

EXCLUSION AND ERASURE: TWO TYPES OF ONTOLOGICAL OPPRESSION

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1. Introduction

Trans people are told by legal systems, state agencies, employers, schools, and our families that we are impossible people who are not who we say we are, cannot exist, cannot be classified, and cannot fit anywhere. (Spade 2015: 19)

This paper distinguishes between two ways in which people are “made impossible” by social groups and institutions.

In cases of *ontological exclusion*, an individual is wronged in virtue of being unjustly excluded from the membership conditions of some socially constructed group. My primary example concerns women’s colleges that refuse to accept trans women.

In cases of *ontological erasure*, an individual is wronged in virtue of it being indeterminate whether they are a member of a socially constructed group. This happens when the admissions policies at women’s college are silent about whether trans people can, or cannot, be students at their colleges.

While both exclusion and erasure are forms of ontological (or ontic) oppression (à la Dembroff 2018 and Jenkins 2020), I specifically focus on the metaphysics and ethics of erasure. In cases of erasure, it is not that (say) trans identity is considered and rejected (§2); rather, the category of trans identity is ignored entirely (§3–4). I also argue that erasure is particularly dangerous because it is a form of what Dembroff and Saint-Croix (2019) call agential identity discrimination, one that obscures oppressed identities from public view (§5).

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2. Ontological Exclusion

Since exclusion is more straightforward than erasure, I start by discussing the former notion.

Ontological exclusion occurs when an individual is wronged in virtue of being unjustly excluded from the membership conditions of some socially constructed group. To illustrate this notion, let us begin with a real world example.

In 2013, Calliope Wong applied to Smith College, a women's college in Northampton, Massachusetts. Much to her dismay, her application was returned. The application was not rejected outright. Instead, it was returned on the grounds that Wong was ineligible for admission to the college. An admissions officer explained: "Smith is a women's college, which means that undergraduate applicants to Smith must be female at the time of admission" (Wong 2013). According to Smith College's admissions policy, trans women did not count as women; it was impossible for her to be female at the time of admission, given that *being female* was taken to be a biological property that is necessarily absent from trans women.¹

Wong never attended Smith College, but she did eventually get the college to change its admissions policy to one that is inclusive of trans women. Wong went public with her experiences, quickly garnering the support of many students, alumni, parents, faculty, and administrators. After a year-long process, Smith changed its admissions policy to allow trans women to attend their college.²

In analyzing this case, it is immediately clear that Wong is unjustly excluded from being eligible to be a member of a certain group: namely, the group of Smith College students.

Wong is *ontologically excluded* because the conditions under which one could be a Smith student ruled out trans women like Wong. The membership conditions of *Smith student* are determined by the relevant authoritative body in the college; for the sake of simplicity, let's call this authoritative body *Smith*. If Smith decides, under the appropriate background conditions, that trans women cannot be Smith students, then trans women cannot be Smith students.

I assume that some groups are *judgment-dependent* in the sense that: whether one can be a member of a group (or satisfy a group role) is metaphysically determined by the judgments—*viz.*, thoughts, beliefs, perceptions, attitudes—of an individual or another group.³

1. An alternative possibility is that Smith would accept trans women on the condition that they had gender-affirming surgery, but this was not a policy of Smith College.

2. See Padawer (2014) for more details on the Smith case. See Nanney and Brunnsma (2017) for a review of how women's colleges handle trans applicants.

3. The judgment-dependent nature of social groups and institutions are described in detail by collective acceptance theorists (Ludwig 2017; Searle 1995; 2010; Tuomela 2002). See Hawley (2017) and Horden and Lopez de Sa (2020) for the distinction between groups and group roles.

It is important to distinguish ontological exclusion from non-ontological exclusion. For an (imaginary) example of the latter, suppose there was a college Smith* such that: Smith* made trans women eligible to be students but it nonetheless sought to minimize its enrollment of trans students. For example, Smith* could enable or promote a hostile environment for trans students at their college; when Smith* garners a reputation as hostile to trans students, trans people stop applying to Smith*, despite their formal eligibility. This is not a case of ontological exclusion because trans people are being discouraged from Smith* by causal means; metaphysically speaking, trans women can still become Smith* students.

As I define the notion, ontological exclusion applies exclusively to cases of unjust exclusion. So the fact that cis men are excluded from being Smith students is not a case of ontological exclusion, in the present sense, because it is not an injustice. There is a purely descriptive notion of ontological exclusion, but I will not be talking about that notion here.

Wong is *unjustly* excluded from the group of Smith students because her ineligibility constitutes a form of misgendering (Dembroff & Wodak 2018; Kapusta 2016). Smith advertises itself as a women's college. By denying Wong admission on the basis of her not being a cis woman, Smith effectively tells Wong that she is not *really* a woman.

