



What are Sex and Gender and what Do We Want them to Be?

RESEARCH

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ABSTRACT

We are living in times where there is considerable debate over what sex and gender are and who gets to be of what sex and what gender. These are questions that impact people's lives greatly, some more than others. They are metaphysical questions, but they also concern what principles we should be guided by when allocating resources, services, and protections to people with potentially different needs. There are also methodological questions in the vicinity. In this essay, I draw on my work in *Categories We Live By* (2018) to suggest a certain approach to navigating some of these thorny issues. I call this approach "ontic descent".

CORRESPONDING AUTHOR:

Ásta

Duke University, US
asta.asta@duke.edu

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1. INTRODUCTION

We are living in times where there is considerable debate over what sex and gender are and who gets to be of what sex and what gender. These are questions that impact people's lives greatly, some more than others. They are metaphysical questions, but they also concern what principles we should be guided by when allocating resources, services, and protections to people with potentially different needs. There are also methodological questions in the vicinity. In this essay, I draw on my work in *Categories We Live By* (2018) to suggest a certain approach to navigating some of these thorny issues. I call this approach “ontic descent”.

2. A PICTURE OF SOCIAL CATEGORIES

Let me draw up the picture presented in *Categories*. Think of categories like women, men, and genderqueers, for example. These are gender categories.¹ What is it to belong to one of these?

This looks like a standard metaphysical question: What is gender? What is it to be a woman?

There is a tradition in philosophy, and in the various cultures we are all part of, which has it that a person is a woman, say, entirely because of something about that person. There is some feature or quality of the person that makes them a woman. Is it being nurturing? Or perhaps having a vagina? What about being perceived or imagined to have female reproductive organs, or perhaps identifying with feminine norms or having the gender identity of a woman? A lot of feminist theory and philosophy has been focused on figuring out what that feature (or set of features) is that makes a person a woman. For after all, we need to know who the women are if we are to end their oppression (Moi 1999, ch.1; Alcoff 2006, Ch.6).

But this task, answering the woman question in feminist philosophy and theory, is an impossible one and we get into trouble because each attempt at a definition runs into problems. We privilege one feature over another and that is bad theoretically, and politically, and morally.²

What to do?

I think what is needed is a reorientation. This reorientation starts with the recognition that just as races are products of racism (Fields and Fields 2012), so genders and sexes are products of sexist social practices and institutions. So, if we focus solely on the features that make a person be of a certain category, whether that is a gender category, a race category, or some other social category, we miss what is most important: how these categories come into being, how they are sustained, and what function they serve. To put the point a bit differently: all we do, then, is describe the content of the gender or race ideology, we don't illuminate how it comes into being and how it is sustained. Without such illumination, how can we critique effectively the oppressive structures we live in? And how can we craft tools to disable and dismantle them?³

The guiding intuition in *Categories* is that social properties of individuals, of you and me, are mostly about other people.⁴

What do I mean? I mean that what makes you a woman or a man or genderqueer or what have you is mostly about other people. It is about other individual people, to some extent, but mostly about the societal setting you find yourself in, with its values, norms, practices, and, yes, material conditions. Those are the things that determine what it is possible for you to be, and other

1 I follow Ásta 2018 in using “category” interchangeably with “kind”, and not to refer to an entity at the semantic level or something like a mental classification. I choose not to use the term “kind” given the expectation that members of a kind share some feature (essential or not) that is explanatory of their behavior.

2 The latest attempt at offering gender identity as an essential feature faces the same fate (Cf. Barnes 2022) as all the other attempts at providing a substantial definition of *woman*, as opposed to a relational one, as the social position accounts all do. For some discussion of the history see Moi 1999 and Alcoff 2006.

3 For more on ideology and ideology critique, see Bohman 2021.

4 I present my account of identity that is to accompany the theory of social categories in Ch. 6 of *Categories* (Identity as Social Location). Identity can also play a role in the conferral of a social status as in many contexts, people are attempting to track how a person identifies. For example, in many contemporary contexts people are attempting to track the gender identity of a person in the conferral of gender status in the context.

individuals and groups assign you roles in accordance with that. The conferrers of the status are the foot soldiers who enforce the values of the social setting you find yourself in; the foot soldiers who enforce the ideology, if you will.

On this picture you are a woman, not primarily because of something about you, but because of something about the society at large and the people that inhabit it: it is their interests and values that place you in a category. You are a woman because other people care about features that they take you to have. And to be a woman is simply to have a certain social status in a context.

