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Article

Identity Documents and Gender Identity: Towards Inclusive Practices

Abstract: *In a world increasingly focused on inclusivity, addressing the challenges faced by gender non-conforming and transgender individuals is crucial. Identity documents are meant to represent us, but the current approaches of administrative systems in registering gender do not reflect the existing diverse identities. This not only has policy and legal implications but it also clashes with modern conceptions of human rights and inherent dignity. This paper explores approaches to more inclusive gender identification practices for IDs. Drawing on the framework provided by Wipfler (2016), it examines three strategies: 1) definitional expansion; 2) categorical expansion, and 3) abolition.*

The definitional expansion approach would expand the understanding of what a man and a woman are, therefore encompassing a wider population. While it would offer more legal protection and affirmation for transgender or gender non-conforming individuals, it reinforces the presumption that registering gender is a necessity and it would still marginalize non-binary people.

Categorical expansion refers to adding other sex categories beyond the traditional binary. Some societies have already started implementing this step. Although advantageous, it continues to expect individuals to conform to pre-determined categories that they may not identify with.

Abolition advocates for the complete elimination of sex categories in identification, aiming to dismantle discriminatory practices. While this would

promote inclusivity, a major drawback is the inability to address existing sex-based discrimination. Thus, this is a promising approach in the long-term, but idealistic in the short-term due to current societal dynamics. A more pragmatic approach combines categorical and definitional expansions of gender.

Keywords: *abolition, expansion, gender, identity documents.*

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1. Introduction

The COVID-19 pandemic has significantly increased the number of times that people must show their identity documents (IDs) – reinforcing the role of IDs in participating in society. This has adversely af-

affected individuals with identity documents not aligned with their gender identity (Holzer, 2022). As Braunschweig (2020: 77) phrased it, “the traditional norms of gender identity are becoming more and more inadequate to represent and recognise the flourishing scope of gender expressions and identifications”. She argues that biological sex is a social and medical construction and thus, the division between sex and gender is irrelevant.

The binary classification of gender is problematic, even legitimising reassignment surgeries on newborns who are diagnosed with an intersex condition – despite difficult mental and physical consequences (O’Connor et al., 2022). This ‘intersex condition’ simply represents a variation in the sexual development of a child that strays from the expected course – a clear sign of the social construction of sex and gender. Butler (2004) refers to these surgeries as using the ‘knife of the norm’. Moreover, numerous difficulties arise within institutions, administrations and social spaces for those who do not fit within traditional gender categories (Braunschweig, 2020). Zooming in on a particular issue, Wipfler (2016) discusses the harms arising from sex designations on IDs. She identifies three ways to change gender labelling and registering practices – ‘definitional expansion’, ‘categorical expansion’ and ‘abolition’. This essay will tackle these, analysing their effects on LGBTIQ* individuals and the possibilities to improve the lives of transgender people.

2. Definitional expansion

According to Wipfler (2016), one method of altering gender labelling and registration practices is through the expansion of gender definitions. This approach revises the criteria through which sex is determined, encompassing more people into existing categories. Here, gender identity becomes the primary determinant of sex categorization.

Advantages. Expanding gender identity beyond biological aspects benefits transgender and intersex people who adhere to binary gender conceptions. IDs that accurately reflect one’s gender identity offer protection from the dangers arising from not adhering to traditional conceptions of gender. Thus, a transgender woman who hasn’t undergone reassignment surgery can still legally be considered a woman. The United States has taken a step in this direction, no longer requiring surgery for a legal gender change (Karasic, 2016). Consequently, less privileged groups that cannot afford surgery are also protected from unwillingly disclosing their gender history (because of an inaccurate ID). This is crucial in “avoiding harassment or violence, being turned away for public assistance, or being placed in dangerous sex-segregated environments in detention facilities and/or homeless shelters” (Wipfler, 2016, p.540). This threat of harassment, abuse, and violence increases during disasters, with sexually- and gender-diverse minorities being excluded due to the heteronormative assumptions that exist within disaster response (Rushton et al., 2019). By expanding the definitions of gender, more people would be protected.

The expanded definition can also be a source of gender-affirmation, helping reduce gender dysphoria. This phenomenon occurs when there is a mismatch between the sex assigned at birth and the gender with which one identifies – creating significant distress (Boston Children’s Hospital, 2023).

Consider Charlene Arcila, a transgender woman in the early stages of her transition. In 2006, she faced discrimination when attempting to use a public transport pass. At the time, people could use monthly public transport passes on the bus, provided that their age and gen-

der were accurately denoted. Ms. Arcila, however, was denied entry by the driver, who claimed that she couldn't use a pass with an 'F' marker since she was not a woman. Nevertheless, the problem persisted when she used a pass with an 'M' gender marker. This illustrates the restrictive nature of the sex binary (Davis, 2014). Embracing an expanded understanding of gender enables gender non-conforming people to use their ID as proof when denied sex-specific services.

