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Daughter of the witches they forgot to burn.

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So, over the last few days a few people have asked me to deal with this delight from Professor Joanne Conaghan.

So, I'm gonna do a paragraph-by-paragraph fisk-type thing.

legalresearch.blogs.bris.ac.uk/2018/12/sex-ge...

1. Yes, the 'debate' is a mess, and yes ppl aren't listening to each other.

BUT, when there is a collision between rights claims, I'm not sure it's a great idea to attribute it to 'unkindness.' Especially not when it's one group asking another to cede rights, and telling them



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such unkind sensibilities is troubling, particularly inclusion, empathy, and respect for different s
respect.

they're unkind' for resisting, especially especially not when the ones being allegedly 'unkind' have a massive gendered expectation of 'being kind' that is been widely

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A part of my philosophical training is in Care Ethics. I'm actually a big believer in empathy, and the knowledge it gives us, and on revaluing that along feminist lines. But using the valuation of empathy to tell women that they need to place other people's political interests above their own is just bullshit feministing.

Nil point.

2. 'So, this is the bit where I'm going to show how well we should listen to each other by presenting trans claims as 'perfectly proper' and feminist claims as 'misgivings' and am going to completely fail to deal with the extensive legal analysis as to why there is a conflict

What lies behind the apparent deadlock in debate between transge critical' feminists? On the one hand, there is the perfectly proper co access to a legal process of gender recognition which they do not e cumbersome, and pathologizing. On the other, there are misgivings feminist community that a legal regime of gender recognition, unde and operating in various forms in Argentina, Belgium, Brazil, Chile, Malta and Norway, will weaken the hard-won gains of decades of fe with regard to securing women's access to safe sex-segregated spa centres and women's refuges. The fact that existing equality legislat of protection allowing same-sex service providers to deny access to where they can show this is a proportionate means of achieving a li counselling service might reasonably be concerned that sexually ab likely to attend group counselling if 'male-bodied' trans women are not seem to have allayed these concerns, though surely they should Government has made clear that they have no plans to change equ

between self-ID and the single sex exemptions in the EA2010.'

Here's [@Julian_Norman1](#):

"Amendment of the GRA...will inevitably have an immediate and potentially destructive impact on the sex based exemptions provided under EqA 2010."

docs.google.com/document/d/1b7...

Here is also an interesting thread from a few days ago re: the different but related issue of the provision of cervical smears:

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WOMEN AND GIRLS IN SCOTLAND
@WG_Scotland

The Times has covered our NHS FOI which reveals that transwomen with GRC's cannot be prevented from providing arranged female-only care, & as such James Morton is wrong, in that there is in fact no legal way women can require their HCP not be transgender:

Women 'risk health over trans NHS workers fear'

Campaigners have raised concerns that a new policy which allows male doctors to self-identify as female is deterring vulnerable women from ...

thetimes.co.uk

12:25 AM · Dec 18, 2018



200



158 people are Tweeting about this

The issue as far as I understand it is this. The EA says we have a right to single sex exemptions 'proportionate to a legitimate aim.' But the GRA makes trans women legally female, and protects them from revealing their birth sex.

To me, it seems pretty evident that that is going to cause a massive conflict in places.

Strangely, no amount of people *telling* me without detailed argument *that* this is not the case 'allays these concerns.'

Funny that.

And especially not when you factor in this:

womansplaceuk.org/references-to-...

actually irrelevant (in this case) complexity into the mix to avoid confronting directly that this is a conflict caused by trying to replace a sex-based definition of the being of a man or a

Gender critical feminists have also expressed concern about the perceived elevation of identity rights over those of other legally protected grounds, the assumption being that all categories, such as race, religion, sex, gender reassignment etc, should always be given the same level of consideration. Yet, such strict adherence to sameness of treatment across all grounds flies in the face of how the various inequalities interrelate: some legally protected grounds are referentially reliant upon others (it is difficult to understand gender reassignment without invoking some notion of sex); while others are actively implicated in constructing categories of disadvantage and/or stigma (consider, for example, how religion has contributed to the construction of homosexuality as unnatural and/or immoral). If intersectionality has taught us anything it is that inequality is a messy and complex phenomenon, not one of straight lines or mathematical forms but a scramble of cross-cutting, interlocking processes, and structures in which the 'protected grounds' feature not as discrete categories of disadvantage but as deeply entangled dimensions of social and political order. Moreover, because these grounds work through, with, and across one another to produce different inequality outcomes, it is rarely the case that they are evenly aligned in their specific effects. It follows that, other than abstractly, inequality categories generally manifest themselves in producing inequality experiences in which the protected grounds feature unevenly, hierarchically, and sometimes, directly collide.

woman, with a gender identity based definition.

