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From Identity To Rights: Grounding Trans Right Through Sincere Self-Identity

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Citation	Alder, Payden. "From Identity To Rights: Grounding Trans Right Through Sincere Self-Identity." 2024. Thesis, Georgia State University. https://doi.org/10.57709/37141970
DOI	https://doi.org/10.57709/37141970
Download date	2026-03-06 06:08:06
Link to Item	https://hdl.handle.net/20.500.14694/12167

From Identity To Rights: Grounding Trans Rights Through Sincere Self-Identity¹

by

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Under the Direction of Christie Hartley, PhD

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

Master of Arts

In the College of Arts and Sciences

Georgia State University

2024

¹ ChatGPT generated this title.

ABSTRACT

Katharine Jenkins argues that Talia Bettcher's Sincere Self-Identity or Existential account of gender identity cannot ground trans rights. Jenkins argues that Bettcher's account reduces to the mere act of claiming a gender identity. Thus, Bettcher's account fails to ground trans rights for two reasons: (1) it cannot show why gender identity ought to be respected, and (2) it cannot explain why a trans person would have a need for access to transition-related healthcare. I argue that Bettcher's account is not reducible to the mere act of claiming a gender identity. Bettcher develops an account of gender identity that captures a person's identity broadly. She argues that existential accounts of gender identity include all of a person's beliefs (true or false), commitments, attitudes, and values. Thus, Jenkins' misunderstanding of Bettcher's account of gender identity. I then argue that Bettcher's account when correctly understood does have the resources to ground trans rights.

INDEX WORDS: Gender Identity, Trans Rights, Philosophy of Gender

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2024

From Identity To Rights: Grounding Trans Rights Through Sincere Self-Identity²

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Electronic Version Approved:

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August 2024

² ChatGPT generated this title.

DEDICATION

To Marisa for always supporting me. I could not be where I am without you, and I would not be who I am without you.

ACKNOWLEDGEMENTS

Thanks to Dan Weiskopf and Andrea Scarantino for comments on drafts and help with revisions, and special thanks to Christie Hartley for pointing me in the right directions and guiding me throughout the process.

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1 INTRODUCTION

In feminist debates about how to understand gender, one issue is recurring: the commonality problem.³ This problem results from the fact that there seems to be no one characteristic that all those who typically count as women have in common. This worry is particularly salient when it comes to justice for trans persons, who are subject to discrimination and other harms, including being assigned a gender they do not identify with.⁴ In many trans-inclusive communities gender identity is understood in terms of self-identification. To be a woman is to simply self-identify as a woman. While this avoids assigning people a gender they do not identify with, it worries some trans-friendly thinkers. Katharine Jenkins, in particular, argues that this approach is not metaphysically robust enough to ground trans rights and trivializes trans identities.⁵ Jenkins makes her case by arguing against Talia Mae Bettcher's sincere self-identify (from here on SSI) or existential account of gender identity.⁶ I aim to defend Bettcher's account and show that it can meet Jenkins' criticisms.

If successful, I will have shown that the kind of gender identity account Jenkins assumes are necessary to ground trans rights are unneeded. It will also mean that the moral significance of gender identity is not found in an account that demands any conformity with existing gender norms. Instead, it is found in sincere self-identifications (whatever they may be) and the value individuals place upon them. Most importantly, this means we do not need an account of gender

³ Sally Haslanger 2000, pg. 37. Katharine Jenkins calls it the inclusion problem, and Elizabeth Barnes calls it the exclusion problem. See Jenkins 2016, pg. 394-395 & Barnes 2020, pg. 708. The commonality problem is also related to what Haslanger calls the normativity problem. This problem states that any definition of what a woman is will be value-laden and thus will marginalize some women, privilege others, and reinforce existing gender norms (Haslanger 2000, pg. 37).

⁴ See Kapusta 2016, Kukla & Lance 2020, Dembroff & Wodak 2018, Bettcher 2007; 2009, Wiseman & Davidson 2011, and Bailey, Ellis, & McNeil 2014.

⁵ Jenkins 2018, pg. 728

⁶ Bettcher only calls her account this in passing in her 2017 piece, where she briefly replies to Jenkins. In her 2009 paper, where she more fully develops her account, she calls it an existential account of gender identity (Bettcher 2009, pg. 109-112 & Bettcher 2017, pg. 396).

identity that will ultimately misgender some people against their self-identifications to ground trans rights.

1.1 Order of Exposition

I begin in section two by describing Bettcher's existential account of gender identity. I do this primarily by distinguishing it from what Bettcher calls metaphysical accounts, using Jenkins' norm-relevancy account as an example of a metaphysical account. In section three, I consider Jenkins' critique of Bettcher's account and offer a defense of Bettcher's view. Jenkins argues that Bettcher's account fails to do two things: (1) ground an ethical demand for respect and (2) ground a right to accessible and affordable healthcare. I call these, respectively, *the objection from respect* and *the objection from healthcare*.

I respond first to the objection from respect. Here, Jenkins argues that Bettcher's account can neither explain why people (1) *want* to identify as they do, nor (2) explain what it is they *express* when they identify with a gender. Jenkins thinks for an account of gender identity to ground a demand for respect, it must explain at least one if not both of these two things. I respond by showing that Bettcher's account can explain why people *want* to identify as they do. I then argue that what it is people express when claiming a gender identity should not be important for grounding a demand for respect.

Following this, I respond to the objection from healthcare, where I argue that Jenkins misunderstands Bettcher's account, mistaking it for a mere disposition to make claims about one's gender identity. However, Bettcher's account is much more robust than a mere disposition. Once this misunderstanding is corrected, it becomes clear that the SSI account can handle the objection from healthcare. Finally, I conclude the paper.

