This paper will explore identity beyond Being, the social constructs that hinder an expression of identity beyond conventional definition, and how otherness creates a legal desert with limited access to institutions such as marriage. Through a discussion of intersubjective ethics, the paper will make a call to feminists to recognize a bond “beyond Being,” with those who are without conventional gender definition. Drawing directly from the work of Emmanuel Levinas, the paper will call for transcendence of otherness, settling on a meditation of the gnosis rather than exposition of the logos as a method of bringing to light unspoken connections. The paper is neither a call for sameness analysis nor otherness analysis, but rather seeks to move the discussion of gender and rights into the realm of the Otherwise.

A recent flurry of media attention offers information that doctors are addressing intersexuality with less determinism and encouraging parents to confront gender ambiguity without striving towards historical goals of settling each child into the binary gender formula out of convenience. With intersexed and transgendered students, the elite women’s colleges, often on the fore of tackling gender-related social issues, are developing policy for admitting and retaining students who present with gender ambiguity yet self-define in ways that prompt them to attend women’s colleges. Rather than adhering to binary standards, progressive doctors, parents, and college administrators are moving beyond a mere representation of the person and delving into the realm of the unsayable.

By examining the historical method of hypodescent, the paper will address the abuses and limitations that result when the dominant culture seeks to unnecessarily define the minority. Categorization through external controls created by the dominant culture does not define Being-ness, since attaining true Being requires transcending classification to find essence. Critics conclude that Durkheimian classification offers symbolic systems that are more than harmless instruments of knowledge, since the classification systems are employed as instruments of domination, even when no clear policy or rationale for domination exists. Slave states imposed a “one drop rule” to enforce ownership through hypodescent, and thus set a policy for how the majoritarian government would perceive race. While some overly constructivist methodology could provide a unifying and consistent (albeit, as with race, a harmful and discriminatory) policy to address gender ambiguity, the states, instead, turn away from any true method of knowingness and rely instead on mere words with no consistent meaning.
A survey of state laws governing gender identity and marriage offers a chaotic picture of how states subjugate self-definition to the normative values of the majority. More troubling, though, is the utter lack of policy or rationale for the rules governing gender assignment at birth, gender change on birth certificates (whether required or allowed or prohibited), and which genders may marry. To begin to sort through the cacophony of laws, feminist theorists may form a group that might most easily acknowledge the immemorable past that may not have crossed to the present (yet). Though, rather than adopting a method of post-modern deconstructionism, or the more traditional models of equality, difference, and domination, this paper will advocate for reflexivity as path to absorbing gender ambiguity into the modern state.