

Rejecting the “Implicit Consensus”: A Reply to Jenkins¹

1. Ontic Injustice and the “Implicit Consensus”

In a recent article, Katharine Jenkins argues that most accounts of social kinds either explicitly or implicitly hold that social kinds are constituted by constraints and enablements. Specifically, she argues that “there is an implicit consensus among different accounts of social ontology that what it is to be a member of a certain social kind is, at least in part, to be subject to certain social constraints and enablements” (Jenkins 2020, 1). Let us call the subject of the so-called “implicit consensus” in social ontology the *Constraints and Enablements Thesis*:

CET: Social kinds are constituted by social constraints and enablements.²

Jenkins uses CET to develop an account of a phenomenon she calls *ontic injustice*. According to Jenkins, this is a distinctively *ontic* form of injustice whereby “an individual is wronged by the very fact of being socially constructed as a member of a certain social kind” (1). To illustrate the nature of this phenomenon, Jenkins provides the following example:

Consider the situation of wives in England and Wales prior to 1991, which is when the marital rape exemption was ended in these countries. Prior to 1991, if a husband had sex with his wife without her agreement, including by force, this did not constitute rape in the eyes of the law, as it was deemed that in getting married the wife had consented in perpetuity to sex with her husband. Accordingly, an individual socially constructed as a wife lacked the social entitlement to refuse to have sex with her husband. According to many accounts of social ontology, including Searle’s and Ásta’s, *what it was* to be a wife in England and Wales prior to 1991 was, in part, to be someone who was not socially entitled to control fully sexual access to one’s own body. (4)

Jenkins rightly argues that the marital rape exemption in English and Welsh law was morally wrong: “everyone is morally entitled to control fully sexual access to their

¹ Thanks to an anonymous referee, Katharine Jenkins, Nick Leonard, Micaela McSweeney, and Katherine Ritchie for their helpful feedback on previous versions of this paper.

² Jenkins claims that John Searle and Ásta (2018) explicitly endorse CET, and that Ron Mallon (2016), among others, implicitly endorses it.

own body” (4). As such, Jenkins argues that the individuals who were wives in England and Wales prior to 1991 were subject to ontic injustice: the social constraints and enablements that constituted the social kind *wife* were wrongful to the individuals socially constructed as wives. That is, individuals in England and Wales who were socially constructed as wives prior to 1991 were wronged in virtue of their very membership in the social kind *wife*.

In what follows, I argue that Jenkins faces a dilemma.³ If she endorses CET, her account massively over generates social kinds in a way that significantly undermines our ability to make empirical generalizations and engage in inductive reasoning about social kinds and their members. Because the ability to make empirical generalizations and engage in inductive reasoning about social kinds and their members is central to social science as well as to feminist theory and practice, CET should be rejected. However, I argue that if Jenkins rejects CET, then she has not identified a form of injustice that is distinctively ontic in nature.

2. Clarifying the Constraints and Enablements Thesis

According to Jenkins, “most accounts of the ontology of social kinds either directly hold or indirectly imply that social constraints and enablements at least partly constitute social kind membership” (4). This is what I have called the Constraints and Enablements Thesis, or CET, above. However, it is not entirely clear what metaphysical relation Jenkins has in mind when she claims that social kinds are *constituted* by social constraints and enablements.⁴ In this section, I argue that on Jenkins’s view, CET is most plausibly understood in terms of *constitutive social construction* (Haslanger 1995, 2003).

Something is constitutively socially constructed as a member of a social kind, K (e.g., a woman) if and only if “X is of a kind or sort [K] such that in defining what it is to be [K] we must make reference to social factors (Haslanger 2003, 318). Sally Haslanger uses the kind *husband* to illustrate constitutive social construction: “A

³ Thanks to an anonymous referee for the suggestion to reframe the argument in this way.

