

Gender is constructed and constrained by a binary dichotomy, which crystallizes in childhood, and any subsequent deviance is subject to heavy criticism. Discuss.

Introduction

Gendered identity is constructed and confined by social discourse, and is expressed through homogenizing binary gender norms which prescribe the 'appropriate' means of gender performance. The definition of the 'feminine' role expected of women is given by men, who in a patriarchal modern society are the dominant gender. I will examine what 'performativity' means in terms of gender discourse, and analyse how exclusionary this can be for the gender dysphoric and the transsexual. I will look at the relevant legislation for allowing them legal acknowledgement of their acquired gender, and provide commentary on its ineffectiveness because it perpetuates the gender binary dichotomy. Pursuant to this, I will deconstruct how girls become 'feminine'; a learning process which crystallizes in childhood rather than any innately biological attributes they may have. I will consider how society responds to deviance from these gender-appropriate norms with condemnation and pathology; none more demonstrably so than in the case of women who kill.

Gender as a result of discourse

Gender is a concept primarily constructed by culture and history. It is a qualitative meaning socio-legal meanings we attach to certain attributes and characteristics of bodies. This process of attaching meaning to bodies is the acceptance of gender-

specific norms and behaviours; subscription to which indicates conformity with the hegemonizing form of social control that gender offers.

Within Western society, sex and gender can be distinguished between as two separate concepts. Sex is the process of recognising “male and female sex from physiological attributes, such as genitals and chromosomes”, whereas gender is defined as the “social and cultural expectation of how males and females should think, behave and how they should be treated by others”¹. These are often, mistakenly, confused as one and the same.

The concept of gender is constrained within the limits of social discourse, which itself is subject to cultural variation. Foucault, the main proponent of discourse as a construction site for gender, argues the body is a text for culture. He believed that through the pursuance of an elusive goal, gendered identity is commissioned “through the organization and regulation of the time, space, and movements of our daily lives, our bodies are trained, shaped, and impressed with the stamp of prevailing historical forms of selfhood, desire, masculinity, femininity”². This discourse insists the conformity to a standardized ideal, none more prevalent than through the gender binary dichotomy.

Heteronormative binary gender dichotomy

It is argued by Butler³ that gender is fluid in nature and that bodies can float along a sliding scale between masculinity and femininity;

¹ M. Wiseman, S. Davidson, ‘Problems with binary gender discourse: Using context to promote flexibility and connection in gender identity’ (2012) *Clinical Child Psychology and Psychiatry* 17, at 528

² S. R. Bordo, ‘The Body and the Reproduction of Femininity: A Feminist Appropriation of Foucault’, in ‘Gender / Body / Knowledge’, edited by A. M. Jaggar, S. R. Bordo, (Rutgers University Press: New Brunswick, 1992), at 14

³ J. Butler, ‘Gender Trouble: Feminism and the Subversion of Identity’ (Routledge: London, 1990)

"[w]hen the constructed status of gender is theorized as radically independent of sex, gender itself becomes a free-floating artifice, with the consequence that man and masculine might just as easily signify a female body as a male one, and woman and feminine a male body as easily as a female one"⁴.

Gender fluidity emphasises the ability to become ambiguous and numerous genders but although an idyllic potentiality, this is not the case in practice. Gender exists, and always has existed, as an artificially-restrained format within a heteronormative binary, with two mutually-exclusive polar opposites. This binary provides that biologically male bodies display appropriately masculine traits, and, conversely, biologically female bodies display appropriately feminine traits. The word 'traits' here has been used to mean performance, mannerisms, etc. These, in turn, produces gendered expectations on criteria such as sporting ability, clothing, sexuality etc. These pervasive expectations dictate how society perceives and subsequently treats any given individual, depending on their performance of their appropriate gender norms.

The gender binary dichotomy is fixed "with prescribed forms of expression – one is born as female/male, behaves in a feminine/masculine way at all times throughout one's life"⁵. To express gender identity in a way which does correspond neatly within the binary is considered to be unnatural, and often mislabelled as a form of mental disorder; for example gender dysphoria - something which I shall discuss later on.

The impetus behind 'bipolar'⁶ gender binary norms can be attributed to biological essentialism, which purports that gender identity can be reduced to scientific

⁴ *Ibid*, in Chapter 1, 'Subjects of Sex/Gender/Desire', at 6

⁵ N. 1, at 529

⁶ J. T. Spence & R. L. Helmreich, 'Masculinity & Femininity: Their Psychological Dimensions, Correlates, & Antecedents', (University of Texas Press: Austin & London, 1978), at preface, ix

definition. This suggests there is some 'essential' characteristic every person possesses which renders them male and masculine, or female and feminine. It would follow from this that men would be assertive and aggressive leaders as the historical foragers and protectors, and inherent within women are nurturing and maternal instincts as the historical caregivers. Irigaray reduces the female body to the over-simplistic "woman as womb"⁷. Biological essentialism is problematic because it posits that gender follow biology back to primal instincts; despite a person's biological sex and gender being completely separate. Irigaray's essentialist conceptualisation of gender is presented with blinkers; it ignores all forms of otherness⁸ and rejects any divergent form of gender undertaking, making the practical applications of her theory limited. Of this, Butler asserts that biological essentialism can be disputed because although sex is determined by biology, gender is culturally-constructed⁹. Butler's rejection of essentialism is evident within *Gender Trouble*, where it is discussed that gender is not constrained by the biological predispositions of our sex, and so transcends the cultural and social discourse constructing it; becoming free-floating.