When we think of social categories and features in this way, then societal values dictate which features of individuals are important, and people get conferred onto them social statuses in accordance with that. This opens up yet other ways of taking a critical stance towards the world we live in. On this picture, society may value certain bodily features over others and people get conferred statuses in accordance with that in certain contexts. This means that those features are socially significant in those contexts (see Ásta 2018, Ch. 2). We can question that these features are valued in the way that they are, we can question the content of the conferred roles that come with being taken to have those features, and we can question the associated norms for playing those roles well. This is not to say that there could not be a good justification for valuing certain features in certain contexts. In many contexts there may be good reasons to value capacity to bear children, for example, or being exceptionally tall, or good at programming. But what this picture offers us is the opportunity to ask, not only for the explanation for why some feature is valued in a particular context, but also for its justification. And in many contexts the justification is missing or spurious.

3. THE CONFERRALIST FRAMEWORK

I hope you have a sense of the big picture. Let's now look at the theory. The main idea is this: social properties of individuals are statuses that people have in the contexts they travel. These statuses consist in constraints and enablements on their behavior in those contexts. And these statuses are connected to other properties of individuals in a particular way.

We all have various sorts of features or properties; natural, relational, social. Some of our features have social significance in the contexts we travel. For example, in certain contexts, height or skin color has significance, and people who have a certain skin tone or a certain height are treated differently. Perhaps they are allowed to speak more or given deference; or on the flip side, perhaps they are simply ignored. I make that idea precise by saying that *a feature is socially significant in a context just in case an individual who is taken to have the feature gets conferred onto them a status in the context*. This status consists in constraints and enablements on the behavior in the context. This is a two-tiered account: there is a base property (which is the socially significant property) and the conferred property, the status. We need to fill in details about the property such as who is doing the conferring, but let us leave that for now.⁵ Let us turn to gender and sex.

4. THE THEORY IN ACTION: SEX AND GENDER

In my proposals⁶ for how to make sense of sex and gender and their relation, I aim to capture the type of social construction involved in the well-known feminist slogan: gender is the social significance of sex (e.g. Haslanger 2012). For such a feminist, sex is biologically given and gender is social. For me there is a twist. In fact, there are three: sex is not biologically given, gender is radically context-dependent, and gender is not always the social significance of sex, but can be the social significance of something else.

4.1 GENDER IS CONFERRED

Let me start with the account of gender.

⁵ For details see Ásta 2018, Ch. 1–2.

⁶ See Chapter 4 of Ásta 2018.

Consider this scenario: you work as a coder in San Francisco. You go into your office where you are one of the guys (some other people make the coffee). After work you tag along with some friends at work to a bar. It is a very heteronormative space and you are neither a guy nor a gal. You are an other. You walk up the street to another bar where you are a butch and expected to buy drinks for the femmes. Then you head home to your grandmother's 80th birthday party where you help out in the kitchen with the other women while the men smoke cigars on the porch. (Ásta 2018, 73)

In each of the contexts we travel different features of us are socially salient. That is also true of gender contexts. In some contexts, people are trying to track sex assignment, in others preferences regarding role in societal organization, self-identification or identity, presentation of the body, preferences regarding role in preparation of food, body parts related to biological reproduction, preferences regarding role as sexual partner, and so on.

In many gender contexts there may be a persistent assumption in the background that in tracking one of the base properties we manage to track the other phenomena as well. But even if there are many contexts where this assumption is not misplaced, the presence of the many contexts where it is the wrong assumption shows the importance of keeping these various base properties apart, not only for a better theoretical understanding, but for practical reasons. In fact, a variety of feminist, queer, and trans theoretical work and activism has been aimed at challenging this assumption.

It is for this reason that I suggest that the way gender is conferred makes gender be highly context-dependent, and the base property or properties vary with context. On this view, not only is gender deeply context-dependent when it comes to historical periods and geographical locations, but the same geographical location and time period can allow for radically different contexts, so that a person may count as of a certain gender in some contexts and not others.

Before we turn to the account of sex let me note a couple of things. This is an account of how gender *functions*, not an account of how it *ought to function*. It is thus not an *ameliorative* account, as that is normally understood. It is a social position account, but it is a radically contextual theory, which means that you may be of one gender in one context and another in another, because the base property for the conferral can vary from one context to another. This may be uncomfortable; it may be unjust. This sort of account *reveals* the injustice in our gender practices. We can ask about a context whether the presence of a certain base property merits or justifies the conferral of a gender status in that context. We can ask about whether that base property should be socially significant at all, whether its significance is outsized, and whether some other property should function as the base property for the conferral in the context. When we are engaged in activism and want our social world to be more just, we are trying to make future contexts just along these dimensions.

