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(Un)Becoming Human:
The Systemic Exclusion of Transgender/Nonbinary/ Gender Nonconforming Individuals through
Hegemonic Conceptions of Personhood

A Thesis
Presented to
The Faculty and the Honors Program
of the University of San Diego

By
Lucy Sloan (She/Her/Hers)
Philosophy and Gender Studies
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Abstract

In this essay, I explore the issue of transgender/nonbinary/gender nonconforming (henceforth referred to as TNBGNC) oppression and exclusion through a philosophical lens. To do so, I use the notion of personhood. I ask the question: How are TNBGNC individuals excluded from personhood and its associated rights? To be a person is the first qualification for rights such as political involvement and social inclusion. I argue that societal conceptions of personhood are rooted in the gender binary, and that sexual difference and gender performance are essential for recognition as a person worthy of such rights. Therefore, TNBGNC oppression and exclusion is not an issue that can be solved with mere policy change and superficial acceptance; rather, personhood itself and what it means to be a human person must be reconstructed in a way that is not conditioned upon gender performance and sexual difference. For the purposes of this paper, I focus specifically on the ways in which personhood as we know it is flawed; I do not, however, address how exactly we might restructure personhood as such. I leave that issue for a future endeavor.

Introduction

What does it mean to be a person? The answer to this question holds the weight of life and death, inclusion and ostracization, domination and subordination. Those in the position of answering it hold power over the social destinies and political validity of billions. Philosophers have concerned themselves with its elusive answer for centuries, positing various measures of consciousness, ability, and biology as answers. I intend to demonstrate one crucial and often overlooked feature of personhood as we know it: gender.

It was not until 2020 that the APA endorsed the use of the singular they in academic writing,¹ and even this formal approval is not enough for some academics (many even still default to the masculine pronoun). What does this say about collective ideas about persons? It shows, at the very least, that it is uncomfortable, if not impossible, for many to imagine a hypothetical person as genderless.

Consider, for example, the common practice of referring to God as he/him. If any being should be thought of as genderless, it surely seems it would be God—it is hard to see how a disembodied being is gendered/sexed. If even our God(s) are gendered because we cannot help but think in gendered subjectivity, then an actual human person as genderless is so much more difficult to conceive. If this is true, then those who do not conform to the rules of the gender binary, whether that be through transness, gender nonconformity, or rejection of the binary itself, face oppression and exclusion not just on account of individual prejudice, but on a fundamental level: hegemonic

¹ Chelsea Lee, “Welcome, Singular ‘They,’” American Psychological Association (American Psychological Association, October 31, 2019), <https://apastyle.apa.org/blog>.

conceptions of personhood² necessarily exclude them from the rights and privileges that personhood provides.

An exceedingly brief introduction to personhood

Before we can understand how personhood is gendered and its problematic aspects, we must grasp the importance of the concept itself. Personhood and its qualifying characteristics are fundamental to moral and political philosophy. While the category “human” is often assumed to be interchangeable with “person,” for philosophical purposes it is important to distinguish between the two. Personhood relies on a set of characteristics beyond mere human biology, though the specifics of these characteristics are disputed.

Discussions about the morality of abortion is one such case where the distinction between human and person is essential. Mary Anne Warren argues that genetic humanity is not sufficient for moral humanity, and that “the moral community consists... of all persons, rather than of all genetically human entities.”³ From this argument it follows that being a person is not necessarily identical to being a human, and even that being a human is not necessary for being a person.⁴ Warren claims that fetuses do not possess such necessary characteristics of personhood (specifically, the ability to participate in a moral community)⁵ and therefore are not entitled to the same rights as the person in whose womb they reside.

² Clarification: the hegemonic conception of personhood to which I refer is one entrenched in and constructed by millennia of colonialism, imperialism, and patriarchy as it exists in the “western” tradition. My focus, therefore, is with personhood in post-colonial and European-adjacent society.

³ Steven M. Cahn, Andrew T. Forcehimes, and Mary Anne Warren, “Exploring Moral Problems: an Introductory Anthology,” in *Exploring Moral Problems: an Introductory Anthology* (New York, NY: Oxford University Press, 2018), pp. 584-599, 589.

