

Article

Discounting Females, Denying Sex, and Disregarding Dangers from Self-ID —A Reply and a Defense of Open Debate

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Abstract: In this article, I reply to comments on my 2020 article “Scrutinizing the Equality Act,” where I express support for the aims of the US Equality Act—providing federal non-discrimination protections to LGBT+ individuals—but opposition to its form. As currently formulated, the US Equality Act would extend federal non-discrimination protections to LGBT+ individuals by redefining “sex” to “include sexual orientation and gender identity” and thereby eliminate sex-based provisions and the protected nature of women’s spaces. My article aimed to stimulate a more balanced discussion around gender self-identification policies that considers both females and transgender people. Here, I reply to published critiques with the goal of correcting misunderstandings and clarifying the complex, contested sociopolitical arguments presented in my article. Framing this issue within the broader creeping illiberal campaign of conformism and censorship in the academy, I, following others, emphasize the crucial role of open, critical dialogue in advancing science and promoting democracy. In that spirit, I echo calls for feminists and others to push back against censorship and engage with sensitive, controversial issues, including but not limited to deficiencies in the US Equality Act.

Keywords: US Equality Act; sex and gender; LGBTQ; women’s rights; transgender; academic freedom

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In my 2020 article, “Scrutinizing the US Equality Act,” I aimed to stimulate a discussion around the US Equality Act (EA) that considers both females and transgender people.¹

¹ Throughout, references to my arguments refer to my 2020 paper, unless otherwise noted: Burt, C. H. 2020. Scrutinizing the U.S. Equality Act 2019: A Feminist Examination of Definitional Changes and Sociolegal Ramifications. *Feminist Criminology* 15 (4): 363–409. doi:[10.1177/1557085120918667](https://doi.org/10.1177/1557085120918667).

Such a discussion requires a recognition of the distinction between sex and gender, competing rights claims, and the significance of redefining sex to include gender self-ID—the focus of my article. Lamenting the absence of open discussion around the EA despite the sweeping sociopolitical changes it would institute from sex-based to gender-identity-based rights, I called for more attention to “the implications of eliminating the legal right to center the interests of females as a sex-class independently of gender identity” (367). I offered alternatives to the Equality Act that would provide federal non-discrimination protections to LGBT+ people without eliminating females’ sex-based provisions and with it the protected nature of women’s spaces (see 390–392).

Highlighting “the nearly complete freezing of public discussion on this matter from those on the left” and within academia, I suggested that much of the public are unaware of the nature of the proposed changes in the bill, including the drastic shift to a policy of in-the-moment sex/gender self-ID facilitating male access to formerly female-only provisions (367). The lack of scrutiny the bill has received, including disregard for the bill’s effect on females, I argued, follows from activists successfully framing any questioning of these changes as anti-trans bigotry. Accusations of transphobia have been weaponized to discredit those who not only raise reasonable concerns about the replacement of sex with gender identity under the law but also simply recognize the material reality of sex and the distinction between sex and gender.² Disturbingly, but consistent with a broader trend in academia and the wider society, tactics of labeling and shaming substitute for a reasoned debate with facts and logic.³

The tumult⁴ in response to my article included an organized and ultimately unsuccessful effort—by a group of scholars who deemed my article “blatant transphobia” and “TERF hatred”—to have my article retracted. This was followed by their removing me from my position on the editorial board of the journal on the basis that my presence, given the concerns outlined in my article, “sends the wrong message about the inclusive intent of the journal” and could cause harm to LGBT+ people. This response may not have been surprising to those paying attention. Relatively swiftly, a culture of enforced conformism to a set of beliefs around sex and gender has solidified in the academy, particularly in

² Allen, S. R., Finneron-Burns, E., Leng, M., Lawford-Smith, H., Jones, J. C., Reilly-Cooper, R., and Simpson, R. 2019. On an Alleged Case of Propaganda: Reply to McKinnon. <https://philpapers.org/archive/ALLOAA-3.pdf>.

³ Brint, S., and German, K. T. 2021. The University of California Drifts toward Conformism: The Challenges of Representation and the Climate for Academic Freedom in the Country’s Greatest Public Research University. *New Discourses*. Retrieved from <https://newdiscourses.com/2021/03/university-california-drifts-toward-conformism-representation-academic-freedom>.