⁴ Certainly, the relevant relation is not *material constitution*. This is because material constitution is a “one–one relation either between collocated objects of different kinds, or perhaps between a co-located mass and object” (Bennett 2011, 82). However, social kinds and social constraints and enablements (unlike statues and lumps of clay) are not material objects that occupy the same region of space. Therefore, the relation between social kinds and social constraints and enablements is not one of material constitution.

husband is a man legally married to a woman. Being a man legally married to a woman does not cause one to be a husband; it is just what being a husband consists in” (317). In other words, someone is constitutively socially constructed as a husband because the definition of what it is to be a husband (i.e., a man who is legally married to a woman) makes reference to social factors (e.g., the social relation of marriage).⁵

According to Jenkins, individuals are socially constructed as members of social kinds such as *wife*, *woman*, *slave*, and *black person* (2). Moreover, she builds this social constructionist claim into her definition of ontic injustice and augments it. On her view, ontic injustice occurs if and only if someone is socially constructed as a member of a social kind, K, “*where that construction consists, at least in part, of their being subjected to a set of social constraints and enablements that is wrongful to them*” (5 emphasis added).

Putting this all together, what it means to say that social kinds are *constituted* by social constraints and enablements, is to say that individuals are *constitutively socially constructed* as members of social kinds such as *wife* and *woman*. And what it means to say that individuals are constitutively socially constructed as members of social kinds such as *wife* and *woman*, is to say that in defining those kinds we must make reference to social factors—specifically, social constraints and enablements. More simply, CET says that social kinds are *defined* by social constraints and enablements.⁶

In the next section, I argue that defining social kinds in terms of constraints and enablements leads to a proliferation of social kinds that significantly undermines our ability to make empirical generalizations and engage in inductive reasoning about social kinds and their members. Because the ability to make empirical generalizations and engage in inductive reasoning about social kinds and their members is central to social science as well as to feminist theory and practice, I argue that CET should be rejected.

⁵ NB: The kind of definition at issue here is real definition rather than linguistic definition (see Rosen 2015).

⁶ It is possible that, despite this textual evidence, Jenkins does not intend CET to be understood in terms of constitutive social construction. In that case, I would argue that Jenkins has not put forward a precise metaphysical thesis about the relation between social kinds and constraints and enablements (I am grateful to an anonymous referee for putting the point in this way). If so, then Jenkins’s account of ontic injustice nonetheless stands in need of revision. Insofar as Jenkins has not put forward a precise metaphysical thesis about the relation between social kinds and constraints and enablements, her account of ontic injustice lacks an adequate metaphysical foundation.

3. Against the Constraints and Enablements Thesis

Let's begin by considering some well-supported empirical generalizations about women:

1. Women experience sexual assault at higher rates than men;
2. Women are paid less than equally well-qualified men for doing the same work;
3. Women perform more domestic labor than men.

Similarly, we are warranted in making a wide variety inductive inferences about women:

4. If X is a victim of rape, then X is more likely to be a woman than a man.
5. If X is a woman, then X is significantly more likely to be a victim of rape, attempted rape, or sexual assault than if X were a man.
6. If X is a woman, then she is likely to be paid less for doing the same work as an equally well-qualified man.

Generalizations and inductive inferences such as these are central to social scientific theories of sexual assault and gender-based discrimination. They are also central to feminist theory and practice. For example, the ability to make empirical generalizations about women—*all* women—is what supports the feminist claim that sexual violence and other forms of unequal treatment and abuse to which women are subject *qua* women are *systematic* and thus constitute gender oppression (Cudd 2006; Frye 1983; Young 1990).

However, if the social kind *woman* is defined in terms of social constraints and enablements, this yields a fine-grained ontology of social kinds that significantly undermines our ability to make empirical generalizations and inductive inferences about women. Therefore, I argue, social kinds like *woman* should not be defined in terms of social constraints and enablements. Though I focus on the kind *woman* here, similar considerations extend to other social kinds as well. Thus, CET should be rejected.

The ways in which women are constrained and enabled *qua* women varies, both over time and across social contexts at the same time. For example, prior to 1919, American women were not legally entitled to vote. According to proponents of CET, *what it was* to be a woman in the United States prior to 1919 was, in part, to be someone who was not legally entitled to vote. This changed after 1919 when American women gained the right to vote. Thus, being someone who is not legally entitled to vote is no longer part of what it is to be a woman in the United States.

