

## ‘Smashing the Binary’: Notes on the Historicization of Sex

Jane Clare Jones, Draft, September 2021

The core axiom of transgender ideology,<sup>1</sup> as pithily expressed by Stephen Whittle, legal scholar and co-founder of Press for Change,<sup>2</sup> is that “To be a man or a woman is contained in a person’s gender identity.” (Whittle 2002, 6) This thought is commonly expressed in the central slogan of contemporary transactivism – ‘trans women are women/trans men are men’ – which serves to disseminate the idea that being a man or a woman is a matter of gender identification, rather than *sex*, and which hence constitutes a radical redefinition of the natural language, and common legal, usage of the terms.<sup>3</sup> Trans ideology can thus be understood as an assertion that gender identity should trump sex with respect to the recognition of a person as a man or a woman, an assertion which has significantly influenced law and public policy in many Western nations and beyond during the course of the last decade through a process that can aptly be described as ‘policy capture.’ (Murray and Blackburn 2019; Jones and Mackenzie 2020)

The assertion that ‘gender identity trumps sex’ can itself be decomposed into two further belief-complexes. The first, which we can call ‘gender identity essentialism,’ is the view that humans have an innate ‘gender identity,’ an internal sense of whether they are a man or a woman (or male or female), which is not determined by their sex, and may not be aligned with it. Gender identity essentialism underpins popular appeals to allow trans people to ‘be who they really are,’ as well as providing the core rationale behind ‘affirmative’ models of healthcare for trans-identifying children or teenagers.<sup>4</sup> Our focus in this particular discussion,

---

<sup>1</sup> For further discussion of the core tenets and development of transgender ideology please see my ‘A Brief History of Transgender Ideology,’ the appendix to *The Political Erasure of Sex: Sex and the Census*

<sup>2</sup> Press for Change was the first significant transgender lobby group in the UK, established by Stephen Whittle and Mark Rees in 1992.

<sup>3</sup> The primary natural language meaning of the word ‘woman’ is “an adult female human being,” (OED) derived from the Old English ‘wifman’ – a composite of ‘wif’ meaning ‘female/woman’ and ‘man’ in its universal sense, hence, literally, ‘female human being.’ The legal definition of ‘woman’ given in the UK Equality Act 2010 is ‘a female of any age.’ Hence, the trans ideological assertion that ‘woman’ is determined by gender identification constitutes an effort to *redefine* the word from a sex-concept to a gender-identity-concept. The enactment of this redefinition in public policy and law is the core of the process I have designated ‘the political erasure of sex.’

<sup>4</sup> The thought of gender identity essentialism depends fundamentally on analogy with the generally accepted innateness of homosexuality (I am not making a claim here about that innateness or otherwise), and a great deal of the success of trans rights discourse depends on the intuitive appeal of the idea that people should be free to express innate ‘authentic’ aspects of their being. The strapline for *The Danish Girl*, the film of the life of Lili Elbe, was ‘Find the Courage to Be Yourself,’ while the lobby group Stonewall’s currently reads, “We imagine a world where all LGBTQ+ people are free to be ourselves.” This is, in many ways, a laudable sentiment. However, what needs to be underlined is that, with respect to trans identity, it implies an ontological claim about

however, will be on transgender ideology's second key belief system, understood here as 'sex denial.' That is, the belief that the categories of 'male' and 'female' do not reflect an underlying material reality and are, rather, some kind of arbitrary artefact produced by human conceptualisation, by specific cultural or historical discourses, and by the action of 'power.'

The first aim of this paper is to trace a partial intellectual genealogy of sex denialist thinking. 'Genealogy' is a significant term here, given that many strands of sex denial can be traced to the influence of Foucault's claim in the *History of Sexuality* that "the notion of 'sex'" functions to "group together," in an "artificial" or "fictitious unity," a variety of otherwise disparate phenomena, including "anatomical elements, biological functions, conducts, sensations and pleasures." (1978, 154) According to Judith Butler, Foucault's most influential heir, the "form of critical inquiry" which Foucault "designates as genealogy" functions to "expose the foundational categories of sex, gender, and desire as effects of a specific formation of power." (1990, xxxi) Foucault's method, rather than tracing the necessary evolution of concepts, emphasises the extent to which they arise through chance historical events, and do not, therefore, express any fundamental reality. To "follow the complex course of descent," he writes in 'Nietzsche, Genealogy, History,' is "to discover that truth or being lies not at the root of what we know and what we are" which instead should be understood as nothing but "the exteriority of accidents." (374)

As Carrie Hull argues convincingly in *The Ontology of Sex* (2005), the basic thought here is a form of philosophical nominalism, that is, the belief that there are no "causal structures in nature" underlying the "regularities" that form the basis of our concepts, and that these categories are, in fact, arbitrary impositions. (48) For Foucault and Butler, the empirical regularity we call 'sex' is, rather, a historical artefact<sup>5</sup> produced and maintained by the action

---

the authenticity of one's gender identification over against one's sex. This claim has manifold consequences, and importantly, is central to the justification for transitioning children and young adults and placing them on a pathway which will often lead to medicalisation. If it is the case that one's gender identity is innate, then it follows that some children are transgender, and that if their gender identity is misaligned, the only humane course of action is to affirm and transition the child. The extent to which this thought is structured by analogy with homosexuality explicitly surfaces in the claim that refusing to transition a child is tantamount to 'conversion therapy.' However, the fact that 'conversion therapy' in this sense is now taken to refer to the process of *not making a clinical intervention*, and of exploring the possibility that the trans identifying child might come to feel okay *as they are*, indicates a certain notable reversal in the notion of 'one's authentic self' being deployed here.

<sup>5</sup> "Nature has a history... The concept of 'sex' is itself troubled terrain, formed through a series of contestations over what ought to be decisive criterion for distinguishing between the two sexes; the concept of sex has a history that is covered over." (1993, 5) In one sense this claim is true, insofar as the understanding of what constitutes sexual difference, and how it should be explained, has, indeed, had different answers at different

of ‘power,’ ‘discourse’ and normative ‘regulatory regimes.’<sup>6</sup> This is the vein in which Sally Hines dedicates a portion of her recent ‘Sex Wars and (Trans) Gender Panics’ (2020) – a sketch of the conflict between gender critical feminists and transactivists – to the task of ‘Historicising sex and gender categories.’ Hines gestures at Foucault’s work on “how bodies come into being through historical processes,” (704) anthropological scholarship indicating “great historical divergence” in the understanding of ‘male’ and ‘female’ (700), and the existence of third gender categories in other cultures which, she claims, “enables the argument to be forwarded that rather than biology, it is social, cultural, political and economic factors that bring into being distinct ways of understanding sex, gender, and their relationship.”<sup>7</sup> (701)

Before moving on to sketch our genealogy,<sup>8</sup> there are some general observations to be made about Hines’ argument, as a representative iteration of contemporary academic sex denial. First, while such sex denialist arguments frequently appeal to Foucault, and his nominalist denial of any underlying reality to concepts to buttress their claim that ‘sex’ is a historical artefact, they do not apply this relativising historicism to their own discourse. Hines observes that “the heart of the current debates” between transactivists and gender critical feminists resides in “divergent understandings of the ontology of the categories of ‘sex’ and ‘gender,’” but it is evident she does not consider her ontology – the claim that sex is historical – to be

---

points in history. Indeed, one of the texts frequently folded into the sex denialist genealogy which we will not have space to discuss further here, is Thomas Laqueur’s *Making Sex*, which maps the transition from the ‘one sex’ model of the ancients that conceived females as inverted males, to the modern period’s ‘two-sex’ model which considers there to be “two stable, incommensurable, opposite sexes and that...their gender roles, are somehow based on these ‘facts.’” (6) But this is an account of how explanations and interpretations of the mechanisms or morphology of sexed difference have been inflected by the historically variable meanings attributed to it, not an account of our basic ability to cognise *that* there are two sexually different kinds of humans. Indeed – and this is true also of accounts of the social arrangements in third gender cultures – our capacity to compare the variation between how the ancients and the moderns explained and formulated the difference between the sexes – or how third gender cultures socially arranged the sexes – *depends* on the fact that both they, and us, are cognising two sexes. Notably, Laqueur will acknowledge in his introduction that he has “no interest in denying the reality of sex or of sexual dimorphism as an evolutionary process,” (11) although this has largely been ignored by the sex denialist literature.

<sup>6</sup> In *Gender Trouble* Butler notes that “Foucault’s original objection to the category of sex is that it imposes the artifice of unity...on a set of ontologically disparate sexual functions and elements,” (137) and reads Foucault’s discussion of Herculine Barbin as “proposing an ontology of accidental attributes that exposes the postulation of identity as...a regulatory fiction.” (33)

<sup>7</sup> This formulation is a perfect example of the ‘either/or’ thinking of the interaction of nature and culture which underpins contemporary sex denial. As we will explore in our last section, while proclaiming themselves to be ‘smashing the binary,’ sex denial is fundamentally structured by the assertion that ‘nature’ plays no active role in the *shaping* of our concepts, and hence, subjugates ‘nature’ to ‘culture/history/discourse.’ That is, sex denial is in fact an exemplification of the binary hierarchy of culture over nature.

<sup>8</sup> My aim in tracing this genealogy is to give an account of the construction of the idea that sex is constructed. Unlike Foucault however, I am not a nominalist, and do not believe that all discourses are just equally arbitrary accounts of reality. Therefore, in addition to historicizing the thought that sex is historical, I will also *critique* it.

just one discursive possibility among others. Indeed, the title and abstract of the article associate the alternative ontology – that sex is a material reality – with “transgender moral panic,” “conservative thinkers” and “resurrecting gender binaries.” (700)<sup>9</sup> One might suggest, from a Foucauldian perspective, that this kind of moral opprobrium directed at other discourses indicates a certain normative, regulatory structure.<sup>10</sup> Indeed, I would argue, in both its censoriousness towards opponents, as well as its efficacy in medically disciplining bodies, transgender ideology appears as an axiom of a Foucauldian regulatory regime; an enormous paradoxical exercise in ‘anti-normative normativity.’