However, gender can only be free-floating if it exists in some way between masculinity and femininity. As undesirable as it is to be oppressed by a binary scale, it is difficult to envisage a way to refer to gender without it. Self-identification to a gender is a necessary, and arguably unfortunate, part of modern life. Not all gendered possibilities are open; the limits are always set within a homogenic cultural discourse predicated on inescapable binary structures. Gender can only be free-

⁷ L. Irigaray, 'The Sex Which Is Not One', translated by C. Porter & C. Burke, (Cornell University Press: New York, 1985), in Chapter 5: *Così Fan Tutti*, at 94

⁸ M. Whitford, 'Luce Irigaray: Philosophy in the Feminine', (Routledge: London, 1991), in preface, at 4

⁹ N. 4

floating if it exists some way between male and female, but this still necessitates the existence of such a scale. Gender as a concept only has meaning if in opposition. To become free-floating so as to transcend the gender binary, as Butler suggests, would essentially be a rejection of the whole concept of gender. It would require the disablement of century's worth of discourse which is not just external to society, but ingrained within society's thinking processes.

Momentarily overlooking how unlikely this is to be adopted by future society, it affords no protection to people who willingly identify with a binary gender category. For example, females would be unable to petition for equal pay if they do not wish to be viewed as 'females', for they reject the very binary from which they are deriving their politics. As Moi argues, "it still remains *politically* essential for feminists to defend women as women in order to counteract the patriarchal oppression that precisely defines women as women"¹⁰. It is the concept of identification as 'woman' as defined by males which critical feminist theory resists¹¹.

The hegemonizing gender binary dichotomy supports heterosexuality as the norm, where masculine males and feminine females are the 'privileged' bodies within the societal hierarchy. Law has a vested interest in the regulation of sexuality through the restraints of lawful marriage; where two consenting heterosexual adults can engage in coitus. This elitist and exclusionary tool of legal control happenstances the creation and maintenance of what the law believes to be a balanced society. This asserts a brand of 'babydoll' sexuality where women rely on their submissive

¹⁰ T. Moi, 'Sexual / Textual Politics: Feminist Literary Theory', (Methuen: London, 1985), at 13

¹¹ T. de Lauretis, 'Eccentric Subjects: Feminist Theory and Historical Consciousness', (1990) 16 *Feminist Studies* 1, at 126

femininity to please men sexually¹². Gender and sexuality are not inextricably linked, and it does not follow that a feminine female or a masculine male be straight.

However, this misconception by society through public gender discourse reasserts masculine dominance over the feminine.

How femininity is constructed by and within society

I will be focusing in particular on how femininity is constructed within society. The feminine role, as constructed by existing discourse, proves at best to be hypocritical and self-opposing. It has been said that “there is no feminine outside language”¹³, but, within a patriarchal society, it seems that only men are talking.

‘Femininity’ is the possession of many conflicting attributes - where the performance of femininity is subservient and ridiculed, yet simultaneously subject to insidiously unattainable goals. What constitutes the truly ‘feminine’ (arguably society’s ideal woman) is a term fashioned through a firmly male perspective. The entire framework of femininity is underpinned by Draconian discriminations; where women are presumed to be childlike, indecisive, obedient, self-depraving, nurturing, maternal, over-emotional and chaste. Simultaneously, femininity means pedantry, bossiness, provocativeness and the capability of pleasing a man sexually. The two conflicting ideologies are incompatible yet society still contemporaneously applies them.

¹² E. G. Davis, 'The First Sex', (Compton Printing Ltd: London, 1973), in Chapter 22 , at 334

¹³ J. Rose, 'Sexuality in the Field of Vision' (Verso: London, 1986), at 80

It is presumed that these attributes are the requirements needed to make a woman; and that all women share in this common identity¹⁴. This reinforces gender as a concept as being inextricably linked with cultural perceptions. If femininity is the result, there is necessarily a predetermined performance within the constraints of social expectations to achieve it. The female gender, and all the subsequent characteristics contained therein, is over-sexualised to the point of absurdity, with all focus remaining stubbornly upon the sexed body. It has been said that a woman's breasts is the most prominent sign of her femininity¹⁵.