4.2 SEX AS SOCIAL

A host of work in biology in the last 30 years by Anne Fausto-Sterling (2000a and 2000b) and others reveals that the biology supposedly supporting the division into two sexes is quite messy.⁷ If we look at the main ways of dividing *people* into sexes (by functioning genitalia and gonads, chromosomes, hormonal levels, and gamete size⁸), not only do these methods not divide people into two neat groups, female and male, but the hard cases do not line up: someone may not fit neatly into one of the categories according to one method, yet do so according to the others. The different ways of dividing people up into sexes not only do not carve nature at some joint, where you have female on one side and male on the other; these methods of carving carve up different slices of nature. Fausto-Sterling estimates that somewhere around 1.7% of people are intersex according to one or other of the methods used.

⁷ For more recent discussions see, e.g., Ainsworth 2015 and Karkazis 2019. Recent developments do not affect the philosophical conclusion to be drawn from the biology of sex.

⁸ Many biologists focus on gamete size, but that is not a primary way of dividing *people* into sexes.

For these reasons I suggest that the property of being of a certain sex is a conferred property where, in the case of newborns, the aim is to track certain physical features, but where the resulting property is an institutional property; in fact a legal one.

In the case of older individuals, who change sex assignments, many jurisdictions require physical modifications and hormonal treatments, but not all. Some simply require sincere avowal for the change of sex assignment in legal documents.

5. THE MOTIVATION

There are a couple of things to note. The first thing is that we are drawing one wedge between the physical characteristics of individuals and how they get classified into sexes on the basis of those features. That is the sort of wedge we draw between the presence of some physical characteristic, such as height, and the social status you get as a result. But the sex case is even more complicated. There isn't just one base feature, but actually three to four sets of criteria that don't line up. Are you trying to track functioning genitalia or gamete production? Hormones? Chromosomes? Some combination?⁹ Some executive decision is made to count the individual with this group rather than that. But that is a social sorting mechanism, used for social purposes, not biological.

And that's when we have to stop and ask ourselves: what is this category for? What role does it play? And whose interests is it serving?

Now some of you might protest: sure, sex is a classification, but it is a biological classification. There are always problems with classifications, but these problems are just normal. They don't show that the classification is really a social status. Cats have sexes! Horses have sexes! Are you saying that the sex of a horse is really a social status?

Although there are cases of horses having a social status— you may remember the story of Caligula trying to make his horse Incitatus a consul— I'm not saying that there cannot be other sex categories, for other purposes, for example in biology, or for that matter if you breed horses. The sex classification there serves a predictive function. The prediction is not always borne out, of course. A mare may not always have a foal when paired with a stallion.

But what function does the sex classification serve for us humans? Is it a mere predictive function about what ensues when you lock two individuals up in a stall?

No, the role of the human sex classification is quite different.

I am not denying that there can be statistically significant correlations related to clusters of various bodily parts that can be useful in predicting or explaining various things in biology or medicine. But I think we need to pull apart various notions of sex and recognize that the sex we all have and is recorded on our birth certificate and in our passports and on our driving permits and countless other documents is not really a biological feature. What gets recorded is our status in society, our legal status, and in many countries that status comes with quite a number of legal constraints and enablements. Are you allowed to go to school? To drive? To own property? That depends on what sex assignment you have on a piece of paper, not what genitalia you have.

What is at stake in the question whether sex is a social phenomenon or biological? Why do we want a theory of sex as a social phenomenon or as a biological phenomenon? One of the things that people found liberating about Simone de Beauvoir's work (1949) was the idea that whatever was going on with the biology, that did not determine social roles or social arrangements. We should ask ourselves what sorts of social roles and social arrangements we want. A wedge was drawn between the biological and the social. I want to draw another wedge, this time between the biological and the assignment into institutional, in fact legal, categories, on the basis of best efforts to make sense of the biology.

9 I thank Daniel López de Sa for pushing me on this.

We who want to end sex-based oppression need a good understanding of what of the world we live in is of our own making, and what is not, and in this case, whether sex categorization is a social matter or merely reflects a natural distinction. If a category is a social category, that opens up the question to what extent it expresses societal values and interests, values and interests that could be questioned. It has been a feminist staple to offer alternative explanations for phenomena that the larger culture insists is just a result of natural distinctions, processes, and forces.¹⁰ Here I suggest that we think critically about the sex distinctions we live with and to what extent they express societal interests and values, as opposed to merely reflecting the natural order of things.