Similarly, the social constraints and enablements to which women are subject at a particular time (e.g., October 2019) can vary across social contexts. For example, in some states (e.g., Ohio) pregnant women cannot legally receive an abortion after a fetal heartbeat is detected. However, in other states (e.g., California), pregnant women can legally receive an abortion after a fetal heartbeat is detected (but they cannot do so once the fetus is viable unless the mother's life or health is at risk).

According to CET, part of *what it is* to be a woman in Ohio in October of 2019 is to be someone who is not legally entitled to receive an abortion after approximately five to six weeks of pregnancy. By contrast, being someone who is not legally entitled to receive an abortion after approximately five to six weeks of pregnancy is no part of *what it is* to be a woman in California in October of 2019.

This variability matters because if social kinds are defined in terms of social constraints and enablements, each of these are numerically distinct kinds:

1. Women in the United States prior to 1919;
2. Women in the United States after 1919;
3. Women in Ohio in October 2019;
4. Women in California in October 2019.

Similarly, because women in the United Kingdom did not win the right to vote on the same terms as men until 1928, there are further numerically distinct social kinds such as:

5. Women in the United Kingdom prior to 1928;
6. Women in the United Kingdom after 1928.

And because different laws in different states and countries regulate the availability of abortion in different ways, there are still more numerically distinct social kinds:

7. Women in El Salvador in 2019;
8. Women in Canada after 1969.

And so on. That is, if social kinds are defined in terms of constraints and enablements, then there exists an abundance of numerically distinct social kinds (i.e., *woman*₁, *woman*₂, *woman*₃...*woman*_n), each of which is defined by different social constraints and enablements.

Why does CET imply this proliferation of numerically distinct social kinds? Recall that, as I argued in section 2, what it means to say that social kinds are

constituted by social constraints and enablements, is to say that individuals are constitutively socially constructed as members of social kinds such as *woman*, and what it means to say that individuals are constitutively socially constructed as members of social kinds such as *woman* is to say that in defining those kinds we must make reference to social factors, e.g., social constraints and enablements. Now, suppose some social constraint, *c*, partially defines what it is to be K_1 . If *c* is not part of what it is to be K_2 , then K_1 is not identical to K_2 . The same goes for any social kind $K_1 \dots K_n$, any constraint, $c_1 \dots c_n$, and any enablement, $e_1 \dots e_n$. In other words, K_1 is identical to K_2 only if the social constraints and enablements that are definitive of K_1 are identical to the constraints and enablements that are definitive of K_2 . Thus, if the constraints and enablements that are definitive of K_1 are not identical to the constraints and enablements that are definitive of K_2 , then K_1 and K_2 are not the same kind.⁷

Individuating social kinds in such a fine-grained way undermines our ability to make empirical generalizations and engage in inductive reasoning about social kinds and their members. If women at different times and in different places belong to numerically distinct social kinds, then we cannot say that, for example, *women* (*all women*) are more likely to experience sexual assault than men. Given the proliferation of constraints and enablements, and the corresponding proliferation of social kinds, there is no single social kind available to support generalizations about women simpliciter. Yet many empirical generalizations about women simpliciter are well founded. Likewise, there is no single social kind available to license inductive inferences about women simpliciter. For example, there is no single social kind that would license the inference that if X is a woman, then X is likely to be paid less for doing the same work as an equally well-qualified man. Yet many inductive inferences about women simpliciter are warranted.⁸

⁷ Thanks to an anonymous referee for the suggestion to develop this argument in more detail by appealing to the interpretation of CET defended in Section 1.