⁴ Briefly, after publishing this article, the journal *Feminist Criminology* was subject to criticism from a vocal group of activist-critics who demanded the journal both denounce and retract the article. These critics, many of whom were part of the American Society of Criminology’s Division of Women and Crime (DWC) which sponsors the journal *Feminist Criminology*, denounced me variously as a “transphobe,” “TERF [trans-exclusionary radical feminist],” and “anti-LGBT,” calling my work “blatant transphobia” in a letter to the division signed by 31 members. As is common in this realm, requests for evidence of my alleged transphobia were not forthcoming. To their great credit, the journal editors neither denounced nor retracted the article. Having been unsuccessful in retracting the article, these critics decided to go after me. Deeming my presence on the editorial board of *Feminist Criminology* “harmful” given the views I presented in my article, the DWC created a new “editorial board committee,” who took among their first actions to remove me from the editorial board against the wishes of the editor who called my service “exemplary.” Concerningly, but not surprisingly, some of those on the editorial board committee who voted for my removal admitted they had not read the article in question. For more details see here: <https://callieburt.org/2021/04/23/context-ebremoval>.

the social sciences and humanities.⁵ This particular set of belief includes, inter alia, that biological sex is, if not constructed, assigned and ambiguous; that gender identity should take priority over sex for sex-based divisions for all purposes no exceptions; and that referencing sex in lieu of gender identity is transphobic, at best, and perhaps racist, colonizing, “cisheteropatriarchal” transphobia.⁶

With almost religious zeal,⁷ some trans-activists and groups, including organizations with representation on university campuses (e.g., Human Rights Campaign, Stonewall, GLAAD), have promulgated an open slogan of “No Debate” about issues of sex and gender. Open censorship aims are manifest by recent efforts to retract papers not due to flaws in science but to disagreement with viewpoints expressed and conclusions reached.⁸ Academics who have dared to stick their heads above the parapet—raising concerns about or challenging these newly dominant ideas about sex and gender—have been subject to various censorious efforts including: no-platforming, shutting down of events and conferences, disinvitations from publications and events, removal from academic positions, non-renewal of contracts, blacklisting and attempted firings, smear campaigns, and even violent threats and harassment.⁹ Scholars, especially females, who question the orthodoxy are increasingly made out to be villains who should be punished and whose arguments—falling outside the increasingly narrow confines of acceptable ideas—deserve to be dismissed. If there was a banner for this crusade, borrowing from Hume (2015), it would say something like: “You can’t say that; if you do, you are evil and deserve to be punished and cast out of reputable society.”¹⁰

As scholars and journalists have documented, these campaigns against critical inquiry and hostility to dialogue about sex and gender fall well outside the bounds of normal scholarly critique, in which ideas are debated openly and with respect for diverse viewpoints.¹¹ The academy is now too often “an environment that squelches debate and punishes opinions, in the very institution that is supposed to make us better thinkers.”¹² Consequently, the academic and broader social climate is increasingly one of fear and self-censorship,¹³ which exerts a widespread chilling effect. Controversial and new ideas flourish largely unchallenged, even those with significant social import.

⁵ Burt, Scrutinizing the U.S. Equality Act 2019; Stock, K. 2021. *Material Girls: Why Reality Matters for Feminism*. London: Hachette; Suissa, J., and Sullivan, A. 2021. The Gender Wars, Academic Freedom and Education. *Journal of Philosophy of Education* 55 (1): 55–82.

⁶ E.g., Upadhyay, N. 2021. Coloniality of White Feminism and Its Transphobia: A Comment on Burt. *Feminist Criminology*. doi:10.1177/1557085121991337.

⁷ As Lukianoff (2014) noted, a slogan of “No Debate” is apposite for religious institutions and ideas not scientific or academic ones.

⁸ E.g., Burt, C. H. 2021a. Context of My Removal from the Editorial Board of Feminist Criminology. Retrieved from <https://callieburt.org/2021/04/23/context-ebremoval>. Graham, C. 2019. An open letter to Prof. Alice Roberts on the subject of DSDs and Stock, K. 2021. *Material Girls: Why Reality Matters for Feminism*; Singal, J. 2017. This is What a Modern-Day Witch Hunt Looks Like. *New York Magazine*. 2 May.

⁹ See, e.g., Suissa and Sullivan, *The Gender Wars*; Turner, J. 2021. Professor Kathleen Stock and the Toxic Gender Debate. *The Times*; Wight, C. 2020. Critical Dogmatism: Academic Freedom Confronts Moral and Epistemological Certainty. *Political Studies Review*. 19 November. doi:10.1177/1478929920942069.

