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A Very Binary Drama: The Conceptual Struggle for Gender's Future

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Abstract

This article explores how both the present and change are imagined and enacted in relation to gender's conceptual future. Its jumping off point is the current British struggle over definitions of gender and sex, and how law and public policy should respond. Two contrasting conceptions have become particularly dominant within wider public discourse: gender as sex-based domination; and gender as identity diversity. The article explores the conceptual lines of friction and the part institutional arenas, particularly law reform debates, have played in shaping the dispute. In its second half, the article locates these conceptual lines in different conceptual tasks. Prefiguring, destabilising, and critiquing gender are all oriented to forging a different conceptual future for gender, but they also seem to rely on different conceptions of what gender means and involves. Arguing that concepts should be approached as invariably plural, rather than as subject to a single right definition, this article asks whether different conceptions of gender can interrelate in less antagonistic, more fruitful ways including in the development of statutory law. This article draws on utopian thinking to explore the challenge of gender's conceptual future.

> Having surveyed utopian literature on gender over the first decade of this century, I am indeed struck by the absence of really new visions. But I am also struck by the continuing *desire for change;* the continuing desire to desist from old patterns of thought and behaviour (Sargisson 2012: 78).

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If our goal is to further feminist and queer political aims, we would do well to have both

the strategies of gender proliferation and feminist redefinition and revaluation of

womanhood operating at the same time. (Hale, 1996: 96)

Introduction

Utopian thinking today foregrounds the imaginary and material development of new worlds by

invoking new desires, new forms of personhood and subjectivity, new relations, and new institutions

(e.g., Levitas 2013). This article explores these themes in relation to gender's conceptual future,

focusing on the struggles currently taking place in Britain to pin down what gender is, what it means,

and what it could come to be. In doing so, it takes up a conceptual method anchored in the

oscillating relationship between imagining and actualisation (Cooper 2014). In other words,

approaching gender as a concept is not just about how gender is imagined or thought about; it is

also about how gender is expressed and manifested; and even more about the ongoing movement

between the two dimensions, as each informs, shapes, cuts, guides and gets folded into the other.

In recent years, the concept of gender has been radically shaken. While many publics in (neo)

liberal jurisdictions continue to regard gender in conventional ways, gender's taken-for-granted

status as the proper social life of natural binary sex has been unsettled. Various perspectives have

emerged with an alternative account of gender – of what it is and what it does. Here, different

politics (trans, queer, anarchist, postcolonial, socialist, radical, lesbian, etc) fuse with accounts of

gender as, variously, a structure, system, performance, practice, language, labour relation and techno-

political assemblage. But in among this rich variety of critical and progressive conceptions of gender,

two formulations have become particularly prominent in contemporary Britain, emerging in the

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course of law reform and public policy debates over gender transitioning and self-determination.

One challenges gender's status as proper and natural, approaching it instead as a binary class relation

of domination anchored in reproductive sex; a second, challenges gender as binary and biologically

anchored, treating gender instead as a felt dimension and expression of the self that may -- or may

not -- align with biological sex,[1] or even map onto intelligible male/ female forms. In this article, I

take up these two competing conceptions as a spring-board to thinking about gender's contested

present and future. This is not a single linear thread from now to what will be, but rather a cluster of

different movements involving aspirations and fears, anticipatory practices, and critical framings of

gender's "now". My discussion considers how to understand the conceptions of gender currently

struggling for hegemony, and the tensions that exist between them. However, at its heart lies the

question: can divergent conceptions of gender, developed for different tasks -- including to support

minorities, maintain instability, and critique the status quo –- take on a more productive, less

adversarial relation with one another?

Notions of conceptual conflict and plurality are not unfamiliar to scholars. There is Gallie's

(1955) influential work on "essentially contested concepts";[2] Wittgenstein's work on "family

resemblance"[3] and "language games";[4] Derrida's (1992, 2000, 2001) work on the relationship

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[1] Feminists also question the notion of alignment on the grounds that suggesting gender can align with biological sex suggests sex is *already* gendered.

[2] Gallie (1955) developed the term to describe a conceptual situation in which appraisive concepts, signifying "some kind of valued achievement" (171), such as justice, democracy, or art, are subject to divergent "rival" understandings, definitions and usages that are also credible and genuine. Gallie's work has been subject to extension and critique, including over the boundaries and limits of which concepts can usefully be described as "essentially contested"; and over the conditions that generate their contestation (e.g., see Garver 1990; Reitan 2001).

[3] "Family resemblance" applies to concepts where usages overlap to create a complex web of similar and related meanings, but where usages do not have a single shared essence (Wittgenstein 2009 [1953]; see also Haugaard 2010).

[4] Here, meaning does not come from a unitary and stable definition but from knowing how to use a word; where uses of language are plural and unfixed. In this way, meaning varies according to the context and purpose of the "language game" (see generally Wittgenstein 2009 [1953]). According to Haugaard (2010), moving between a

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between conditional and unconditional concepts (including the gift, hospitality and justice); and

normative theory debates that assume possibilities for conceptual elasticity and divergence in arguing

over whether concepts should be framed in ideal or non-ideal ways (e.g., see Hamlin and

Stemplowska 2012; Valentini 2012). This article draws loosely from these different discussions.

Working with a notion of concepts and "conceptual lines"[5] that, importantly, fold in actualisation as

well as imagining, what it primarily takes from these literatures on conceptual plurality are three key

ideas. First, that ways of understanding and operationalising any particular concept are multiple and

contested. How particular concepts are used, advocated for and understood depends, among other

things, on the context and the purpose of their deployment.[6] Rather than ask pre-emptively which

conception is the right or best one, it is more useful to consider their different cuts and joins

(material and interpretive), and so the implications different conceptions have for how social life is

understood and lived. This also recognises that while different conceptions, for instance of gender,

are tied to different political projects, conceptions can take on their own life as not-sensibly-to-be-

disputed "facts", particularly when they are taken up by powerful institutional bodies and processes.

   Second, consistency and unity of use are not necessarily advantageous when it comes to

thinking politically in both critical and optimistic ways. Derrida's work on conditional and

unconditional concepts, for instance, suggests that value may reside in keeping the relationship

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discussion of what 'is' and what 'ought to be' involves a movement between language games. This resonates with
the pluralist approach to concepts I have adopted (see Cooper 2014, 2017, 2019). For a helpful discussion of
Wittgenstein's ideas in relation to gender, see Nicholson (1994); on the value of plural, sometimes imprecise,
conceptual boundaries, and emergent definitions, see Davidson and Smith (1999).