⁴ Surely we can imagine a case where human beings encounter some nonhuman, alien species which possesses all the intelligence, empathy, and other relevant characteristics of a human person. It would make sense to call this alien a person as well.

⁵ Steven M. Cahn, Andrew T. Forcehimes, and Mary Anne Warren, “Exploring Moral Problems: an Introductory Anthology,” in *Exploring Moral Problems: an Introductory Anthology* (New York, NY: Oxford University Press, 2018), pp. 584-599, 586.

While Warren's functional definition of personhood relies mainly on capacity for moral participation, other philosophers prefer different standards for determining personhood. Harry Frankfurt also claims that personhood is not a necessary characteristic of all human beings, but he claims that "one essential difference between persons and other creatures is to be found in the structure of a person's will."⁶ For Frankfurt, this means that the ability for an individual to reflect upon their desires and rationally determine their will is what makes them a person. For example, I may have the desire to eat because I am hungry, but I can reflect on that desire and choose to eat later, perhaps because I have dinner plans with a friend. A dog, when it is hungry and presented with food, does not reflect on its desire to eat; it just eats.

There are many additional arguments that purport to elucidate the necessary conditions for personhood. My brief mention of the above few serves not to endorse one or another, but rather to demonstrate two things: firstly, that personhood and humanness are not interchangeable concepts, and secondly, that most traditional philosophical literature on personhood indicates that when we consider who is a person and who is not, we tend to rely on assessments of the mind to do so, whether this be through moral ability, rational ability, consciousness or perceptive ability, or some combination of the above.

Which specific qualities of the mind make a person are not the concern of this paper. I take that there are some for granted and leave other philosophers to determine their specifics. Instead, I argue that when we consider personhood and those who enjoy its rights and privileges, we omit an important piece of the discussion. Personhood, as we experience it materially and regulate it ideologically, is gendered, and an explanation for its genderedness is owed and overdue. In the following section, I forgo the traditional discussion of personhood and instead demonstrate how

⁶ Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person," *The Journal of Philosophy* 68, no. 1 (January 14, 1971): pp. 5-20, <https://doi.org/10.2307/2024717>, 6.

exactly personhood is gendered and what that means for individuals who exist outside the (cis)gender binary.

Personhood as subordinating tool

While discussions of personhood based on rational or moral ability tend to dominate contemporary ethics, it is important to acknowledge the functional reality of personhood and how it has been used as a tool for oppression. Without this perspective, we would have no grasp on its importance today. Perhaps the most consequential and violent use of personhood in recent history was its role in justifying and enforcing the enslavement of Black people in the United States.⁷

Persons have the right to property; persons cannot be property. Therefore, human beings legally considered property are not eligible to be persons at all. The institution of slavery in the Americas legally deprived enslaved humans of personhood status: enslaved individuals counted for only $\frac{3}{5}$ of a person for census purposes, and courts ruled against the attempts of the enslaved to sue for their freedom on the basis that they did not count as persons and therefore did not have the right to sue.⁸ Furthermore, the non-personhood of the enslaved effectively justified their subordination in the minds of slaveholders: pseudoscientific claims of innate inferiority of African people justified their nonperson status and therefore their enslavement. The racialization of personhood allowed white supremacists to rationalize the subordination and enslavement of nonwhites.

The racialization of personhood is a topic which requires its own essay. I mention it here only to emphasize the importance of personhood not just as a category of individuals, but as a tool

⁷ The U.S was not the only country to engage in the trans-Atlantic slave trade, but I focus on it specifically here because of the specific weaponization of personhood in its justification.

⁸ Jennifer Szalai, "Remembering the Enslaved Who Sued for Freedom Before the Civil War," *The New York Times* (*The New York Times*, November 24, 2020), <https://www.nytimes.com/>.

of subordination and exclusion. Who counts as a person is a matter of justice: as legal cases such as those of enslaved Americans show, personhood is a prerequisite for justice at all.