Of course, one might argue that Smith is not misgendering Wong because it has a different notion of woman in mind. Smith does not think Wong is not a woman; rather, Smith thinks she is not a *Smith woman*, the technical term that refers to the individuals who do not satisfy the membership conditions of "woman" as used in Smith admissions policies. This is the multiple or context-sensitive meanings gambit.

The gambit does not work. Many philosophers have argued that it can be oppressive to use "woman" in a trans-exclusive way, even if you intend your use to be a purely technical or restricted one (Bettcher 2013; Dembroff 2018; Diaz-Leon 2016; Jenkins 2016; Kapusta 2016; Kirkland 2019; Saul 2012). A recurring theme of these philosophers is that trans-exclusive uses of "woman" further encourages the construction of a trans-exclusive social world; we further marginalize and oppress trans women in a society in which they are already marginalized and oppressed.

There are other examples of ontological exclusion. Jim Crow and apartheid are easy examples; Black people were unjustly excluded from being members of social groups and institutions in the United States and South Africa. Another example is the Chinese Exclusion Act of 1882, which made Chinese laborers ineligible to become American immigrants for several decades.⁴ For any oppressed social identity *G*, there will be cases where *G*s are ontologically excluded in virtue of their identity as *G*s.

4. Thanks to an anonymous referee for this example.

Now I should explain how exclusion relates to other notions of metaphysical injustice—forms of injustice that hold partly in virtue of metaphysical considerations. I start with Jenkins’s definition of *ontic injustice*:

An individual suffers ontic injustice if and only if they are socially constructed as a member of a certain social kind where that construction consists, at least in part, of their being subjected to a set of social constraints and enablements that is wrongful to them. (2020: 191)

Jenkins gives the example of cases where wives in England and Wales prior to 1991, in virtue of being socially constructed as members of the kind *wife* in that context, lacked the social entitlement to refuse sex from their husbands. This is a case of ontic injustice because it is a case in which one is socially constructed in a wrongful way.

Ontological exclusion describes cases in which one is wronged in virtue of *not* being socially constructed in a certain way. Wong does not suffer from ontic injustice in virtue of being a Smith student because she cannot be a Smith student. But Wong may suffer from ontic injustice in virtue of being a trans person (or more specifically, a trans applicant); note that this kind of ontic injustice is not an instance of ontological exclusion because exclusion is about being wrongfully excluded from a social kind. Given the strict definition of Jenkins’ notion of ontic injustice, ontological exclusion is not identical to, nor a species of, ontic injustice.

Now let us consider how exclusion relates to *categorical injustice*. Ásta writes:

I characterize categorical injustice as a type of injustice where an individual is institutionally entitled to perform an action but their action is blocked by their placement in a category. (2019: 398)

Wong is not institutionally entitled to be an eligible Smith student, so her being a trans person does not block this institutional entitlement. Wong’s case is not a case of categorical injustice. More generally, in cases of exclusion, individuals are excluded from the relevant categories, not parts of them.

Cases of exclusion *are* instances of what Dembroff (2018: 26) calls *ontological oppression*, where ontological oppression “occurs when the social kinds (or the lack thereof) unjustly constrain (or enable) persons’ behaviors, concepts, or affect due to their group membership.” They give the example of definitions of marriage which exclude same-sex marriages. The problem is that same-sex couples are unjustly excluded from the membership conditions of marriage.

While Dembroff sees ontological oppression as a broad category, Jenkins (2020: 202) takes a similar notion—what she calls ontic oppression—to only

describe injustices that are “systematic, significant, and pervasive.” Jenkins’s notion explicitly captures the fact that oppression is associated with patterns of injustice. In the case of trans exclusion, ontological exclusion is systematic, significant, and pervasive. I will focus on such cases, although I recognize that ontological exclusion can sometimes be a local affair.

There is more to say about ontological exclusion and the wrongs it engenders. However, my goal is not to explicate ontological exclusion for its own sake. Rather, I want to contrast ontological exclusion with a similar, but distinct, form of metaphysical injustice: ontological erasure.

3. Ontological Erasure

The terms “exclusion” and “erasure” are often used as synonyms, but I want to use “erasure” to identify a specific kind of metaphysical injustice.

For a real world example of erasure, we need to go back a few years prior to the Smith case. In 2007, Bryn Mawr, a women’s college, faced scrutiny over its lack of clarity with respect to the admission of trans students. It was clear that cis women could be admitted to the college while cis men could not. It was also clear that those who become men after being admitted to the college would not be asked to leave. However, if a person was a trans person, or preparing to transition, at the time of admission, the policy was unclear.