2 METAPHYSICAL AND EXISTENTIAL ACCOUNTS OF GENDER IDENTITY

I believe Jenkins' criticism of Bettcher turns on a misunderstanding of Bettcher's account. Bettcher splits accounts of gender identity into two different kinds: existential gender identity and metaphysical gender identity. Importantly, however, it should be noted that metaphysics is a broad field that deals with reality and existence at large. Thus, if existential identities exist, then, by virtue of their existing, they are metaphysical as well. So, the phrases 'metaphysical accounts of gender identity' and 'existential accounts of gender identity' should be understood as technical terms. I am not saying one kind of identity is metaphysical, and the other is not. When I refer to metaphysical accounts, I am talking about accounts that focus primarily on the correctness of categories and what objects properly belong to them. When I refer to existential accounts, I am talking about accounts that focus primarily on individuals' beliefs, commitments, attitudes, and values and what these things tell us about the person in question and their motivations.⁷ Of course, there is a kind of categorization happening with existential accounts, but, as I will show, the way existential and metaphysical accounts categorize tends to be quite different. In short, existential accounts of gender identity have a different focus than metaphysical accounts do. I bring this out difference in more detail below.

2.1 Existential Identities and Self-Conceptions

Bettcher notes that existential self-identities contain aspects of one's self-conception but are not themselves conceptions of self, whereas metaphysical self-identities tend to be. Bettcher notes that "all of the beliefs that one holds (true or false, self-regarding or not) goes into the set of facts that determines"⁸ one's existential identity. She further says that "much of one's attitudes,

⁷ Bettcher 2009, pg. 110-111

⁸ Bettcher 2009, pg. 110

values, and commitment[s] go likewise into making this determination.”⁹ While Bettcher states that existential identities contain these aspects, she does not explain how. It may seem confusing that we could have an identity outside of our self-conceptions. As an example of how values and beliefs that are not self-regarding (and thus not a part of our self-conception) can still constitute a part of our identity, imagine that I believe kindness should be valued. Notice that (1) my belief that kindness should be valued is not the same as (2) believing I am kind. The second is a self-regarding belief, while the first is a belief apart from my self-conception.¹⁰ I can be wrong about my being kind, but it is difficult for me to be wrong about my believing kindness should be valued. And yet, because it is *my* belief the first is still a part of my existential identity, and this would be true even if I were not a kind person.¹¹ I would still be a person who believes kindness should be valued, and that still tells you something important about me. Thus, even false conceptions of self (like falsely believing I am a kind person) can give us meaningful information about people.

Metaphysical self-identities, on the other hand, tend to rely on self-regarding beliefs and their truth or falsity, with a focus on beliefs about what properties one does or does not have. It is because of their self-regarding nature that Bettcher describes them as self-conceptions. For example, I may believe that having a penis, testis, and XY chromosomes metaphysically constitutes what a man is, and that I am a man because I have these traits. However, if it turns out I do not have XY chromosomes, then, by my own definition of a man, I fail to have the metaphysical gender identity I thought I did.¹²

⁹ Bettcher 2009, pg. 110

¹⁰ One could have a self-regarding belief about this belief (i.e., I am a person who believes kindness should be valued), but the belief itself is not self-regarding.

¹¹ It is in this same way that false self-regarding beliefs can also be a part of a person's existential identity.

¹² I borrow this example from Michael Rea (Rea 2022, pg. 14-15).

2.2 Centering Values and Motivations

Additionally, Bettcher thinks that by developing an account of gender identity which can center values instead of categories and self-conceptions, her existential account can better capture our motivations for self-identifying than metaphysical accounts can.¹³ This is because while our values are not always a part of our self-conceptions, they are often what give our self-conceptions importance. For example, as we saw above, I would not value my being kind unless I thought kindness was something to be valued.¹⁴

2.3 Differences in Categorization

The distinction between both kinds of accounts can be further understood by looking at how metaphysical and existential accounts categorize people. In determining what gender identity individuals have almost all accounts of gender identity follow a standard two-step form. First, they define a gender identity by a set of parameters, creating a category or *standard* for the gender identity in question.¹⁵ Second, the status of a person's gender identity is then determined by their *fit*, i.e., their meeting or not meeting the parameters set by the standard. What these parameters are varies depending on the account and the gender identity in question,¹⁶ However, metaphysical accounts tend to have standards and fits that are more demanding than Bettcher's existential account.¹⁷ We can see this by turning to an example.

¹³ Bettcher 2009, pg. 110

¹⁴ This is barring one value kindness as a means to some other end.

¹⁵ Of course, they also give arguments explaining why the parameters they use are the correct way of defining what gender identities are.

¹⁶ For example, on Jennifer McKittrick's view, the standard is having a sufficient number of dispositions (i.e., dress, posture, mannerisms, and so on) associated with a gender in that culture. The fit is actually having a sufficient number of dispositions (McKittrick 2015, pg. 9). For Michael Rea, the standard is having a personal conception of a specific gender identity constructed out of the gender norms found in one's culture. The fit is actually meeting one's own conception (Rea 2022, pg. 18-19). Of course, these are rough simplifications of these accounts, but they help demonstrate the larger point about the general form accounts of gender identity have.