Gender for dummies

Before discussing how the gender binary is essential to the concept of personhood as it functions in society, a brief explanation is required: specifically, an introduction to the gender binary in layperson's terms and how TNBGNC individuals threaten it. Most people at this point are familiar with the sex/gender distinction. A fairly traditional interpretation of the relationship between sex and gender looks like this: sex is the biological reality, the concrete binary upon which gender is socially constructed. There are males, and the category "man" is derived from maleness, while the category "woman" is derived from the female sex. Individuals are classified as female or male based on whether they possess biological traits which signify femaleness or maleness. These sex categories are seen as pre-social and pre-theoretical; they exist as facts of nature. Gender is the social meaning we ascribe to the preexisting sex binary. Under this view, gender is a social construction, and sex is not.

However, recent sociological literature has shown that this is not the case. The claim that sex is concrete and pretheoretical is false. Sex is, and has always been, constructed by notions of gender. The ownership of a penis or a vagina, the possession of XX or XY chromosomes, amounts of certain hormones and other physical traits have all been assumed to be proof of distinct, unwavering sexual categories. The view that sex is inherent to the body omits the reality of many individuals who live with chromosomal, hormonal, or physical "deviations" from the norm.⁹ The practice of doctors and guardians prescribing, rather than identifying, a sex to newborn infants is not as uncommon as most think: Lisa Wade writes that "In the U.S. today, when infants are born

⁹ Planned Parenthood estimates that one to two people out of 100 are born intersex each year. That is around 49,717,392 people in the United States today.

with ambiguous genitalia, surgeons often operate in order to bring the child's body into accordance with our expectations for "correct" male or female genitalia, even when the actual morphology of their bodies causes no dysfunction or harm."¹⁰

What biological sex is and what physiological traits make someone male or female are determined in a gendered society, and this genderedness of thought is a prerequisite to claims about sex categories. This is not to say that sexual dimorphism is neither real nor relevant, but rather, as Judith Butler writes, that "sexual difference is the site where a question concerning the relation of the biological to the cultural is posed and reposed, where it must and can be posed, but where it cannot, strictly speaking, be answered."¹¹

There is much more to be said about the sex/gender relation which exceeds the parameters of this paper. That gender exists as a massively influential organizing schematic in contemporary society which purports to derive from innate sexual categories is enough premise. Now, an introduction to identities which fall outside of the binary tradition.

TNBGNC refers to transgender, nonbinary, and gender nonconforming individuals. A brief overview of these terms will be helpful for the discussion that follows. Transgender is a "term for people whose gender identity and/or expression is different from what is typically associated with the sex they were assigned at birth."¹² By contrast, cisgender people do identify with the gender they were assigned at birth in accordance with their sex.

Trans individuals may identify within the gender binary—the man/woman dichotomy—or somewhere in between or outside of it. For this reason, transgender is also used to describe those who are neither trans men nor trans women, but non-binary individuals as well. However, for the

¹⁰ Lisa Wade, "The Phall-O-Meter - Sociological Images," *Sociological Images: The PhallOMeter*, September 4, 2008, <https://thesocietypages.org/socimages/2008/09/04/the-phall-o-meter/>.

¹¹ Judith Butler, *Undoing Gender* (New York, NY: Routledge, 2009), 186.

¹² "Gender Identity 101," *Beyond Gender Project*, accessed May 7, 2021, <http://www.beyondgenderproject.org/>.

purposes of this paper, a distinction is made between transgender and nonbinary transgender individuals (and associated identities- agender, genderfluid, etc.) This is because the case could be made that transgender individuals who “pass” as cisgender and identify within the gender binary are conferred the status of persons due to their intelligible gender, while nonbinary transgender individuals do not. However, this would omit a crucial part of the ideology of gender—that it supposedly stems from sex categories.

The gender binary gains its power from the false epistemology where gender derives from sex; therefore, trans persons who comply with the gender binary are still ideologically excluded from it. Because gender is viewed as a result of biological sex, the gender binary demands that those assigned female at birth must identify as women. Catherine Mackinnon writes that “masculinity precedes male as femininity precedes female, and male sexual desire defines both. Specifically, ‘woman’ is defined by what male desire requires for arousal and satisfaction and is socially tautologous with ‘female sexuality’ and ‘the female sex.’”¹³ Under this view, to be a woman is to be an object of heterosexual male desire, and the hegemonic conception of heterosexual desire is a procreative one.