[5] I use this term, "conceptual line" to describe the oscillating relationship between concepts' imagining and
actualisation through common or different temporal planes (see Cooper 2014). These two dimensions of imagining
and actualisation do not converge; and it is, in part, the ongoing tension, pressure, and discrepancy between them
that keeps concepts in flux.

[6] See also Clarke (2015: 829-830) who suggests that identities might be "unbundled"; and so defined differently in
different contexts.

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between both poles in play rather than arguing for one to necessarily supersede the other (e.g., see

Derrida and Dufourmantelle 2000). Everyday pragmatic or conditional conceptions identify what is

done; idealised conceptions operate as an aspiration, a horizon of impossible possibility and a

standard for evaluating what is. In this article, I am less concerned with the movement between the

barely acceptable and the ideal, and more with how we might move between critical, exploratory and

affirmative conceptions.

The third claim I want to take up suggests concepts' evaluative or normative dimensions

form key stakes in how, why and whether a conceptual line is desirable. In the case of gender, this is

complicated by the fact that views differ radically not only on what gender names, but also on what

gender does, and thus the normative valence that should be attributed – in basic terms, whether

gender identifies something positive (or natural) or something harmful.

Conflicts over conceptions of gender are far from new. The one taking place in the second

decade of the 21st century is a successor to previous feminist conflicts over essentialism. Earlier

debate arose as multiple forms of oppression became more adequately attended to within feminism,

leading to debates over whether there was anything common or shared by the category of woman.

While some writers and activists identified possible commonalities -- from reproductive potential to

subordinated status and experiences -- others challenged this essentialism on empirical and

normative grounds, with a third way emerging based on a "strategic essentialism".[7] This third

approach treated the category woman "as if" it had some core common meaning, while recognising

this commonality explicitly as a politically constructed one. I return to the work performed by the

"as if" later in relation to gender's prefiguration. One striking difference, however, with the earlier

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[7] For one account of this debate, see Stone (2004); for critique, see Munro (2006).
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essentialism debate was that the normative borders of who should count as a woman were not, for

the most part, up for grabs. Some feminists centred eroticised sex-based inequality in constructing

the category of woman, generating the claim that lesbians weren't women since their lives were not

defined by willing sexual subordination to men.[8] But this was a process of self-executed category-

exit rather than unwilling exclusion. It also intersected other moves, concerned to expose and

overturn histories of denial that withdrew the status of woman from many thanks to racialized and

socio-economic processes of symbolic and material exclusion (e.g., see Carby 2007). Previous

debates about what it means to be a woman diverge, then, from the current conflict, which is

foremost concerned with how expansively certain gender categories should be drawn. Today, the

starting point is not what, if anything, do all those indisputably defined as women share; but how

should the criteria of woman be defined so that certain identified groupings – most prominently

trans women (or trans women who haven't undergone body modification) – get included or

excluded (see also Ahmed 2016a: 30).

In Britain, in the later teen years of the 21st century, the conceptual conflict over gender has

led two quite different accounts to come to political prominence: "gender as diversity" (GDiv) and

"gender as domination" (GDom).[9] While other accounts exist, these two became particularly

influential within wider legal and policy debate.[10] Indeed, their prominence was partly structured by

this wider institutional focus, which shaped and supported certain discursive positions in contrast to

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[8] See Wittig (1992); also discussed by Hale (1996); Tudor (2019). See also MacKinnon (1987: 6) on gender "as the congealed form of the sexualization of inequality between men and women".

[9] GDom aligns with what has been described as a "gender critical" perspective; e.g., see Critical Sisters; http://www.criticalsisters.co.uk/; and the Socialist Feminist Network; https://www.socfem.net/; both last accessed 25 February 2019.

[10] This became especially apparent in organisational and individual responses to the 2018 government consultations over reforms to the Gender Recognition Act 2004 in Scotland, and in England and Wales, as discussed below.

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others. Both GDom and GDiv embrace a spectrum of positions. For instance, GDiv includes liberal perspectives that treat gender as a core stable part of personhood alongside more experimental, critically intersectional, and fluid approaches to gender. GDom includes conceptions of gender as a social relationship entirely, and by definition, constituted through domination. But it also includes conceptions of gender that are more equivocal about the constitutive and essential character of domination in relation to what gender is and could become.

Later, I discuss how liberal variants of each account gained prominence compared to more radical alternatives. However, one complication of GDom has been the growing dismissal or demotion of gender, as a critical term, by some women's rights activists on the grounds that gender has become overly aligned with a voluntarist and stereotypical approach to identity that ignores the "real", biological, unchosen sex-basis of women's oppression.[11] According to the influential radical feminist activist-scholar, Sheila Jeffreys (2014: 43), "The way in which queer and transgender activists use the term 'gender' is problematic because it obscures the existence of persons, women, who are biologically female, and their particular interests." This challenge to the ongoing validity of gender as a social and political concept is an interesting one for a discussion of gender's future. However, to the extent GDom feminists recognise those social processes that convert sex into gender (while rejecting, if tacitly, the feminist counter-claim that it is gender processes which give rise to discourses of sex), gender remains an important concept. Gender is also an important concept for progressive future-oriented politics since, unlike sex, it is not deemed a fixed, stable fact. In the struggle over the immediate terms and possibilities for self-determined gender, political

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[11] See, for instance, Women's Spaces in Scotland, Response to Scottish Consultation on reforming the Gender Recognition Act 2004; https://www.gov.scot/Resource/0053/00539506.pdf; last accessed 25 February 2019. For an interesting account of the history of the term 'gender' which concludes by questioning its ongoing value for feminists, see Debbie Cameron, "A brief history of 'gender'", *Language: A feminist guide* blog, 15 December 2016; https://debuk.wordpress.com/2016/12/15/a-brief-history-of-gender/; last accessed 25 February 2019.

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ambitions for the future have received less attention. But to the extent that advocates of both

approaches want a future that is less unequal, can gender have a future? Should gender be

abolished;[12] can it be organised in ways that are more equal and freer; what might gender then mean;

and can (and should) the good life be cultivated against and away from androcentric norms? While

these are normative questions, they are not only that; they are also conceptual questions, inextricably

tied to the cuts and joins in how gender is imagined and done.

GDiv and GDom offer conceptions of gender that diverge in multiple ways. They diverge in

what gender means, its subjectivities, constitution, relations, normative valence, histories, sought-

after ends, and strategies for how to accomplish them. The capacity of gender to diverge

conceptually is unsurprising. Within different contexts, attuned to different harms, desires and

aspirations, gender acquires different meanings and uses (even as pre-existing meanings, usages and

material relations shape the new ones that emerge). These different meanings and uses, arguably,

could co-exist, sliding over each other, as they got taken up by different social populations. They

could even remain comfortably unintelligible across different communities of usage, particularly if

they remained relatively insulated, politically and socially, from each other. However, the capacity of

different conceptions of gender to coexist, with seemingly mutual indifference, in divergent

normative and social worlds has been undermined by a series of contact points, including the turn to

law and state by different gender-based movements seeking recognition and remedial action.