What this further suggests is that while Foucault distanced himself from the traditional Marxist critique of ideology<sup>11</sup>, contemporary sex denial resonates with many academics

---

<sup>9</sup> Indeed, in non-academic contexts, and especially on Twitter, Hines has made it evident that she considers people who believe in the material reality of sex to be essentialist ‘bigots,’ as demonstrated by this thread précising the paper we are discussing here: [https://twitter.com/sally\\_hines/status/1113072399304527872?s=20](https://twitter.com/sally_hines/status/1113072399304527872?s=20)

<sup>10</sup> In addition to the obvious and extreme moral opprobrium directed at anyone who does not accept the axioms of trans ideology – ‘essentialist,’ ‘bigot,’ ‘TERF,’ ‘transphobe,’ ‘white supremacist,’ ‘white feminist,’ ‘colonialist,’ ‘Nazi’ etc. – there is also a more subtle, but I think, extremely significant, disciplinary structure which functions to direct people, and especially academics, towards the acceptance of sex denial. This is the constant more-or-less explicit positing of social constructionist accounts as ‘complex’ and ‘sophisticated,’ in contrast to more realist accounts, which are most usually presented as ‘simplistic,’ and ‘naïve.’ As Toril Moi notes, “[w]hat we need today more than ever is a feminism committed to seeking justice and equality for women, in the most ordinary sense of the word... The problem is not the meaning of these words, but the fact that too many academic feminists, whether students or professors, fear that if they were to use such sentences in their intellectual work, they would sound dreadfully naïve and unsophisticated.” (2005, 9) Especially in the context of the academic hegemony of Butlerian feminism, this creates a situation in which scholars must be extremely intellectually self-confident (and of course, because of female socialisation, women are very often *not* that intellectually self-confident) – as well as being willing to deal with likely social opprobrium and negative effects on their career advancement – in order to pursue a more realist approach to the question of ‘what is a woman?’ That is *profoundly* disciplinary.

<sup>11</sup> The classic leftist critique of ideology is realist, and hinges on the possibility of revealing an ontological ‘truth’ which has been covered over by ideology, and hence, is incompatible with strict Foucauldian nominalism. Notably, however, the disciplinary zeal which attends the trans ideological belief in the construction of sex suggests that its deployment of Foucauldianism against the material reality of sex is a politically strategic gesture. This is especially evident given that the ‘gender identity essentialism’ branch of trans ideology makes extremely grand claims about the transhistorical nature of trans identity (viz. ‘trans people have always existed’), which flatly fly in the face of any semblance of Foucauldianism. What should be further noted here is that the massive increases in young people identifying as trans, often having encountered trans ideology on the internet, could well be read as an axiomatic example of the Foucauldian thought that, in the words of Butler, “systems of power produce the subject they subsequently come to represent.” (1990, 2) This is vociferously denied by trans ideologues, under the aegis of gender identity essentialism, who maintain that the increase in trans identification among young people is explicable by the removal of stigma allowing people to ‘be who they really are.’ Once again, what is revealed here is the entirely selective application of Foucauldian nominalism to undermine the material reality of sex. The claim is not that there is no underlying reality and all concepts are produced by discourse/power, the claim is specifically that there is no underlying reality to sex, but there is a transhistorical innate reality to gender identity, and, by extension, to trans identification. This is, I would argue, precisely the reverse of the case. That is, ‘gender identity’ is a historical concept developed by sexologists in the 50s and 60s, a theoretical explanatory mechanism that has no demonstrable empirical basis. ‘Sex,’ on the other hand, is an extremely well empirically documented evolved biological mechanism. Thus, the core trans ideological assertion that ‘gender identity trumps sex’ is founded on two separate (and strictly contradictory) ideological mover; on the one side, the effort to posit the historical concept of ‘gender identity’ as

because it apparently conforms to the classic structure of ideological critique: that is, it purports to reveal how an entity generally understood as ‘natural’ is *actually* ‘historical,’ ‘cultural,’ or ‘socially constructed,’ and to explain how that construction serves the interests of ‘power.’ For this diagnosis to be correct, however, it must *actually be the case that sex is a historical human artefact*, and not, in fact, a millions-of-years-old biological mechanism that occurs across the plant and animal kingdoms and which just happens to be key to the very possibility of evolution by natural selection. Notably, if sex is a natural kind, then contemporary sex denial would be distinguished by being possibly the first form of political ideology to function, not by positing something historical as natural, but by positing something natural as historical. My aim in this paper is to explore this possibility, first by tracing an intellectual history of the process by which sex has been posited as historical, and secondly, by examining how this positing depends on a mistaken absolutist conception of difference, discursively designated ‘the binary.’

### The Historicization of Sex, a History

In August 1992, at the first annual meeting of the International Conference on Transgender Law and Employment Policy (ICTLEP), trans woman, lawyer and tech-entrepreneur, Martine Rothblatt,<sup>12</sup> delivered the ‘Report of the Health Law Committee’ to assembled delegates at the Hilton Hotel in Houston, Texas. The function of the address was to outline the “emerging paradigm” of transgender health law, which should aim, “in the longer term,” Rothblatt argued, “to redefine sex itself as a continuum of lifestyle behaviors and not as a diatonic category.” (1992, 246) By ‘life-style behaviour’ Rothblatt appears to mean “[g]ender,” or the

---

a transhistorical essence (which conforms to the classic ideological move of positing culture as nature), and on the other, the effort to posit the material reality of sex as a historical artefact (a distinctive reversal of the classic ideological move, in which nature is posited as culture).

<sup>12</sup> It should be noted that in the early stage of transition, Martine Rothblatt went by the name ‘Marla Aspen,’ and it was under this name that the first report from ICTLEP’s Health Committee was delivered. As I suggest here Rothblatt’s address in 1992 is the earliest instance I have found in the genealogy of trans ideological thinking of the claim that sex is, or should be conceived, as a ‘continuum,’ predating the more usual reference to Anne Fausto-Sterling’s 1993 ‘The Five Sexes.’ By the second ICTLEP conference in 1993 it is clear Rothblatt is aware of Fausto-Sterling’s essay, while a reference to the “transgender theorist Martine Rothblatt” appears in Fausto-Sterling’s *Sexing the Body* in 2000 (p108), although I have found no archival evidence regarding the transmission of the concept of ‘sex as a continuum.’ Rothblatt’s notion of “sex as a vast continuum of personality possibilities,” is, however, explicitly referenced by Ruth Hubbard in her 1996 essay, ‘Gender and Genitals: Constructs of Sex and Gender’ (p163) along with Fausto-Sterling’s work in ‘The Five Sexes.’ Both Hubbard and Fausto-Sterling’s work will then turn up in a contemporary sex-denialist recitation, like that of Hines (2020), although, it’s worth noting that the citation Hines claims comes from Hubbard’s *The Politics of Women’s Biology* actually appears to be taken from a blurb Hubbard supplied for Suzanne Keller’s *Lessons from the Intersexed* (1998).

“a classification of life into masculine and feminine based predominantly on role-playing behaviour,” (252) and is hence, effectively, claiming that ‘diatonic’ sex should be legally redefined as the continuum of gender. However, at other places in the address the proposed redefinition of sex is extended to a “continuum of male and female anatomical, behavioural and biological characteristics,’ (263) which approaches the claim that anatomical sex itself is a ‘continuum.’

This indeed, is precisely the claim made less than a year later, in March/April 1993, in Anne Fausto-Sterling’s ‘The Five Sexes,’ a widely recognised source of the now common trans ideological assertion that ‘sex is a spectrum.’<sup>13</sup> Here Fausto-Sterling suggests that the existence of “the intersexual body<sup>14</sup>” means that “biologically speaking, there are many gradations running from female to male” and that hence, “sex is a vast, infinitely malleable continuum.” (1993, 21) Later in 1993, in the ‘Second Report of the Health Law Project,’ Rothblatt will explicitly cite Fausto-Sterling’s notion of an ‘infinitely malleable continuum,’ (1993, A5-5) while the following year’s report will flatly assert that “science is really coming to the conclusion that there is no natural dividing line between the sexes” and that the distinction between male and female is rather just “a continuum of differences.” As such, Rothblatt suggests, there is “really no logical, no objective...reason for labelling people as either male or female,” (110) and it is only “social pressure maintained by government regulation that separates people so strictly.” (1994, 110) Rothblatt will come to refer to this

---

<sup>13</sup> I am not making claiming here that Fausto-Sterling, or Rothblatt, are the first people to ever make this claim. Indeed, Dworkin made a very similar claim in *Woman-Hating* (1974), namely, “We are, clearly, a multi-sexed species which has its sexuality spread along a vast fluid continuum where the elements called male and female are not discrete.” (1974, 183) Dworkin’s claim, however, was never folded into the genealogy of sex denial in the course of the development of trans ideology, and claims about what she would make of contemporary trans ideology and its implications for women’s rights and political recognition are strictly speculative on both sides. It is worth noting however, that Dworkin’s thought here is a product of exactly the same difference/hierarchy conflation we will explore in our last section, which characterises so much American feminist thinking.

<sup>14</sup> Most usually the sex-is-a-spectrum claim is supported by instrumentalising people with DSDs (Differences of Sexual Development), and exploiting the sematic properties of the term *intersex*, which suggests the state of being ‘between the sexes.’ Alternatively, the claim is sometimes supported by breaking ‘sex’ into different components – gonadal, genital, chromosomal, hormonal – and pointing out the ways these may be differently aligned, or may overlap. The aim here is to posit sex as a quantitative phenomenon, to use, say, the fact both males and females have testosterone in differing proportions to show that ‘maleness’ exists along a scale which differs by degree (by this reasoning males with more testosterone are ‘more male’ than males with less testosterone, and females with high testosterone might be ‘more male’ than some males, which is errant sexist nonsense). It is true that several secondary sexual characteristics, and hormonal distributions, are quantitatively distributed. ‘Maleness’ and ‘femaleness’ however, designate reproductive function, or to be more precise, because such precision has now been made necessary, ‘differentiation along the developmental pathway which produces the phenotype that, barring accident, illness and developmental anomaly, enables a particular reproductive function when sexually mature.’ That is, in humans, females have the phenotypic morphology to produce ova and get pregnant and males the phenotypic morphology to produce sperm and inseminate females. These are not differences in degree. They are differences in kind.