To clarify its position, the college commissioned a task force which eventually declared:

Our admissions policy as a women’s college is to admit female students only. If it is not clear that an applicant to the College is female, we would approach the situation on an individual basis to gain a better understanding of the student’s circumstances. However, our policy to admit female students only would not change. (Brymer 2011: 149)

What’s remarkable about the college’s clarification is that it does not clarify what counts as a woman; rather, it clarifies that the college will *not* present a precise policy on what counts as a woman. Difficult cases will simply be judged on a case-by-case basis.

The Bryn Mawr case involves indeterminacy. Intuitively, the eligibility conditions for being a Bryn Mawr student are not fully determinate. It is determinately true that cis women can be admitted to Bryn Mawr. It is determinately false that cis men can be admitted to Bryn Mawr. However, it is indeterminate whether trans students (or students planning to transition) can be admitted to Bryn Mawr.

Suppose Linda is a trans woman who is considering applying to Bryn Mawr in 2007. Linda is not determinately excluded from college eligibility, but she is not determinately included either. Linda's status with respect to Bryn Mawr is indeterminate; there is no determinate answer to whether she can, or cannot, be a student of Bryn Mawr.

Linda's case is a paradigm case of ontological erasure. More precisely, Linda is *ontologically erased* just in case (a) the membership conditions of *Bryn Mawr student* neither determinately apply nor determinately fail to apply to her, in virtue of her social identity, and (b) this fact constitutes an injustice. The definition of ontological erasure has two parts: one metaphysical, one ethical.

Let us start with the metaphysics of erasure. To start, I take the relevant indeterminacy to be a worldly (or metaphysical) matter. This means that indeterminacy is not due to our language or ignorance; indeterminacy is a substantive feature of the world. In §4, I will clarify and defend the metaphysical interpretation of indeterminacy. For now, I will describe the broad features of erasure.

Linda is *ontologically* erased because her erasure concerns the membership conditions of a social group or institution being indeterminate in a way that affects her. In the Smith case, the college determinately excludes trans applicants. More progressive colleges determinately include trans applicants. Bryn Mawr, meanwhile, neither determinately excludes nor determinately includes trans applicants.

There is an important difference between ontological and non-ontological erasure. Ontological erasure concerns the lack of determinate facts about group membership. Non-ontological erasure concerns the lack of *recognition* of determinate facts about group membership. If I ignore the fact that Linda is a trans woman, I erase her in a non-ontological sense. But if I create a club that, by construction, leaves the membership status of trans people indeterminate, then I ontologically erase Linda.⁵

Setting the metaphysics of erasure aside, we should now turn to the ethics of erasure. Like exclusion, erasure is an unjust failure to include trans identity. In both cases, the colleges fail to determinately include trans people (with respect to being eligible to be students at the colleges). And in both cases, this failure of inclusion is unjust.

While the wrongs of exclusion and erasure overlap, they are not the same. Erasure, unlike exclusion, obscures marginalized identities from public view. Erasure is an absence of judgment, an absence of determinate membership conditions. When a social identity is erased, the individuals that inhabit that identity are rendered invisible to the policies and formal practices of the institution that

5. The non-ontological notion of erasure is often discussed with respect to bisexual identity (Yoshino 2000).

erases them. This can be worse than exclusion, in some cases, because oppression thrives best under conditions of invisibility.

To be clear, however, erasure does not necessarily imply that erased individuals will simply be ignored by agents within institutions. In some cases that will be true; perhaps an individual is erased *qua* trans person, but there is no scrutiny toward individual trans persons. But in other cases, erased individuals will be hyper-visible precisely because they fail to be determinately classified.⁶ Erasure is primarily about what happens when there is an absence of determinate membership conditions with respect to a social identity; it does not rule out the possibility that erased individuals are sometimes subjected to intense scrutiny.⁷

In §5, I give a detailed account of the injustice of erasure. For now, I will end by comparing erasure to existing notions of metaphysical injustice.

Recall the Bryn Mawr case. Linda, the trans applicant, does not suffer from ontic injustice in virtue of being a Bryn Mawr student because she cannot be a Bryn Mawr student. However, Linda can suffer from ontic injustice in virtue of being a trans applicant, assuming that the category *trans applicant* carries wrongful constraints and enablements.

Erasure is not a form of categorical injustice, insofar as we assume that such injustices require inclusion into a category. A failure to exclude is not itself a form of inclusion. Erasure *is* a form of ontological oppression. And in the case of *trans*, erasure is widespread and systematic in a way that it may not be for other social identities.

So far, I have described what I take ontological erasure to be. For the remainder of the paper, I will defend the details and applicability of the notion.