In the section that follows, I explore in more detail the current struggle to shape gender's

present and future meanings as law reform processes provide a stage for conflict, substantial

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[12] See for instance, Jo Bartosch, "Feminists like me have a broader aim; we don't want more gender boxes to choose from; we want to get rid of the boxes altogether," in 'Lesbian pride, lesbian protest', 8 July 2018; https://medium.com/@josephinebartosch/lesbian-pride-lesbian-protest-cea2c1404cc0; last accessed 25 February 2019.

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material and symbolic stakes, and an institutionalised bridge between what is and what should be. I then shift ground to locate GDom and GDiv within a broader field of future-oriented usages that underpin gender's conceptualisation: focusing on prefiguration, destabilisation, and critique in order to consider how these purposes affect the conceptual lines that develop; and the tensions that get engaged. Driving this discussion is the question of what to do with conceptual plurality. Political adversaries in the struggle over gender treat plurality as something to eliminate, hoping to gain victory for their paradigm over other contenders. But, there are other ways of approaching conceptual plurality. The relationship between divergent conceptions of gender, when it comes to material practice, has received insufficient attention in both theoretical and empirical work, including in sociolegal and gender studies. This article seeks to contribute to understandings of contemporary conflicts over gender; but as a case study of one particular conceptual conflict, it also traces an approach that can be taken up for other concepts too -- property, citizenship and the state for instance -- where progressive and critical perspectives tend to polarise into either critique or reconstruction.

Struggling for gender's conceptual future

Today, the conceptual assumption that there are two fixed and stable sex-based genders, with very limited traffic between them, no longer holds up. In different countries, governments have been amending their recognition laws. These have mainly focused on regularising and, in some cases, simplifying procedures for gender transitioning. However, in a few jurisdictions, including Canada, Malta, Denmark, California and Scotland, governments are also attending to the new (rather than traditional) claims of those who identify with a gender other than male or female (see Clarke 2019; Holzer 2018). Some countries have managed gender-transitioning law reform with minimal

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opposition from other progressive/ critical gender movements. In other countries, the question of

who gets to define and come within the category of woman (and to a lesser degree men), and

whether new gender categories can and should be legally created, has precipitated a series of

flashpoints, as clusters of feminist activists oppose any changes that would make the category of

woman more permeable or expansive. These institutional flashpoints echo earlier ones. Feminist

spaces and projects have a long history of membership tensions, one of the most famous being the

Michigan womyn's music festival policy of excluding trans women's participation (see, e.g., Browne

2009; Gamson 1997). But community-based boundary-disputes have multiplied and hardened as

state bodies and powers get involved.[13]

In Britain, disagreements over gender's conceptual parameters have grown increasingly

heated (see also Ahmed 2016a). Social and mass media stories describe participants being subject to

abuse, social media attack, no platforming, the closing down of meetings, and violence.[14] Provision

of puberty-blockers for transgender-presenting children and teenagers;[15] and the de-sexing of public

toilets (Jeffreys 2014) proved two focal-points for conflict. Clashes also broke out over the Labour

Party's decision to recognise the right of any self-identifying women to apply for nomination to

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[13] See, for instance, the litigation in British Columbia, Canada, in *Vancouver Rape Relief Society* v. *Nixon* [2003] BCSC 1936; [2005] BCCA 601. In this case, a trans woman was denied access to volunteer peer counsellor training at the feminist organisation, Rape Relief, on the grounds she had been raised male and so had not been oppressed as female from birth.

[14] E.g., see Sophie Hemery, 'Online platforms have enabled "deluge of hatred against trans women" in the UK', Open Democracy, 15 November 2018; https://www.opendemocracy.net/en/5050/online-platforms-enable-deluge-hatred-against-trans-women-uk/; last accessed 12 March 2019; also Jamie Doward, 'Women's groups claim 'silencing' on transgender concerns', The Observer, 14 October 2018; https://www.theguardian.com/society/2018/oct/14/women-claim-intimidation-silencing-gender-recognition-act-debate; last accessed 25 February 2019.

[15] Tim Adams, 'Transgender children: The parents and doctors on the frontline', *The Guardian*, 13 November 2016; https://www.theguardian.com/society/2016/nov/13/transgender-children-the-parents-and-doctors-on-the-frontline; last accessed 25 February 2019.

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women-only party posts and women-only parliamentary shortlists.[16] But the conflict's gathering

steam came to a head in Scotland, and in England and Wales, in 2018, when both governments

consulted over whether to introduce a lighter-touch approach to gender transitioning given similar

developments in other jurisdictions. The advancement of a self-declaration framework that would

remove the need to establish "gender dysphoria", the two year "real life" test and other "intrusive"

or demeaning requirements gained support from some feminist and women's organisations.

However, others strenuously opposed it. As one organisation (Fair Play for Women) remarked, in

response to the Scottish consultation on reforming procedures for gender transitioning, "Trans-

ideology is the belief that the subjective concept of gender identity overrides the objective reality of

bodily sex. …This policy will codify this belief into law and prioritise this ideology over and above

other widely held concepts such as the male and female sex binary."[17]

The conflict that has emerged painfully exposes the contested character of gender among

progressive forces. To flesh out the tensions between gender as diversity (GDiv) and gender as

domination (GDom), I start with the former. GDiv dominates the accounts of those arguing for

self-determination on the grounds that gender forms a core part of identity.[18] As expressed by the

Yogyakarta principles, a set of aspirational international human rights, "gender identity" is "each

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[16] Paul Waugh, '"Self-defining" trans women to be allowed on Labour's all-women parliamentary shortlists', *Huff Post*, 6 March 2018; https://www.huffingtonpost.co.uk/entry/self-defining-trans-women-to-be-allowed-on-labours-all-women-parliamentary-shortlists-partys-nec-set-to-announce-equalities-committee_uk_5a9d94f4e4b0479c0255e9c2?guccounter=1&guce_referrer_us=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvLnVrLw&guce_referrer_cs=nLz8k7alXGC3_lleLGNhrw; last accessed 25 February 2019; see also Josephine Bartosch, 'Labour's refusal to accept the definition of a woman', *The Spectator*, 11 September 2018; https://blogs.spectator.co.uk/2018/09/labours-refusal-to-accept-the-definition-of-a-woman/; last accessed 25 February 2019.
[17] Response to the Scottish government consultation on the GRA; https://www.gov.scot/Resource/0053/00539305.pdf; last accessed 25 February 2019.
[18] On self-determination-based approaches to gender, see Clarke (2015); Hutton (2017).