‘strict separation’ as ‘The Apartheid of Sex,’ the title of both a 1995 book (reprinted in 2011 as *From Transgender to Transhuman*) and a speech given the same year at an ICTLEP ‘Keynote Luncheon’ with Stephen Whittle. In the keynote address, Rothblatt reiterates the thought that while “[b]iology gives rise to many possibilities...it’s the law...starting with the birth certificate...that creates an absolute division between people, a rigid apartheid of sex.” (1995, 37)

The basic claim here is that the underlying biological reality of sex is a continuum, and that therefore, the categorisation of humans into male and female types is a cultural or historical artefact, linked to oppressive hierarchical power structures, and more specifically, to legal and governmental procedures.<sup>15</sup> As Fausto-Sterling asserts in ‘The Five Sexes,’ “if the state and the legal system have an interest in maintaining a two-party sexual system, they are in defiance of nature.”<sup>16</sup> (1993, 21) In the opening chapter of *Sexing the Body* (2000), Fausto-Sterling rehearses a similar argument. The reality of “the body’s sex is simply too complex,” containing too many “shades of difference,” to be made “either/or” and hence, “[o]ne of the major claims I make in this book is that labelling someone a man or a woman is a social decision,” and “only our beliefs about gender – not science – can define our sex.” (2000, 3) By this point then, the ‘sex is a spectrum’ claim advanced in the early 90s by Rothblatt and Fausto-Sterling has begun to coalesce with another of the main strands of sex denialist thinking, the assertion that ‘sex’ is *produced* by the ‘regulatory regime’ of heteronormative gender, famously elaborated by Judith Butler in *Gender Trouble* (1990) and *Bodies that Matter* (1990). Hence, while Fausto-Sterling’s appeal to the empirical reality of sex-as-spectrum is strictly incompatible with Butler’s thorough-going constructivism (cf. n15), she

---

<sup>15</sup> For a special example of this reasoning, please see my discussion of Christine Burns’ essay ‘Fourth Column Revolutionary, which suggests that sex-based oppression is *caused* by recording sex on birth certificates (Jones 2020, 5)

<sup>16</sup> Note that this again does not conform to Foucauldian nominalism, because it is predicated on a realist claim about the underlying – or in Butlerian, ‘pre-discursive’ – truth of the ‘continuum of sex.’ It is congruent, therefore, that Butler’s contribution to sex denial does not fundamentally rely on this appeal to the reality of ‘sex as a spectrum,’ although, she does write a ‘Concluding unscientific postscript’ in *Gender Trouble* which attempts to ‘trouble’ empirical research on the identification of the SRY gene (1990, 144-150), cites Fausto-Sterling, and claims, ludicrously, that “a good ten percent of the population has chromosomal variation that do not fit neatly into the XX-female and XY-male set of categories.” (1990, 146) Notably, following the increased dissemination of sex-spectrum discourse during the nineties, her 1999 preface to *Gender Trouble* suggests that, were she to “rewrite this book under present circumstances, I would include a discussion of transgender and intersexuality” as examples of “the way that ideal gender dimorphism works.” (1990, xxvii)

nonetheless also approvingly nods towards Butler's thought that "bodily materiality" is "constructed through a 'gendered matrix.'"<sup>17</sup> (2000, 22)

Neither Rothblatt nor Fausto-Sterling reference Butler in their early recitations of the thought that the 'two-sex party system,' or 'the apartheid of sex' is a historical or legal artefact. By 1995, however, Fausto-Sterling and Butler are being linked, appearing together in an article by Sandra Bem (of 'Bem Sex Role Inventory' fame) in *The Journal of Gender Studies*, a publication of The Outreach Institute of Gender Studies, an organisation which, according to their webpage, was established in 1975 to "advance the understanding of gender identity" and serve the community of '[c]rossdressers, dragqueens, transsexuals, and transgendered people of all types.'" (1998) Bem provides a notably pithy précis of Butler's core thesis in *Gender Trouble* that "[r]ather than these two bipolar groups" we call males and females "being the cause of...compulsory heterosexuality, they are instead the effect of...compulsory heterosexuality."<sup>18</sup> (How and why humanity conceived heteronormativity without being able to recognise two sexes is a question that remains unanswered to this day). According to Butler, this effect is generated, Bem notes, by the fact that heterosexual gender norms create a "matrix of intelligibility" (Bem 1995, 59; Butler, 1990, 24) that recognises only two "sex/gender/desire configurations." (Bem 1995; 59) "[T]wo-and-only-two...are allowed to exist within the historical framework of the system," Bem writes, and this "two-and-only-two is thus created by a historical process in which everything else is either excluded or demonized." (60)

What Bem's summary here makes clear is that Butler's argument depends, as does Foucault's, on collapsing sex, gender and sexuality into the historically created 'two-and-

---

<sup>17</sup> As I'm undertaking a philosophical analysis here, I am not going to spend a great deal of time unpacking the substantive empirical challenges to Fausto-Sterling's estimates of the incidence of intersexuality on which the 'sex is a spectrum' claim rests. (Cf. Sax 2002; Hull 2005, 66-68) What I am interested in underlining is that, while Fausto-Sterling is eager to embrace Butler's thought that we have no access to any 'pre-discursive' reality about bodies, the thought that 'sex is a *really* a spectrum' rests on just such an appeal. Moreover, once again, we find sex denialist/trans ideological thinking to be an exemplary instance of the kind of constructivism it is diagnosing in others, insofar as, as Hull suggests, Fausto-Sterling's inflation of the incidence on intersexuality is produced because "her philosophy is too deeply invested in uncovering high rates of sexual nondimorphism." (68)

<sup>18</sup> In Butlerian, the "institution of a compulsory and naturalised heterosexuality requires and regulates gender as a binary relation in which the masculine term is differentiated from the feminine term." (1990, 31) Or again, using the characteristic rhetorical non-question question, "What happens to the subject and to the stability of gender categories when the epistemic regime of presumptive heterosexuality is unmasked as that which produces sensible categories of ontology?" (xxx)

only-two' under critique.<sup>19</sup> This type of elision is endemic across sex denialist and trans ideological writing, which tends to lump sex, gender and sexual orientation together under the wilfully muddy Butlerian thought of 'the gender binary.' This is justified within the terms of Butler's own argument, because if we buy the claim that "'sex' is as culturally constructed as gender; indeed...it was always already gender," (1990, 9) then the sex/gender distinction breaks down.<sup>20</sup> But this is, evidently, circular. We will explore the conceptual confusion around the sex/gender distinction more fully in the next section, but at this juncture will confine ourselves to noting that there is no reason why the concept of 'male' must *necessarily* contain the concept of 'masculine,'<sup>21</sup> let alone the concept of 'heterosexual,' unless one is working with the implicitly determinist assumption that natural facts mechanically produce social norms – and hence, by inversion, are inclined to believe that to change social norms, one must deny natural facts.

---

<sup>19</sup> One of the functions of this collapse is that it is eminently reasonable to suggest that human sexuality and gender roles are socially constructed to some or other degree, although I would question both Butler and Foucault's elision of the material appropriation of women's bodies and labour in the motives of that construction, and the replacement with a model of amorphous power and 'matrixes of intelligibility' which operate for no discernible reason. Another way to think about this is to note the deep opacity in sex-denialist discourse about what exactly is meant by 'the body,' which as the Foucault quote we started with evinces, collapses anatomical features, biological processes, behaviour and sexual drives within the concept of 'sex.' It is one thing to suggest that heteronormativity constructs sexual drives, sexual behaviour, gender performance, and bodily comportment. It is quite another to suggest it constructs gonads and whether one is capable of conceiving a child or insemination. That is, if we don't already accept that the concept of 'sex' actually means *also* gender, and sexual orientation, then the idea that sex is constructed becomes significantly less plausible.

<sup>20</sup> This conflation and its justification were articulated over a decade before Butler in Kessler and McKenna's *Gender: An Ethnomethodological Approach*, viz, "We will use gender, rather than sex, even when referring to those aspects... that have traditionally been viewed as biological. This will serve to emphasise our position that the element of social construction is primary in all aspects of being male or female." (1978, 7) Indeed, Kessler will later claim in 'The Medical Construction of Gender,' that "the very idea of gender" resides in the view "that it consists of two exclusive types: female and male." That is, that gender *is* the perception of human sexual dimorphism. Like Fausto-Sterling's telling of a "literal tale of social construction...of a two-party system of sex," (2000, 32) Kessler grounds this extraordinary claim on the treatment of intersex infants, which exhibits the way a 'two-sex system' is "maintained...by the medical community in the face of incontrovertible physical evidence that this is not mandated by biology" (1990, 24) and hence "reveal[s] the model for the social construction of gender generally." (4) This thought has been folded into contemporary trans activist discourse in the demand we refer to the sex of *all* humans using the 'assigned at birth' linguistic structure derived from the surgical assignment of sex to ambiguously sexed infants. Apparently, it is opaque to some people that it pushes credibility to assert that easily categorising an unambiguously sexed infant is an equal instance of 'social construction' as surgically assigning a sex to an ambiguous one.

<sup>21</sup> This is amply demonstrated by the fact that we are perfectly able to sex animals without having any gender concepts about them whatsoever. Indeed, there is an extreme anthropocentrism, and concomitant denial of human animality, underpinning all sex denialist thinking. This denial of our animality is exemplified in the Butlerian thought that we have no access to our embodied selves that is not discursively mediated; a thought which, to be blunt, indicates a form of corporeal dissociation I consider to be absolutely emblematic of phallogocentric idealism.

