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Contesting Gender Concepts, Language and Norms: Three Critical Articles on Ethical and Political Aspects of Gender Non-conformity

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A thesis submitted in partial fulfillment of the requirements for the degree in Doctor of Philosophy

CONTESTING GENDER CONCEPTS, LANGUAGE AND NORMS: THREE CRITICAL ARTICLES ON ETHICAL AND POLITICAL ASPECTS OF GENDER NON-CONFORMITY

(Thesis format: Integrated Articles)

by

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Abstract

My thesis considers ethical and political aspects of gender non-conformity. Prominent in all three articles is the idea of contestability: conceptual (semantic), moral, and political.

In my first article, I present two arguments related to resemblance accounts of the category WOMAN. First, I critique some contemporary family-resemblance approaches to the category WOMAN, and claim that they do not take sufficient account of dis-semblance, that is, resemblances that people have in common with members of the contrast category MAN. In the second argument, I analyze how the concept of WOMAN is semantically contestable, that is, resemblance/dissemblance structures give rise to vagueness and to borderline cases. Borderline cases – for example, transgender or intersex persons – can either be included in the category or excluded from it. The factors which incline parties in a dispute about membership to include or exclude such persons depend on metaphysical, ethical, or political background assumptions.

In my second article, I begin by considering the harms suffered by transgender persons through "misgendering", that is, the intensional or extensional deployment of gender terms which inflict psychological harms upon transgender persons, place them in situations of injustice, or diminish their self-respect. Such deployments are morally contestable, that is, they can be challenged on ethical grounds. Several characterisations of the term 'woman' proposed in the feminist literature are critiqued from this perspective. These characterisations possess two defects in the context of political struggle: they either exclude at least some transgender women, or else they implicitly foster hierarchies among women, marginalising transgender women in particular.

In my third article, I elaborate a broadly liberal approach to gender pluralism. The approach involves: i) the public toleration of gender practices and beliefs which contest prevalent gender expectations and modes of gender ascription; and ii) state-gender neutrality. Public toleration allows gender practices and beliefs within public space that do not conform to socially prevalent norms regarding gender and its expression. State gender-neutrality consists mainly in the removal from law and government policy of provisions which assume compliance with prevalent conceptions of gender. Together, public toleration and state gender-neutrality help ensure the contestability of prevalent gender norms.

Keywords: Contestability, gender non-conformity, transgender, definitions of 'woman', family-resemblance, vagueness, misgendering, hermeneutical injustice, public toleration, state neutrality, social norms, contestatory vigilance.

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I gained valuable knowledge about transgender experiences of marginalisation from numerous discussions with many transgender folks and allies from the trans community in London, Ontario. I can say that this research was inspired by their testimonies. Many of the ideas contained in this dissertation have been commented upon by various people, and I have benefited greatly from their insights. Parts of the work were presented at conferences, such as at the Canadian Philosophical Association annual meeting at Brock University in 2014, at the Society of Women in Philosophy (UK) panel at the Joint Session of the Mind Association and Aristotelian Society, University of Cambridge, in 2014, and at the Association for Legal and Social Philosophy Annual Conference at Leeds University in 2014. I would like to thank all those who took the time to come to my talks and discuss my work, both at Western and at other venues. In this regard, I would particularly like to thank Reuven Brandt, Katharine Jenkins, Sune Lægaard, Kathleen Okruhlik, Jennifer Saul, and Meghan Winsby.

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Introduction

Up until the end of the first decade of the 21st century, the word 'transgender' was an umbrella term encompassing a whole gamut of identities, as well as social and cultural practices: transsexuals, cross-dressers, transvestites, drag-queens and kings, gender-queer, androgyne, etc. (Ekins and King, 2006). More recently, one also finds the term 'trans' as a stand-alone term: one speaks of a 'trans woman', a 'trans man', or 'trans people' (Bettcher 2014; Shelley 2008). In North America and Europe there seems to be increasing media interest in trans people and their communities, communities which – according to Stephen Whittle – "have created new industries, a new academic discipline, new forms of entertainment" whilst at the same time offering "new challenges to politics, government, and law" (Whittle, 2006).

Discussion of trans people and their claims have recently been prominent in the media. In 2014, *Time Magazine* featured Laverne Cox, the transgender star of the Netflix series *Orange is the New Black* on its front cover, claiming that transgender rights constitute 'America's next civil rights frontier' (Steinmetz 2014). Nevertheless, there is still no general consensus about whether transgender women are really 'women', and in what sense (Williamson 2014). The recent gender transition by the ex-Olympian and reality-TV star Caitlyn Jenner has generated discussions about 'who is a woman' in the press and on social media (O'Neil 2015). Jenner has been praised by some for her bravery and determination in being who she is; by others she has been maligned for embodying harmful stereotypes of womanhood. Still others have doubted whether she is a woman at

all, basing their arguments on her lack of typically ‘female’ experiences, such as those of menstruation, or of the fear of rape (Hadley 2015).

My doctoral thesis undertakes philosophical analysis of transgender experiences and of the structures of injustice toward gender non-conforming persons in general, focussing on three aspects of the way gender is understood and enforced in society: social gender norms, gender concepts and categorisations, and gendered language use. It thus fits comfortably into a contemporary western cultural debate. Yet being topical cannot be the most important motive for reflecting philosophically about gender norms, concepts, and language. As gender non-conforming persons, transgender persons are subject to real injustices and vulnerabilities, real in the sense that the gender norms they are exposed to have real, concrete, burdensome, and harmful effects on their lives. Ethical and political reflection is called for in order to deepen understanding of these harms, as well as to open up normative perspectives for eradicating or mitigating them. I aim in my thesis to make a positive and original contribution to these tasks.

The terminology around transgender persons is still evolving. I take the term ‘transgender’ to denote people who do not conform to dominant gender norms or language use. But the term ‘transgender’ has recently been contrasted to other terms, such as ‘transsexual’ so that the term ‘trans’ seems more appropriate as an umbrella term encompassing gender non-conforming persons (Bettcher 2014). Although I specifically discuss transgender women and their experiences at several points in this thesis, in my more general considerations persons who do not conform to prevalent gender norms within society are denoted by the term ‘gender non-conforming’ or simply ‘trans’.

What do I mean more specifically by gender non-conformity? A detailed account of gender non-conformity is presented in chapter three. Employing Anthony Appiah's notions of social scripting and the legitimate ascription of social labels (Appiah 2005), I present what I call the *Prevalent Gender Structure* of western society. This consists of a series of general socially normative rules for ascribing the genders 'woman' or 'man', and for specifying the normative content of these terms. The latter is called *scripting*. There are, I claim, five basic rules for gender ascription: The *gender extension rule* (gender labels are applied to all human embodiments); the *biological determinism rule* (the genders 'woman' and 'man' are aligned with clear and unambiguous physical characteristics that have a determining, causal influence on gender identity); *the gender invariance rule* (once assigned, gender labels are permanent); *the gender exclusivity rule* (the gender labels are mutually exclusive); and *the bi-gender exhaustivity rule* (the gender labels 'woman' or 'man' are the only ones available). There is one rule for gender scripting which I formulate rather broadly: the *gender expectations rule*. The latter encompasses all the socially normative behaviours, attitudes, emotional states expected of those labelled 'woman', respectively 'man'. Gender non-conformity arises because people dis-identify with one or more of these rules. By 'identification' with a rule I mean the appropriation within one's life of its regulation and demands, and the structuring of one's social relations in accordance with it. Dis-identification occurs when this is not the case, or is not the case to a socially significant extent.

Although I discuss at length prevalent social norms around gender, metaphysical views about the category WOMAN,[1] as well as various authors' definitions of 'woman' and 'man', my own project does not focus on the 'correct' metaphysics of WOMAN or other gender categories, nor on how we should define the term 'woman', but rather on the *contestability* of gender norms, as well as of the definitions, characterisations and uses of gender terms. This is so, because my emphasis is on the exclusionary and marginalising potential of all such definitions or characterisations. My point is to indicate how particular metaphysical or semantic conceptions of WOMAN are open to challenge, and I do this by analysing the conditions of possibility for challenging them. These conditions of the possibility for challenge constitute what I call 'contestability'. Inasmuch as challenging gender norms and the uses of gender terms can be understood as a form of resistance to them, understanding contestability gives us philosophical insight into how resistance to gender norms, conceptions, and language use is semantically, ethically, and politically justified.

Resistance to gender norms and gender-based oppressions has been an important element in critical feminist reflection upon our understandings of 'woman', 'man', and other gender categories. What I call transfeminist philosophy – I will presently outline what I mean by this – places central emphasis on this element. The present thesis aims to give a transfeminist analysis of the contestability of gender norms and language.

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[1] I use small capitals when designating a category, single inverted commas when discussing a term, and normal script when denoting members of a category. Thus, WOMAN denotes a category, women are members of the category, and these members are denoted by the term 'woman'.

My notion of contestability is articulated in the three articles of the present integrated-article thesis as: semantic contestability, moral contestability, and political contestability, respectively. In the present introduction to the thesis, I briefly describe the free-standing articles and explain how they are thematically and methodologically linked. Then I discuss in more detail what a transfeminist philosophy might be. Finally, I provide substantial summaries of each of the articles.

The Unity of the Three Articles

Gender non-conforming persons are not a homogeneous group. Despite the presence and media-backed dispersal of 'standard narratives' of who trans people are, and what they experience, there is no uniform template into which the phenomenon of gender non-conformity can be pressed. Perhaps the one over-arching characteristic of such persons is that they do not "conform to the social expectations for their assigned sex at birth" (Currah, Juang, and Minter 2006, xiv). More generally, however, one could say – as noted above – that they do not identify with one or more socially prevalent rules regarding gender. For example, some wish to remain within a gender binary, with scripted gender identities, that is, they identify with the gender expectations rule as well as with the bi-gender exhaustivity rule and the gender exclusivity rule of the Prevalent Gender Structure. Others, on the other hand, wish to move 'beyond' gender, that is, they dis-identify with most or even all of the rules of the Prevalent Gender Structure. It is this tension between 'identity politics' and 'queer politics' (cf. Broad 2002) which, I believe,

is characteristic of the trans movement and of gender non-conformity in general.[2] This tension is very difficult to accommodate theoretically. I have thought it best not to lay down detailed specifications of 'woman', 'man' or other particular gender categories, but rather take the option of showing how all of them are *contestable*. It is thus the notion of contestability of gender that emerges as the guiding thread of my research.

In this section I outline the basis of the integration of the three articles within the thesis. The three articles exhibit a certain thematic unity, common sources, as well as a unified methodological standpoint:

1. As regards content, all three articles propose reasons and arguments for the just and inclusive treatment of gender non-conforming persons within society. This constitutes their thematic unity. As already stated, I do not advocate any particular conceptions of 'woman', 'man' or other genders. Rather, my point is that, whatever social understandings and social norms of gender dictate, those understandings and norms are subject to semantically, morally and politically grounded *challenge*. Each article presents conditions for contesting gender meanings, language or norms from a distinct perspective. In the first article, I deal with semantic contestability, that is, the properties of conceptual structure which ground the possibility for contesting membership in gender categories. I also touch on certain non-semantic conditions for contestability, such as the evaluative force assigned to conceptions of gender by diverse groups within society, as well as degrees of political organisation around gender issues. In the second chapter, I

[2] There are certainly interesting parallels – and tensions – within the intersex movement (Spurgas 2009).

consider a morally grounded type of contestability. Deployments of gender terms, whether connotational or denotational, that cause psychological, moral or political harms to transgender persons in particular are open to challenge on moral grounds. In chapter three, my focus moves away from concepts and language to gendered social and political power. Although not explicit in the body of the chapter, one can understand my proposals in this chapter as further explicating some political conditions that would support the public contestation of prevalent notions and expectations (social norms) around gender within western society. The third chapter thus elaborates a more specific account of conditions for the social and political contestability of prevalent gender norms.

2. As regards *sources*, these are interdisciplinary. But they are unified by the notion of minority group or social non-conformity. Discussions in the general philosophical literature of vagueness and the structure of concepts are prominent, as these have proved very useful in analysing persons who find themselves at the periphery of gender-category membership. I also undertake critical reflection upon works of political philosophy which treats of toleration, recognition, and inclusion, remaining principally within the analytical tradition, but also drawing on some ideas from continental philosophy. Moreover, since the transgender studies literature is heavily influenced by feminist philosophy of many hues, as well as by queer studies, ideas from those areas inevitably find a place within the thesis.

3. As regards *method*, I implicitly – and rather explicitly in chapter two – adopt a type of *standpoint theory* (Harstock 1983; Kenny and Kinsella 1997; Wylie 2003)

> in which I assume that gender non-conforming persons possess epistemic privilege or, at least, valuable insights with respect to gendered and sexed embodiment and how language, notions and expectations relating to them function within society. More specifically, I adopt the oppressed position of gender non-conforming persons, in particular, of trans people, and theorize from the point of view of the forms of injustice and the vulnerabilities they experience, treating these as *bona fide* injustices and vulnerabilities, and not as imagined harms or as the deceitful ruse of a minority attempting to disseminate the latest version of political correctness.

The latter, third point regarding method warrants a somewhat broader excursion into what I mean by transfeminist philosophy.

A Characterisation of Transfeminist Philosophy[3]

I accept as given that, just as a specifically feminist philosophy has furthered a philosophically critical awareness of women's issues and oppression, so a specifically transfeminist philosophy will further philosophically critical awareness of trans issues and oppression against gender non-conforming people. But how are we to conceive of a specifically *trans*feminist philosophy?

I shall venture to propose a working characterisation of 'transfeminist' in its application to philosophy. It is meant to serve continued philosophical discussion about gender. That

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[3] I would like to thank Katharine Jenkins for helpful discussion regarding what transfeminist philosophy might be, and the usefulness of introducing the notion.

is why I call it a working characterisation not a definition. It is certainly not intended to be definitive. In fact, quite in line with the philosophical threads of this thesis, I suspect it is vague and contestable. Such a characterisation is, nevertheless, still useful as long as it is viewed as a starting-point for debate within analytic philosophy about the ways genders are constructed and prescribed.

Some remarks are in order. First, like feminist philosophy, transfeminist philosophy will be particularly engaged in a spirit of solidarity with the perspective of an oppressed population, without, of course, being uncritical toward that community. This is what I call 'critical responsiveness'. In the case of transfeminist philosophy, the oppressed population is the trans or gender non-conforming community. We may not be able to circumscribe this community exactly. There will be borderline cases of who is 'gender non-conforming' (or 'trans' or 'transgender') and who isn't, and political contests may arise around this issue. But this fact does not mean that the characterisation is useless, for – as stated above – eliciting contest is justified if it aids understanding and furthers just political goals. Second, the 'feminist' in 'transfeminist' is motivated by the historical circumstance that feminist philosophy is principally and originally concerned with gender. This point is more intricate than it might seem at first blush. To my mind, transfeminism is not concerned exclusively with trans *women*, but will be critically responsive to what I have generally called 'gender non-conformity' whether expressed and experienced by those who self-identify or are socially identified as 'women', 'men', or others. In addition, the focus on the social reality of gender concerns the starting-point, emphasis or aspectual character of one's analytical approach. It does not exclude questions of race, class, sexual orientation, disability or other axes. Third, in light of the

analysis of social labels in chapter three, and outlined earlier in the present chapter, the characterisation of transfeminist philosophy highlights and generalizes the importance of processes of label ascription. Recall that there are two basic aspects of the Prevalent Gender Structure: gender scripting, and legitimate ascription. I suggest that transfeminist philosophy will focus more on the latter, but will certainly take the former into account insofar as it intends to correctly and critically analyze the way gender labels are ascribed. Fourth, I restrict my characterisation to 'works of philosophy,' by which I mean – broadly speaking – units of discourse: books, articles, talks. I do not exclude the application of the term to particular philosophers (as those who produce transfeminist works of philosophy, for example) but my intention is to desist, as far as possible, from attaching labels to persons.

Given these provisos, I offer the following working characterisation of transfeminist works of philosophy:

> A work of philosophy is transfeminist inasmuch as it undertakes, in a way that is critically responsive to the trans community, philosophical analyses of biological, epistemic, ethical, social, and political processes and procedures involved in the ascription of gender labels to individuals or groups.

This thesis is intended to be a work of transfeminist philosophy.

Summaries of the Three Articles

The thesis contains three articles that are integrated by the theme of contestability.

Chapter One. Disputes over 'woman': Resemblance, Dis-semblance, and Contestability.

In the *Philosophical Investigations* (1953, [2001]), Ludwig Wittgenstein presented a way of viewing collections of equivalent objects (categories) as linked by 'family-resemblances'. Instead of determining sharp definitions for the terms we use to describe collections of things, Wittgenstein suggested that our language use tracks similarities between objects. There are no necessary or jointly sufficient conditions for membership in a category, such as GAME. Instead, there are many similarities among games: teamwork, skill, competitiveness, non-competitiveness, rules, and so on. No game possesses all of these features. What links a game, for example the card game Patience, to the other members of the category GAME is some resemblance to other members of the category. Wittgenstein's account also better explains how the meaning of a term is extended. New objects can become referents of terms such as 'game' provided that they exhibit some resemblance or other to the members of the category GAME. As Wittgenstein noted, categories that are unified by such resemblance relations will exhibit vagueness, that is, the boundary of the category is not sharply delimited. We may remain unclear whether to call a certain activity a 'game' since we may not be able to decide whether that activity exhibits enough resemblances to games. In chapter one I do two things. First, I critique family-resemblance approaches to WOMAN, arguing that resemblance alone is insufficient for deciding category membership. In particular, I explain the important role of dissemblances and contrast categories. Second, I show how – because of vagueness – resemblances and dissemblances render gender categories semantically contestable.

In the first main section of chapter one, I present the system of family resemblances, introducing the notions that will be employed in the rest of the article. First, I show that the overlapping similarities of members of a category can result either in strong

connectivity or weak connectivity. By connectivity I have in mind the degree of featural overlap an object has with other members of the category. Strong connectivity is exhibited in several ways. When an object possesses many features of other members of the category, it is strongly connected within that category since it will have one or more features in common with many members of the category. Alternatively, an object may exhibit features that are particularly common among members of the category. In this case I say that the object exhibits features heavily weighted for membership in the category. They are paradigmatic features for the category. Exhibiting these features, an object is strongly connected to the category. In contrast, if an object has few features in common with members of the category, or possesses features that are not heavily weighted for membership in the category, that object is weakly connected to the category. The most strongly connected members of a category are its paradigmatic members.

An innovation I introduce is to consider contrast categories. I propose that an example contrast category to the category GAME is the category WAR. I show that whether an activity is called a 'game' depends not only on resemblances to members of the category GAME, but also on resemblances to the category WAR. The latter are dissemblances to the category GAME. Dissemblances (resemblances to contrast categories) will weaken connection to the category. In general, even taking dissemblances into account, categories will still possess *vague* boundaries, just as Wittgenstein indicated for family-resemblance categories. There will be cases in which it will not be clear whether an object belongs to the category or does not belong to it. These are borderline cases. Specifically, categories exhibit both combinatory vagueness and degree vagueness. Combinatory vagueness arises when we have a list of features which qualify someone for membership in the

category (resemblances) as well as those that disqualify someone from membership in the category (dissemblances), yet cannot decide which resemblances/dissemblances are necessary, sufficient, or simply more important in deciding membership. Degree vagueness occurs when the resemblance/dissemblances are instantiated in degrees, so that it is unclear to what extent a particular feature should be instantiated to count as a resemblance or as a dissemblance.

It is objects with weaker connectivity to the category that can be borderline cases. One can, of course, stipulate which resemblances/dissemblances are more important and also stipulate to what degree they should be instantiated for membership in the category to be assigned or not. This is a *stipulative conception* of the category. It makes the membership conditions more precise, yet does not, in general, eliminate vagueness for, in some cases, it will still be unclear whether the conditions so stipulated are instantiated or not. Stipulative conceptions – as I show in detail in the fourth section of the chapter – play a role in political dispute.

Family-resemblance approaches to the category WOMAN have become quite popular among feminist philosophers, no doubt with good reason. One advantage of the Wittgensteinian perspective in treating gender categories such as WOMAN is that the lack of necessary and sufficient conditions for membership in the category precludes sharp boundaries, so that exclusionary tendencies in theorizing about ‘women’ are greatly mitigated. Moreover, the very notion of resemblance is a very broad one and can help us understand intersectional approaches to gender, accounting for how race and class interact with gender categories (Garry 2011). A black, working-class woman and a white, middle-class women, for example, resemble each other in some respects and so both are

‘women’. But this does not entail that there is some identical ‘womanhood’ that they have in common, or that they are ‘women’ in exactly the same sense.

The critique I undertake of family-resemblance approaches in the third section of the first chapter is not aimed at the aforementioned advantages of resemblance accounts which do, indeed, allow us to see the unity-among-differences of women. The point of my critique lies elsewhere. I query the common reliance on mere resemblance in such approaches to the category WOMAN. I concede that there are social paradigms of WOMAN. Nevertheless, dissemblances (resemblances to the contrast category MAN) must also be employed to decide membership in the category WOMAN, particularly with borderline cases. Through a detailed analysis of two family-resemblance accounts of woman – that of Jacob Hale and Natalie Stoljar – I show how dissemblance plays a crucial role in deciding membership in the category WOMAN. A consideration I employ in arguing this point is that many ‘non-passing’ transgender women who possess paradigmatically ‘masculine’ features to a significant extent are the object of ostracising and marginalising behaviour from those they encounter on a daily basis. Paradigmatic ‘feminine’ features – such as attire – can, in fact, emphasize the paradigmatically ‘masculine’ ones. This is so because the presence of features from the contrast category MAN inevitably influence the number of, and degree of, features of the category WOMAN that must be exhibited for membership in the category to be assigned to the individual. Paradigmatic features of both the category WOMAN, and of the category MAN must be taken into account to decide the membership of intersex and transgender individuals, in particular. They often present borderline cases of membership. In this respect, the resemblance accounts of Hale and Stoljar should be refined.

In section four, I proceed to the second aspect of my treatment of resemblance and dissemblance with regard to the category WOMAN. I introduce the notion of *semantic contestability*. Semantic contestability expresses a condition for the possibility of contest regarding category membership, in particular, gender-category membership. That condition is constituted by the unclear membership of borderline cases. Many intersex and transgender persons, exhibiting features that connect them to the category WOMAN, as well as features which connect them to the category MAN or to other contrast categories (such as to the category INTERSEX) will be borderline cases. How is one to decide their membership? I adopt Stewart Shapiro's (2006) concept of open-texture: in borderline cases, one is free to decide either for membership or against it without violating the rules of language use. This, in turn, implies that for the purposes of *contesting* membership in the category woman, one can choose the option that excludes transgender or intersex persons or the option that includes them.

Nevertheless, semantic contestability is not sufficient for contests to become a political possibility. For the latter to happen, two additional conditions are required. First, there are parties to a dispute who assign *evaluative force* to their own conceptions of WOMAN, that is, they believe that their own conception is the one that *ought* to be applied, for example in law or government policy. One party usually defends a conception which encompasses paradigmatic features of woman (resemblances), and no paradigmatic features of man (dissemblances), so that the political interest group it represents is clearly within the category WOMAN. The other party – perhaps the transgender of intersex movement – defends a conception that is borderline, with paradigmatic features from the category WOMAN as well as paradigmatic features from other gender categories, such as

MAN or INTERSEX. Both parties adopt stipulative conceptions of WOMAN for the purpose of political contest. The third and final condition for contestability is one which ensures its recurrence within a society. There must, namely, be a tradition of contests around gender categories. I take this tradition to be present in western society. It has produced a general awareness of the importance for law and government policy of contesting gender conceptions. Moreover, where there is a tradition of contestation, it is more likely that groups can freely form around issues of membership in the category WOMAN. These groups will often have counter-cultural practices and language.

Chapter Two. Gender-Term Vulnerability and Moral Contestability

In chapter one I consider the semantic contestability of conceptions of woman, explaining how specific political goals shape the particular features that enter particular conceptions of woman. In the second article, my focus shifts toward various harmful effects some of these conceptions can have if deployed within society, especially with respect to transgender women. From a transfeminist perspective, I argue that such deployments are morally and politically problematic, or *morally contestable*, in a sense to be explained.

The phenomenon I analyse is what I call 'misgendering', an aspect of language use that is of particular concern to many transgender persons. By misgendering I mean not only the use of male pronouns or of designations connoted with being male or with masculinity in referring to transgender women. I broaden the notion to include any deployment of gender terms that exclude transgender women from the category WOMAN, or that hierarchize the category WOMAN in a way that marginalises transgender women. I circumscribe my treatment of the issue by considering so-called 'non-passing' transgender women, that is, those transgender women who do not exhibit enough of the

paradigmatic features of the category WOMAN, and/or who exhibit several of the paradigmatic features of the category MAN (as explained in chapter one). In particular, I adopt the perspective of a particular 'non-passing', transgender woman whom I introduce in the first section of the chapter. I call her Laura. Laura is a fictional character, but relevantly similar to persons I am acquainted with. Imagining her experiences and encounters aids my exposition, and illustrates the notion of *gender-term vulnerability*.

Gender-term vulnerability is the susceptibility to various harms that misgendering can produce. What are these harms? Section two of the chapter presents three types of such harms. The first type is *psychological harm*. Misgendering is a type of microagression. Microagressions are everyday, often apparently 'trivial' verbal or nonverbal slights that communicate derogatory or hostile attitudes toward persons inasmuch as they are members of minority groups. Microagressions have been studied in the context of racial and ethnic-based discrimination and oppression, as well as within the context of homophobia. Recently, some studies have considered microagressions against transgender people, including misgendering. Microagressions lead to real psychological harms, ranging from fear, and a sense of shame, to depression and persistent anxiety.

The second type of harm which arises from misgendering is an *epistemic and moral harm*. Particularly when persistent, misgendering imposes the dominant discourses about gender on social relations in which transgender women such as Laura are engaged. Laura, and others like her, is denied the discursive resources to shape societal understandings of gender; she is also deprived of her right to express a part of her own experience that is particularly important to her. Miranda Fricker (2007) has called this type of denial of discursive resources *hermeneutical injustice*. Besides leading to situations of

hermeneutical injustice, misgendering also *undermines self-respect*. Self-respect encompasses the sense of one's own worth, as well as the confidence to implement one's own life plans, inasmuch as they are one's own and seen as worthy of being pursued (Rawls 1999, 386). Transgender women's gender identity is part of their life plan, and a measure of their own personal worth. Misgendering diminishes the public acknowledgement of this worth and erodes confidence in one's own worth and in the value of pursuing any plans for life.

Finally, the third type of harm that arises from misgendering is *political harm*. If definitions of who a woman is misgender transgender women like Laura, so that she is a 'man' in the eyes of the law and of the state, then she will be subject to additional burdens and discrimination to which citizens should not be subject, and she may have limited access to goods and services.

The harms produced by misgendering are taken as a given for the rest of the article. In section three, I proceed to study gender-term deployments in two basic modalities: *intensional* and *extensional*. Intensional deployments of the term 'woman' associate particular propositional descriptions with the term, so that whoever satisfies the description is called a 'woman'. Extensional deployments, on the other hand, focus on language use and consider the class of referents that are denoted by the term 'woman'. Intensional deployments focus on the sense, meaning, or connotation of the term 'woman'. Extensional deployments focus on the referents, or denotation of the term 'woman', on what is sometimes called its 'ostensive definition'. In deploying a gender term with respect to our non-passing, transgender woman Laura, we can consider whether Laura satisfies a certain description associated with the term 'woman' (this is an

intensional deployment) or whether competent language users denote Laura as a ‘woman’ (this is an extensional deployment).

In the remaining parts of section three, I argue that both linguistically normative intensional and extensional deployments of gender terms can be problematic in relation to persons who are gender-term vulnerable. In particular, in the light of past and present ‘expert’ descriptions of the ‘homosexual’ and the ‘transsexual’ within the field of psychiatry, I indicate how particular expert descriptions of ‘woman’ and ‘man’ are morally problematic, and can simply reinforce socially normative conceptions of gender. When it comes to intensional gender-term deployments, ‘expert’ opinion can be socially prejudiced. Thus, the normative requirement of ‘deference’ to such opinion in the question of the linguistic use of gender terms is significantly weakened, and can be overridden if deployments are psychologically, morally, or politically harmful. I make a similar argument as regards the way ‘woman’ is deployed as a natural-kind term on the basis of physiology and physical sex. Medical and other professionals are not morally justified, I claim, in deploying terms in this way toward Laura, and other transgender women. In such cases, epistemic considerations and standard uses of ‘terms of art’ (for example, the use of the term ‘woman’ within the medical profession) are trumped by ethical considerations, given the harms gender-term deployments can cause (as outlined in section two). As regards extensional gender-term deployments, normative reliance on ‘competent use’ of the term ‘woman’ is, again, morally problematic: with regard to extensional meaning, the socially dominant competent use of gender terms is imbued with social and political biases, issuing in the denigration, discrimination and marginalisation of gender non-conforming persons.

The specific considerations of section three can be generalized, a task I undertake in section four. I define *gender-term vulnerability* as follows:

> A person or group is vulnerable to gender-term deployment (or "gender-term vulnerable", for short) in a context C with respect to gender terms x, y, etc., just in case they are susceptible to moral harm or political oppression by the individual or institutional extensional or intensional deployments of x, y, etc. The terms x, y, etc. are harmfully or oppressively deployed (in context C) with respect to that person or group.

I also formulate the following claim: *Oppressive or harmful deployments of gender terms are subject to ethically or politically grounded challenges, irrespective of the competencies, epistemic or linguistic, of those who deploy them.* I will say that these deployments are *morally contestable*. Note that – just as in the case of semantic contestability in chapter one – I am here specifying conditions for the possibility of contesting gender-term deployments. In the present chapter, those conditions are determined by the psychological, moral, and political harms of misgendering, whereas in chapter one they are determined by combinatory and degree vagueness of gender terms and category membership.