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person's deeply felt internal and individual experience of gender".[19] As such, gender constitutes a

fundamental aspect of personhood: something people have a right to have and to express without

being "subject to another's approval".[20] In liberal terms, it describes a process of developing self-

realisation and coming to personhood.[21] In more radical terms, gender self-determination also forms

a terrain of creativity, choice, and sometimes experimentation, albeit one lived and structured by

other social relations as well. But, in both liberal and more radical versions, the right for one's

gender identity to be publicly intelligible, recognised, treated as mattering, and supported is

emphasised (see Butler 2015: 35-39). Judith Butler (2004: 32) describes the harm that results from

being treated as unreal and unintelligible; she talks of the impossibility of "persist[ing] (in my being)

without norms of recognition that support my persistence". Witnesses in the 2015 parliamentary

inquiry on transgender equality expressed similar views: "Non-recognition has ruined my life. I feel a

shadow of the person that I could have been if I had been able to lead a normal life… [M]y whole

life has just been a battle for the legitimate identity that other people can take for granted."[22] "As a

trans man, it was very, very important to me to get an 'M' on my birth certificate and on my

passport. That helps validate my identity, and certainly for some trans people it can make the

difference between somebody respecting who they are or continuing to misgender them."[23]

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[19] https://yogyakartaprinciples.org/introduction/; last accessed 25 February 2019.

[20] See Stonewall Scotland's response to the Scottish consultation, which treats gender identity as part of the right to private and family life; https://www2.gov.scot/Resource/0053/00539455.pdf; last accessed 29 February 2019.

[21] In some versions, the right to "have" a gender expresses a relationship that is propertied in its inflection, anchored in people's ownership of themselves. For discussion of self-ownership in relation to gender and feminism, see also Cooper and Renz (2016); Davies (1994); Hutton (2017); Naffine (1998).

[22] Christie Elan-Cane, evidence to the Women and Equalities Committee, Transgender Equality Inquiry, 13 October 2015, HC 390, p. 32; http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/oral/23159.pdf; last accessed 25 February 2019.

[23] James Morton, evidence to the Women and Equalities Committee, Transgender Equality Inquiry, 13 October 2015, HC390, p. 13; http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/oral/23159.pdf; last accessed 25 February 2019.

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As a descriptive and normative stance of gender's invariable diversity, GDiv is predicated on

the harms that face those whose gender identity is deemed improper -- the micro-aggressions,

discrimination and physical violence that people confront when their gender appearance is

unconventional or when their legal and social gender diverge (e.g., see Chang and Chung 2015;

Doan 2010; Lombardi et al. 2002; Spade 2011).[24] One non-binary respondent to the parliamentary

inquiry into transgender experiences commented, "In various workplaces I have experienced

constant and sometimes deliberate mis-gendering, laughing at my gender identity and undermining

of my gender as 'over political,' 'not real' or 'over intellectualizing'. Because my gender identity is

not recognized in law and policy, it is impossible to address these issues in the workplace."[25]

Arguments over recognition and status reform have here taken two primary paths.[26] While some

advocate greater legal recognition and institutional mirroring of people's lived gender identities (for

instance, in legal documents), others seek to eliminate gender registration or legal gender status

altogether,[27] on the grounds that dissident or minor gender identities would be better served by the

state's withdrawal.

Advocates of GDiv emphasise gender freedom, fluidity, and self-determination. However,

what gender *is* remains opaque. The international Yogyakarta principles tie gender to identity and

expression (including mannerisms, dress etc). But while they recognise that identity and expression

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[24] Also discussed, if less extensively, are the negative economic and workplace effects of transitioning (e.g., Schilt and Wiswall 2008). For an intersectional account of the ways transgender identity and class intersect in relation to the violence faced by trans female sex workers, see also Namaste (2009).

[25] Individual written submission to Women and Equalities Committee, Transgender Equality Inquiry, 18 August 2015; http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/written/19360.pdf; last accessed 25 February 2019.

[26] Whether recognition should include *institutional* recognition has led to divergent perspectives. Views differ on whether it is beneficial for the state to take up gender identities and, if so, in what contexts (e.g., see Shrage 2012; Wipfler 2016).

[27] For discussion of some of the implications of abolishing assigned legal gender status, see Clarke (2015); Cooper and Renz (2016); Hutton (2017); Katyal (2017).
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may not converge, what makes either one of *gender* is unspecified. In the re-fabrication of gender

away from binary birth sex, what gender means in general, and what particular genders entail,

remains little addressed. What does it mean, for instance, to express a specifically female identity, a

male one, or neither? These identities or descriptions could acquire radically new meanings, but if

gender and its categories are not to constitute a private language, excluding others on grounds of

incomprehension, how are its terms to be intelligibly anchored?[28]

Within the broad constellation of GDiv, different responses are offered. One conceptual

approach retains stable and conventional notions of masculine and feminine, but recognises people

may situate themselves between "binary" poles or mix and match masculine and feminine in novel

and changing ways – where non-binary constitutes an identity rather than a politics of destabilisation

as I explore further below (see also Holzer 2018). Nordmarken's (2014: 39) autoethnography

captures the complexity of this well: "I am becoming more masculine in shape and yet, more

feminine in movement. I find myself embodying a certain femininity that I did not feel comfortable

in, in movements before, when my body looked more female. Though my voice now is in male

octaves, I am speaking more softly than I did. This is a masculine-bodied femininity." Stachowiak's

(2017) discussion of people who identify as genderqueer also addresses questions of flexibility and

gender-mixing. Yet, the research emphasises the importance of a "felt sense of gender" among the

self-identified genderqueer people spoken with. Stachowiak's (2017) participants identified "wiggle

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[28] See Gender Critical Greens, 'Gender is not an identity, it is a tool of patriarchy: A feminist view of gender identity politics', 15 August 2016: "Any attempt to define female other than by biology inevitably resorts to gender stereotypes, so all references by this ideology to 'being female' or 'feeling like a woman' are based on such socially-constructed ideas as wanting to wear feminine clothing, play with dolls, wear makeup, do 'girly' things, and crucially not do 'boy' things." https://gendercriticalgreens.wordpress.com/2016/08/15/a-feminist-view-of-gender-identity-politics/; last accessed 25 February 2019.