In her excellent *Sex, Gender and the Body*<sup>22</sup> (originally published as the essay ‘What is a Woman?’), Toril Moi carefully unpacks the assumptions underlying Butler’s drive to deny the reality of sex, referring to a 1993 interview in which Butler claimed that people pointing to the “materiality of the body” are actually involved in “a discursive enforcement of a norm” about “the social institution of reproduction.” (Cited Moi 2005, 41) That is, Moi notes, Butler “seems to believe that if one takes sexual difference to be determined by reference to the potential reproductive function of the body, then one simply must be caught up in repressive sexist ideology,” (41) a determinist assumption also expressed in “the common post structuralist argument that the belief that there were only two sexes, men and women, must be heterosexist.” (38) Part of the confusion here, Moi intimates, is stemming from the tendency to think that one could only hold sex to be a material reality on metaphysically essentialist grounds (cf. n33), and to then conflate this thought of metaphysical essentialism with the sense of essentialism-qua-determinism.<sup>23</sup> “Because they think that to speak about biological facts is the same as to speak about essences or metaphysical grounds,” Moi observes, “many poststructuralists believe that...to avoid biological determinism one has to be a philosophical nominalist,” which, she continues wryly, is “obviously absurd.” (43) There is, she rightly notes, “no good reason to assume” that anyone asserting the material reality of sex is “being essentialist in the bad, metaphysical, and political sense that poststructuralist feminists give the term.” (36) Indeed, “to avoid biological determinism all we need to do is to deny that biological facts justify social values.” (43)

Moi is careful to underline that these determinist assumptions informing the drive to deny the reality of sex take the form of “a *recoil*<sup>24</sup> from the thought that biological facts can ground

---

<sup>22</sup> I agree wholeheartedly with Moi’s critique of Butler in this text, as well as her analysis of the philosophical importance of Beauvoir’s notion of ‘the body as situation.’ Where I would demure is with Moi’s claim that her argument is a critique of the sex/gender distinction, and that the elaboration of that distinction from Beauvoir’s work is incorrect. What Moi is addressing, is, I would argue, a misconstrual of that distinction in absolutist terms exemplified by Butler’s (deliberately?) catastrophic misinterpretation of ‘One is not born but becomes a woman’ in her 1986 article, ‘Sex and Gender in Simone de Beauvoir’s *Second Sex*.’ (Cf. also, *Gender Trouble* p. 152) This misconstrual inheres in the concatenated thoughts that a) ‘female’ is a sex-word and ‘woman’ is a gender-word (which is a literal-minded misreading of the Beauvoirian thought of ‘Woman’ as patriarchal projection), b) that sex and gender must be ‘radically distinct,’ that c) gender is only ‘arbitrarily’ related to sex, and that, therefore, d) there is no reason to think that women are female (Cf. also n.48).

<sup>23</sup> This confusion, I would suggest, is precisely what is expressed by the common charge of ‘bioessentialism’ levelled at gender critical women when they assert the material reality of sex. That is, trans activists have conflated ‘thinking things exist is metaphysical essentialism’ with the usual feminist meaning of ‘essentialism as biological determinism,’ and produced the thought that ‘thinking sex exists is biological determinism,’ which is, as Moi suggests, absurd. Indeed, thinking that the existence of biological things must determine social norms *is* biological essentialism. That is, it is the charge of ‘bioessentialism’ that is implicitly determinist.

<sup>24</sup> This visceral recoiling from determinism is another extremely legible feature of the sex denialist literature and runs through Foucauldian feminist writing on the body in general. One example I came across was particularly

social values” rather than their advocacy. (41) But she is right to highlight that they are still being generated by a determinist frame. Rather than simply denying that biological facts ground social values, “poststructuralists prefer to deny that there *are* biological facts independent of our social and political norms.” (42) This underlying recoil from the spectre of determinism is legible throughout sex denialist thinking. The ostensible form of these arguments is to attribute the historical construction of the ‘gender binary’ to the action of ‘power,’ identified variously as ‘heteronormativity’ (e.g. Butler and Fausto-Sterling), ‘patriarchy’ (e.g. Rothblatt), and in some iterations, ‘colonialism’ (e.g. Lugones).<sup>25</sup> However, what is more-or-less tacitly expressed by many of these foundational accounts is the extent to which the drive to posit sex as a mutable effect of power is informed by the intent to erase the hierarchies and injustices which it is believed to create. This is exemplified in Suzanne J Kessler and Wendy McKenna’s *Gender: An Ethnomethodological Approach* (1978), which rehearsed the thought most usually attributed to Butler, that is, that it is, in fact, gender which *produces* “a world of two ‘sexes’” (1978, vii) over a decade before *Gender Trouble*.<sup>26</sup> In the course of what they term the ‘gender attribution’ process,<sup>27</sup> Kessler and McKenna write,

---

stunning, viz. the “possibility of biological nature, or material bodies, playing some part in explanation of gender difference runs under the field of feminism like a camouflaged sewer into which the unwary may trip and so be contaminated without fully realising the danger. [!!]” (Ramazanoglu 1993, 7) Given this kind of ever looming horror that acknowledging the mere existence of the body might lead to contamination with gender norms, it seems little surprise feminist women are lining up disavow their femaleness. What needs to be underlined here, however, is that this kind of recoiling is being generated in response to patriarchal norms about *what it must mean to be female*, and it is the job of feminism to repudiate those norms, not internalise them and then attempt to escape them by denying being female. (Cf. Jones 2019)

<sup>25</sup> There is an entire separate genealogy to be written on the argument gender critical feminists colloquially refer to as ‘colonialism invented the gender binary,’ which usually involves some kind of appeal to third gender cultures, especially the recognition of ‘two-spirit’ people in Native American cultures, prior to the arrival of patriarchal white Europeans. These arguments are often spliced with claims about the analogy between scientific racism and the recognition of human sexual dimorphism, white European culture as a ‘world-ordering project,’ and characteristic confusions about the human capacity for conceptual discrimination, and the construction of binary hierarchies. The upshot of all this is to posit the perception of human sexual dimorphism as a racist artefact of white supremacy, which is politically very efficacious when trying to win over self-identified progressives. It appears to escape these progressives’ notice that claiming non-white peoples were unable to conceptualise sex without white people’s input might be regarded as *extremely* racist, not to mention the imperialism of assimilating multiple different cultures’ ways of formalising gender non-conformity to a sex-denialist modern Western concept of trans identity. (Cf. Hubbard 1996, 160; Fausto-Sterling 2000, 39; Whittle 2002, 6; Lugones 2007)

<sup>26</sup> Butler references Kessler and McKenna’s work in the footnotes of *Gender Trouble*, and credits them for “a politically sensitive and provocative analysis of the *berdache*, transsexuals, and the contingency of gender dichotomies.” (1990, 208) What Butler doesn’t however acknowledge is that *Gender Trouble* is fundamentally a recitation of the core of Kessler and McKenna’s thesis that “a world of two sexes is a result of the socially shared, taken-for-granted methods which members use to construct reality,” (vii) that is, that the process they call ‘gender attribution’ constructs sex.

<sup>27</sup> Kessler and McKenna’s account of the ‘gender attribution process’ is confused. They claim that in ‘the natural attitude’ “genitals are the essential insignia of gender” (154), which seems broadly correct, albeit muddled by conflating sex with gender. They then further assert that everyday gender attribution can’t work using genitals, because genitals cannot usually be seen, and suggest that what is happening is the attribution of ‘cultural genitals’ which “is the one which is assumed to exist and which, it is believed, should be there.” (154) They

“dichotomous physical differences are constructed,” and, “once a physical dichotomy has been constructed it is almost impossible to eliminate sociological and psychological dichotomies.” (164) They continue, in a passage worth quoting at length:

As long as the categories female and male present themselves to people in everyday life as external, objective, dichotomous, physical facts, there will be scientific and naive searches for differences and differences will be found. Where there are dichotomies it is difficult to avoid evaluating one in relation to the other, a firm foundation for discrimination and oppression. Unless and until gender, in all of its manifestations *including the physical*, is seen as a social construction, action that will radically change our incorrigible propositions cannot occur. People must be confronted with the reality of other possibilities as well as the possibility of other realities. (164)

The first thing to unpack here is that ‘incorrigible propositions’ is ethnomethodological argot for certain basic assumptions or “unquestionable axioms” (4) about the world, the most basic of which, Kessler and McKenna tell us, is “the belief that the world exists independently of our presence, and that objects have an independent reality and a constant identity.” (4) This is a startling admission of the degree of solipsistic – indeed, narcissistic – idealism which, I would argue, necessarily subtends all iterations of sex denial, irrespective of Butler’s effort in *Bodies that Matter* to gesture vaguely in the direction of ‘materiality’ before repeating that matter materialises only in a manner determined by discourse.<sup>28</sup> As we will explore further shortly, this idealist, imperialist conviction that the world has no existence of its own – or

---

then claim that what is used to make this attribution is “the socially constructed signs of gender,” which they consider, reasonably, to refer to “dress and accessories, and nonverbal and paralinguistic clues,” and, less reasonably, to “secondary gender [sex!] characteristics,” (157) which are *not* by any means all socially constructed (although some may be amplified/diminished by cultural practice). The fundamental flaw in their account hinges then on this obfuscation around the role of the perception of secondary sexual characteristics in our ability to correctly sex other humans to a high degree of reliability even while clothed. Farcically, they try to dismiss the role of secondary sexual characteristics by noting that humans are “far from being dichotomous, at least when compared to those markers in other species (e.g., plumage in birds),” (155-56) as if the fact that male and female humans are not as distinct as say, peacocks and peahens, would have any bearing whatsoever on our evolved ability to readily perceive sex differences *in members of our own species*. The role of secondary sexual characteristics, in their interaction with cultural gender markers, is, of course, recognised by the concept of the ‘passing’ trans person (and its counterpoint, ‘being clocked’), and is also indicated by the money and effort some trans people will invest in shaping secondary sexual characteristics through facial feminisation surgery, electrolysis etc. Kessler and McKenna will try to elide this fact by claiming – in a manner not dissimilar to Butler’s analysis of drag – that *all* of us are involved in ‘passing,’ or performing, as the gender we want to be perceived as (cf. 126), which of course, erases the fact that many gender-non-conforming people are, nonetheless, routinely sexed correctly, and indeed, sometimes experience violence *because* of the perceived disjunct between their sex and gender performance. It also comes close to blaming female people for not mitigating the vulnerabilities attendant on being perceptibly female in public.