We're not worried about gender identity's relation to other protected characteristics. We're worried about the legal and political erasure of sex.

And you can't sidestep that with your burbling.

4. Now we get onto the next side-step, which tries to avoid the conflict between sex and gender identity based conceptions by wheeling out a bunch of fairly familiar tropes to trouble the sex/gender distinction. In the first couple of paragraphs we get the instrumentalization of

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the point is arguing the sex/gender distinction and the way it has been employed by gender critical feminists to put a formal distance between 'women born' (sex) and trans women (gender). Most feminists are familiar with the sex/gender dichotomy which emerged in second wave feminism as a way of distinguishing between aspects of women's experience which were biologically based (pregnancy, menstruation and the like) and those which were culturally imposed (for example assumptions that women were more caring, less suited to particular kinds of work etc). Second wave feminists invoked the sex/gender distinction to argue that much of the discrimination to which women were subject was socially constructed not biologically determined; it could not therefore provide a defensible basis for treating women less favourably than men. This strategy worked up to a point but ran into trouble when it came to advancing arguments for accommodating pregnancy in the workplace as it left open the possibility for arguing that because, in some fundamental biological respects, women were different from men, social arrangements which reflected those differences (too often to women's disadvantage) were not necessarily discriminatory.

While some feminists were preoccupied with surmounting the impasse posed by the sameness /difference debate, other feminists from mainly minority communities (black and lesbian) began to question the construction of sex and gender emerging from mainstream feminism. The difficulty with feminism, these voices persuasively affirmed, was that it essentialised notions of womanhood in a way which corresponded with white, middle class, heterosexual, female experience but was inattentive to the experiences of minority women who struggled to have their perspectives aired and shared in feminist discourse : 'Ain't I a woman?' asked black feminist

Black feminism, and the use of the argument about 'essentialism.' On these I want to say 1. The fact that Black women have a specifically located experience inflected by race which requires particular articulation in no way makes them a sub-class of women, and in no earthly way

implies that male people are female. Crenshaw's model was not intended to fracture the body of women in order to allow male people into it. And the fact that when it comes down to it - and you take out all the verbiage -

this argument reduces to 'if Black women are women then trans women are women,' should pull anyone who makes it up, HARD. 2. Essentialism. I have one thing to say. Why is this argument only ever rolled out when female people are making a claim to their own existence??? We allow

manner of groups to organise and express their political interests and their experience, and how they relate to each other. But as soon as women want to do it? No mate, that's *essentialism.* I could give you a long philosophical argument here about how existence doesn't depend

essences, but this is twitter, so I'm going to confine myself to saying a) If you think you can advance the interests of female people by erasing their existence you're a damn moron, b) Denying the existence of female people is patriarchy 101 and c) Fuck right off.

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and the meaning of natural things is culturally mediated?' 'Well yes thank you I did....
AND?'

There is a conceptual error here... I would say that the 'sex' and 'gender' are
analytically distinct... that is, we can usefully think them separately, and then also,
because we can think them separately, we can also think *how they interact.* To
think that having a sex/

gender distinction means that you think there there is no meaningful relation or
interaction between them is just to misunderstand what such a distinction is. As is to
think that understanding *that* they interact, and are both, in fact, mediated by each
other, in some way

undermines such a distinction.

Bodies exist, they are mediated by culture, and culture is also, mediated by bodies.

Great.

Tell me how why that means we can abolish the legal recognition of sexed bodies in
law?

Because unless you believe that our perception of sexed bodies - and the material
limits imposed by sexed bodies - is *entirely* mediated by culture, then, it doesn't

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about the thinking of distinctions. I've banged on about this in my Butler essay and the video I made. People think that to make a distinction between things, they must be thought as completely

distinct. As if we can only think minds and bodies as either a perfect dualism or an identity. That not actually how things are in the world. We can distinguish them analytically, while recognising they are interpenetrating and indissociable. The point is to think *both/and.*

But to think both/and, *there has to be a both.* If you don't grant existence to sex, and to the reality of sex and it's political importance, you are reducing a reality made of the interaction of nature and culture to culture.

Anyway, as we get to here... this is all basically politically. Granting reality to sex is bad, because then female people can use it to claim that male people are not female. Yeah sure, we can gloss this as a social construction which depends on an essentialised notion of

'womanhood.' But we don't need that concept. I personally have no idea what 'womanhood' even means. All we need to be able to say is that female people exist, they are allowed to define themselves *as* female, they have political interests that follow both from their biology

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they have a right to express those political interests without being sneered at, dismissed, told they are 'unkind,' and threatened with violence.

And any kind of feminism that won't grant existence or political rights to the group of people it is supposed to represent is no fucking kind of feminism at all.

<Ends>

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