The remaining part of section four undertakes an investigation of case-studies of how the term 'woman' is deployed in some recent feminist philosophical literature. Two considerations are paramount: first, whether intensional or extensional deployments of the term 'woman' are exclusionary with respect to Laura and people like her; and, second, whether intensional or extensional deployments of the term 'woman' are marginalising with respect to Laura and persons like her. Since the deployments considered are somewhat removed from Laura's social environment, my critique involves the methodological step of imagining what *would* happen if the philosophers'

deployments *were* widely implemented within society, policy, and law. I express this methodological approach in terms of a counterfactual unacceptability criterion:

> Let *x* be a philosophical deployment of the gender term 'woman'. Then *x* is unacceptable from a transfeminist point of view if *x* would be an oppressive or harmful gender-term deployment with respect to some group of transgender women when implemented (broadly applied) within their social context.

One can then re-express the moral contestability of a gender-term deployment in terms of counterfactual unacceptability: if a gender-term deployment is counterfactually unacceptable, it is also counterfactually morally contestable. In short, if such a term *were* widely implemented in Laura's social context, it *would* be morally contestable.

Armed with the above notions, I devote the remaining parts of section four to a critique of several gender-term deployments in the philosophical literature. The first three are intensional deployments of 'woman', the fourth an extensional deployment. These are, in order: Sally Haslanger's intensional deployment of 'woman' as subordinated social class (Haslanger 2012); Linda Alcoff's (2006) and Charlotte Witt's (2011) intensional deployments of 'woman' as social relationship to female reproductive capacity; and Mari Mikkola's (2009) methodological approach to 'woman' as whatever competent language users denote it to be. I find all of these deployments – with some variation in degree – problematic from the trans/feminist standpoint I have adopted, on the grounds that they are exclusionary. The final, fifth case-study I consider – Heyes's intensional family-resemblance account of 'woman' – is found to be problematic because it introduces gradability and hierarchy into the connotation of the term 'woman', threatening to marginalise non-passing, transgender women like Laura.

Chapter Three. A Liberal Approach to Gender Pluralism: Contesting Social and Political Assymetries of Power

In chapter one I discussed semantic contestability, as well as the additional social conditions necessary for contest to be able to take place, namely, the condition that alternative conceptions of WOMAN must have evaluative force for the rival parties and, additionally, that within society there must be a tradition of gender contestation. In particular, the social and political conditions must be present that allow the formation of significant gender non-conforming groups with their own subaltern languages and gender practices. One can regard chapter three as a more detailed elaboration of certain aspects of the latter, political condition, but applied specifically to the policies of a liberal state. That is, chapter three discusses institutional conditions for the possibility of contesting socially dominant gender norms.

I take 'liberal' here in a broad sense: it denotes a state or form of political organisation that places great emphasis on individual freedom and autonomy, as well as on equality of persons. Liberal political theory has not concerned itself particularly with gender non-conforming citizens. As regards minority groups, the research focus has been on religious and ethnic minorities. I take it that the arguments of authors such as Eisenberg and Kymlicka (2011) to the effect that culture and language are required of persons in order for them to pursue their own particular conception of the good, are transferable to gender identities: the beliefs and practices (including language) of gender non-conforming persons often express gender identities. These beliefs and practices are thus important for the effective pursuance of their own conceptions of the good, and required to allow theim to make meaningful choices in life.

I have already summarised in this Introduction what I mean by ‘gender non-conformity’. In chapter three of the thesis, after an introductory section, I explicate in section two the ‘Prevalent Gender Structure’ in more detail, indicating how various gender non-conforming groups (transsexual, agender, androgyne …) can be understood by reference to the rules which enter the prevalent gender structure. The phenomenon of gender non-conformity explained in this way raises the political question of the appropriate response to gender non-conforming minorities. So, in section three, I discuss whether minority gender beliefs and practices should be recognised, that is, publicly endorsed by the state, or tolerated, that is, regarded simply as a part of the intrinsic right of persons to assess and revise their own goals in life. Taking my examples from forms of gender ‘recognition’ for transgender persons in the UK and, more widely, in Europe, I argue that most current state systems of gender recognition with regard to transgender persons do not grant ‘recognition’ in a full, political sense. What we have, in fact, is more similar to a system of ‘permission toleration’ (Forst 2014) in which the state permits some of its citizens to change legal gender under heavily circumscribed conditions.

The example of legal gender recognition in the UK and some other jurisdictions makes the question of recognition acute. At the beginning of section four, I argue that political recognition – the positive endorsement or evaluation of particular gender beliefs or practices within the public realm – is not a good approach to gender pluralism. As the example of the UK shows, recognition of gender identities is problematic. First, recognition in law and government policy implicates a *power to script identities*. In many cases, it is psychiatrists and medical professionals who are entrusted with deciding what kinds of behaviours, beliefs, or emotional states constitute reliable signs of being a

'woman' or a 'man'. There is thus a danger of 'freezing' gender identities in particular configurations. Moreover, I claim that the rules of gender ascription, such as the rules of extension, gender exclusivity and gender exhaustivity, as well as those of gender invariance and biological determinism, become politically endorsed in these systems. Elements of the Prevalent Gender Structure are thus not only socially prevalent; they are also *politically* prevalent. This is morally and politically problematic for gender non-conforming persons who dis-identify with one or more of these rules.

Does toleration fare any better? I argue that gender *identities* cannot be the object of political toleration for they are plausibly not objects of choice. Even if gender identities are socially constructed, they cannot be chosen by individuals in the way practices and verbal expressions can be chosen. On the other hand, toleration can pertain to gender practices and various expressions of beliefs about gender. In section five, I proceed to describe a notion of tolerance which fits well with the social and political goals I advocate. Tolerance involves

> (1) an 'objection component' or 'reason for interference' consisting in some negative judgement on the part of one agent towards the beliefs or practices of another, a judgement which disposes the former agent to suppress, prohibit or otherwise interfere with the latter; (2) a power component consisting in the first agent actually being able to interfere with the latter; and (3) an 'acceptance component' or 'reason for non-interference' consisting in some positive judgement on the part of the first agent which overrides the disposition to interfere. (Ferretti and Laegaard 2013)

The liberal state should give its citizens 'reasons' for non-interference with minority gender practices by, on the one hand, outlawing discrimination and, on the other, *publically tolerating* (Galeotti 2002) expressions of gender non-conformity within its

institutions. For example, officers or public officials who are ‘men’ according to the Prevalent Gender Structure should be allowed to wear attire which the gender expectations rule associates with ‘women’. The aim of public toleration is the full inclusion of gender non-conforming persons as full citizens with equal rights within the polity. The liberal state should both recognize and publically tolerate: It recognises the full political personhood of gender non-conforming persons; and, given the asymmetries of gendered social power within society, allows for expressions of gender non-conforming beliefs and practice within public institutions. Thus, public toleration is mediated through the recognition of full political personhood, and has its rationale in the social fact that there is an asymmetry of gendered power between those who largely identify with the Prevalent Gender Structure, and those who do not. In fact, the gendered power exercised is both social and political. It is social in that gender non-conformity can be the subject of social ostracism and various mechanisms of marginalisation. It is political, in that many elements of the Prevalent Gender Structure are endorsed and sustained through law and government policy.

I show in section six how two ‘pillars’ of liberal policy can mitigate or eliminate the effects of gendered asymmetries of power: a policy of public toleration, and a policy of state gender-neutrality. The effects of gendered social power are assuaged by public toleration: citizens are provided with a public ‘reason’ for desisting from the employment of gendered social power through the institutional state toleration of gender non-conforming practices. Gendered political power, on the other hand, is to be completely eliminated. The liberal state should not employ any of the rules of the Prevalent Gender Structure either to assign gender identities, or to script them. This latter postulate is an

ideal. In a more detailed case study of gender markers on government-issued ID documents, I argue that gender markers should be optionally assigned according to the self-identification of individuals. The state can be said to assign a gender. But it only does so mediately, through the recognition of the full political personhood of the one requesting the gender marker. However – and this constitutes a departure from complete elimination of the Prevalent Gender Structure at the political level – for ID markers to usefully be instruments of public toleration, certain aspects of the gender invariance rule, as well as of the gender exhaustivity rule must be retained.

The analyses and arguments in the three articles which make up this thesis aim to convince the reader of the contestability of gender norms, gender concepts, and gender language use. I seek to make a contribution to philosophical reflection on a phenomenon – gender non-conformity – which presents a range of moral and political challenges. Of course, those familiar with the literature in political philosophy will no doubt be reminded of other authors' notions of contestability; I am thinking of William Gallie's idea of essential contestability, and Philip Pettit's notion of political contestability. In the conclusion to the thesis, I review these other notions of contestability, and explain the commonalities and differences they possess with respect to the notions presented here. This provides me with the conceptual framework to briefly describe a type of civic virtue, what I call 'transfeminist contestatory vigilance', the critical attitude of regarding gender definitions and categorisations as dependent on political goals, and as malleable and provisional. My hope is that the reflections of this thesis will provide useful analytical tools, if not for directly inculcating such a virtue, then, at least, for convincingly

defending the idea of the provisionality and circumstantial nature of gender language, gender definitions, and gender norms.

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Chapter One

Disputes over 'Woman' – Resemblance, Dissemblance, and Contestability

One of the principal concerns of feminist philosophy has been the correct way to conceive the category WOMAN[4] (Spelman 1988; Heyes 2003; Zack 2005; Alcoff 2006; Haslanger 2012a, 2012b). We are faced, it seems, with a dilemma, one that can be couched in terms of unity and difference: On the one hand, unifying generalizations about women's needs or experiences risk ignoring the real differences that exist among women, such as race, disability, sexuality, and economic class; and, on the other hand, attempting to take differences into account fragments the concept of WOMAN, and leads to splintering within feminist theory and activism. Both for theory, as well as for activism, overcoming the dilemma is a central focus of interest. Indeed, with this problematic in the background, several authors have proposed family-resemblance accounts of the concept of WOMAN (Nicholson 1994; Stoljar 1995, 2011; Heyes 2000, 2002; Lindemann Nelson 2002; Hale 2006; Frye 2011; Garry 2011). Although not explicitly stated in all of the proposals, such accounts allow for significant differences between women while guaranteeing the unity of the kind WOMAN. The latter is achieved by positing overlapping resemblances between members of the class: any two of them need have no

[4] I write the category I am discussing in small capitals, a name between single inverted commas, and the individual denoted by the term in ordinary script. Thus, WOMAN is the abstract class or category of equivalent persons, 'woman' the label or title, and women are individual members of the corresponding category.

characteristics in common, yet their resemblance to other members of the class means that both are legitimately called 'woman' and – on most accounts – are women.

The purpose of this article is twofold. First, I critique family-resemblance approaches to the category WOMAN. I show – on the basis of two representative accounts – how simply considering resemblances is insufficient for determining membership of the category WOMAN. I indicate how dis-semblances should also be taken into account to provide an improved account of category membership. Second, I discuss how resemblance and dissemblance relations lead to contestability conditions. Contests can arise whenever parties with different conceptions of WOMAN regard those conceptions as having evaluative force (they believe their own conceptions *ought* to be generally accepted and deployed), and also recognise the political importance of contestation. My emphasis is thus not on the *unity* or *differences* within a 'static' type WOMAN, but on how the conceptual structure of WOMAN makes its extension open to constant challenge, and potential revision.[5]

The plan of this article is as follows. In the next section, I present mostly familiar ideas related to Wittgenstein's notion of family-resemblance. Here, I emphasize, in particular, the vagueness that family-resemblance concepts exhibit. I also explain the importance of integrating *dissemblance* into this account. In section three I turn to specific accounts of the family-resemblance class WOMAN, that of Jacob Hale and Natalie Stoljar. I show that

[5] The two principal themes of this article – a critique of family-resemblance accounts of WOMAN and the discussion of contestability of membership in WOMAN – are largely independent. However, the fact that both themes are heavily invested in the idea of resemblance and dissemblance as important for category membership warrants including them in a single article.

these accounts are defective, as they do not explicitly take dissemblances (resemblances to the contrast category MAN) into account. I suggest an improved account of membership in the category WOMAN which explicitly integrates dissemblances. In section four, I focus in detail on how resemblance/dissemblance relations semantically ground the possibility of contesting the extension of the term ‘woman’, and explain how additional personal, social, and political factors contribute to the contestability of the category WOMAN. In section five, I anticipate a series of objections to my account. I close with some remarks concerning the provisionality of conceptions of WOMAN.

1.1 Family Resemblance Concepts

In this section, I will present several key ideas about family-resemblance concepts and paradigms. This will provide the background for my critique of family-resemblance concepts of WOMAN, which highlights the need for integrating dissemblances into such account. The reason for treating family-resemblance approaches in the first place is that they are quite inclusive as regards their potential extension. In fact, this is one of their theoretical advantages, advantages which arise from two properties: First, they are multi-feature or multi-criterial accounts, in which many different properties of individuals can be accommodated; and, second, there are no individually necessary and jointly sufficient conditions for membership of the category WOMAN.

1.1.1 Family Resemblance

The idea of family-resemblance is taken from Wittgenstein’s discussion of words such as ‘game’:

> Consider, for example, the proceedings we call "games". I mean board-games, card-games, ball-games, Olympic Games, and so on. What is common to them all? – Don't say: "There *must* be something common, or they would not be called 'games'" – but *look and see* whether there is anything common to all. – For if you look at them you will not see anything common to *all*, but similarities, relationships, and a whole series of them at that. To repeat: don't think, but look! – Look, for example, at board games, with their multifarious relationships. Now pass to card-games; here you may find many correspondences with the first group, but many common features drop out, and others appear. When we pass next to ball-games, much that is common is retained, but much is lost. Are they all 'amusing'? Compare chess with noughts and crosses. Or is there always winning and losing, or competition between players. Think of Patience. In ball games there is winning or losing; but when a child throws his ball against a wall and catches it again, this feature has disappeared. Look at the parts played by skill and luck; and at the difference between skill in chess and skill in tennis. Think now of games like ring-a-ring-a-roses; here is the element of amusement, but how many other characteristic features have disappeared! … And the result of this examination is: we see a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities, sometimes similarities of detail. (Wittgenstein 2001, §66)

"Overlapping, criss-crossing similarities" can form a pattern in which objects belonging to the class GAME have no common property. Within the category GAME there can be a lot of overlap of features of objects we call games, or little overlap. Consider a set of five objects belonging to a family-resemblance class, corresponding to the predicate *P*, each with four properties.[6] The objects have no single property in common, yet there is broad overlap between them. The fact that the objects have several properties in common with

[6] The example is a modified version of one offered by Waldron (1994, 519).

each of the other members of the category is what I call 'strong connectivity'.[7] The category of five objects depicted in Table 1 is strongly connected.

1	**2**	**3**	**4**	**5**
A	B	A	A	A
B	C	C	B	B
C	D	D	D	E
E	E	F	E	F

Table 1. Family Resemblance with Strong Connectivity

If objects are connected to all others through links of common properties as in the example in Table 1, this creates the "overlapping, crisscrossing" family resemblances of which Wittgenstein writes (2001, §66). No feature is individually necessary. The objects possess at least one of {A, B, C, D, E, F}, but there is no object in this group that possesses all six of the features, and neither is there any feature that all the objects have in common.

Ingram (1985) has pointed out an aspect of family-resemblance that I will call 'weak connectivity'. The terminology is suggested by a picture of family-resemblance proposed by Wittgenstein, namely, that of a thread composed of intertwined fibres. Of the family-resemblance concept NUMBER, he writes:

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[7] The notion of strong and weak connectivity is the informal analogue of measures of coherence in cognitive science, such as a category's cue validity (Rosch 1999) or characteristic function (Tversky 1977; 1978).

> Why do we call something a "number"? Well, perhaps because it has a – direct – relationship with several things that have hitherto been called number; and this may be said to give it an indirect relationship to other things that we call the same name. And we extend our concept of number as in spinning a thread we twist fibre on fibre. And the strength of the thread does not reside in the fact that some one fibre runs through its whole length, but in the overlapping of many fibres. (Wittgenstein 2001, §67)

Wittgenstein is talking about how the extension of terms is expanded through usage. But let us focus on the idea of degree of overlap suggested by the image of intertwined fibres. Table 1 exhibits 'strong connectivity': the "fibres" (objects) overlap considerably, so that the resulting thread is robust. However, we can imagine a family-resemblance class which exhibits 'weak connectivity'. A clear case of weak connectivity is exhibited by a family-resemblance class in which each object has something or other in common with only one or two other members of the class. Weakly connected family resemblance is illustrated by the following property distribution among the five objects of category *P*:

1	**2**	**3**	**4**	**5**
A	B	C	D	E
B	C	D	E	F
I	D	M	Q	U
J	F	N	R	V

Table 2: Family Resemblance with Weak Connectivity

Object 1 has no properties in common with objects 3, 4, and 5; object 2 has no properties in common with objects 4 and 5; object 3 has no properties in common with 1 and 5, and so on. Objects having no properties in common, such as 1 and 5, may be rather *dis-*

similar. Ingram claims that such a structure is more in keeping with Wittgenstein's original example of "game".[8] The games of Patience and football are, after all, rather dissimilar. The features which determine that dissimilar objects such as 1 and 5 belong to the same category are those that are held in common with objects 2, 3, and 4.

I will say that a member of the group that possesses all or many of the features exhibited by category members is *paradigmatic*: This member usually bears a direct resemblance (through the possession of common features) to all or most of the other members of the category. In the example of table 1, *all* of the members of the category are paradigmatic, as they resemble all the other members of the category. But paradigms can also arise in other ways. Some features of objects which enter the family-resemblance class will have a high frequency of incidence among members of the category (although, of course, they are not possessed by all members). In this case, those features will be regarded as of particular importance for group membership; I will say that these features are more *heavily weighted* as criteria for category membership. [9] An object which meets a certain number of the most heavily weighted criteria can be regarded as a paradigm. In this case, not just the number of criteria satisfied is relevant for an object to be paradigmatic, but also their relative weight or importance:

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[8] In Ingram's terminology, weakly-connected family-resemblance concepts are "C-concepts" (Ingram 1985, 44).

[9] This is the first – 'statistical' – notion of 'weighting' of features. In section five I will discuss other factors which influence the way features are weighted.

1	**2**	**3**	**4**	**5**
A	B	A	A	D
B	A	E	B	B
C	D	D	D	E
F	E	F	E	F

Table 3: Family-Resemblance with Weighted Features

In Table 3, the features A, B, E, and D each occur in four of the five members of the category *P*. They are heavily weighted as regards category membership because they each establish connections with many members of the class. Objects 2 and 4 are clearly paradigmatic (they each possess four, heavily weighted features), and objects 3 and 5 may also be paradigmatic (they each possess three, heavily weighted features). Object 1 is probably not paradigmatic (it possesses only two heavily weighted features) but is clearly a member of the category, being connected to all other members of the category.

A sixth object (A, F, G, H), clearly belongs to the group depicted in table 1, as it is quite strongly connected to all other members of the category (with which it has one or two features in common). With regard to Table 3, an object (C, I, J, K) is connected to only one out of the five objects. It may be indeterminate whether possessing just the property C counts as possessing "enough" of the features of the group. C is, after all, not a heavily weighted feature. The *degree* to which C is exhibited by the candidate object is also a factor to be considered. I will discuss indeterminacy of membership shortly. First, however, I will point out how dis-semblance enters considerations of category

membership. For many decisions about category membership, resemblances are not enough.

1.1.2 Contrast Categories and Dissemblance

In this subsection I will look at how Wittgenstein's treatment of family resemblance can be modified, and consider a scenario in which a family-resemblance concept has what I call a *contrast category*, that is, a category which is regarded as its opposite or contrary. This notion will prove useful for my later analysis of family-resemblance accounts of WOMAN which possesses at least one contrast category, namely, MAN.

Experimental and theoretical accounts of prototypicality and graded membership – the psychological equivalents of Wittgensteinian family-resemblance – have emphasized how *both* commonalities and differences play a role within categorization (Rosch 1978; Rosch and Mervis 1975; Margolis and Laurence 1999; Bhushan 2002). In particular, Tversky (1977) and Tversky and Gati (1978) proposed a measure of similarity between two objects as a linear combination of common *and distinct* attributes, weighted according to salience (Murphy and Medin 1985). The details of the proposals do not concern us. But I assume that the empirical findings in cognitive science provide a plausible ground for investigating to what extent differences between objects – what I call dissemblances – play a role in categorization.

Let us first consider an example unrelated to gender predicates. Since Wittgenstein discusses the concept GAME at some length, consider the theme of the movie entitled *The Hunger Games*. The idea of the 'hunger games' is that teams of people from poor districts, selected through a lottery organised by a tyrannical regime, train and then

compete against each other to the death. By doing so, the districts show their continued allegiance to the government and pay their dues for past rebellions. Now the concept GAME does not possess an obvious, unique contrast category, but I suggest that the concept WAR would come close. In fact, the movie plays on the contrast between games and such notions as SUFFERING, KILLING, and CRUELTY which often occur in wars. An activity may involve athleticism, competitiveness, skill, a prize to be won, teamwork, amusement on the part of those involved, and so on. Yet it is not a game if it exhibits features of a contrast category such as WAR, in that it also involves exploitation, killing, cruelty, and suffering. I depict the situation schematically as follows:

Category *P*		?	Contrast Category to *P*	
1	**2**	**3**	**4**	**5**
A	B	D	I	J
B	C	A	J	K
C	D	K	K	L

Table 4: Contrast Categories and Decisions over Membership

If we engage in a competitive activity in which winning depends on killing one's competitors, we are disinclined to call the activity a 'game'. An activity may have features common to contrasting categories. In Table 4, object 3 has features of the category *P*, as well as of its contrast category. If *P* is the category GAME, the feature *K* may be connected strongly enough with a contrast category, to discount object 3 as a 'game', *despite the fact* that the object possesses certain features of games. Our willingness to discount object 3 as a game will depend, however, on the nature of the

feature *K*. If *K* denotes not the attribute that the winner is the one who kills her competitors, but merely the feature that the one who is the first to effectively hide the teacher's pen is declared the winner, we may still understand why some might call the activity (just) a 'game'. The upshot of these considerations is that in order to decide whether some activity is a game, it is *not enough* to be aware of games and the corresponding family-resemblance concept of features. One must also be aware of other concepts, and be able to recognize whether, and to what extent, candidate 'games' are connected to other features, particularly to those of contrast categories. If an activity exhibits a feature which is heavily weighted within a contrast category, then it will be discounted from membership of the category *P*; an activity which involves killing and torture – despite other game-like features it might possess – is not a game. Considering Table 4, I will say that, with respect to category P, features *A*, *B*, *C*, and *D* are *positively weighted for membership*, and features *I*, *J*, *K*, and *L* are *negatively weighted for membership* (of *P*).

Resemblances, then, are not enough for category membership. Family-resemblances are often mixed with dis-semblances (resemblances to contrasting categories). To decide whether some activities are games, we require a broader list of features than simply those of games. Without other lists of features pertinent to deciding whether something is a game – for example, from the family-resemblance contrast concept WAR – we cannot correctly identify some activities.

Even if we do take contrast categories into account, there will be cases that are difficult to decide as regards their membership in a category. So I will say something about an

important property of resemblance and dis-semblance: vagueness. This will help me explain in subsequent sections how gender categories can be contested.

1.1.3 Interactions between Resemblance and Dissemblance: Combinatory Vagueness and Degree Vagueness

The collections of features exhibited by members of a family-resemblance category can be understood abstractly as satisfaction conditions for membership of the category, and together constitute a *family-resemblance concept*, corresponding to the category concerned. None of the conditions are individually necessary, and none are jointly sufficient. How many of the criteria are sufficient for membership, and to what degree they need to be satisfied are open questions. *Stipulating* the greater importance of some criteria over others with some purpose in mind is a sharpening of the concept's boundaries:

> If someone were to draw a sharp boundary I could not acknowledge it as the one that I too always wanted to draw, or had drawn in my mind. For I did not want to draw one at all. His concept may then be said to be not the same as mine, but akin to it. The kinship is that of two pictures, one of which consists of colour patches with vague contours, and the other of patches similarly shaped and distributed, but with clear contours. The kinship is just as undeniable as the difference. (Wittgenstein 2001, §76)

In this text, Wittgenstein maintains that family-resemblance categories exhibit vagueness. We may have a list of features or satisfaction conditions within our family-resemblance concept, without, however, being able to say exactly which are necessary or sufficient for membership, nor to what degree they must be satisfied. We may apply different criteria in different contexts, for various purposes. At the same time, we are willing to acknowledge

that an object that satisfies many or all of the conditions is a paradigm member of the category. This is how Wittgenstein expresses the idea:

> When I say "N is dead", then something like the following may hold for the meaning of the name "N": I believe that a human being has lived, whom I (1) have seen in such-and-such places, who (2) looked like this (pictures), (3) has done such-and-such things, and (4) bore the name "N" in social life. – Asked what I understand by "N", I should enumerate all or some of these points, and different ones on different occasions. So my definition of "N" would perhaps be "the man of whom all this is true". – But if some point now proves false? – shall I be prepared to declare the proposition "N is dead" false – even if it is only something which strikes me as incidental that has turned out false? But where are the bounds of the incidental?
>
> And this may be expressed like this: I use the name "N" without a *fixed* meaning. (Wittgenstein 2001, §79)

Although Wittgenstein is discussing the meaning of proper names, the phenomenon he is describing regarding the vagueness of meaning is very similar to what we encounter in the case of family-resemblance concepts and which William Alston calls combination-of-conditions vagueness or *combinatory vagueness* (Alston 1964, 87–9; Waldron 1994, 518–519; Hyde 2010, 16). Those objects which satisfy all or most of the conditions are clear cases of the category: they are strongly connected and paradigmatic (Wittgenstein's "definition"). However, there will be cases in which it is not clear whether the object falls or does not fall under the concept, and equivalently, whether the corresponding predicate is true of the object or whether it is false (as regards satisfaction conditions, one may apply "different ones on different occasions"). In addition one might discount the importance of some conditions, when they are found not to hold for a particular case (in Wittgenstein's terms, they are found to be "incidental"). That is, one might consider that some condition is not as important as others. In short, it is indeterminate "as to just what

combination of conditions is sufficient or necessary for the application of the term" (Alston 1964, 88–9).

To illustrate the idea of combinatory vagueness, let us consider the example of the category DEMOCRACY. One might list the following criteria for the application of the concept of DEMOCRACY:

1. The power of the majority of citizens to choose and remove governments;
2. Equality of all citizens to obtain positions of political leadership and responsibility;
3. The continuous, active participation of all citizens in political life at all levels. (Gallie 1956, 184–5)[10]

In the case of concepts like DEMOCRACY, vagueness arises with respect to candidate democracies, not just because there are no facts of the matter or conclusive arguments establishing how many of the criteria would be sufficient for an organisation of society to count as a democracy, but also because there are no facts of the matter or conclusive arguments as to which criteria are more important than others. These two properties characterise combinatory vagueness. Yet, we have an additional type of vagueness in this case. Namely, since it is also unclear *to what degree a* given criterion needs to be satisfied by the candidate, we encounter *degree vagueness* (Alston 1964, 90). For example, considering condition 3, it may be debatable what degree of participation is

[10] Gallie (1956) states these are descriptions of democracy, favoured by different parties. I follow Connolly (1993, 10) and regard them as conditions of application of the term 'democracy'.

required. In the case of DEMOCRACY, there is thus both combinatory vagueness, as well as degree vagueness.[11]

1.1.4 Contests over Category Membership

Linking now to my previous discussion of strong and weak connectivity, paradigms are those objects which satisfy a large number of conditions, or satisfy a sufficient number of conditions of greater weight, or satisfy few conditions, but those with the most weight, etc. They are strongly connected to other members of the category. The conditions and their respective weights are both important in settling on paradigms. In general, paradigms and weighted features will be determined by competent language use: for example, we will look at all the activities that competent language users call 'games', note the features which are common to many or most games (the weighted features), and see that some games are strongly connected to others (paradigmatic games, if these exist). This is a *descriptive* process. We will regard as borderline those activities that are weakly connected to games, or possess features of contrasting categories, at least to some degree (excessive violence, for example, which is itself a vague concept).

However, the situation with DEMOCRACY is somewhat different. There is, in general, no consensus among competent users of the English language as to the meaning of the term 'democracy'. Some stress representation in government, others direct participation in government. There is also disagreement over which countries are democracies. Some

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[11] I will content myself with providing the following characterisation of degree vagueness: "Degree-vagueness consists of those cases in which the vagueness stems from the lack of precise boundaries between application and non-application– or at least their apparent lack – along some dimension." (Hyde 2010, 16)

claim the United States is a democracy because government is elected, there is a system of judicial review, etc. But others claim that American disparities in wealth limit the access of many to positions of political leadership, and may dispute that the United States is a 'democracy', or may dispute that it is a paradigmatic 'democracy' (Waldron 2002, 149–151).[12]

Different parties in a dispute over DEMOCRACY will assign different weights to the features of the family-resemblance concept. They are, in effect, making the concept somewhat more precise and establishing rival *stipulative conceptions.* This is not a descriptive process, but an *evaluative* one: the parties are claiming that it is the particular features they select that *ought to be* the ones democracies exhibit in order to be called 'democracies'. The resemblance of some objects to these stipulative conceptions will still be susceptible to interactions between the two kinds of vagueness discussed, combinatory and degree vagueness. If an object possesses some of the conditions satisfied by the stipulative conception, it resembles it. If one of these conditions is regarded as particularly important for category membership, then its possession even to a relatively small degree may still count as a salient resemblance. And, of course, there will be borderline cases where we are unsure.[13] Moreover, if an object possesses features of a contrast category, this will count as a dissemblance. For example, if a country's

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[12] The fact that the concept of DEMOCRACY has no clear paradigm cases is a consequence of its being 'essentially contestable', a notion I discuss in the concluding chapter to this thesis.

[13] Note that the family-resemblance structure of a concept like DEMOCRACY can lead not only to vagueness of application, but also to other forms of indeterminacy of application (involving ambiguity or underspecificity, for example). This means that the criteria may require interpretation in order to be applied, and it may not be clear what the appropriate interpretation is (Connolly 1993, 14). These other forms of indeterminacy are of little interest in the present article, in which I focus on vagueness.

constitution possesses elements of authoritarian decision making, a feature of the contrast category DICTATORSHIP, this dissemblance will negatively affect whether that country falls under a stipulative conception of DEMOCRACY.

