons claim that their normatively prescribed genders are incongruent with their preferred gender identifications. Many persons are unable to lead flourishing lives when unduly restricted by gender norms which do not allow for multiple genders. If, as the previous limiting condition holds, gender systems ought not to restrict morally unproblematic activity which is fundamental to one's self or wellbeing, then a society ought not to force persons to identify with a gender alien to themselves. Accordingly, gender systems ought to allow for multiple genders.

In this section I have argued that, in spite of the fact that gender systems restrict the ability of persons to engage in many forms of activity, it is possible that within certain limits gender systems may be morally permissible. This is the case because human freedom and autonomy are null outside the context of society; although culture is limiting, its limitations allow for a huge array of valuable activity. While it is possible that gender systems may be morally permissible, it is clear that certain forms are immoral. If a gender system does not satisfy

the following conditions, then it is immoral and ought to be reformed: (1) gender identities ought to be non-hierarchical, (2) gender norms ought to be sufficiently flexible, (3) gender norms ought not to restrict or disincentivize morally unproblematic activity which is fundamental to one's self or wellbeing, and (4) gender systems ought to allow for multiple gender identities.

## CONCLUSION

In this paper I attempted to answer the question: is gender needed for justice? Ultimately, I concluded that we are somewhat like a social, intelligent, linguistic, and asexual alien species: we do not need gender for justice. The examination which lead me to this conclusion proceeded as follows.

In the first section, I provided an account of social construction. I distinguished between two types of social construction: the social construction of content, i.e. the social invention, development, and maintenance of the content of social kind terms, and the social construction of criteria, i.e. the social creation of heuristic tools which allow social actors to pick out and distinguish certain things, persons, or types from others. Next, in the second section, I used the social constructionist framework to define gender. Broadly, I defined gender as a social system which socially constructs the content of sex-correspondent gender terms, the subjects of which are socially positioned such that they are normatively required to engage in displays and performances which function as socially constructed criteria for sex.

In the third section, I provided Haslanger's argument for gender minimalism, the idea that gender ought to exist as a thin social position. Haslanger's argument for gender minimalism holds that socially constructed gender terms are needed to account for socially important sex differences, especially those related to reproduction. So, for Haslanger, if any phenomena are primarily related to sex, i.e. meet the demands of the sex relativity condition, and are socially

important, i.e. meet the demands of the social importance condition, then, socially constructed gender terms are needed in order to ensure the just treatment of socially important sex differences in the human body.

In the fourth section, I critiqued Haslanger's position, arguing that gender is only needed if the just treatment of sexually differentiated human bodies is most effectively realized through the use of gender terms, i.e. if any socially important sex relative phenomena meets the demands of the categorical simplicity condition. I considered if any of the following phenomena meet the demands of the categorical simplicity condition: sex differences relevant to health and medicine, pregnancy and childbirth, and roles played in childcare. As I found that none of these phenomena meet the demands of the categorical simplicity condition, socially constructed gender terms are not needed to ensure the just treatment of sexually differentiated human bodies.

In the fifth section, I argued that even though gender is not needed for justice, it is possible that gender systems may be morally permissible if they meet the following limiting conditions: (1) gender identities ought to be non-hierarchical, (2) gender norms ought to be sufficiently flexible, (3) gender norms ought not to restrict or disincentivize morally unproblematic activity which is fundamental to one's self or wellbeing, and (4) gender systems ought to allow for multiple genders. An important implication of my position is that, contra Haslanger, some thick gender systems may be moral. This is the case because certain forms of thick gender may meet the demands of the four limiting conditions.

Although socially constructed gender terms are not needed for justice, there are practical considerations that ought to be addressed before calling for the elimination of gender. We currently live in a thickly gendered society that is structurally disadvantageous to women. In the pursuit of gender justice and equality, gender might be strategically used to guard against

policies and social practices that contribute to gender based oppressions. While, for now, I leave it an open question whether our society ought to eliminate gender, in showing that gender is not needed for justice, I aim to have weakened its grip.

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