⁸ An anonymous referee suggests a response on behalf of the proponent of CET: perhaps there is some higher-order, generic social kind, of which the proliferation of lower-level social kinds are appropriately related so that every individual that belongs to the lower-level social kind thereby belongs to the higher-level social kind. This higher-order social kind, unlike the proliferation lower-level kinds, can support empirical generalizations and inductive inferences about social kinds and their members. However, this suggestion presents a dilemma. Either the higher-level social kind is defined by social constraints or enablements, or it isn't. If the higher-level social kind is not defined by social constraints and enablements, then CET is false. QED. But on the other horn of the dilemma, the proponent of CET runs head-on into the "inclusion problem," i.e., that there doesn't seem to be any property (including any deontic property) that all women have in common *qua* women, and in

Given that a great deal of social scientific and feminist scholarship on the nature, scope, and prevalence of gender-based discrimination and oppression involves making empirical generalizations and inductive inferences about women simpliciter, CET threatens to undermine the legitimacy of social scientific and feminist scholarship on the nature, scope, and prevalence of gender-based discrimination and oppression. This is, in my view, an unacceptable result. Similar considerations apply to other social kinds (i.e., those that are loci of inductive and explanatory potential). As such, CET should be rejected.

4. In Defense of the Constraints and Enablements Thesis

One might reply to the line of argument developed in the previous section by pointing out that it need not be the case that *every* way in which women are constrained and enabled qua women is part of *what it is* to be a woman. To the contrary, only *some* social constraints and enablements are part of what it is to be a woman, whereas others are merely incidental. Thus, it does not follow that any variation in the ways in which women are socially constrained and enabled gives rise to a numerically distinct social kind.

To substantiate this reply, however, we need some principled way of determining which social constraints and enablements are part of what it is to be a woman, and which are not. However, this undertaking runs head-on into a problem that has plagued feminist philosophy for decades; namely, what Jenkins elsewhere calls the “inclusion problem” (2016). Iris Young characterizes the inclusion problem as follows:

On the one hand, without some sense in which ‘woman’ is the name of a social collective, there is nothing specific to feminist politics. On the other hand, any effort to identify the attributes of that collective appears to undermine feminist politics by leaving out some women whom feminists ought to include. (Young 1994, 714)

The problem is that there doesn’t seem to be any properties (including deontic properties) that all women have in common *qua* women. However, if there aren’t any properties that women have in common *qua* women, who are feminists fighting to liberate? Either feminists aren’t fighting to liberate anyone (because there is no

virtue of which they belong to the higher-level social kind. I discuss the inclusion problem in more detail in section 4, below.

way to define the category *woman*), or they aren't fighting to liberate all women (because womanhood is defined in an exclusionary way).⁹

Though many feminists regard the inclusion problem as a significant barrier to feminist theory and practice, Mari Mikkola (2016) argues that feminism can proceed without resolving the seemingly intractable question of what it is to be a woman. However, it is important to note that the inclusion problem is not merely a political one. That is, the problem is not merely that the feminist political project cannot proceed without a suitably inclusive definition of womanhood. Rather, the inclusion problem also has an epistemic dimension, which Mikkola's arguments do not resolve. The epistemic dimension of the inclusion problem is that feminists need to define the kind *woman* in such a way that it can support inductive inferences and empirical generalizations about *all* women, and not merely some of them. Thus, even if Mikkola is right that the inclusion problem does not present a political obstacle to feminist theory and practice, an epistemic obstacle remains. In that case, Jenkins needs to demonstrate that we can identify a subset of constraints and enablements that do not marginalize or exclude some women and thereby jeopardize the scope of the inductive inferences and empirical generalizations we make about them.

One way that Jenkins might try to avoid the inclusion problem is by identifying the social kind *woman* with a cluster of constraints and enablements. On this view, womanhood is defined in terms of a *disjunction of conjunctions* of social constraints, *c*, and enablements, *e*. That is, what it is to be a woman is to be subject to $(c_1 \wedge c_2 \wedge c_{11} \wedge e_3 \wedge e_7) \vee (c_9 \wedge c_4 \wedge e_1 \wedge e_5) \vee (c_{12} \wedge c_{20} \wedge e_1 \wedge e_5)$, and so on.¹⁰ In that case, different women may be constrained and enabled in different ways, depending on other dimensions of their social identities (e.g., race, class, sexual orientation, etc.) and yet belong to the same social kind. If *woman* is defined in terms of a disjunction of conjunctions of social constraints and enablements, then no particular constraint or enablement is necessary for being a woman.