Let me summarize this second section. Family-resemblance concepts are collections of satisfaction conditions for membership in a category. One can supplement the family-resemblance accounts by considering contrast categories. Membership of a category is then decided by considering not only resemblances but also dissemblances (resemblances to the contrast category). Objects which possess all or many of the family-resemblance features, or satisfy those criteria that are commonly found among members of the category (positively weighted for membership), *and* do *not* possess features of a contrast category (negatively weighted for membership), are strongly connected to the category and are paradigms of the category. However, conceptions can also be stipulative, where stipulation is a more precise determination of the features required for membership, as well as of those which disqualify for membership. Objects that possess fewer features in common with fewer members of the category, or possess features of the contrast category, are more weakly connected to the category. Some of the latter may be borderline cases arising from the combinatory and degree vagueness exhibited by resemblance and dissemblance relations; we may not be sure which features are necessary and sufficient for category membership, nor to what degree they should be satisfied.

We now have the tools we need to discuss family-resemblance accounts of WOMAN; the notions of the interplay between resemblance and dis-semblance, of strong and weak connectivity, of conceptions (paradigmatic and stipulative) and the vagueness they give rise to, all play a role in the following sections. In particular, in the next section I present two family-resemblance accounts of WOMAN, and present a critique of them based on the claim that they take insufficient consideration of relations of dis-semblance (connection to the contrast category MAN). I propose an improved version which takes both resemblance and dissemblance into account. In sections four and five, I analyse the vagueness of membership of the category WOMAN, and explain how it grounds the contestability of membership.

1.2 Two Family-Resemblance Accounts of Woman

The notion of family-resemblance has proved attractive to several authors in their reflections upon the category WOMAN. As stated earlier, family-resemblance can accommodate many features of embodiment and social behaviour, without insisting on necessary or sufficient conditions for membership. One can gauge the spirit of family-resemblance approaches from the following text adapted from Wittgenstein's *Philosophical Investigations* by Cressida Heyes to the category WOMAN:

> Look and see what the construct of women consists of, and what women might have in common. For, if you look, you will not see something that is common to all, but similarities, relationships, and a whole series of them at that. Look, for example, at heterosexual women. They are attracted to, and may form sexual relationships with, men. Now pass to bisexual women: some features drop out and others appear. Think now of a woman of color (if you haven't already). How is she like a white woman? And what is the relationship of a Jewish lesbian to a straight Chicana? Does a

> poor woman in England have anything in common with a wealthy one in South Africa? (Heyes 2000, 77–8; 2002, 196)

Although Heyes mentions features of sexual orientation, race, and cultural identity as among the properties women can have, she also wishes to include primary and secondary sex characteristics, as is clear from her discussion of MTF (male-to-female) transsexuals and intersex women (2000, 90–3). Adopting a Wittgensteinian anti-essentialist position, Heyes argues for the inclusion of MTF persons within the category WOMAN: MTF persons bear "family resemblances to those conventionally labelled 'woman'" (93). Under the expression "conventionally labelled 'woman'", I take it that Heyes means individuals who satisfy many of the satisfaction conditions for membership in the category WOMAN, or, at least, some of the most heavily weighted conditions. Part of Heyes's purpose in introducing family-resemblance is to ground the unity of the type WOMAN: even if some 'women' have nothing in common they are still related to each other through resemblances to paradigmatic 'women'. This is the basic idea of the following two family-resemblance accounts of WOMAN which I critique.

1.2.1 Jacob Hale's Family-Resemblance Account

According to Jacob Hale, the dominant concept of WOMAN within US culture is a family-resemblance concept containing 13 elements clustered into groups that are differentially weighted (Hale 2006).[14] The most heavily weighted is a cluster containing physical characteristics which are used in gender assignment:

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[14] Hale's account is a modification of Bornstein (1994) who, in turn, bases her features of womanhood on Garfinkel's famous study of Agnes, a self-declared intersex person who actually turned out to be transgender, not intersex (Garfinkel 1967).

A. **Female sex** – 1. Absence of a penis; 2. Presence of breasts; 3. Presence of reproductive organs (uterus, ovaries, and fallopian tubes) which allow for pregnancy to occur if the person engages in intercourse with a fertile man; 4. Presence of estrogen and progesterone in a balance with androgens within a range defined by endocrinologists within one's age group; 5. Presence of XX chromosomes;

The second most heavily weighted cluster in the dominant concept of WOMAN concerns more overtly social means which work together to produce the social gender assignment of 'woman' in a way that is unreflective, constant, and unambiguous:

B. **Gender cues** – 1. Gender self-presentation ('secondary sex characteristics', dress); 2. Behaviour (posture, expressions, manners, styles of communication); 3. Textual cues (feminine name and pronoun use, citation of continuous, unambiguous history as a woman, having ID documents with 'F', consistent photographic gender presentation in accordance with 1);

C. **Consistent gender narrative** – Having a history consistent with the gender assignment 'woman' as produced by B providing an unbroken line of descent from female infancy through girlhood to womanhood.

Of lower weighting are the following:

D. **Subjective sense of gender**

and

E. **Gender roles** – 1. Having an occupation considered acceptable to a woman; 2. Engaging in leisure pursuits deemed acceptable for women; 3. Engaging at some point in life in sexual/affectional relationship with a commonly recognized heterosexual man.

Hale employs his cluster account to critique Wittig's (1992) and Calhoun's (1994) conceptions of WOMAN. Wittig places too great an emphasis on feature E.3, claiming that

since lesbians do not occupy the binary sexual relationship to men, they are not women. Hale counters that this is not the only feature of WOMAN – not even the most important feature – that is commonly taken into account in characterising someone as a 'woman'. Against Calhoun, he objects to her reliance on the notion of a coherent unity linking anatomical features, heterosexual desire, and gender behaviour, for this seems to make some or all features of clusters A, B and E necessary – and perhaps even jointly sufficient – in order to be classified as a 'woman'. In sum, Hale emphasizes that not all of the elements of the clusters are necessary or sufficient for a person to be classified as a woman. Clusters A and B are – so Hale – the most heavily weighted within the dominant paradigm, although for transgender women under certain circumstances, B can outweigh the absence of many of the elements of A (Hale 2006, 292).

Taken together with their respective weightings, these features constitute a paradigmatic conception of the category woman: that is, an individual who satisfies all of the features will be a paradigmatic woman within US society. An individual who satisfies the more positively weighted features for category membership – features from clusters A, B, and C – will most likely also be a paradigmatic woman within US society.

Many transgender women – particularly those who do not 'pass' as women from the point of view of appearance – have relatively few of the features listed in cluster B, and may have few, if any, of those listed in cluster A. Sometimes the way they dress is the only means of detecting their candidature for membership in the category WOMAN. And it is in such cases that we encounter an interesting phenomenon. Although we regularly mark and read gender – we seem to be constantly doing so – a non-passing transgender woman not only offers to society a public trace of her claim to womanhood, but makes

her ‘masculinity’ not less but *more* visible. Out of a crowd of passers-by, the transgender woman emerges not in her femininity but in her *masculinity*: her large body-frame, hands and feet, her square jaw and, if she says something, her low, booming voice come into sharper relief against the backdrop of the dress and makeup that she wears. She can become the object of public stares or, worse, verbal and even physical abuse. This is a source of psychological distress for many transgender women, particularly for those just beginning to transition or for those who transition later in life.

The point I am making is that Hale’s account is deficient in the way it formulates the attribution of womanhood mainly in terms of resemblances. One can possess several of the feminine features Hale lists, yet these can be effectively *swamped* by certain other aspects of appearance or demeanour which count as typically ‘masculine’. In short, Hale fails to take into account the contrast category MAN, and the negative weighting of the features from the category MAN for membership of the category WOMAN. In the realm of social interaction, feminine features emerge only against a ‘neutral’ background, so-to-speak. If strong masculine indicators are present, womanhood may not be attributed. Taking into account the studies of Kessler and McKenna (2006), Hale has already indicated this: *absence* of a penis is high among biological features which assign individuals to the category WOMAN. In day-to-day social gendering, however, many other ‘absences’ – such as the absence of a deep voice, square jaw, large hands and body-frame – must be made more explicit within the concept of WOMAN. More than this, however, it should be made more explicit within Hale’s approach to WOMAN how features from the contrast category MAN interact with features from the category WOMAN so that some ‘masculine’ features fail to disqualify an individual as belonging to the category WOMAN.

The attribution of ‘woman’ follows not only when a sufficient number of the typical or paradigmatic ‘feminine’ features are present, but also when there is an insufficiently large number of paradigmatically ‘masculine’ features – especially of those weighted highly in the attribution of ‘man’ to an individual.

Many people will have a sufficient number of the ‘feminine’ features *as well as* a certain number of masculine features. What decides the attribution of ‘woman’ to an individual is a sufficient number of sufficiently weighted ‘feminine’ features. But what counts as ‘sufficient number’ and ‘sufficient weighting’ is at least partly determined by the presence of any typically ‘masculine’ features in the same individual. Paradigmatically ‘female’ features interact with paradigmatically ‘masculine’ features altering the degree of resemblance to paradigmatic ‘women’ that should be exhibited for membership of the category WOMAN. If a heavily weighted ‘masculine’ feature – for example, a penis – is exhibited by the individual, a sufficiently high number of ‘feminine’ features – and from among those, preferably the ones more heavily weighted for membership of WOMAN – are needed to compensate, so-to-speak, for the presence of male genitalia.

Hale’s family-resemblance concept of WOMAN is simply a *paradigmatic conception* of WOMAN. For ‘women’ who exhibit all or many of Hale’s features to a sufficient degree (if such exist), membership in the category WOMAN is not ‘tainted’ by the possession of features from the respective contrast category MAN. However, not all of those commonly called ‘women’ are ‘untainted’ by paradigmatically masculine features. A person belonging to the category WOMAN may dress and behave in a paradigmatically ‘masculine’ way, or may possess elevated levels of testosterone in her body, or may possess considerable quantities of body hair, and so on.

1.2.2 Natalie Stoljar's Family-Resemblance Account

I now move to my second example of a family-resemblance account of WOMAN, that of Natalie Stoljar (1995, 2011). Stoljar seems more willing in some passages to acknowledge the importance of dissemblance without, nevertheless, fully integrating dissemblances and contrast categories into her account. Moreover, Stoljar's account is a metaphysical one. According to Stoljar, each token woman is a woman through participation in a resemblance structure which unifies the type. Women constitute a type based on real similarities – both natural and social – in the class of features; there is no feature that is possessed by all and only members of the type in an identical way. One should note, however, that real similarities can also unify features from contrasting or opposite types. There is a tendency in Stoljar's account to render salient similarities (resemblances) to the type MAN *un*real (that is, metaphysically irrelevant to the unity of the type WOMAN). Let us consider the account in detail.

Stoljar suggests four gender elements which constitute the multi-feature family-resemblance concept of WOMAN.[15] There may be no woman who instantiates all the features of the family-resemblance concept. Stoljar maintains that "[t]he same ingredients make up the components in our concept of WOMAN but are not always all instantiated in

[15] Stoljar's discussion of Wittgenstein's account of games implies that she regards the class WOMAN to be a family-resemblance class.

the individuals to whom the concept applies" (2011, 40).[16] The family-resemblance concept of WOMAN encompasses the following features (1995, 284; 2011, 41):

1. **Female sex** – XX chromosomes, sex characteristics, general morphology, physical features such as voice and gait;
2. **Phenomenological features** – lived experiences related to menstruation, childbirth, breast-feeding or the potential for such experiences, feelings that are the product of social factors (such as fear of walking the streets at night);
3. **Social roles** – dress code, oppression on the basis of sex, normative family or occupational roles;
4. **Self-attributions and attributions of others** – calling oneself a woman or being called a woman on the basis of the above three sets of features.

The four elements allow us – so Stoljar – to identify paradigms of woman that establish the resemblance class. They are "standard objects or exemplars" which possess enough of the features of the family-resemblance concept to count as women. Although Stoljar admits that what counts as 'enough of' the features which standard women should exhibit may be open to dispute, she suggests that perhaps at least three features taken from three of the distinct groupings above are sufficient. She does not mention whether any paradigmatically 'masculine' features can be present, nor to what extent, but prefers to speak of a 'lack' of some paradigmatically feminine features. But one might question whether the lack of a feature *x* is ontologically equivalent to the possession of its contrast feature *y*.

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[16] I should note that the later Stoljar (2011) prefers to speak of "complex and overlapping sets of properties" (41) rather than concepts. That said, she still alludes to "operative concepts" and "kinds".

And so, for example, a paradigm ‘woman’ can be a “transgender person who attributes womanness to herself and dresses ‘as a woman,’ has female secondary sex characteristics and many of the elements of female phenomenology though she lacks an XX chromosome and does not have responsibility for child-rearing or other domestic tasks”; or “a person whose biological sex is ‘indeterminate’ … who has been brought up ‘as a girl’ and as a result satisfies typical female roles, has many of the aspects of female phenomenology and bodily features, and dresses and lives as a female though she lacks female sex characteristics” (Stoljar 2011, 41). One should note, first, that according to Stoljar, given the way that womanhood is understood in different societies, the standard women or paradigm women might be characterised differently, the implication being that they are socially constructed in some way. Second, membership of the category WOMAN becomes a gradable property. For example, a transgender or intersex woman may get over the threshold of being a woman but may resemble the paradigmatic women to a lesser or greater degree (Stoljar 1995, 285).

I formulate two objections to Stoljar’s account. The first concerns the status of paradigms. Consider the paradigmatic intersex woman depicted above. One can plausibly object that lacking female sex is not ontologically equivalent to possessing male sex or, at least, an argument has to be made to show that it *is* ontologically equivalent. After all, in general, the privation of a property (e.g not being courageous) is not the same as the possession of a contrasting property (being cowardly). And so it remains to be shown that possession of elements of male sex by the intersex woman would not affect her participation in the resemblance structure unifying the type WOMAN or her ontological status as a paradigm.

The second objection is related to the first but more general in scope. It might more generally be asked what the metaphysical relationship between resemblance and *dis*semblance is. Participation in the resemblance structure is expressed exclusively in terms of a sufficient number of features from the family-resemblance concept of WOMAN. This means that any features a person possesses from the contrasting category MAN have *no influence* on whether a person participates sufficiently in the resemblance structure. But one might ask: Why do *real* similarities to standard women count, while *real* similarities to standard men don't? Do the similarities to standard women somehow metaphysically 'drown out' the similarities to standard men? Stoljar does not address these questions, at least not directly.[17]

That said, there is textual evidence that Stoljar is thinking in terms of the interaction between features from the contrast categories WOMAN and MAN, at least for borderline cases. Of the transgender woman Dil from the film *The Crying Game*, Stoljar observes

> Dil also satisfies many of the features of the concept "man" and could, in principle, be a member of the category "man". Treating the types "woman" and "man" as resemblance classes explains this possibility. Resemblance classes do not have precise boundaries, and cases like Dil suggest that the boundaries of the types "man" and "woman" overlap. (Stoljar 1995, 285)

[17] There are other concerns with Stoljar's account as a piece of metaphysics. In particular, it is not clear whether the vagueness exhibited by the resemblance structure is metaphysical or linguistic in character, that is, whether entities, properties and objects are themselves 'fuzzy'. This is a controversial question and widely debated (Lewis 1986; Shapiro 2006, 190–209; Hyde 2010, 105–151). I have no intention of attempting to decide the matter here. Suffice it to say that I prefer to regard vagueness as a conceptual or linguistic phenomenon and would claim that what Stoljar is describing is the way we assign the label 'woman' to individuals.

This statement implies that – *contrary* to her model – the family-resemblance concept of WOMAN is *not* a powerful enough tool to perform the function of deciding Dil's participation in the resemblance structure unifying the type WOMAN. If Dil has male sex, Stoljar's model implies that this fact is irrelevant, provided that she possesses enough of the features of paradigmatic women. But the above text states to the contrary that, in fact, another resemblance concept – that of MAN – is also playing a role. Stoljar's family-resemblance concept of WOMAN is portrayed as if it encompassed all the relevant relations for participation in the resemblance structure. In contrast, I assume that an individual possesses a pattern of features, positively and negatively weighted for membership in WOMAN. That particular pattern of features qualifies them for membership, provided that the paradigmatically 'masculine' features do not outweigh the paradigmatically 'feminine' ones. Whether an individual is a 'woman' through possession of three features, two features, or four features will depend on what paradigmatically 'masculine' features she also exhibits.

Since Stoljar mentions intersexed individuals, it is now incumbent upon me to expand the list of features which are needed for deciding membership in the category WOMAN. For, 'non-standard' genitalia of various types (gonadal dysgenesis, ovotestis), as well as various chromosomal constitutions (XXY, genetic mosaicism) will have a role to play in whether someone is assigned to the category WOMAN (respectively, MAN). In fact, all sorts of different sexual embodiments (including intersex ones), various social roles and phenomenological experiences, and different ways people label themselves, as well as the way they are labelled by others, will generally have to be taken into account to decide membership in WOMAN, with the respective weights of the features patterned in a certain

way. All such features can enter into determining whether someone belongs to the category WOMAN or not, as they also can enter into determining whether someone belongs to the category MAN or not or, for that matter, whether someone belongs to the categories INTERSEX and TRANSGENDER, or not. I will call the set of features that are pertinent to categorization in a given context, the *gender-pertinent features*. In general, those features or conditions which are pertinent to the consideration of categorization are weighted positively and negatively, and to varying degrees.

Let me summarize this section. I have taken the notions of contrast category, paradigmatic conception, as well as of positively and negatively weighted features explained in section two, to critique two family-resemblance approaches to the concept of WOMAN. I have argued, in particular, that these accounts are insufficient to account for the membership of many individuals in gender categories because they do not take dis-semblances (resemblances to contrast categories) into account. What one needs are many different features of embodiment, behaviour and social roles, to fully take into account the gender categorisations of individuals in a given context.

Of course, there will still be combinations of positively and negatively weighted features that allow for no clear gender category assignment. In fact, I have not yet applied other notions from section two, in particular, the notion of vagueness, as well as the notion of conceptions of WOMAN that are stipulated. I apply these notions in the next section. I show that when moral or political goals are at stake, stipulative conceptions can be formed which ground political contestation over who is to be called a ‘woman’.

1.3 Political Dispute on the Foundation of Vagueness: Semantic Contestability

I assume that, within western society, the question about who is and who is not a woman, and to what extent, has often been resolved through political dispute, and continues to be a matter of political dispute. I thus turn my attention to *contests* about membership of the category WOMAN. In particular, I will ask: How are such contests possible? As I will explain, family resemblance to paradigmatic conceptions of WOMAN, as proposed in the accounts of Hale and Stoljar considered in the previous section, do not necessarily ground the *unity* of the type woman, except perhaps for individuals who *clearly* resemble the paradigms and do not exhibit *clear* dissemblances. Depending on one's political goals, paradigmatic conceptions can, in fact, ground the *contestability* of category membership. This is because there will always be borderline or 'penumbral' cases, in which the paradigm conceptions and the gender-pertinent features do not, by themselves, decide the gender category one way or the other.

1.3.1 The Semantic Contestability Condition

The reason that various individuals such as transgender persons and intersex persons may be borderline with respect to the paradigmatic conception of WOMAN is that it may be unclear whether enough of the paradigmatic features have been satisfied, and whether they are satisfied to a sufficient degree. Moreover, it may be unclear to what extent features from contrasting paradigmatic categories (such as those of MAN or INTERSEX) disqualify individuals from assignment to the category WOMAN. Borderline, stipulative conceptions of WOMAN are weakly connected to the paradigmatic conceptions. The

possibility for contest over category membership is thus grounded in a semantic *contestability condition*:

> ***Semantic Contestability Condition***. *Relative to a paradigmatic conception of* WOMAN*, a borderline (weakly connected) case (‘transgender woman’, ‘intersexed woman’, etc.) exhibits various, positively or negatively weighted gender-pertinent features. From a semantic point of view, it is not obviously wrong to include the borderline case in the category* WOMAN*, nor is it obviously wrong to exclude the borderline case from the category* WOMAN.

In short, in the cases of many transgender persons one can decide ‘either way’ as regards category membership. Now, it might be contended that one could also suspend judgement with respect to a particular case. In theory, one could. However, my interest here is in disputes about membership in the category WOMAN in which groups claim membership: suspending judgement in a political dispute is not a practicable option, especially in disputes in which political or legal decisions must be made. So I will adopt Stewart Shapiro’s characterisation of “open-texture”, specifically related to the vagueness we have already noted:

> Suppose … that *a* is a borderline case of [predicate] *P*. I take it as another premise, that, in at least some situations, a speaker is free to assert *Pa* and free to assert ¬*Pa*, without offending against the meanings of the terms, or against any other rule of language use. Unsettled entails open. The rules of

> language use, as they are fixed by what we say or do, allow someone to go either way. Let us call this the *open-texture* thesis. (Shapiro 2006, 10)[18]

In unclear cases of borderline membership of the category WOMAN, one can go 'either way' without "offending" against language use. In a political dispute, one *will go* one way or the other, and *which way* one goes is governed by moral and political considerations. Borderline conceptions can always be contested, given certain (rival) political goals: one party advocates that certain 'borderline' people are members of the category; the other party advocates that they are not. This possibility is grounded in the open-texture thesis. One can adopt a political strategy to go the 'contested way' with respect to a rival social or political group. Let us consider in more detail how this happens.

1.3.2 Stipulative Conceptions of WOMAN

When politically disputing membership in the category WOMAN, our choice of paradigmatic women's features will be influenced by two factors: on the one hand, by the socially constructed common notions of who is a woman that permeate our social life – what I have called paradigmatic conceptions; and, on the other, by personal experience, values, and political goals. Linda Nicholson (who also advocates for a family-resemblance approach to WOMAN) aptly expresses the latter influence when she states:

> What we see and feel as commonalities and differences will at least partially depend on our diverse psychic needs and political goals. To clarify the meaning of a word where ambiguity exists and where diverse

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[18] Shapiro's notion of open-texture is a development of Friedrich Waismann's notion of the same name (Waismann 1965). For details, see Shapiro (2006, 210–215).

> consequences follow from diverse clarifications is itself a political act. Thus, the clarification of the meaning of many concepts in our language, such as *mother*, *education*, *science*, *democracy*, while often portrayed as a merely descriptive act, is, in actuality, stipulative. With a word as emotionally charged as *woman*, where so much hangs on how its meaning is elaborated, any claim about such must be viewed as a political intervention. (Nicholson 1994, 102)

Where Nicholson talks of "ambiguity", I talk of combinatory vagueness and degree vagueness. She makes the point that, for political purposes, conceptions of WOMAN can be stipulated. Nevertheless, within the context of political disputes within broadly democratic systems, stipulative conceptions cannot be too distant from paradigmatic conceptions: if conceptions and terminology diverge too far from social norms, they will become politically ineffective.

Now, stipulative conceptions of WOMAN that challenge paradigmatic conceptions, or describe people who vie to be included within the category WOMAN will, in general, be based on a pattern of positive and negative weightings of gender-pertinent features, examples of which were given in section three. Such conceptions are generally not paradigmatic, and so will encompass not just paradigmatically 'feminine' features, but will also usually contain some features from the paradigmatic contrast category MAN, or other contrasting features (for example, intersex features), negatively weighted in some way. For example, in discussion over whether transgender women belong to the category WOMAN, the party that adopts the paradigmatic conception WOMAN will point to the fact that transgender women possess features of the contrast paradigm MAN (male sex or XY chromosomes, for example) and will assign to these features significant negative weight with regard to membership of the category WOMAN. Those, on the other hand, who claim

transgender women should belong to the category WOMAN will, in contrast, attach a greater weight to the paradigmatic features of subjective sense of being a woman, self-declaration, and perhaps feminine self-presentation. They will *not* attach significant negative weight to reproductive organs or chromosomes.

This is a condition which – in simplified terms – obtains in cases in which gender-minorities fight to be included within existing gender categories. The question at issue is whether the term 'woman' can be extended to persons who do not satisfy criteria for membership in a clear way, for example, they do not satisfy enough of the conditions listed by Stoljar and Hale, and/or possess features from paradigmatic contrast categories. In political terms, the "dominant members of an existing group vie with the peripheral members" (Heyes 2000, 93). The dominant members are those who instantiate or uphold the culturally or politically normative paradigmatic conception. The peripheral members are those who seek membership in the category. The latter possess stipulative conceptions, that is, they select gender-pertinent features and corresponding weights so that they fall within the category WOMAN.

The same condition holds in the situation in which the contesting parties *both* propose *stipulative conceptions* of WOMAN, but one of the parties proposes, within their conception, features that are heavily weighted within the paradigmatic conception of WOMAN, so that those who possess the features can clearly be called 'women'. A current example of dispute over WOMAN provides an illustration. Consider the following passage:

> We know that we are women who were born with female chromosomes and anatomy, and that whether or not we were socialized to be normal women, patriarchy has treated and will treat us like women. Transsexuals have not had this same history. No man can have the history of being born

> and located in this culture as a woman. He can have the history of *wishing* to be a woman and of acting like a woman, but this gender experience is that of a transsexual, not of a woman. Surgery may confer the artifacts of outward and inward female organs but it cannot confer the history of being born a woman in this society. (Raymond 1994, 114, quoted in Jeffreys 2014, 6)

For the purposes of their critiques of 'transgenderism', Raymond and Jeffreys pick out three features of the concept of WOMAN: biological sex at birth, possession of XX chromosomes, and subsequent caste subordination on this basis. These features are certainly not conceived by Raymond or Jeffreys as part of a family-resemblance account. On the contrary, they likely regard these features as necessary and jointly sufficient, amounting to a definition. From the perspective I have adopted, such an approach is incorrect and does not reflect the way we identify people as 'women'. What is actually going on in such accounts is that particular gender-pertinent features are being selected that render their possessors clearly similar to paradigmatic women; the features selected – or, at least two of them, anatomical sex and chromosomal sex – are heavily weighted features of most people's paradigmatic conceptions of WOMAN. What is happening in this case is similar to a psychological process described as follows:

> It seems likely that when people list such defining features, they are answering the question of which attributes are most central to their concepts, rather than which include all (potential) members and exclude all non-members. … Even if no feature is truly defining in a semantic-theoretical sense, people may put great weight on those that are tied up with much of their knowledge. (Murphy and Medin 1985, 312)

Although Murphy and Medin are discussing empirical studies with test subjects, I suggest that many people are psychologically inclined to regard their conceptions of WOMAN as definitions. When certain features of the paradigmatic conception WOMAN are heavily

weighted, the resulting stipulative conceptions may seem like definitions, and the features so weighted may be formulated as if they were necessary and jointly sufficient. According to Murphy's and Medin's diagnosis, however – and consonant with the perspective I have adopted – the features so formulated are simply those that their advocates assign large positive weight to, no doubt, for personal, moral, or political reasons.[19]

The persons Raymond and Jeffreys acknowledge as belonging to the category WOMAN are strongly connected to paradigmatic women, and so are clear cases of 'women'. In contrast, transgender women are, as previously noted, weakly connected borderline cases. The semantic contestability condition explains how some feminists – such as Raymond and Jeffreys – are able to dispute transgender persons' membership in the category WOMAN in the way they do: their own stipulative conception of woman is strongly connected to the paradigmatic conception of WOMAN. From their perspective, transgender persons can be excluded from membership of the category WOMAN. But from a purely semantic point of view, Raymond and Jeffreys could have decided 'either way' regarding the membership of transgender persons in the category WOMAN. Their politics inclines them toward an exclusionary option with regard to transgender people.[20]

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[19] The phenomenon of *psychological essentialism* (Medin and Ortony 1989) – a psychological disposition to *believe* that "objects have essences, even though that belief may be faulty" (Gelman and Wellman 1999 [1991], 635) – has been widely studied in psychology. Some authors speculate that psychological essentialism may be cognitively useful for inductive processes and categorization. On some applications of the notion of psychological essentialism to gender concepts, see Prentice and Miller (2006).

[20] The disputes between some radical feminists (labelled "Trans Exclusionary Radical Feminists" or TERFs) and transgender women over who gets to be a 'woman' rely, I believe, on this type of feature-selecting politics. On the so-called 'TERF wars', see Herman (2015), MacDonald (2015), and Mangan (2014).

1.3.3 Non-semantic Contestability Conditions

The semantic contestability condition may remain 'dormant'; no actual contest will arise unless the potential parties to a dispute propose conceptions of woman that not only satisfy the semantic condition (the borderline nature of at least one of the rival weighted combinations of gender-pertinent features) but also certain other conditions. That is, the rival parties must also (i) assign evaluative force to their conceptions (as the conceptions that *ought* to be accepted); and (ii) realize the social and political importance of contesting rival proposals. I will call these two conditions *political contestability conditions*.

To explain political contestability as I understand it, I have recourse to another formulation of 'contestability'. The formulation is Jeremy Waldron's:

> *Contestability*: A predicate *P* is contestable if (1) it is not implausible to regard both "something is *P* if it is A" and "something is *P* if it is *B*" as alternative explications of the meaning of *P*; and (2) there is also an element *e** of evaluative or other normative force in the meaning of *P*; and (3) there is, as a consequence of (1) and (2), a history of using *P* to embody rival standards or principles such as "A is *e**" or "B is e." (Waldron 1994, 512–513)

As an example of contestability, we have the predicate "democracy". In accordance with the above definition, we see that it is (1) not implausible to explicate its meaning in terms of representation, and not implausible to explain it in terms of direct participation of the people; (2) the term has favourable evaluative meaning ("*e**" = "ought to be promoted", etc.); and (3) there is, as a consequence of (1) and (2), a history of using the term "democracy" to embody rival political principles such as "Every political system should

have a representative structure" and "we ought to encourage direct popular participation in government" (Waldron 1994, 513).