Simone de Beauvoir¹⁶ posits that womanhood is the 'Other' against which man is defined¹⁷. This evidences the gender binary and suggests that women are subservient. In *The Second Sex*, de Beauvoir considers how women in a patriarchal society are paternalistically assigned their place by the dominant males. In an analogy of poles, females are the negative to the male positive¹⁸. Butler commentates of de Beauvoir's contribution to feminist theory as critical in that she explained, "to be a woman within the terms of a masculinist culture is to be a source of mystery and unknowability for men"¹⁹. With males being the absolute determiners of the female role within society, it is unsurprising that the actual and the expected performance of femininity are so incongruous.

Aristotle advanced that the, "female is a female by virtue of a certain lack of qualities... we should regard the female nature as afflicted with a natural

¹⁴ N.4, at 3

¹⁵ I.M. Young, 'Breasted experience: The look and the feeling' in *The politics of women's bodies: Sexuality, appearance and behaviour*, ed. R. Weitz, (Oxford University Press: Oxford, 1998), at 125-36

¹⁶ S. de Beauvoir, 'The Second Sex', (Vintage: London, 2010)

¹⁷ *Ibid*, in Volume 1, Part 1, Chapter 1, at 21 & 45, and Volume II, Part 1, Chapter 1, at 293

¹⁸ N. 10, at 3

¹⁹ N.3, in Preface, at vii

defectiveness”²⁰. This suggests that women are not autonomous, concrete beings in their own right, but can only be defined in deference to males. Men do not have to define themselves; their existence is undisputed, but for women it is necessary to say, ‘I am woman’.

De Beauvoir also suggests that “one is not born, but rather becomes, a woman”²¹. This refers to the process known as gendering or, as Butler coined it, ‘girling’²²; whereby children are born a blank slate without any innately feminine qualities, and subsequently learn their gender-appropriate behaviour. This process can be achieved through gendered play, which I shall later discuss. For now, the main stance is clear – gender is not something that a person is but how they act.

Performativity of gender

Butler explains gender performativity not as a pre-existing identity waiting to be acknowledged, but rather that it is “performatively constituted by the very “expressions” that are said to be its results”²³. Butler is suggesting here that gender is something we do rather than something we are, and so femininity is an ongoing process as a set of performances which constantly reinforce the message ‘I am woman’. In *Gender Trouble*, such performances are defined not as “...a singular act, but a repetition and a ritual”²⁴.

²⁰ N. 8, at 4

²¹ N. 16, at 293

²² J. Butler, ‘Bodies That Matter’, (Routledge: New York, 1993), at 177

²³ N. 3, at 25

²⁴ *Ibid*, at 7

Here, Butler postulates that gender is defined by the repetition of constrained norms, which forming the base of your identity, rather than some intangible idea. Following Butler's hypothesis that gender is fluid and interchangeable, any minor alteration to the set of actions being repetitively performed could, in theory, change your gender as often as desired. Other commentators support her claims that gender is something open for customisation, "for any length of time, at any rate of change"²⁵. Although theoretically this is logical, it is not practical because what constitutes 'expressions of gender' is left undefined by Butler. There is ambiguity as to whether it involves *prima facie* details such as dress and appearance, or more objectively-measurable criteria such as hormone levels or surgical reconstruction. It is unrealistic to suggest that your gender is fluid enough to change completely in a short period of time, and for that process to be infinitely repeatable.

It is further unrealistic by the very act of performing gender remaining inadequately defined. In practice, the realm of gender is too ambiguous for a person to declare with sufficient certainty that from x point they are y gender. This struggle to separate acquired gender from preferable gender is particularly tense for transsexual and gender dysphoric individuals.

The Gender Dysphoric and their struggles with the gender binary

²⁵ K. Bornstein, 'Gender outlaw: On women, men, and the rest of us'. (Routledge: New York, 1994), at 51-2

Gender dysphoria exists as a mental disorder²⁶ and is “characterized by a strong desired to be treated as the ‘other’ gender or to want to change one’s sex characteristics, and... feelings that are typical of the ‘other’ gender”²⁷. It is important to note that “their gender is not disordered... indeed their gender is quite ordered, just not in conventional ways”²⁸. Gender dysphoria tends to affect children and adolescents²⁹, particularly following the onset of puberty.

It is difficult to justify gender dysphoria’s existence as a mental disorder, when homosexuality was also pathologized within the DSM until 1973. I bring homosexuality into my discussion because it, as a diagnosis, was based on heteronormative assumptions of what was considered ‘normal’, ‘natural’ and ‘healthy’ at the time³⁰. Ideas of gender and sexuality are not universal. Gender exists not within a vacuum but a constantly evolving society, where meaning is dependent on the material cultural context.

For people with divergent genders, particularly the gender dysphoric, the heteronormative binary system and its conflation of sex and gender can feel oppressive to the point of tyranny³¹.