Additionally, the expansion of what it means to be a woman or a man would also benefit those within the gender/sex binary. This is because of the social norms found in the current understanding of gender, which shape the lives of everyone and harm those women and men who violate gender roles (Morgenroth et al., 2020).

Disadvantages. While an improvement from past practices for LGBT+ individuals, 'definitional expansionism' poses multiple risks. Firstly, it reinforces the presumed necessity of gender labelling and registration. Nevertheless, technological advancements have introduced more accurate methods of confirming someone's identity than gender. The use of biometrics can be used to identify persons through fingerprints, facial recognition or retina scans. Even the shape of one's ear or the veins in one's hand are unique. Biometrics are already being incorporated throughout the world – U.S. e-passports contain a digital photograph of the holder's face, fingerprints or iris that prevents its chip from being unlawfully read (Kaspersky, 2020). Thus, adhering to the practice of labelling and registering gender is no longer unnecessary.

Secondly, 'definitional expansion' fortifies the assumption that the government should control and monitor gender – as opposed to gender being self-defined, self-controlled, and announced only willingly. Lastly, the essentialist logic of the 'definitional expansion' approach continues to marginalise those who are non-binary or gender non-conforming. Countries that only recognize two genders will exclude anyone not belonging to these categories (Wipfler, 2016). The term 'gender non-conforming' already points to the exclusionary methods of gender and its socially constructed nature.

3. Categorical expansion

'Categorical expansion' refers to the increase in the amount of available sex categories.

The long-standing binarity of gender registration in administrative documents and civil status has come into question, with several governments enabling their citizens to select a third gender box ('x'), such as Germany, Australia and India (The Economist, 2022).

Advantages. While sharing benefits with the 'definitional expansion' approach, 'categorical expansion' offers additional advantages, as outlined below.

Many transgender people find themselves outside of the gender binary. A recent study revealed that 25 percent of respondents chose not to undergo 'legal gender recognition' due to the absence of a preferred legal gender marker (European Commission & Directorate-General for Justice and Consumers, 2020). Recognizing gender diversity through the addition of more categories ensures broader societal inclusion.

'Categorical expansion' can have real impacts in sex-segregated spaces like prisons – particularly concerning gender identification, housing decisions and searching arrangements. The binary separation and hyper-gendered nature of prisons make transgender inmates more susceptible to violence (Patrickson, 2020), depression, PTSD and suicide attempts than cis-gendered people (Marchi et al., 2023). The legal recognition of a third gender could foster safety

and respect for one's identity. It could even prompt the re-evaluation of prisons' policies to take into account one's self-identified gender – although this would come with administrative challenges.

Disadvantages. Many countries recognizing a third gender only accept 'male', 'female' or 'other sex/diverse' as categories. This exhibits a continued primacy of physical appearance over self-definition (Wipfler, 2016). In fact, in countries like Germany, the third gender category is only available to intersex people who can provide a medical certificate attesting to a "variation in sex development" (Federal Anti-Discrimination Agency, 2021, para.5). Thus, the amendment of one's civil status to 'diverse' is entirely dependent on physical sex characteristics – excluding non-binary or transgender people.

Expanding ID options won't resolve the dangers of the gender binary; it may solely create another biological gender without addressing the stigma directed towards non-conforming people. As Braunschweig (2020, p.83) notes, "gender non-conforming individuals might become legally legible, but they will still be oppressed".

Concurrently, marginalised social groups often advocate for equality by emphasising their identity category that historically led to their exclusion. They redefine the importance of this category but also perpetuate the social distinctions they want to eliminate. Affirmative action exemplifies how such efforts aim to address historical inequalities while sparking debates about the possible consequences of reinforcing identity-based differences. This paradox is reproduced in the approach of adding a new gender (Braunschweig, 2020). Gender non-conforming people receive more rights, but the discriminatory effects of the gender binary are overlooked.

According to Wipfler (2016), the 'categorical expansion' approach creates tension within administrative systems due to them attempting to recognize the diversity of gender while preserving the assumptions that sex registration is necessary. Similar to the 'definitional expansion' approach, it fails to move beyond the primacy of gender classification.

4. Abolition

Faced with the flaws of the previous two approaches, another approach to eliminate discriminatory binary registration arises – its abolition. This acknowledges that any categorization of sex will exclude those who don't conform to a certain recognized category and thus, argues in favour of the elimination of sex categories. Here, a link is drawn to Patchen Markell, who wrote about the importance of dismantling the existing privilege before working to include those excluded from its protection (Braunschweig, 2020). In other words, it is more efficient to eradicate gender registration before fighting to include all the previously excluded groups of people that have severely suffered at the hands of this system.

Sex-segregated practice. A place where one is daily confronted with questions of gender diversity is a public toilet. While unisex bathrooms are becoming more common, they still give rise to heated debates. For example, in Germany, the Association of German Engineers included a description of the design of gender non-conforming toilets in their guidelines, which led to complaints such as: "Women and girls need safe spaces" (VDI, 2022; Rodriguez-Sanchez, 2023).

