

# The Social Construction of Human Kinds

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*Social construction theorists face a certain challenge to the effect that they confuse the epistemic and the metaphysical: surely our conceptions of something are influenced by social practices, but that doesn't show that the nature of the thing in question is so influenced. In this paper I take up this challenge and offer a general framework to support the claim that a human kind is socially constructed, when this is understood as a metaphysical claim and as a part of a social constructionist debunking project. I give reasons for thinking that a conferralist framework is better equipped to capture the social constructionist intuition than rival accounts of social properties, such as a constitution account and a response-dependence account, and that this framework helps to diagnose what is at stake in the debate between the social constructionists and their opponents. The conferralist framework offered here should be welcomed by social constructionists looking for firm foundations for their claims, and for anyone else interested in the debate over the social construction of human kinds.*

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## I. INTRODUCTION

When we philosophers talk to colleagues in other humanities disciplines or the social sciences, we frequently encounter claims to the effect that a particular human kind or category of person is socially constructed. A large number of philosophers dismiss such claims as resting on a confusion between the epistemic and the metaphysical: even though our conceptions of the category in question are shaped by social practices, that does not show that the category itself is (cf. Hacking 1999, 28–30; Boghossian 2006). And it is hinted that surely no one would want to put forth the metaphysical claim. Why? Because it is clearly false? Because it is confused?

This is the challenge I take up in this paper. The aim is to show that the metaphysical claim is neither confused nor clearly false. While it is true that our friends in other disciplines have not been attending to the metaphysical foundations of their projects—their focus has, after all, been on particular categories or kinds, and the particularities of their construction—they are not to be faulted for that. For is it not our jobs as philosophers to offer such foundations? Regrettably, it is only in recent

years that philosophers have begun turning to that task, and much work is yet to be done. It is in this spirit that I offer here a metaphysical framework that can support a certain kind of social constructionist project, one that Sally Haslanger has called a “debunking” project (Haslanger 2003). Although the motivation for social constructionism varies considerably, and theorists vary in where they place their emphasis, the metaphysical picture offered here can support any debunking project (feminist, antiracist, anti-ableist, and so on) where what is claimed to be constructed is a human kind or category.<sup>1</sup>

## II. SOCIAL CONSTRUCTION

The debate over the social construction of human kinds evokes earlier debates in the history of philosophy over the dependency of objects, properties, and kinds on human thought and practices: realism/conceptualism/nominalism on the one hand, and realism/idealism on the other. Allowing ourselves the broad strokes, we can say that the realism/nominalism debate concerns existence, and the realism/idealism debate the nature of that which exists,<sup>2</sup> although these issues overlap in various ways. While the question of the metaphysical status of human kinds concerns the reality of these kinds, a host of complicated issues gets brought together under that hat. Recent work on the metaphysics of social kinds has started to pull apart the various issues involved, but, with the notable exception of Ian Hacking’s work, this work has tended to focus on the reality of a particular category, such as race or gender, with no obvious upshot for the metaphysics of social construction generally speaking, or of human kinds in general.<sup>3</sup> It is, however, my explicit aim here to offer a general metaphysical framework that can support social constructionist claims.

The notable exception in the literature on human kinds is Hacking’s work. Hacking has in his numerous articles and books offered a metaphysics of human kinds in general, and not just an account of a particular category or categories. The metaphysics he offers, dynamic nominalism about human kinds, is focused on existential commitment, and other philosophers have since been inspired by this framework and have offered a dynamic nominalism of a particular kind or category (for example, Sundstrom 2002).

Hacking’s dynamic nominalism captures very well certain social constructionist aims, notably the commitment to the noninevitability of the kind in question, to historicism, and to the respect for alterity; this is in line with his intention to articulate a metaphysics for new historicism in history and literary theory (Hacking 1990). There are, however, other aspects of constructionism that dynamic nominalism, by itself, seems not to address.<sup>4</sup> In particular, an important aspect of the debate over the social construction of a particular kind or category is that it is a deeply political debate where it appears that its normative upshot is to follow from the metaphysical status of the phenomenon. It seems, then, that a metaphysics of social construction should explain these normative implications, or show them to be in error. It is with

this as a guide that I turn to the other side of the question of the reality of human kinds, the one that is not focused on existential commitment, but on the nature of the kind in question. The framework offered here is thus not in tension with Hacking's dynamic nominalism, but is designed with different constraints in mind.