4. The Metaphysics of Erasure

In this section, I will clarify what I take metaphysical indeterminacy to be (§4.1) and defend my assumption that, in cases like the Bryn Mawr case, we have metaphysical indeterminacy (§4.2).

4.1. Metaphysical Indeterminacy

Metaphysical indeterminacy is often regarded as mysterious, and this perception may be even more prevalent within social and feminist metaphysics, where there are few (if any) existing connections to the larger literature on metaphysical

6. These are sometimes called *gender panics* (Westbrook & Schilt 2014).

7. Thanks to an anonymous referee for this point.

indeterminacy. For this reason, it is necessary to make a few brief remarks about the nature and logic of metaphysical indeterminacy.

There are various theories on the nature of metaphysical indeterminacy. I specifically conceive of indeterminacy as worldly unsettledness (à la Barnes & Williams 2011). For it to be indeterminate whether P is for the states of affairs represented by P to be unsettled. Metaphorically: we imagine indeterminacy as a kind of absence. It is not as if there is an indeterminate state of affairs (contra Wilson 2013); rather, a state of affairs has yet to have been settled, one way or the other.

I take vagueness to be one type of indeterminacy. Specifically, I reserve the term “vagueness” for cases in which the relevant indeterminacy arises because of considerations involving a quantitative scale of some kind.

Consider the traditional examples of vagueness. How many grains of sand constitute a heap? How blue does a dress have to be in order to be a blue dress? What age does a person have to be in order to be considered old? In cases of vagueness, we find indeterminacy in the borderline cases; we even find it in determining which cases are the borderline cases.

Not all types of metaphysical indeterminacy have this character. For example, the open future is not a kind of vagueness. If the future is open, there is no fact of the matter about whether the sun will rise tomorrow. This has nothing to do with vagueness about the sun or its rising; rather, the facts are currently unsettled with respect to the sun rising in the future.

There are other kinds of indeterminacy, but the most obvious kinds of indeterminacy in cases of erasure are vagueness and open texture.

Vagueness is certainly a factor in erasure. Just consider the fact that colleges have varying policies depending on whether the potential student plans to undergo a gender transition in the near future. But what counts as planning? Merely considering the possibility of a gender transition is not sufficient to count as planning. Of course, if you have already made the relevant social, legal, and medical arrangements associated with gender transition, and you are psychologically certain that you will transition, then this counts as planning. However, there is a range of attitudes and practices in between; vagueness emerges at the borderline cases.

Although vagueness is a factor, I have generally spotlighted the way in which erasure often stems from open texture. In cases of *open texture*, a concept fails to determinately apply because the concept was not designed for that scenario (Shapiro 2006; Waismann 1945).

Hart (1961) gives a classic example of open texture in law. Imagine a law that says: no vehicles in the park. Hart writes:

There will ... be plain cases constantly recurring in similar contexts to which general expressions are clearly applicable (‘If anything is a vehicle a

motor-car is one') but there will also be cases where it is not clear whether they apply or not. ('Does "vehicle" used here include bicycles, airplanes, roller skates?') (1961: 126)

The indeterminacy of the statute does not reside in the degree to which something is a car; we do not remove atoms from the car until it is indeterminate whether it is a car. The statute simply leaves open whether or not some things count as vehicles (for the purposes of the statute).

I give open texture an additional metaphysical interpretation: it is metaphysically indeterminate whether the existence of a bicycle in the park is consistent with the law. It is simply unsettled. But it is unsettled because the statute was not designed with certain scenarios in mind.

Open texture is common in the social world, and it has disproportionate effects on people from certain marginalized identities. Some social identities are recognized only to be excluded; e.g., *woman*, *Black*, *homosexual*. Other social identities are often not even excluded; e.g., *trans*, *non-binary*, *mixed race*. In the latter case, social groups and institutions do not have determinate conclusions about individuals with these identities because policy makers often do not imagine the possibility of such people.

There is a growing literature that defends the intelligibility and existence of metaphysical indeterminacy (Akiba 2004; Barnes & Williams 2011; Hawley 2002; Morreau 2002; Parsons 2000; Rosen & Smith 2004; Williams 2008; Wilson 2013; 2016). In the past, it was a foregone conclusion that metaphysical indeterminacy is impossible, but those days are over. I will assume that metaphysical indeterminacy is possible.

What about the logic of indeterminacy? There are various ways to go, but I will be relatively neutral. In my framework, sentences can be determinately true, determinately false, or neither determinately true nor determinately false. I do not assume that truth/falsity *just is* determinate truth/falsity. Nor do I assume a particular semantics for the threefold distinction I am making.