Mackinnon writes that heterosexuality is reliant on the myth that the ultimate purpose of sex is procreation. If this is true, trans women are not valid women.¹⁴ The purpose of heterosexual sex is not procreation however: Mackinnon writes that if it were, “it would not happen every night (or even twice a week) for forty or fifty years, nor would prostitutes exist.”¹⁵ The existence of trans

¹³ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1991), 131.

¹⁴ I do not mean to insinuate that straight men cannot or should not be attracted to trans women. I only reference widely held ideas about heterosexuality that wrongly exclude trans women from acceptance as “real” women.

¹⁵ *Ibid*, 133.

women, despite their conformity to the category “woman,” still defies the rules of the gender binary by disproving the relation between sex and gender.

Gender nonconforming individuals may or may not be transgender: an individual is gender nonconforming if they do not present or behave in accordance with the rules of the gender binary. For example, in many ways, lesbians are inherently gender nonconforming because to be a woman, according to the rules of the gender binary, is to be attracted to men. However, gender nonconformity exists in a multitude of presentations. In an interview with Vice magazine, Doctor of Psychology Lou Himes explained gender nonconformity as ““I am expected to be in this box, but I am not going to be in the box because I’m not going to conform to the expectations that are set for me.””¹⁶ They also explained that the newness and complexity of these terms is a result of these labels emerging out of personal, lived experience. Therefore, it is important to note that while I use these terms because they are the most concise way to include most individuals who do not fit the script of the cisgender binary, there exist a wealth of identities and individuals that may not fit or prefer this label. I acknowledge this shortcoming and only hope that TNBGNC will suffice for theoretical purposes.

The gender of a person

Judith Butler addresses the issue of gendered personhood by use of intelligibility. She claims that gender is part of a regulatory scheme that informs what is intelligible as a person. Furthermore, Butler claims that the conditions for intelligibility as a person are a concern of justice. This is because justice does not merely concern how persons are treated, but also (and perhaps more importantly) “it concerns consequential decisions about what a person is, and what social

¹⁶ Mary Retta, “What’s the Difference Between Non-Binary, Genderqueer, and Gender-Nonconforming?,” VICE, September 13, 2019, <https://www.vice.com/en/article/wjwx8m/whats-the-difference-between-non-binary-genderqueer-and-gender-nonconforming>

norms must be honored and expressed for ‘personhood’ to become allocated.”¹⁷ Gender is one of these social norms that inform the intelligibility of persons: the judgement of someone to be a gendered being is prerequisite for judgement of someone to be a person.¹⁸

Butler claims that the intelligibility of persons is “composed of norms, of practices, that have become presuppositional, without which we cannot think the human at all.”¹⁹ To be conceivable as a person is to be conceivable and intelligible as valid knowledge (knowledge that one is, in truth, a person). What we accept as truth, however, is in part reliant upon the social norms and dominant standards that govern our ways of knowing. Foucault writes that “nothing can exist as an element of knowledge if, on the one hand, it... does not conform to a set of rules and constraints characteristic, for example, of a given scientific discourse...and if, on the other hand, it does not possess the effects of coercion or simply the incentives peculiar to what is scientifically validated or simply rational and generally accepted.”²⁰ In short, that which is accepted as knowledge must adhere to the scientific or ideological rules of the times. Gender, as supposed derivative of biological sex, which itself is broadly accepted as both scientific truth and general knowledge, is one such governing rule which determines what is viable “knowledge”—knowledge in this case meaning those who can be known as persons. To be knowable as a person is, in part, to be knowable as a gendered individual.

Susan Stryker expresses her experience as an unrecognizable person in relation to Frankenstein’s monster. She writes “Like the monster, I am too often perceived as less than fully human due to the means of my embodiment; like the monster’s as well, my exclusion from human

¹⁷ Judith Butler, *Undoing Gender* (New York, NY: Routledge, 2009), 58.

¹⁸ Butler uses person and human interchangeably; I use person in all cases for coherence.

¹⁹ *Ibid*, 58.