What are these constraints? As Sally Haslanger has discussed (Haslanger 2003), an important social constructionist aim is to debunk widely held beliefs that function to justify oppressive arrangements, institutions, or practices. The beliefs in question concern the nature of the kinds or categories underlying these phenomena and are thus metaphysical beliefs; the debunking work consists in exposing the beast for what it is. A paradigm case of such a debunking project is to reveal a kind or category as a social category when it is widely held to be a natural one. The consequences of this are that the constraints and enablements that come with membership in the kind are then revealed to need justification; these constraints and enablements are shown not to be the result of some natural order of things, beyond the demand for justification.

Why would such exposure of the nature of a kind or category serve the political aims of fighting oppression? It does so by revealing the categorization and related arrangements as needing justification, when it had appeared that they simply were the product of nature, where a demand for justification was inappropriate. It is here that the normative upshot of the battles over social construction becomes quite clear. Showing the normative nature of a particular kind is a first step in exposing the values expressed in the arrangements, institutions, and practices involving the kind. It is these values that need to be examined critically.

Not all debunking projects involve revealing a kind to be social that is widely believed to be natural. Sometimes a kind is widely believed to be social, so that is not the erroneous belief in question. Instead, the widely held but erroneous beliefs concern the nature of that social kind and the justification of the constraints and enablements that come with membership in the kind. So, although some social constructionist projects involve showing a category or kind that is believed to be normatively inert to be in fact infused with value that is in need of justification, other projects don't have that feature, but rather concern the beliefs about the particular normativity in question.<sup>5</sup>

For this reason, I choose to describe a social constructionist debunking project in a slightly different way from the characterization above and say that the aim of the debunking theorist is to reveal which property is operative in a context. Understood in this way, the widely held but erroneous beliefs concern which property is operative in a context, and the debunking consists in revealing that some other property is really operative in the context. This characterization departs in some ways from Haslanger's own, but is, I believe, in the same spirit.<sup>6</sup> I will return to this characterization of a debunking project once I have offered a framework that I believe supports any social constructionist debunking project. It consists in a general method for revealing the nature of kinds that can support the claim that the kind in question is socially constructed. Let us now turn to the framework.

## III. A FRAMEWORK FOR THE DEBATE

The key idea is that of a conferred property: a property that something has in virtue of some attitude, action, or state of subjects, or group of subjects.<sup>7</sup> For an intuitive grasp of this idea, recall the disagreement between Socrates and Euthyphro (Plato 1578, 10a): is the action pious because it is loved by the gods or do the gods love the action because it is pious?

Initially, Euthyphro holds what I call a “conferralism” about the property of being pious. He thinks that the gods’ love confers the property of being pious on the action. Socrates, of course, insists that being pious is independent of the gods and their affections; they merely detect a property the action already has and upon detecting it come to love it.

This disagreement between Euthyphro and Socrates is a disagreement about the metaphysical status of the property of being pious: What kind of property is it? How independent is the property from the attitudes and practices of the gods? How real is it?

The debate over the social construction of human kinds mirrors exactly the debate between Euthyphro and Socrates: What kind of property is the property of being a woman or being a homosexual, to take but two examples? How independent are these properties from human thoughts, attitudes, and practices? How natural or real are they? The Euthyphronic position is that they are not naturally given or real, but rather are dependent in some way on human thoughts, attitudes, and practices. The social constructionist is, I believe, a modern-day Euthyphro, and the difference among the many theorists consists in different accounts of the details of the conferral: who is doing the honors, under what conditions, and what, if anything, is being tracked.

I hope the intuitive idea of a conferred property is clear. Let us look at some more examples. Consider the property of being popular. We cannot be popular in isolation; in fact, our popularity is entirely dependent on other people’s harboring certain feelings toward us. Or, as I would put it: other people’s harboring certain feelings toward us confers the property of being popular on us.

Some properties, like being popular, are obviously conferred; others are plausibly conferred, but bear a close relationship to some nonconferred properties with which they can easily become confused. Consider, for instance, some baseball properties, such as a pitch’s being a strike. There is a physical property, which we can allow is nonconferred, of having traveled some trajectory *T* from the fingers of the pitcher to the glove of the catcher. We may think that whether a pitch is a strike or a ball is not a matter of what that trajectory *T* is, but rather of what the umpire judges that trajectory to be. If we do that, then we say that the umpire is attempting to track what the physical property *T* is, but that it is his judgment as to what *T* is that makes something a ball or a strike. We then hold that the properties of being a ball or a strike are conferred by his judgment.