¹⁷ However, this is not always the case; Graham Bex-Priestley offers a metaphysical account of gender identity where he argues that gender identity metaphysically operates like names do and that gender identity has value in the same way names have value. On his account, the standard is simply sincerely claiming a gender identity for oneself,

Jenkins has developed a metaphysical account of gender identity called the norm-relevancy account that is useful in illustrating this point. On the norm-relevancy account, a person has gender identity X if they take a sufficient number of norms typically associated with gender identity X in their culture as relevant to themselves.¹⁸ Roughly speaking, taking a norm to be relevant to oneself is to understand the behavior governing rules issued by that norm as applying to oneself.¹⁹ However, one can understand behavior governing norms as applying to oneself and still not want to follow them or think they should apply to oneself (as anyone who has ever felt alienated by gender expectations will have experienced).²⁰ Jenkins does not fully work out what a sufficient number of norms is, but she does say that a person must not take more norms from another gender identity as relevant to themselves.²¹ On Jenkins' norm-relevancy account, the standard and fit are (1) identifying with a gender and (2) taking a sufficient number of norms associated with that gender in one's culture as relevant to oneself. Thus, like many other metaphysical accounts, Jenkins' account has a demanding standard, one people can fall short of despite their sincere self-identifications.

As a result of this demandingness, thinkers like Mathew Salett Andler,²² Robin Dembroff,²³ Elizabeth Barnes,²⁴ and Bettcher²⁵ have shown that her account will assign people a

and the fit is just having sincerely done this. This gives him a metaphysical account of gender identity with a much less demanding standard and fit (Bex-Priestley 2022).

¹⁸ Jenkins 2018, pg. 730

¹⁹ Jenkins 2018, pg. 730-731

²⁰ Jenkins 2018, pg. 728-730

²¹ Jenkins 2018, pg. 731. She further notes that what counts as a sufficient number will be relative to the number of norms one takes to be relevant to oneself that are also stereotypically associated with a gender other than the one you self-identify with. The idea is that the largest set of norms relative to others will usually determine one's gender identity. However, this leaves the account, as it stands, subject to hard cases and indeterminacy problems, particularly when considering non-binary identities.

²² Andler 2017, pg. 888-889 & 891-182

²³ Dembroff 2020a, pg. 9

²⁴ Barnes 2020, pg. 710-711

²⁵ Bettcher 2017, pg. 396

gender other than the one they self-identify with.²⁶ This outcome is a serious problem, for those who, like Jenkins, are seeking to create accounts that can support the aims of trans rights activists, as clinicians have shown that not treating people in alignment with their self-identification causes significant harm to trans people.²⁷ Likewise, philosophers, like Stephanie Kapusta, have shown that not treating people in accordance with their self-identified gender constitutes various forms of moral, epistemic, and political harms.²⁸ Not being treated in accordance with one's self-identified gender even harms cis people who frequently deal with it.²⁹ However, misgendering people against their self-identifications is a problem many metaphysical accounts of gender identity face.³⁰

Bettcher's existential account has a standard and fit that is far less demanding. Simplified and formalized, the standard of her account looks something like this:

Person A (existentially) has gender identity X if they sincerely believe they have gender identity X (thus, sincerely self-identifying with gender identity X).

Thus, the standard is simply that a person sincerely identifies with and has reasons explaining why their gender identity is important to themselves, such reasons demonstrate their sincerity.

This makes Bettcher's account far less likely to misgender people against their self-identifications. To see this, let us talk about Sam.

²⁶ For example, very feminine cismen who identify as men and very masculine ciswomen who identify as women will not count as their identified gender on Jenkins' account if they do not adhere to enough gender norms associated with the gender they identify with. Bettcher has also shown that Jenkins' account will misgender some trans people who, because of societal expectations and or their social conditioning as children, take norms they do not identify with as relevant to themselves (as Jenkins understands the concept of relevancy) (Bettcher 2017, pg. 396).

²⁷ Wiseman & Davidson 2011, and Bailey, Ellis, & McNeil 2014.

²⁸ Kapusta 2016

²⁹ Watson 2015

³⁰ For example, Michael Rea, Sally Haslanger, and Jennifer McKittrick have all noted that their accounts will assign some people a gender other than the one they identify with some people (Rea 2022, pg. 13-15, Haslanger 2000, pg. 42, & McKittrick 2015, pg. 9-10).

Sam was AMAB but now identifies as non-binary. Sam believes that someone is non-binary when they are androgynous. Sam identifies as non-binary because they believe they are naturally³¹ disposed to social behaviors and attitudes that are androgynous, and yet Sam is not nearly as androgynous as they believe themselves to be. Thus, Sam's metaphysical identity fails according to both their own and the common understanding of the category. However, the reason being non-binary is important to Sam is because they believe some aspects of traditional masculine gender roles and expression are harmful. Without this animating value, being non-binary would matter very little to Sam.³² While Sam metaphysically fails to be an object (or to have the fit) that belongs to the category androgynous or non-binary (according to their own and the dominant understanding), it does not follow that they are not existentially non-binary. As, again, Bettcher says, existential identities are made up of "all of the beliefs that one holds (true or false, self-regarding or not)."³³ This means that, while Sam may by many accounts metaphysically fail to be a member of the category non-binary, they are still existentially non-binary because they sincerely believe they are non-binary, even if that belief turns out to be false by the criteria of some metaphysical account. Further, Sam is existentially non-binary because they continue to hold the animating value that gives their non-binary identity importance to themselves in the first place. This aspect is important. The fact that Sam holds this animating value tells us something significant about them. I believe this evaluative aspect is the most crucial thing existential gender identities capture. With the distinction between existential and

³¹ Here, the term naturally should not be understood as me making an essentialist claim about gender. People can have the experience of finding themselves naturally drawn or disposed towards things despite that experience being socially shaped.

