

The Negotiative Theory of Gender Identity and the Limits of First-Person Authority

Burkay Ozturk

Burkay Ozturk assesses the first-person authority (FPA) view about gender according to which X's self-identification of what X's gender is, is the final say on what X's gender is, such that if others disagree with X regarding what X's gender is, these others are mistaken. One main reason in support of FPA is that overriding X's identification amounts to denying X's autonomy—it amounts to wrongful paternalism. Ozturk, however, criticizes this view using as analogies religious and patriotic self-identifications: If in some cases Y can permissibly claim that X is not a true Muslim or a real patriot, then such rejections can be permissible in some cases, which implies that there might also be cases of permissible rejection of gender self-identification. Ozturk offers instead the negotiative theory of identity, according to which it is permissible to reject a self-identification if and only if the three constraints of no harm (to the self-identifier), (their) privacy, and (their) dignity are not violated. If Ozturk's negotiative theory is correct, it would be relevant to all types of self-identifications.

Burkay Ozturk teaches at the School of the Art Institute of Chicago and Texas State University. This essay was originally published in the seventh edition of *The Philosophy of Sex*, 139–59. © 2021, Burkay Ozturk, who kindly gave permission to reprint his essay, slightly revised, in this volume.

The first-person authority view (FPA) is the current dominant view about what someone's gender is. According to FPA a person has authority over her own gender identity; her sincere self-identification trumps the opinions of others. There are two versions of FPA, epistemic and ethical. Both versions try to explain why a person has authority over her own gender identity. But both have problems. Epistemic FPA attributes to the self-identifier an unrealistic degree of doxastic reliability. Ethical

FPA implies the existence of an unreasonably strong and unqualified obligation on the part of others not to reject the person's identification. This essay offers an alternative: the negotiative theory of identity. Unlike epistemic FPA, the negotiative theory doesn't presume the reliability of self-directed beliefs. Unlike ethical FPA, the negotiative theory doesn't imply an obligation not to reject. Instead, it contends that an act of rejection is morally permissible if and only if it respects three ethical and epistemic constraints. In doing so, the negotiative theory combines the strengths and avoids the weaknesses of both versions of FPA, and it gives us insight into how far first-person authority reaches in terms of grounding rights and obligating others.

THE STORY OF SUSAN AND JOE

Susan is a self-identified woman who works in an office. Susan makes it clear to her coworkers that she wants them to call her "Susan" and abandon her given name, "Edward." She also asks them to use female pronouns when they refer to her in the third person.

Joe, a coworker of Susan, sees several reasons for complying with Susan's requests. Some of these reasons are prudential, such as maintaining a positive professional relationship and avoiding being identified as a bigot. Some are moral,¹ as Joe worries that not complying can cause Susan to suffer. However, Joe thinks that he has reasons against complying as well. According to Joe, Susan is mistaken about her gender identity. Complying with her requests would amount to participating in deception and enabling a delusion. It would also be insincere and dishonest because, according to Joe, Susan is not really a woman. Joe thinks he ought not participate in deception, enable a delusion, or be dishonest.

Would Joe be doing anything wrong in rejecting Susan's self-identification? If yes, why would he be wrong? Would he be wrong regardless of how he rejects? Or are there modes of rejection that wouldn't be wrong?

We must first clarify what "acceptance" and "rejection" mean. I understand acceptance of Susan's self-identification at least as assent to the proposition expressed by the sentence "Susan is a woman" where "woman" is meant literally and without contextualization or qualification,² or anything that implies such assent. Rejection is explicit or implied dissent. It is also possible to have a neutral position that is neither acceptance nor rejection.

Both acceptance and rejection often involve more than mere assent or dissent. For instance, if lawmakers accept Susan's self-identification then Susan will also be able to legally marry a man even in places where same-sex marriages aren't recognized by law. Some implied rejections are delivered in the form of harassment, refusal to accommodate, discrimination, and even physical violence. But at the core of acceptance

and rejection there is implied or explicit assent and dissent. Respectively, assent and dissent are the minimally necessary and sufficient conditions for acceptance and rejection, and can be thought of separately from their social and political associations, and modes of delivery.

When acceptance and rejection are understood in this way, one might think it obvious that Joe is doing something wrong by rejecting Susan's self-identification regardless of how he does it. One might think that Joe is wrong to reject because Susan being a woman, a man, neither, or both is not something that Joe gets to decide for Susan. Only one person gets to decide Susan's gender—or lack thereof—and that person is Susan. That's why, rejecting a sincere gender self-identification like Susan's is *always* wrong. Following Talia Mae Bettcher,³ I will call this view "the first-person authority view of gender identity (FPA)."⁴

EPISTEMIC AND ETHICAL FPA

Epistemic FPA, whose roots can be traced back to Donald Davidson,⁵ is the view that the gendered person has the ultimate say over her gender because of her unique epistemic position. Gender, on this view, is *constituted* by the contents of the gendered person's mind, such as beliefs and desires, and one has privileged and reliable access to the contents of his or her own mind.

Crispin Wright, Krista Lawlor, and Bettcher identify several difficulties with epistemic FPA, including the possibility of stable but unintentionally erroneous self-directed beliefs.⁶ If the authority Susan has over her gender has merely epistemic roots, then Joe's refusal to accept Susan as a woman is not necessarily a factual mistake. Anybody might have erroneous beliefs about themselves, who or what they are, and even about the content of their own minds. So epistemic FPA fails to show that it is *always* wrong to reject.