There can be reasonable disagreement about the baseball case, but if you are a conferralist about the baseball properties of being a ball or a strike, then this is what the account would look like. It has five aspects:

*Conferred property*—what property is conferred: being a strike, being a ball

*Who*—who the subject is: the baseball umpire

*What*—what attitude, state, or action of the subjects matter: the umpire's judgment

*When*—under what conditions the conferral takes place: in the context of a baseball game

*Grounding property*—what the subject is attempting to track (consciously or not), if anything: the physical trajectory of the ball<sup>8</sup>

On a conferralist account of the property of being a strike, there is not a fact of the matter as to whether the pitch is a strike or not independent of the judgment of the umpire, but rather it is the umpire's judgment as to the trajectory of the ball that confers on the pitch the property of being a strike. There is, of course, a physical fact about the trajectory of the ball, but that physical fact does not determine the baseball fact. It is the umpire's judgment that confers on the pitch the baseball property of being a strike and in so doing creates the new baseball fact that the pitch is a strike.

#### COMPARISON WITH CONSTITUTION AND RESPONSE-DEPENDENCE ACCOUNTS

I said that there was room for disagreement in the baseball case; this and some other features of the case make it relevant for our purposes here.

Although it is not very plausible to hold that the property of being a strike exists outside the game of baseball, one could hold that the ball's traveling a certain trajectory (given certain conditions) simply constituted its being a strike. Readers familiar with John Searle's work will recognize this view (x counts as y in c) (Searle 1997). It is worth comparing the conferralist account I am offering here to what I label a "constitution" account of a property as well as a response-dependence account, since these closely related, yet different, accounts of a property might seem reasonable accounts of social properties.

Let's stick to baseball and the property of being a strike for the time being to get a sharp contrast among those accounts. On a constitution account of the property of being a strike, the formula is thus:

the ball's traveling trajectory T in context C counts as a strike

What I find unhappy about this way of thinking about it is that in this case the umpire's job is purely epistemic: he is supposed to discern what the baseball fact already is. This is unhappy for two reasons:

First: why do baseball players and their fans accept such an imperfect method for figuring out what the baseball fact already is—why has baseball not gone the way of American football, where the tape plays an all-important role?<sup>9</sup>

Second: The judgment of the umpire plays a fundamental role in the game of baseball, including how the game progresses as well as the explanations people give for what happens on the field. It seems odd to say that there are these baseball facts out there that play no role in the game, namely those baseball facts not detected by the umpire.

Better, I think, is to say that there are physical properties and facts about the placement and trajectories of balls, but the judgment as to what those physical properties and facts are confer baseball properties and help to create new and interesting baseball facts. For the game of baseball, what counts is the judgment of the umpire as to what the physical facts are, not the actual physical facts.

Whether you agree with me about baseball properties is not all-important. What matters is that the difference between these two accounts of property be clear. It would make me even happier if you were to agree that there might be cases that are analogous to the conferralist account of baseball properties: namely, where there is a physical (or some other nonconferred property) in the vicinity that is being tracked in the conferral, even though the property that matters is the conferred property itself.

Let us also compare the conferralist account to a response-dependence account, where the relationship between the physical property and the baseball property is a causal one:

the pitch is a strike iff the ball's trajectory induces response R in  
umpire U in context C,

where the response in question is something like a judgment that the ball's placement is within the strike zone.

On one standard interpretation of a response-dependence account of a property, there is something in the object that induces or causes the response in question (see, for example, Pettit 1991). On a conferral account, however, whatever there is in the object plays no causal role, only an epistemic one. There can be something in the object that the subject is tracking, but it plays no causal role.

Again, it matters little in this context which account of being a strike we opt for. We may favor a constitution account of baseball properties and a response-dependence account of colors, for example. The question is what we want to say about various social properties. So, enough about baseball. Let's get back to human kinds.

My suggestion is that the claim that a certain human kind is socially constructed can be spelled out in a helpful way as the claim that the kind is a conferred kind, where what is meant by this is that the property all the members of the kind share is a conferred property.