²⁰ *Ibid*, 27.

community fuels a deep and abiding rage in me that I, like the monster, direct against the conditions in which I must struggle to exist.”²¹ Stryker’s comparison between her own transsexual body and that of the patchwork-bodied monster echoes the visceral reaction that physically othered individuals experience. The villagers’ fear of Dr. Frankenstein’s unnatural monster is founded on the departure from categories otherwise known to be unbreakable-- those of life and death, the living body and the corpse. Similarly, society rejects those who transition because of “the prospect of destabilizing the foundational presupposition of fixed genders upon which a politics of personal identity depends.”²² Frankenstein’s monster is unintelligible as a person, despite his capacity for reason and self-reflection that philosophers traditionally use to define personhood. The monster’s existence resists intelligibility, and therefore is doomed to be rejected. In the same way, Stryker claims that her existence, because it defies rules that are generally accepted to be irrefutable truth, faces a similar reaction.

Lori Watson discusses the difference between the subordination of women and the subordination of gender-nonconforming individuals with regard to the eligibility for personhood that each group possesses. Standards for gender conformity harm both women and TNBGNC individuals; however, Watson claims that “unlike those drawing on misogynist ideology to punish women for ‘stepping out of line’ ...the hostile enforcer of gender conformity relies on the ideology of gender binarism to insist that the gender non-conforming person is entitled to no space, no place, no existential entitlement.”²³ Women already are persons due to the alignment of the gender woman with the gender binary. Therefore, the fundamental difference between misogyny and anti-

²¹ Susan Stryker, Stephen Whittle, and Susan Stryker, “My Words to Victor Frankenstein above the Village of Chamounix,” in *The Transgender Studies Reader* (New York, NY: Routledge, 2006), pp. 244-256, 245.

²² *Ibid.*, 245.

²³ Lori Watson, “Gender Policing: Comments on Down Girl,” *Philosophy and Phenomenological Research* 101, no. 1 (July 12, 2020): pp. 236-241, 240. <https://doi.org/10.1111/phpr.12699>.

TNBGNC sentiment is that while women are punished if they are not the good, gendered persons that they should be, gender nonconforming individuals are punished because their nonconformity allows them no space as persons. Eligibility for personhood, derived from intelligibility within the gender binary, is what distinguishes these kinds of subordination.

Kinship and Personhood

Further elucidation is required: it is one thing to claim that gender is an essential organizer of thought about persons and another to prove it. Let us examine kinship to do so. I start here because kinship is perhaps one of the oldest structuring institutions in society. Elizabeth Freeman writes that “In state-centered societies, kinship consists of the social policies that recognize some forms of lived relationality— those extending from the heterosexual couple and the parent–child unit.”²⁴ Throughout history, kinship has functioned as a defining quality of the person: social rank, property rights, duty, social inclusion, naming are just some of its consequences. Freeman argues that the genderedness of kinship is essential to its role in constructing the person.

The notion of kinship aligns with the gender binary and hetero compulsive model of society because they mutually construct one another. Kinship, because it is understood as a product of biological reproduction, necessarily upholds dominant ideas about gender: if people are born because they have a mother and a father, *then to be a person is to be a product of normative gender relationships*. In turn, dominant ideas about gender regulate what can be seen as valid kinship: Freeman writes that “Heterosexual gender norms therefore “make” kin relations, in that they regulate human behavior toward procreation while appearing to be the result of some primal need.”²⁵

²⁴ Elizabeth Freeman, “Queer Belongings: Kinship Theory and Queer Theory,” in *A Companion to Lesbian, Gay, Bisexual, Transgender, and Queer Studies*, ed. Molly McGarry and George Haggerty (John Wiley & Sons, 2008), pp. 295-314, 295.

²⁵ *Ibid*, 297.

Kinship is the cultural answer to procreation in that it is entailed in biological reproduction of human beings and also social construction of persons. According to Freeman, “kinship makes bodies not only (or not even primarily) through procreation, but also through the process of gendering them.”²⁶ Because heterosexuality enforces (and relies upon) the genderedness of sex, kinship-as-reproduction necessarily includes heterosexuality. Although TNBGNC individuals can (in some states) and do marry and have children, kinship-as-reproduction limits possibilities for queer inclusion. Freeman writes that “the terms for descent tend to draw not only upon the dominant lexicon of kinship but also upon kinship’s most conservative meanings and functions.”²⁷ The importance of lines of biological descent, the gendered expectations in traditional parenting, and even the way we understand names to pass down from parent to child are reflections of lingering hetero compulsive expectations in kinship. This, Freeman claims, renders whatever connections are made and relationships formed in queer social structures “unintelligible as kinship.”²⁸

In many ways, kinship both creates and defines persons. What then, if a trans woman cannot biologically mother children? What if a homosexual couple cannot? What, even, if the kinship-as-gendering-force “fails” to produce a gender-compliant child? These are all problems that arise when negotiating personhood via kinship with TNBGNC individuals. The connections between kinship, heteroconformity, and personhood render queer lives outside the parameters of personhood.