My claim is: if metaphysical indeterminacy is possible, then it is present in certain cases in the social world. I will not defend the antecedent of this conditional because there is already a wealth of literature defending the possibility of metaphysical indeterminacy. My goal is to show that the putative cases of erasure do involve metaphysical indeterminacy.

4.2. The Case for Metaphysical Erasure

Many theorists of indeterminacy take indeterminacy to be either semantic or epistemic. So why think that indeterminacy is metaphysical? More importantly:

does it really matter whether indeterminacy is metaphysical? One might think that the nature and significance of erasure is independent of metaphysical theses. Against this view, I argue that the metaphysical interpretation of indeterminacy best explains the worldly effects of ontological erasure.

Suppose erasure involves semantic indeterminacy. According to the semantic theory, the source of indeterminacy is our language (e.g., Keefe 2000). “Woman,” as used by Bryn Mawr to determine admissions, does not have a precise meaning. The meaning of “woman” gives determinate verdicts about cis women and cis men, but it does not give determinate verdicts about trans people. The meaning of “woman” is simply undefined, in such cases. (Typically, the semantic theory takes a supervaluationist form, but you do not have to be a supervaluationist to adopt the semantic theory.)

It is plausible that erasure *involves* semantic indeterminacy. The question is whether erasure is *purely* a matter of semantic indeterminacy. After all, the existence of semantic indeterminacy is compatible with the existence of metaphysical indeterminacy. If erasure is purely semantic, then determining the membership conditions of *B* (*eligible to be a Bryn Mawr student*) solely consists of stipulating that “*B*” means ϕ , where ϕ is some condition that leaves it indeterminate whether, say, *l* (Linda) is *B*. To determine the membership conditions of *B*, on this view, is to determine the semantic content of “*B*” in a certain context.

The problem with the purely semantic view is that it does not make sense of the resulting worldly structures that characterize ontological erasure. Stipulating the meaning of a word does not necessarily change the world. I can use the word “small” to refer to small tables, but this does not change any facts about the world. Similarly, defining “woman” in a way that it is indeterminate with respect to Linda does not, by itself, entail that Linda will be treated in any particular way.

There is a gap, at least in principle, between (a) how we define words and (b) how we structure our institutions and social norms. To bridge this gap, we need to say that our judgments and actions make it the case that certain social structures are created. Trans-erasing gender definitions are not simply harmful because they misrepresent gender; rather, they are harmful because of the trans-erasing social structures that will be built around such definitions. By “social structures,” I am referring to the broad class of facts about agents, their interactions, and the environments they shape.

For example, trans erasure leads to the construction of gendered spaces—most obviously, restrooms—and a set of social norms governing gendered spaces. These gendered spaces are important for the well-being of gendered individuals but they are often designed in a way that trans people cannot safely or reliably access them. If college staff and faculty are instructed to treat students differentially on the basis of trans-erasing gender definitions, then they will be ill-equipped to meet the social, academic, and health needs of trans students. If

trans students drop out of college because of trans-erasing gender definitions, then their life chances will be altered; in our society, college degrees partially determine lifetime earnings and social mobility.

The broad way in which legal gender classifications lead to oppressive social structures has been described in detail by Spade:

For trans people, administrative gender classification and the problems it creates for those who are difficult to classify or are misclassified is a major vector of violence and diminished life chances and life spans. Trans people's gender classification problems are concentrated in three general realms: identity documentation, sex-segregated facilities, and access to health care. (2015: 77)

I emphasize that, strictly speaking, it is the worldly implementation of these classifications that make them especially oppressive. Trans-erasing definitions are oppressive because of the worldly structures and systems they engender, not just the linguistic meanings and mental states associated with them. The semantic view cannot fully capture erasure because it does not capture the worldly aspect of erasure.

For similar reasons, the epistemic view of indeterminacy also fails to capture the worldly nature of erasure. According to epistemicism, indeterminacy (or at least vagueness) stems from our ignorance of the world, rather than metaphysical or semantic indeterminacy (Caie 2012; Hawthorne 2006; Sennet 2012; Williamson 1994; Yli-Vakkuri 2016). The epistemicist is committed to the existence of sharp-cut off lines, but they claim that there are special obstacles to knowing the truth about where these lines lie. So it is epistemically indefinite whether, say, Linda is *B*. But this lack of knowledge does not, by itself, entail any specific social structures that are oppressive to Linda or other trans women. Ignorance can certainly lead to oppressive outcomes (Medina 2013; Sullivan & Tuana 2007). Nonetheless, it is important to recognize that the oppressive social structures—the non-linguistic, non-mental barriers to the flourishing of trans people—are the main problem.