To evaluate a particular conferralist account of a property, though, we have to know the details. In fact, it is in the details that the real interest in a particular conferralist account lies. Five components need to be specified:

*Conferred property*: what property is conferred, for example, being pious, being hip, being a strike

*Who*: who the subjects are, for example, the Greek gods or the baseball umpire, the in-group, “society”

*What*: what attitude, state, or action of the subjects matter, for example, the gods’ love or the umpire’s judgment. It can be a particular speech act, a particular occurring mental state, or an underlying state best characterized by a disposition. It can be a one-time conferral or an iterative phenomenon stretching over a long period of time, which is perhaps more common

*When*: under what conditions the conferral takes place, for example, normal, ideal, or some specified conditions or context

*Grounding property*: what the subjects are attempting to track (consciously or not), if anything

The grounding property being tracked can play a very important role and often becomes confused with the conferred property. We can say that the grounding property “grounds” the conferral, although this relation is merely epistemic.

#### IV. CONFERRALISM ABOUT PARTICULAR PROPERTIES: EXAMPLES OF SEX AND GENDER

To see how the conferralist framework can support a social constructionist debunking project, let us look at an application of it to gender and to sex.<sup>10</sup>

##### THE BEAUVOIREAN CONFERRALIST ACCOUNT OF GENDER

The sex/gender distinction has its origin in Simone de Beauvoir’s *The Second Sex*, where she wrote, “one is not born a woman, but rather becomes one” (Beauvoir 1949). Although it is controversial whether she herself held the view attributed to her, the standard interpretation of her is that she held that sex is biologically given, whereas gender is the social significance of sex.

I maintain that various constructionist accounts of gender, including the Beauvoiran one, can be brought under the hat of conferralism. Most would probably agree that gender is conferred in some way, but they will disagree on who does the conferring, under what conditions the conferral takes place, and what, if anything, the conferral is supposed to track: sex assignment, role in biological reproduction, sexual roles, self-presentation, to name a few candidates.

Consider the Beauvoirean view. On this view, sex is biologically given, and gender is the social meaning of it. On a plausible interpretation of this view, sex is a nonconferred biological property, but gender is conferred by society on people taken to be of a certain sex. Gender assignment, on this view, is supposed to track sex assignment, which is assumed to be biologically given, but gender properties are social properties and with them come privileges and burdens. The Beauvoirean view is, however, not the only kind of conferralist view of gender one could offer. Let us look at another that is highly context-dependent.

#### A CONTEXT-DEPENDENT CONFERRALIST ACCOUNT OF GENDER

In many gender contexts there is a persistent assumption in the background that in tracking one of the grounding properties—that is, sex assignment, role in biological reproduction, sexual role, role in societal organization, and so on—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 an erroneous assumption shows the importance of keeping these various tracked properties apart, not only for a better theoretical understanding, but for practical reasons. In fact, a variety of feminist and queer theoretical work and activism has been aimed at challenging this assumption: these categories are not coextensive, and tracking one of these properties need not help us track the others.

It is for this reason that my own suggestion as to how gender is conferred makes gender be highly context-dependent, and the grounding 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. This is because different properties are being tracked in different contexts: in some contexts it is their perceived role in biological reproduction, others it is their role in societal organization of various kinds, sexual engagement, presentation of the body, role in the preparation of food at family gatherings, and so on. Here is the general schema:

*Conferred property*: being of gender G, for example, a woman, man, trans

*Who*: the subject S in the particular context C

*What*: the perception of the subject S that the person have the grounding property P

*When*: in some particular context C

*Grounding property*: the grounding property P



The conferral of gender, unlike a baseball property, is not a one-time act, but rather involves a standing attitude, namely the perception by the subjects in the context that the person have the relevant grounding property. This perception can be in error and the person may in fact not have the property. What matters is simply the perception.

But the gender case is dissimilar from the baseball case in another crucial way. In the baseball case, an umpire has been granted the authority to make the call. If the gender case worked in the same way, then whenever we entered a new context, say showed up for a party, we would have a gender conferred upon us by some authorized subject in the context. But other partygoers don't seem to have been given the authority to confer a gender on us. Aren't they just like us, at a party to have a good time? Do I really want to say that other partygoers confer a gender on us?<sup>11</sup>

Yes, I do want to say that people at parties confer gender on other partygoers, but the situation is very different from the baseball case in a number of important ways. First, the other partygoers do not have any explicit authority to confer gender. Second, the conferral of gender involves a complicated negotiation over what rules apply in the context and who should play what role.