<sup>28</sup> The “body, its contours, its movements, will be fully material, but materiality will be rethought as the effect of power, as power's most productive effect.” (Butler 1993, 2)

makes no active contribution to shaping our cognition – gives the metaphysical lie to all sex-denialist posturing about ‘smashing the binary.’ But there is, of course, something extremely seductive about this promise of mental mastery. If sexual difference is oppressive, but is made only by our minds, then the entire edifice of injustice can be easily undone by just *changing* them.<sup>29</sup>

This lure of the better world birthed by erasing sex is threaded throughout the literature. The 1999 preface of *Gender Trouble* dedicates the work to the “collective struggle” of “increasing the possibilities for a livable life for those who live...on the sexual margins.”<sup>30</sup> (xxviii) Bem’s 1995 article on ‘Dismantling Gender Polarization and Compulsory Heterosexuality’ underlines how “deeply attached” she is to “trying to make the male-female distinction as minimal a presence in human social life as, say, eye color or foot size.” (57)<sup>31</sup> While Bem thinks, however, this might be unachievable, her alternative “utopian fantasy” now seems strangely familiar, that “rather than trying to dismantle... two-and-only-twoness...by *eliminating* gender categories, we instead dismantle that two-and-only-twoness by *exploding and proliferating* gender categories.” (57) Fausto-Sterling shares this vision, and her commitment to “challenging ideas about the male/female divide,” (2000, 79) leads her to conjure “a world in which sexes have multiplied beyond currently imaginable limits” and “all

---

<sup>29</sup> This drive to change people’s minds, or in the current lexicon, get them to ‘educate themselves’ about the unreality of sex, is, of course, where the utopian instinct of sex denial tips directly into the rampant totalitarianism we see today. Such are the inherent problems of grounding a political project on the demand that everyone believes something that virtually no one believes.

<sup>30</sup> This is a clear indication of whose interests Butler is concerned with in *Gender Trouble*, and it’s not women’s. There is nothing wrong *per se* with not being concerned with the interests of women. Not everyone is obliged to care about everything – indeed, feminism is the only justice movement that seems to be currently tasked with including everyone, in a way so strangely reminiscent of the fundamental injunction of female socialisation that women’s job is to be *for others*. My only objection in the case of Butler is that it is a mistake to call work so implacably uninterested, and indeed, many would argue, actively harmful, to women’s interests, ‘feminism.’ Furthermore, it is an extremely grave mistake – although one amenable to male interests – to give work hostile to women’s interests such prestige and authority within the field of academic feminism.

<sup>31</sup> Here again we see the collapse of the desire to get rid of gendered norms and hierarchies with something approaching the desire to abolish sexual difference. It is unclear exactly what making the ‘male-female distinction’ a “minimal... presence in...social life,” means exactly, and it might just refer to wanting to remove sexist gendered stereotypes. However, Bem is forced to concede, “the sex of the body (by which I mean the biology of reproduction)” does “matter more than eye color or foot size.” (57) This is the crux of the issue, and key to the conflict between sex denialist feminists and those who maintain that sex matters. We are *always* going to have to socially organise reproduction *in some way*, and hence, sex *will always be socially salient* in a way that we can conceive, theoretically at least, say, race, might not be. Female people have particular needs and interests pertaining to the organisation of reproduction – reproductive rights, maternity leave, the maternity pay gap, the sexed division of labour, flexible working for both parents etc. The present injustice of those arrangements and the negative impact they often have on women’s flourishing *cannot be addressed*, and indeed, *will be substantially amplified*, by the impulse to try and erase the recognition of sex (cf. n42).

those oppositions and others would have to be dissolved as sources of division.” (1993, 24)<sup>32</sup> This chimes with Rothblatt’s thought that if ‘sex’ is just a continuum of gender expressions, and, in particular, “those aspects of our personality that lead us to want to express ourselves...along assertive, nurturing and erotic dimensions,” it then follows that there “are an infinite number of possible genders.” (1994b, E4) The explorations undertaken by “gender pioneers” will, Rothblatt suggests, allow humanity to “break out of the male or female traps of our past,” (1995, 41) and leave behind “the pernicious fiction of separate male and female classes of people with associated separate gender roles, a fiction which has been especially unfair to women since time immemorial.” (1992, 268) And thus, finally, “we’ll evolve from a history based on arbitrary oppression...up toward a future based on love...togetherness... extending hope and caring to all people...whatever they may look like.” (1992, 41)

### Smashing the Binary

As we’ve seen, in its earlier iterations, the object of the denialist critique is designated, variously, as a ‘two-party sexual system,’ (Fausto-Sterling) ‘The Apartheid of Sex,’ (Rothblatt), ‘bipolar groups’ (Bem) or ‘dichotomous physical facts.’ (Kessler and McKenna) As the nineties progress into the new millennium, these various expressions are steadily eclipsed by the framing propagated by Butler, such that, today, the object of sex denialist critique is almost invariably designated ‘the (gender) binary,’ and the core sex denialist claim most usually expressed as ‘sex isn’t binary.’ Sex denialists never really stop to unpack exactly what is meant by ‘binary’ or ‘the gender binary’ or ‘the sex/gender binary,’ and, we might observe, for a group of people so allegedly committed to ‘unveiling’ how concepts construct reality, there is scant attention paid to the effects of framing this whole question through “that very binary frame for thinking about gender.” (Butler 1990, xxx)

The place I want to start this unpacking is with the perhaps surprising admission that I agree with the sex denialist claim that sex isn’t binary. If we start from the mathematical roots of the concept, ‘a binary’ is a formulation of *absolute* difference *in which there are only two possible options*; in mathematical terms 0 and 1, in Aristotelian logic, what we would call a

---

<sup>32</sup> In *Sexing the Body* Fausto-Sterling notes “that those battling against the constraints of our sex/gender system were delighted” by her proposals in ‘The Five Sexes,’ again revealing the normative moral impulse of sex denial that has now taken such disciplinary form in the debate between trans ideological and gender critical feminists.

*contradiction*, that is, A and not-A.<sup>33</sup> The sex denialist literature is entirely committed to the thought that for sexual difference to be empirically meaningful, it must conform to the structure of a pure logical contradiction. The texts are littered with claims like “the physical distinction between men and women is not absolute” (Whittle 2002, 7), “sex differences are not all that clear-cut” (Hubbard 1996, 161), it’s impossible to “draw a hard line between the sexes” (Hines 2020, 709), “there is no natural dividing line between the sexes,” (Rothblatt 1993, 110) and there is not “two exclusive types: female and male.” (Kessler 1990, 709) On the basis of the fact that sexual difference does not present itself in the form of an absolute logical contradiction, the sex denialist then concludes that the perception of human sexual dimorphism is false, and is, hence, a historical artefact. Whereas, the truth, I would argue, is that sex denial itself is an artefact *produced by the belief that empirical differences must manifest as a perfect logical contradiction to be meaningful.*

It should be evident to anyone who stops to think about their experiences of the empirical world that there are pretty much *no* differences we routinely cognise that have the form of a pure binary contradiction. Most natural and man-made phenomena have fuzzy edges and exhibit anomalies.<sup>34</sup> Streams turn into rivers. Day shades into night. Yellow becomes green becomes blue. It is wrong to conclude from this that the difference between night and day is a historical artefact, or that the existence of green demonstrates that yellow may as well be

---

<sup>33</sup> The point here is that in a *contradiction* the two options occupy the full range of possibilities, whereas in a *contrary*, say ‘black’ and ‘white,’ each term represents the two extreme ends of a continuum with variation in between.

<sup>34</sup> My discussion here focuses primarily on the role of troubling absolute distinction with intermediate or ambiguous cases, but there is an interrelated group of arguments that attempt to achieve the same end by focusing on anomalies – infertile women, women who have had hysterectomies, women with PCOS, women with facial hair, women with deep voices etc etc – and centre on the claim that there is “no one single reliable marker of sex difference at all,” (Whittle 2007, 4) or “no single measure that unassailably places each and every human into one of two categories.” (Fausto-Sterling 2018) Both these methods are produced by the same underlying Platonic essentialism about concepts and how they work, that is, the thought that concepts must have perfectly defined edges, and that everything inside the category must be discernible on the basis of some ‘unassailable’ essential defining characteristic that *every* member of the category must share. However, as I am suggesting throughout this discussion, I do not think Platonic essentialism is a very good account of how concepts actually work, given that our concepts work perfectly well with edge-cases and anomalies all the time. It is beyond the scope of this essay to outline in detail how I think concepts *do* work and should note that my general view is that humans are remarkably adept at using concepts, and remarkably bad at explaining how we do it. My general position here though is some combination of Aristotle, Wittgenstein and Heidegger. That is, I think the *function* of things is extremely important to how we conceptualise them. I believe concepts are not representations but tools, that they develop through interaction with the world that does indeed exist prior to us conceptualising it (‘existence precedes essence’), and that because concepts are the means by which we *interact* with the material world and other people, we are constantly receiving feedback about how well our concepts are working and make adjustments when we are not ‘grasping’ things. To use the famous Heideggerian example, concepts are a lot more like hammers than they are like pictures. And trying to replace ‘sex’ with ‘gender identity’ is like taking my hammer, giving me a fish, and telling me I can still bang nails in with it.

blue. That is, the fact that there are liminal states, or a small number of anomalies or ambiguous cases between any cognisable difference is entirely as we would expect for any empirical phenomenon, and has no bearing on whether our concepts are grasping a generally meaningful empirical regularity. The irony of all this is that the impression that the existence of anomalies negates the meaningfulness of concepts is, indeed, an artefact produced by the conceptual framing. Fausto-Sterling takes herself to be battling against “the idealised, Platonic, biological world,” in which “human beings are divided into two kinds: a perfectly dimorphic species,” (Five sexes revisited, 19-20) but the point is that the *biological world isn't a manifestation of Platonic ideas*, and Platonic idealism is an, at best partial, *theory* about the way concepts work. What is, however, eminently Platonic is the assumption that only phenomena which manifests as an idealised, absolute binary would be meaningfully distinct, when it is evidently the case that conceptual discrimination works perfectly well with fuzzy edges and anomalies *all the time*.