Gender Recognition

²⁶ Diagnostic and Statistical Manual of Mental Disorders (DSM-5; American Psychiatric Association (APA) 2013)

²⁷ A.I. Lev, ‘Gender Dysphoria: Two Steps Forward, One Step Back’, (2013), *Clinic Social Work Forum*, 288, at 292

²⁸ *Ibid*, at 290

²⁹ *Ibid*

³⁰ N.1, at 528

³¹ P.L. Doan, ‘The tyranny of gendered spaces – reflections from beyond the gender dichotomy’ (2010) 17 *Gender, Place & Culture: A Journal of Feminist Geography* 5, at 635

The most authoritative piece of legislation regarding gender is the Gender Recognition Act (GRA) 2004, whose purpose is to allow gender dysphoric and transsexual people the right to legally identify as their acquired gender³². Such legal recognition is granted through a gender recognition certificate granted by the Gender Recognition Panel. To be considered, s.1 (1) of the GRA provides that applicants must be 18 years of age or over. However, this requirement excludes many people who the legislation aimed to benefit; those affected at puberty by gender dysphoria. S.1 (a) expects the applicant to already be 'living in the other gender'. The statute is silent on what constitutes living as the opposite gender, and this subjectivity ensures a wide scope for the Gender Recognition Panel's discretion. Conversely, it becomes difficult for applicants to know what is expected of them in order to fulfil the application criteria, and the law is most ineffective when it is uncertain. S.2 (1) curtails the Gender Recognition Panel's discretion, for it is mandatory to approve an application if the individual in question has gender dysphoria³³, has lived in the acquired gender for a minimum of 2 years³⁴, and intends to do so until death³⁵. The evidence required to prove such an intense commitment to the acquired gender is ambiguous, and is left unanswered by the GRA.

It remains unclear how a person would 'perform' gender for a panel, but this in itself reflects how gendered identity is an ongoing process; never to be in stasis. It also, more gloomily, implies that it is not enough for you yourself to believe that you are the acquired gender; it is for others to judge that (at least for legal purposes). This

³² Gender Recognition Act 2004, Explanatory Notes, at para. 3

³³ Gender Recognition Act 2004, s.2(1)(a)

³⁴ *Ibid*, s.2(1)(b)

³⁵ *Ibid*, s.2(1)(c)

system provided by the GRA is arguably arbitrary in the way it processes applications for gender recognition certificates and such subjectivity is far from fair.

To evidence your need for a gender recognition certificate, an expert in gender dysphoria provides an assessment³⁶, furthering the idea that gender dysphoria is indeed a mental illness. The legislation itself references to more permanent, irreversible states of gender change, such as hormone treatment or surgery³⁷. This mirrors society's expectations for the gender dysphoric to take at least temporary steps towards the assimilation of the opposite gender³⁸. This exposes how we as a society understand gender - it is the performance of our identity. The outward aesthetics of an applicant are given precedence over their emotions and mental state. Furthermore, it is absurd to pose criteria for applicants to meet when so little is understood about the condition itself. It is apparent that the law is confused regarding performativity of gender but a haphazard proviso will not aid clarification.

The GRA further enforces the heteronormative gender binary because applicants are expected to identify as either male or female and so are restricted within two confines. The law reflects existing tensions between the traditional male/female binary and the people who challenge its legitimacy. Although the GRA appears to be embracing those who have "multiple and queer ways of expressing gender and sexuality"³⁹, it operates in opposition to this by requiring applications subscribe to male or female. This denial of the threat transsexualism poses to the gender binary

³⁶ *Ibid*, s.3(1)

³⁷ *Ibid*, s.3(3)

³⁸ D. Valentine, "'The calculus of pain': Violence, anthropological ethics, and the category transgender', (2003), 68 *Ethnos* 1, at 27-28

³⁹ N. 27, at 295

indicates that the law is no more ready to formally acknowledge the existence of anything more than male and female⁴⁰ than before this Act of Parliament; which Sandland refers to as, “a blunt, pragmatic and somewhat amoral response”⁴¹ to the case of *Goodwin v UK*⁴². As Butler points out, the medical approval given to transsexual individuals who are having to perform an essentialist construct of gender just further solidifies the concept of gender normativity⁴³. Butler’s argument is convincing, and dismally forecasts a defeat for the embracement of further gender identities. As a result, transsexualism and gender dysphoria, rather than a crack in the armour for people to explore the uncharted gendered territory of ‘hybrid’, ‘queer’, or ‘third’ genders; has become just another way of sectioning off society “within a dichotomous, either/or model”⁴⁴ between masculine male or feminine female.

‘Girling’ the girl

The origins of identification as ‘feminine’ has caused considerable controversy by commentators as to whether it is the influence of innate biological factors or, more persuasively, the process of ‘girling’ by parents and the child’s surrounding

⁴⁰ R. Sandland, ‘Feminism and the Gender Recognition Act 2004’, (2005), 13 *Feminist Legal Studies* 3, at 43

⁴¹ *Ibid*, at 46

⁴² *Christine Goodwin v UK* [2002] GC (Application no. 28957/95)

⁴³ J. Butler, ‘Undoing gender’ (Routledge: New York, 2004), at 71

⁴⁴ L. Bondi, ‘Tenth anniversary address: For a feminist geography of ambivalence’, (2004), 11 *Gender, Place and Culture* 1, at 12

environment at identity-sensitive stages. It has been posited from an anthropological perspective that the human personality is “malleable”⁴⁵. This is evidenced by the observable difference in the personalities of children who are shown to be, “heavily influenced by the sex-specific child-rearing practices and by the nature and severity of sex-role differentiation imposed by that society”⁴⁶. This suggests it is not biological determinants characterising the gendered attributes of a child, but the process of nurturing and education about gender-appropriate norms. Humans are identified at the point of birth, or even earlier, as either male or female and are expected to maintain this label for the duration of their life. This means the process of ‘girling’ a girl begins as soon as she arrives into the world, thus following the assumption that the proclamation of her biological sex is also indicative of her gender.