Let's linger with the question of the lack of authority. In the context of talking about how slurs (racial, homophobic, and so on) get their force, Judith Butler talks about individual agents "citing" and "echoing" the authority of laws or other institutions, or the history of such laws or of discrimination and mistreatment (Butler 1993). On Butler's account of speech acts it isn't the officials themselves who have the authority to confer anything on anyone, but rather their citing the authority of the law or institutions that does the work. She thinks that the force of a slur sometimes comes from citing the authority of laws and the like, but that sometimes it comes from citing the history of a systematic injustice that may not have been encoded in law or explicitly embodied in institutions. The conferral of a property is similarly situated with regard to the authority of the subjects doing the conferring. Some properties are conferred by subjects in authority, some by subjects citing authority. And then some properties are conferred by citing power structures that lack normative support. Some of those structures are backed by habit or inertia, others by the threat of violence.

The suggestion then is that the other partygoers cite social structures that exist outside the context of the particular party, namely those that have been operating in other contexts in which the partygoers have been. I think of them as gender maps that each person brings to the party. These gender maps come with gender roles that have constraints and enablements attached to them. What gets negotiated at the party is which gender map should operate at the party, and who should play what gender role.<sup>12</sup> What this highly contextualized account of gender brings out is the systematic and structural aspect of gender (via the citing of the external gender maps), yet it reveals how the enforcers of this structure are always individual agents in contexts. The assignment of gender roles in a context draws its force from how broadly and widely the gender maps are operating, even though

resistance and negotiation can and does happen in many contexts. But as Charlotte Witt has argued, individuals are responsive to, and evaluated with respect to, social norms irrespective of their endorsing those norms (Witt 2011); this point is crucial. The subjects in the context need not endorse the gender map that is operative in the context in order to be subject to it.

On this view there may be certain contexts such that to count as of a certain gender one need not only be perceived to have some central grounding property, such as perceived role in biological reproduction, but also not be seen to trouble the assumption that one also have some other properties traditionally associated with that gender (for example, societal role, gender-appropriate presentation, sexual orientation). There can thus be contexts where there may be people who do not count as being of any of the available genders.<sup>13</sup> Similarly, being transgender will count as a separate gender in some contexts; in others, it will simply raise trouble for the gendering structure of that context and disrupt the expectations of the coextension of the associated grounding properties. In certain contexts, being perceived as being of a certain sex may be an essential grounding property; in other contexts, it may be highly irrelevant.

Let us now turn to the question how an account like the one presented above is a social constructionist account of gender that is offered as part of a debunking project. The first thing to recognize is that gender is analyzed as a conferred property where another property is being tracked. The debunking move consists in pointing out that being of a certain gender is not to have the grounding property in question, but rather to have a conferred status, even though in the conferral of this status the grounding property is being tracked. It is this feature of the account that lies at the heart of a debunking social constructionist project, and it is for this reason that I think that the above account of gender is not only representative of a social constructionist account, but shows in action the framework that any debunking social constructionist can make use of. To bring out more aspects of the framework let us look at a conferralist account of sex.

#### CONFERRALISM ABOUT SEX

While it is widely held that only gender is socially constructed, but sex biologically given, many may be influenced by Judith Butler to think that sex itself is a product of social forces. Although Butler herself may not like all aspects of the framework offered here and perhaps not the “constructionist” label, the main claim—that sex is the product of social forces—can be given support by the conferralist framework.<sup>14</sup>

The conferralist framework can help make sense of how sex could be the product of social forces, without rejecting that there could be some constraints having their source in biology.<sup>15</sup> By making biological properties be what the conferrers are attempting to track we can account for the appearance that a certain property is biologically given, even if it is not.

A host of recent work in biology by Anne Fausto-Sterling and others reveals that the biology supposedly supporting the division into two sexes is quite messy (Fausto-Sterling 2000a and 2000b; Roughgarden 2004; Callahan 2009). If we look at three main ways of dividing people into sexes (by functioning genitalia, chromosomes, and hormonal levels), not only do these three 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. Fausto-Sterling estimates that somewhere around 1.7% of people are inter-sex according to one or other of the methods used.