My claim is not that there cannot be a semantic or epistemic interpretation of the relevant judgments. Rather, my claim is that these judgments eventually result in social kinds that have a tripartite structure, one we see in the case of partially indeterminate kinds. On the metaphysical interpretation, determining the membership conditions of *B* is not simply a matter of stipulating meanings or acting under ignorance. When Bryn Mawr makes the constitutive judgment that being *B* means being ϕ , they create a worldly social structure that entails differential treatment depending on whether one is determinately a *B*, determinately not a *B*, or is indeterminate whether one is a *B*. Regardless of whether the judgments

are semantically indeterminate or epistemically indeterminate, they contribute to the formation of indeterminate social structures.

Of course, you may think the same work can be done by an indeterminacy-like structure as opposed to a strictly indeterminate one. Instead of there being three states of determinacy (determinately ϕ , determinately $\neg\phi$, and indeterminate whether ϕ), there may be three properties that collectively resemble three states of determinacy. Imagine a grocery store that organized its business hours as follows: open (defined as open for the entire day), closed (defined as closed for the entire day), and neither open nor closed (defined as opened for part of the day but not all). Suppose the states of *open*, *closed*, and *neither open nor closed* are treated quite differently by the business, so there are robust worldly patterns surrounding each of the three states. The state *neither open nor closed* may resemble the property *indeterminate whether open*, but it does not follow that it is identical to the latter property; nor does it follow that the latter property exists. An opponent of metaphysical indeterminacy could argue that we structure the world in a way that resembles what the world would be like if it contained metaphysical indeterminacy. Maybe it is not genuine metaphysical indeterminacy but actually metaphysical *schmindeterminacy*.⁸

I am not confident that *schmindeterminacy* will be good enough to capture ontological erasure; a commitment to metaphysical indeterminacy strikes me as a simpler and better understood option. But I do believe it is more important to think that erasure is *metaphysical* than it is to think that erasure is metaphysical *indeterminacy*. Erasure is metaphysical in the sense that it is primarily about worldly social structures. We fail to capture the nature and significance of erasure if we ignore its worldly element.

5. The Ethics of Erasure

I have described the metaphysics of erasure. Now I will argue that erasure generates a distinctive kind of social injustice. I first argue that exclusion and erasure are forms of agential identity discrimination (§5.1). Then I argue that erasure is a distinct form of agential identity discrimination (§5.2).

5.1. Agential Identity, Exclusion, and Erasure

Dembroff and Saint-Croix describe a simple scenario that illustrates the notion of agential identity:

8. Thanks to an anonymous referee for raising this possibility.

Consider, for example, a young man deciding whether to come out to his parents as gay. For all they know, he is straight. So, he currently occupies the social position of being straight, at least at home. But, having realized that he is gay, he comes to self-identify as gay. This internal identification is crucial to agential identity, but it is the choice to come out, the choice to make that private identity public and allow others to perceive him as gay, that would create an agential identity. (2019: 576)

Call this young man Sam. There are three important features of Sam's predicament.

First: Sam is perceived as straight by his parents. For this reason, he will be treated as straight by his parents. One's *social position* consists in how they are treated on the basis of being perceived to be a member of a certain social group. In his household, then, Sam has the social position of a straight person. This social position exists regardless of whether Sam accepts or identifies with that social position.

Second: Sam initially privately self-identifies as gay. His private self-identification exists regardless of whether his parents perceive him as gay; it exists even if he were somehow incorrect about being gay. Sam's self-identification does not need uptake or validation from others.

Third: Sam wants to externalize his self-identity. To successfully externalize one's preferred identity is to get others, aside from oneself, to accept or recognize one's social identity. Sam's externalization attempt can be as simple as telling his parents that he is gay, or it can consist in engaging in behaviors that are associated with being a gay person. Because Sam intends his self-identity to be publicly accepted, Sam will accept being socially positioned as a gay person.

A person possesses an *agential identity* just in case they self-identify as a member of a certain group and intend to externalize that self-identification. It is important to note that agential identities do not require uptake by others in order to exist. Sam can have the agential identity of a gay person even if he occupies, and continues to occupy, the social position of a straight person. Sam's parents, and larger society, can reject his attempt to externalize his self-identity. Sam's agential identity of being gay could remain, despite this rejection.

The notion of agential identity is useful in making sense of certain kinds of discrimination. In some cases, one is not discriminated against based on self-identity or social position, but instead one is discriminated against on the basis of attempting to externalize one's self-identity. Dembroff and Saint-Croix (2019) point to Spade (2015: 148)'s observation that "Medicaid provides all of the gender-confirming procedures and medications that trans people request to non-trans people and only denies them to those seeking them based on a transgender diagnostic profile." So if you self-identify as a woman but occupy the social position of a man, you can get the gender-confirming procedures and medications.