²⁶ Ibid, 301.

²⁷ Ibid, 297.

²⁸ Ibid, 298.

Capitalism and personhood

There are other ways in which gender has been essential in conceptualizing the person. Some feminist theorists have criticized the capitalist on the basis that the inherent genderedness of the laborer subordinates women. I argue that this subordination extends to all non-cisgender men and contributes to the genderedness of personhood as a whole.

Social contract theory, which lies at the heart of liberal states, relies on the conception of persons as “independent, self-interested or mutually disinterested individuals.”²⁹ This theory of the person leads to the social contract mode of society: wherein these mutually disinterested persons can use reason to choose to enter in contracts, which is fundamental to the free-market economy. Thus, the capitalist economic structure is supposedly a logical result of fundamental truths about human nature.

Virginia Held argues that this ideological framework is exclusionary, and that it relies on an untrue assumption about human nature. Held claims that using the idea of the rational, self-interested contractor as representative of humanity limits the conception of the ideal person to the economic man. The economic man is not limited by responsibilities to children and is not burdened by domestic labor; he is defined only by his independence and his ability to contract with other economic men for personal gain. Gendered society allows him to focus solely on economic participation while his wife cooks dinner and cares for his children. Held writes that to consider the economic man the ideal person is “to overlook or to discount in very fundamental ways the experience of women.”³⁰ Held writes that as social contract theory was developed, and therefore the conceptualization of the ideal person in contractual society, it was never applied to women,

²⁹ Virginia Held, “Non-Contractual Society: A Feminist View,” in *Arguing about Political Philosophy*, ed. Matt Zwolinski (Vancouver, BC: Access and Diversity, Crane Library, University of British Columbia, 2015), pp. 70-85, 70.

³⁰ *Ibid*, 71.

who were constrained to the private sphere of domestic life in the time of Hobbes and Locke. Women simply could not be economic men; they could not be ideal persons.

Furthermore, because the social contract theory is reliant on assumed truths about the person, it is extended to areas of life “not hitherto thought of in contractual terms.”³¹ This extension of contractual thought to areas such as morality, parenting, punishment, and health demonstrates just how pervasive the concept person-as-independent-contractor (or person as economic man) is.

To recap: the structure of the liberal state relies on a conception of the person-as-economic man. To claim that persons are most importantly rational, independent contractors excludes those who do not fall into the category “man.” Historically, this has led to the exclusion of women from full participation in contractual society: philosophers whose contributions to social contract theory still govern contemporary political discussions often explicitly stated the necessity of female subordination. Held writes that this view genders the distinct public and private domains, with “complete freedom and equality in the exclusively male polity; absolute male authority and female submission in the household,”³² with the household being the only domain in which women ought to participate at all.

Advances in women's rights and increases in women's participation in the public domain do not and cannot erase the binary construction of such spheres upon which social contract theory relies. The conception of the person-as-economic man and the gendered division of public and private domains are integral to the ideological foundations of capitalism, and therefore personhood under capitalism reinforces the gender binary. Where personhood is reliant on the gender binary, the rules and norms of gender apply, and although policies may have evolved, when cultural

³¹ Ibid, 70.

³² Ibid, 73.

expectations about femininity and masculinity dominate ideas about work and economic participation, those who do not conform to that binary are left placeless.

Religion and personhood

Christianity, as the dominant religious force in the West, has shaped the concept of personhood like no other institution; both the sociocultural traditions in Christianity and the official documents and statements place gender as central to the Christian person. For the purposes of this paper, I focus on Catholic actions specifically: to recount all actions of the Christian subordination and exclusion of TNBGNC individuals would take up the entirety of this project.