The conferralist framework can support the claim that the division into sexes, and the resulting categories, are products of social forces without denying that there are any constraints on the conferral of sex on the part of nature. While sex is a legal status on the following conferralist account, what is being tracked is the presence of certain biological features:

*Conferred Property:* being female, male

*Who:* legal authorities, on the testimony of doctors, other medical personnel, and parents

*What:* the recording of a sex on a birth certificate

*When:* at birth (in the case of newborns); after surgery and hormonal treatment (in the case of older individuals)

*Grounding Property:* the presence of sex-stereotypical physical characteristics, including genitalia, chromosomes, and hormonal levels; doctors perform surgery in cases where it might help bring the physical characteristics more in line with the stereotype of male and female

While the above account of sex accurately reflects the sex categories in most Western countries and many others in the beginning of the twenty-first century, there may come a time when sex status options are more numerous or when sex status need not be specified.<sup>16</sup>

Unlike in the case of gender, the conferral of sex is a one-time act by relevant authorities, and not a standing conferral by some subjects in a context. Such subjects can in fact be in error as to what a person's sex assignment is, but a person's perceived sex assignment plays no role in determining that assignment, although it may play a role in determining the person's gender assignment in the context. For in some gender contexts, at least one of the things being tracked is sex assignment. In such a context, being of a certain gender is conferred by the perception that the person has a certain sex assignment.

As in the case of gender above, what we have here is an account of sex that is part of a debunking project: it may appear that the category in question is a natural

one, but in fact it is a conferred social status. The conferral framework can help expose sex for what it is; it also gives us a diagnosis of why it appears to be a natural category. But we can do even better. When we consider the explanatory function of sex assignment, a general method for constructing an argument for the social construction of a certain kind suggests itself: Consider what kinds of facts the presence of the property explains. If it only explains social facts, is it not likely that it is a social property and hence conferred?

Take sex and the question whether sex assignment explains why a person has an offspring. In explaining the creation of an offspring we can mention many things including the presence in a particular time and space of certain functioning genitalia, hormonal levels, certain arrangement of body parts, and so on, but sex assignment itself offers us no help. In fact, some people whose sex assignment is in no way in dispute cannot bear or seed children. What allows one to bear or seed children are rather some other properties that the sex assignment is intended to track. Since being of a certain sex is not an explanatory property when it comes to bearing or seeding offspring, but it is explanatory when it comes to the distribution of various social resources, privileges, and burdens, it is an argument for the claim that sex is a conferred social status.

#### V. THAT A HUMAN KIND IS CONFERRED

We have now seen the conferralist framework in action by looking at particular accounts of gender and sex. My main aim, though, is to offer support for any debunking social constructionist project. Let us see how the framework can help us diagnose what is at issue when whether a kind is dependent in some way upon human thought or practices is not in dispute, but something more specific is at stake.

#### HIERARCHIES OF CONFERRED PROPERTIES

Let's consider, for example, the debate over whether refugees are socially constructed (cf. Hacking 1999 and Haslanger 2003). In this debate the social constructionist insists that being a refugee is not merely about being of a certain legal status. It is something over and above that, whereas the opponent insists that being a refugee is precisely and simply to be of that legal status. The opponent may even take a leaf out of John Searle's book (Searle 1997) and say that having a certain legal status constitutes being a refugee. How is the conferralist framework supposed to help us diagnose what is at issue here?

What we have here from the social constructionist's point of view are hierarchies of conferred properties. The property of being a legal refugee is conferred on an individual by authorities, and with it come legal privileges and burdens. Both the constructionist and the anti-constructionist agree on that. The social constructionist, on

the other hand, insists that there are constraints and enablements that refugees face that are not direct consequences of the legal privileges and burdens that come with the legal status itself. These constraints and enablements can be explained by reference to the conferralist framework by saying that apart from the legal property *being a legal refugee* that comes with legal privileges and burdens, there is also another conferred property *being assumed to be a legal refugee*, which comes with its own social constraints and enablements and that in the conferral of this latter property the property *being a legal refugee* is being tracked. As usual on the conferralist framework, a person can have the conferred property, yet not have the grounding property itself. But this is how it should be. The presence of the conferred property, not the grounding property, is what explains the social constraints on a person's behavior in a context.