Uni-sex toilets benefit not only transgender people but also those outside the gender binary. Thus, gender equality and discrimination are curtailed as transgender, intersex and non-bi-

nary people no longer need to choose a gendered bathroom where they may meet exclusionary reactions. With everyone using the same toilets, a more accepting environment would be fostered, where the stigma around gender non-conforming people is reduced.

Furthermore, unisex toilets bring other advantages to cisgender people, such as saving space; cleaner facilities; smaller queues and easier access for parents with children (Rodriguez-Sanchez, 2023).

Advantages. The abolition of gender would further the rights of transgender and gender non-conforming people, fostering their inclusion into society and decreasing the stigma against them. The aforementioned dangers arising from predefined gender classifications would be mitigated, as individuals would no longer need to adhere to traditional gender categories.

Moreover, this approach acknowledges the self-defined and self-controlled nature of gender, no longer focusing on its primacy in the public world.

The abolition of gender registration can be considered in terms of Fraser's (1995) 'transformative remedies' to injustice, which help resolve the dangers of normative gender regulation. These aim to restructure the underlying generative framework of inequitable outcomes and to deconstruct existing group identities and distinctions; to destabilise all fixed gender identities. According to Braunschweig (2020), adding a third gender option does not disturb these underlying frameworks but the abolition of gender labelling would facilitate this.

Disadvantages. As previously mentioned, accurate gender labelling protects transgender people from dangerous or exclusionary circumstances. The abolition of such a practice could threaten anti-discrimination laws, hindering a 'finder of fact' from identifying instances of sex-based discrimination (Wipfler, 2016).

Another risk arising from the abolition of gender labelling is gender-blind institutions where inequalities are concealed rather than addressed (Braunschweig, 2020). An example originates in the medical field. The quality of care for women is lower than for men due to women's historical exclusion from medical trials and the erroneous assumption that pathologies and treatments follow the same course as for men. It was recently discovered that pathologies manifest differently in women – not only in their symptomatology but also in incidence (Mastroianni et al., 1994; Mirin, 2020). For example, women are more likely to experience higher mortality rates due to heart attacks than men because they portray different symptoms, which are under-researched and more likely to be missed. Even doctors tend to dismiss the significance of their symptoms (Quinn, 2008, Clarke, 2008). Thus, when in the emergency room, doctors may not know what symptoms to look for without a gender marker on one's ID. A counterargument is that doctors would then need to scan for any and all symptoms, possibly avoiding pre-conceived bias. However, this could consume crucial time. Moreover, the division of participants in medical trials into different genders is key for conducting a comprehensive study that analyses the likely effects of medicine on different groups of people. Wipfler (2016) also identified this issue, noting the added difficulty for governments to redress gendered public health disparities in the context of the abolition of gender registration.

A possible solution is offered by Braunschweig (2020), who discusses abolition in terms of gender-blindness versus non-assignation. However, this falls outside the scope of this paper.

Lastly, it is important to note that this approach would meet the most resistance from the public, with a recent research paper finding that such policies "were seen as particularly unfair among people high in gender identification" (Morgenroth et al., 2020: 731).

5. Conclusion

Abolition, but also the expansion of the gender binary, brings advantages and disadvantages. Scholars like Wipfler (2016) and Braunschweig (2020) argue in favour of abolition; however, it is clear that our society is not prepared for this. While any categorization of sex will exclude those who do not conform to a certain recognized category, the dangers of abolishing gender registration currently outweigh its benefits. Sex designations are still necessary and ensure a more equitable situation for those marginalised (remember the medical field example).

Until the situations of all genders have become more equitable, the expansion of the gender binary is a more appropriate solution to the harms of gender labelling and registration. A combination of definitional and categorical expansions is necessary, together with the opportunity to self-assign one's gender. This would facilitate, for example, the protection of transgender people (especially those without sex reassignment surgery), while curtailing dangers like the marginalisation of non-binary people. Lastly, it is crucial to understand the opposition and resistance that may arise with each of the three approaches.

Conflicts of interest

The author declares no conflict of interest.

About the author

Elisabeth-Gabrielle Șatalan is a Master's student at the Global Campus of Human Rights, in Venice, Italy. She is currently following the European Masters Programme in Human Rights and Democratisation. After having obtained an Honors Bachelor of Science in Politics, Psychology, Law and Economics – with a major in Politics – at the University of Amsterdam, Ms. Șatalan received a research scholarship at the *Accademia di Romania in Roma*, Italy. There, she studied the gaps and gender inequalities in medical knowledge.

Born in 2000 in Bucharest, Romania, Ms. Șatalan has also interned at the Romanian Presidential Administration where she worked for the Department of Education and Research. Her current areas of interest are human rights, especially gender equality; communist Romania; and the politics of authoritarianism.

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