³² This example is a simplification for the sake of argument. Most trans people will have many evaluative reasons that cause them to care about the identities they claim.

³³ Bettcher 2009, pg. 110

metaphysical accounts of gender identity hopefully made clear, I will now move on to Jenkins' criticisms of Bettcher's account.

3 THE JENKINS-BETTCHER DEBATE

Jenkins argues that an account of gender identity should meet the following six desiderata if it aims to respect trans persons and trans rights:

- D1. The definition should render plausible the idea that gender identity is important and deserves respect.
- D2. The definition should be compatible with a norm of FPA.³⁴
- D3. The definition should be compatible with the idea that some trans people have a need for transition-related healthcare that is based on their gender identity.
- D4. The definition should be clear and non-circular.
- D5. The definition should apply equally well to binary and non-binary identities.
- D6. The definition should combine well with broader critiques of current gender norms and social structures.³⁵

Jenkins claims Bettcher's account fails desiderata D1 and D3. However, she believes it meets every other desideratum.³⁶

3.1 The Demand for Respect

Desiderata D1 demands that a definition of gender identity explain why gender identity is important and deserves respect. This desideratum is intended to ground access to gendered social spaces (e.g., bathrooms)³⁷; guarantee the ability to swiftly change one's name, pronouns, and gender identity on legal documents; and demand that governments be legally required to treat

³⁴ FPA, or first-person authority, is the idea that people have a kind of authority in determining who they are and that their determinations should be respected because of this authority. Bettcher has distinguished between what she calls epistemic FPA and ethical FPA. Epistemic FPA argues that people's determinations of who they are have authority and ought to be respected because they are more likely to be correct. Whereas ethical FPA argues that people's determination of who they are has authority because of the ethical badness of not respecting people's self-determinations (Bettcher 2009, pg. 99-103).

³⁵ Jenkins 2018, pg. 723-724

³⁶ Jenkins 2018, pg. 727-728

³⁷ Jenkins 2018, pg. 713-714 & 718

people as their identified gender.³⁸ It should also ground ethical demands that a person's sincere gender identity be respected.³⁹

3.1.1 *The Objection from Respect*

Jenkins argues that the SSI account is too minimal to do the work needed to ground a demand for respect. Her argument can be seen in the block quote below:

I understand 'self-identification' here to mean claiming, or being disposed to claim in relevant circumstances, that one is a person of a certain gender. On this account, to have a female gender identity is to be someone who is disposed to reply to the question, 'What is your gender?', with the statement, 'I am a woman' (or words to that effect) and to be acting in good faith in doing so. Here, then, self-identification refers to the act of expressing or claiming a certain identity, or, at least, being disposed to make such expressions or claims.⁴⁰

As can be seen, Jenkins believes Bettcher's account reduces to either (1) the act of claiming a gender identity or (2) the disposition to make claims about one's gender identity.

Jenkins believes that such a reductionist account is problematic if we are to claim that gender identity is something that deserves respect. To this point, she says, "As we have seen, on this account gender identity is equated with a disposition to make certain kinds of assertions. This means that the account makes gender identity seem trivial: why should we care about dispositions to utter certain sentences?"⁴¹ Not only does Jenkins think Bettcher's account trivializes gender, she thinks it does not describe what people are trying to refer to nor what they care about when it comes to gender identity.

To this point, she says, "In common parlance, gender identity is usually thought of as the property of a person *that makes them inclined* to engage in certain acts of self-identification and

³⁸ Jenkins 2018, pg. 719. This provision could also potentially apply to workplaces and other public accommodations, not just governments.

³⁹ Jenkins 2018, pg. 713-714 & 718

⁴⁰ Jenkins 2018, pg. 727

⁴¹ Jenkins 2018, pg. 728

that is expressed when they do engage in acts of self-identification.”⁴² Further saying, “Insofar as we care about gender identity we seem [to] intuitively care about it as *whatever it is that makes people want* to utter those sentences, or *whatever it is that they express* when they do utter them.”⁴³ This last quote is particularly important. Here, Jenkins sets up two conditions that can be understood as the requirements an account of gender identity must meet to ground a demand for respect.

So, with the first quote also in mind, what Jenkins is looking for is a property of persons that explains either (1) "*whatever it is that makes people want*" to identify as gender X "or" (2) "*whatever it is that they express* when they do" identify with gender X. Jenkins believes Bettcher's account fails at both of these. Importantly, however, special attention should be given to the disjunction 'or' here. While it is not entirely clear, this may indicate that Jenkins thinks explaining either what it is people *express* when identifying or why it is they *want* to identify is sufficient to ground the right to respect. I believe Bettcher's account can safely meet the first requirement; given Jenkins' ambiguity, this may be enough. However, to strengthen the argument, I will explain why requirement two, depending on how it is interpreted, is not the kind of thing that, on its own, demands respect.

3.2 Responding to the Objection from Respect

Jenkins' criticism about minimalism may be true of accounts that say gender identity is merely self-identification. However, as we have seen, Bettcher does not claim that gender identity is merely self-identification. Bettcher's account has important evaluative components Jenkins does not grapple with. In not recognizing the need to engage with these aspects of

⁴² Jenkins 2018, pg. 727

⁴³ Jenkins 2018, pg. 728

Bettcher's account, Jenkins misunderstands the account. Jenkins misses that Bettcher's account is fundamentally about our commitments and beliefs, all our beliefs. Including our beliefs about what is valuable. This means beliefs about why our gender identities matter to ourselves are included in Bettcher's account. Thus, for Bettcher, having a particular gender identity is not simply a matter of self-identification or a mere disposition to utter certain words. Part of the account's substance lies in the reasons why individuals value their gender identity.