By using "hierarchies" here, I need not commit myself to there being an absolute hierarchy of conferred properties, only that in a particular context there can be an ordering of properties in the sense that one property is a grounding property in a context and another is the conferred property in that context. The grounding property of one context can thus be the conferred property of another.<sup>17</sup>

On my diagnosis of this debate over the question whether being a refugee is socially constructed, the constructionist and the opponent have their eyes set on different things: the opponent focuses on the legal status itself, whereas the social constructionist attends to the social property conferred on individuals presumed to have the legal status. The debunking move consists precisely in exposing that the operative property in the context is the higher-level conferred property, not the legal property which grounds the conferral.

#### CONFERRALISM AND THE EXPLANATION FROM SOCIAL SALIENCE

A certain aspect of the account of social construction offered here may concern the reader. It is that the explanation of the social constructionist claim is that apart from the grounding property in a context—be it *being a legal refugee*, *having XX chromosomes*, or what have you—there is also on top of it this other property, the social property (*being assumed to be a refugee*, *being a female*, and so on). Isn't there a danger of a proliferation of conferred properties? Why posit these extra social properties? Why not refrain from introducing new social properties on top of the other ones, and instead say that the (grounding) properties in question are socially salient in a context?

Let's try to flesh out this proposal. It seems at the outset to capture the post-Beauvoirean feminist intuition that gender is socially constructed in the sense that sex is biologically given and gender is the social meaning of sex. We want to flesh it out without adding some extra social property on top of sex; instead we would say that gender is the social meaning of sex in a context.

What would it be for a property to have a social salience or meaning in a context? For something to be socially salient in a context is for it to play a social role, to have social meaning attached to it. For instance, we can imagine a context in which

having a big nose has social salience, and other contexts where it plays no social role. In the context in which having a big nose has social meaning, certain privileges and burdens may come with having a big nose (for instance, job advancement); in contexts where having a big nose has no social meaning, nose size is not correlated with the distribution of resources, privileges, or burdens.

But how are we to capture the idea that a certain property has social salience in a context? Isn't the conferralist framework exactly one that can give precise formulation to this idea? For a property to be socially salient in a context is for it to ground the conferral of another property, which brings with it constraints and enablements.

Let's take an example. Let's say that we want to flesh out the post-Beauvoirean position along these lines. Then we say that sex is socially salient and it manifests such that in a context another property—being of a certain gender—gets conferred on people presumed to be of a certain sex, and with this conferral come privileges and burdens.

The conferralist framework thus seems ideally situated to capture the idea that a certain property is socially salient and that the social construction of the associated kind consists in that. The proliferation of properties is not superfluous, but is indeed needed to explain social behavior by reference to the constraints and enablements that come with the conferred properties. This the conferralist account does better than a constitution account such as Searle's, since the relationship between the grounding property and the conferred property is epistemic, that is, it isn't whether someone has the grounding property that matters, but whether they are taken to have it. What matters socially is what you seem to be, not what you are, and this is well captured by the conferralist account.

## VI. SOCIAL CONSTRUCTION AND THE DEBUNKING PROJECT

I said at the outset that the framework offered here was to aid a certain social constructionist project, where the aim is to debunk beliefs regarding the nature of the kind in question and reveal which property is operative in a context. How well does the account offered here fare in that task?

On the account put forward here, the social constructionist's debunking move reveals two things. The first is that membership in a certain human kind comes with constraints and enablements that are not justified with reference to the presence of the property that is taken to define the kind. These constraints and enablements are as a result of a conferred status, and it is the conferral of this status (with its constraints and enablements) that is in need of justification. The second thing that is revealed is that the operative property in the context, the property that is responsible for the constraints and enablements in the context, is the conferred property, not the grounding property the conferral is tracking.

What is the political upshot of the social constructionist debunking project, as so described? It is not only that theorists can then ground their demand for justification of the distribution of privileges, burdens, and the like that come with the conferral of

the property in question; they also stand on firm ground when they critique it and ask related questions, such as who may be benefitting from the social arrangement. However, that a certain property has social significance may not always be unjust; it is a separate endeavor to examine it and show it to be so, even though, often enough, a social constructionist may be motivated to show that a kind is socially constructed precisely because the social salience of a property results in an unjust and oppressive arrangement.