It does not follow, therefore, from the fact that there are a small number of ambiguously sexed humans that “the idea that there are only two sexes” is fundamentally flawed or that sex is some kind of infinite multidimensional continuum. (Fausto-Sterling 1993, 20) It is conceptual mistake to conclude for the absence of *perfect* regularity in the empirical world that there is no regularity *at all* (indeed, this thought is produced by the binary ‘either/or’ frame). *Most*<sup>35</sup> humans are either male or female, a very small number are ambiguous, and no humans are a third, fourth, or fifty-fifth kind of sex.<sup>36</sup> The perception and cognition of the general regularity of human sexual dimorphism arises because humans are generally sexually dimorphic. It is true that the thought that humans are *absolutely* sexually dimorphic is wrong, as is also, we will readily agree with Fausto-Sterling et al, surgical intervention to make ambiguously sexed infants unambiguous. But the problem here is how we deal with ambiguity, and the fact that we wrongly tend to think that liminality, anomaly, and relationality confound the existence of difference, an assumption shared by both the sex

---

<sup>35</sup> In ‘The Five Sexes’ Fausto-Sterling estimated the number of people with DSDs to be as high as 4 percent (1993, 21). She later revised this to a figure of 1.728 percent of individuals “who deviate[s] from the Platonic ideal of physical dimorphism at the chromosomal, genital, gonadal, or hormonal levels.” (Blackless et al., 161). Hull has undertaken an analysis of the rates of intersexuality and concluded that “Fausto-Sterling’s reduced estimate of the incidence of intersex is still a dramatic overstatement and that a more realistic figure is 0.373 per 100 live births.” While as Hull notes, the analysis by Leonard Sax suggests the figure is closer to 0.0018 percent. (2005, 68)

<sup>36</sup> The existence of ambiguously sexed people also has no bearing on the question of whether an unambiguously sexed male human is actually a female human. Thinking that is does is equivalent to arguing that the existence of green proves that yellow is blue, or the existence of dusk proves that day is night.

denialists and those who would intervene to make that difference absolute, both of whom are still operating inside an idealist Platonic frame.<sup>37</sup>

This reading chimes with Carrie Hull's analysis of Foucauldian/Butlerian nominalism in *The Ontology of Sex*. Nominalism arises, Hull suggests, because, as we explored above, empirical phenomena do not exhibit the absolute regularity of logic, in which the "existence of one exception to a rule...negates the rule." (2005, 27)<sup>38</sup> The nominalist concludes from this that there is no empirical regularity at all, and that our concepts are mere arbitrary impositions that *produce* the phenomena they purport to describe.<sup>39</sup> From here it is a short walk to the thought that these arbitrary impositions are generated by 'power,' 'discourse' or 'regulatory regimes,' and are operating in the interests of 'heteronormativity,' 'capitalism' or 'whitecishetpatriarchialcolonialism.' And once we have determined that the perception of sexual dimorphism is *produced* by oppressive power structures, it seems evident that someone asserting the material reality of sex could only be motivated by defending these structures. What won't be allowed is that there are decent justice-minded people who simply think the sex denialist's ontology is wrong, are pretty sure the material world exists and exhibits regularities we can cognise to a high degree of reliability, and believe political interventions should be based on accounts of how the world actually works, rather than on wish-fulfilment. But within the circular normativity of sex denialist discourse no such

---

<sup>37</sup> Toril Moi points this out elegantly in her critique of Butler – who, like Fausto-Sterling, is still trapped inside a Platonic frame in which meaningful sexual difference would have to conform to "ideal dimorphism." (1990, xxiv – v) Quite correctly, Moi appeals to the passage in *Philosophical Investigations* in which Wittgenstein critiques the belief that a meaningful concept must conform to a perfectly bounded self-identical area and is "threatened with disintegration" (2005, 39) if it does not: "Frege compares a concept to an area and says that an area without boundaries cannot be called an area at all. This presumably means that we cannot do anything with it.- But is it senseless to say 'Stand roughly there?'" (PI 71; Moi 2005, 39)

<sup>38</sup> Hull has an illuminating discussion of the way in which "Foucault ranks the formalized and predictive knowledge of mathematics and the physical sciences far above the descriptive and explanatory theories of the human sciences." (2005, 51) That is, as we are discovering throughout this discussion, nominalism arises through a kind of inversion framed by the assumptions of absolutist essentialism, viz, that if the empirical world is not as regular and crystalline as, say, maths, then there is no 'order of things' at all. This formation-by-inversion is the sense in which I consider the Foucauldian/Butlerian branch of post-structuralism to have drawn precisely the wrong conclusion from the critique of Platonic essentialism. That is, the critique of essence only destroys the meaningfulness of concepts if you think that concepts must work by the logic of essences, and in this sense, Butler is simply engaged in a form of 'reverse-Platonism.' Rather, as I am suggesting here, what I would draw from the critique of essence is that essence *is not how concepts work*.

<sup>39</sup> To be clear, some concepts *do* produce the phenomena they purport to describe, that's how social contagion works for example, while many ideas are sedimented in social and political structures and end up producing all kinds of empirical effects. What is not true, however, is that there is no mind-independent world, that there is no regularity to that mind independent world, that all cognition of that regularity is purely a product of our minds (culture/discourse etc), and that hence, everything we think we are cognising is actually *being produced by us*. This would be, to be blunt, a massive solipsistic god-complex, and it frankly beggars belief that progressive people who want to oppose domination and hierarchy think this kind of epistemic narcissism is liberatory.

possibility exists. The *truth* is that sex is a historical artefact, and anyone who disagrees can only be interested in, as Hines suggests, ‘resurrecting gender binaries.’

I am not claiming here that this error of absolutist thinking is being *caused* by the adoption of the Butlerian ‘binary frame.’ As our history makes evident, sex denialism was always grounded on the confusion between ‘meaningful empirical two-ness’ and ‘absolute logical contradiction.’ But the way the issue has come to be designated under the thought of ‘the binary’ certainly expresses and reinforces the underlying problem, which is the *tendency to think difference in absolutist binary terms*, or, conversely, to think *that a difference which is not absolute is not a difference*. The hallmark of binary thinking is imagining a world in which there are only *either* absolute differences, *or* no differences, in which things must be either perfectly distinct, or are collapsed into each other. And indeed, it is precisely this kind of logic which produces another of the key conceptual errors of sex denialist thinking, the conflation of sex/nature/biology and gender/culture/history. As I have discussed in detail elsewhere, the argument forwarded by Butler in *Bodies That Matter* to justify the erasure of materiality performed by *Gender Trouble*, depends, like the thought that the sexes cannot be distinct, on the view that difference depends on perfect delineation. (Jones 2018b) As Butler writes, the “moderate critic might concede that some part of ‘sex’ is constructed, but some other is certainly not, and then, of course, find... herself...under some obligation to draw the line between what is and is not constructed.” (Butler 1993, 11) This claim amounts again to the thought that the existence of the liminal, the edge-case, the *between*, confounds the possibility of meaningful difference.<sup>40</sup> And as with the difference between males and females, my contention is that it does not.

In the case of the sex/gender distinction, which, as widely noted, is associated with the nature/culture, body/mind, and matter/idea distinctions, there is clearly *a large area of interaction between the poles*. Here we might think of the queer concern with the cultural

---

<sup>40</sup> “The moment in which one’s staid and usual cultural perceptions fail, when one cannot with surety read the body that one sees, is precisely the moment when one is no longer sure whether the body encountered is that of a man or a woman. The vacillation between the categories itself constitutes the experience of the body in question. When such categories come into question, the *reality* of gender is also put into crisis: it becomes unclear how to distinguish the real from the unreal. And this is the occasion in which we come to understand that what we take to be ‘real,’ what we invoke as the naturalized knowledge of gender is, in fact, a changeable and revisable reality. Call it subversive or call it something else. Although this insight does not in itself constitute a political revolution, no political revolution is possible without a radical shift in one’s notion of the possible and the real.” (Butler 1990, xxiv)

shaping of sexual drives (although Butler denies the existence of any pre-discursive drives, of course, because idealism), or the influence of physical molecules like hormones on human behaviour and gender norms. Humans are psychophysical creatures. Our behaviour, culture, concepts and history arise through a complex dialectical interaction between ourselves and the world, our bodies and our minds, our innate dispositions and our culture.<sup>41</sup> It is not possible, at the level of universal abstraction, to draw clean lines through these liminal zones, although we can carefully map out interactions when looking at particular concrete processes. The fact that we cannot inscribe an absolute difference between nature and culture, body and mind, or sex and gender, does not, however, mean that they can be neatly collapsed. The fact that our emotional lives inhabit the liminal zone between embodied sensation and mental representation, does not therefore mean there is no meaningful difference between, say, the morphology of our gonads and our capacity to conceptualise ‘zero.’ There are clearly aspects of what a Foucauldian would call ‘the body’ – physical passions, sexual behaviours, bodily comportment – which are to some degree or other shaped by culture. There are other aspects of the body – the colour of our eyes, the amount of melanin in our skin, what type of gametes we make – which are not. We do not have to draw a perfect line between ‘the body’ as culturally inflected, and ‘the body’ as naturally given, to claim there is a difference between them.

Butler therefore makes a metaphysical error when she suggests that granting existence and activity to a ‘pre-discursive’ element of ‘sex’ would depend on us being able to draw a clean

---

<sup>41</sup> It is notable that Butler always frames the sex/gender distinction in hierarchical terms, positing that it conforms to a body/mind, or nature/culture hierarchy in which ‘sex’ or ‘the body’ is figured as passive inert *feminine* matter imprinted by the masculine mark of culture, viz. “The relation between culture and nature presupposed by some models of gender ‘construction’ implies a culture or an agency of the social which acts upon a nature, which is itself presupposed as a passive surface.” (1993, 4) This construal of the distinction, which may well represent an accurate account of how it has been widely misconstrued in much Anglo-American academic feminism, is arguably generated by the persistent haunting spectre of determinism. That is, it is thought that if ‘sex’ is granted any active principle of its own, it will then mechanically determine ‘gender,’ as if gender is not produced by the collective historical activity of humans with minds that are not simply mechanically determined. This then leads to all kinds of abject confusion in Anglo-American academic feminism about how sex and gender are actually related. Sex cannot be granted any active role, because that, it is thought, would be determinism. And it is then inferred that gender must be a completely arbitrary structure unrelated to the activity of sex which is then inscribed on the body. Butler, who has her own interests in destroying the sex/gender distinction, will then use this misconception as reason to dismiss it, viz. “any uncritical reproduction of the sex/gender distinction ought to be rethought for the implicit gender hierarchy that the distinction has conventionally produced” (1990, 17), which is an irony, given she will then reconstitute precisely this hierarchy by subjugating the existence and activity of sex to the regulatory regime of gender. The point here, I would argue, is to produce an account of how the oppression of embodied women by the social conventions of gender arises through the *interaction* of the activity of sex and the culture making activity of humans, and this requires an account of the historical development of patriarchal gender as a mechanism of the appropriation of the active reproductive capacities of women as resource. (Cf. n.48)

line between the natural and the cultural. While *Gender Trouble* is generally considered to be the great critique of the ‘the gender binary,’ Butler’s argument is, nonetheless, predicated on thinking difference in binary terms. For sex to be different from gender, that difference must be absolute. Given it is not absolute, there is no difference. The impact of this is to deny the difference and dialectical interrelation between the poles of nature and culture, and to subjugate nature to the pre-eminence of culture, that is, to formulate the relation of culture to nature as a hierarchy. Here we arrive at the further theoretical significance of the thought of ‘the binary,’ which designates not only a difference formulated as an absolute contradiction (*either 0 or 1*), but as a metaphysical hierarchy where one term is privileged (1) over the other (0), ontologically, morally and/or politically (mind over matter, culture over nature, man over woman, etc).<sup>42</sup> Both of these senses are connected, because both are structured by an exclusive ‘either/or’ which, with respect to metaphysical polarities, then denies the ambiguous space of interaction and interdependence between two things that are dialectically related but remain different. The enormous irony here then, is not only that Butler’s denial of the sex/gender distinction is *produced* by a binary absolutist conception of difference, but that by subjugating sex to gender under the auspices of ‘the gender binary,’<sup>43</sup> she is elevating and privileging culture over nature, that is, constituting a binary.