The *ethical* version of FPA characterizes the authority Susan has over her gender identity as ethical, *not* epistemic. On this view, being mistaken in one's beliefs is irrelevant: "When one person reports one's attitudes and emotions, one's authority rests not on being right, but on being responsible. Evidence of one's fallibility [. . .] has no bearing on one's *authorial* status. Social psychology's unrelenting skepticism about our self-knowledge is apparently defanged (emphasis added)."⁷ Bettcher, the most prominent defender of ethical FPA, appeals to this "authorship account" to formulate an argument from autonomy, which justifies ethical FPA and tries to explain why it is always wrong to reject:

Consider a case in which a second person simply tells the first person with certitude what her attitudes are. For example, even if it is clear one

wants to go home (one looks at the clock, taps one's foot), it is odd for one's date to announce, unprompted, "You want to go home now." To be sure, he might ask, "Do you want to go home? Because it seems like you do." He might even say, "It seems to me you want to go home." What seems problematic is the attempt to avow somebody else's mental attitudes on their own behalf, and there is the sense that if "You want to go home now" is not meant humorously, *it is an attempt to control*. Again, there is something that feels "ungrammatical." More important, *there is an infringement on the first person's autonomy*. The second person is inappropriately treating his own interpretive assessment as authoritative (emphasis added).⁸

In other words, making avowals on someone else's behalf (and by implication, responding to self-directed avowals with rejection) is a denial of that person's autonomy and is an attempt at control, both of which are wrong.

According to the argument from autonomy, rejecting is not wrong just because and when it is a factual mistake, or causes Susan to suffer. Rejecting is wrong because rejection is essentially paternalistic. That's why Joe's rejection of Susan's self-identification is morally wrong regardless of how he rejects. As an autonomous being, Susan is in charge of herself and ought to be recognized as such. No one rejecting Susan's gender self-identification can avoid denying Susan's autonomy, explicitly or implicitly.

As the obligation not to reject is grounded in Susan's autonomy, it is arguably overriding. It trumps most other moral considerations Joe might have for rejecting, such as the obligations not to participate in deception, enable a delusion, or be dishonest. Therefore, what Joe does to Susan is wrong regardless of the consequences or the mode of his rejection. Ethical FPA and the argument from autonomy that grounds it imply that Joe has an unqualified moral obligation not to reject Susan's gender self-identification.

WHY ETHICAL FPA IS IMPLAUSIBLE

Since the argument from autonomy concerns not just gender-related self-identifications but *all* self-directed avowals, it implies that rejecting *any* sincere self-identification would amount to moral wrongdoing. However, here are two scenarios in which it is *pro tanto* permissible to meet a sincere self-identification with resistance and even outright rejection.⁹

Sam sincerely believes that he is a Muslim, lives his life as a Muslim, and sees this as an important part of his identity. Offended by some visual depictions of the prophet Muhammad published by a French

magazine, Sam and his two friends drive over to the magazine and kill several staff members. Muslims all over the world, including Zahra, condemn Sam and his friends' actions and denounce them as "incompatible with Islam." They declare that Sam, contrary to his sincere and public self-identification, isn't a real Muslim.

Andy sincerely believes that he is a patriotic American, lives his life as one, and sees this as an important part of his identity. He publicly supports political candidates and policies that he perceives to be patriotic, raises his children with what he considers patriotic values, and actively encourages his peers to be patriotic. However, it comes to Robert's attention that whenever Andy is summoned for jury duty, he concocts a lie to avoid it. Next time he catches Andy touting his patriotism in public, Robert retorts, "Andy, you aren't a real patriot."

Now consider the following argument:

1. If Joe had an unqualified obligation not to reject Susan's self-identification as a woman, then Zahra would have had an unqualified obligation not to reject Sam's self-identification as Muslim.
2. Zahra doesn't have an unqualified obligation not to reject Sam's self-identification as Muslim.
3. Therefore, Joe doesn't have an unqualified obligation not to reject Susan's self-identification as a woman.

The argument above hinges on the strength of the purported analogy between Susan's self-identification as a woman, on the one hand, and Sam's self-identification as a Muslim, on the other. Its counterpart involving Andy likewise hinges on the strength of the purported analogy between Susan and Andy. So, just how strong are those two analogies?

The analogies might appear weak because gender identity could be seen as a special kind of identity that is very much *unlike* religious and political identities. If that's the case, the scenarios involving Sam and Andy might not be sufficiently similar to the one involving Susan to draw any conclusions about Susan's rights and Joe's obligations. While one can reject Sam's and Andy's self-identifications without denying their autonomy, only gender and transgender self-identifications would command the authority that makes rejecting always wrong.

This, however, requires that there be a principled distinction between gender identity, on the one hand, and other kinds of identity, including religious and political identities, on the other.¹⁰ What could this principled distinction be?

I can think of two answers. First, one might claim that being gendered is so important to all of us that gender self-identification is more important than any other self-identification. Perhaps gender identity is

so existentially and morally significant to all individuals that self-avowals over gender identity *alone* command an overriding ethical authority. Second, one might point at the phenomena of political and religious conversions, and contrast how society reacts to them differently than gender transitions. If Thomas More had recanted his Catholicism and converted to Anglicanism, his peers would not have rejected his new identity on the grounds that you just can't recant your Catholicism. In fact, even religions that punish conversions with death (such as certain strains of Sunni and Shi'a Islam) do so *because* they recognize those conversions as *successful changes in one's religious identity*. By contrast, when someone like Private Manning publicly states that she is a woman, some folks (including CNN's Jake Tapper) take it as a duty upon themselves to publicly deny that Manning is, ever was, or ever will be a woman.¹¹

Let's first consider the idea that gender identity has a unique degree of existential and moral significance that sets it apart from all others. People like Sam, however, will disagree that gender identity is more important than religious identity. For Sam, being Muslim is likely to be at least as important as being a man, if not more. It is conceivable that Andy could say something similar about himself in his patriotic fervor. The same is arguably the case for many people who hold strong religious or political convictions. That is why thinking of gender identity as more significant would be underappreciating the existential and moral significance of religious and political identities for the people who profess to have them. After all, some people die for their faith, for their ideology, for their nation. Some, such as Sam, even kill. It is not clear how self-identification can get more existentially and morally significant than that.

I am not defending the claim that gender identity is less important than other identities. Although being a woman might have the utmost existential and moral import for some people, for many others religious or political identities are at least as important. So if it's always wrong to reject Susan's self-identification, it would also be always wrong to reject Sam's. But Zahra rejecting Sam's self-identification is *pro tanto* permissible. Therefore, Joe has no unqualified obligation not to reject Susan's self-identification.