At the outset I drew up a picture of the debates over human kinds as echoing the old debates in the history of philosophy and claimed that certain social constructionist concerns centered on the question of existence and others on the question of the nature of that which exists. It is now time for me to clarify that comment. It seems to me that the discussion of the social construction of human kinds proceeds along two different axes, the first focused on existence and the second on revealing the hidden nature of the kinds,<sup>18</sup> and it is not obvious what the relationship between these is or should be. A separate investigation is needed to expose these connections, and I hope to do so elsewhere. But the point of drawing attention to these different concerns is a suspicion that different emphases tilt the theories one comes up with. The social construction debunkers want to reveal the mechanics of oppressive social norms and their lack of justification. These theorists may at the end of the day also be able to address the question of existence, but now, in the early morning, the focus is on the source of the constraints and enablements that individuals face.

My aim in this paper has been to offer a general metaphysical framework to support the claim that a human kind is socially constructed, where this is offered as part of a social constructionist debunking project. I have given reasons for thinking that this conferralist framework is an adequate way to capture the social constructionist intuitions and that it can explain why it may appear that the kind in question is not constructed. This is due to the fact that in the conferral some other property in the vicinity is being tracked, and this property gets confused with the conferred property. I believe that both the conferralist framework and the diagnosis can help social constructionists meet the challenges they face from their opponents, the main one being the charge of confusion between the epistemic and the metaphysical claims, accompanied by the claim that the metaphysical thesis cannot be sustained. I have articulated a framework which shows that the metaphysical thesis is neither confused nor obviously false; in fact, in a number of cases, it may be true.

#### NOTES

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Intentionality conference in Berkeley, Berkeley Social Ontology Group, CSU Chico, UC Santa Cruz, and MITing of the Minds at MIT and I am very grateful for the feedback I received on those occasions. None of the people mentioned is responsible for the ideas presented herein or for any remaining errors.

1. I use the terms *kind*, *type*, and *category* interchangeably in this essay, and there is no more to a kind than having a property that defines the kind or type.

2. By saying that the realism/idealism debate concerns the nature of what exists, I don't mean to invoke essence or essentialism, but rather to point out the concerns with revealing the hidden nature of the thing in question. An example of this is to reveal something to be social when it is thought to be natural, or to show something to be normatively infused in different ways than is recognized. The kind of idealism that I have in mind is more Hegelian than Berkeleian.

3. Notable work here includes that of Linda Martín Alcoff, Kwame Anthony Appiah, Judith Butler, Sally Haslanger, Ron Mallon, and many others. For bibliographical references, see, for example, Haslanger and Sveinsdóttir 2011 and James 2011.

4. For a discussion of the limits of Hacking's account of social construction, see Haslanger 2003.

5. For this reason a social constructionist need not take a stand on whether there is normativity in nature, but can allow that nature is not normatively inert.

6. In fact, Haslanger speaks of "operative" and "manifest" concepts, although with a different distinction in mind. See Haslanger 2005.

7. Here I draw on previously published work. See Sveinsdóttir 2008.

8. Throughout the paper the use of "tracking" is not factive. Someone can be tracking a property but not manage to find it, and it may not be present.

9. Note, also, that even if baseball were to follow American football and make use of the videorecording, this does not rule out a conferralist reading of baseball properties. It is still the judgment as to what the physical property is that confers the baseball property; it's just that now umpires are required to look at more evidence to aid their judgment.

10. I have argued for these accounts of gender and sex in Sveinsdóttir 2011.

11. I thank an anonymous reviewer of this journal and Sally Haslanger for pushing me on this point.

12. For a detailed discussion of this, where the maps in question are not just gender maps but broader social maps, see Sveinsdóttir unpublished.

13. Such contexts can vary in the attitudes toward those who do not fit in: they may be hailed as special, sacred creatures or suffer abuse of life and limb.

14. I will not go into a detailed interpretation of Butler's views here. For that, and for why the conferralist framework may not square entirely with Butler's views, see Sveinsdóttir 2011.

15. The point is precisely not to take a stand on whether the grounding property is biologically given or not. Even on views where there is no such thing as being biologically given, there can be layers of construction, and what the conferrers are attempting to track in this particular conferral is at a lower level of construction.

16. We already have a case of this in Australia, where Norrie May-Welby is legally recognized as neither male nor female. See Wikipedia entry.

17. Thanks to Sylvain Bromberger for pushing me on this.



18. By “nature” I do not mean to invoke talk of essences or essentialism, merely that the latter project concerns revealing the kind for what it is, when it is claimed to be somehow different.

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