---

<sup>42</sup> In addition to the specific influence of Butler, one of the key reasons for the adoption of ‘the binary frame’ in contemporary sex denial is that it carries with it the sheen and sophistication of the poststructuralist critique of binaries in general. As Whittle writes, “the sexual siting of human beings within the polarised groups ‘men’ and ‘women’...is culturally and socially dependent...[on] a framework made up of binary (oppositional positions)” (2002, 4). He continues, “[s]ome of the most eminent thinkers of the 20th century, such as Foucault, Lacan, Baudrillard and Derrida, have produced research and ideas which look beyond the limitations of the modernist/enlightenment paradigm that constructs a world of dualities, heaven and hell, evil and wickedness, madness and sanity, health and sickness, heterosexuality and homosexuality. They have challenged those basic ‘incorrigible beliefs’ and shattered their assumptions.” (6) This is a vacuous effort to enlist a bunch of heavy-hitting and prestigious thinkers to your cause, while providing no evidence that you actually understand their thought. Evidently, famous philosophers have produced ‘research’ and ‘ideas.’ What is the content of their ideas? What exactly does it mean to ‘look beyond the limitations’ of binary thinking and ‘shatter its assumptions’? Because, as I argue here, this entire appropriation of the poststructuralist critique of the binary is based on the thought that you challenge a binary by denying difference. That may well be the understanding propagated by Butler, which has, unfortunately, come to stand as the most dominant representative of what ‘post structural’ means in the Anglo-American academy. However, the reading advanced here about how you actually smash a binary is also derived from poststructuralism, through the line that descends from Derrida, and the *critique* of Lacan, into French difference feminism. That is, it is intellectually inadequate to just point at poststructuralism and note ‘they critiqued binaries’ without unpacking what ‘critiquing binaries’ means.

<sup>43</sup> Although it is rarely explicitly unpacked, the phrase ‘the gender binary’ contains within it the sex/gender conflation initiated by Butler. The thought is, as we’ve rehearsed, that it is the ‘regulatory regime’ and binary frame’ of gender which *produces* the perception of humans as sexed, that is, that the belief in human sexual dimorphism is an artefact of gender. As such, the material reality of sex is *subsumed under* gender, and the sex denialist will then claim that that anyone who asserts it is ‘resurrecting the gender binary.’ Gender critical feminism, however, is grounded on the continued belief in the second wave sex/gender distinction, that is, the view that sex is a material reality, and gender is a historical system of social norms, roles and values which constitute the *mechanism* by which women are oppressed as a sex class. Given gender critical feminists are using a sex/gender distinction, and do not believe *either* that sex is an artefact of gender, or that gender is

A great deal of the *trouble* here is arising from the confusion between difference and hierarchy.<sup>44</sup> As we have seen, much sex denial is working on the more or less explicit assumption either that difference causes hierarchy, or that hierarchy produces the false perception of difference in order to justify itself.<sup>45</sup> (Arguably, sex denialists actually think both things; they fear the determinism of the first option, so they imagine the idealist mastery of the latter). What this then produces is the belief that to get rid of hierarchy, they must deny difference – indeed, they often simply think that hierarchy *is* the perception of two-ness and hence, removing the perception of two-ness will eradicate hierarchy. This is perfectly exemplified by Fausto-Sterling in the chapter of *Sexing the Body* entitled ‘Dueling Dualism,’ which starts from the reasonable observation that “questions of nature and nurture have troubled European culture for some time,” and our “ways of understanding the world...depend heavily on...pairs of opposing concepts” which are “usually employ[ed]...in some form of hierarchical argument.” (21) In the context of discussing the sex/gender distinction she then conflates the notion of binary hierarchy with the belief in the

---

mechanically determined by sex, when gender critical feminists assert the material reality of sex, we are not making any claims about gender hierarchy whatsoever.

<sup>44</sup> For example, when discussing the sex/gender distinction, Butler will claim that this “very concept of sex-as-matter...is a discursive formation that acts as a naturalised foundation for the nature/culture distinction and the strategies of domination that that distinction supports.” (1990, 50) It is not, however, the *distinction* between nature and culture that creates domination, it is the binary hierarchy *between* them. Moreover, Butler’s analysis of the sex/gender distinction is marred by the standard Foucauldian error of always indicting a description of a situation for *producing* it. To the extent that the sex/gender distinction implies a “relationship of hierarchy... in which culture renders [nature] into an ‘Other’ to be appropriated to its own limitless use,” (50) that is because it is a *description* of how the mechanism of patriarchal gender functions to appropriate nature/women as resource. You will not undo that mechanism by simply disallowing the conceptual means of describing it. Indeed, that will serve the interests of appropriation. However, given that Butler will then reproduce precisely the binary of culture over nature, all this purported objection to the sex/gender distinction is, actually, moot. It’s an intellectual excuse for destroying the distinction, because her objective is undoing the ‘heterosexual matrix,’ and for her, that necessitates sex-denial.

<sup>45</sup> I have written more on the conflation of difference and hierarchy in my ‘A Note on Smashing the Binary’ (Jones 2018a). There is an important piece of work to be done tracing the genealogy and unpacking the conceptual confusions which have led to this conflation, especially among thinkers from the States. One important part of that genealogy is the legacy of America’s racial history, in particular, the role of scientific racism and its colloquial kin, and the thought of ‘separate but equal,’ to justify slavery and segregation. Given this history it seems progressive Americans are almost incapable of understanding an appeal to difference as anything other than a fabrication to legitimatise unjust social hierarchy and are primed to take efforts to erase difference as *de facto* liberatory. Rothblatt clearly gestures towards this racial history when calling sexual dimorphism, ‘The Apartheid of Sex,’ underlining that “Martin Luther King taught us...it’s wrong to treat people differently because of biology over which they have no control and which makes not a damn bit of difference in everyday life.” (1995, 37) What this of course eclipses is that women’s reproductive role frequently makes *all kinds of difference* to their everyday lives, and refusing to recognise that amplifies, not diminishes, the injustices which follow from it. Here we might note that America’s racial history may well be implicated then in the failure of American feminists to win the reproductive rights and social accommodations for maternity which have been achieved in other developed nations, given they are hamstrung by a history which frames appeals to difference entirely negatively.

“fundamental<sup>46</sup> split between nature and culture, between ‘real bodies’ and their cultural interpretations,” and mistakenly then concludes that what needs to happen is to “*erode the distinctions* between the physical and the social body.” (20, my emphasis) Like “Foucault, Haraway, Scott, and others,” Fausto-Sterling tells us, she is committed to the view that “our bodily experiences are brought into being by our development in particular cultures and historical periods.” (20) And thus, she proposes to “cut through the Gordian knot of dualistic thought” by “arguing...that sexuality is a somatic fact created by a cultural effect.” That is, just like Butler, by reinscribing the binary hierarchy of culture over nature. (21)

Notably, in the course of her discussion Fausto-Sterling makes passing reference to “the philosopher Val Plumwood” and claims she agrees with Plumwood’s analysis that binary hierarchies are pernicious “because their use makes invisible the interdependencies of each pair.” (21) Plumwood is an ecofeminist, influenced, as am I, by the sexual difference feminism of Luce Irigaray. Her central text, *Feminism and the Mastery of Nature* (1993), is, as the title suggests, an analysis of the centrality of the patriarchal dualism of reason (idea/mind/culture/masculine) over nature (body/matter/feminine) to the domination and exploitation of the environment, and the bodies of women. Congruent with the key insight of sexual difference feminism, Plumwood indicts the elevation of reason over nature – which we can denote as patriarchal *idealism* – as the “logical structure” that “forms a major basis for the connection between forms of oppression” providing an “integrated framework for the critique of both human domination and the domination of nature.” (1993, 1-2) As in Irigaray’s work, Plumwood recognises that the motive of patriarchal idealism is the *denial of our dependency on the material world*, and, by association, on the body of the mother. This is the conceit by which the patriarchal male subject constructs himself as an immaterial, and *invulnerable*, mind, dissociated from the matter of the body, with all the animal dependence and mortal vulnerability that entails. And this dualistic dependency-denial is then, Plumwood rightly diagnoses, critically implicated in generating the constant, unacknowledged appropriation of the environment and “the whole sphere of reproduction and subsistence,” which is “treated as a limitless provider without needs of its own.”<sup>47</sup> (21)

---

<sup>46</sup> Note again the absolutism. *If* there is a difference between sex and gender, between nature and culture, it must be a ‘fundamental split,’ as opposed to ‘interpenetrating, relational, interactive, dialectical.’

<sup>47</sup> This is where the purported leftism of trans activism really comes unstuck. The anti-materialist sex denialist strand of trans ideology is an absolute gift to the mechanisms of power that still depend on good old fashioned material appropriation. In this respect, the entire Foucauldian/Butlerian replacement of the analysis of material exploitation with concerns about representational exclusion/marginalisation/intelligibility/normativity, plays right into the hands of capital.