The Second Vatican Council stated that “though made of body and soul, man is one.”³³ This statement and others like it are used to promote a biological essentialist ideology—one that denies the validity of TNBGNC individuals on the basis that binary sex categories make the person.

The Vatican Congregation on Catholic education released a document in 2019 entitled “Male and Female He created Them.” The title alone implies pre-social sex categories as integral to God’s creation (i.e., persons). The document states that “Gender theory (especially in its most radical forms) speaks of a gradual process of denaturalization [sic], that is a move away from nature and towards an absolute option for the decision of the feelings of the human subject.”³⁴ Not only does the document erroneously regard the gender/sex binary as natural (natural here meaning by God’s design and therefore ultimately true), but it implies that anyone who deviates from it is acting upon “a confused concept of freedom in the realm of feelings and wants...as opposed to anything based on the truths of existence.”³⁵ The reiteration of gender theory as a deviation from

³³ Guiseppe Versaldi and Angelo Vincenzo Zani, eds., “‘Male and Female He Created Them’ Towards a Path of Dialogue on the Question of Gender Theory in Education,” *Congregation for Catholic Education* (Vatican City, 2019), 12.

³⁴ *Ibid*, 11.

³⁵ *Ibid*, 11.

the natural and the existentially true enforces the claim that binary sex (and its consequent binary genders) are the real truth, the reality of the human person.

At the 1995 United Nations conference on the status of women, the Vatican opposed the use of gender when describing persons, preferring only to refer to sex categories. Furthermore, when lesbian rights were to be discussed, the Vatican opposed any mention of them, on account of lesbians being “anti-human.”³⁶ The sentiment that lesbians are unhuman is rooted in the gender rules of femininity: to be a woman is to have sex with men. While the Church may attribute this belief to the “human dignity in sexual distinctiveness and the personal nature of the generation of new life,”³⁷ in the words of Mackinnon, if sexual intercourse were a function of reproduction, “it would not happen every night (or even twice a week) for forty or fifty years, nor would prostitutes exist.”³⁸

Although there exist some positive statements from officials within the Catholic church that denounce discrimination on the basis of sexuality or gender identity, it nonetheless remains that at the highest ideological level, Catholicism’s contributions to hegemonic personhood are primarily exclusive of TNBGNC individuals.

Exclusion of TNBGNC folks as a reflection their non-personhood status

Here, examples of TNBGNC oppression and exclusion are given as support for the above claims. I will demonstrate that acts of violence and oppression against TNBGNC individuals are not merely results of individual prejudices, but rather are direct consequences of TNBGNC non-personhood.

³⁶ Judith Butler, *Undoing Gender* (New York, NY: Routledge, 2009), 190

³⁷ Guiseppe Versaldi and Angelo Vincenzo Zani, eds., “‘Male and Female He Created Them’ Towards a Path of Dialogue on the Question of Gender Theory in Education,” *Congregation for Catholic Education* (Vatican City, 2019), 12.

³⁸ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1991), 133.

Personhood affords those who qualify for it certain inalienable rights by law. While one might argue that TNBGNC individuals are still citizens, eligible to vote here in the US, there are copious examples of how they do not possess the same legal rights as full, gender-compliant persons. Take, for example, a recent bill passed by the Florida House Senate. This bill, deceptively called the “Fairness in Women’s Sports Act” allows for verification of biological sex in order to play in gendered sports: essentially, if a youth is suspected to be transgender, they may be subject to genital examination to play in the sport of their gender.³⁹ This is state sanctioned sexual assault of children, specifically transgender children and those suspected of being trans. Cisgender and gender conforming individuals, on account of their inclusion in personhood, are not subject to genital examination in grade school: they have the right of privacy and bodily autonomy. Evidently, TNBGNC children do not.

This bill is one of many being considered in several states. In fact, recent years have marked unprecedented anti-trans legislation in the United States.⁴⁰ Furthermore, bills like these do much more than harm trans youth. Women athletes of color are often perceived as too masculine (and even accused of being men in disguise)⁴¹ on account of the racist standards of femininity: the colonial construction of gender holds whiteness and Eurocentric features central to femininity. Therefore, when laws allow the policing of gender conformity in schools, not only are TNBGNC students put at risk, but students of color are at risk for racist harassment by school officials.