It is only when you attempt to externalize your self-identity that you will be denied the relevant healthcare. Call this *agential identity discrimination*.

In cases of agential identity discrimination, one is discriminated against on the basis of one's agential identity—one's preferred perceived group membership—and not necessarily on the basis of one's actual group membership. Strictly speaking, it is people with trans agential identities that are discriminated against. It is a separate question whether those with trans agential identities are "really" men, women, non-binary, or genderqueer. Agential identity discrimination is triggered by the attempt to externalize one's self-identity, not the self-identity or social position of an individual.

With the notion of agential identity discrimination in hand, I will now argue that exclusion and erasure are both forms of agential identity discrimination. I start with the exclusion case. Calliope Wong had the agential identity of a trans woman when she applied to Smith College. Wong was determinately excluded from being a student because she did not count as a woman, as far as Smith was concerned. Surely this is a form of gender discrimination. The question is what kind of discrimination is at issue.

On the simple view, Smith is discriminating against Wong by failing to classify her as a woman even though she belongs to the social group *woman*. More specifically, Smith discriminates against trans women, where we assume that, as a metaphysical fact, trans women are women. If we analyze exclusion in this way, the injustice is that Smith fails to treat Wong in the way that is reflective of her real gender. Dembroff (2018) calls this the *real gender assumption*: that our gender classification practices should mirror the metaphysics of gender. If the real gender assumption applies in this case, then it may appear that we need not appeal to agential identity to explain the relevant discrimination.

The real gender assumption may fail to apply, for two reasons.

The simplest is that the real gender assumption may be false (as Dembroff 2018 argues) Why? Because individuals may not always have a real or univocal gender identity. You may be a nominalist who believe that the predicate "woman" describes the world even though there is no kind woman. Or you may simply be a gender pluralist who thinks there are a variety of contextualized woman kinds like Black woman, trans woman, Southern woman, etc. In either case, you cannot pin down a single gender identity that serves as the basis for discrimination.

While I am sympathetic to the falsehood of the real gender assumption, I think there is a more mundane reason to think that the assumption, even if true, simply does not apply. The reason is this: even if there are real, univocal genders, it will not always be true that individuals are excluded from the membership of a social group because they fail to be a member of a given gender group. For example, Smith may not care about Wong's true gender identity. Rather, Smith

might simply insist that they are not a *Smith woman*, no matter what the metaphysics of *woman* tells us.

For example, we can imagine Smith agreeing that trans women are women but nonetheless insisting on their definition of *Smith woman*, for the purposes of the college. In such a case, Smith treats Wong in a way that is reflective of her real gender; Smith simply does not accept individuals on the basis of their real gender, but on the basis of Smith's preferred gender categories. In such a case, Wong's exclusion is an instance of agential identity discrimination. Wong seeks to externalize her self-identity and Smith rejects this externalization. Regardless of Wong's actual gender identity, Smith prevents Wong's self-identity from being recognized by the college.

I view these cases through the lens of agential identity discrimination because the central issue, in these cases, is the rejection of one's attempt to externalize one's identity. Social groups need not, and in many cases, *do not*, make grand judgments on the metaphysics of gender or other social kinds. Rather, they make contextual and value-laden judgments about the specific social statuses they prefer to recognize. To be clear: even if these judgments are independent of the metaphysics of gender, they can still qualify as transphobic and oppressive.

For similar reasons, erasure can also be understood as a form of agential identity discrimination. The difference is that, in the case of erasure, Bryn Mawr fails to determinately count Linda as a (Bryn Mawr) woman. Linda takes herself to determinately count as a woman, but Bryn Mawr prevents the externalization of her determinate gender self-identity. Failing to determinately include an individual can be just as harmful as determinately excluding an individual.

5.2. *The Injustice of Erasure*

Although exclusion and erasure are both instances of agential identity discrimination, the injustice of erasure is importantly different from the injustice of exclusion. Erasure involves a distinctive kind of externalization failure, one that removes erased identities from public view.

Judgment-dependent social groups are governed by publicly available norms and membership conditions. Of course, the degree of publicity will vary from case to case. Formal institutions like colleges distill their norms and membership conditions into publicly available handbooks or websites. In more informal settings, a social group's norms and membership conditions may be communicated orally or conveyed through the relevant social structures that are built on the basis of the judgments. In any case, these norms and membership conditions must be communicated, either directly or indirectly, to those who are governed by them (or who desire to be governed by them).