However, defining social kinds in this way does not avoid the objection that CET significantly undermines our ability to make empirical generalizations and inductive inferences about social kinds and their members. This is because disjunctive kinds (e.g., *jadeite or nephrite*) are entirely unsuitable for making empirical generalizations or inductive inferences. Here's why.

⁹ Thanks to an anonymous referee for encouraging me to expand this argument.

¹⁰ Indeed, I think that Jenkins may have something like this in mind. For example, she says that "social kinds 'bundle' constraints and enablements" (15).

Suppose that “dax” refers to the disjunctive kind *water or iron*. Even if every sample of dax you have encountered thus far has the property of boiling at 100 degrees Celsius, one cannot infer on that basis that the next sample of dax one encounters will boil at that temperature (samples of dax that are iron won’t boil at 100 degrees Celsius), nor is it true that dax boils at 100 degrees Celsius (some samples of dax boil at 2750 degrees Celsius).

If (1) the social kind *woman* supports empirical generalizations and inductive inferences (as it apparently does), and if (2) disjunctive kinds do not support empirical generalizations or inductive inferences, then the social kind *woman* should not be identified with a disjunction of constraints and enablements.

5. Theorizing Ontic Injustice

I have argued that CET leads to a proliferation of social kinds that significantly undermines our ability to make empirical generalizations and engage in inductive reasoning about social kinds and their members. Because the ability to make empirical generalizations and engage in inductive reasoning about many social kinds and their members is central to social science as well as to feminist theory and practice, CET should be rejected. In this section, I argue that if Jenkins rejects CET, then she has not identified an injustice that is distinctively ontic in nature.

Jenkins argues that the injustice she describes is distinctively ontic in nature because “the mere fact that an individual is a certain kind of social being” is what makes that individual subject to wrongful constraints and enablements (5). For instance she argues that “in the example concerning marital rape, the ontic injustice is the mere fact that someone *is* a wife, where being a wife consists, at least in part, of being someone who is not entitled to control fully sexual access to one’s body” (5). In other words, according to Jenkins, the injustice she describes is distinctively ontic in nature because, if the social kind *wife* is defined by social constraints and enablements that are wrongful, then the mere fact that someone is socially constructed as a wife constitutes an injustice.

However, if social kinds such as *wife* are not defined by social constraints and enablements, then it is not the case that “the mere fact that an individual is a certain kind of social being” is what makes that individual subject to wrongful social constraints and enablements.

For example, it is not the case that the mere fact that individuals are socially constructed as wives that makes them subject to wrongful constraints and enablements. Rather, it is the fact that (a) they are socially constructed as wives in

conjunction with the fact that (b) the law permits husbands to rape their wives, that makes them subject to wrongful constraints. In that case, it is the *laws* that are unjust—*marital rape should be illegal*—rather than the fact that individuals are socially constructed as wives.

Similarly, if women are not permitted to vote, or to obtain an abortion, it is not the mere fact that they are socially constructed as women that makes them subject to these wrongful constraints. Rather, it is the fact that (a) they are socially constructed as women in conjunction with the fact that (b) the law does not permit them to vote, or to obtain an abortion, that constrains them. Here too, it is the *laws* that are unjust—*women should have the right to vote; abortion should be legal*—rather than the fact that some individuals are socially constructed as women.

What this shows is that Jenkins's account of ontic injustice cannot survive the demise of CET. That is, if social kinds such as *wife* and *woman* are not defined by social constraints and enablements, then the injustice that Jenkins describes is not distinctively ontic in nature. Thus, Jenkins faces a dilemma: If she embraces CET, her account massively over generates social kinds in a way that significantly undermines our ability to make empirical generalizations and engage in inductive reasoning about social kinds and their members. However, if she rejects CET, she has not identified a form of injustice that is distinctively ontic in nature

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