3.2.1 Whatever It is that Makes People Want to Identify

The objection from respect demands that an account of gender identity explain either what people *express* when they say they have a specific gender identity or why people *want* to identify as they do. Bettcher's existential account can answer why people *want* to identify as they do. As Bettcher says:

[E]xistential rather than metaphysical self-identity illuminates the centrality of reasons in conferring intelligibility on a person's act of self-identifying. One's understanding of what is important is fundamental to one's reasons for acting, and so one's existential self-identity is the anchor of the narrative. While metaphysical narrative can include behavior-governing norms (e.g., I am a woman, I must gender present and self-identify in these ways), it does not explain why these norms should be taken seriously. Only a final appeal to one's existential self-identity can explain this motivation; only an existential self-identity is essentially bound up with reasons for acting.⁴⁴

The key point here is that metaphysical accounts cannot explain the personal significance of the behavior-governing norms they issue in a way that explains why someone would want to identify with them. This inability can be shown using Jenkins' example of the hairy-legged woman. Jenkins uses this example to explain why, on her account of gender identity, a person can take a norm as relevant to themselves and yet not desire to follow it.

⁴⁴ Bettcher 2009, pg. 111

As discussed in section 2.3., Jenkins' account roughly says someone is a woman if they take more feminine norms, relative to all other gender norms, as relevant to themselves (which is true on her account for any gender identity). Again, taking a norm as relevant to oneself means that one feels they ought to comply with that norm. However, Jenkins shares the story of the hairy-legged woman who feels pressure to shave her legs and yet does not, as an act of defiance against gender norms she is critical of.⁴⁵ This is an experience I think many people of all genders, cis or trans, will find to be common. A person can be categorized by some metaphysical account as (or simply believe they are) a man or a woman and yet not desire to conform to all or even most stereotypically masculine, feminine, non-binary, or any other gender norms. They may even hate the expectations such norms create and feel alienated by them. If people do not value the gender category they find themselves in or the norms it issues, that category can become a prison and thus create a kind of unfreedom.⁴⁶ While Jenkins' account can explain why a person would feel the expectation to conform to a specific gender identity and the norms it issues, it struggles to explain why a person feels an affinity that causes them to accept or reject those norms and identities. So, it struggles to explain the personal significance of someone's self-identified gender in some cases.⁴⁷ Thus, we can see how Jenkins account serves as an example of Bettcher's more general critique of metaphysical accounts of gender identity metaphysical accounts struggle to explain why people choose to take on specific gender norms and identities. This explanatory gap

⁴⁵ Jenkins 2018, pg. 731

⁴⁶ This may not be a problem for accounts of gender identity that would leave gender identities up for complete self-definition by self-identifying individuals, such that being a man, woman, or non-binary can be whatever the individual decides. However, philosophers have so far tended to resist such moves and want to tie metaphysical accounts of gender identity to existing gender norms.

⁴⁷ I think Jenkins' account captures an important aspect of the internal experience created by the dominant conceptions of gender identity that we are socialized into in childhood. Many cis and trans people experience an internalized self-expectation to conform with the gender they were assigned at birth, and this internalized experience is continually socially reinforced through the reactions of others when we break those norms in public. It also explains quite well some trans people's experience of their self-identified gender. However, it cannot explain every trans or cis person's experience of their self-identified gender.

is especially true when metaphysical accounts assign people a gender they do not self-identify with.

Furthermore, given the problems the example of the hairy-legged woman generates for Jenkins' account, it is not clear her account can explain why people *want* to identify as they do using her concept of relevancy.⁴⁸ For example, Bettcher has noted that many transwomen who were socialized and raised as men will often experience masculine norms as relevant to themselves and may even feel they are violating them when they present in alignment with their self-identification.⁴⁹ In this case, a person takes norms from a gender identity they do not self-identify with as relevant to themselves. Thus, in such cases, Jenkins' account faces an explanatory gap her own desiderata suggest an account of gender identity ought to close. Her account cannot explain why a transwoman who still experiences the masculine norms they were raised with as relevant to themselves would want to identify as a woman.

In these kinds of cases where Jenkins' norm-relevancy account struggles, Bettcher's account does not. Bettcher's account can explain why people want to identify the way they do by pointing at their self-regarding beliefs (whether true or false) and the evaluations that give their self-identifications importance to themselves. This importance then explains their reasons for adopting and acting out their gender identity. If someone sincerely believes they have a certain

⁴⁸ Moreover, explaining why someone wants to identify as they do is unnecessary for the move Jenkins employs to ground the demand for respect on her account. Jenkins tells the story of a transwoman who wears a nice dress to a formal event, like a wedding. However, the transwoman is perceived by others to be a man and wrongly interpreted as attempting to undermine the formality of the event. Jenkins then argues, using Alissa Bierria's work on social agency, that this interpretation of the transwoman by the other attendees constitutes a kind of disenfranchisement by depriving them of "the authority to prompt social recognition of one's intentions" (Jenkins 2018, pg. 732). But as Bettcher's example explaining how many transwomen who were socialized and raised as men will experience masculine norms as relevant to themselves shows we do not need norm relevancy to explain the kind of disenfranchisement Jenkins is talking about. Taking norms as relevant to oneself is not needed to create the disenfranchisement of one's intentions. This kind of disenfranchisement can occur even to those whose gender identities fail to meet the demandingness of Jenkins' or any other account. One might take masculine norms as relevant to oneself and yet still intend for others to interpret oneself in a feminine light.