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room" from being outside of defined, binary, gender "boxes" (540);[29] but, in the process, many also

expressed largely conventional understandings of these boxes. Other conceptual lines, however,

recognise, more explicitly, the problems of stabilising conventional gender terms (which are not

necessarily destabilised by discourses of combination and crossing). Gender's social intelligibility

may come from existing discourse, but this does not mean gender meanings have to derive from

mainstream notions of masculine/ feminine (see also Schippers 2007). Rejecting the notion of singular

and unitary histories in gender's meaning and cultures, dissident and minority gender histories -- of

female masculinities (e.g., Halberstam 1998; Mackay 2019), for example -- come into view. In other

cases, identification as agender or nongender constitutes a space for gender's disavowal. This might

seem to challenge the very framework of GDiv; yet, in contrast to a gender abolitionist perspective,

identifying as non-gendered comes to function as one gender identity among others anchored in

personal refusal. As such, it is about creating a space for those who identify outside of gender's

current classificatory terms rather than necessarily advocating politically for the destruction of these

terms.

If GDiv identifies one emergent conceptual constellation struggling for hegemony, gender as

domination identifies another. The notion that gender oppresses and renders people's lives

precarious is not exclusive to GDom. GDiv is centrally concerned with the injuries that people face

who express "gender variant" identities, where violence and erasure confront those who live outside,

or fail to meet, normative gender terms. Sara Ahmed writes (2016a: 32): "We can think of gender

norms as places in which we dwell: some are more at home than others; some are unhoused by how

others are at home." GDom also concerns itself with gender policing and the experience of being

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[29] See also response from Stonewall Scotland to the Scottish consultation on the GRA;
https://www.gov.scot/Resource/0053/00539455.pdf
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"unhoused", particularly for women who refuse their conventional social role. However, GDom, at least in the formulation presently prevailing, is primarily attuned to the harms that *normative* gender conduct generates. Violence, exploitation and men's domination of women form gender's constitutive core -- part of the normal, everyday, casually expected, and socially policed patterning of gender (or sexed) class relations. This, then, is a core distinction between the two conceptions: in one, gender harms primarily confront those who live non-normative lives; in the other, gender harms primarily confront those who live subordinate lives, where being subordinate is integral to the normative harms encountered. Or, to put it another way, GDiv foregrounds the right to have a gender, whereas GDom foregrounds the rights and freedoms some people lose because of the gender that they have. Sheila Jeffreys (2014: 43) writes: "Women do not adopt the identity of being women, but rather possess female biology and on this basis are reared in a subordinate relation to men."

GDom's analysis is a relational one. While it focuses on domination as gender's central relational feature, it also recognises relationality in three other respects: that what being a woman or man means comes through relations and interactions with others;[30] that one's own particular gender is determined by and dependent on others' recognition (and treatment); and that gender characteristics are constituted relationally in the sense that, within a binary scheme, each gender is assumed to be an inversion of the other. As one women's organisation wrote, responding to the Scottish consultation on reforming the GRA: "Gender is a set of stereotypes based on sex. It is a hierarchy which places women in a box marked weak, submissive, maternal, emotional and men in a

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[30] See also Connell and Messerschmidt (2005); Fenstermaker and West (2013) on different dimensions of gender's relational and interactive character.

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box marked strong, aggressive, dominant."[31] At the same time, they continue: "No individual conforms to these stereotypes, we are neither barbie nor action man."[32] For GDom, these dimensions of relationality are interconnected: what it is to be a woman is defined by the presumed lack of male-associated qualities, where being a woman is to be perceived and treated as a woman, and where one becomes a woman through a complex mix of relational processes (see also Schippers 2007). Yet, these relational processes are underpinned by biology. GDom presents an explicitly materialist framework against the idealism which GDiv is dismissed as bearing, and the female body is deemed the incipient material form causing women to be oppressed:[33] "Sex is the scaffolding upon which gender roles are constructed."[34] Through this structure of biology plus socialisation, women constitute a formation with class-based interests -- proletarianised as an exploited, dominated, and vulnerable class thanks to "real" physical relations. Violence, child-birth and sexual exploitation are the material practices that ground women's vulnerability. And in this emphasis on biologically-rooted social and physical experiences, little accounting space is left for language, meaning and affect. As one responding organisation to the Scottish consultation remarked, "sex isn't about how one identifies or feels, but is an objective, verifiable fact. … The law needs to reflect the material reality of people's lives. Regardless of how a person identifies, if she is female, she is at risk of male violence, of discrimination in the workplace etc. on the basis of biology, not feelings."[35]

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[31] Women's Spaces in Scotland, response to the Scottish Consultation on the GRA; https://www.gov.scot/Resource/0053/00539506.pdf; last accessed 25 February 2019.
[32] Ibid.
[33] This conception of sex/ gender has been extensively criticised by feminists for some decades for ignoring the complex character of women's inequality and domination, including the part played by capitalism, racial classifications and colonialism (e.g., see Carby 2007; Lugones 2007).
[34] Socialist Feminist Network, 'On not being allowed into leftist spaces', 6 June 2018; https://www.socfem.net/2018/06/leftist-spaces; last accessed 25 February 2019.
[35] Response from Women's Spaces in Scotland, submitted to Scottish consultation on the GRA; https://www.gov.scot/Resource/0053/00539506.pdf; last accessed 25 February 2019.
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Legal dystopia

The institutional arena of law reform provides a site where these competing conceptions of gender meet; but it is also more than that. In Britain, proposals to make changing one's sex/ gender status easier have intensified conflict, and provided many of its terms, as participants fight over what gender and sex mean in law, and how changes to the Gender Recognition Act 2004 will (or won't) affect interpretations of the Equality Act 2010.[36] Institutional sites of law reform and public policy have also affected the relative prominence of different strands within the two constellations. Thus, while one strand of GDom points hopefully to gender's (far off) abolition,[37] women's interests advocates focus on a less hopeful (nearby) future as they emphasise women's vulnerability and need for protection, including through activities and spaces which functionally separate men and women. The future presented here is a dystopic one where men claim femalehood, opportunistically seeking to pass as women in ways that jeopardise "real" women's safety and privacy.[38] The women's interest group, Fair Play for Women, describes how conflating gender identity and sex, so that "self-identification policies become the norm", will cause harms to women to "become common place. This is neither viable nor fair."[39] Toilets, changing rooms, girls' youth organisations, hostels, and

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[36] For one attempt to clarify the relationship between the two legal frameworks, see EHRC, 'Our statement on sex and gender reassignment: legal protections and language', 30 July 2018; https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language; last accessed 12 March 2019.

[37] Some respondents to the Scottish consultation described their politics as "gender abolitionist"; e.g., see Lyons' Point Educational Coop response; https://www2.gov.scot/Resource/0053/00539376.pdf; last accessed 25 February 2019. For a review of academic discussion of "degendering", see Lorber (2000).