Children are subject to a process of gendering through a variety of means; including socialization and toy play. Roles and attitudes of the people around them, particularly caregivers, engrain a sense of gendered identity within the children⁴⁷ who, particularly by the age of two, are very much aware of their gender and the consequent expectations flowing from this. From this point on, they will often make their own choices about play and clothing to suit their gender. I use the word ‘choices’ liberally, as it is accepted that children will be conforming to their understanding of what it means to perform gender within our society. They are also aware if other children do not fit in the gender categories they have devised; and are quick to identify and attempt correction of any deviant behaviour⁴⁸. Deviant gender behaviour is more acceptable in girls than boys to both other children and parents.

⁴⁵ N.6, in Chapter 1, at 5

⁴⁶ *Ibid*

⁴⁷ E. Yearwood, ‘Children and Gender’ (2009) *Contexts*. Available at: <http://ctx.sagepub.com/content/8/3/78>. (Accessed: 05/03/2014)

⁴⁸ *Ibid*

Androgyny in girls is rewarded with terms of endearment, such as ‘tomboy’, whereas equivalent classifications for boys carry more negative connotations; such as ‘sissy’. This reinforces the notion that for the child’s own benefit, binary gender norms for should be strict. If there is any divergence at all, only deviance favourable to masculinity is acceptable, which links back to the idea that femininity is subservient to masculinity and is the least desirable sex.

Fine, in her book *Delusions of Gender*, discusses the transformative journey of children as gendered beings, and reasons that rather than children being born with some hard-wired knowledge about how to perform their gender⁴⁹, it is the role of experience⁵⁰ and how we treat baby boys and girls differently within hours of birth⁵¹ that determines how they will identify. Fine posits that gender-neutral parenting is a difficult and rarely successful feat, but articulates that this is not a result of biology, but rather due to the unconscious gendered expectations of the parents transferring onto the child as it develops⁵². A girl will usually be presented with a lot of pink, her physical abilities will be under-estimated, and her propensity to care and nurture, for example through a love of stuffed animals, will be exaggerated and encouraged. This demonstrates how gender identity is not created in a vacuum but constructed due to the majority opinions by society about what is ‘normal’ at that material time. The toy industry perpetuates society’s desire to ‘girl’ the girl, and is effective because children use toys as gender category maintenance⁵³. Children continually to favour

⁴⁹ C. Fine, ‘The Real Science Behind Sex Differences: Delusions of Gender’, (Icon Books: London, 2011), in Chapter 10, at 117

⁵⁰ *Ibid*, in Chapter 16, at 176

⁵¹ N. 49, in Chapter 17, at 196

⁵² N.49, in Chapter 18, at 199

⁵³ B. Davies, ‘Frogs and snails and feminist tails’, (Allen & Unwin: Sydney, 1989)

toys appropriate to their gender⁵⁴. In a study on children and their favourite toys, it was shown girls preferred those which were marketed towards stereotypically 'feminine' interests, such as caregiving, compared with the toys favourable to boys, characterised as action⁵⁵. Toys with gendered interests propound the idea that children must recognise, from a very young age, what is appropriate to play with. This leads the child to characterize normal and abnormal gender performances based on the conclusions they make about their toys, which can have a great impact on the future development of their hobbies, careers and relationships. Branding aimed at girls places a lot of emphasis on the colour pink and appeals to the child's ability to offer maternal nurturing. In particular, the toy doll 'Baby Annabell' is arguably the most gendered toy currently available on the market. The doll – white, blonde, female – carries a little sheep and offers 'realistic' features; such as crying, gurgling and giggling. Interaction between a child and this doll is an education in the needs of babies, and how to efficiently meet them. This provides a 'learning by doing' type experience⁵⁶, where a child, not long since a baby herself, is already involved in the pedagogy of becoming a mother. Although this may appear an exaggeration; upper class American girls were "said to throw down their dolls that they may nurse their children"⁵⁷; demonstrating the expectation that all girls, no matter how old, are considered mothers-to-be. The Zapf Creations website for Baby Annabell refers to the children as the "doll's moms"⁵⁸. This omission to reference the doll's father indicates a gendered exclusivity of the toy. It goes without saying every