It might be objected that I am taking the point of view of the self-identifier (e.g., Sam's and Andy's). Shouldn't we instead focus on whether it is important *objectively*? If gender has more *objective* existential and moral significance than other identities, the analogy between Susan's and Sam's self-identifications would break down and we would have no reason to accept the first premise of the argument above.

I don't see how this line could be pursued cogently. Part of the issue is "*objective* existential significance" is an oxymoron. Perhaps more crucially, the disagreement between Sam and those who consider gender identity to be more important than Muslim identity seems intractable,

which is a *pro tanto* reason to disfavor any meta-theory valuing one over the other.

The second proposed principled distinction—that the success of religious and political conversions is universally recognized, while gender transitions are often met with serious resistance by some—is at odds with facts of the sociology of religion and politics. In particular, some religious individuals don't recognize conversions to (or, in some cases, away from) their religions, just as some cisgender people do not recognize gender transitions. These religions include the vast majority of Anatolian Alevites and Syrian Alawites, a substantial number of Hindus, and some conservative Jews. Also like gender conversions, some political conversions are met with strong resistance (e.g., Albert Speer's recanting of his Nazism at the Nuremberg trials and Hillary Clinton's embrace of same-sex marriage). If anything, this supposedly principled distinction between religious and political identities, on the one hand, and gender identity, on the other, further highlights the strength of the analogies between them.

However, we shouldn't overstate the point of these analogies and the objection they raise against ethical FPA. I do not deny that there are ethical (or epistemic) grounds for accepting a self-identification. Nor am I arguing that it is always permissible to reject a self-identification. I am arguing that it is not always morally wrong to reject; sometimes it is permissible to challenge a self-identification by subjecting it to some form of external scrutiny and reject those self-identifications that fail to withstand scrutiny. The important task here is to identify the instances and forms of rejection that are permissible and distinguish them from those that are not. The negotiative theory of identity aims to do precisely this.

THE NEGOTIATIVE THEORY OF IDENTITY AND THE CONSTRAINTS ON PERMISSIBLE REJECTION

I have so far concluded, contrary to what ethical FPA entails, that there is no unqualified obligation to not reject. This does not mean, however, that self-identifiers have no rights to any form of social recognition.

There are morally permissible and impermissible modes of rejection. Whether rejection is morally permissible depends on compatibility with three ethical and epistemic constraints of the framework in which negotiations of identity take place. The constraints are those of harm, privacy, and dignity. They jointly determine when and how the rejection of someone's self-identification is permissible.

The constraints of harm and of privacy require that an act of rejection not cause unjustifiable harm or constitute a morally impermissible

violation of privacy. The constraint of dignity is both ethical and epistemic; it requires that an act of rejection not deny the dignity of the person professing a certain identity if that person is in possession of adequate defenses of self, which are reasonable responses to the attempted defeaters against her self-identification. Individually, each of these three constraints is a necessary condition for permissible rejection. That is, if the rejecter fails one (or more), the rejection is impermissible. They are also collectively sufficient: If the rejecter satisfies all, then the rejection is permissible. The negotiative theory of identity claims that *rejection of a self-identification is permissible if and only if none of these three constraints is violated*.

Let's examine each constraint individually.

1. The Harm Constraint

Gender is often said to be "policed" by society. The ethics of gender must pay close attention to the actual and potential harms associated with various forms of coercive and noncoercive gender policing. Sometimes the policing is more than metaphorical. Many adolescent and adult gender nonconformists are coerced into accepting traditional roles. This coercion relies on the threat of violence and sometimes even on actual violence. When rejection is coercive, it undeniably causes harm.

Other forms of policing are subtler, and not all are coercive. For instance, a softer kind of gender policing starts early with most parents giving their children unambiguously gendered names matching the gender assigned to them at birth. They also verbally correct their behavior whenever it clashes with traditional gender roles. If and when these corrections clash with a child's own deeply felt gender identity, they could cause harm to the child's psyche.¹²

In some exceptional cases, potential and even actual harm can be justified. For instance, if an adult made such a strong emotional investment in an identity that *any* rejection would cause that person emotional injury, the person in question is liable to harm. Consider again Sam and Zahra. If Zahra's rejection of Sam's self-identification as Muslim will cause Sam emotional suffering regardless of how gingerly Zahra rejects, the harms Sam suffers are justifiable harms, unless Sam suffers from a mental issue that prevents him from constructing an emotionally stable self-image that is not so vulnerable to the judgments of semi-strangers.

Here, one might argue that trans people can't help being so vulnerable due to the systemic injustices and the history of discrimination they have been putting up with. This line of reasoning, however, is a form of infantilization that is not only in tension with the argument from autonomy for ethical FPA but also something that many trans individuals might find repugnant.

The upshot here is that *rejection ought not cause unjustifiable harms*. This constitutes a constraint both on when it is permissible to reject and in what mode a rejection can be permissibly delivered.

Due to their incomplete psychological development, and because they are developmentally not ready to cope with rejection, children are not in a position to articulate adequate defenses of self and might be unjustifiably harmed by *any* act of rejection. Studies indicate that childhood rejection is associated with negative long-term effects on the child's general psychiatric health and academic success as well as problems in internalization and externalization.¹³ This is also true of psychologically vulnerable adults; they are likely to be harmed by rejection regardless of its mode. Since it is impossible to justify such harms, we have an unqualified obligation not to reject when it comes to children and other psychologically vulnerable persons. Obviously, this is not a reason to abandon the negotiative theory of identity as applying to psychologically healthy adults.

2. The Privacy Constraint

Gender is often characterized as a private matter, which is sometimes presented as an argument for an obligation to accept all gender self-identifications and preferred gender pronouns. Although the argument is not convincing, examining it closely will help us identify an important ethical constraint on the permissibility of rejection: rejection is permissible only if it doesn't violate prohibitive or consensual privacy. However, we need to first understand the claim that gender is private.