[38] See 'Sex self-ID and what it means for privacy, safety and fairness for women', *Fair Play for Women*, 8 September 2018; https://fairplayforwomen.com/examples/; last accessed 25 February 2019.

[39] Ibid.

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prisons emerge as the dystopic terrain of women's vulnerability to enduring predatory male

behaviour.[40]

So far, this article has traced two conceptions of gender – conceptions that have become

publicly prominent in Britain today. Both counter the conventional notion of gender as the natural-

social life of binary biological sex. Without knowing, of course, what gender's conceptual future will

be, these two contrasting conceptual lines provide possible and plausible ways of reimagining what

gender is and means; but what should we make of their struggle to determine gender's truth –

whether as a relation of class domination or as a form of diversity? To the extent that this is a

struggle for exclusive definitional capture at the expense of other competing definitions, does it limit

the contribution any one conception can make to the "better" society of progressive utopian

yearning (e.g., Levitas 2013)? To address this question, I want to broaden my focus from gender as

either diversity or domination to consider how different conceptions of gender get taken up for

different purposes. GDiv and GDom map broadly onto gender affirmation and critique respectively.

But there are other conceptions of gender that might also do this work. There are also other political

tasks for the concept of gender. I therefore want to move beyond the binary of diversity/

domination as well as the binary of affirmation/ critique. Yet, rather than search for a single

conception of gender to work effectively across multiple contexts and usages, I want to consider

whether and how different conceptions of gender, oriented to different purposes, might fruitfully

and interactively coexist. Addressing this is crucial for left gender and feminist politics that want to

find ways of moving beyond the conceptual wars currently taking place. It is also crucial for a

project of law reform that does not want to become cubby-holed or paralysed by incompatible

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[40] See also Schilt and Westbrook (2015: 27) on the "gender panics" occasioned by conservative and other opponents of transgender rights, where "people react to a challenge to the gender binary by frantically asserting its naturalness".

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approaches. What follows are some tentative conceptual lines, drawing on a utopian method, attuned to materiality, plurality, disorientation, and present-futures.

Prefiguring gender

Prefiguration provides a helpful concept for thinking about how gender's imagined futures might materialise within the present.[41] Challenging conceptions of man and woman as fundamentally descriptive, they become instead categories to take up and repurpose (see also Hale 1996: 105-6). Prefiguration thus goes to the heart of a conceptual approach that does not simply advocate for new gender meanings, but foregrounds their materialisation as well. What is enacted here, importantly, is also something more than a redrawing of group membership boundaries, e.g., who counts as a man. At stake also are different ways of understanding gender (including as relinquishable, plural, fluid, chosen etc.). I therefore want to think about the prefiguring taking place as a form of prefigurative *conceptualising* (see Cooper 2017) where dissident or minor meanings are taken up and enacted *as if* they were valid -- in contrast to a conceptual approach that merely fantasises, advocates for or desires them.

Prefiguring gender as if it means something beyond the contours of a conventional common-sense is not the preserve of a gender-affirming politics alone. Gender-abolitionist perspectives have also prefigured what gender might mean – acting, for instance, as if gender was something eliminable. Feminist protest communities, such as Greenham Women's Peace Camp combined the rejection of conventional feminine norms of presentation and capacity with an assumption of feminist norms anchored (at least for some) in self-identified women's-cultures of peace, caring, intergenerational responsibility and horizontal collaborative politics (Roseneil 2000).

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[41] On prefiguration, more generally, see Maeckelbergh (2011); Swain (2019); Yates (2015).

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What is prefigured changes over time. An earlier generation of activists prefigured the shift from

androcentric to gynocentric norms while also severing the taken-for-granted linkage between the

sexed body and stereotypical masculine and feminine assumptions. This latter continues in contexts

where people treat the social fabric "as if" it can make room for diverse non-hetero-normative (if

sometimes heterosexual) ways of living: men as primary child-carers, women in manual trades,

lesbian, gay, queer, polyamorous households.[42] However, the form of prefiguration currently

receiving attention is rather different (although it also sometimes combines with these other forms).

Its central premise is the notion that *intelligible* genders, disarticulated from birth sex, can be

combined and mixed; where genders are (potentially) transient, multiple, and changing – both in

themselves and in their relations, connections and overlap with each other (see also Linstead and

Pullen 2006; Mackay 2019; Stachowiak 2017). Today, these moves are largely associated with

genderqueer, non-gendered, trans, intersex and other "gender variant" community practices,

prefiguring gender-as-diversity in their clothing, body hair, pronouns, self-descriptors, and intimate

and sexual relationships (Mackay 2019). This form of prefiguration is striking in breathing life *into*

gender rather than away from it. It also suggests a different kind of relationality. Moving away from

a binary framework of contrasting genders to one of multiple genders foregrounds gender's capacity

to develop and be expressed in ways that do not depend on inversion or reversal (where woman is

everything man is not, and vice versa). It also recognises that new, not yet imaginable, categories and

ways of doing gender will emerge, as what gender means continues to evolve, both in its substance

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[42] A different feminist enactment of a hoped-for future appears in Sarah Browne and Jesse Jones' workshop performance piece. It presents a "postpatriarchal archive" of objects that have become "ideologically obsolete" in the future that they wittily anticipate; http://www.sarahbrowne.info/work/burn-in-flames/; last accessed 25 February 2019.

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and in the dimensions of life to which gender is tied -- as gender's depiction as an expressive

language of social and personal action becomes more pertinent.

Yet, describing the manifestation of non-normative genders as prefigurative is not wholly

unproblematic. Aside from some feminists' concerns about gender's salvaging, two interconnected

lines of criticism emerge. The first suggests that gender is not being *prefigured* as plural and diverse;

for this simply expresses what gender truly *is*. From this perspective, it is others' claim that there are

only two genders that is the mistaken or fanciful one. Identifying gender as diverse and mutable,

however, can be seen as prefigurative without this implying that such gender enactments are less

authentic than more conventional variants. The "as if" quality of prefiguration does not have to

mean acting as if particular "fictive" genders were real *while "knowing" that they are not*, for this would

solidify a conservative account of what gender *really is*. Rather, it means enacting sought-after

changes as if they can be carried by society as it is. In other words, the "as if" quality of prefiguration

goes to the wider social environment, and its readiness to treat non-dominant genders as liveable.