³⁹ Fairness in Women's Sports Act. Bill (2021).

⁴⁰ Wyatt Ronan, “2021 Becomes Record Year For Anti-Trans Legislation,” HRC, March 13, 2021, <https://www.hrc.org/press-releases/breaking-2021-becomes-record-year-for-anti-transgender-legislation>.

⁴¹ Serena Williams is one of many Black women athletes whose talent and success has been targeted by such racist accusations: Imdb even has a page for a 2014 documentary titled “Irrefutable proof that Serena Williams is a Man.”

Athletics is just one part of a multifaceted attack on trans rights. The ACLU is calling 2021 a record breaking year for anti-trans legislation: as of April 2021, thirty three states have introduced over 100 bills that aim to restrict the rights of transgender individuals, from access to healthcare, use of bathrooms, access to gender affirming healthcare, and more.⁴² Furthermore, according to medical professionals, these bills are expected to disproportionately affect trans youth, “a group that researchers and medical professionals warn is already susceptible to high rates of suicide and depression.”⁴³ When anti-trans legislation is passed without regard for its life threatening consequences, not only are the rights to privacy and bodily autonomy of transgender individuals restricted, but their very right to life is disputed. The core of our conception of personhood is that persons deserve to live: the life of a person contains inherent value. The legislation that disregards the lives of TNBGNC individuals is utmost evidence of their systemic exclusion from personhood.

Legislation is not the only reflection of TNBGNC exclusion and oppression on account of their non-person status. Butler writes “The particular sociality that belongs to bodily life, to sexual life, and to becoming gendered (which is always, to a certain extent, becoming gendered for others) establishes a field of ethical enmeshment with others.”⁴⁴ For Butler, existing in a gendered world and being intelligible as a gendered person is fundamental to establishing connection or community with others. Because becoming gendered is a condition for association with others, gender-compliant persons are entitled to association, which Butler argues is a condition for freedom.⁴⁵ Thus, those who are unintelligible within the gender binary—whether they are gender nonconforming, nonbinary, or transgender, are socially limited to a point of unfreedom.

⁴² Priya Krishnakumar, “This Record-Breaking Year for Anti-Transgender Legislation Would Affect Minors the Most,” CNN (Cable News Network, April 15, 2021), <https://www.cnn.com/>.

⁴³ *Ibid.*

⁴⁴ Judith Butler, *Undoing Gender* (New York, NY: Routledge, 2009), 25

⁴⁵ *Ibid.*, 26.

Conclusion

Because of the ways that personhood as we know it has been constructed and the intrinsic notion of gender in this hegemonic personhood, it is evident that TNBGNC individuals are not included in personhood on account of their unintelligibility within the gender binary. What then? The question arises whether it is possible to expand our notions of personhood in a more inclusive fashion. Personhood as a concept is essential to our legal and social systems; therefore, eliminating our concept of it would be unproductive and perhaps impossible. The straightforward solution, then, would be to eliminate the association of the gender binary with personhood. However, I suspect that the legitimacy of gender is tied to its association with personhood. If the gender binary gains its power from its supposed derivation from biological sex categories and therefore is understood as a facet of human nature, then to eliminate gender from personhood would contradict personhood's very nature: that it is overwhelmingly human. Our understanding of gender is irrevocably tied to our understanding of what it is to be human- what it is to be desired, to be recognized, to be mourned.⁴⁶ If gender and personhood mutually reinforce one another, perhaps our only option is to eliminate gender as we know it. How to eliminate gender, what consequences its elimination would have, and whether its elimination is feasible is a question for another paper. The intricacies of sexual attraction, the reality of gender euphoria, and the deep rootedness of gender in all facets of life make its elimination a complex endeavor.

Whether abolition or reform is the better approach to gender equity, possibility for a more just conception of personhood is crucial. Butler writes that “possibility is not a luxury; it is crucial as bread. I think we should not underestimate what the thought of the possible does for those for whom the issue of survival is the most urgent.”⁴⁷ Beginning to question the legitimacy of the

⁴⁶ Ibid, 8.

⁴⁷ Ibid, 29.

binary, the legitimacy of that which for so long has been held to be irrefutable truth, is the very sense of possibility that is essential to justice.

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