We can distinguish between three senses in which a matter can be private: prohibitive, consensual, and prudential. When something is prohibitively private, revealing it to the public is *always* morally impermissible, even when the person it concerns directly consents to revealing it. Penis size, for example, is considered prohibitively private in most communities. Consensual privacy, however, makes it morally impermissible to reveal to the public *unless* the relevant person consents. Age, in many (but not all) contexts, is considered a consensually private matter. Some consensually private things are also prudentially private, which obtains when making the matter public would be imprudent, even if it is ethically permissible (when the person consents), such as posting pictures of yourself drunk on social media.

Clearly, for the rejection of gender self-identification to be wrong it has to be a violation of prohibitive or consensual privacy. Sometimes the rejection of gender self-identification is wrong because it *is* a violation of prohibitive privacy. For instance, if Joe insists on referring to Susan as "Edward" while conversing with others, he might mean that "that person has (or used to have) a penis." Most would agree, however, that

the current state and the history of someone's genitalia are prohibitively private. That implies that Joe should not refer to Susan as "Edward" with that intention, even if Joe thinks that trans women aren't really women.¹⁴ Similarly, if Joe was privately told by Susan that she used to identify as a man, telling everyone in the office that Susan is "not a real woman" would be a violation of consensual privacy and therefore wrong.

However, not all rejections are violations of prohibitive or consensual privacy. First, rejections need not be made in public. Suppose Susan reveals to Joe that she used to identify as a man. Then Joe responds to her and her alone, "then you aren't a real woman." Although such a response could be disappointing for Susan, it is not a violation of privacy. More important, there are ways of rejecting gender self-identification in public but on *public* grounds. To do so, it is sufficient to commit to the claim that gender is determined at least partly by things that are independent of the gendered person's own beliefs and desires. This is a strikingly weak commitment.

The weakness in question allows for significant diversity among what we can call the "externalist theories of gender identity." Although all externalist theories are orthogonal to the existence of an overriding first-person authority, they come from very different places in the political spectrum. Some, such as the *social conservative* worldview, identify gender with the history and current status of one's genitalia and deny that trans women (and men) are real women (and men).

Nevertheless, there are other externalist theories of gender identity that neither identify gender with genital status nor deny the possibility of transgenderism. For instance, the received view of the metaphysics of gender is that gender is socially constructed and is therefore constituted by social recognition of some sort, at least in part. Unlike the social conservative, the proponent of the received view does not have to subscribe to any form of biological determinism or essentialist views about genital status or history, and can and would acknowledge a significant degree of fluidity in gender identity.¹⁵ A social constructivist could accept or reject a trans identity depending on the congruence or lack thereof between it and the social norms that determine the person's gender.

Likewise, when Joe publicly refers to Susan as "Edward," he could mean that the way Susan looks or behaves is not congruent with the social construct that we call "woman." Saying and meaning such a thing is entirely consistent with acknowledging that Susan can later become a woman with or without genital alteration, or that there are other real women who were assigned to the male sex at birth without presupposing that the assignment had been a medical mistake.

Equally important, Joe saying such a thing doesn't have to infringe Susan's right to privacy. Susan's looks and behavior are directly accessible to the people Susan interacts with, which makes them public. If

what grounds Joe's rejection of Susan's gender self-identification is her looks and behavior rather than her genitalia, then though Joe might still be guilty of something, it can't be disseminating information about Susan's genitals or forcing her to disclose such information. The fact that *some people* use gender terms as code for "genitalia" and the rejections they express are violations of prohibitive privacy does not imply that rejecting gender self-identification is *always* gossiping about someone's genitalia. Susan's gender self-identification *could be* rejected on public grounds without necessarily violating her right to privacy.

To be clear, I am not saying that rejection never violates privacy. There are times when people use "man" and "woman" to harass, shame, indignify and oppress people like Susan by violating their prohibitive or consensual privacy. Those cases, which could even be the majority of all cases, are wrong; *rejection ought not violate prohibitive or consensual privacy*. My claim instead is that the argument from privacy doesn't apply to all those who reject a gender self-identification, and therefore cannot explain why rejection as such is morally wrong.

3. The Dignity Constraint

A rejection of gender self-identification is also wrong when it denies the earned *negotiative dignity* of the self-identifier.

Negotiative dignity is a special kind of recognition that the parties engaged in an argument, a dispute, or any other negotiation might earn. What gives a person the right to negotiative dignity is their epistemic position in the dialectic of the negotiation. In particular, if a person possesses reasonable responses to all available attempted defeaters against their position in the negotiation, he deserves that his position be treated as a moral equal to that of his interlocutors, even if he doesn't have a right to their agreement.

Court opinions are often illustrations of negotiative dignity. For instance, when the Supreme Court justices argue about the law and fail to reach unanimous agreement, minority opinions are written as dissents. These dissents are not mere formalities: they command respect from even their critics, and they inform and inspire later legal reasoning, which sometimes culminates in a change in the law. Dissents have this prospective moral influence because they include reasonable responses to all the decisive concerns and objections of the majority. That's why any lawyer who comments on Murphy's dissent in *Korematsu v. United States* ought to do so with an explicit recognition that it is a respectable and reasonable piece of moral and legal reasoning, even if he disagrees with it.

Similarly, who and what we are is also a matter of negotiation, because who and what we are is always a conceptualization of a moral

ideal. When Susan says that she is a woman, when Sam says that he is a Muslim, and when Andy says that he is patriotic, they express judgments about what is worth being and living for.

Thus, when in a dispute over self-identification a party possesses reasonable responses to all the criticisms raised against their position, that party deserves recognition of the dignity of their position. In other words, if the self-identifier possesses an adequate defense of self against the defeaters they encounter, then others ought to either refrain from rejecting or reject with dignity.

In other words, a person *S* has the right to negotiative dignity with regards to a certain self-identification *X* if

- (I) *S* currently lives his or her life as an *X*, and sincerely identifies as an *X*, and
- (II) *S* (or someone else on behalf of *S*) delivers an adequate defense of self against all reasons made available in good faith to *S* for rejecting *S*'s self-identification.