Waldron notes that his condition (1) for contestability is very similar to a condition for vagueness, so that it would seem that, although not necessary, vagueness can be encompassed by this notion of contestability (512, note 10). In particular, I will take it that when Waldron's condition (1) regards the vagueness of a predicate such as 'woman', then (1) is a semantic contestability condition, as I have defined it.[21] Moreover, there are political contestability conditions – (2) and (3) – whenever the predicate possesses moral and political significance within the context of a dispute. With regard to conceptions of WOMAN, the preceding section on semantic contestability has already indicated how Waldron's first condition is satisfied:

> (1) It is not implausible to regard some distinct collections A, B etc. of positively and negatively weighted features of gender-pertinent features as alternative explications (conceptions) of the predicate 'woman'.

This will happen – as I have explained – when, for example, A is a paradigmatic conception of WOMAN (or a conception of woman strongly connected to a paradigmatic conception) and B is a borderline or penumbral conception of WOMAN, weakly connected to the paradigm conception.

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[21] Instead of predicates, I have claimed that conceptions are subject to vagueness. For the purposes of this paper, nothing of importance hangs on the distinction.

As regards condition (2), inasmuch as whom we call 'woman' *matters* to at least some groups within society – personally, socially, and politically – then (2) is satisfied. Parties can propose the paradigmatic conception or stipulative conceptions of woman, as evaluative conceptions of how 'woman' *ought* to be understood:

> (2) There is some evaluative force in the meaning of 'woman' for certain groups within society. Jeffreys and similarly-minded feminists, for example, regard their own stipulative conception as how 'woman' ought to be defined. Transgender women similarly assign evaluative force to their own meaning of 'woman'.[22]

I take condition (3) to be important for the maintenance or periodic return of contests around 'woman'. Predicates which embody values, and exhibit forms of indeterminacy, such as vagueness, are likely to become contestable "if there is a history of argumentation about the meaning of the term" (Waldron 1994, 514). I understand this to mean that a tradition of 'women's liberation' – and, I might add – of political activism, in general – makes contestants more aware of the political import of their disputes around the term 'woman' and thus make them more willing to engage in such disputes:

> (3) There is, arguably, a political tradition within Western society of contest between "rival standards" applied to those called 'women'. From campaigns for women's education and suffrage, through those for reproductive and labour rights, and the rise of women-of-color feminism, to current debates about who is to count as a 'woman', rival understandings of the term 'woman' have been engaged in political

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[22] I do not wish to give the impression that evaluative conceptions necessarily have an endorsement function. One can characterise 'women' in terms of a subordinate class (with respect to 'men'), while still claiming that this is how the concept woman *ought* to be understood for political purposes.

> struggle. Awareness of these struggles and of their political importance for the organisation of society, embodied in identifiable social groupings or movements, fuels the tendency for disputes about gender to re-surface from time to time.

Condition (3) expresses the fact that potential parties to a dispute about membership of the category WOMAN are conscious of the political importance and possible consequences of engaging in dispute against rival conceptions. Significant legal and policy decisions may depend on the outcome of the dispute, for example. I have interpreted Waldron's condition (3) more precisely to encompass the idea that a group which is vying for membership in a category such as WOMAN must also be sufficiently organised and identifiable as a social grouping – as 'transgender', for example. Perhaps this is what Waldron means when he speaks of the "embodiment" of rival standards of the predicates. I take this embodiment to be a social one: a socially identifiable group with its own practices and gender language.[23]

1.4 Some Objections

I argued in sections two and three that resemblances are insufficient to account for membership in the category WOMAN. I then went on to show that membership in the category woman is contestable. Let me now anticipate some objections to the account I have proposed in this article.

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[23] The three conditions I have outlined still may not be sufficient for actual contest to occur. For example, a minimum amount of freedom of expression and other freedoms need to be institutionally guaranteed for public contestation to arise. On the other hand, perhaps this condition for contestability is implicit in condition (3): If a given society has a tradition of public contestation of gender conceptions, then that society presumably has the requisite political structures that allow public contestation.

Transgender Women and the Problem of Membership in the category WOMAN. One worry which might arise is that my claim that gender conceptions are contestable entails the possible denial of membership in the category WOMAN to transgender people. Specifically, a transgender person may exhibit many of the features of a paradigmatic woman, yet possess male sex. On Hale's and Stoljar's view, the transgender person is clearly a 'woman' since she possesses enough of the paradigmatic features of WOMAN. On my view, the presence of features from the contrast category MAN problematizes membership, so that the transgender person might end up as borderline, and her membership in the category WOMAN contestable. On my account, then, it would appear that transgender persons will have a politically more difficult situation.

In answer to this objection, I would re-iterate that the irrelevance of male sex in family-resemblance accounts is inaccurate to the way contrast categories interact with each other. In addition, however, the family-resemblance accounts I have criticised assume the irrelevance of certain typically 'male' features, without accounting for how it is that such features *can become* irrelevant or, at least, of lesser importance in assigning membership to the category WOMAN. I take it that one of the principal factors which leads to the revision of gender paradigms is sustained – and ultimately effective – political contest. That is, once certain transgender persons are broadly accepted as 'women', it is then that a change in paradigm has occurred. It is then that male sex can begin to lose the large negative weight for membership in the category WOMAN, and self-identification (or some

other feature), for example, becomes more important, not just for transgender persons, but generally within society.[24]

What counts as a resemblance or a dissemblance is dependent on background assumptions. Another objection is familiar from critiques of similarity approaches to categorization (Murphy and Medin 1985). The objection goes: what counts as a resemblance or a dissemblance depends on background theories, knowledge, or assumptions. A good example in the context of the present discussion is provided by Heyes. Recall that Heyes claims that MTF persons bear "family resemblances to those conventionally labelled 'woman'" (2000, 93). Consider, then, an MtF transsexual who has undergone gender confirmation surgery and possesses a 'vagina'. Does this organ resemble the vagina of a person born with this type of organ at birth? Is a 'prosthetic vagina' similar or dissimilar to a 'natural vagina'? In the light of some contemporary surgical techniques, one might call the transsexual's organ an 'inverted penis'. Is the latter similar or dissimilar to a 'natural vagina'? Is the 'vagina's' connection to, and interaction with, other internal organs a salient factor?

This is an important point, and I readily concede its validity. It is very likely that what counts as a resemblance/dissemblance is, at least partly, determined by background metaphysical, ethical, political, and other commitments. It is not based simply on assumption-free perception or reflection, if, indeed, there is such a thing as 'pure' perception and 'pure' reflection in this sense. In the body of this article, I have sometimes

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[24] Despite changes in the social perception of transgender women in Europe and North America, it does not seem to me that such a general 'paradigm shift' has yet occurred, although it may have occurred locally, that is, in certain social and political circles.

talked of resemblances and dissemblances as if these were 'evident' to all concerned without further ado. But this is not, in fact, necessary to my argument. I maintain only that resemblances and dissemblances to paradigmatic conceptions of WOMAN and MAN are largely 'self-evident' or, at least, not generally questioned in everyday social and political life. They can become questioned when 'borderline' or 'penumbral' persons appear claiming membership of the categories. When this happens, the influence of background assumptions on what counts as resemblance and dissemblance becomes more significant. The MtF transsexual's 'prosthetic vagina' and another person's 'natural vagina' are certainly similar in some respects. The question is whether they are saliently similar (or dissimilar) for the purposes of membership in the category woman.

In my discussion in section two, I stated that the features with the largest positive and negative weights with respect to membership of gender categories are those which exhibit a high incidence among those who belong to the category. One might call this the 'statistical' notion of feature weight. But in light of the concern expressed above, it becomes clear that weights are not purely statistical, particularly when there is a political dispute over the category membership of borderline cases. In fact, I take these positive and negative weights, as well as judgments of 'sufficient' resemblance, to be – at least partially – a function of a party's metaphysical, ethical, and political assumptions.[25] One party will view the transsexual's vagina as still 'penile' in nature (and so 'purely

[25] I have also assumed that we simply 'know' which features of embodiment, behaviour, and appearance are *gender-pertinent* features. I take it that our common form of life and language-use determines that we know the gender-pertinence of these features. In general, these features will be different for different societies (if, indeed, those societies have a commensurable idea of 'gender'). This is another intricate topic; I can only gesture toward it here, in a hand-waving way.

cosmetic', etc.), assigning it a negative weight for membership in the category woman; another party will regard it as 'vaginal' enough and weight it positively for membership. In this example, degree vagueness of predicates such as 'vaginal' and 'penile' will influence the weights – whether positive or negative for membership in the category WOMAN – that are assigned to the genitalia of the transsexual person. I am not claiming that both parties in the dispute necessarily regard the same body part (the same behaviour, the same social role, etc.) of the 'borderline candidate' as a salient resemblance, or that both agree that it is a salient dissemblance. So it is not simply the case that 'objective' resemblances and dissemblances are 'evident' to all parties, and that they disagree simply on how these commonly agreed-upon resemblances and dissemblances should be weighted for membership. No, the parties may even disagree *over whether a given feature is a resemblance or a dissemblance* to paradigmatic features of woman.

1.5 Concluding remarks

What does this analysis of the various gender conceptions of WOMAN give us? I believe it gives us a more adequate picture of the complexities of the category WOMAN than those provided by family-resemblance accounts. In particular, it is easier to take into account how many people have 'mixtures' of paradigmatically feminine features and paradigmatically masculine ones, as well as other gender-pertinent features.

Moreover, my account also brings to light the provisional character of political and legal decisions reached on the basis of gender categorisations. Law and government policy regulate concrete instances, and may require specific conceptions of WOMAN. For the

solution of concrete problems in the area of law and policy, policy-makers, judges and lawyers make semantic decisions about gender terms. The same is true within political movements organised around a gender "identity"; the tendency will be to specify, at least implicitly, what terms such as 'woman', 'transgender' or 'asexual' mean. Yet all these meanings can be contested. Semantic contestability conditions invite us to adopt a stance with regard to the gender terms we adopt in law and in policy: legal and political decisions about who is called what, and for what reason, *ought* to be considered provisional and re-formable. Realising that gender conceptions are conceptually vague should translate into a political attitude, one open and willing to harken to calls from the borderlands for inclusion, wherever those borderlands may be currently situated.[26]

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[26] I discuss this political attitude in more detail in the final section of the concluding chapter of the thesis.

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Chapter Two

Gender-Term Vulnerability

In chapter one I considered the contestability of conceptions of WOMAN, explaining how specific political goals shape the particular features which enter particular conceptions. In the present article, I consider not the *conceptual contestability* of conceptions of WOMAN, but the various harmful effects some of these conceptions can have if deployed within society, especially with respect to transgender women. From a transfeminist perspective, I argue that such deployments are morally and politically problematic, or *morally contestable*, in a sense to be explained.

I critique various conceptions of WOMAN, as well as uses of the term 'woman', from the perspective of so-called 'non-passing' transgender women. By 'non-passing', I mean the circumstance of those transgender women who do not, in most contexts, resemble non-trans women (cisgender women)[27] in any socially acknowledged way, or, at least, resemble them insufficiently in the perception or understanding of most people, and so tend to be *mis*gendered. I take *mis*gendering to mean something broader than simply the use of male pronouns or of designations connoted with being male or with masculinity in referring to transgender women. For my present purposes, it also means using gender

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[27] A *cisgender* person is one who generally accepts or identifies with the gender label assigned to them at birth. *Cissexism* is based on the (often tacit) assumption that transgender persons should be subordinated to cis-gender persons along some axis, either in a systemic way within social and political institutions, or on the interpersonal level. For example, cissexism occurs through the institutional pathologisation of transgender persons, through discrimination in employment, housing, or educational opportunities.

terms that exclude transgender women from the category WOMAN, or that hierarchize that category in a way that marginalises transgender women.[28] This misgendering can be either intentional or unintentional. In particular, I present a more detailed critique of recent feminist conceptions of woman which tend to misgender non-passing transgender women.[29] To explicate my critique more fully, I develop the notion of *gender-term vulnerability*, the susceptibility to being psychologically harmed, morally wronged, or politically disadvantaged through linguistic misgendering of one's own person.

Let me say a few words about methodology. Why am I adopting the rather particular perspective of the non-passing transgender woman? There are three aspects here which ostensibly reflect my approach. The first is the transgender aspect. Transgender persons, as well as those who do not conform to societal expectations regarding gendered linguistic usage, appearance and behaviours, are discriminated against and marginalised (Shelley 2008; Beemyn and Rankin 2011), and not only through misgendering (as characterised above). I thus adopt what I call a 'transfeminist standpoint', namely, I

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[28] By marginalisation I have in mind any description or characterisation of the category WOMAN which will situate non-passing transgender women as borderline cases, or as non-central cases of women with respect to paradigm members of the category.

[29] For the purposes of this article, I am focussing on the misgendering of non-passing transgender women. However, I believe analogous arguments may be made with regard to genderqueer people who refuse to identify as either female or male. Genderqueers sometimes prefer to be referred to using gender-neutral pronouns, such as *ze* and *hir*. This attempt to change language, so that persons' self-understanding is respected, mirrors elements of some of the arguments I will present here. With regard to the misgendering of genderqueer people, Genny Beemyn and Susan Rankin report: "Genderqueer respondents who sought to have other people refer to them using a different name or gender-neutral pronouns encountered some of the greatest hostility. The individuals they knew who were antagonistic toward genderqueer identities frequently expressed this disapproval through their unwillingness to use the appropriate, nongendered language, even after being corrected" (Beemyn and Rankin 2011, 152).

consider gender conceptions and gender terms from the point of view of a marginalized and oppressed community, the transgender (or trans) community. I do not justify my theoretical stance in this paper. The approach is, I hope, familiar within feminist theory (Harstock 2003; Haslanger 2012a, 24), and is aptly characterised by Miranda Fricker:

> Let us suppose our methodological injunction to be as follows: Whatever you want to understand, try taking a look at it from the point of view of the powerless, those on the losing end of the practice you want to explain. (Fricker 2012, 289)

Socially and politically dominant gender categorisations have a real effect on human lives, with transgender people often on the "losing end" of the practice. Adopting the transfeminist standpoint allows me to develop certain insights about gender which are not available and are not even considered by cisgender, that is, non-transgender, feminist theory. I am thus making a similar move to that of Women of Color feminism, in its critique of white feminism.

Yet that is not all that is to be said about the methodological perspective I am adopting. For I am looking not at transgender persons in general, but at transgender *women*. This is principally because the characterisations I will consider are characterisations of women, and also because transgender men, it seems to me, are subject to different oppressions and exclusions.[30] Finally, I also adopt the point of view of the *non-passing* transgender woman. In essence, I look within the community of transgender women and within that community attempt to pick out a group that is marginalised and discriminated against,

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[30] There is some evidence that transgender women are subject to greater degrees of discrimination and marginalisation than transgender men (Nordmarken 2014, 131). I will not adopt a position on this issue. But if this were true, it would provide another rationale for adopting the perspective of the more oppressed, the transgender women.

perhaps even *within* that community (Hardie 2006). Being able to pass as a cisgender woman is a type of privilege, and should be viewed as such.[31] In short, my perspective is a kind of sequentially nested standpoint: within a given oppressed group (transgender persons), I focus on the group who call themselves or self-identify in some way as women. Then within *that* group, I focus on the sub-group that are subject to hierarchical marginalisation, who are regarded – often within their own community – as "lesser" women, or perhaps "not *really* trans", and so on. In short, I attempt to view feminist theorizing from the point of view of transgender minorities-within-minorities, moving as far as practically possible for the purposes of this paper toward the social margins of group membership and identity.[32]

The plan of the article is as follows. In the next section I list and describe the principal harms that arise for transgender persons from misgendering. In section three, I then distinguish and describe extensional and intensional approaches to gender terminology. I argue that both approaches fail to capture the moral and political claims a non-passing

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[31] I do not deny that possessing so-called "passing privilege" brings certain specific problems of its own for transgender women, especially if they are not "out" as transgender. I have known some very passable transgender women who have struggled with the tensions of living as if they were assigned the gender label 'woman' at birth. They experience, for example, the constant threat of being 'outed', as well as dilemmas around getting involved in transgender activism. That said, my position is that, in general, passing transgender women – even if they do not hide that they are transgender – do not experience the misgendering that non-passing transgender women must put up with.

[32] Of course, I might continue this path toward a marginal standpoint by, for example, considering non-passing transgender women of color, or non-passing transgender women of color who are sex-workers, and so on. Transgender women of color are more often victims of physical abuse and discrimination than white transgender women (Beemyn and Rankin 2011, 96). I suspect that misgendering is more common and more malicious in respect to transgender women of color, and probably more often accompanied by physical violence and harassment from authorities, such as the police. I do not accommodate the intersection with race and class in my account. This is certainly a defect of my approach. My hope is that the perspective I present is sufficiently flexible to be modified in the light of other axes of oppression. The intersection with sex work or the porn industry is an area that is certainly worthy of analysis, but which, unfortunately, exceeds my competence as well as the confines of this paper.

transgender woman might have with respect to gender-term deployments. In section four I describe in more detail what I call gender-term vulnerability, and develop guidelines for detecting it. I proceed to apply the guidelines, and a suitably developed criterion of (un)acceptability, to several recent conceptions of WOMAN in the feminist literature. I conclude by answering some anticipated objections, and with a more general observation about feminist theorizing in relation to transgender and gender non-conforming minorities.

2.1 The Harms of Misgendering

Misgendering can cause psychological harm, moral wrong and political disadvantage. Let me briefly explain what I mean by these three types of harm or wrong, as they form a basic assumption for what follows in the remainder of the article. I will summarily refer to these harms with terms such as "moral harms," "political oppression", and so on. I will assume, then, that misgendering makes Laura vulnerable to one or more of the following harms:

Psychological harms: Microaggressions.[33] A microaggression is characterised as follows:

> Microaggressions are the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, that communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership. (Sue 2010, 3)

[33] I would like to thank Meghan Winsby for giving me the idea of looking at the harms of misgendering in terms of mircoaggressions.

Transgender persons are subject to microagressions (Nordmarken and Kelly 2014; Nordmarken 2014).[34] Research indicates that microaggressions "may on the surface appear quite harmless, trivial, or be described as 'small slights,'" but "have a powerful impact upon the psychological well-being of marginalized groups" (Sue 2010, 3). Those subject to them may suffer from chronic health problems, persistent anxiety, fatigue, stress, hypervigilance, anger, fear, depression, shame, and a sense of loneliness. In their study of the health care of transgender persons, Nordmarken and Kelly note that trans-specific microagressions occur in various ways, among others

> in interactions when providers misunderstand or misinterpret trans people's identities, which invalidates the trans person's experiences of reality; when providers mispronoun or misname trans patients (using incorrect gender pronouns and their former names), inquire about their "real" identity, and deny or fail to acknowledge their gender identity, pronouns, or name … (Nordmarken and Kelly 2014, 150–1)

The harm of micro-aggressive misgendering in relation to transgender people is commonplace in many different contexts of social interaction (Nordmarken 2014, 130). This is the first harm that persistent misgendering is likely to produce.

Moral harms: epistemic injustices and undermining self-respect. Transgender persons are denied the discursive resources to participate in furthering society's understanding of their own gender and – I would add – of gender, more generally. By being persistently

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[34] Transgender persons are, of course, also subject to macroaggressions where the latter are understood as overt – usually physical – aggressions targeting specific groups. These can include rape, murder, and other forms of physical violence. However, one might also include certain forms of hate speech that are particularly explicit and malicious. Microaggressions are not so conspicuous. Sue characterises them as "everyday", and as appearing "harmless" or "trivial". Misgendering is usually of this type. It often goes unnoticed by many – usually cisgender – people. I do not deny that public, malicious misgendering might border on hate speech, and so be seen as macroaggressive. Although I believe that my framework can be developed to accommodate the harms of hate-speech, I will not treat the subject here.

classified as a ‘man’ in social interactions, as well as in the law and in government policy, according to particular conceptions and descriptions, a transgender woman is denied participation in shaping those descriptions herself. This is what Fricker calls hermeneutical marginalization. Fricker proceeds to define hermeneutical injustice as

> the injustice of having some significant area of one's social experience obscured from collective understanding owing to hermeneutical marginalization. (2006, 102)

The primary harm that emerges from hermeneutical injustice, according to Fricker, is a situated hermeneutical inequality, that is, “the concrete situation … such that the subject is rendered unable to make communicatively intelligible something which it is particularly in his or her interests to be able to render intelligible” (2006, 103). This harm may be tied to an imposed, ‘authoritative’ interpretation of the subject’s experience which constitutes her social identity; there arise discourses that ‘construct’ the Homosexual, the Hermaphrodite, or the Transsexual. Widespread misgendering imposes upon transgender persons external, authoritative interpretations of their social identity. It may thus at least contribute to robbing them of the power to express their own sense of self, and of the opportunity to develop a language and conceptual resources that articulate that sense of self.

Besides injustices of an epistemic nature, persistent misgendering undermines self-respect. By ‘self-respect’ I mean the worth a person recognizes in her own agency and her own life plans, inasmuch as they are her own:

> We may define self-respect … as having two aspects. First of all … it includes a person’s sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one’s ability, so far as it is within

> one's power, to fulfill one's intentions. When we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavours. It is clear then why self-respect is a primary good. Without it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism. (Rawls 1999, 286)

Without self-respect, action itself is impeded. Self-respect – distinguished from the self-evaluation involved in self-esteem – can be "undermined by the words or actions of others" (Brake 2013, 66). Because a person's gender identity can be part of her life struggle, and one of the most central values of who she is, misgendering – especially when persistent – can lead to an erosion of a transgender person's plans to lead the life she wishes to lead, indeed, to an erosion of pursuing any of her own plans for life.

Political Harms: Oppression and Domination. If definitions of who a transgender woman is misgenders her, so that she is a 'man' in the eyes of the law and of the state, then she will be subject to additional burdens and discrimination to which citizens should not be subject, and she may have limited access to goods and services. For example, if a transgender woman cannot legally change the gender marker on her driver's licence or her identity card from 'male' to 'female' due to legal definitions or judicial interpretations of those terms, she becomes exposed to possible abuse and discrimination, along with the continual burden of explaining herself to medical insurance representatives, police officers, and sundry officials. She may also face discrimination at work and in finding accommodation. Following Iris Marion Young, such political and administrative effects are examples of oppression understood as "the institutional

constraint on self-development", as well as domination, that is, "the institutional constraint on self-determination" (Young 2011, 37).

2.2 Intensional and Extensional Approaches to Gender Terms

Imagine Laura. Laura is a transgender woman, say around 55 years old. The realisation that her sense of gender identity did not conform to the gender assigned to her at birth came when she was in her teens. She became increasingly unhappy and struggled emotionally for many years with her gender identity, concerned that a decision to transition would ruin her marriage and destroy her family. She began her transition quite recently but because of high blood pressure and diabetes, her doctors have advised against sex reassignment surgery. She takes hormones (a testosterone blocker and estrogen) in moderate amounts but – perhaps due to the fact that she is a 'late transitioner' – they do not seem to have much of a feminising effect on her appearance. She wears female attire and sometimes make-up, but has the physical stature, facial features, and voice that would usually be perceived by most as typically 'masculine'. In short, Laura does not 'pass' as a woman in most social contexts. Worse still, she is often called a 'man' by passers-by, and even by medical professionals, something that upsets her and causes distress. She is subject to discrimination and harassment in her workplace. Laura will be taken as a hypothetical test-case throughout the analyses that follow. She is a fictional character, but not very different from several transgender persons I know.

Can Laura be included in the category WOMAN? To answer this question, we can plausibly adopt two approaches: the first begins with the intension or connotation of the

term ‘woman’; the second takes the extension or denotation (referents) of the term as its starting point. As Emily Constance Jones states:

> What I insist on is that all the names we use have both extension and intension; and either of these may be a guide to the other. I may have the things to which a name applies put before me (extensive definition) and from examination of them reach the intension; or have intension given, and go out and by means of it determine extension. (1911, 14; quoted in Ostertag 2011)

Jones is describing the dual nature of linguistic terms, variously called “comprehension” and “denotation”, “connotation” and “denotation”, “sense” and “reference”, the dichotomy between “what a term *means* and what it *denotes*” (Fitting 2015). The meaning, sense or connotation of the term will usually consist of a group of propositions, a description, which individuals must satisfy in order for the term to apply to them. Taking a cue from Jones, I will call this the *intensional approach* to the term ‘woman’.[35] Alternatively, one can start with the referents of the term ‘woman’, that is, propose an ostensive definition.[36] I will call this an *extensional approach* to the term ‘woman’. When one asks whether Laura is a woman, both approaches are possible. More specifically, it seems intuitive that one might consider the following ways to determine whether Laura is a woman. One might ask,

1. Are there some biological, social, or psychological facts which establish that Laura is a woman? Laura is a woman if she satisfies the relevant propositions

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[35] One could also call it a descriptivist approach (Mallon 2006, 530).

[36] One might compare Haslanger’s distinction between conceptual and descriptive enquiries concerning our gender concepts. See section 2.3.2. Haslanger’s account corresponds closely to Jones’s (1911) characterisation that I have quoted. As I show, however, both intensional and extensional starting-points can be problematic for Laura and people like her.

which enter some proposed description (compare Mallon 2006, 530–1). The approach is intensional;

2. Is Laura, in general and for the most part, called a ‘woman’ by the competent users of the English language who encounter her? This is a question about the referents of the term ‘woman’ according to a standard of linguistic use. The definition of ‘woman’ is not descriptive but ostensive, and the approach is extensional.

Let us look at both of these approaches in turn.

2.2.1 The Intensional Approach to ‘Woman’

We can determine whether Laura satisfies an anatomical description associated with the term ‘woman’ by observing her body. In case of uncertainty or dispute – for example, if she is intersex – we defer to medical experts with specialist knowledge of female physiology, and decide the question according to their more detailed and refined descriptions. We can determine whether Laura satisfies a social description associated with the term ‘woman’ by observing the social facts about Laura in an analogous way: social position, social behaviours and attitudes, for example. In case of doubt – for example, in case some of her social positions or social behaviours are difficult to interpret – we would again defer to experts: to sociologists, anthropologists, or social psychologists perhaps, who possess a more refined and better informed description. Laura might also satisfy a psychological description associated with ‘woman’ (“I have felt for a while now – and I still feel – that I am a woman”). Yet, we might worry that Laura’s internal sense of gender is not transparent to herself, or that she has some sort of

mental illness, in which case we would defer to the opinion of a psychiatrist or psychologist, or the cognitive scientist. Again, it is usually assumed that these experts possess a more sophisticated, scientifically grounded description of psychological states that Laura would need to satisfy to be called ‘woman’.

Problems with Deference to Expert Opinion

So much seems intuitively plausible. But let us ask some questions of all these descriptions. Semantic externalism – the view that conceptual content is individuated at least partly through our relations to the environment (Haslanger 2012c, 373–5) – claims that the descriptions Laura is taken to need to satisfy – even those of experts – may be incomplete or erroneous. This is why Tyler Burge introduces the distinction between concepts and conceptions, a distinction which captures the idea that language users can talk and think about something using the concept of some *x*, but their articulation of how they understand *x*, their conception of *x*, may be incomplete or erroneous. Examples from the history of science support the view that concepts or ‘translational meanings’ remain the same, while conceptions or ‘lexical meanings’ can change. For example, Dalton’s definition of the atom – i.e. his *conception* of the atom – turned out to be false, but the empirically based scheme of atomic weights which that definition encompassed “anchored the concept” (Burge 1986, 716; 1993, 316–317). A term – such as ‘atom’ – picks out what we are talking about, despite the imperfections or incompleteness in the way we explicate it as our science advances. The referents are, in any case, “empirically discernible entities”, even though they may belong to natural kinds, social kinds, or may be artifacts. Exposure to examples introduces the notions which make up the concept (Burge 1993, 323).

We can conclude from the possible ‘disjunct’ between conceptions and concepts that expert opinions may themselves be incomplete, and may even be quite misguided. Nevertheless, one might claim that deference to experts as regards the meanings of technical terms or terms of art is still normatively appropriate (Williams 1990, 454–5). After all, in the case in which ‘woman’ is understood as a term of art or expertise, experts’ conceptions, even though incomplete and subject to revision, are still more adequate than the conceptions articulated by lay persons.

The situation is more complicated with categories regarding gender and sexuality, and this poses problems for the normativity of deferential attitudes in cases where socially and politically important conceptions and terms are at stake. Where expert terms inflict psychological harm or are oppressive, deference to those regarded as experts is inappropriate. For example, many psychiatrists once declared that homosexuality was a mental disorder, that is, they defended a certain pathologising and denigrating conception of homosexuals. It is when homosexuals themselves got to contest the expert conceptions, and began to mobilize with others around the issue, that change became possible: homosexuality was removed from the third edition of the *Diagnostic and Statistical Manual* of the American Psychiatric Association (*DSM*-III). We can consider another example, more relevant to Laura’s situation. Until recently, the *DSM* still categorised transgender persons under a condition called GID – Gender Identity *Disorder*. The underlying psychiatric conception of gender assumed that a person’s subjective sense of gender should align with physical sex. Again, it was when experts began to take into account the experiences, testimonies and critical intervention of transgender persons and their organisations that GID was renamed “Gender Dysphoria”

in *DSM*-V, with revised diagnostic criteria (*American Psychiatric Association* 2014).[37] With human social kinds we often find "looping effects" (Hacking 1995, 1999; Haslanger 2012b, 465–7): those falling under the expert conception can come to influence its content. Such effects may occur without the full awareness of those who interact in shaping conceptions – what one might call 'interactive conceptual drift.' What I am suggesting is that a more consciously political and concerted influence upon expert conceptions on the part of those classified by them does happen and does effect change. This politically mobilised influence – although it can be to some degree informed by scientifically based critiques – need not be primarily scientific in nature, and can be exerted by lay persons. The point is that its claim is largely ethical or political. Deferring to expert opinion in such cases is not obligatory. On the contrary, contesting such opinion can be valid and ethically recommended.

What about "Natural Kind Terms"?