For Fausto-Sterling to enlist Plumwood in her efforts to ‘dual dualism’ by reinscribing the elevation of culture over nature is then, to say the least, misguided. Fausto-Sterling claims she agrees with Plumwood’s suggestion that the problem with binary hierarchy is that it conceals the necessary interdependence between poles, but she evidently doesn’t grasp what that implies, because to recognise the interdependence between two things, you first have *to recognise that there are two things*. The key point here is not only that it is a conceptual error to conflate difference with hierarchy, but that binary hierarchy works, fundamentally, by *denying that there are actually two things* which *both* have their own existence, principles of activity, drives, needs, or interests, and that *both* show up to relate and interact in the manifold complex ways that produce the world of phenomena. What this means is that the way you actually ‘dual dualism’ is precisely *not* by denying difference. Rather, if you really want to ‘smash a binary,’ what you do is assert the equal reality of both sides of a dualism understood *in their own terms*, map their relational interdependence and complex interaction, and resist all absolutist temptation to think the poles must either be completely distinct, or can be dissolved into each other.

This has important implications for how we should properly understand the sex/gender distinction, and there is another genealogy to be written about how its misconstrual has contributed to much academic feminism falling hook, line and sinker for sex denial.<sup>48</sup> What I want to conclude with, however, is a brief unpacking of what our analysis of how to ‘smash a binary’ tells us about the absurdly vexed question of whether women actually exist. As we saw above, a binary hierarchy is not a recognition of difference, but is rather, the hierarchical privileging of one term over another, in which the inferior term is subjugated to the dominant term, and, in fact, denied its own reality (an absent ‘0’). In the difference feminist account of ‘the binary frame of gender’ which descends from Beauvoir’s analysis of ‘Woman as Other,’

---

<sup>48</sup> I have gestured at some aspects of this misconstrual in the course of this discussion. The fundamental issue stems, I think, from the recoil about the spectre of determinism, combined with an absolutist way of conceiving relation abstracted from concrete historical process. This produces the view that unless sex is conceived as ‘radically distinct’ from gender, gender must be determined by sex, and hence, that gender’s relation to sex must be ‘arbitrary.’ (For this reading see especially Butler 1996). From there it is a short walk to the conviction that women are not female, and that anyone who asserts they are must be a determinist. This, ironically, for people so busy asserting that sex is historical, is a conceptual error derived from attempting to understand the sex/gender distinction in the metaphysical abstract, rather than through materially grounded process. Gender arises from the historical development of a social system which aims at appropriating women’s bodies as a reproductive resource. The relation of sex to gender is therefore *neither* determinist *nor* arbitrary, but historically contingent. For further discussion of this please see Jones 2021.

the patriarchal projection 'Woman' is produced, by inversion, from the perspective of the masculine subject. In concrete terms this involves the masculine subject allocating to himself all the privileged characteristics in the great edifice of metaphysical polarity (mind/reason/idea/culture/transcendence/human etc), while 'Woman' is made the repository of all the unwanted metaphysical 'waste' (body/matter/emotion/nature/immanence/animal etc). According to Irigaray – and this is the core of the significance of sexual difference feminism – the structuring of our culture by the hierarchical projection of 'Woman as Other' means that, in symbolic terms, there is no recognition of the existence of actual embodied concrete female humans. What there is is the properly human male default, living in a hall of mirrors populated by inversions, distortions and fantasies. To shatter this hall of mirrors, the very last thing we should be doing is denying the fact of sexual difference, let alone agreeing to be redefined in law and public life as the patriarchal projection 'Woman.' No. To shatter this hall of mirrors we must assert, to our very last breath, that the class of actual embodied female human beings, that is, *women*, as such, exist.

## References

- Bem, Sandra Lipsitz. 1995. 'Dismantling Gender Polarization and Compulsory Heterosexuality: Should We Turn the Volume Down or Up?' *Journal of Gender Studies* 17(2). Available at <https://www.digitaltransgenderarchive.net/files/h702q645g>
- Blackless et al., 'How Sexually Dimorphic Are We?,' *American Journal of Human Biology*, 12(2), pp. 151-166.
- Butler, Judith. 1986. 'Sex and Gender in Simone de Beauvoir's Second Sex.' *Yale French Studies* 72, pp. 35-49.
- Butler, Judith. 1990. *Gender Trouble: Feminism and the Subversion of Identity*. New York and London: Routledge Classics
- Butler, Judith. 1993. *Bodies that Matter: On the Discursive Limits of 'Sex.'* New York and London: Routledge
- Dworkin, Andrea. 1974. *Woman Hating*. New York: Penguin
- Fausto-Sterling, Anne. 1993. 'The Five Sexes: Why Male and Female are Not Enough.' *The Sciences*, March/April.
- Fausto-Sterling, Anne. 2000a. *Sexing the Body: Gender Politics and the Construction of Sexuality*. New York: Perseus Books.
- Fausto-Sterling, Anne. 2000b. 'The Five Sexes Revisited.' *The Sciences*, July/August.
- Fausto-Sterling, Anne. 2018. 'Why Sex Is Not Binary.' *New York Times*, October 25. Available at <https://www.nytimes.com/2018/10/25/opinion/sex-biology-binary.html>
- Foucault, Michel. 1978. *The History of Sexuality, Volume 1*. New York: Pantheon Books.
- Foucault, Michel. 1994. 'Nietzsche, Genealogy, History.' In *Aesthetics, Method, and Epistemology: Essential Works of Foucault 1954-1984*. London: Penguin Classics.
- Hines, Sally, 2020. 'Sex Wars and (Trans) Gender Panics: Identity and Body Politics in Contemporary UK Feminism.' *The Sociological Review Monographs*, Vol 68(4), pp. 699-717
- Hubbard, Ruth. 1996. 'Gender and Genitals: Constructs of Sex and Gender.' *Social Text* (46/47): pp. 157-165
- Hull, Carrie. 2005. *The Ontology of Sex*. London and New York: Routledge
- Jones, Jane Clare. 2018a. 'A Note on Smashing the Binary.' Available at [www.janeclarejones.com/2018/10/01/a-note-on-smashing-the-binary/](http://www.janeclarejones.com/2018/10/01/a-note-on-smashing-the-binary/)

- Jones, Jane Clare. 2018b. 'Post-structuralism, Butler and Bodies Part III: All that trouble with gender.' Available at [www.janeclarejones.com/2018/07/18/part-3-all-that-trouble-with-gender/](http://www.janeclarejones.com/2018/07/18/part-3-all-that-trouble-with-gender/)
- Jones, Jane Clare. 2019. 'The Radical Notion That Women Are People.' Available at <https://janeclarejones.com/2019/09/01/the-radical-notion-that-women-are-people/>
- Jones, Jane Clare and Lisa Mackenzie. 2020. *The Political Erasure of Sex: Sex and the Census*. Available at <https://thepoliticalerasureofsex.org/>
- Jones, Jane Clare. 2020. 'A Brief History of Transgender Ideology.' Appendix to *The Political Erasure of Sex*.
- Jones, Jane Clare. 2021. 'Woman as Resource: Towards a Radical Materialist Feminism.' *The Radical Notion*, Issue 3.
- Kessler, Suzanne J and Wendy McKenna. 1978. *Gender: An Ethnomethodological Approach*. Chicago and London: The University of Chicago Press.
- Kessler, Suzanne J. 1990. 'The Medical Construction of Gender: Case Management of Intersexed Infants.' *Signs* 16(1), pp. 3-26
- Laqueur, Thomas. 1990. *Making Sex: Body and Gender from the Greeks to Freud*. Cambridge, MA: Harvard University Press.
- Lugones, Maria. 2007. 'Heterosexualism and the Colonial/Modern Gender System.' *Hypatia* 22(1), pp. 186-209
- Moi, Toril. 2005. *Sex, Gender and the Body: The Student Edition of 'What is a Woman?'* Oxford: Oxford University Press
- Murray, Kath and Lucy Hunter Blackburn. 2019. 'Losing sight of women's rights: the unregulated introduction of gender self-identification as a case study of policy capture in Scotland,' *Scottish Affairs*, 28(3): 262-289. Available at <https://www.eupublishing.com/doi/full/10.3366/scot.2019.0284>
- Outreach Institute of Gender Studies. 1998. Website at <http://www.cowart.com/outreach/>
- Plumwood, Val. 1993. *Feminism and the Mastery of Nature*. London and New York: Routledge
- Ramazanoglu, Caroline. 1993. 'Introduction.' In *Up Against Foucault: Explorations of Some Tensions between Foucault and Feminism*, edited by Caroline Ramazanoglu. London and New York: Routledge

- Rothblatt, Martine (as Marla Aspen). 1992. 'Report of the Health Law Committee.' *Proceedings of the First International Conference on Transgender Law and Employment Policy*, pp 245-275. Available at <https://www.digitaltransgenderarchive.net/files/bc386j278> (Accessed 26/08/2021)
- Rothblatt, Martine. 1993. 'Second Report on the Health Law Project.' *Proceedings of the Second International Conference on Transgender Law and Employment Policy*, Appendix 5, pp A5-1 - A5-16, Available at <https://www.digitaltransgenderarchive.net/files/gq67jr234>
- Rothblatt, Martine. 1994a. 'Your Health Report Project.' *Proceedings of the Third International Conference on Transgender Law and Employment Policy*, pp107-117. Available at <https://www.digitaltransgenderarchive.net/files/kw52j810t>
- Rothblatt, Martine. 1994b. "'Unisexuality:' The wave of the future.' *Proceedings of the Third International Conference on Transgender Law and Employment Policy*, Appendix E, pp. E1-E6. Available at <https://www.digitaltransgenderarchive.net/files/3b5918656>
- Rothblatt, Martine. 1995. 'The Apartheid of Sex' at 'Keynote Luncheon.' *Proceedings of the Fourth International Conference on Transgender Law and Employment Policy*, pp. 33-41 Available at <https://www.digitaltransgenderarchive.net/files/kw52j813n>
- Sax, Leonard. 2002. 'How common is Intersex? A response to Anne Fausto-Sterling.' *Journal of Sex Research* 39(3), pp.174-178. Available at <https://doi.org/10.1080/00224490209552139>
- Whittle, Stephen. 2002. 'Disembodied Law.' In *Respect and Equality: Transsexual and Transgender Rights*, London: Cavendish Publishing. First published as 'Becoming Man' in *Reclaiming Genders*, edited by Kate More and Stephen Whittle, London: Cassell, 1999.
- Whittle, Stephen and Lewis Turner. 2007. 'Sex changes'? Paradigm shifts in 'sex' and 'gender' following the Gender Recognition Act,' *Sociological Research Online*, 12(1), 2007. Available at <https://www.socresonline.org.uk/12/1/whittle.html>