Yet, even if diverse genders are not treated as fictive, a second line of criticism emerges. This

worries that non-normative genders are being taken up as tropes or figures of a future-oriented

politics, where minority genders become appropriated as the emblems of what gender could

become.[43] This criticism becomes particularly acute when minority genders are celebrated for, and so

expected to demonstrate, constant fluidity and flux. Queer expectations of gender being endlessly in

motion have been criticised for seeming to dismiss the interests, needs, and social experiences of

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[43] For instance, see one written response to the Transgender Equality Inquiry, 18 August 2015: "If passports were to have an 'other' or 'x' category, it would offer official recognition of my gender identity and help me to be confirmed by others in my gender identity. This would radically relieve the everyday anxiety of living a non-binary gender." http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/written/19360.pdf

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currently precarious subjects, placing future imaginaries of the unimaginable above present-day

concerns (see also Butler interviewed in Ahmed 2016b: 490-1). Yet, while recognising the

importance of this criticism, can there still be a space for an exploratory, experimental gender

politics?

Prefigurative politics in recent years has become more open-ended and contingent, aware

that the better future constitutes a fluctuating aspiration of the evolving present not a stable and

knowable real time outside present-day constraints (see also Jameson 1982). This version of

prefigration emphasises invention; but, when it comes to gender, can a curious anti-hegemonic

ethics coexist with one of identity-affirmation? The tension between representing (or establishing) a

particular desired outcome and constantly destabilising what is runs through much contemporary

utopian thinking.[44] Fredric Jameson (1977: 16) describes the "tension, profoundly characteristic of

all Utopian discourse, between description and narrative, between the effort of the text to establish

the coordinates of a stable geographical entity, and its other vocation as sheer movement and

restless displacement, as itinerary and exploration and, ultimately, as event."[45]

The drive for institutional recognition and the influence of law reform processes over the

gender discourses that prevail has led both GDom and GDiv to minimise the value and legitimacy

of more playful, exploratory, ill-disciplined conceptual lines. In part this may be because institutional

take-up, especially by law, depends on needs being presented (and accepted) as serious and weighty.

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[44] Gender as diversity can be both destabilising and affirming. Nordmarken (2014) describes the early sensation of exhilaration from transitioning into a more masculine-perceived form of embodiment as it generated confusion among others. At the same time, Nordmarken's account evocatively describes the growing fatigue and experienced intrusiveness from relentless attention (41).

[45] See also Preciado (2008) on "gender-copyleft tactics", taking up our techno-bodies to multiply possibilities for doing sex/ gender as a public or commoning practice. "Gender-copyleft tactics should be subtle but determinant: the future of sex and the open gender of the species is at stake. There should not be one single name that can be patented. It will be our responsibility to remove the code, to open political practices, to multiply possibilities."
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In part, it may be because law reform processes privilege conceptual lines that have conventional

resonance and currency -- those that can align themselves with discourses of human rights, freedom,

unchosen immutable conditions and vulnerability, for instance.[46] Yet, adopting an open-ended,

exploratory approach to gender does not have to be at the expense of supporting and affirming

dissident gender enactments. Utopian approaches are helpful here in emphasising the value of

several simultaneous moves: of attending to the interests, concerns and subjectivities of the present,

of imagining -- across different temporal and spatial scales -- other ways of living, and of treating the

creation of new futures as an undetermined, open realm of possibility (see Levitas 2013; Sargisson

2012).[47]

Making room for critical conceptions of gender

Conceptions of gender that make room for experimenting with the "not yet" and the "not sure"

constitute one supplementary conceptual approach. A second returns us to the critical ethos of

GDom. Critical accounts of gender as-it-is are vital to a utopian politics of gender. Conceptual

prefiguration may involve acting as if meanings are (and could be) otherwise, but it is important not

to lose the double character of the "as if" – on the one hand manifesting desired or preferred

meanings; on the other, recognising that these meanings may not in fact prevail (see also Swain

2019). This means recognising those other conceptual cuts and joins that illuminate social life and

are actualised as part of it. New gender meanings, as GDiv demonstrates, draw attention to specific

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[46] See for instance, the discussion in *Pink News* in relation to the consultation on the GRA, Sascha Amel-Kheir,
'Gender Recognition Act reform: I'm non-binary and this is why I need your help', *Pink Paper*, 9 October 2018;
https://www.pinknews.co.uk/2018/10/09/gender-recognition-act-reform-im-non-binary-and-this-is-why-i-need-
your-help/; last accessed 25 February 2019. See also Nick Duffy, 'Metro newspaper runs full-page ad attacking
transgender rights reforms', *Pink News*, 10 October 2018; https://www.pinknews.co.uk/2018/10/10/metro-
newspaper-full-page-ad-attacking-transgender-reforms/; last accessed 25 February 2019.
[47] For further discussion on the temporary and contingent character of identity attachments, see Hall (1996: 6);
also Lehtonen (2018: 158-9). In line with thinking about "critical utopias" (Moylan 1986), this emphasises the
importance of critical reflexivity in relation to even seemingly progressive developments.

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harms, including previously unattended to ones. But other kinds of gender harms, including those

that feminists have long identified and analysed (involving resources, opportunities, the organisation

of time and care-work, violence, sexual exploitation, and economic and political power), may require

different conceptual lines. So too may accounts of the divisions and organisation of institutional and

social life. Feminist work over several decades has explored the gendering of law, institutions,

spaces, language and multiple other fields (e.g., see Beckwith 2005; Smart 1992). Feminists argue that

these are gendered, but the accounts of gender being deployed do not start (or, rather, do not have

to start) with group-based or subject-oriented accounts of men and women. Instead, gender is

conceptualised through, and as giving rise to, regimes, systems, institutions, discourses, actor-

networks and organising principles (e.g., Cooper 2004; Lagesen 2012; Lorber 2000; Martin 2004;

Pascall and Lewis 2004; Walby 1990, 2007).

There is no single right answer to the question of whether gender should be understood as a

process that shapes all aspects of social life or whether it should be understood more narrowly – for

instance, as the category distinctions that define and emanate from sex-based differentiation. But in

assessing whether gender should be conceptualised expansively or narrowly -- recognising that the

former may require chains of (historic) association to link gender to areas of life (rationality, affect,

privacy, war etc.,) beyond its own limited terms -- does the task make a difference? Do we need

different conceptions of gender when it comes to affirming difference, destabilising new forms of

settledness and critically understanding the status quo? Typically, critical analyses of the present read

social concepts expansively in terms of their reach and scope in order to highlight embedded and

formative processes. As Joan Acker (1992: 565) remarks, "Rather than being a specialized area

within an accepted domain, gender is the patterning of difference and domination through

distinctions between women and men *that is integral to many societal processes*" (emphasis added). This

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makes gender (or related concepts, such as race) less easy to extract -- practically or analytically -- as discrete social forms. Adopting an expansive and enmeshed approach to the conceptual character of inequality means equality cannot be attained (or only a thin form of equality would be attained) by simply redistributing goods, dangers, responsibilities, and freedoms *between groups* without touching more systemic processes. Critical conceptions also tend to draw strong ontological lines around key sites or subjects to emphasise inequalities of power and intensities of harm. Whether in relation to the state, capitalism, gender or other powerful forces of injustice, the critical tendency is not to foreground variation, countervailing exercises of power, or the capacity for creative agency where this undermines the force of the argument in terms of demonstrating what is wrong and at stake.