I claim, then, that deference to expert opinion when expert conceptions of gender are politically oppressive or morally denigrating is unjustified, and can reinforce negative social attitudes toward gender and sexual minorities. Now, someone might concede what I have claimed so far, as long as we treat the expert conceptions of WOMAN as limited to a

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[37] The detailed and intense discussions over the reform of the diagnosis within the *World Professional Association for Transgender Health* is documented in the *International Journal of Transgenderism* 12(1) (2010); 12(2) (2010) and 13(1) (2011). Some transgender organisations, as well as some psychiatrists, were in favour of removing GID from the *DSM*-V altogether. However, doing this would have barred many transgender people from seeking reimbursement from insurers for hormones and surgeries. Recommending the retention of some form of medical diagnosis is thus at least partly motivated by non-medical factors. The recommendation to change the name and diagnostic criteria was aimed at reducing the possible pathologisation of transgender persons. The name change was also intended to signal that the *gender identity* of the transgender person is not a disorder.

description of social position or subjective psychological states. Yet they may claim that – used as a natural kind term – the argument is unsound. They may say: "I admit that the gender conceptions of psychiatrists and social scientists are interactive kinds, and more prone to cissexist and gender bias. And I concede that they are contestable, not just within the scientific community for reasons that are epistemic, but also within the broader community, in which the reasons for contest are moral and political. This certainly problematizes, within an intensional approach, the proposed procedures to find answers to the questions concerning whether Laura is a woman. But, surely, it is hardly contestable that Laura possesses male genitalia, and so is a man – at least in some contexts – so that one can answer the question about whether Laura is a woman in the negative."

To answer the objection, I adopt and adapt some considerations from Jennifer Saul (2012). For as she has pointed out, there is something wrong even in this case. One might claim, for example, that for the purposes of an examination for prostate cancer, Laura is a man, that is, she is a man in the context of 'testing-for-prostate-cancer'. The public health service in her country may issue advice that men 40-years-of-age and over should have their prostates periodically tested. When she goes for such an examination, the doctor may well call her a 'man' and use the pronoun 'he', because he believes Laura satisfies a certain description of what it is to be called a 'man' (his approach is intensional). But she will find this use of language offensive and denigrating. Saul notes that

> Disagreements over who counts as a woman are simply not to be settled by appeal to the facts of language. They are to be settled by appeal to moral and political principles. There may well be a single *right* answer about what standards should be applied for determining who satisfies the

> definition of "woman" in a particular context; but it will be right because it is morally and politically right. (Saul 2012, 204)

Let us look more closely at Saul's idea. Even limited to this particular context, by calling Laura a 'man', the doctor not only offends her, but he disvalues her personal struggle of resistance to gender norms and to society's prejudice. It is true that Laura and the doctor have different conceptions of MAN and WOMAN, possibly with diverging associated descriptions. The doctor, presumably, is the 'expert' in medicine: Laura is not his epistemic peer in this respect. Yet this is not simply a case of epistemic disagreement, but ethical disagreement. Laura, in contesting the use of that term to designate her own person, is making an ethical claim, not a factual claim about her body. It is of moral significance that she be able to *contest* the doctor's use.[38] There is no "deference condition" as there usually might be when lay persons employ terms of expertise, that is, there is no intention on the part of Laura to use the term 'woman' as (medical) experts use it. This is because being a woman for Laura is part of what Bettcher calls "existential self-identity". For her, the avowal 'I am a woman' does not invoke the factual question 'What am I, biologically?' but rather involves "the importance of one's personal history of relatedness to gender, body, and sex. It will also probably involve the significance of the question 'What does it mean for me to be a woman?' to one's interpretation of one's past and one's projects for the future" (Bettcher 2009, 112). Similarly, I would claim, Laura's objection to the doctor: 'Don't call me a man', is not an objection to expert

[38] The situation is a result of what Saul (2012, 206) calls "mixed contexts" where two parties have different standards of meaning in mind.

language use as such, but to the denigration of who she regards herself to be, and the denial of her moral claim to be that person.

The doctor may think that it is just a natural fact that Laura is a referent of the term ‘man’, and should be called a ‘man’. Nevertheless, there are ethical reasons not to use this term, since employing it is morally damaging. There is much more at stake for Laura than there is for the doctor when he uses the term ‘man’ to refer to her: she may experience triggering effects of various sorts, painful memories of rejection, a reminder of her dysphoria, all this allied to the undermining of her personal identity, as well as a threat to her self-respect. Given Laura’s input into a dispute of whether she should be called a ‘man’, the doctor’s stance should be conciliatory: he ought to come to realise that the employment of ‘man’, ‘male’, ‘masculine’, or ‘he’ is much more than a designation of body parts, and is particularly so for Laura. Once the meaning of purportedly natural kind terms flows over into the ethical, changes in terminology are called for. For example, the health service brochure advocating prostate screening does not have to mention the term ‘men’ but can talk generally about “persons with prostates”. The doctor can also choose to address Laura, and to discuss her case in other terms. The doctor initially takes ‘woman’, ‘man’, etc. to be terms of expertise. He is more competent than Laura to determine their meaning within a medical context. According to his medical knowledge, the meaning of ‘man’ includes possession of a prostate. However, he encounters Laura’s first-person ethical authority which, in this case, overrides his authoritative use of gender terms.

2.2.2 The Extensional Approach to ‘Woman’

Laura’s visit to the doctor has already touched on normative language use. Linguistic normativity is also relevant to asking competent users of the English language whether they would call Laura a ‘woman.’ In this case, it is the extension of ‘woman’ which is at stake. We appeal to the authority of the relative linguistic community. But which community might that be? Who are the competent users whose use is authoritative? Let us say that Laura is active in a local transgender support group. Within that group – as would be the case in many other similar groups – even when Laura presents in a more ‘masculine’ way, she is simply called ‘woman’ and referred to with the pronoun ‘she’. Yet the members of these support groups are all competent users of the English language. In effect, non-conforming use presupposes ‘being in the know’ of how terms are predominantly used (Williams 1990, 455).

Here, a possible dispute about the extension of the term ‘woman’ is thus not decided by questions of linguistic competence, since Laura and her transgender support group are as linguistically competent as anyone else. Perhaps, then, we should simply follow the prevalent or majoritarian use? But it is *morally* problematic to claim that the transgender use of the term ‘woman’ is incorrect or deviant for it will be ‘incorrect’ only with respect to a common and ‘natural’ use that is a mechanism for diminishing Laura’s self-respect, and denying her basic rights. One of the justifications of the ‘common-sense’ use would be that transgender persons are using the word ‘woman’ incorrectly, and that they are simply in error, either deluding themselves or deceiving others (Bettcher 2007). Majoritarian use is susceptible to prejudice and bias. It can be a tool to maintain

asymmetries of social power, a tyranny of the (linguistic) majority. Once again, ethical or political norms problematize the application of linguistic norms.

Let me summarize this section. Gender categorisations involve the use of gender terms which denote and connote, have a meaning and a designation. Gender conceptions – even scientifically elaborated ones – are sufficiently prone to distortions and biases to render them open to critique, both scientific and lay. Even when gender terms are treated as natural kind terms, situations of ethical asymmetry can arise in which expertise impinges on self-respect and self-identity. In such cases, a challenge to either expert connotation or denotation can outweigh epistemic superiority and competence in the deployment of those terms as terms of art. Finally, with regard to extensional meaning, the socially dominant competent use of gender terms can be questioned on the grounds that this use is also imbued with social and political biases, issuing in the denigration, discrimination and marginalisation of gender non-conforming persons.

2.3 Vulnerability to Gender-term Deployment

I will attempt to generalise somewhat the results of the preceding section. Let us say that the use of a gender expression to refer to individuals, or the description associated with a gender expression, is a *gender-term deployment.* In the former case, the deployment will be called *extensional*; in the latter, it is *intensional*.[39] There are a number of points to consider, from which several conclusions follow.

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[39] Gender-term deployments do not have to be explicit utterances or inscriptions; their intensions or extensions can often be inferred from actions, attitudes, or expressions that do not explicitly involve gender

a. *The deployment of gender terms has moral and political effects*. As I pointed out in the introduction, the extensions and intensions of these terms can harm and disadvantage individuals psychologically, morally, and politically. I will say that

> a person or group is *vulnerable to gender-term deployment* (or "gender-term vulnerable", for short) in a context *C* with respect to gender terms *x*, *y*, etc., just in case they are susceptible to moral harm or political oppression by the individual or institutional extensional or intensional deployments of *x*, *y*, etc. The terms x, y, etc. are *harmfully* or *oppressively deployed* (in context *C*) with respect to that person or group.

Gender-term vulnerability is intended to capture the idea that the everyday deployment of gender terms – both extensional and intensional – often injures personal dignity and self-respect, particularly in the case of gender non-conforming persons. In addition, however, gender-term deployments can find their way into public policy and law. For example, the institutionalised connotations gender terms carry are deployed to determine gender markers on all sorts of documents. As we saw, if Laura cannot legally change the gender marker from 'male' to 'female' on her driver's licence or her identity card due to legal intensional deployments of those terms, she becomes exposed to possible abuse and discrimination. Laura is thus gender-term vulnerable with respect to the gender terms 'male' and 'female' in those contexts in which she requires ID to access services and facilities. Again, oppressive or morally harmful gender-term deployments do not have to be intentional and may be systemic.

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meanings. However, the treatment of this broader class of deployments is somewhat more complicated, so I will not consider them in this article.

b. Oppressive or harmful deployments of gender terms are subject to ethically or politically grounded challenges, irrespective of the competencies, epistemic or linguistic, of those who deploy them. I will say that these deployments are morally contestable. Gender terms ought not to be oppressively or harmfully deployed. This is an ethical evaluation. However, to my mind, it is not necessarily the case that Laura (or others) ought to contest such deployments. For that obligation depends on many other factors, particularly on the prospect of increased marginalisation if she does so. Whether gender-term deployments can effectively be contested depends on various social and political conditions.[40] Inasmuch as 'ought implies can' it is difficult to determine an obligation in this regard, especially regarding Laura. This is why I speak simply of moral contestability, that is, the existence of ethical and political grounds to challenge gender-term deployments.

2.3.1 Detecting Oppressive Gender Terms

Is there any way of finding out whether specific gender term deployments are morally contestable? I do not claim that there is any general, reliable formula for testing gender term deployments. One could have recourse to empirical studies, for example. In this section, however, I will consider two rather more theoretical considerations regarding the effects of intensional and extensional gender-term deployments, and argue that they are likely to be harmful or oppressive if implemented at the social or political level. The two axes of analysis I have in mind concern two properties of language: *exclusion* (from

[40] I discuss some of these social and political conditions in chapter three.

membership in a gender category); and *hierarchical or gradational structure* (of category membership).

Corresponding to the two basic approaches outlined by Jones (1911), and quoted in section two, we first need to ascertain whether the approach to gender terms begins with intension or with extension. In the former case, a definition or descriptive characterisation may potentially be harmful or oppressive, and one can find out by considering the individuals who satisfy its criteria or fail to satisfy them, to see what might happen to Laura and others like her. One can thus pursue

1. *Queries regarding exclusionary effects of intensional approaches to the meaning of 'woman'*: Which individuals do the intensional deployments include? Whom do they exclude? Given the general social conditions of western society, what moral and political consequences is the inclusion or exclusion likely to have on those people?

Alternatively, one can start with the extensions of competent language use, or expert language use. Any exclusion or inclusion of individuals is occurring already as the gender terms are used to 'pick out' those who are purportedly denoted by them. One can thus pursue

2. *Queries regarding exclusionary effects of extensional approaches to the meaning of 'woman'*: Which individuals do the extensional deployments include? Whom do they exclude? Given the general social conditions of western society, what moral and political consequences is the inclusion or exclusion likely to have on those people?

This is not all. For besides asking about inclusion/exclusion we can also ask about the possible effects of hierarchies, rankings, and the presence of margins or borderlines exhibited by gender term deployments. We can thus pose

3. *Queries regarding gradational effects of intensional approaches to the meaning of 'woman'*: Do intensional gender term deployments explicitly or implicitly grade individuals according to some measure? Given the general social conditions of western society, what moral and political consequences might such rankings have?

Similarly, we can pursue

4. *Queries regarding gradational effects of extensional approaches to the meaning of 'woman'*: Do extensional gender term deployments pick out individuals uniformly, or is there implicit or explicit gradation (hierarchy)? (Some examples might be: "*She's* more of a woman than Laura is" or "Now *that's* a *real* man!") Given the general social conditions of Western society, what moral and political consequences might such rankings have?

Armed with this outline method – which certainly could be refined – let us go back to consider Laura's moral or political situation in the light of some specific gender term deployments, namely, those that have appeared in recent literature in feminist philosophy.

Now, the gender-term deployments of feminist philosophy are theoretical and largely confined to the academy. Unless she has a particular interest in philosophy, Laura is unlikely to encounter such deployments in her daily life, and it is safe to say that the psychological and moral harms or political oppression she faces on a daily basis are not

of a theoretically refined, academic kind. So how am I justified in making the move from a common, every-day type of gender-term oppression to a purported gender term oppression generated within philosophy?

My claim is not that the philosophical accounts of gender that follow are *actually* oppressive or morally harmful. What I am claiming is that a criterion for deciding their acceptability resides in seeing what would happen to people like Laura if philosophical gender-term deployments were broadly[41] applied at the social and political levels. Acceptable theorising still has a moral or political basis. We can still apply the queries about exclusionary or gradational (ranking) effects listed previously, not because of how they actually affect Laura and people like her, but because of how they *would* affect her if used within her social environment. The criterion for unacceptability is expressed counterfactually:

> Let *x* be a philosophical deployment of the gender term 'woman'. Then *x* is unacceptable from a transfeminist point of view if *x* would be an oppressive or harmful gender-term deployment with respect to some group of transgender women if it were implemented (broadly applied) within their social context.

The counterfactual criterion for unacceptability is relative to a transfeminist point of view. I do not exclude the possibility that, for some purpose or other, the deployments I critique may be adequate from that particular viewpoint. For example, characterising

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[41] The qualification of 'broad' application excludes occasional deployments which do not contribute to the moral harms or political oppressions inflicted on people like Laura. For example, Laura may attend the public lecture of a famous feminist philosopher. The philosopher may deploy gender terms that are exclusionary or marginalising with respect to Laura and people like her. Laura may be offended, yet the deployment is not a broad application of the gender term. By the latter, I mean the deployment by many people in Laura's social environment, or the enshrinement of a gender-term deployment in law or government policy.

'women' in terms of the reproductive function of birthing may serve the justified political goal of drawing attention to discrimination in the workplace against people who are pregnant or can become pregnant. Moreover, the qualification "from a transfeminist point of view" is crucial. I do not state "from *the* transfeminist point of view", as there may be many transfeminist points of view.[42] Finally, the social contexts mentioned above pre-suppose some knowledge of how transgender people actually live within society, and how they are discriminated against and oppressed. This knowledge helps reveal the potential shortcomings of gender-term deployments.

Now, the above characterisation frames unacceptability rather narrowly, in terms of (potential) harms and oppression. However, one could understand unacceptability of gender-term deployments more broadly. It could range from the impracticability of such deployments, through their ineffectuality in promoting political change, to – consonant with the emphasis of this paper – their negative consequences for particular marginalised groups, such as oppressive or morally damaging effects. In my discussion of definitions and characterisations of 'woman', I will occasionally mention the ineffectuality of the deployments discussed. However, I will generally keep to the more narrow specification of unacceptability given above.

The counterfactual unacceptability criterion for 'woman' is explicated in terms of 'transgender women'. At first sight, one might suspect some form of circularity here. However, deployments of 'woman' can be critiqued relative to other deployments of

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[42] I discuss transfeminist philosophy at greater length in the concluding chapter of the thesis.

‘woman’, whatever these may be. For the criterion to be applicable there must be some way, after all, of referring to, or of describing, transgender women such as Laura. I have done so myself in this paper. That said, one can still critique other gender-term deployments from the adopted group- or identity perspective. This is the way black feminism critiqued white feminism in the past, or lesbian feminism critiqued heterosexual feminism. In this sense, gender-term deployments are *dialectically positioned* with respect to each other.

Finally, it should be noted that if gender terms are counterfactually unacceptable in the ethical sense this fact imposes moral obligations for those who would deploy them in Laura’s context. Basically, they should not be deployed in Laura’s context. But if they were to be deployed, they would be morally contestable in the sense explained earlier: Laura or others would possess ethical or political grounds to challenge them.

With our counterfactual unacceptability criterion in hand, we can now proceed to consider recent philosophical deployments of the term ‘woman’, and see what would happen if they were socially or politically implemented within Laura’s social context.

2.3.2 Haslanger’s Intensional Deployment of ‘Woman’ As Subordinated Social Class

Sally Haslanger deploys the term ‘woman’ intensionally, as a definition that is meant to capture the idea that women form a subordinate class (Haslanger 2012d, 2012e). She first makes a distinction between sex and gender. The former is a biological notion, and is determined by anatomical and physiological factors such as chromosomes, and primary and secondary sexual characteristics. Although I do not attach methodological

importance to this distinction, and talk indiscriminately of 'gender terms', for ease of exposition in this section and the next two sections, I will follow Haslanger and adopt the terms 'male' and 'female' when talking about sexed bodies, and 'woman' and 'man' when talking of the gender terms Haslanger deploys.[43]

Haslanger distinguishes between *manifest*, *operative*, and *target* concepts of gender, and also between the corresponding investigations we can undertake to enquire into them. A *conceptual* inquiry will investigate our manifest concept of gender by examining our intuitions about various actual and hypothetical cases of what it is to be, for example, a 'woman', and also by examining definitions or formulations of the concept which we produce upon reflection. A *descriptive* enquiry into our operative concept focuses on the extension of the concept, and will often use empirical methods. It will pick out the various individuals usually identified as *women* and attempt to discover whether, and to what extent, our designations are tracking a social kind. Finally, target concepts are the object of *ameliorative* investigations. They are formulated on an assumption of what the concept woman *should* be in order to facilitate certain ethical or political ends (Haslanger 2012e, 223–4; Saul 2006, 123–5; Stoljar 2011, 34–5)

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[43] To what extent the meanings of 'sex' and 'gender' are distinct is a rather difficult question. If we regard 'sex' as denoting biological embodiment, it is still difficult to dissociate the component elements of its meaning from socially conditioned understandings of gender. A lot seems to depend on the expressions we use. It is difficult, for example, to dissociate apparently purely descriptive terms, such as 'estrogen' and 'vagina' from socially imbued connotations. Perhaps one could only perform the dissociation through a very technical type of specification for 'sex', for example, if one intensionally deploys the term solely as a series of body measurements, concentrations of chemicals in the blood, genetic sequences, and the like, in short, as a multi-variable vector-quantity, consisting entirely of numbers.

In accordance with her critical analytical project within feminist and antiracist social theory, Haslanger seeks to define a *target* concept of *woman* in an explicitly normative way, a way which will prove to be an effective tool in the fight against injustice. This goal is to be achieved through a distinct strategy, that of offering "a focal analysis that defines gender, in the primary sense, as a social class" (Haslanger 2012e, 228). Indeed, part of the originality of Haslanger's approach to gender consists in the fact that she centres her definition of 'woman' and 'man' on a particular aspect of gender ascription, namely, on the characterisation of women as subordinate and of men as dominant – this is the "core phenomenon" of gender. Although Haslanger suggests that it would ultimately be desirable for our manifest, operative, and target concepts to coincide, she is primarily concerned with the target concept.

Inasmuch as such an approach formulates a definition of the social kind, Haslanger's approach is – from the perspective of the present paper – an intensional one: it is the definition of 'woman' that lies at the centre of queries related to gender-term vulnerability. Within Haslanger's definitions, it is the male *body* – observed or imagined – which is described as the direct marker of privilege. Similarly, it is the female *body* – observed or imagined – which is described as the salient marker or the "cue", so to speak, for subordination. The purpose of these definitions is to reveal aspects of the concept associated with 'woman' that are open to social and political critique. Haslanger's definitions run as follows:

> S is a woman iff_{df} S is systematically subordinated along some dimension (economic, political, legal, social, etc.), and S is "marked" as a target for this treatment by observed or imagined bodily features presumed to be evidence of a female's biological role in reproduction.

> S is a man iff_{df} S is systematically privileged along some dimension (economic, political, legal, social, etc.), and S is "marked" as a target for this treatment by observed or imagined bodily features presumed to be evidence of a male's biological role in reproduction. (Haslanger 2012e, 230)

Let us ask about exclusionary effects these definitions might have on Laura. Now, in most circumstances, Laura does not "pass" as a woman, that is, any gender cues she gives are not sufficient for those around her to imagine she has bodily features presumed to be evidence of female reproductive biology. But neither does Laura possess female organs, so that the requisite bodily features cannot be observed. So, on Haslanger's view, Laura is not a woman, and – presumably – should not be called a 'woman'.[44]

Now one might claim that such exclusion from the extension of the term 'woman' is quite benign. After all, it implies that Laura is not subordinate in a sexist way, which is – presumably – not something Laura would want (a point I will come to presently). And yet, Laura *is* subordinate along various dimensions in a way typical for many non-passing transgender women. It seems implausible that her subordination is not based in some way on her gender and/or sex. It is quite likely, in fact, that she is subordinate because she exhibits some feminine social cues but not enough to pass as a female according to the socially conditioned perception of those whom she encounters. She is thus understood by many as a 'guy-in-drag', as 'just a dude'.[45] Paradoxically, Laura's dress and make-up can make her typically male features more salient. She is subordinated not on the basis of

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[44] The same goes, by the way, for a non-operative trans man who does not pass as a man with respect to Haslanger's definitional connotation of the gender term 'man'.

[45] On this point, see the remarks in Jenkins (2015).

being a female, but on the basis of not conforming to dominant cultural conceptions of manhood or womanhood. After considering how – contrary to her definition of man – Black men may be subordinated on the basis of being male, Haslanger comments

> On the sort of view we're considering, a woman is someone whose subordinated status is marked by reference to (assumed) female anatomy; someone marked for subordination by reference to (assumed) *male* anatomy does not qualify as a woman, but also, in the particular context, is not socially positioned as a man. (Haslanger 2012e, 232).

This is the case for Laura as well. But her subordination may not explicitly be a question of race (she may be a white transgender woman). Haslanger's analysis fails to take cis-sexist forms of gender oppression into account. From the transfeminist perspective adopted here, it is politically useless for people like Laura. This is certainly one aspect of its unacceptability.[46]

Yet, if Haslanger's definition were to be applied in Laura's social context, the marginalising effect of the definition emerges. Being a woman may include sexist subordination even for Laura, but that is not *all* it can be if Laura is to rationally desire to transition into being a woman. Laura must perceive some value in being a woman. The way Haslanger has stated her definition, there is little room for the positive appraisal of being a woman. Of course, the circumstances of sexist subordination may occasion a

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[46] Jenkins (2015) has argued that the exclusion of transgender women from Haslanger's account is marginalising because she regards her definitions as 'focal' concepts, and other conceptions of 'woman' as marginal. This is a valid point. My approach is different, in that I take Haslanger's 'focal' concepts and investigate how they would function (or not) for people like Laura. Jenkins makes the additional point, however, that, if applied to social contexts, Haslanger's definition would unjustly exclude many transgender women from feminist activism in resisting the oppression they face *as women*. Jenkins' criticism does, in this case, apply something like the counterfactual unacceptability criterion I have proposed.

greater sense of solidarity in community among women, for example, and thus being a woman may have some derived, positive value. But Haslanger does not theorize this possibility. If implemented, Laura chooses to bear great personal sacrifice and expose herself to gender-term vulnerability, as well as abuses of all sorts over many years, just in order to become subordinate.[47] In this perspective, Laura's rational judgment can be questioned and she may be subject to pathologisation on that account. In short, not only is Haslanger's definition unacceptable because it would be politically useless for Laura, but also because it would likely have morally harmful effects on her.[48]

2.3.3 Alcoff's and Witt's Intensional Deployments of 'Woman': Social Relationships to Female Reproductive Capacity

The problem with Haslanger's approach is that women, as subordinated, must first pass satisfaction criteria about whether they possess certain biological features ("observed features") or whether they emit the culturally determined, appropriate gender cues associated with such features ("imagined features"). Laura has neither, so the approach cannot accommodate her subordination. Generally, any intensional deployments of 'woman' will exclude Laura if they focus on one or other of these aspects. One variant of this is Linda Alcoff's account in which female reproductive capacities – even if not

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[47] On this point, see Saul (2006, 123).

[48] Haslanger states that her focus is not to discover or articulate what all women have in common. Rather, "the primary goal is an analysis of gender that will serve as a tool in the quest for sexual justice" (2012d, 228). If we consider "quest for sexual justice" to include the quest for freedom from cissexist subordination, Haslanger's definitions do not help people like Laura. But Haslanger also states that "the hope is that the account's implications would not reinforce but would help undermine the structures of sexual oppression" (229). If within "the structures of sexual oppression" we include the structures of cissexist oppression – and I am assuming we should – then Haslanger's definitions would indeed, as I have argued, *reinforce* oppressive cissexist structures if broadly implemented.

actualised – nevertheless shape a horizon of practices and experiences (‘woman’) in which biological females are immersed.

Alcoff is concerned to maintain the material, “objective basis” for sexed identity. She proposes that women are differentiated from men by a specific

> relationship of possibility to biological reproduction, with biological reproduction referring to conceiving, giving birth, and breast-feeding, involving one’s own body. (Alcoff 2006, 172)

The possibilities Alcoff is discussing refer to “practices, expectations, and feelings with regard to reproduction” irrespective of their actuality, so that, for example, infertile women, postmenopausal women, as well as prepubescent girls are included. The particular functions of biological reproduction thus configure females’ interpretative horizons because of “the ways in which we are embodied” (2006, 176).

The prospects that Laura will be called a ‘woman’ on Alcoff’s account are rather poor, but perhaps not completely hopeless. Maybe Laura has always wanted to conceive, give birth, and breast-feed, even as she was fully aware that such things were physically impossible for her. Thus, it would seem that – on Alcoff’s account – she is very close to some infertile females. However, one could conceive of males who have wanted to give birth, but who – unlike Laura – are perfectly happy to be men within society. Perhaps Alcoff’s insistence that the relationship of possibility involve one’s *own* body, or the ways in which females are embodied, takes us toward an interpretation that is meant to rule out such cases. But it is also conceivable that many infertile females have no desire to conceive, give birth or breast-feed, and do not regret that they are unable to do such things, and perhaps are quite indifferent toward this state of affairs. So the ‘relationship

of possibility' to female reproductive function anchored in the body, even an infertile one, remains obscure.

That said, some of Alcoff's remarks, particularly her association of the possibility of pregnancy, childbirth, nursing, and rape with females' horizons which are carried "throughout childhood and much or all of our adult lives" suggests that she is also invoking a notion of female socialization, linked to expectations and practices around female reproduction, centred on the embodiment of the person involved. We should conclude that because Laura has a male embodiment, this type of biology-constrained socialization is not hers. One could perhaps suitably modify and clarify Alcoff's description of satisfaction criteria for being a woman but, on balance, her intensional deployment of 'woman' will exclude Laura. If applied in Laura's context, Alcoff's intensional deployment would justify continued misgendering of transgender women, threatening Laura's self-respect, negating the value of her personal struggles, and denying her sense of self, and self-worth. Such considerations reveal that Alcoff's gender-term deployment is unacceptable from a transfeminist perspective.

In a way somewhat reminiscent of Alcoff, Witt (2011) also lays an emphasis on social interpretations of particular biological functions. In her analysis of the human self, Witt distinguishes between human organism, person and social individual, each being evaluable under distinct sets of norms: respectively, biological, ethical, and social norms. Witt argues that gender is the "mega social role or the principle of normative unity" for the social individual which is "prior to that individual's other social roles and also prioritizes them" (2011, 103). In short, one's gender holds all other social roles together in a functional unity. Without a gender, or some other integrating mega social role – and

Witt argues that in present-day Western societies, gender is the only plausible candidate for this role – the social individual would disintegrate.

What is crucial for Laura is that, according to Witt, gender locates social individuals on the basis of the socially mediated function of reproduction. Witt claims that this socially mediated function – she calls it *engendering* (2011, 32) – is distinct from biological reproduction, and yet related to it in culturally and socially conditioned ways.[49] That is to say that the material conditions of biological reproduction do somehow constrain the socially mediated function of engendering, but do not explain the complexity of the social roles and expectations which come with the latter. And even the material conditions of biological reproduction are not fixed; we do not know, for example, in which directions reproductive technologies may take us. Witt summarises as follows:

> Being a man and being a woman are social positions with bifurcated social norms that cluster around the engendering function. To be a woman is to be recognized as having a body that plays one role in the engendering function; they conceive and bear. To be a man is to be recognized as having a body that plays another role in the engendering function: men beget. The social norms include, but are not limited to, those attaching to different gestational roles and to different parenting roles. (2011, 40)

Having thus defined the terms of gender, Witt briefly discusses the case of transgender individuals, and concludes that they can be considered as belonging to a 'third gender' if they can be "described in terms of the notions of being a man and being a woman," that is, in terms of notions understood in relation to the engendering functions of bearing and begetting (2011, 41). Witt is willing to concede that

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[49] Witt provides an analogy with the social function of dining which is the socially mediated equivalent of the biological function of feeding: "Engendering is to reproduction as dining is to feeding" (2011, 37).

> It is reasonable to think that a change in social role marks the end of one social individual, and the beginning of another. From being responsive to one set of gendered social norms and expectations (of appearance, posture, activity, and so on) the transgendered individual becomes responsive to an entirely different set of gendered social norms. (Witt 2011, 88)

Nevertheless, she does not concede that transwomen are 'women' in her deployment of that term. But although some trans people wish to live 'beyond the binary' or identify as 'third gender', Laura may not wish to do so. Witt considers the 'third gender' option because it is, in fact, the *only* one open, on her account, to transgender people. This is clear from her intensional deployment of 'woman': to be a woman one has to be recognized as having a body which conceives and bears. This is not the case for Laura. Witt's deployment excludes Laura, and transgender women like her.[50] As with Alcoff's gender-term deployment, if applied to Laura's context, Witt's deployment of 'woman' would support continued misgendering and the concomitant moral denigration or political oppression of transgender women.