6. HOW TO NAVIGATE DIFFICULT WATERS: ONTIC DESCENT

Let us go back to what is at stake. In giving an account of gender and sex, we are looking for a theoretical understanding that can help us in fighting sex and gender oppression. Such oppression takes different forms in different corners of the world, as does how it interacts with other forms of oppression such as racism, ethnocentrism, religious oppression, heterosexism, ableism, classism, and transphobia. An analysis of what is unjust when a transwoman in the UK is misgendered may not help illuminate the injustice faced by a person thrown into sexual slavery on the basis of being taken to have a vagina.

But this is where a radically contextual account that is two-tiered is actually an asset. And now we come to my suggestions for how to navigate potentially conflicting interests. I call the strategy “ontic descent”. I think for many purposes the gender and sex categories are really too coarse. They are *shorthand* for something else and instead of the conferred gender or sex status, we should focus on the potential base properties. Consider the fights over who should get to be a woman in North America and the UK today. In many contexts I travel, people care about with what role in a gender system you identify. In other contexts, they care about your sex assignment. Or they care about what body parts you have. Or what have you. How are we to navigate these different demands? I suggest we take it down a notch. *Ontic descent* as a strategy means that when we are navigating difficult waters, we don’t focus our energies on the status such as woman or female, but rather on the base property in each context. We ask whether that base property merits the treatment or procedure or service or protection. We ask what should be the base property for a certain status in a particular context. The normative argument should happen at that level. We descend from the level of the conferred property to the level of the base property.

For example, when you are a health care worker and are calling people in for a pregnancy checkup, the features that matter are not sex assignment or gender status. What matters is whether you are pregnant. You can be a cis woman or a transman, agender, intersex, and a host of other things. It doesn’t matter. What matters is your pregnancy.

Another example is the AstraZeneca vaccine. During 2021 many countries were not administering it to women under age 55. I don’t know about you, but that strikes me as a very euphemistic way of talking. Is the gender status of those affected what is at issue? Or perhaps it is people who menstruate? Or people who have certain hormonal levels? Clearly, we need more refined categories for specific purposes. Gender and sex are just too crude. We need to focus on specific features that we think are relevant for the task, procedure, or protection at hand. When we need to make those decisions, let us leave the status of being a woman or being female to the side and focus on features that may merit a certain protocol or protection.

Now, you may say, you are not focusing on the most contentious issues. How about segregated bathrooms? I will address that.

If we have bathrooms segregated by gender or sex, what is the rationale for that? Presumably it is to protect vulnerable groups. What groups are these? Who are the people vulnerable to gender or sex-based violence? These include people who are taken to have vaginas, people who are feminine, people who identify with being a woman, people who are genderqueer in any way, people whose

¹⁰ Wollstonecraft 1792 contains an early example.

self-presentation seems not in line with that dictated by their sex assigned at birth, people who appear to go against the ideological roles of women and men in their gender presentation or their sexuality. All these people are vulnerable to sex and gender-based violence, often death. All these people need protection. The justification for segregated bathrooms should focus on the features that have social significance in that context, which includes all of the features I mentioned. Having any of the features mentioned puts you at greater risk for violence. Then the question is how to address that. There can be many options. Unisex individual stalls is one. But whatever the solution is, it should be informed by the empirical research related to who is vulnerable to sex and gender-based violence and what sorts of arrangements best mitigate the risks.

I have given you a conception of what sex and gender are. They are social phenomena that are not immutable, but can change over time, because they are really expressive of societal values and interests. What do we want them to be? My answer is: I want gender and sex to play a smaller role in our lives and world. And I think some of the conflicts over what gender and sex is and who gets to be of what gender and what sex can be better approached by deescalating the conversation by ceasing to focus on the conferred gender or sex status, and instead focus on the base property for the conferral in each context. This focuses the normative argument. And that is the argument we need to have. I am not saying that all disagreements would get solved this way, but at least it would be clearer what the disagreement is about. And that would be a step in the right direction. De-escalation by ontic descent.


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The author has no competing interests to declare.

AUTHOR AFFILIATIONS

Ásta  orcid.org/0000-0003-0252-6527
Duke University, US

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