Consider Sam's case again. Sam's self-identification as Muslim clearly satisfies (I). To see how (II) might be satisfied, we should first identify what reasons someone like Zahra might have to reject Sam's self-identification. Zahra, like Mohammad Ali,¹⁶ might argue that killing someone because of cartoons is a behavior so far removed from the core tenets of Islam that the killer cannot be a Muslim or—at least—a good Muslim. In this case, whether Zahra's rejection is morally wrong depends on the following. Suppose Sam gets a chance to defend himself against the rejection and explains why his actions are consistent with Islam's core tenets. For instance, he discredits some of the Hadith, on which Zahra relied, as false reports. He also offers excerpts from the Qur'an that appear to not only excuse but also justify or even glorify his actions. Sam's defense might not suffice to convince Zahra that Sam is a Muslim, but it might constitute an adequate defense of self by casting serious doubt on the authoritativeness of Zahra's arguments in the eyes of disinterested observers. This would obligate Zahra to treat Sam with the respect and dignity other self-identifying Muslims get from her merely by virtue of being Muslims.

If Zahra persists in denouncing Sam's self-identification *in an irreverent mode* without displaying recognition of Sam's negotiative dignity, she would be guilty of a moral failure. However, Zahra could remain unconvinced and reject Sam's identity without doing anything morally wrong. But she now ought to treat him with a non-trivial degree of dignity.

The same is true of Andy and Robert. Suppose after Robert's rebuke, Andy responds with an explanation of why he lies to get out of jury duty: he thinks that as it is practiced today, the jury system is very different from the patriotic ideal of citizen-governance it once represented.

Actually, Andy reasons, it would be unpatriotic to play any part in it, since that would provide false legitimacy to a judicial regime that is fundamentally incompatible with his patriotic values.

If Robert presses on with his public accusations, ridicule, and disrespect without responding to Andy's defense, he is also guilty of moral failure. If he keeps parroting his "you aren't a real patriot" line as if Andy had not just explained why he does what he does, Robert would be in the wrong. Even if he is not convinced by Andy's defense of self, Robert ought to *change the mode of his rejection* by limiting himself to a mode of rejection that recognizes Andy's negotiative dignity as someone who can think for himself on political issues. Robert can still dispute Andy's claim, even publicly, but because Andy possesses an adequate defense of it, Andy cannot anymore be reasonably characterized *as someone who is simply delusional about who he is, as someone who cannot take charge of his own identity*.

Likewise, Susan would have access to a defense of self that grounds her negotiative dignity. When someone like Joe rejects her womanhood, Susan (or someone on her behalf) will be able to mount that defense of Susan's self against Joe's defeaters. Suppose that Joe asks Susan a number of rhetorical questions such as "If you are really a woman, why don't you have a uterus?" Susan could reply by pointing out the existence of millions of cisgender women who do not have uteri, whom Joe recognizes as women without hesitation. Once Susan (or someone else on behalf of Susan) mounts an adequate defense of self against all of Joe's attempts at defeating Susan's claim, Joe can no longer see Susan *as someone who is simply delusional about who she is, as someone who cannot take charge of her own identity*. He might remain unconvinced that Susan is a woman but now owes Susan the social recognition that he used to withhold from her, which must entail the dignity any other self-identifying woman gets from Joe.¹⁷

The dignity in question is not a mere abstract matter. It has practical implications. It renders morally wrong legislative attempts, public policies, or private actions that are designed to deprive her of the rights and privileges other women are granted *qua* women. Still, we must not exaggerate the implications. Take, for instance, the matter of trans athletes in sexually segregated competitive sports. In these areas, it might still be permissible to bar Susan from competition since her defenses of self cannot overcome the conceptual and empirical distinctions between female and woman. Similarly, anyone could permissibly refuse to date or marry her on the grounds that she is not female, given that sexual orientation is a function of sex, not gender.¹⁸

The upshot of this is the third and final constraint on identity negotiation, the dignity constraint: *rejection ought not deny the negotiative dignity of the self-identifier*.

OBJECTIONS AND REPLIES

I will address three objections. The first is that the analogies underlying my rejection of FPA are flawed because whereas Sam's and Andy's actions are morally suspect, Susan's aren't.¹⁹ The second objection targets the negotiative theory and raises the worry that the harm constraint and the dignity constraint are too narrowly construed because they focus on harms caused or dignities denied *by the rejecter* while ignoring the rejecter's moral complicity in harms caused or dignities denied *by others*. The third objection is that the asymmetry in the way the negotiative theory treats trans and cisgender persons is unfair.

1. The Moral Objection against the Analogies

One might object on moral grounds to the analogies I draw between Susan, on the one hand, and Sam and Andy, on the other. Sam is a murderer and Andy is a perjurer. What motivates the intuition that it is *pro tanto* permissible to reject their self-identifications as Muslim and patriotic, respectively, might be these wrongdoings. Susan, by virtue of being a trans woman, isn't doing anything morally wrong. Therefore, the analogy is flawed. Whereas it might be permissible to reject Sam's and Andy's self-identifications, it is not permissible to reject Susan's.

This objection is attractive to many people. However, its attractiveness is a chimera resulting from the normative assumptions of social liberalism to which such people subscribe. When people say, "Sam did something wrong but Susan didn't!" they are assuming a particular system of values that prohibits punitive killings of blasphemers. At the same time, they are also dismissive of the social conservative, religious, and feminist claims that a biological male transitioning causes or perpetuates harms or injustices.

Here, I am not appealing to the well-worn last refuge of the moral philosopher, moral relativism. Instead, I am pointing out two things. First, one cannot divorce questions of identity from questions of value. Second, one cannot appeal to the premise, "Susan didn't do anything wrong" without begging the question against Joe. After all, Joe believes that Susan might be living a lie, which is a form of self-harm, and a potential cause of harm to others. Or take Mary, a cisgender woman, who thinks that Susan is now unjustly benefiting from affirmative action or winning sports competitions by identifying as a woman without carrying the burdens of growing up and living as a biological female in a patriarchal society. Dismissing Joe's and Mary's moral accusations against Susan is only possible when we accept the moral framework that sees Susan as a woman just like Mary is.