⁴⁹ Bettcher 2017, pg. 396

gender identity and value that identity, it is clear why they would want to identify that way, even if they do not take the norms of their self-identified gender as relevant to themselves in the way Jenkins describes. The fact that people value their identities can be the property Jenkins is looking for, which explains why people want to have identities as they do. However, perhaps Jenkins does not think explaining why people *want* to identify as they do enough. She may think we must also explain what it is they *express* when they identify that way.

3.2.2 Whatever It is that People Express when They Identify

A cheap way of responding to this would be to simply say that what people are expressing is that they believe they have and value having their self-identity. However, I do not think that this is what Jenkins is looking for. I think she is asking the question metaphysical accounts tend to. That is, 'What list of traits does this person have that would allow them to belong to a more demanding category of gender?', much like her own account generates. I think this is the wrong thing to demand because I do not think it is where the personal significance of gender identity lies. And, for me at least, it is the personal significance gender identities have to those who self-identify that seems to matter most when asking questions about the importance of gender identity. I will attempt to show this with an example, again, in the vein of Jenkins' hairy-legged woman.

Here is why I think the question of why people want to identify is more important than the question of what they express: A person who cares very little about their gender self-identity could find themselves having a robust metaphysical gender self-identity because they have good fit with some account of gender identity's standard. Accordingly (though they care very little), their gender identity would (if I am interpreting Jenkins correctly) be demanding of respect. And at the same time, a person who cares very much about their gender self-identity could find

themselves, according to some accounts, having good fit with a gender other than the one they identify with. Thus, if metaphysical robustness is what generates a demand for respect for gender, the gender they identify with will demand little respect, according to that account.

If we are trying to explain why trans identities deserve respect, we do not want our account assigning respect to gender identities people do not care about or self-identify with. Furthermore, it is not clear why a gender identity's being metaphysically robust would make it demanding of respect. Electrons are metaphysically robust entities and yet that does not make them objects demanding of respect.⁵⁰ I would posit that because people's self-identified genders are often deeply significant to themselves (enough so that not respecting them tends to generate harm) and that generally in self-identifying they do not harm others we have prima facie reason to offer respect for people's self-identified genders. Such a position would seem to be in line with common arguments from tolerance. If this is right, why people want to identify as they do is more important than what it is they express, and Bettcher's account can explain why people want to identify as they do. Thus, if when it comes to demanding respect why people want to identify is more important than what it is they express, Bettcher's account can ground demands for respect.

However, Jenkins' demand for respect seems to be after more than just a prima facie demand for respect. What I take her to want (and what I think we need) is an argument for why trans identities ought to be a protected class. Showing that trans identities deserve prima facie respect is not going to be enough to make them a protected class. Thus, the problem is with Jenkins' desiderata. The demand should not be for respect but instead protection from

⁵⁰ Thanks to Dan Weiskopf for this example.

discrimination and an appeal to what gender identity is (no matter how metaphysically robust) does not seem like a promising route to ground such demands. We need to look elsewhere.⁵¹

I suspect that the problem may not be that we must show that gender identity is morally significant and thus demanding of respect, rather that it has been improperly moralized. The problem seems to me that being trans has been marked as immoral, but it ought to lack moral significance in the same way that being heterosexual is morally insignificant. No one cares if you are heterosexual, and you will not be marked for discrimination or any other form of subordination because one is heterosexual. Being trans ought to have the same status.

I take myself to have shown that Bettcher's account can ground a demand for respect, as Jenkins' desiderata require. However, we must still ask, can Bettcher's existential account of gender identity ground *the need for healthcare*?

3.3 The Need for Healthcare

Jenkins' second criticism of Bettcher's account is the objection from healthcare. This objection comes from desiderata D3, which is meant to ground *the need for healthcare*. It is "the idea that some trans people have a need for transition-related healthcare that is based on their gender identity."⁵² This need includes affordable and non-burdensome access to medical procedures like hormone therapy and transition-related surgeries.⁵³

3.3.1 The Objection from Healthcare

In arguing that Bettcher's existential account lacks the metaphysical resources to ground D3, Jenkins says, "it is difficult to perceive any relationship at all between a linguistic disposition and the sort of felt need for one's body to be different that would prompt the desire to access

⁵¹ Thanks to Dan Weiskopf for suggesting this response to Jenkins' first desiderata.

⁵² Jenkins 2018, pg. 721

⁵³ Jenkins 2018, pg. 720

transition-related healthcare.”⁵⁴ Jenkins is claiming here that we need metaphysical reasons deeper than the mere claim that I identify as X gender in order to ground a need for transition-related medical care. Put differently, she says:

[I]f it were seen as a complete coincidence that...a particular individual (a) is a trans person with a male gender identity, and (b) feels a need for top surgery, it would be difficult to explain why his need to access to transition-related healthcare is properly understood as a trans right issue.⁵⁵

I think Jenkins is correct here. A person will likely not experience a felt need for medical transition unless they have a metaphysical self-conception that says something like, 'Women have developed breasts; I am a woman; therefore, I should also have developed breasts.'

Bettcher's account may seem ill-equipped to capture such experiences. However, as we have seen, Bettcher's account does not describe a mere disposition to claim one has a particular gender identity. It includes other resources, like the beliefs one holds (true or false) both about the world and oneself. Is it then possible that existential identities can ground a right to healthcare?