¹⁰ Hume, M. 2015. *Trigger Warning: Is the Fear of Being Offensive Killing Free Speech?* London: HarperCollins.

¹¹ Singal, *A Modern-Day Witch Hunt*; Suissa and Sullivan, *The Gender Wars*; Wight, *Critical Dogmatism*.

¹² Lukianoff, G. 2014. *Unlearning Liberty: Campus Censorship and the End of American Debate*. New York: Encounter Books.

¹³ Hume, *Trigger Warning*; Rauch, J. 2013. *Kindly Inquisitors: The New Attacks of Free Thought*, Expanded Edition. Chicago, IL: University of Chicago Press.

This censoring of discussion and consequent lack of viewpoint diversity is concerning. The hazards of unchallenged groupthink are well established. The deployment of tactics to shut down or deter critical engagement and diversity of ideas is not without consequence for society and science. Whereas the process of open debate allows us to fill gaps in our always partial knowledge, groupthink promotes a shallow and incomplete understanding,¹⁴ creating a climate “in which people harbor a comfortable, uncritical certainty that they are right.”¹⁵ The implications for policies and practices can be substantial. An environment that squelches debate and filters contrary ideas and evidence creates a context for the uncritical promotion of unsound policies and neglect of unintended and unforeseen negative consequences.¹⁶

Academics have a unique capacity to apply their knowledge and skills to clarify issues and ideas; to question their taken-for-granted assumptions; and push back against unquestioned dogma, some might argue even a duty to do so. Yet, as I and others have argued, the current “gender debate” in academia is characterized not by critical engagement but by proclamations and mantras. This form of groupthink promotes feedback loops, which reward unreflective ideological conformity and avoidance of constructive disagreements, fostering an unscholarly degree of self-assurance about the soundness (even righteousness) of one’s positions as epistemology certainty.¹⁷ As resources are expended to stifle dissent rather than debate, these censorious groups become increasingly unable to articulate or defend their positions with reason or logic¹⁸ resorting to cheap, infantile tactics like name-calling.¹⁹ Like others entering this debate, I was variously denounced by fellow academics as transphobic. Yet, as mentioned earlier, when asked for evidence of my alleged transphobia and anti-LGBT sentiments, through both official and unofficial channels, my critics refused further engagement.²⁰

Concerningly, ideological censorship in the academy has spillover effects, shaping dialogue and viewpoints in the media and wider society. After all, at the heart of the academy is respect for free inquiry, including the right to question taken-for-granted orthodoxies, and the charge to inculcate skills and knowledge to challenge assumptions, accepted wisdom, and current arrangements. If we cannot engage in open, candid exchange and critique in the academy, then where can we do so? Open debate and viewpoint diversity, which Rauch (2013) refers to as the “liberal science system,”²¹ is the antidote to this ideological blindness, because the path to progress is not paved by censorship and claims of unchallengeable authority.

¹⁴ Mill, J. S. 1998/1859. *On Liberty and Other Essays*. Edited by J. Gray. Oxford: Oxford University Press; Rauch, *Kindly Inquisitors*.

¹⁵ Lukianoff, *Unlearning Liberty*. On the injury from silencing expression of ideas, Mill (2008/1859) argued: “If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error” (Mill, *On Liberty*, 21).

¹⁶ Haidt, J., and Lukianoff, G. 2018. *The Coddling of the American Mind: How Good Intentions and Bad Ideas are Setting up a Generation for Failure*: Penguin. Lukianoff: *Unlearning Liberty*.

¹⁷ Lukianoff, *Unlearning Liberty*; Rauch, *Kindly Inquisitors*; Wight, *Critical Dogmatism*.

¹⁸ Mill, *On Liberty*.

¹⁹ Brint and German, *The University of California Drifts toward Conformism*; Hume, *Trigger Warning*. Mill (1998/1859) argued: “The worse offense of this kind is to stigmatize those who hold the contrary opinion as bad and immoral [people].”

²⁰ Burt, C. H. 2021b. Response (Objection) to My Removal from Editorial Board. Retrieved from <https://callieburt.org/2021/05/20/response-objection-to-my-removal-from-editorial-board>.

²¹ Rauch, *Kindly Inquisitors*.