One might, as Lauren Williams does, try to argue that what makes the case of Susan distinct from those of Sam and Andy is that the alleged wrongness of Susan's case is "intrinsically bound to" Susan's identity, whereas the alleged wrongness in Sam and Andy's cases isn't.²⁰ In other words, Susan's transitioning is a necessary consequence of Susan being a trans woman, whereas Sam's killing of cartoonists isn't a necessary consequence of Sam being a Muslim.

This version of the objection leads to more trouble for the objector than the original version. The most significant one is its reliance on a false claim. In neither case is the supposedly wrong action a necessary consequence of self-identification. This should come as no surprise; most of us have control over our actions most of the time. Very few actions are necessitated by beliefs, desires, and similar mental states. Susan could have, as many closeted trans women do, refrained from making any public changes to her appearance or behavior. That would have cleared her in the eyes of her detractors for the most part. Sam, similarly, could have refrained from acting on his beliefs. That, again, would have mostly cleared him. So there is no disanalogy.

Besides, even if there were a disanalogy born out of the morally contentious nature of my examples, it would be trivial to generate less offending examples involving self-identifying Randian objectivists who donate to Oxfam or self-identifying Catholics who deny Jesus' divinity. Therefore, the objection misses its mark either way.

2. The Objection from Moral Complicity

My claim is that *rejection with dignity* is morally permissible if it doesn't cause unjustifiable harm or constitute any morally impermissible violation of privacy. "But how can this be?" one might object. Susan is already deeply wronged by society's prejudice, discrimination, and bigotry. She can't expect to find work in most areas, can't hope to get elected for public office, and she might even be harassed and victimized every day. Given this pervasive social injustice, doesn't rejecting Susan's self-identification make Joe complicit in the harms as well as indignity that Susan has to suffer even if Joe doesn't cause any harm or indignity by actively participating in those acts of prejudice, discrimination, and bigotry?

As this objection recognizes, moral complicity is possible even in the absence of active participation in the wrongdoing. Suppose that Nathan sells a shotgun to Bob even though he suspects that Bob intends to use it to commit armed robbery. Then the fact that Nathan does not participate in the robbery would not absolve him of moral responsibility for it.²¹ This is true even if Nathan does not intend the robbery to take place. As long as Nathan knows that he will facilitate a morally impermissible act by

selling the weapon, he ought not to sell it even if he doesn't intend it to be used for that purpose.

The same could be said about Joe's rejection. Perhaps Joe doesn't actively participate in any acts aiming to harm Susan or undermine Susan's dignity, and doesn't even intend Susan to be harmed or be denied dignity. But he might nonetheless be complicit in the harms or indignity she has to suffer at the hands of others.

Joe's and Nathan's situations are morally different, however. One reason for Nathan's complicity in the robbery is that Nathan's selling of the weapon is counterfactually necessary for the robbery. We might be presupposing that "if the sale hadn't occurred, no crime would have taken place."²² But Joe's rejection is not counterfactually necessary for harming Susan or denying her dignity.

In the absence of counterfactual necessitation, taking partial ideological agreement as sufficient grounds for moral complicity would lead to absurd results: all anti-abortion folks would be complicit in abortion clinic bombings, all socialists would be complicit in the horrors of the Soviet gulags, and all Muslims would be complicit in the *Charlie Hebdo* attacks. Setting up counterfactual necessitation as a necessary condition for complicity is one way a theory of moral complicity could block such absurd results.²³

Still, common sense dictates that Joe shouldn't get off the hook merely by not *actively* participating. He might be obligated to do more than just stand idly by as Susan gets treated without dignity. Unless Joe clarifies his position and publicly states his opposition to denying Susan dignity, his public act of rejection can be seen as participation. By saying "Susan is not a real woman" in public, for instance, he might encourage the bigots who harass Susan, as they might find courage in what they perceive to be Joe's approval of their bigotry. In this regard, Joe should speak out against those who harm Susan or treat her with indignity, even as he rejects Susan's self-identification himself.

3. The Objection from Fairness

According to the negotiative theory of identity, Susan (or someone else on her behalf) has to find an adequate defense of self against all good faith defeaters she knows of. Otherwise, she doesn't get to earn the negotiative dignity that guarantees moral and social equality, and constrains the modes of permissible rejections. But Mary, a cisgender woman, faces no such requirement. This asymmetry in the way the theory treats cis- and transgender people indicates that the negotiative theory unfairly discriminates against Susan on the basis of her trans identity.

The objection sees any asymmetry in the epistemic duties between cis- and transgender women as an indication of surrendering too much

ground to “the dominant understanding of gender categories.”²⁴ Therefore, we should avoid characterizing

the inclusion of trans women in the category of “woman” [as] something in need of defense (unlike the taken-for-granted inclusion of non-trans women). Notably, this asymmetry, which places the womanhood of trans women in jeopardy, arises only if we assume the dominant understanding of “woman.” If we assume a resistant understanding of “woman,” no question arises since trans women are exemplars of womanhood.²⁵

It is true that the negotiative theory of identity often puts a heavier epistemic burden on people like Susan.²⁶ But this inconvenient and frustrating asymmetry is not unfair discrimination. After all, Sam and Andy face the same asymmetry when we compare them to Muslims who don’t kill French cartoonists and patriots who don’t perjure themselves.

Moreover, the asymmetry does not assume the dominant understanding of “woman,” “Muslim” or “patriot.” On the contrary, it stems from a basic fact about the epistemic and ethical framework in which negotiations of identity must take place—namely, that in order to negotiate any identity claim, we have to deal with real societies that are populated by agents who make sense of the world through comprehensive doctrines. Even if we disqualified the unreasonable comprehensive doctrines (after all, their defenders either negotiate in bad faith or don’t negotiate at all), there still would remain a large number of individuals who would take good faith objections against Susan’s self-identification as sufficient grounds to deny her the rights they grant to Mary with ease.