These norms and membership conditions are established by the judgments of some individual or group. Smith makes a judgment to the effect that trans women are not women; this judgment becomes the basis for publicly available membership conditions governing Smith College. College faculty and staff make this judgment publicly available, directly or indirectly, because they have to enforce the membership condition that it establishes.

I should emphasize that “public” does not necessarily mean: easily accessible and transparent. Consider the law. The laws of a country may be publicly available, but in practice, we often learn about those laws after we face material consequences for breaking them. Police, prisons, stop signs, border walls, restroom gender icons—all of these are ways of making public our judgments about what is, and is not, socially permissible. Publicity can merely consist in the availability of worldly social structures that are built on the basis of our judgments.

In the case of Wong, Smith refuses to externalize Wong’s identity as a trans woman. Wong’s exclusion is a matter of college policy. Nonetheless, Smith does externalize the identity *trans woman*. By determinately excluding trans women from their college, Smith externalizes the identity *trans women* but fails to externalize its instances. It is as if Smith says, “There may be a concept or kind of *trans women*, but the individuals in that category are not women. Or at least, they will not be considered women at Smith College.” The identity *trans woman* is publicly available because Smith makes clear (albeit unsatisfactory) judgments about it.

In contrast, Bryn Mawr fails to externalize the category *trans woman* because Bryn Mawr fails to make judgments about the category. Linda is ontologically erased because it is indeterminate whether trans women can attend the college, and it is indeterminate whether trans women can attend the college because Bryn Mawr failed to make a judgment, one way or the other. The absence of judgment leads to an absence of publicity. Decisions will certainly be made about individual trans women who apply to the college. However, the identity of *trans woman* is obscured from public view because there is no judgment to be made about the social kind as a whole.

I claim that erasure results in an absence of publicity. However, this fact is not a metaphysical necessity. We can imagine a possible world in which the erasure of trans women is just as publicly visible as their exclusion. Absences can be conspicuous. So one might wonder why ontological erasure is bound up with social invisibility.

My hypothesis is that the act of making (or failing to make) a social distinction—a distinction in ways the social world might be—is an indication of whether or not a distinction is socially significant. In cases of erasure, then, the failure to make a social distinction is also a failure to recognize the significance of a social distinction.

Let me explain. Humans have many properties but only some are regarded as socially significant. *Having exactly such-and-such many hair follicles* is not a socially significant property, but *having such-and-such sex characteristics* is. Both properties may carve out distinctions in nature, but in the latter case, the distinction is regularly and publicly made in the course of regulating our social lives.

In cases of ontological erasure, then, there is a failure to import the significance of a social distinction. The kind *Bryn Mawr woman* is *gappy* with respect to the kind (or agential identity) *trans woman* in the sense that: if x is a trans woman, it is indeterminate whether x is a *Bryn Mawr woman*. (This is an idealization since the kind probably does not perfectly fit the gaps of *Bryn Mawr woman*.) Within the context of the college, Bryn Mawr does not make a social distinction concerning trans women. Because they fail to make the relevant distinction, they indicate that the distinction is insignificant (in that context).

Putting it another way: erased kinds fall through the cracks of our classification practices, and our classification practices dictate what kinds are socially significant. This leads me to conclude that the injustice of erasure differs from the injustice of exclusion because erasure negatively affects the publicity of oppressed social identities. This lack of publicity has harmful epistemic and political consequences.

Epistemically, erasure contributes to *hermeneutic injustice*, which is “the injustice of having some significant area of one’s social experience obscured from collective understanding owing to a structural identity prejudice in the collective hermeneutical resource” (Fricker 2007: 195). When individuals are erased, their social experiences are obscured from collective understanding, much more so than in cases of exclusion. Furthermore, erasure is not accidental or unsystematic. Trans women were erased in the context of Bryn Mawr, but they were erased in the context of other women’s colleges and social institutions more broadly.

In the case of erasure, the lack of collective hermeneutical resources is partly due to how the social world is structured. There are worldly facts about the lack of determinate inclusion or exclusion of trans people with respect to gendered spaces. There is a gap in hermeneutic resources because there is a gap in what the social world is like.

Politically, the lack of publicity undermines the likelihood of political change. Wong’s rejection from Smith served as a catalyst for political change because Smith drew clear lines in the sand. The college decided, unequivocally, that trans women were not women, and this decision was the subject of controversy and a subsequent political battle. The Wong case led the public to pay greater attention to the policies of other women’s colleges.

In a way, erasure is more dangerous than exclusion. Oppression thrives best when it is invisible, and erasure, by its nature, renders oppressed identities invisible. We overlook the injustices that live in the metaphysical gaps of

social groups and institutions. The current analysis spotlights these injustices so that we can (a) have a more complete typology of metaphysical injustices and (b) someday abolish them.

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