⁵⁴ I.D. Cherney et al, 'The Effects of Stereotyped Toys and Gender on Play Assessment in Children Aged 18-47 Months', (2003) 23 *Educational Psychology: An International Journal of Experimental Educational Psychology* 1, at 97

⁵⁵ B. Francis, 'Gender, toys and learning', (2010) 36 *Oxford Review of Education* 3, at 329

⁵⁶ *Ibid*, at 333

⁵⁷ F. Marryat, 'A Diary in America, with Remarks on its Institutions', vol. II (New York, 1839), at 225

⁵⁸ Zapf Creations (2014) *Baby Annabell*. Available at: <http://babyborn.medienlounge.com/index.php?id=9&L=0> (accessed: 07/03/2014) (translated from German)

baby requires male and female components to be created, but the lack of toys encouraging nurturing behaviours for male children presumes that caring for a child and possessing emotionally-intuitive qualities is something that girls, and girls alone, should do. Undoubtedly, the paternal role is just as important as the maternal one when raising a child (assuming the child is being raised in a heterosexual cisgender environment). These expectations become ingrained within children's sense of gender categories, and the cycle is further perpetuated when they have children. It can be postulated that a girl, who will identify with her mother as a fellow female, can look to her for training and direction on becoming a mother herself⁵⁹, and so the child may produce similar behaviours towards the toy doll that she may have received from her mother herself, and so the cycle perpetuates. Dolls being thrust upon female children strengthens de Beauvoir's theory; one is not born innately maternal but a blank slate, and through the learning experience of mothering a doll and similar practices of gendered play, the process of 'girling' is complete; where the ultimate fulfilment of womanhood, as per society, is having a child.

When feminine traits are performed inadequately, or wholly rejected, society seems to treat that woman with condemnation. This has particular emphasis where motherhood is declined by capable females because it is deemed the apex achievement of womanhood and the ultimate performance of femininity. It should be noted that in modern Western society, women are offered a lot more choice about their body and fertility due to medical advancements in contraception. However, it is seen as abnormal if you do not fulfil your ability to conceive. Women who are unfortunately infertile, their choice being removed, are met with sympathy and condolences. Women who choose not to, even if for educated reasons, are regarded

⁵⁹ N. Chodorow, 'The Cycle Completed: Mothers and Children', (2002) 12 *Feminism & Psychology* 1, at 12

as deviant, and society does not receive such transgression from the appropriate female role comfortably. This is because “[c]ultural discourses of femininity and women’s social role have historically and traditionally been constructed around motherhood”⁶⁰. Such deviancy from appropriate feminine discourse, in particular motherhood, could not be better demonstrated than through society’s treatment of women who kill.

Women who kill

I am going to briefly examine how women who kill are triply deviant (against the law, appropriate femininity, and the concept of motherhood), by using Rose West and Myra Hindley as case studies. I will evidence that the only ‘acceptable’ way to fulfil womanhood is to refrain from deviating from these socially-constructed gendered norms. Any deviance on the part of a woman is met with more emotive condemnation and scorn than a man committing the very same acts would receive. As a result, women are paternalised by the state as objects without agency. Conversely, the media and wider public criticise these women as evil and over-sexualises them; even if aspects of sexuality are irrelevant to the case in question. Women who kill are seen to be deviating against feminine discourse by refusing to portray appropriate gender norms; ones I have spent the first part of this essay discussing. Because women who kill are seen as rejecting the very essence of femininity, they can only be characterised as one thing – masculine. Inchley argues

⁶⁰ R. Gillespie, ‘When No Means No: Disbelief, Disregard and Deviance as Discourses of Voluntary Childlessness’, (2000) 23 *Women’s Studies International Forum* 2, at 223

this is done in contrast “against a stereotype of motherhood that is itself a symbolic manufacture suited to the perpetuation of patriarchal structures”⁶¹. To reiterate, femininity and its features have been constructed from a purely male perspective. Aggression and brutality are not considered attributes of appropriate femininity and so female criminals are labelled with masculine traits. Statistically-speaking, women commit considerably less violent crimes than men⁶². It appears convenient to much of society to reason that this is a result of women’s inherent passivity; thus perpetuating the sexist gender discourse that prescribes what is ‘normal’ for a woman⁶³. Thus, these few women who oppose and challenge feminine discourse are viewed as deviant, and explanation is sought in the form of the women being mad, bad or a victim themselves⁶⁴. Attempts to medicalise women who kill’s behaviour has become a common knee-jerk response, and has often led to conclusions of mental derangement or hormonal imbalances⁶⁵. Jones comments; “[a]lmost naturally insane, a woman might easily be a natural criminal”⁶⁶. These ‘explanations’ find their pretext within the nature of femininity, which is argued to be inherently embedded within these women, suggesting that being a woman itself is the problem; it’s an incurable disease. Weare submits that this reaction from the Criminal Justice System “further entrenches gender stereotypes surrounding women. That is to say that it enforces the idea that women are mad generally, but especially when they commit