3.3.2 Responding to the Objection from Healthcare

Here again, it is important to note that Bettcher says, "unlike metaphysical self-identity, existential self-identity is not a *conception* of self."⁵⁶ As self-conceptions, metaphysical identities will contain ideas like 'I am a woman. Therefore, I ought to have developed breasts.' But Bettcher also says, "unlike metaphysical self-identity, existential self-identity is not a *conception* of self. Rather, the fact that one holds all of the beliefs that one holds (true or false, self-regarding or not) goes into the set of facts that determines 'who one is, really.'"⁵⁷ When Bettcher uses the phrase "who one is, really," she is referring to existential identities. Thus, while

⁵⁴ Jenkins 2018, pg. 728; see also pg. 720 for a similar point.

⁵⁵ Jenkins 2018, pg. 720

⁵⁶ Bettcher 2009, pg. 110

⁵⁷ Bettcher 2009, pg. 111

existential identities are not themselves self-conceptions, they do contain the beliefs that make up our self-conceptions. That means that beliefs about how one's body ought to be are also contained within our existential gender identities. If someone holds the sincere belief that they are a woman and, therefore, should have a certain kind of body, it makes sense that they would have a felt need to medically transition. It follows then that if such beliefs are contained within existential identities, Bettcher's account can explain why someone would have a felt need for transition-related care. Furthermore, such a belief can create a felt need for transition-related care even if a person fails to have good fit with some metaphysical account of gender identity.

The primary difference here between Bettcher's account and metaphysical accounts like Jenkins' is that one need not have good fit with a metaphysical account of gender identity that has a demanding standard for a right to healthcare to be grounded. For Bettcher, the belief that one is a woman and thus ought to have a different body is enough, and these beliefs can be supplemented by our values. For example, one might feel happier and more themselves when they present and are perceived or treated by others as a woman. This experience generates reasons that cause them to value their sincere identity as a woman; nothing else needed.

4 THE TRANSFERENCE PROBLEM

In fact, the demand that someone have a metaphysically robust gender identity actually generates problems for grounding the right to healthcare and respect on Jenkins' account. Jenkins created her account to ground trans rights, believing it provides the needed metaphysical resources to do so. However, as was noted in section 2.3., because of her account's metaphysical demandingness, it will assign some people a gender different from the one they self-identify with. This creates a problem for Jenkins. If an account of gender identity metaphysically assigns people a gender different from the one they identify with, then it cannot provide those it misgenders against their self-identifications with the metaphysical resources Jenkins argues are necessary to ground a demand for respect (requirement D1: that an account show why gender identity deserves respect) and access to transition-related healthcare (requirement D3: why having a certain gender identity would create a felt need for transition-related care).

This inability to ground the desired metaphysical resources results because when an account of gender identity logically entails that a person has a gender they do not identify with, it creates what I call a *transference problem*. If an account assigns a person a gender different from the one they self-identify with, then it cannot transfer upon them the metaphysical weight or importance it is supposed to provide that person's self-identified gender. Instead, it would transfer upon them the metaphysical importance of a gender other than the one they identify with.

Jenkins is aware that her account will assign some people a gender different from the one they self-identify. She acknowledges this when she says, "it is clear that the norm-relevancy account does *not* entail that everyone is always right about their own gender identity."⁵⁸ In

⁵⁸ Jenkins 2018, pg. 733

response to this problem, she argues that an account of gender identity can assign someone a gender different from the one they self-identify with so long as it does not ethically require us in practice to misgender them against their self-identifications.⁵⁹ She then argues that we ought not to misgender people against their self-identifications because of "the ethical badness of failing to treat another person's avowals as decisive."⁶⁰ However, this highlights a major tension in Jenkins' work, and it does not get her around the transference problem.

To bring out this tension it helps to work through how Jenkins' might respond to my objection. She might say that an account of gender identity only requires compatibility with D1 (the demand for respect) and D3 (the need for healthcare) it need not ground these two desiderata. If Jenkins made this move her account would then avoid the transference problem. However, her arguments in defense of her own account and the objections she raises against Bettcher's rest on issues of grounding and not compatibility. To see this, let us look at how Jenkins uses her own account to ground both the demand for respect and the need for healthcare and how she argues that Bettcher's account fails to do so.

Jenkins uses Alissa Bierria's work on social agency and disenfranchisement to show how her account grounds a demand for respect. Bierria argues that agency has social aspects. She notes that agents act on the presumption that their actions will also communicate at least a partially accurate sense of their intent to observers.⁶¹ When an agent's intent receives uptake from others it empowers them as the social author of their own autonomous action.⁶² Jenkins then uses this concept of social agency to link the demand for respect to her norm-relevancy account.

⁵⁹ Jenkins 2018, 732

⁶⁰ Jenkins 2018, pg. 719

⁶¹ Jenkins 2018, pg. 732

⁶² Jenkins 2018, pg. 732

To do this, she tells the story of a transwoman attending a formal event. She wears a nice dress with the intent to match the formality of the event. However, those at the event others perceive her to be a man and believe she is wearing the dress in an attempt to undermine the formality of the occasion.⁶³ Thus, she is deprived of the authority to prompt the social recognition of her intentions. According to Bierria, this constitutes a kind of disenfranchisement. Jenkins then links this disenfranchisement to her account by arguing that part of what constitutes this as a wrong is the fact that this transwoman takes the norm⁶⁴ of dress wearing as relevant to herself in virtue of her gender identity. Thus, it is a kind of disenfranchisement that results directly from her having the gender identity of a woman according to the norm-relevancy account. In tying the demand for respect directly to her account of gender identity Jenkins is showing she wants grounding not compatibility.