To secure Susan’s rights within this framework, the disbelief of the majority must be countered with defenses of self. Otherwise, self-identifications of trans people will continue to be met with acts designed to undermine their dignity. More important, we can’t occupy the moral high ground against indignity unless the associated epistemic burden is met. Here is why: comprehensive doctrines do not just tell people who is and who isn’t a woman, a Muslim, or a patriot. They—especially the dominant ones—also inform the actions of individuals and thereby help maintain public order and a semblance of a moral community without requiring them to justify their every choice. That’s why a comprehensive doctrine that is shared by the majority has a degree of moral and epistemic authoritativeness that the members of the society are entitled to take for granted. If your parents, teachers, and most peers believe certain things that you also believe, you have every right to expect the dissident to carry a heavier epistemic burden than the conformer. This is true for the vegetarian in a community of meat-eaters as it is true for the vegetarian in a community of vegans as it is true for the dissenting justices of the Supreme Court.

None of this indicates unfair discrimination. Wherever there is a majority, the minority has to earn the majority's respect by showing it that the members of the minority are not simply delusional. This basic fact gives moral and ethical authority to the majority view. That's why Susan—and those who agree with her self-identification—have the burden to mount an adequate defense of self to earn negotiative dignity that has currency outside the trans community. The bar, of course, should not be set unreasonably high, but this does not mean that none should be set.

Some proponents of FPA and pro-LGBT organizations such as GLAAD consciously abandon the painstaking and open-ended moral theorizing that the negotiative theory requires and attempt to replace it with a revolutionary ethic. Their solution to Susan's peril is to replace the dominant understanding of gender with the resistant subculture's understanding. This strategy could indeed achieve the desired goal if and when it succeeds. However, its proponents make it sound as if the dominant and the trans subculture's understanding of gender cannot coexist in a society in which trans people are treated with dignity and respect.

But there exists an alternative missed by this revolutionary ethic, supplied by the negotiative theory. It is not true that Susan and the people on her side can either "assume the dominant understanding of gender" or "reject, on philosophical grounds, the entire system of gender that dominant cultures circulate."²⁷ Such wholesale rejections and attempted revolutions are not necessary to protect trans people from unjustifiable harms, privacy violations or indignities. Indeed, if they fail, they might encourage a closing of the ranks among the members of the dominant culture and further marginalize Susan. What Susan should do is carry her epistemic burden. She should show that she is a dissenter who is neither out of her mind nor convinced that everyone else must be out of theirs.

I firmly believe that this epistemic burden has already been met by and for many trans people. That's why treating them without dignity is morally wrong, even when it doesn't harm them or violate their privacy. The burden might have also been met for the majority of trans people. In the latter case, negotiative dignity might be seen as a given. However, from the wrongness of those modes of rejection that deprive people of the dignified treatment they deserve we cannot infer the wrongness of all rejections in all modes and manners. Rejecting with dignity is morally permissible if it doesn't cause unjustifiable harms or violate privacy.

CONCLUDING REMARKS

I identified some problems with both epistemic and ethical FPA. Epistemic FPA attributes to the beliefs of the self-identifier an unrealistic

degree of reliability. Ethical FPA implies the existence of an obligation—an unqualified obligation not to reject—which is too strong to be plausible.

I offered a third way of explaining why a person has authority over her own identity and how far that authority reaches in terms of grounding her rights and obligating others. I called this third alternative the “negotiative theory of identity.” According to the negotiative theory, *rejection of a self-identification is permissible if and only if rejection doesn’t cause unjustifiable harm, doesn’t impermissibly violate privacy, and doesn’t deny negotiative dignity.*

The negotiative theory avoids the objections that the epistemic and ethical versions of FPA run into. It also gives a better explanation for why Joe might be doing something morally wrong by rejecting Susan’s self-identification. The explanation has to do with *the mode of Joe’s rejection*. If Joe’s rejection causes Susan unjustifiable harm, violates her privacy, or denies her negotiative dignity, Joe would be doing something morally wrong. Moreover, the authority the negotiative theory attributes to the self-identifier and the epistemic burden it demands apply to all cases of self-identification, involving gender and non-gender, with agents who can deploy an adequate defense of self.

NOTES

1. In his “Analyzing Gender,” *Southwest Philosophy Review* 17:1 (2000), 173–80, at 179, where he recognizes such reasons in Brandon’s story from *Boys Don’t Cry*, John Corvino distinguishes between the *conceptual* and *ethical* issues of gender identity:

There is also an *ethical* matter at hand . . . Perhaps we should call Brandon by whatever pronouns with which he felt comfortable. Given the great power of gender (in our society), there may be a strong case for respecting people’s self-conception in the matter of gender, notwithstanding the other important defining characteristics. While accuracy is paramount in conceptual analysis, ethics requires sensitivity as well.

2. For an articulation and defense of contextualizing gender pronouns, see Jennifer Mather Saul’s “Politically Significant Terms and the Philosophy of Language: Methodological Issues,” in *Out from the Shadows: Analytical Feminist Contributions to Traditional Philosophy*, edited by Sharon L. Crasnow and Anita M. Superson (Oxford: Oxford University Press, 2012), 195–216.

3. Talia Mae Bettcher, “Trans Identities and First-Person Authority,” in “*You’ve Changed*”: *Sex Reassignment and Personal Identity*, edited by Laurie Shrage (Oxford and New York: Oxford University Press, 2009), 98–120; Talia Mae Bettcher, “Trans Women and the Meaning of ‘Woman,’” in *The Philosophy of Sex: Contemporary Readings*, 6th ed., edited by Nicholas Power, Raja Halwani, and Alan Soble (Lanham, Md.: Rowman & Littlefield, 2013), 233–50.

4. Henceforth, I will use “FPA” to refer to the view that gender identity is settled by first-person authority. I will use “first-person authority” to refer not to the view or versions thereof but to first-person authority itself.

5. Donald Davidson, "First Person Authority," *Dialectica*, 38:2–3 (1984), 101–12.

6. Crispin Wright, "Self-Knowledge: The Wittgensteinian Legacy," *Royal Institute of Philosophy*, 43 (1998), 101–22; Krista Lawlor, "Elusive Reasons: A Problem for First-Person Authority," *Philosophical Psychology*, 16:4 (2003), 549–64; Talia Mae Bettcher, "Trans Identities and First-Person Authority."