⁶¹ M. Inchley, ‘Hearing the Unhearable: The Representation of Women who Kill Children’, (2013) 23 *Contemporary Theatre Review* 2, at 193

⁶² Office for National Statistics, ‘Focus on: Violent crime and sexual offences, 2011/12’ Available: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-290621> (accessed: 07/03/2014)

⁶³ L. H. Bowker, ‘Women, Crime, and the Criminal Justice System’, (Lexington Books: Toronto, 1978), in Chapter 2, at 50

⁶⁴ S. Weare, ‘“The Mad”, “The Bad”, “The Victim”: Gendered Constructions of Women Who Kill within the Criminal Justice System’, (2013) 2 *Laws* 3. (Available: <http://www.mdpi.com/2075-471X/2/3/337>. Accessed: 07/03/2014), at 338

⁶⁵ A. Wilczynski, ‘Mad or bad? Child-killers, gender and the courts’, (1997) 37 *British Journal of Criminology* 3, at 425

⁶⁶ A. Jones, ‘Women Who Kill’ (The Feminist Press: New York, 2009), in Chapter 3, at 191

murder”⁶⁷. The biologically essential view she critiques is a dangerous one to take, where instead the cumulative effect of other factors such as environment, culture and sociology should be taken into account⁶⁸ when considering female criminality; else there is a strong risk of missing the opportunity to understand women who kill.

These violent women are thus labelled as triply-deviant. The first deviance is when a provision of the law is flagrantly violated through the commission of murder. The second instance of deviance from appropriate feminine discourse occurs when these women bypass the docile, pious and obedient expectations of them as constructed by society in becoming a criminal. This is not just a mere failure in appropriate gender performance, but a complete rejection of it. Finally, these women are further deviant by rejecting the institution of motherhood; **but** it when they kill children or their absence of their own children – it is an institution deemed excessively important in the performance of appropriate and legitimate femininity.

Many violent women appear in feminist discourses apart from Myra Hindley, of which there is a “deafening silence”⁶⁹. Although commentators find it hard to analyse such behaviour because of its abhorrent quality, to remain silent in feminine discourse allows women such as Myra Hindley “the refuge of the myth of female passivity”⁷⁰. This reinforces the idea that women are merely neutral spectators, incapable of having the drive or agency to intentionally commit such heinous acts when in fact, quite the opposite is true. It was established that while Ian Brady was the initiator,

⁶⁷ N. 64, at 345

⁶⁸ A. Morris & L. Gelsthorpe, ‘False Clues and Female Crime’, in *Women and Crime*, edited by A. Morris and L. Gelsthorpe (Papers presented to the Cropwood Round-Table Conference: Cambridge, 1981), at 50

⁶⁹ H. Birch, ‘If looks could kill: Myra Hindley and the iconography of evil’ in ed. H. Birch, *Moving Targets: Women, Murder and Representation* (Virago: London, 1993), at 34

⁷⁰ B. Morrissey, ‘Crises of Representation, or Why Don’t Feminists Talk About Myra?’, (2002) *Australian Feminist Law Journal* 16, at 131

Hindley was the commissioner of the killings⁷¹. Far from relying on her femininity to bring her solace, Myra Hindley refused to indulge in 'victim appropriate' behaviour in the courtroom. Although the show of remorse or even tears would have been beneficial to the outcome of her case⁷², Hindley did not submit to appropriate feminine discourse. Arguably, Hindley would have received more sympathy if she had subscribed to the expected notions of femininity, such as heightened emotion, for she would have been rendered harmless; she would have become a meek and unthreatening woman again; the perfect embodiment of the patriarchal oppression⁷³. Upon doing this, female criminals find themselves the recipients of a chivalrous paternity on behalf of the state who are less willing to harshly punish. By refusing to do so, violent female offenders such as Hindley find themselves sentenced not just according to the legislative tariff provided for their acts, but "according to the degree to which their behaviour... has deviated from the appropriate female behaviour"⁷⁴. When traditional female gender roles have been violated, punishment tends to be harsher than a male committing an equivalent act. Hindley became extremely evocative to the public, strongly opposing her release, because of her triple deviance. Not only had she been an active participant in the depravity, thus adopting a more sexually-active and masculine persona; the crimes had involved children. Childless herself, this further offended the institution of nurturing motherhood, exacerbated by her competent mental capacity. Without the convenient label of 'mad' to give her, it was with a sense of outrage that an innately sexist society received such flagrant violations of the female role in the commission of such violent

⁷¹ *R v Secretary of State for the Home Department, Ex parte Hindley* [1998] 2 W.L.R. 505, per Lord Bingham of Cornhill C.J., at 760

⁷² J. Ritchie, 'Myra Hindley: Inside the Mind of a Murderess', (Angus & Robertson: UK, 1998), at 116

⁷³ *Ibid*, at 125

⁷⁴ S. Edwards, 'Women on Trial: a study of the female suspect, defendant, and offender in the criminal law and criminal justice system', (Manchester University Press: Manchester, 1984)

murders. A police photograph taken of her staring defiantly into the camera was circulated by the media and became “synonymous with the idea of feminine evil”⁷⁵, because whilst aesthetically conforming to femininity, she is the “victim of a sick, clever male mind”⁷⁶.