Why do Alcoff and Witt place so much emphasis on features of reproductive function? Much feminist theorizing and activism has centred on reproductive rights. Authors such as Alcoff and Witt wish to ground their theories in the material embodiment ("material content" – Alcoff 2006, 174) characterised by gestation, lactation, menstruation, and the like, as well as the experiences of social life that ensue. Alcoff states that

> The significance of the division of labour in the process of biological reproduction is not unstable or undecidable all the way down. There is much that is variable about it, and social conditions can make pregnancy a true disability, but it will never have the range of variable significance that

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[50] I wish to thank Naomi Scheman for helpful discussion of this point.

> eye color, skin color, or height can have. Its objective significance is transformable only by technology. To categorize human beings on the basis of a biological division of labor is thus to recognize an objective type. (Alcoff 2006, 175)

In the face of concerns that my approach simply ignores the biological materiality of reproductive function, let me stress that I do not dispute that the division of reproductive labour has been significant in analysing 'women's' oppression in the past, and will continue to be so in many contexts. It is certainly important to recognize certain biological facts that ground vulnerability and exploitation. However, the crucial question from a transfeminist perspective is whether the biological differences ought to be the basis for labelling people as 'woman' and 'man' in an exclusive, exhaustive way, that is, in all possible contexts, including Laura's social context. And one can ask, as I do, what harms might emerge for trans people by doing so. Additionally, there are now people claiming to be 'men' (transgender men) who give birth. Reproductive rights then cease to straightforwardly be a "women's issue". The question is thus not one concerning biological facts of the matter, but one which regards finding a terminology that inflicts no psychological, moral, or political harms on marginalised individuals.

A related objection arises with regard to my apparent dismissal of girls' and women's socialization. But here I would like to make another distinction. Even if there exists something relatively homogeneous as "female socialization" linked to expectations and practices related to biological reproduction, it is possible for someone to lack such socialization while still having a *moral claim* to the title 'woman'. I believe that this claim is grounded in the type of personal struggle that I have attributed to Laura and

people like her, and in the fact that excluding Laura from the category WOMAN has harmful and oppressive effects.[51]

2.3.4 Mikkola's Extensional Deployment of 'Woman'

Mari Mikkola, acknowledging the "apparently insurmountable" difficulties in defining woman, adopts an extensional deployment of 'woman' (2009). Asking for a definition of woman – in my terminology, asking for an intensional deployment of 'woman' – is, according to Mikkola, "asking for too much" and "more trouble than it's worth" (2009, 562). Her approach is to rely on ordinary language users. With respect to 'woman', Mikkola claims, it is "intuitively easy to apply the term but hard to account for its application" (573). She thereby distances herself from intensional deployments, and adopts extensional deployment as semantically normative. In particular, she wishes to rely on what she calls "extensional intuitions":

> our extensional intuitions about 'woman' are simply about which individuals we think the term applies to. They do not, then, inform us about the content of any concept, manifest or operative. Extensional intuitions may, of course, be taken to provide the starting point for inquiring into the content of our operative woman concept. But this would be a further step and would require an additional much more detailed analysis of what precisely extensional intuitions do tell us about the content of our gender concepts. (2009, 254)

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[51] A moral claim to the title 'woman' may also be recognised in the case of non-trans people who have not been subject to stereotypical 'female' socialization, simply because that title is part of whom they regard themselves to be as persons commanding respect. Defining persons *simply* in terms of biology and sexist socialization excludes far too many people who value their sense of womanhood and what they achieve in, through, and out of this sense of self.

This text makes clear Mikkola's extensional approach. Mikkola's basic premise is that ordinary language users apply the term 'woman' consistently and uniformly, with little confusion. In the case of transgender women, however, Mikkola has to do some theoretical back-peddling, treating them as "equivocal cases":

> Non-trans feminists must engage in a dialogue with trans people in order to negotiate together where the boundaries of women's social kind in particular circumstances will fall. In appealing to extensional intuitions, I am not proposing to settle the boundaries of women's social kind once and for all; my proposal is more modest than that. But this does not render my proposal unhelpful: what I am suggesting provides a way to avoid problems with type membership and gender concepts that have plagued recent feminist philosophy for cases that are unequivocal. (Mikkola 2009, 579)

It is admirable that Mikkola acknowledges the limitations of her approach, yet the problem it poses for Laura is a rather serious one. Mikkola considers the character Dil from the film *The Crying Game*. Now the only reason Dil features as an equivocal case, according to Mikkola, is because in some contexts in which gender cues of typically feminine self-presentation are more salient, Dil is called a 'woman', and in other contexts in which her body parts are exposed, she is not called a 'woman' and may be called a 'man' (578). Mikkola intends her extensional intuitions to apply to unequivocal cases, not to cases like Dil.

But, for many, Laura *is* an unequivocal case. In fact, many ordinary language users may deny that 'woman' applies to her at all. They may, instead, call her a 'man'. This is the very source of much of Laura's struggle, of her anguish, and of her fear. Laura is theoretically excluded in Mikkola's perspective. Reliance on extensional intuitions – if put into practice – would subject Laura to harm and, indeed, currently harms many like

her. Mikkola's extensional gender-term deployment of 'woman' is thus also unacceptable from a transfeminist perspective.

2.3.5 Cressida Heyes: Intensionally Deployed Gradability and Hierarchies

Gradability and rankings emerge in the case of resemblance approaches to intensional deployments of 'woman'. I shall treat only one such approach, that of Cressida Heyes (2000, 2002). Heyes conceives of the concept WOMAN as a multi-dimensional concept none of the elements of which are necessary or sufficient for someone to count as a woman.[52] Women are connected to each other by a network of overlapping similarities which may be quite minimal.

> Thus, on this view, it is perfectly possible to make sense of the fact that two "distantly related" individuals can both be women and share none of the same characteristics except that they are called "women." A male-to-female (MTF) transsexual woman, for example, might have XY chromosomes, experience of being raised as a boy in a white, urban bourgeois nuclear family, and conventionally feminine self-presentation. A butch woman might have XX chromosomes, experience of being raised as a girl by lesbian parents in a small Northern community, and conventionally masculine self-presentation. On my Wittgensteinian-feminist view, it is not "wrong" to call them both "women" even though they do not share any common features potentially definitive of womanhood. (Heyes 2000, 84)

Heyes accepts that boundaries will be fuzzy, but will have to be drawn for political purposes. Yet, how should we understand the assignment of the label 'woman' to the MTF transsexual considered above, if – as is Laura's case – she did *not* have a

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[52] I discuss family-resemblance approaches to the category WOMAN in detail in chapter one of this thesis.

"conventionally feminine self-presentation"? Would self-declaration and expression, or what Heyes has termed "gender voluntarism" be enough, a feature she seems to reject as insufficient and, moreover, regards as often ethically questionable? (Heyes 2007, 53–5).

Resemblance approaches assign a central role to typicality. They thus tend to justify hierarchies among women. This is because of the nature of resemblance, and the fact that there are, purportedly, many possible resemblances. Clearly, some women will resemble a larger number of other women because they possess a larger number of salient resemblances. These women are more 'typically' or more 'centrally' women. Laura, on the other hand, is quite removed from these central or paradigmatic cases of woman. She may still count as a woman through some resemblance or other, or she may be borderline, because of her resemblances to men. Although this gradability does not *logically* necessitate social hierarchies and Laura's marginalisation, its systematic social and political implementation would, I claim, tend to do so. As far as I can tell, other detailed resemblance accounts will have the same deleterious effects (for example, Hale 2006; Stoljar 2011). They are thus unacceptable as gender-term deployments.

Nevertheless, Heyes's allusion to 'gender voluntarism' provides me with an opportunity to consider Laura's responsibility to others, as this is one of Heyes's principal motivations in countering a gender 'free-for-all', based in the assumption that gender identities are relationally formed (2007, 39). In regard to the transgender activist Leslie Feinberg's views (Feinberg 1998), Heyes comments

> I contest hir[53] implication that a feminist politics should tolerate any "gender expression." … A failure to understand gender as relational (and hierarchical) does not examine the fact that the expression of one gender may limit the possible meanings or opportunities available to others. Adopting the language of individual freedom of expression with regard to gender, then, will sidestep important questions that arise from gender relations and the demands of politics. (Heyes 2007, 40)

Heyes's concern is a legitimate one: gender-term deployments – including those embraced by transgender women and men – can inflict harm on others. They can, for example, re-inforce stereotypes about women. The current project is, in fact, sensitive to these types of issue, a point I will return to in the next section. In addition, the framework I have presented can be extended, I believe, beyond misgendering as a specifically transfeminist concern, to a more general analysis of gender-term deployments which implicate various oppressive axes, such as heteronormativity or sexism.[54]

2.4 Some Objections, Concluding Remarks

Laura and other transgender or gender non-conforming persons are subject, both individually and collectively, to gender-term vulnerability, and are oppressed by particular extensional or intensional deployments of gender terms, whether those deployments figure in interpersonal interactions, or on an institutional level. I have argued that whenever this is the case, ethical and political considerations render

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[53] Heyes respectfully employs gender-neutral pronouns: *hir* (instead of her/his) and *ze* (instead of she/he).

[54] For example, any deployment of 'woman' – if broadly implemented within society, law, and politics – that would have the effect that certain people (i.e the 'women') would systematically earn less for the same work, or be precluded from freely joining the workforce would be an oppressive gender-term deployment. Of course, sexism does not always operate through explicit gender-term deployment. In fact, neither does cissexism. In this respect, the current treatment is limited in its scope as it focusses on explicit misgendering.

oppressive gender-term deployments morally contestable, because unacceptable from a transfeminist perspective. Such deployments are open to challenge, and, provided other conditions are in place – a point I will come to presently – ought to be contested.

I have focussed on gender *terms* and their deployments. Some readers might find it strange that I have not touched upon the metaphysical question of whether Laura *is* a woman, neither on what it is that makes her a woman, an issue that is, surely, of great importance to Laura herself. The reason I am reluctant to indulge in metaphysics is that, to do so, I would have to *deploy* the gender term 'woman' in a much broader way than I have done in this paper. It is one thing to describe Laura and others like her as 'non-passing transgender women' and to critique gender-term deployments from her particular perspective; it is quite another to give a general extensional or intensional deployment of the term 'woman'. The latter sort of undertaking would presumably involve engaging in similar analyses to those critiqued in section three. I would implicitly or explicitly have to refer to some general semantic normativity, either the normativity of natural or social facts, or the normativity of competent linguistic usage. However, I cannot exclude the possibility that such deployments would, if implemented, create gender-term vulnerability for some individuals or groups: they would tend to exclude, hierarchize, marginalize in some way. Now I am not saying that it is in principle impossible to devise such general non-exclusionary, non-marginalizing deployments, but simply that it is very difficult. That is why, for the moment, I rest content with grounding Laura's and others' moral entitlement to the *contestation* of oppressive gender-term deployments. This claim

expresses their right to resist those deployments by negotiating or demanding different extensional or intensional deployments.[55]

My response to the lead objection may elicit a related one. If we do not say who women are, what is the basis for the unity of the type WOMAN, and the sense of talking of 'women's experiences' and 'women's concerns'? The assumption behind this objection is that having a unified conception WOMAN is somehow necessary or sufficient (or both) for solidarity around gender-based political oppression and injustice. However, this assumption is doubtful. For example, in a critique of Zack's (2005) definitional approach to the concept WOMAN, Elizabeth Spelman questions the assumption of sufficiency by pointing out that shared commonalities with Black women did not establish social or political solidarity with white women eager to defend slavery (Spelman 2007). As regards the necessity of a unified concept of woman, Spelman adds that distinct feminisms and intersectional approaches to the category WOMAN have not precluded coalition-building around specific political issues. She then continues,

> "We're all women here" – even if, perhaps especially if, it's understood along the lines Zack urges – is a suspicious rallying cry, in no small part because it seems to substitute metaphysics for politics, to exclude the possibility that the question what women have in common is itself subject to political negotiation. (Spelman 2007, 204)

In a similar vein, I have limited myself in this paper to the moral and political aspects of gender designation. I agree with Spelman that it is not at all evident that a unified concept

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[55] Reading these words, Laura herself might be somewhat dismayed. After all, I am dithering over whether she *is* a woman (and also over whether anyone is a woman and why). But perhaps the only claim I am willing to make at the moment is a negative one: if Laura is vulnerable to the gender-term 'man' in all her life-contexts, then she is not a man.

of woman is necessary for feminist activism around particular issues. From the transfeminist perspective adopted here, what is more important than developing a metaphysics of gender is to highlight an issue which affects many transgender women: gender-term vulnerability and the moral and political nefariousness of misgendering.

Nevertheless, my talk of 'contestation' – and Spelman's talk of 'negotiation' – assumes that the social and political conditions are in place for such contestation to be effective. So another objection might go something like this: "For transgender and gender non-conforming persons, as well as for many others – including those subject to sexism and homophobia – one might accept that there is a moral entitlement to contest oppressive gender-term deployments. But that tells us nothing about whether those deployments *really can be contested* in the public sphere. It may simply be too dangerous, legally burdensome, or socially ostracizing to contest them." This is a valid point. But in response, I would say that acknowledging the moral contestability of gender-term deployments is a first step that ought to lead to the analysis of the social and political conditions for de facto contestation. This requires an investigation into the *social and political contestability* of gender-term deployments. Moral contestability thus provides a normative impulse to consider which social and political structures make de facto contestation possible. [56]

[56] I consider some of these social and political conditions in chapter three.

A further closing remark will not be untoward. Several feminist philosophers I have considered (Mikkola, Stoljar, Heyes, and possibly Haslanger in her definition of woman) assume that transgender women – even though they do not have female biology – nevertheless somehow 'resemble' those that do (like Dil in *The Crying Game*). In particular, they are taken to signal the culturally and socially adopted cues of womanhood. As this is a type of privilege with respect to non-passing transgender women such as Laura, one may call it *passing privilege*. Within transgender communities themselves, dominant gender term deployments are still latently at work to create what Alaina Hardie (2006) has called "hierarchies of legitimacy". Hardie relates her own experiences of this hierarchy in which (in the case of transgender women) attractive, 'passing', post-operatives are positioned at the top. Their sexuality is usually heteronormative. There follow a series of grades lower down in the hierarchy which are a function of operative status, and culturally normed female attractiveness. Finally, at the bottom, Hardie locates the not-so-attractive, non-passing cross-dressers, as well as 'she-males' and sex workers. Ordering the hierarchy is a principle of being able to present oneself as an attractive, (usually heteronormative) woman in the culturally *dominant* sense of that term.

My point is that feminist theorizing about transgender persons may not only generate deployments that are exclusive and marginalising with respect to the gender term 'woman', but also reinforce marginalising deployments of the gender term 'transgender woman' or similar terms. Some transgender people are marginalised for not being 'really' transgender. Socially dominant deployments can have the tendency to seep into gender non-conforming groups themselves, dividing those communities, by exploiting old

gender-term vulnerabilities (for example, ideals of 'femininity') and creating new ones ("not really trans"). That is something we should bear in mind as we theorize about gender-term deployments and their multifarious modalities of oppression.

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Chapter Three

A Liberal Approach to Gender Pluralism

The emerging diversity of gender[57] identities in North America and parts of Europe has received little attention within mainstream analytic political philosophy. This is despite the fact that in North America and Europe there is increasing media interest in transgender and gender non-conforming people and their communities.[58] The social fact of increasing gender pluralism is a political issue, not least because gender non-conforming people face discrimination, bias, violence, and economic disenfranchisement (Beemyn and Rankin 2011). In many western democracies, hegemonic gender expectations impact welfare benefits, legal proceedings, segregation of facilities, freedom of movement, and identity documents. Persons who do not conform to the existing gender identities of 'man' and 'woman' are often socially and economically disadvantaged (Spade 2011, 137–150; Fogg Davis 2014).

I will advocate a broadly liberal approach to gender pluralism in this article. By liberal, I mean an approach that gives emphasis to individual freedom and autonomy, as well as equality. This, of course, is a rather selective and imprecise characterisation, but I hope it

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[57] *Sex* denotes the biological features which render someone 'male' or 'female'; *gender* is the "social meaning of sex", and denotes societal roles and expectations commonly attached to the labels 'man' and 'woman' (Haslanger 2012a, 227–30; Witt 2011, 24-42). The distinction is not clear-cut, partly because the terms 'male' and 'female' do *not* seem to be assigned in practice *purely* on the basis of biological features of human organisms (Shrage 2009).

[58] The English-language version of Facebook recently introduced a list of 54 genders from which to choose in setting one's profile (Peterson 2014).

will become clearer during the course of my exposition. Because my approach has affinities with what Will Kymlicka has termed the "liberal culturalist position" (2002, 339) that arose within debates about multiculturalism (Taylor 1994; Kymlicka 1995; Barry 2002; Fraser and Honneth 2003; Forst 2013), it is useful for my purposes to draw on some ideas invoked within liberal culturalism, and provide an initial characterisation of the 'liberal approach' I discuss in this article. First and foremost, I assume that gender beliefs and practices are at least as important to gender minority groups as language and culture are to minority ethno-cultural groups. What Kymlicka says about culture and language, namely, that they "can sometimes be a precondition for the very capacity to make meaningful choices" (Kymlicka 2002, 340), I understand to apply – perhaps even more strongly – to minority gender practices and beliefs, which I take to express gender identities. Gender beliefs and practices are also, I claim, preconditions for the very capacity to make meaningful choices. Assuming that this is so, they require some form of protection from external forces, in particular, from the pressure to conform to prevalent notions of gender identity. So there is here an assumption that protecting gender practices and beliefs protects individual freedom.

However, equality is also compromised if non-conforming gender practices and beliefs are not protected. A social and political requirement to conform to dominant gender beliefs and practices places a burden upon gender minorities. Once again, one can endorse what Kymlicka states with respect to ethno-cultural minorities, namely, that "it is unreasonable to expect minorities to bear this cost, when members of the majority face no comparable sacrifice" (2002, 340). Those who comfortably fit into dominant "background" gender notions and practices "face no comparable sacrifice" to gender

minorities who are socially and politically pressured to conform to 'external' gender notions and practices. The liberal approach to gender pluralism I advocate seeks to address asymmetries of power in this regard.

I will discuss state neutrality, tolerance, and recognition with respect to gender beliefs and practices in some detail. For the moment, let me provide an outline of what I mean by these notions. By state *neutrality*, I will understand simply that a liberal state should not evaluate from a public standpoint particular conceptions of what citizens regard as their good in life. Specifically, particular conceptions should not, implicitly or explicitly, be used to justify state policy (Rawls 1993, 192–4; Kymlicka 2002, 218). Broadly speaking, *tolerance* is simply the commitment to the freedom of individuals to assess and revise the goals they set themselves in life. Finally, *recognition* can be broadly understood as a public endorsement or positive evaluation of persons, beliefs, or practices.

Elisabetta Galeotti has argued that state toleration of minority cultural and religious identities is insufficient to restore the self-esteem eroded by the exercise of social power by the majority, and has called for "public toleration" or "symbolic recognition" (Galeotti 1998; 2002). I take up the idea of public toleration – not as a form of recognition but as mediated *through* the public recognition of the equal political personhood of all – and apply it to gender pluralism. Public toleration allied with state gender neutrality offer, I argue, a liberal approach to gender pluralism in which prevalent gender structures are divested of their political hegemony, and in which the unjust effects of the social hegemony of prevalent gender notions and expectations, in the form of scripts and modes of ascription, are, at the very least, tempered.

The article is structured as follows. In the next section, I present Anthony Appiah's theory of social identity ascription and scripting, and identify a set of general rules of gender ascription, and of assigning particular normative content to social labels, such as 'woman' and 'man'. I will call the general rules of gender ascription and scripting within western societies the *Prevalent Gender Structure*. In the third section, I explain how many current state regulations of legal gender change for transgender persons in the West are not processes of political gender recognition, but neither do they constitute a form of political toleration grounded in respect. This provides the backdrop for a more theoretical discussion of recognition and toleration in section four, in which I claim that it is problematic from a liberal point of view to expect political recognition of diverse gender identities as such. Instead, I argue that some form of liberal toleration is desirable, not toward gender identities in themselves, but rather toward gender non-conforming beliefs and practices which diverge from the rules of the Prevalent Gender Structure. Armed with a more precise concept of toleration, as well as a distinction between gendered social power and gendered political power presented in the fifth section, I argue in section six that Galeotti's concept of public toleration together with a notion of state gender neutrality constitutes an effective and just liberal approach to gender pluralism.

3.1 Ascribing and Scripting Genders: the Prevalent Gender Structure

The notion of an ascribed social identity needs to be explicated in order to analyse the liberal response to gender pluralism and gender-based asymmetries of power. In most western states, gender identity ascription and scripting take a particular form which I describe under the heading of the 'Prevalent Gender Structure.'

3.1.1 Social Identities: Ascription, Scripts and Identification

I will assume that social identities possess two dimensions: a social one and a personal or individual one. Within the context of identity formation, Appiah frames these dimensions in terms of two processes: ascription and identification (Appiah 2005, 65–71). *Ascription* is the application to persons of a 'label' by others and expresses a socially recognized identity. The label is applied by most people and involves descriptive criteria for applying the label (Appiah 1996, 80). Not all people may agree on these descriptive criteria, but Appiah claims that such criteria usually exist. In the case of race, for example, it very often includes a rule such as: "where both parents are of a single race, the child is of the same race as the parents" (Appiah 1996, 77). The subjective pole in identity formation is *identification*. This is "the process through which an individual intentionally shapes her projects … by reference to available labels, available identities" (Appiah 1996, 78). Noteworthy is the role assigned here to intentionality. In conceiving the relation between identification and ascription, Appiah claims that the available conceptual schemes an individual can identify with, and according to which she can shape her life, bear some relation to existing socially ascribed or ascribable labels and their associated conceptual schemes. I will sometimes call these schemes *scripts*.

Identification is thus the assumption within intentional action of certain socially determined images and scripts. But the scripts which the individual assumes within her own identity are situated relative to the *legitimate or proper process* of social ascription. In the case of racial passing, for example, a person may perform the *script* of a white person. But this is not sufficient for a white social identity, for that person should possess

certain properties which confirm that the label ‘white’ has been properly ascribed. For example, she must have white parents (Appiah 1996, 79).

The work of the individual citizen to *dis*-identify with socially ascribed labels and their corresponding scripts still implicates those scripts in some way. I take gender to be an ascribed social script. Within a strongly bi-gendered social structure, being, for example, androgyne will involve adopting attitudes and behaviours which emphasize *not* being simply a man and *not* being simply a woman. For if this is not done, the individual will be socially subsumed under one or other of the labels ‘man’ or ‘woman’. Of course, with time, social scripts for androgyny may arise consisting in specific expectations regarding comportment, dress, behaviour, language, and so on. But for this to happen, the prevalent (majoritarian) idea that there are only two genders must already have been at least partially dislodged from its privileged structuring role. My aim in formulating the following rules of the *Prevalent Gender Structure* is to gain a clear focus on the *dis*-identifying strategies employed by gender non-conformists within western societies with respect to majoritarian gender ascription and gender scripting. It is in terms of the Prevalent Gender Structure that new genders define themselves. In strongly gendered social situations there seems to be no alternative.

3.1.2 The Prevalent Gender Structure

I will call the rules for socially ascribing and scripting genders in western societies the *Prevalent Gender Structure*.[59] One of these rules (the gendered behaviour rule) seeks to capture the content of the labels (scripting). The others pertain, in Appiah's terms, to the mode or procedure of their socially legitimate ascription. Some of these rules are currently being modified, as the social conception of gender develops, in part due to the increasing visibility of transgender and gender non-conforming persons in the media, and the action of transgender advocacy groups. Nevertheless, I maintain that the rules outlined below still constitute the traditional notion of gender for most people, and in many countries still influence the way gender is socially – and I would add, legally and medically – ascribed and scripted. I articulate the rules as follows:

Rules of gender ascription

1. *The Gender Extension Rule*. Gender labels are applied to all human embodiments;

2. *The Biological Determinism Rule.* The gender labels 'woman' and 'man' are ascribed to human embodiments through some correlational procedure based on one or more determinate, observable or presumed, biological feature such as: particular chromosomal sex, gonadal sex, external and internal morphological sex, hormonal profile, phenotype (primary and secondary sex characteristics).

[59] The rules I present as part of the 'Prevalent Gender Structure' are similar to those of 'bigenderism' as described by Gilbert (2009, 95). However, the rules I present are somewhat more detailed and grouped in light of procedures of ascription and scripting. Compare also Shrage (2012, 237–9) for a somewhat different classification of sex and gender identities.

Ascribing a different gender to the one correlated by the rule with a given embodiment is illegitimate;

3. *The Gender Invariance Rule*. The gender labels, once ascribed, are permanently so ascribed. Once a gender label has been ascribed, one cannot ascribe a different one;

4. *The Gender Exclusivity Rule.* The gender labels are mutually exclusive: gender 'mixing' is ruled out;

5. *The Bi-Gender Exhaustivity Rule*. The gender labels are 'woman' and 'man' and are exhaustive, that is, they are the only gender labels that are ascribable (ascribing other 'genders' is ruled out).

Rules of gender scripting:

6. *The Gendered Expectations Rule*. Gender labels conceptually encompass broadly accepted social roles (scripts) which will tend to regulate such things as occupation, dress, and bodily comportment, as well as inter-personal interaction. Gender scripts may be explicit or implicit. Scripting (the assignment and enforcement of scripts) may be purely individual (agentic) or structural.[60]

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[60] I am interested in the ways that *structural oppression* of trans persons can be eliminated or reduced through the political and administrative institutions of liberal democracies. I do not treat here other forms of structural oppression, for example, within religious communities, particular cultures, or the family. Neither will I treat directly *agent oppression* against trans people. Haslanger (2012c, 100; 106) characterises structural oppression as "a social/political wrong … lying in our collective arrangements, an injustice in our practices or institutions" usually taking the form of a misallocation of power resulting in psychological, political or economic disadvantage for members of a particular group. Agent oppression, on the other hand, occurs when particular persons inflict harm on others through an abuse of power (100; 106). I agree with

The above analysis of the Prevalent Gender Structure allows us to situate various processes of identification or *dis*-identification with gender labels within western society. Lack of identification can be seen to play out on two distinct, though internally complex, levels: one may *dis*-identify on the level of gender scripting, for example, by acting in a way that rejects or challenges the notion that women are incapable of leadership roles; or one can dis-identify on the level of processes of gender ascription, for example, by rejecting or challenging the gender label assigned at birth; or on both levels.[61] Any person may *dis*-identify with gender scripts. They therefore reject the prevalent Gendered Expectations Rule. Within such *dis*-identification, I maintain, one could locate many feminist and gay, lesbian or bisexual political postulates. For gender scripting will elicit certain expectations as to how men and women are to dress, behave, and otherwise relate to their social environment. This may include, for example, the expectation of heteronormativity, or the expectation that women are not fit for certain social and political roles.

The resistance of gender non-conforming people to the prevalent structure of western gender identity is more tightly (though not exclusively) focussed on the process or procedure of ascription. Many regard themselves as always having been women or men, but not on the basis of the gender labels ascribed to them on the basis of biology. The

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Haslanger that the focus on structures and institutions is more important, as structural reform is generally more efficacious in eliminating oppression than are efforts aimed at the moral improvement of individuals. For a contrary view, however, see Garcia (2004).

[61] Dis-identification may consist in a way of speaking, acting or experiencing. I will generally focus on public ways of dis-identifying.

Biological Determinism Rule is thus not something according to which they aspire to shape their lives; this is what I mean here by 'dis-identification'. It expresses itself in words, actions, emotional reactions, and so on.[62] Some transgender people, on the other hand, might be quite comfortable with the idea that they have simply changed the gender ascribed at birth, in which case they would tend to resist the Gender Invariance Rule. Further, gender non-conforming persons may identify partly as men and partly as women (they may be 'androgyne' or 'bi-gender'). They would thus *dis*-identify with the Gender Exclusivity Rule. And still others may regard themselves as neither men nor women but belonging to a 'third gender,' thus resisting the Bi-Gender Exhaustivity Rule. Finally, some may regard themselves as not having a gender at all ('genderqueer'), thereby resisting the Gender Extension Rule.[63]

3.2 Gender Pluralism between Conditional 'Recognition' and 'Permission Toleration'

The preceding presentation of the ascription, scripting, and rules of the Prevalent Gender Structure provide conceptual tools to consider prevailing legal 'recognitions' of gender. It

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[62] *Dis*-identification with this rule may also include intersex persons whose neonatal bodies defy the dichotomous biological correlations the rule assumes, yet who identify as simply men or women. Note, however, that the biological determinism rule can be taken to include surgical and hormonal interventions on the basis of a medical estimate of which gender is socially 'appropriate' for the intersex person in the long run. In this case, persons who reject such a gender assignment *dis*-identify with the rule. On gender ascription in the case of intersex, see, for example, Karkazis (2008).