When it comes to Bettcher's SSI account, Jenkins thinks the account's inability to ground a demand for respect is precisely what is wrong with Bettcher's account. As we have seen Jenkins thinks Bettcher's account reduces to a mere disposition to make certain kinds of assertions. She argues that such a minimalist take trivializes gender identity arguing that the minimalism of Bettcher's account "leaves the account without resources when it comes to showing why gender identity is significant."⁶⁵ If Jenkins were merely after compatibility, Bettcher's account being minimalist (which I have attempted to show it is not) would be fine. An account's being minimal does not make it incompatible with a demand for respect, but minimalism is a problem if Jenkins is after grounding.

⁶³ Jenkins 2018, pg. 732

⁶⁴ Again, to take a norm as relevant to oneself is to under the behavior governing rules issued by that norm s relevant to oneself.

⁶⁵ Jenkins 2018, pg. 739

We can see Jenkins' demand for grounding with the need for healthcare as well. She notes that in contemporary society, gender norms also include norms about how bodies should be and that these norms provide a link between gender identity and properties of the body, usually considered to be sex characteristics. So, it follows that a person who identifies as a man would experience the norm that men should not have breasts as relevant to themselves. This would then justify the need for a transman to get a mastectomy on the norm-relevancy account.⁶⁶ Again, this is another clear case of grounding. Jenkins takes it that the need for healthcare should be directly derived from the resources provided by an account of gender identity.

And again, Jenkins argues against Bettcher's account on the premise that it cannot ground a need for healthcare. Saying "it is difficult to perceive any relationship at all between a linguistic disposition and the sort of felt need for one's body to be different that would prompt the desire to access transition related healthcare."⁶⁷ Jenkins takes it that an account of gender identity must either be able to explain or generate a felt need for it to justify a need for healthcare. Once again, we have a clear demand for grounding.

But this is where the tension in Jenkins' work comes out. If grounding is needed to justify the demand for respect and the need for healthcare the transference problem will prevent grounding from taking place when the norm-relevancy account misgenders people against their self-identifications. Hence, Jenkins tries to save her account by arguing that it does not ethically require us to misgender people against their self-ascriptions. But this move alone does not save her from the transference problem. Even if Jenkins' account does not ethically require us to misgender people against their own self-identifications it cannot ground a demand for respect or

⁶⁶ Jenkins 2018, pg. 733-734

⁶⁷ Jenkins 2018, pg. 728

need for healthcare for those it does misgender against their self-identifications, and as we have seen Jenkins is arguing that our accounts ought to ground these demands.

Thus, Jenkins has one of two moves available to her: 1) she admits the limitation of her account and accepts that it cannot ground a demand for respect or need for healthcare for those it misgenders against their self-identifications, or 2) she argues that the ethical badness of misgendering people against their self-ascriptions can ground the demand for respect and need for healthcare. The first is a move Jenkins likely will not want to accept given that her aim is to create an account that can defend the aims of trans activists.⁶⁸ If she accepts the second, her objections to Bettcher's account fall flat and she must accept that a minimalist account of self-identification can do all the needed work. To go this route, Jenkins would have to give up her desiderata, but D3 (the demand that our account of gender identity explain the need for healthcare) seems genuinely needed to aid trans rights activists. Given Jenkins's aims, being stuck with these two outcomes is a fatal problem for her project. However, as I hope to have shown, Bettcher's account is not so minimalistic that it cannot meet Jenkins desiderata and at the same time it avoids the transference problem. Being able to avoid the transference problem gives Bettcher's account a major advantage over Jenkins' account and other metaphysical accounts of gender identity generally.

⁶⁸ Such a move would seem inconsistent with her aims. Jenkins takes herself to be making an ameliorative account of gender identity specifically designed to support the aims of trans rights activists. Ameliorative accounts can best be understood by contrasting them with descriptive accounts. Descriptive accounts attempt to describe the world as it is, they attempt to 'carve nature at its joints'. Thus, a descriptive account of gender identity would seek to discover on as objective of grounds as possible what gender identity is. Ameliorative accounts are not concern with 'carving nature at its joints.' Ameliorative accounts are, instead, a kind of conceptual engineering. They start from explicitly normative presuppositions and attempt to engineer a concept that best meets their desired end. Jenkins understands her norm-relevancy account as an ameliorative not descriptive account of gender identity (Jenkins 2018, pg. 715).

5 CONCLUSION

The main goal of this paper was to show the ethical primacy of existential gender identities over metaphysical gender identities. However, none of this has been to say that metaphysical gender identities do not matter. Such accounts are useful in helping cis people understand trans experiences. And while trans people do not need the understanding of cis people to be legitimate, when cis people are better able to understand the experiences of trans people, they gain legitimacy in the eyes of cis people. Subsequently, as more cis people see trans identities as legitimate, the oppression of trans people becomes less severe. Furthermore, and perhaps more importantly, metaphysical accounts can help trans people better describe, explain, and understand their own experiences. As Bettcher says, "it is difficult to pull apart metaphysical self-identity from beliefs about one's existential identity. After all, the belief one is a woman may be a belief about both what one is and who one is."⁶⁹

My point is only to say that in legal and ethical contexts where trans-identities and rights are of concern, existential gender identities must take precedence over metaphysical identities, as our existential identities give metaphysical identities value in the first place. Not only this, but existential identities tell us something deeply profound about a person, even when metaphysical identities fail. In this sense, existential identities tell us something important about people that metaphysical identities alone cannot.

⁶⁹ Bettcher 2009, pg. 111

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