When it comes to critique, this conceptual clarity is effective, but for other uses, it has limits. As Gibson-Graham (1996) have influentially argued in relation to the economy, supporting and growing new progressive alternatives benefits from conceptions that make room for existing diversity (that refuse, in their case, to treat capitalism as overpowering and all-pervasive). The proposal of this article, however, is not that a conception of gender attuned to domination should be replaced with one attuned to diversity, nor to replace a conception attuned to critique with one attuned to prefiguration or to experimentation; but, rather, to find ways of sustaining incommensurate progressive conceptions, attuned to different tasks. This, however, begs a difficult question: can clashing conceptions be sustained *in fruitful relation to each other*. This is an important question for a range of left projects, where the conceptual terms that support critique may not be the ones that support experimentation or hopeful notions of progress. I do not have the space here to address this question in any detail, but I want to briefly sketch one possible response involving two lines of thought. First, where might we find resources to help think about relations of fruitful coexistence, including through productive tension, rather than just relations of hostile antagonism?

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Second, what does this plurality entail when it materialises in particular social spaces and sites,

including state institutions and law?

In thinking about the first, of conceptual neighbourliness or contact, legal pluralism offers a

helpful framework. Legal pluralism addresses how different forms of state and non-state law

interact. While it recognises state law is usually the more powerful framework, its focus is on mutual

relations of borrowing, parallel (isomorphic) forms of rule, the delegation or seizing of authority and

power, bridging figures, and the evolving, complex interpenetration and connections between

different legal orders (e.g., see Cooper 2019; Griffiths 1986; Melissaris 2004; Merry 1988). Applied to

gender's contrasting conceptual lines, exploring these different elements -- from a starting point that

assumes plurality rather than unity -- opens up forms of interaction beyond antagonism or mutual

disregard. Taking the two conceptions of GDom and GDiv, centred in this discussion, might mean

exploring what they take from each other, the figures and institutions that force conflict but might

also act as communicative bridges, the social conditions that underpin their differential power and

influence, and the distributive allocation of their autonomy -- recognising the different domains

where they each might "make better sense". What then does this mean for law?

The assumption of many law reformers is that legislative use of a concept needs to be

consistent – that gender (or sex) must mean the same thing across law's different fields. If this is the

case, the stakes are high. As one women's organisation wrote, in response to the Scottish

government's consultation on the GRA: "For a government to seek to abolish the common

understanding of man and woman without any explanation, never mind involvement of, its citizens

cannot be right. It cannot be right to infer that human beings are not sexually dimorphic, that there

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may be in fact 3 sexes (and why just 3?) without any evidence."[48] Legally recognising gender as a

deeply personal aspect of identity – whether divided into three categories or two -- seems to

undermine attempts to experiment with gender or to unsettle and craft new gender meanings. It also

seems to undermine accounts of gender as systemic domination. Of course, this presupposes that

state law has the power to determine what gender could come to mean or, at least, to assert an

authoritative account. Legally pluralist, contextual and actor-network approaches to law dispute the

normative force of state declarations (e.g., see Davies 2017a). At the same time, to the extent that

institutions, such as state law, participate in giving force and authority to particular discursive

accounts or rationalities, there may be good reason to try and sustain plural conceptual lines,

recognising the inevitability of different legal "language games" when it comes to gender (Davidson

and Smith 1999).

  As a deliberate legislative undertaking, conceptual plurality can be sustained (or introduced)

in different ways (see also Clarke 2015). State law might insulate legislative fields from each other,

draw on different interpretive frameworks within different legal areas, use overlapping but distinct

terms (sex *and* gender, for example), devolve authority for gender-based decisions (to bodies

working with different gender accounts), legislate policies that don't rely on gender's explicit naming

or definition (for instance, in relation to welfare, taxation, immigration, low pay, collective property

rights and public space); and advance substantive principles and norms that decentre the middle-

class, white, male, able-bodied subject. Each of these moves raises complex questions. What is

important for my discussion here is that legal conceptual plurality is recognised rather than denied.

Margaret Davies (2006) has very helpfully explored the presence of plurality *within* state law,

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[48] Women's Spaces in Scotland response to the Scottish consultation on the GRA;
https://www.gov.scot/Resource/0053/00539506.pdf; last accessed 25 February 2019.

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including the common law. The challenge of the analysis presented here is whether, and how, legislative reform might engage explicitly with different gender conceptual lines, rather than treating inconsistency as a source merely of unwelcome confusion (see also Cooper 2019; Davies 2008: 288, 2017a, b; Naffine 2009).

Conclusion

This article has explored the challenge of creating new conceptual lines for gender in conditions of conflict, where what gender is and means are in dispute. In Britain, currently, different gender projects challenge different gender harms, seek to create different hopeful futures, and worry over different approaching dystopias, as they advance radically different accounts of gender and its categories – of how people are gendered and what their gender means. Such divergences are not uncommon. In this context, different conceptions might have been able to coexist along separate normative planes. However, this coexistence came under pressure as state, law and institutional bodies, such as the Labour Party, became the sites through which a struggle for gender's conceptual future took place.

This article has sought to elucidate some of the key tensions and issues at stake. However, it is also intended as an intervention, taking up the contemporary struggle to define gender as a way into wider questions about conceptual plurality. Too often social and political forces seek to impose a single definition – whether of the state, law, capitalism or gender. Yet, this article suggests that different conceptions, even within critical and progressive spaces, are inevitable and can be valuable, since they reflect the different uses and purposes to which concepts are put. While other work on concepts focuses on divergent conceptions arising from epistemology, political ideology, ontology, and methodology, this article has focused on the divergence between political projects of critique,

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affirmation, prefiguration, and experimentation. These different political moves are often set against

each other as if one was the best way forward. Drawing on utopian writing, this article has argued

for their interconnected coexistence. In such conditions, the challenge becomes how to develop

modes of conceptual neighbourliness and connection so that conceptual lines, attuned to different

political tasks, strengthen the momentum for progressive transformation rather than undermining or

destroying it.

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