[63] All these gender non-conforming persons may resist different combinations of the rules to varying degrees. For example, an androgyne person *dis*-identifies not only with the Gender Exclusivity Rule, but also with the Bi-gender Exhaustivity Rule, and – if they do not have a specific intersex condition – with the Biological Determinism Rule. However, here I simply focus on the ways particular rules of the Prevalent Gender Structure are specifically resisted. A study of gender non-conforming persons' biographical narratives and self-understandings would, I believe, reveal the current prevalent gender rules as those I have listed. However, I will not attempt a detailed defence of these rules in the present article.

is, in fact, doubtful whether legal approaches to gender recognition as currently regulated in many jurisdictions in Europe and North America constitute a form of *political* recognition at all. In an aptly titled *Amnesty International* document 'The State Decides Who I Am,' we read the following concerning the situation of legal gender recognition in Europe:

> For transgender people, official identity documents reflecting their gender identity are vitally important for the enjoyment of their human rights. They are not only crucial when travelling but also for everyday life; depending on the specific country, individuals may be asked to produce an official document when they enrol in school, apply for a job, access a public library or open a bank account …
>
> Many states made the change in one's legal gender contingent on the fulfillment of invasive requirements, which violate the human rights of transgender people, through procedures that usually take years. In these instances, transgender people can obtain legal gender recognition only if they are diagnosed with a mental disorder, agree to undergo medical procedures such as hormone treatments and surgeries, are single or of age. Some other countries simply do not allow for a change in one's legal gender. (Amnesty International 2014a, 6–7)[64]

In the case of the UK, for example, a special tribunal has been set up – the Gender Recognition Panel – which publicly ascribes a preferred gender to citizens who *dis*-identify with the gender assigned to them at birth, i.e. with the Biological Determinism Rule. It does so on the basis of a legitimate process of ascription which has been legally

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[64] The document also highlights the 'double binds' in which transgender persons are placed, being forced to choose between legal recognition of their gender and divorcing their partners, for example, or between legal recognition of their genders and preserving their reproductive capacity (Amnesty International 2014a, 7). This brings to mind Marilyn Frye's comment that "One of the most characteristic and ubiquitous features of the world as experienced by oppressed people is the double bind – situations in which options are reduced to a very few and all of them expose one to penalty, censure or deprivation" (Frye 1983, 2). Some European countries are in the process of reforming their legislation with regard to those seeking legal gender recognition. Denmark has recently changed its laws to eliminate medical procedures and criteria (Amnesty International 2014b).

defined and which the Panel oversees, and involves providing documentation of having lived in one's preferred gender for at least two years, as well as evidence of medical diagnoses and treatment. Only the genders 'man' or 'woman' are legitimate. Note that if we were to treat cultural or religious identities in an analogous fashion, it would be clear that we have a very different political situation from the pluralist scenarios envisaged in the discussions of multiculturalism: no liberal state would dream of establishing public criteria for determining when and how a citizen ceases to be, for example, a Christian and becomes a Muslim, or, for that matter, of establishing how many 'official' religions there can or should be. There are, moreover, various negative consequences the UK legislation brings for many gender non-conforming persons (Hines 2013). Those who are not sufficiently 'close' to the Prevalent Gender Structure – that is, fail to demonstrate the expected 'feminine' or 'masculine' behaviour and psychology from childhood (Gendered Expectations Rule) in a constant or, at least, recurring way (Gender Invariance Rule) – are not diagnosed as gender dysphoric. Their gender is not legally recognised, and they become further marginalised, and excluded. *Dis*-identification with the Rule of Biological Determinism is thus permitted on the basis of other prevalent gender rules involving label scripting and the notion of gender invariance. These other rules make room for justified exceptions to biological determinism and compensate, so-to-speak, for the failure of biological determinism. The Gender Invariance Rule is, on the other hand, strictly enforced. Not only does the subjective sense of gender, with accompanying expected behaviours, have to have been present for a prolonged period of time, but once the gender has been ascribed by the Panel, it is to be maintained for life. As indicated, the required psychiatric diagnoses tend to enforce gender scripting (Hines 2013, 57–62).

In what sense are we talking here of 'recognition'? As long as medical professionals are expected to intervene in the process of ascription, legal gender 'recognition' for transgender persons amounts to a legal measure to alleviate discrimination for some citizens who purportedly suffer from a medical condition. The gender of such people will still be regarded as 'deviant' or 'abnormal', with accompanying stigma or pathologisation, often reflected in social attitudes toward gender non-conforming persons (Shelley 2008; Ehrbar 2010; Hines 2013). The gender 'recognition' one is speaking of in this case is thus not one of respect or even affirmation: how can one respect or affirm an identification that is believed to be the result of a medical condition?[65] Rather, the case is one of acceptance or appreciation of a certain situation of individual disadvantage which needs an 'ad hoc' legal remedy to ensure justice.[66]

Perhaps, then, non-conforming gender identities are currently tolerated in some sense. Toleration as a political value and tolerance as a moral virtue have often been maligned for the attitudes of superiority, judgmentalism, and condescension that they seem to imply in the tolerators towards the tolerated (Brown 2006). Limitations of political toleration are especially visible in what Forst calls the 'permission conception' of

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[65] In short, what Carter (2013) calls 'opaque recognition' – a principled refusal to appraise the basic agential capacities (such as rationality and reasonableness) – is lacking or, at best, compromised in the case of gender non-conforming persons. See also Ceva and Zuolo (2013, 249).

[66] Regarding the political and legal recognition of transgender people, McQueen astutely remarks: "In falling outside the limits of the 'normal', wherein the normal is construed as natural and hence 'right', many transgender identities must struggle against assumptions about what constitutes a recognisable gender identity. When one's identity lies outside of the realm of the possible and acceptable identities prescribed by society's dominant norms, institutions and discourse, then one is embroiled in complex struggles both for and against recognition wherein it is not clear what 'success' in such struggle might mean. Transgender identities thus present a problem of recognition stemming from difficulties built into our shared conceptual repertoire, which make it difficult to recognise transgender people even when they seek recognition." (McQueen 2015a, 51–2)

toleration, where the hegemonic partisan state or religious monarch for some reason ‘graciously’ bequeaths religious or cultural freedom to an ethnic or religious minority, a freedom that is heavily circumscribed (Forst 2014). Most current legal recognitions of gender are more akin to the granting of permission and seem to be of this type: Firstly, the legitimate process of gender ascription is state controlled; second, the gender identities that are recognized are heavily scripted: medical professionals attempt to ascertain whether the person involved has a ‘subjective sense’ of being a woman. This is seen to require archetypically ‘feminine’ emotional states and behaviours. State power to ascribe or withhold identities is still exercised.

From this brief overview of legal gender ‘recognition’ as it currently stands in many western legal systems, it emerges that conditional acceptance and permission toleration are not conducive to the full citizenship of gender non-conforming persons. They place unacceptable burdens on those who undergo legitimate processes of ascription, and also further exclude and marginalise those who are unwilling or unable to undergo those processes. What, then, should the liberal state’s response be to gender pluralism? Should gender identities be recognized or tolerated? And what type of recognition or toleration would be required?

3.3 Gender Pluralism: Recognition or Toleration?

By political or public recognition of gender identities, I mean their state endorsement or public affirmation, as enshrined in law, state policies, and the public management of gender segregation. Several authors have noted that the public recognition of particular social, cultural or religious identities possesses features which are inimical to liberalism.

Such a recognition can, for instance, create or reinforce certain 'scripts' for the members of the corresponding groups: minority identities can become too tightly defined (Appiah 2005, 110) or frozen in a "specific configuration of recognition" (Tully 2004, 91; Medina 2003, 657). There is thus a real danger that publicly recognised identities may limit the freedom of citizens in ways undesirable from a liberal point of view, particularly where individual freedom and equality are jeopardised (Barry 2002, 133–4). In the case of gender pluralism, 'particular configurations of recognition' turn out, in most cases, to be highly invasive, selective, and exclusionary. Taking up a similar thread, Paddy McQueen has recently critiqued Axel Honneth's theory of recognition, illustrating the problems of that theory with respect to gender non-conforming people. According to McQueen, Honneth's theory of recognition is a 'deficit model' analysing the relationship between someone who lacks recognition, and someone else who has the power to remedy the situation, and confer recognition. Honneth maintains that recognition is necessary for an individual's self-realisation (Honneth 1995). He understands the social and political co-optation of identity principally as a psychological harm (Honneth 2012). Thereby, he overlooks "the ways that institutional practices of recognition construct and normalise the forms of identity which we seek to take on as part of this search for authentic individualism" (McQueen 2015a, 55). The point is that the political recognition of identities involves the *power to script identities*.[67]

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[67] McQueen gives a more detailed account of how legal recognition can regulate identities in his other work (2015b). His approach is somewhat different from mine, in that his project analyses, within a perspective of continental philosophy (particularly that of Butler and Foucault) the dynamics of subject formation, and the relationships of that formation to power. My project, on the other hand, is conceived within analytic political philosophy and, although I too analyse gendered social and political power, I seek to elaborate a more immediate political approach to the question of gender diversity.

Moreover, as Cillian McBride has argued, there is a fundamental difference between recognising persons – something a liberal state necessarily does – and recognizing their achievements; the former is the basis for equality, whereas the latter presupposes the public affirmation of particular group- or identity-based achievements which can lead to inter–group competition and hierarchies. If a democratic political order wishes to maintain the former, it cannot grant the latter (McBride 2009). It is worth considering this idea for a moment with respect to gender. If a given gender identity is positively valued by the liberal state, the question naturally arises whether that value is greater or less than the recognised value of a different set of gender identities. One could, of course, claim that they are simply *different* values, incommensurate in some way. But when one asks *why* they are politically recognised at all, one usually ends up appealing to some other more general value, such as political personhood or social diversity, so that the gender identities are not, after all, valued in themselves. Alternatively, one might claim that the liberal state in fact recognizes a hierarchy of gender identities. But such a hierarchy is socially problematic: those groups further down the hierarchy would, in all probability, despise the fact that their own identity is seen as inferior to others, and social tensions and political frustration could ensue.

Political recognition is realised through legal statutes as well as case law, in the gender assumptions that go into the formulation of public policy, or through judicial decisions. Even if not always entirely explicit, the Prevalent Gender Structure is affirmed in the sense that its public effects are generally endorsed and made effective in policy and in legal decisions. I would claim that the rules of gender extension, gender exclusivity and gender exhaustivity, as well as those of gender invariance and biological determinism, are

politically recognized in this way. The Prevalent Gender Structure is thus not only socially prevalent; it is also *politically* prevalent. The ways citizens are identified and classified for all sorts of state purposes testify to this. Political recognition necessarily involves the institutionalization of processes of gender ascription, and of gender scripting, this latter because one cannot affirm an identity without specifying or assessing its content in some way. Indeed, government directives and judicial interpretations require this. Political recognition of gender identities is thus difficult to reconcile with a broad range of gender non-conformity. At some point, such recognition will turn out to be exclusionary. Even if we steer clear of talk of identities, and focus instead on the way those identities are *expressed*, that is, through beliefs and practices, the same danger of excessive scripting rears its head: to recognize a belief or practice in policy and law, one must in some way define or specify its content (to the exclusion of other contents). Within a liberal democratic order, then, political recognition of gender identities, as well as of gender beliefs and practices, is undesirable.

Does toleration fare any better? Contemporary conceptions of toleration have focussed on the mutual respect which grounds it: 'respect toleration' (Forst 2014), or toleration based on 'status recognition' in which equal citizenship or political personhood is mutually and publicly recognised and, in turn, grounds or 'mediates' attitudes of tolerance (Jones 2006a, 2006b; Williams 1996, 25).[68] This is generally a more positive approach to the

[68] One can distinguish the moral virtue or attitude of tolerance from political toleration understood as a form of state policy aimed at maintaining freedom and public order (Forst 2013, 6). Galeotti's 'Public toleration', for example – which I will discuss in more detail shortly – is a form of state policy, aimed at fostering tolerance among citizens. (See also note 11). Jones (2006b) speaks of 'mediated recognition' and applies it to Galeotti's notion of public toleration. However, to my mind, such terminology can lead to

toleration of gender pluralism: even if many of those who identify strongly with the Prevalent Gender Structure have reason to object to gender non-conforming beliefs and practices, the publically endorsed respect for the equal political and moral status of gender non-conforming persons provides them with a reason for non-interference.

One should note, however, that it is not gender *identities* that are the proper object of toleration. Specifically, whatever is not subject to choice cannot be the object of toleration. Skin colour, for example, is not an appropriate object of toleration. Only the results of moral capacities are subject to toleration, that is, beliefs, actions, and attitudes or, more generally, comprehensive doctrines of the good:

> whether or not one takes dislike as a proper object of toleration, ascriptive differences cannot really be included in the moral model, even under the category of 'disliked differences'. Such differences are excluded by the fact that tolerance is defined as the suspension of the power of either interference or suppression of disapproved or disliked differences; but this power cannot be exercised if the differences in question are not modifiable, at least in principle. Hence, unchosen and unmodifiable differences such as race, ethnicity and sex cannot be considered proper conditions of tolerance. … […] … This exclusion is rather troublesome, given the reality of contemporary pluralism, where the most relevant and divisive differences are those related to race, ethnicity, sex and nationality. (Galeotti 2001, 280)

If it is assumed that gender identity is unmodifiable, then it cannot be the object of toleration. Whatever is a result of 'nature' is of this kind, for example, human capacities

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misunderstanding. Recognition that is mediated is not a form of respect recognition. It is political personhood or citizenship which is recognized – *directly* recognized – in Galeotti's conception of public toleration (even though she herself occasionally writes of 'symbolic recognition' of minority *identities*). Jones himself recognizes the problematic character of his choice of terminology (134).

for rationality and free will, on which rights discourses are based. We might call these natural goods. They are commonly endorsed and valued. In much legislation – and particularly in social interaction – prevalent gender identities also come close to this kind of common valuation, particularly maleness and masculinity, as well as socially scripted understandings of 'natural' womanhood (compare Galeotti 2006, 573).

On the other hand, if – as I am assuming in this article – we view gender as a social construct (Haslanger 2012b), as a social 'label' in Appiah's sense, gender identity will be a set of socially generated classifications related to physical sex, maintained by social and political institutions, toward which individuals adopt a stance of identification or *dis*-identification. That gender identities may be social constructions does not, in itself, imply that they are modifiable or – let us say – straightforwardly modifiable. From a social point of view, it may take generations to modify a gender script. It is sufficient for the purposes at hand, however, to adopt the perspective of the individual citizen's stance toward processes of gender ascription and scripting. That stance may remain largely internal or may be expressed through speech and other behaviours. These are certainly modifiable, at least in principle. Seen in this way, individual gender beliefs and practices can be an object of political toleration. In designating more precisely the nature of this object of toleration, one should thus be careful. It is not gender *identity* understood as a rational, psychological and emotional positioning of self toward the Prevalent Gender Structure that is the proper object, for this may remain publicly unknown. Rather, the object of toleration is constituted by the individual, publicly articulated beliefs and public practices which are commonly taken to express gender identification or *dis*-identification with respect to the Prevalent Gender Structure. It is these express beliefs and practices

that mark public gender *difference* within western society, and which thus render them politically salient. From now on, in light of the above distinctions, I will focus on the political toleration of (conforming or non-conforming) *gender beliefs and practices*.

3.4 Toleration – Restraint of Power Grounded in Recognition

As an adequate political response to gender pluralism, some form of liberal toleration is more acceptable than direct political recognition of gender beliefs or practices. To investigate the option of toleration further, we need a more precise notion of it. Ferretti and Lægaard (2013) specify that tolerance possesses

> (1) an 'objection component' or 'reason for interference' consisting in some negative judgement on the part of one agent towards the beliefs or practices of another, a judgement which disposes the former agent to suppress, prohibit or otherwise interfere with the latter; (2) a power component consisting in the first agent actually being able to interfere with the latter; and (3) an 'acceptance component' or 'reason for non-interference' consisting in some positive judgement on the part of the first agent which overrides the disposition to interfere. (224)

The 'power component' has a central position in the notion of tolerance. In the above characterisations, it should be understood broadly. If it were not, we might think that those who possess no *political* power to interfere with co-citizens' beliefs or practices cannot truly exercise toleration.[69] As Ferretti and Lægaard point out, however, this

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[69] An individual or group – as Williams notes (1996, 19) – does not need to have access to power to be intolerant: it is intolerant if it *would* suppress other beliefs or practices *if* it had the power to do so. And, presumably, one might say that the individual is tolerant if she would not suppress the beliefs or practices she objects to even if, counterfactually, she did have the power to do so (subjunctive tolerance). However, the case of political toleration is not the same when considering gender minorities in which the exercise of power is crucial, as we are dealing, on the one hand, with political power as already expressed in law and policy, and, on the other hand, with social power, which is also, in fact, already broadly exercised. As Ferretti and Lægaard state (2013, 225), "holding minority status consists in being the object of negative

component includes not only overt political power but also *social* power (2013, 228). This is an important point for my exposition, as I will argue that the notion of public toleration of gender concerns itself with overriding dispositions to employ *gendered social power* to interfere with gender non-conforming beliefs or practices, while state gender neutrality – the requirement that the state not evaluate from a public standpoint particular gender beliefs and practices, or justify its policies within the framework of particular conceptions of gender – eliminates the *political power* to do so. Gendered social power can be exercised by individual citizens through social sanctions – not always conscious – such as ignoring people or assigning to their needs or requests lower priority than those of the gendered majority, or, generally, treating them with disrespect as 'deviant'. Such actions will have social or moral effects on gender non-conforming persons, particularly, a lower sense of self-confidence and self-respect. Alternatively, gendered social power can be exercised by state officials, legislators, and judges. It can take many of the same forms as those of the individual citizen, and with the same effects, but, additionally, may have legal and political consequences. However, the decisions made by these officials may not be directly related to gender: gendered social power will often be implicit.

I will distinguish both these forms of gendered social power from *gendered political power*. By gendered political power, I mean the legal and political endorsement of the

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attitudes *and* asymmetrical power" [My emphasis]. Carter (2013, 196) specifies, moreover, that subjunctive tolerance considers tolerance simply as an attitude or disposition whereas toleration as a practice involves the actual (not merely subjunctive) power to interfere.

Prevalent Gender Structure. However, gendered political power is not limited simply to legal statutes, case law, or government policies. It is extended to encompass what might be called ‘public space’ in a more physical sense, for example, the way citizens are spatially segregated on the grounds of gender within public buildings.

Besides the ‘power component’, there is an ‘objection component’ and an ‘acceptance component’ to tolerance. I have little to say about the ‘objection component’ and will only remark that the ‘reason for interference’ which it implies may not be rationally justifiable to all co-citizens. Rather than basing itself upon rational argument, it may even be more akin to an impulse to interfere based on various negative emotional reactions towards gendered differences in comportment or appearance. In an ideal society, perhaps the objection component would not exist. However, current levels of discrimination, as well as resistance to legislation incorporating transgender rights, make its existence more than plausible. As regards the ‘acceptance component’ and the ‘reasons for non-interference’ implied in it, we can understand its operation in various ways. It is the exercise of power, above all, that is restrained in the exercise of tolerance, not judgments or feelings. The latter are merely overridden. Restraint of power can be self-restraint of one’s own power, motivated by ethical or political reasons, without regard for political or social sanctions. For example, the conviction that all persons possess equal dignity and have a right to their gender beliefs and practices would be one such reason. Prudential reasons, however, may also provide the restraint. For example, the decision to desist from the exercise of power because of the threat of legal sanctions to oneself would be another reason for non-interference.

Correspondingly, a liberal political order might support tolerance of gender pluralism between citizens in two ways.[70] Firstly, it could provide citizens with a 'reason for non-interference' by legally prohibiting discriminatory or persecuting interventions by some citizens who disapprove of gender non-conforming beliefs or practices. The threat of sanctions, however, does not necessarily elicit any 'positive judgement' of the first agent with regard to the second agent whose beliefs and practices she objects to. Rather, the 'positive judgement' is reflexive – the objecting citizen values her *own* political freedoms, and so abstains from putting interference into practice. Reasons such as these might effectively serve the purpose of 'stabilising' the full political inclusion of gender non-conforming persons once this has been attained (Galeotti 2002, 109–112), but these reasons do not include the moral reason of recognizing those who do not conform to the prevalent gender rules as free and equal citizens or persons. So a second way the liberal political order might provide citizens with a 'reason for non-interference' with gender pluralism, is by publicly recognizing the value of political personhood, encapsulated in principles of equality and liberty. This is more in line with respect-toleration, alluded to earlier (Forst 2014; Firretti and Lægaard 2013). Public institutions in this second scenario provide a recognitive political climate that enables mutual respect and fosters tolerance among citizens.

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[70] It might be claimed that the state 'disapproves' of gender non-conforming beliefs and practices if its legislation and policies favour the Prevalent Gender Structure. The way I formulate tolerance requires that the reason for objecting to, or disapproving of, a given practice not be eliminated but simply overridden by another reason. The only way gendered law and policies can become just in the face of gender pluralism is that they be changed or abrogated. Thus, the purported 'disapproval' (and any reason for it) vanishes, and is not simply overridden. I thus prefer to speak of the 'politically tolerant liberal state' as one that – through policy and law – fosters tolerance between citizens, taking into account asymmetries of gendered social power. It does not – strictly speaking – exercise tolerance itself. On the debate on whether, and in what sense, a liberal state can be called 'tolerant', see Balint (2012) and Jones (2012), and references therein.

In practice, the democratic liberal state might provide both moral and prudential 'reasons for non-interference.' In the case of gender non-conforming beliefs and practices, what I call 'political toleration' would thus involve, at least

> provision of reasons for non-interference in the gender beliefs and practices of others through i) the public recognition of equal citizenship and ii) the imposition of legal sanctions on those who do so interfere.

This is not, of course, meant to be an exhaustive characterisation of what liberal toleration might require. In fact, as long as public recognition of the Prevalent Gender Structure, that is, gendered political power, remains, the above requirements may not go very far in addressing marginalisation and the hegemonic power of existing gender ascription and scripting. The liberal state should not, on the one hand, publicly endorse the Prevalent Gender Structure – thereby marginalizing gender non-conforming persons – while, on the other, maintaining that it affirms the equal rights and citizenship of gender non-conforming persons (as in the requirement i) above). For if it were to do so, its policies would, in this case, be working at cross purposes. So, in addition to providing some of its citizens with reasons for non-interference in the beliefs and practices of gender non-conforming persons, the liberal state should be *gender neutral* in a way I will presently explain. Additionally, social asymmetries of power between genders may decrease the social standing of gender non-conforming persons to such an extent that the resulting attrition of self-respect may bring with it limited access to rights that are formally guaranteed in non-discrimination laws. In the next section I take a closer look at state gender-neutrality and at a form of toleration aimed at mitigating the negative effects of asymmetries of gendered social power on self-respect.

3.5 Countering Gendered Social Power and Eliminating Gendered Political Power: Public Toleration and State Gender-Neutrality

3.5.1 State Gender-Neutrality

The state has an obligation toward gender non-conforming persons to eliminate gendered political power, that is, the implicit gender assumptions that permeate its own policies and institutions. This is a crucial point in light of the current public affirmation of the Prevalent Gender Structure, a political endorsement which is taken for granted by many and rarely thematized. As in the case of culture and religion, there is an implicit or covert background against which minority beliefs and practices are identified as *different* (Galeotti 2002, 8; 2006, 570). This is particularly so in the case of gender. Most state officials, law-makers, and civil servants probably 'live and breathe' the Prevalent Gender Structure. The biases and prejudices of that social structure are translated into public policy, and into law. In effect, a liberal democracy should undertake all reasonable measures to eliminate the exercise of gendered political power within its own institutions. This requirement alone implies thorough-going reforms – from ID documents to the way washrooms are designed and signed in public buildings.

Gender neutrality is distinct from fostering tolerance and restoring self-respect through public toleration. As I understand tolerance in this article, it is fostered by the liberal democratic state in that the latter provides its citizens with moral and prudential reasons for overriding dispositions to employ gendered *social* power to interfere with gender non-conforming beliefs and practices. Gender neutrality, on the other hand, addresses gendered *political* power. The liberal state will seek to simply dismantle it, not to

override a moral disposition to employ it; the state does not have a moral disposition to employ this power, as it cannot be said to morally disapprove of gender non-conforming beliefs and practices.[71] State gender-neutrality may, in fact, help foster tolerance of gender non-conformity among citizens, and restore self-esteem among marginalised gender non-conforming people. However, its immediate goal is not fuller social inclusion in a broad sense, but, more explicitly, political inclusion, in that it tackles legal and governmental discrimination.

3.5.2 Public toleration of gender non-conforming beliefs and practices

Besides gender neutrality, a more robust version of political toleration is needed. The experienced burden of imposed gender practices lowers the capability among gender non-conforming persons of effectively exercising the formal liberties the state grants them; it is particularly nefarious as regards self-respect (compare Galeotti 1998, 41, 46).[72] Taking up an idea from Galeotti (2002), the normative response to this state of affairs is that the liberal state should foster 'public toleration' with respect to gender non-conforming persons. Toleration is thereby not restricted to some private realm, but attains a public dimension. This might involve explicitly accepting particular practices within public

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[71] One of the critiques of Galeotti's original, multicultural version of public toleration was that her theory had not shown that lack of self-esteem among minorities, and their reduced access to substantial justice was a *public fact*, something that would be required for the political justification of public toleration (Lægaard 2008, 307–9). One should note that, in the case of gender non-conforming persons, particularly transsexuals or transgender persons, low levels of self-esteem and restricted access to services are well-documented. For the case of the Province of Ontario, see the research on the transgender population published by the Trans Pulse project (Scanlon et al. 2010).

[72] Compare the following remark from Galeotti (2006): "public exclusion of differences is first unfair, because it treats members of minorities differently from members of the majority, whose identity is openly visible in the political domain. Secondly, it is unjust because the invisibility of differences concurs to keep minorities in a marginal position of second-class citizenship" (574).

institutions, for example, allowing school students assigned ‘male’ at birth to wear attire and make-up classified by the rules of the Prevalent Gender Structures as ‘female’ or ‘feminine’. But this is not all. The public justification of such toleration should make reference to the aim of including minorities into full citizenship, as a requirement of justice (compare Galeotti 2002, 104–105; Lægaard 2008, 297–298). Although Galeotti seems at times to call for public validation of specific beliefs and practices, I will take it that it is full citizenship which is the publicly recognized value (Galeotti 1998, 47; Jones 2006b, 139). This provides the basis for a mediated form of toleration with respect to a specific belief or practice (Jones 2006b, 133–134; Appiah 2005, 140–141): “What is directly recognized is not identity or whatever intrinsic properties that set minorities *apart* from the majority, but the politically relevant property which they have in common, e.g. their equal status as persons” (Lægaard 2005, 334; Galeotti 2006, 574–5).

To illustrate the notion of public toleration further, let me draw a certain analogy with the familiar example of the turban-wearing police officer. He is allowed actively and electively to identify with a religious script through his engagement within a public institution, the police force. Now, there is a sense in which the police force can be said to publically *ascribe* the identity, but only in a very weak sense, through the free initiative of the officer concerned. More precisely, it is a form of *mediated* toleration of religious beliefs and practices, in which the mediating element is the recognition of full citizenship coupled with certain contingent social circumstances: it is only due to the value of equal and full citizenship (or political personhood), coupled with the existence of minorities in danger of marginalization, that public toleration has its rationale. It certainly cannot be

said that the state is thereby recognizing the intrinsic value of Sikhism.[73] I believe many people find this example quite plausible. I would extend it to gender beliefs and practices. Even though the Prevalent Gender Structure would label the officer as 'male', public toleration of gender pluralism requires that 'he' be allowed to wear make-up and appropriate (i.e. police-standard) women's attire, if desired (and if such exists).[74]

Public toleration should be viewed as a way in which the liberal state seeks to offset the asymmetries arising through social relations of power. It is an attempt to rectify an unjust gendering of public space already dominated by beliefs and practices assuming compliance with the rules of the Prevalent Gender Structure. Full citizenship is evidently not conferred on gender non-conforming persons simply by accepting their non-conforming gender expressions into public space, on a par with beliefs and practices that assume compliance with the Prevalent Gender Structure. Public institutions can only attempt to influence oppressive social dynamics and their power structures, and the way

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[73] In a similar way, public toleration allows a Muslim girl to wear a veil at a public school in a society in which Muslims form a minority. We should note, however, that the girl's specifically religious and cultural action of wearing the veil does not undermine (a) the public recognition of citizens, nor (b) the religious neutrality of the liberal state and its institutions. We can imagine situations in which religious or cultural actions might do so, if only on the level of symbolism. For example, the hanging of a crucifix on the wall of the main chamber of parliament in which a minority of MPs are Christians could be interpreted as compromising the neutrality of the liberal state. The difference between the cases lies in the fact that in the case of the veil, there is no evident political claim to universality for the practice or accompanying belief. It is sufficient for the purposes of this paper to recognize that liberal institutions might, in some circumstances, legitimately circumscribe the conditions for public toleration, if – left to its own devices – public toleration would tend to undermine (a) or (b).

[74] Of course, I cannot deny that – due to the social entrenchment of the Prevalent Gender Structure – gender non-conforming police officers may be particularly exposed to verbal and physical abuse in the course of their work. This is part of the 'social risk' of public toleration of gender non-conforming beliefs and practices. Nevertheless, it is not principally different from the acknowledgement of gays and lesbians, for example, within the police, or within the other services. What makes it perhaps more 'jarring' for those who are imbued with the Prevalent Gender Structure is that there is usually an accompanying visibility (as with the wearing of a turban).

this influence is publicly justified is of central importance. What public toleration achieves is a strengthening of a recognitive climate, in which the full, equal citizenship of all is publicly affirmed as an ideal. The majority is being offered moral 'reasons for non-interference' while members of the minority gain a sense of self-respect and a sense of greater integration within society.

One should note that state gender-neutrality and public toleration will go hand-in-hand whenever a publicly tolerated gender non-conforming practice or belief requires legal changes for consistency of policy. In this case, publicly tolerated practices of *dis*-identification with the Prevalent Gender Structure, grounded in the recognition of the equal political personhood of all, require the dislocation of the Prevalent Gender Structure from its legally privileged position. Such dislocation is required, in fact, not only for consistency, but also to maintain respect toleration as opposed to some form of permission toleration.

3.6 A Case Study: Government-Issued Identification (ID) Documents

For an example of public toleration, let us look briefly at the case of government-issued ID. This is an area of *institutional* ascription of sex/gender by national/federal and/or local government bodies. Given that it is often found to be the occasion for oppression of transgender people, should we not simply abolish it?

It is plausible to assume that the gender marker on such documents is a public gender practice. At first sight, the marker may seem to be ascribing an identity. I would argue,

however, that what the gender marker could do – particularly if it is chosen by the citizen, as I will explain – is express administratively the public toleration for the *self-identification practices* of the citizen. Inasmuch as this self-identifying procedure is public, it must consist of beliefs (or expression of them) and practices. And one of these self-identification practices will be the *choice* of gender-marker.

Let us look at how this might work in more detail. The public toleration of gender non-conformity – grounded as it is in the recognition of citizens' personhood, more particularly, their *autonomy* (Williams 1996, 22) – would have to take into account individual *dis*-identification with the Prevalent Gender Structure, that is, it would entail the cessation of administrative ascription or scripting of gender for the purposes of identification according to the rules I outlined in section 3.1.2. The rules of Biological Determinism, of Gender Invariance, of Gender Exclusivity, and of Bi-gender Exhaustivity would thus have to be dislodged from their prevalence in policies and directives regulating document issuance. Additionally, we would not want the state to 'script' genders.