7. Lawlor, "Elusive Reasons," 550.

8. Bettcher, "Trans Identities and First-Person Authority," 102. The origins of the authorship account can be traced to Charles Taylor, *Human Agency and Language: Philosophical Papers, Vol. 1* (Cambridge: Cambridge University Press, 1985); Richard Moran, "Interpretation Theory and the First-Person," *Philosophical Quarterly* 44:174 (1994), 154–73; Richard Moran, "Making Up Your Mind: Self-Interpretation and Self-Constitution," *Ratio* 1:2 (1988), 135–51; Richard Moran, "The Authority of Self-Consciousness," *Philosophical Topics* 26:1&2 (1999): 179–200; Richard Moran, *Authority and Estrangement: An Essay on Self-Knowledge* (Princeton, N.J.: Princeton University Press, 2001); Victoria McGeer, "Is 'Self-knowledge' An Empirical Problem? Renegotiating the Space of Philosophical Explanation," *Journal of Philosophy* 93:10 (1996), 483–515.

9. It would be uncharitable to formulate eccentric scenarios (such as a person believing that he is Napoléon Bonaparte) as counterexamples to the general logic of ethical FPA. As Bettcher notes in "Trans Identities and First-Person Authority," when we think about the scope of the first-person authority about which ethical FPA talks, we should focus on contexts where "words have relatively fixed meanings: Persons may not declare themselves teapots and thereby make it so. Nor may they, through sheer force of will, alter the meaning of words within determining cultural contexts. In advocating FPA over gender, I am discussing an already regulated cultural interaction rather than an 'anything goes' or 'because I say I am' doctrine" (98–99).

So, for an overriding authority and unqualified obligation not to reject to arise, the self-identification must be made in a linguistic community regulating the application of the terms picking out that identity.

10. This path is not open to some defenders of ethical FPA because they themselves rely on analogies between gender self-identifications and other public avowals. For instance, Bettcher uses examples of ordinary avowals (such as "I do not want to go home") from everyday life to explain why rejection of gender self-identification is wrong. So this commits them to an ethical principle that addresses all self-directed avowals, not just those concerning gender.

11. <http://www.cnn.com/videos/bestoftv/2013/08/22/lead-intv-mcnamara-friend-wikileaks-bradley-manning.cnn> (accessed January 23, 2017).

12. There are worries in the other direction too. Conservative critics of non-traditional parenting, for instance, argue that the *absence* of non-coercive gender policing during childhood could also lead to harm: this absence deprives the child of the tools and skills necessary to "fit in"—which might not seem valuable until you *don't* fit in. However, because there is no solid evidence for this, I will disregard them in this paper. If future evidence reveals otherwise, the negotiative theory should be amended to account for it.

13. Patricia McDougall, Shelley Hymel, Tracy Vaillancourt, and Louise Mercer, "The Consequences of Childhood Peer Rejection," in *Interpersonal Rejection*, edited by Mark R. Leary (Oxford and New York: Oxford University Press, 2001), 213–49.

14. See Bettcher, "Trans Identities and First-Person Authority" (108–9), for an eloquent defense of the view that all rejections are violations of prohibitive privacy. Bet-

tcher's considered view, however, is that her argument from privacy is not meant to show that rejections of gender self-identification are *always* violations of privacy but to expose and illustrate a particular form of oppression and harassment trans people generally suffer (personal communication).

15. See Jacob Hale, "Are Lesbians Women?" (*Hypatia* 11 [1996]: 46–57), where Hale argues that the concept of "gender" cannot be analyzed into a set of necessary and sufficient conditions but should be thought of in terms of family resemblance: that there are a number of factors that work in tandem to determine gender, some of which are external but not biological, such as having a "womanly" occupation or demeanor. Internal factors such as self-identification are also included in the gender-determining cluster of factors. Importantly, however, none of these factors are individually necessary or sufficient to be a woman. Therefore, a Haele externalist doesn't have to rely on genital status or history to reject a person's gender self-identification.

16. David Mencer, "Mohammad Ali was a 'Champion of Islam' Who Wanted to Distinguish the Religion from Isis, Says Muslim Leader," *The Guardian* (June 5, 2016). Retrieved from <http://www.independent.co.uk/news/people/muhammad-ali-dead-muslim-islam-champion-distinguish-religion-from-isis-a7065941.html> (accessed January 23, 2017).

17. The epistemic burden the negotiative theory associates with self-identification doesn't have to be carried alone. A colleague, a family member, a religious figure, a philosopher, or a social scientist can articulate defenses of self with or on behalf of Susan, depending on the case. Thus it is possible that the burden has already been met as far as most transgender individuals are concerned. If a defense of self-fitting Susan's self-identification has already been made public and widely circulated by others, Susan cannot be reasonably required to reiterate the defense herself on every occasion. So, it is likely that Susan's burden might have already been met and Joe already has an obligation to treat her with dignity with regard to her gender identity.

18. [On whether sex or gender (or both) is the basis of sexual orientation, see Robin Dembroff, "What Is Sexual Orientation?" and Kathleen Stock, "Sexual Orientation: What Is It?" (both in this volume)—eds.]

19. I thank several philosophers and students who raised this objection. As far as I am aware, its only formulation in print is by Lauren Williams, "Ozturk's Disanalogies," *Acta Cogitata* 7:8 (2019), 32–38.

20. Williams, "Ozturk's Disanalogies," 35.

21. Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge: Cambridge University Press, 2000), 168.

22. Kutz, *Complicity*, 169.

23. Although there are good reasons to think that counterfactual necessitation is required for complicity (Kutz, *Complicity*, 120, 130), this subtlety doesn't matter for our purposes because the counterfactual necessitation requirement is waived *only when there is participation*.

24. Bettcher, "Trans Women and the Meaning of 'Woman,'" 245.

25. Bettcher, "Trans Women and the Meaning of 'Woman,'" 245.

26. But not always. For example, a cisgender woman might face a greater number of attempted defeaters if her behavior and appearance are sufficiently at odds with the society's standards and expectations. See Hale's "Are Lesbians Women?"

27. Bettcher, "Trans Women and the Meaning of 'Woman,'" 245 and 243, respectively.