Similarly, Rose West committed triple deviance against conventional feminine discourse and was tried alone for 10 counts of murder. Her partner, Fred West, had committed suicide before commencement of the trial. Despite her consistently denying any complicity, she was convicted and criminal input from Fred was minimised. In fact, it was her indignant protestations which caused the jury to speculate upon West’s contribution to the murders⁷⁷. Throughout the trial, attention was brought to her ‘deviant’ sexuality, despite having little relevancy to the case in question. Incredibly intimate details, such as personal sexual preference, was openly discussed in court⁷⁸. Acts of ‘lesbianism’ and references to ‘whorish’ behaviour suggest that the law is most comfortable when regulating female sexuality. Women who are sexually divergent are treated more severely than women who could be “more readily constructed within feminine discourse”⁷⁹. With such biased preconceptions, it is unsurprising that society reduces gender “to sexual identity and agency is understood as an abstract structural potential or in narrowly libidinal terms”⁸⁰. Far from being chaste, West was immediately disadvantaged by her sexuality in a discourse constructed by conflicting female roles. Contrast this with an

⁷⁵ N. 69, at 32

⁷⁶ N.69, at 48

⁷⁷ P. Bracchi, S. Wright, ‘Humming along to Take That, playing Monopoly with her child-killer friends and parading in glitzy tops... the very cushy prison life of Rose West’ (2011), available: <http://www.dailymail.co.uk/news/article-2033143/Rosemary-West-Humming-Take-That-playing-Monopoly-child-killer-friends-parading-glitzy-tops--cushy-prison-life-Rose.html>. (Accessed: 08/03/2014)

⁷⁸ *R v Rosemary Pauline West* [1996] 2. Cr. App. R. 374, per Lord Taylor C.J., at 376

⁷⁹ N.64, at 350

⁸⁰ L. McNay, ‘Gender and Agency: Reconfiguring the subject in feminist and social theory’ (Blackwell Publishers: Oxford, 2000), in Chapter 2, at 31

analogy where she is male; such discussion around his sexuality would be regarded as wholly irrelevant.

Not only was West expected to be the nurturing and docile persona appropriate for her gender role, she was also subject to the motherhood mandate. Considered the apex fulfilment of womanhood, mothering is not just something that is to be done; it is something to be done well. West was a bad mother, with a debauched sense of morality, and by helping her husband to kill their own daughters she effectively tore down the discourse constructed around the 'natural' and 'innate' maternal love women have for their children. This distortion of appropriate gender discourse effectively undermines the institution of motherhood, and so West's femininity was rejected. Instead, she becomes unnatural and 'other'; so as to completely distinguish her from other 'normal' women who would not commit the same kinds of violent offence.

Women who kill find their voices "stigmatised or silenced"⁸¹, thus leaving the public and media to fill in the blanks. To describe my case studies, terms such as 'icon of evil' were used by the media; whose stereotypes of female criminals are limited to variations of "witch, whore or bewildered mother"⁸². With violent offenders such as Hindley and West, their deviation from appropriate feminine norms and society's gendered biases become just as important as the crimes committed. Article 6 of the European Convention on Human Rights promises defendants a right to a fair hearing and the UK courts *prima facie* granted this to both of my case studies. However, with such a massive absence of identity, the whisper of female criminal's voices are

⁸¹ N. 61, at 192

⁸² F. Heidensohn, 'Women and Crime: Questions for Criminology', in *Gender, Crime and Justice*, ed. P. Carlen and A. Worrall, (Open University: Milton Keynes, 1987), at 27

barely heard by half-closed minds. Our preconceptions of gender, firmly established in our minds since childhood, instruct us that such voices are to be regarded with suspicion, they are not to be trusted, and that our prejudices are founded in fact.

Conclusion

Although the Butlerian conception of gender fluidity is attractive, it remains too abstract to offer any practical solutions, particularly not for the gender dysphoric and transsexuals from the strictly-oppressive gender categories in which society operates today. Although the GRA 2004 cosmetically goes some way to offer legal recognition to those wishing to change their gender, it remains stoic (when offering an either/or model of the polar-opposite genders for acquirement) in affirming the heteronormative gender binary, whose biologically essentialist view works as an exclusionist tool against those who refute its legitimacy by wishing to pursue third or other genders. This gender binary is culturally and socially constructed through discourse, where gender is not something derivative of your sex but something learned from a young and impressionable age. Parenting, pedagogy and play with gender-specific toys protect against any diversion from these strict 'appropriate' gender roles. In particular, girls from a young age are subject to an array of conflicting ideologies to which they must conform about what it means to be 'woman'; heterosexual, chaste, passive and maternal. Any deviation from this is condemned as abnormal and, especially in the case of women who kill, met with society's rejection of the female's self-identification as 'feminine'.

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