Now, these postulates can be realised in two ways: either by allowing citizens to choose their own gender on documents; or by removing gender markers from them altogether. The latter policy would also more clearly dislodge the Gender Extension Rule, and so would, perhaps, be preferable. Fogg Davis argues forcefully for the elimination of gender markers (Fogg Davis 2014, 54) on government-issued documentation. Shrage, on the other hand, argues not for the total elimination of government sex-classification (on documentation, for example) but for greater gender self-determination by citizens (Shrage 2012, 245–6).

I believe it is the latter policy which is more in line with my conception of public tolerance of gender diversity. The state should retain the power to ascribe gender *on request* on the basis of how an individual *self-identifies*. This is what I mean when I say that the gender marker is 'elective'. Such a policy involves a clearer recognition of the principle of citizens' autonomy in gender matters. A blanket elimination of gender markers robs the liberal state of an instrument for public toleration of gender minorities. And the fact of elective gender self-identification underscores the reason for public tolerance, namely, direct recognition of political personhood.

There is another, more pragmatic and legal reason for not abolishing gender markers on identity documents. Transgender activist lawyers and academics have advocated for changes in legislation toward genders that are less constraining, and that are self-selected. Paisley Currah documents how transgender activist lawyers have strategically invoked gender identity in US law: it seems that judges – and society at large – are more prone to understand and be sympathetic to the idea of a stable identity, as the ground for transgender rights. This is one reason why it is expedient to retain some 'loose' form of gender ascription on behalf of the state. Currah affirms that:

> Even as activists work to unmoor legal gender from the confines of the sex gender system and its attendant assumptions – that sex is binary and biologically transparent, that gender maps easily and predictably onto sex – they (we) have framed their arguments in terms intelligible to those outside the "gender community" by strategically deploying the language of identity. As a movement, however, the ultimate goal of transgender rights does not seem to be to contain gender nonconforming identities and practices within slightly expanded yet still-normative gender constructions and arrangements. (Currah 2006, 24)

Currah indicates that a notion of stable identity can be useful. Gender markers on ID documents can serve such a purpose. This is not to deny that, ultimately, the goal for a liberal state may become the elimination or abolition of gender as a political category.[75] Yet, we are far from such a scenario at the present time. Many transgender people self-identify simply as women or as men. If 'dis-establishment' were to entail the *abolition of gender*, many transgender people – and probably many non-transgender (cisgender) people too – would feel excluded and disadvantaged. Howard Kendall sees this problem clearly when he notes that for some transgender activists "a trans democratic project ought not to endorse a politics of compulsory resistance to gender assignment. What transdemocracy demands, rather, is the abolition of the regime of *compulsory* gender" (Thomas 2006, 321).[76] Some transgender people may not desire the *complete* dis-establishment of gender from the state. Gender markers on their ID documents may prove

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[75] "Indeed, in other legal and policy contexts, many of these same activists are working to 'dis-establish' gender from the state by ending the state's authority to police the relation between one's legal sex assigned at birth, one's gender identity, and one's gender expression; by attempting to stop the state's use of "sex" as a marker of identity on identification documents; and by ending the state's reliance on sex as a legal category to distribute resources – through bans on same-sex marriage, for example." (Currah 2006, 24)

[76] Viviane Namaste has similarly noted the problematic character of the aims of some transgender activism. In an interview she has gone on record as saying (2006, 6): "a lot of transsexuals take a critical distance from the term *transgendered*. … The question [of the interviewer] assumes that "transgendered" people will see their bodies, identities, and lives as part of a broader process of social change, of disrupting the sex/gender binary. … But many transsexuals do not see themselves in these terms. They would situate themselves as "men" and as "women," not as "gender radicals" or "gender revolutionaries" or "boyzz" or "grrrrrrls"" (18–23). I can appreciate the point Namaste is making, and I am trying to integrate it into the framework I am presenting. On the other hand, as a framework in political theory, my proposal should be as inclusive as possible. I find Namaste's dismissal of those who identify as a "third gender" (22) not sufficiently inclusive of the gender nonconforming spectrum.

affirming, a state recognition – not of their particular gender identity, practices and beliefs – but of their personal journey toward self-determination.[77]

In accordance with my model, I am thus led to favour the allocation of a gender marker on ID documents in accordance with the following principles:

a) The state recognises its citizens as *selves*, that is, embodied persons capable of adopting a conscious standpoint towards the social roles they are ascribed as social individuals, including gender;

b) Further, in accordance with the recognition of selves, it recognises its citizens' right to the free election of, and self-identification with, all or some of the elements that comprise the Prevalent Gender Structure. (The state does not ascribe a "sex" to its citizens at birth, as this is an administrative act endorsing (and enforcing) the Biological Determinism Rule. It is incompatible with state gender-neutrality[78]);

c) The state – in recognition of this choice – can, upon request, *ascribe* the corresponding gender to its citizens. This is *mediated* ascription. The state does

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[77] Having one's gender indicated on a government-issued document may, in some cases, be socially expedient for gender non-conforming people, for example in cases where showing ID may be required for the use of facilities and services, such as entry to bars, pubs, or changing-facilities. Such markers will not be experienced as oppressive, but as affirming and useful, as long as the presence of the marker, as well as its form, is optional.

[78] This does not exclude, of course, a legal requirement to record certain features of embodiment before or after birth, such as the presence of certain reproductive organs. As long as this information is not too detailed, it would not be an intrusion into privacy (Shrage 2012). This would allow the state to monitor illicit practices, such as prenatal selection of infants on the grounds of reproductive capacity or physiological make-up. It does not seem necessary, however, to label such collections of physiological data 'female' or 'male'. Moreover, in accordance with the idea of optional gender ascription, parents would be able to (optionally) record sex/gender labels on birth certificates.

> not determine the content of the label. If a citizen does not initiate the process of gender ascription on her documents, there is no ascription, for it is not mandatory. Moreover, the state ensures that no group or community less than the state ascribes genders on others without those persons' consent, or imposes beliefs or practices concerning gender on others.

Now I will add some provisos. One objection or difficulty to the above proposal concerns the Gender Invariance rule. If citizens are allowed to elect their gender marker, how often should they be allowed to do so? If gender has no degree of permanence, in what sense can it be regarded as an identity? Identities are, after all, usually assumed to be relatively stable. In response, one should bear in mind that the public mediated ascription of gender markers serves a particular purpose, namely, to facilitate or enable full citizenship by those who do not have access to it because they belong to gender minorities. It would not be wise for the state to ascribe genders markers (on official documents, for example) that could be regularly changed 'at a whim,' so to speak, if only because the ascription would soon become worthless as the expression of a gender identity, and would frustrate the political aim of public toleration. Some degree of stability is both necessary and expedient, for otherwise the gender marker loses its political usefulness. Considerations such as these underline the ascriptive character of the gender, and lead to the necessary temporal constraint on the gender marker choices of the citizen. In effect, the Gender Invariance rule – or, rather, some revised form of it – cannot be politically eliminated. For adults one could stipulate, for example, that changes in gender ascription are possible only after five or so years have elapsed since the last ascription.

There is also a difficulty related to the Gender Exhaustivity rule. Indeed, someone might object that allowing just any gender specification (a "fill-in-as-appropriate" policy on document applications, for example) would render the whole system worthless, for anyone could, in principle make up a gender identity with little or no social meaning. Perhaps, then, gender should be limited to a certain list of officially recognised genders which, nevertheless, are descriptively not too specific (such as "man", "woman", "androgyne," "MtF", "other" …). Again, this constraint constitutes a departure from the complete political elimination of the Gender Exhaustivity rule. It establishes the need for a revision of that rule, one which would not limit genders to simply "man" or "woman", but would, nevertheless, specify a broad list from which those wishing an administrative ascription of gender could choose.[79]

The case study shows how the liberal theory of gender pluralism sketched in this paper is related to gender eliminativism. In analogy with race eliminativism (Glasgow 2009, 1–2), gender eliminativism is usually motivated by the fact that prevalent notions of gender, and the conceptions and social expectations that flow from them, are oppressive in character, usually towards women. It therefore postulates the elimination of such categories as a political and social desideratum, on the assumption that such elimination will at least reduce the levels of oppression. However, my conception differs in several respects from gender eliminativism so understood. First, I concentrate on state policies, institutions, proceedings and documents and have little to say, and only with respect to gendered social power, about the more thorough-going elimination of gender categories

[79] The list would need to be regularly updated in consultation with gender minority groups.

in the life of society as a whole (public eliminativism). Second, even with respect to the Prevalent Gender Structure, the eliminativism espoused is partial because, as I have argued in the case of government-issued ID documents, the political effectiveness of public toleration cannot be guaranteed without conserving, at least in revised form and for legitimate political purposes, certain elements of the Prevalent Gender Structure.

3.7 The Liberal State's Approach to Gender Pluralism: Final Formulation

In light of the above, and with the foregoing analysis of gender identities and the Prevalent Gender Structure in mind, we are in a position to specify a liberal democratic state's approach to gender pluralism. It involves recognition of full citizenship, public toleration of gender beliefs and practices, as well as state gender-neutrality. The liberal democratic state

> a) provides the gender majority with reasons for non-interference with diverse gender beliefs and practices in that i) with a view to full citizenship for gender non-conforming persons subject to asymmetries of gendered social power, it accepts *dis*-identification with the Prevalent Gender Structure within public space and institutions, justified by appeals to full inclusion; ii) imposes legal sanctions on those individuals or groups who seek to enforce gender scripts or modes of gender ascription on fellow citizens and, b) again with a view to full citizenship for gender non-conforming persons subject to gendered social power, itself desists from

> implementing policies or structuring institutions in ways that pre-suppose compliance with the Prevalent Gender Structure.

Western states are not currently gender-neutral in the sense of the present argument. Gender-neutrality is conceived here as a political project, defined *relative to* the Prevalent Gender Structure, whose influence on society and political decisions is to be eliminated. The main purpose of gender-neutrality as a political goal is to eradicate gendered political power (which, presumably, would not exist in the 'ideal' case). A liberal democracy should gauge its gender-neutrality according to the degree to which it has politically eliminated notions of prevalent gender ascription and scripting, and their implicit or explicit endorsement, in its justifications of law and policy.[80] We are clearly not talking about 'gender blindness'.[81]

3.8 Concluding Remarks

Within the liberal approach to gender pluralism I have presented, the gender non-conforming individual *qua* citizen is politically recognized. State institutions practice a policy of public toleration with respect to those who in some way do not conform to the Prevalent Gender Structure. That toleration is grounded in the public recognition of full and equal citizenship that provides citizens with reasons for non-interference in the

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[80] The conception of gender neutrality I have presented is thus non-ideal in Mills's (2005) sense: it is an "ideal-as-descriptive-model" (as opposed to an "ideal-as-idealized-model") which, although normative, does not abstract away from "the reality of different kinds of subordination" (173).

[81] I might add that the theory does not necessarily imply that genders will gradually be eliminated. Perhaps the liberal approach I have outlined might lead, in time, to genders understood in Haslanger's (2012c) sense: non-hierarchical, 'thin' social positions (254).

beliefs and practices of gender minorities. That same recognition provides the liberal state with reasons for eradicating, as far as possible, the oppressive effects of prevalent gender scripting and ascription rules within its own institutions and policies (gender neutrality). Once we consider the extent to which the Prevalent Gender Structure imbues our public space at all levels, from birth certificates to changing rooms, we realise that the implementation of state gender-neutrality and of public toleration for gender pluralism may require far-reaching reforms of state policies and institutions.

Within the framework of the current thesis, the political conditions I have described in this article constitute political conditions of possibility for challenging the Prevalent Gender Structure of western society. It is the social normativity of this structure which is the target of the reforms I have spoken of. By eliminating the dominance of this normativity in law and policy, and enabling its 'flouting' in public space, the liberal state renders prevalent gender scripts and modes of gender ascription politically and socially contestable.

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Conclusion

In this thesis I have argued that there are semantic, ethical, and political conditions which render social gender norms, gender concepts and categorisations, and gender language-use open to potential challenge, that is, they can be contested. In the introduction to this thesis, I claimed that the property of contestability creates the conditions for resistance to gendered categorisations, expectations, and language deployment. Many of the philosophical analyses in this thesis – especially those regarding semantic contestability conditions, misgendering and gender-term vulnerability, and gender state-neutrality – aim at helping to elaborate a novel approach in socially critical philosophy. Part of that novelty stems partly from the particular transfeminist perspective I have adopted which – although implicitly present in the works of some other authors (Bettcher 2014, McKinnon 2014, Jenkins 2015) – has, to my knowledge, not been as clearly articulated as in the present work.[82]

The notion of contestability is prominent in this thesis. One of the principal ideas behind the emphasis I have put on this notion is that however we define our gender terms, and however our social norms concerning gender shape roles and expectations, it is of paramount importance from an ethical and political point of view to be aware that norms, concepts, and terms are contestable. Even within gender non-conforming groups and

[82] One should also distinguish transfeminist philosophy from transfeminism understood as a form of activism or as a political movement (Koyama 2003).

movements, there can be a danger of marginalising those who do not neatly fit into the identity that is either pre-supposed or even democratically decided upon for the purposes of political organisation and action. Normative conceptions and characterisations are provisional and reformable, especially if some individuals or groups are vulnerable to, or are harmed by, their implementation.

In the remainder of this concluding chapter, I wish to do two things. A reader who is well-versed in the political theory literature may legitimately ask the question what relationship my notions of contestability bear to William Gallie's notion of 'essential contestability' and Philip Pettit's notion of 'contestability'. So, first, I wish to briefly discuss the latter two notions, indicating commonalities and differences with respect to my own understandings of the term 'contestability'. Second, however, over and above the task of situating my notions of contestability with respect to these other concepts of the same name, the review of Gallie's and Pettit's ideas will provide the principal features that help me characterise a civic virtue that I call 'transfeminist contestatory vigilance': an attitude or stance that allows those who adopt it to see the circumstantial need for defining gender 'identities' in ways that will promote political goals, on the one hand, while, on the other, empowering them to be sensitive and vigilant to the potential marginalising and exclusionary effects of all such gender definitions.

Essentially Contestable Concepts: Commonalities and Differences

Chapter One of the dissertation contains discussions of semantically contestable categories and conceptions. Semantic contestability is based upon combinatory and

degree vagueness and the accompanying presence of peripheral or borderline cases for which it is conceptually or semantically unclear whether an individual belongs to a category such as WOMAN or not. Gallie's notion of 'essential' contestability' (1956a)[83] can also be interpreted in terms of a type of combinatory indeterminacy. Gallie explicitly speaks of multi-dimensional concepts, whose constitutive elements are variously weighted or differently described by parties in a dispute, thus leading to different conceptions or interpretations of the given concept. In fact, several authors have considered essential contestability in the light of family-resemblance and vagueness (Connolly 1993, Waldron 1994, Janik 2003).[84]

Another commonality worth noting between my treatment of the semantic and non-semantic contestability conditions of gender categories in chapter one and the notion of essential contestability, is that both Gallie and other authors such as John Gray (1977, 1978, 1988) have stressed that contestable concepts tend to be ones that express a 'valued achievement' (Gallie 1956) or fulfil an 'endorsement function' regarding a particular way of life. Gray, in particular, emphasises that essentially contestable concepts such as JUSTICE, DEMOCRACY and ART are embedded within broader metaphysical and ethical assumptions. I too have emphasized that rival positions concerning membership or non-membership within the category WOMAN are – in semantically borderline cases – strongly influenced by background metaphysical, ethical, and political assumptions.

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[83] Gallie actually spoke of essentially *contested* concepts.

[84] This aspect has also been recently highlighted for multi-dimensional adjectives by Väyrynen (2014) who also integrates degree vagueness into his account.

However, combinatory indeterminacy, as exhibited by essentially contestable concepts, does not, as such, require the presence of paradigm cases: there need be no generally agreed-upon 'clear' cases of an instance of the concept. And the lack of agreed upon paradigms is a crucial difference with respect to the category WOMAN, for which we do, I claim, have socially acknowledged paradigms.[85] Gallie did originally postulate common agreed-upon exemplars or exemplary traditions that instantiated essentially contestable concepts. However, subsequent authors pointed out that the real existence of an exemplar or paradigmatic tradition is often difficult to detect (Gellner 1968). In the case of some concepts such as ART, every candidate paradigm would, in fact, be contestable in its status as paradigm. The absence of agreed-upon paradigms is even more noticeable in the case of other essentially contestable concepts such as MORALITY. John Kekes, for example, claims that the criteria for what counts as 'moral' are irreducibly and indefinitely diverse (Kekes 1974): Is there a paradigm of a 'moral' action or a 'moral' attitude? One might contrast this situation with that of the category WOMAN and of the category MAN, and associated socially dominant conceptions of gender. Even though we may object to some explications of these categories, all members of society generally sort people unproblematically into 'women' and 'men' in everyday interactions. This seems quite unlike deciding what 'art' is and what isn't, or what is 'moral' and what is 'immoral'. The latter types of contest seem to engage a particularly *thoroughgoing* form of disagreement. In fact, one way of interpreting the 'essentially' in essentially

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[85] This is why, I talk of combinatory *indeterminacy* with regard to essential contestability rather than combinatory vagueness, as notions of vagueness usually presuppose clear or paradigmatic cases of category membership.

contestable is that disputes over such concepts are not simply disputes about marginal cases, but go to the 'core' or to the heart of the concept (Waldron 2002, 149).

In sum, although related to essential contestability through the ideas of combinatory indeterminacy and the role played by background metaphysical, ethical, and political assumptions in the endorsement by contestants of their respective positions, the general lack of paradigms in many cases of essentially contestable concepts distinguishes essential contestability from my notion of contestability outlined in chapter one of the thesis.

Pettit's Political Contestability: Commonalities and Differences

Philip Pettit has proposed another notion of contestability within the republican tradition of political theory (Pettit 2012).[86] This notion is closely related to Pettit's idea that freedom is freedom from domination, that is, a robust type of freedom in which not only is there no interference from other persons (freedom as non-interference) but also no citizen has "to live under the potentially harmful power of another" (2012, 5). Importantly, freedom as non-domination is to extend to relations between citizens and the state. Not only is the state to guarantee freedom as non-domination between citizens; it also cannot dominate its own citizens. This latter requirement means, in turn, that the state is constrained by a constitutional form of mixed government, so that no instance has a monopoly on power. Moreover – and this point is directly relevant to contestability –

[86] Pettit distinguishes the "Italian-American" tradition of republican thought, with its emphasis on the contestatory role of citizens, from the "Rousseauvian" tradition, antithetical to this idea (Pettit 2012, 12–16).

the citizens in such a state possess an equal power to check and test governmental decisions, so as to reduce the risk of state domination. As Pettit puts it,

> if the citizens are to keep the republic to its proper business then they had better have the collective and individual virtue to track and *contest* public policies and initiatives: the price of liberty, in the old republican adage, is eternal vigilance. (Pettit 2012, 5 – my emphasis)

Contestatory citizenry – "a citizenry committed to interrogating all the elements of government policy and imposing itself in the determination of law and policy" (2012, 5) – is the citizens' complement to a mixed constitutional form of government.

For citizens to be free of domination by the state, there must be political mechanisms in place that ensure citizens' collective influence on government. Yet this is not enough, since collective influence does not exclude the possibility of relations of domination. What is additionally required – so Pettit – is individual citizens' equal access to influence on government. Inasmuch as influence on government is exercised through some system of majority elections, however, individual citizens who are members of minorities will not have equal access to influence on government, for they have no realistic chance of winning electoral competitions.

> On one or other of a range of issues there may always be a more or less sticky divide between a majority and a minority and, if there is, then on that range of issues people will not enjoy equal access to influence, not having the same *ex ante* chance of being on the winning side; the pattern of electoral or legislative voting may shut out the minority. Those of a minority religion are going to be in this situation with an issue like whether to set up a majority religion as an established church; those of a minority culture with an issue like whether to authorize only a mainstream pattern – say, the use of the majority language – in public life; and those of a minority sexual orientation with an issue like whether to give full civic recognition only to heterosexual unions. (Pettit 2012, 212)

To counter the danger of electoral "tyrannies of the majority", Pettit proposes the introduction of "a system of individualized contestation" (2012, 214). Individuals or groups ought to have the possibility to test the laws and decisions for how far the processes by which they were made provide equal access to influence for all citizens. Moreover, there must be impartial adjudication of these matters, as well as appropriate adjustment if such challenges are upheld. Pettit calls this collection of ideas "individualized contestability of the assembly" (2012, 215). It is, in effect, a collection of necessary conditions for the institutional possibility of challenging majority decisions. The conditions are explicated more specifically as

- Transparency: the capacity of members of the society to know what proposals are under consideration and what measures have been passed.
- Contestability: the opportunity for members to challenge overtures both in advance of legislation and once they have been passed.
- Impartiality: the availability of forums in which challengers can expect an impartial assessment and, ideally, resolution. (Pettit 2012, 215)

Contestability in Pettit's understanding thus has a broad sense and a narrow one. In the broad sense, it is the collection of the above three conditions that guarantee the possibility for effective challenge to decisions made by democratic assemblies. In the narrow sense, it is the middle condition described above.

What is the relationship between Pettit's notion of contestability and the various contestabilities I discuss in this thesis? What are the commonalities and differences? Pettit's concern is the design of institutional conditions which make possible the testing and challenge of political decisions, as well as of the processes by which they were

arrived at. This is aimed at ensuring freedom from domination by government for all citizens. As regards my notion of semantic contestability from chapter one, it is certainly quite distinct from Pettit's notion of contestability; Pettit is clearly talking about institutional conditions rather than semantic ones.

On the other hand, as regards my discussion of moral contestability in chapter two, of the three harms of misgendering I discuss, the political harm of oppression and domination that the hegemonic intensional or extensional deployments of gender terms produce can perhaps be re-couched in Pettit's terms. If a democratic assembly decides to deploy gender terms with respect to individuals or groups that are vulnerable to them, then there are moral grounds to contest these decisions and, indeed, the process by which those decisions were arrived at. But here my notion of moral contestability is at once more general and more specific. It applies not only to institutional decisions about meanings and gender categorisations but, more broadly, to any gender-term deployments. It is, on the other hand, more specific because I discuss only gender-term deployments, not all and any decisions which might lead to domination. Moreover, moral contestability is about the moral grounds or conditions for contesting gender-term deployments, namely, the infliction of psychological, moral, or political harm. Pettit's notion, on the other hand, although justified by the harm of domination by the state – and, in this sense, invoking moral contestability as I understand the term – describes a property of political institutions, not the moral property of a situation of harm.

Once we understand that Pettit is talking about institutional conditions, it is relevant to ask how Pettit's view relates to my treatment of state gender-neutrality and public tolerance in chapter three. The latter are also institutional conditions. State gender-

neutrality may, of course, entail institutional design that protects citizens from laws and policies which explicitly invoke the Prevalent Gender Structure, or assume that structure for their justification. For example, constitutional rights may protect gender minorities from such laws and policies, or grant recourse to challenge them in the courts. So state gender-neutrality may encompass the three elements of Pettit's broad notion of contestability: transparency, contestability, and impartiality. State gender-neutrality is, again, more specific as it regards issues around gender. However, freedom from domination by gendered political power – one of the goals of state gender-neutrality – is here consonant with Pettit's more general notion of contestability.

Let me add immediately, however, that the object of contestability in chapter three is somewhat different. The object of Pettit's contestability is domination by government. As I formulate the issue in chapter three, state gender-neutrality and public toleration are conditions for the contestation of the Prevalent Gender Structure. It is the dominant social gender norms that are to be exposed to public contestation. One can, for example, understand public expressions of gender non-conformity as direct contestation of social gender norms.[87] Political decisions are the object of contest indirectly, only inasmuch as they embody those norms and the power they yield. Ensuring citizens' equal, individualized and independent influence over government decisions (Pettit) is different from tackling the dominant influence of social norms (chapter three of this thesis).

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[87] Cristina Bicchieri (2006) explains how non-conforming behaviour can undermine social norms.

In sum, as in the case of essential contestability, there is some overlap between Pettit's notion of contestability and my own understandings of that term. They are, nevertheless, quite distinct. Yet the overlap does provide me with some conceptual tools to introduce the notion of 'transfeminist contestatory vigilance'.

Transfeminist Contestatory Vigilance

Having highlighted some commonalities and differences between my notions of contestability and those of Gallie and Pettit, I wish to consider a further commonality as a potential development of the views contained in this thesis. For I have thus far said little about which normative stances or civic virtues are required to bring out the 'optimal' moral and political potential of contestability conditions.[88] I wish to do so in this final section of the thesis.

Besides the type of thoroughgoing disagreement implied in the notion of essential contestability, a second meaning of 'essentially' in essentially contestable is that the understanding of the concept is somehow deepened or enriched by contests over its meaning (Gallie 1956a, 107; Waldron 2002, 163). For example, Gallie argued that contests over the nature of art provided valuable impulses for the development of styles and techniques of art and then retroactively influenced the concept ART (Gallie 1956b). This may be true in some cases, but it is difficult to see how it can be inevitable and so 'essential' to the concept. After all, disputes may lead to a degeneration of the level of

[88] By 'optimal', I mean here the politically most inclusive and morally least harmful and least oppressive result that can be obtained from contesting gender social norms, conceptions, and language-use in a given social context.

argument, over-simplifications of the words or concepts used, or even result in coercion (Freeden 1996, 60). Nevertheless, there is a sense in which this aspect of 'enriched understanding' can play a role in my general approach to the contestability of gender norms, conceptions, and language-use. For I claim in chapter one that paradigmatic conceptions of WOMAN undergo change through contestation. I do not think that such 'paradigm changes' need be necessarily progressive or more inclusive, but, in my view, when they are, the original understanding is, indeed, deepened and enriched. For this to happen, however, we need something more than just a semantic or conceptual condition, something more than the fact that rival conceptions are valued and politically significant for socially identifiable groups. What is needed is an awareness of the contestability of our gender conceptions, and of the expectations that flow from them, as well as a type of moral attitude or stance toward contests which exhibits a sensitivity to their harmful, oppressive, or exclusionary effects. What is additionally needed, in short, is a type of civic virtue that contributes a willingness to treat all gender categorisations and conceptions as provisional and as in need of reform if they have negative moral or political consequences for certain groups or individuals. In the case of gender categorisations and conceptions then, semantic and non-semantic contestability conditions are 'essential' in this second sense of bringing about deeper understanding and enrichment only if they are accompanied by a particular kind of civic virtue.

The idea of such a civic virtue is more explicitly developed by Pettit. A further condition for actual contests to be possible is expressed in what Pettit calls "contestatory vigilance", a civic virtue thanks to which citizens are actively engaged in the type of testing and challenging activities that actual contestation requires (Pettit 2012, 225–229). This notion

resonates closely with the type of virtue required to optimally exploit contestability conditions. Awareness of the provisionality of conceptions and categorisations, and a sensitivity to their oppressive effects, are conditions which help ensure that contests will lead in a particular 'direction' so-to-speak, that is, toward greater justice. Despite the fact that the object of this civic virtue is much more specific than in Pettit's treatment – for it pertains not to discriminatory or oppressive political decisions in general, but specifically to those involving gender categorisations – this latter point about civic virtue can be understood as implicit in what, in chapter one, I named as a third (political) condition for the contestability of membership in the category WOMAN, namely, a tradition of contestation over gender categories and notions. For the existence of such a tradition plausibly testifies to the existence of a culture of "contestatory vigilance" regarding gender categories in law and in policy. This culture can inculcate the corresponding civic virtue in those who contest gender norms, categorisations, and language-use, so that contestability conditions are optimally sourced toward greater justice.

I claim, then, that the literature on essential contestability as well as Pettit's writings on his own notion of 'contestability' implicitly or explicitly invoke a certain type of stance or civic virtue, a virtue I would myself endorse with regard to gender norms, categorisations, and language-use. I am in agreement, for example, with what William Connolly has said about essentially contestable concepts, and would apply them to my analysis of the contestable character of gender categorisations and language-use:

> Politics is, at its best, simultaneously a medium in which unsettled dimensions of common life find expression and a mode by which a temporary or permanent settlement is sometimes achieved. In these circumstances, to endorse a particular set of standards is to support criteria

> for decision where decision is imperative, and to acknowledge that the decision endorsed is contestable is to endorse the case for keeping dissident perspectives alive even after a political settlement has been achieved. There is no contradiction in first affirming the essential contestability of a concept and then making the strongest case available for one of the positions within that range. That's politics. (Connolly 1993, 227)

Within political movements that organise around a gender "identity", there will be a tendency to specify, at least implicitly, what terms such as 'woman', 'transgender' or 'asexual' mean. Yet all these meanings and uses can be contested on semantic, political, or moral grounds. However, to put these contestability conditions to effective and just political use, I now add that one needs a specific type of virtue in line with the above quotation: Realising that gender categorisations are contestable should translate into a political attitude, one more open to diverse forms of gendered life ("keeping dissident perspectives alive") and to less exclusion and oppression.

So, finally, I wish to adopt Pettit's term 'contestatory vigilance' and qualify it with the adjective 'transfeminist'. Transfeminist contestatory vigilance, in line with the characterisation of transfeminist philosophy I offered in the introductory chapter to this thesis, is an awareness of, and a political sensitivity to, the exclusionary and hierarchizing tendencies implicit within processes of gender-label ascription, and the way deployments of 'woman', 'man', etc. function within these processes. It is true that category boundaries must sometimes be drawn for social and political purposes, differentiating those "within" a group oppressed on the grounds of gender, from those "without". However, those boundaries can introduce differences or hierarchies within oppressed groups themselves (Medina 2003). Our willingness to contest or challenge gender-based

exclusion and marginalisation is reinforced or weakened by our notions of gender conceptions and how they function. Recognising that conceptions of gender are semantically, ethically, and politically contestable in the sense I have proposed in this thesis hopefully provides an impulse for transfeminist 'contestatory vigilance' with respect to gender conceptions which exclude and marginalise, as well as with regard to those which aim to revoke hard-won rights.

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