To be sure, no available evidence suggests that those who attempt to censor dissent and discussion of certain topics have ill intent. Indeed, many, if not most, appear to do so in the name of social progress. “However,” as I argued, “good intentions are not enough.” At present, the narrow focus on ameliorating the struggles of transgender people, too often centering on the loudest and most radical voices, has coalesced into a myopic political crusade to improve the situation of trans people to the complete neglect of the impact on females and broader consequences. Much transgender activism is characterized by sex-blindness even sex-denialism, resulting in an abject failure to consider females in the crafting of social policies for transgender people. One such result is a US Equality Act that would, in current form, extend protections to transgender people by eliminating the sex-based provisions of female people and, still worse, by undermining the safety of both via gender/sex self-ID.

Against this backdrop, I seek to further dialogue by engaging with the three published responses to my article. I address their critiques aiming to correct the record, clarify, concur, and dissent. First, I briefly summarize the substance of my arguments before describing and addressing respondents’ objections. Notably, my aim is not to rehash or repeat the discussions of sex, gender, gender identity, and the law in my original article, but rather to respond to critiques via correction and clarification. I conclude by urging scholars to push back against this ‘creeping campaign of conformism’ given that science, democracy, and social progress depend on open debate within and outside the academy.²²

Precis of My Arguments against the Equality Act’s Implementation

Explicitly supporting the bill’s aims—protecting LGBT+ people from discrimination—I argued that the EA was deficient in *form*. Rather than creating two new protected classes—i.e., sexual orientation and gender identity/transgender status—the EA would extend federal non-discrimination protections to LGBT+ people by redefining the term “sex” to “include sexual orientation and gender identity.” Recognizing that sex is not, in fact, gender identity, and that, therefore, this redefinition creates a clash of rights between sex and gender identity, the bill specifies that gender identity takes priority over sex.

Establishing gender identity’s priority over sex, the EA modifies the description of discriminatory practices to specify that sex can no longer be a basis for inclusion/exclusion when it conflicts with gender identity. For example, the act amends unlawful employment practices to specify that when “sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity” (see Sec. 701A, H3932), without exception or explanation. In addition, Democrats added a rule in Section 1107: “(with respect to gender identity) an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity.” Removing any lingering question that the EA gave gender identity priority over sex, Democrats rejected several Republican efforts to amend the bill to include exceptions for sex-separated spaces where people are undressed or to maintain the sex separation of sport for fairness. This prioritization of gender self-ID regardless of sex, without exception, contrasts with the approach of other countries, such

²² Hume, Trigger Warning.

as the UK, which allow the use of sex-based distinctions when doing so “is a proportionate means to a legitimate aim” (e.g., fairness, safety).

Crucially, and also in contrast to the UK’s policies, the US Equality Act was formulated without defining gender identity²³ clearly or by requiring any formal status change. Given this, one’s gender identity is established by, and only knowable through, an in the moment self-declaration (“I identify as a woman/womanly/non-binary”). The result is that anyone can legally gain access to provisions set aside for the opposite sex on the basis of a simple self-declaration—no gatekeeping possible or sincerity required.

My explicit and primary objection to the EA’s form is this prioritization of in-the-moment gender self-ID “regardless of sex” for access to “sex-separated” provisions. By allowing any male to legally gain access to women’s provisions at any time merely by saying “I identify as a woman,” the EA undermines the protected nature of women’s provisions. For a provision to be a protected one, access has to be restricted. If any male can identify into women’s provisions on a say-so, it is no longer a protected space. I highlighted the fact that the EA’s gender self-ID policy undermines the protected nature of women’s spaces to the detriment of both females and transwomen. That is, to the extent that predatory males can opt into protected women’s spaces, the safety of everyone in those spaces is compromised. I discussed existing work documenting the erosion of protected spaces by self-ID policies.²⁴

The EA passed the US House in 2019 and again in 2021 with an egregious lack of policy impact evaluation for females and a dismissal of concerns about gender self-ID. I argued that the continued failure to consider the consequences of gender self-ID for females and transwomen was irresponsible. I recommended alternatives to the bill that would protect LGBT+ people without erasing sex in law and with it the protected nature of women’s provisions. I proposed maintaining the definition of legal sex as biological sex and creating two new protected categories in civil rights law: sexual orientation and gender status. When sex-based provisions are deemed legitimate—for privacy, safety, fairness, well-being (e.g., in prisons, shelters, showers, sports)—we would allow at least some sex-based distinctions and provide protected gender-neutral (or gendered) spaces.²⁵ I did not, as critics have charged, argue that all provisions should be sex separated. Rather, I proposed that when sex separation is deemed valuable as a proportionate means to a legitimate aim (rape crisis shelters, sport) at least some sex-separated provisions should be made available. For example, I proposed:

the creation of more third (gendered, gender-neutral, or unisex) spaces (e.g., bathrooms, locker rooms, incarceration facilities, refugees, shelters) for individuals who do not wish to inhabit spaces with others of their sex along with more concerted efforts to enhance protections to better protect the privacy and safety of those who do. When possible (e.g., in a large facility) spaces might alternate between sexed and gendered spaces (e.g., bathrooms on different floors), with clear signs as to whether they are sex or gender separated. Private businesses may choose how they separate

²³ As I noted: “Impractically, gender is not defined. Without an understanding of “gender” in the definiens, the definition is not just circular (as Rep. Lesko noted during House floor discussions) but *incomprehensible*, amounting to “the []-related identity, appearance, mannerisms or other []-related characteristics of individuals, regardless of the individual’s designated sex at birth” Burt, *Scrutinizing the U.S. Equality Act 2019*, 352.

²⁴ E.g., Dolovich, S. 2011. Strategic Segregation in the Modern Prison. *American Criminal Law Review* 48 (1).

²⁵ See Burt, *Scrutinizing the U.S. Equality Act 2019*, 390–92.

spaces, with the caveat that single-sex options must exist for female people in some form when sex-specific services have been identified as legitimate and beneficial for females. For example, at least one rape crisis center in a jurisdiction should retain a female-only policy, given that the over-whelming majority of support-seekers will be female, nearly all of whom will have been victimized by male-bodied people, and some of whom will have PTSD. (pp. 390–91, internal citations omitted)

In addition, I discussed the potential role of confusion around the concepts of sex, gender, and gender identity and devoted several pages to clarifying these terms and their different usages drawing on existing literature in sociology, women and gender studies, and biology.

Below I address the key objections and comments on my arguments in three different responses. I focus on addressing their major critiques while minimizing repetition; readers interested in a lengthier exegesis of different views of sex and gender should see my original article.

Disregard for Females and the Dangers of Self-ID

In her reply, “In Favor of the 2018 Equality Act,” Professor Mezey (2021) disagrees with what she perceives to be my premise, namely that the “Equality Act disadvantages women by blurring the distinction between sex and gender identity.”²⁶ This does not quite capture my arguments accurately. Rather than “blurring the distinction,” the EA *eliminates* the legal distinction between sex and gender. As I stated: “Membership in the female sex class would be legally defined on the basis of a self-utterance.” An imperfect, albeit useful, analogy to this shift would be a law defining age by self-declaration where the statement “I am 21 years old” would make one 21 years old under the law and thus bestow to said person all the rights of 21-year-olds in the USA, such as eligibility to purchase alcohol. This represents not a blurring but a legal redefinition of age from years old into something else—i.e., whatever age you say you are.

Moreover, my argument was not that the EA’s elimination of sex-based provisions would “disadvantage” females. Rather, as I discussed at some length,²⁷ females are disadvantaged due to their sex and the social prohibitions and constraints attached to sex. Until relatively recently in Western developed nations, females were constrained by sociohistorical laws explicitly restricting female participation in society. In many cultures around the world today, female social participation and equality remain curtailed by laws and customs. Additionally, I noted that females are “disadvantaged” by physiological sex differences, such as strength, size, and the labor of reproduction, all of which position females dissimilarly to males in some contexts (e.g., safety, self-defense, sport). The EA would undermine provisions designed to remedy females’ historical disadvantages and biological differences, including females’ unequal burden of reproduction and vulnerability to male violence, especially sexual violence.

Most women recognize that they are vulnerable to males from an early age. We learn to live with the reality of our vulnerability to male violence, especially male sexual violence, by being proactive: don’t go out at night alone, don’t accept drinks from male strangers (and watch your drink), do carry a rape whistle. Sex-separated spaces

²⁶ Mezey, S. G. 2021. In Favor of the 2019 Equality Act: A Comment on Burt. *Feminist Criminology* 16 (4): 526–31. doi:10.1177/1557085121991336. Here p. 526.

²⁷ See Burt, Scrutinizing the U.S. Equality Act 2019, 369–71.

provide temporary respite from the threat of male's violence and sexual objectification. Of course, some males will break rules about sex-separation; crucially, however, we can object to their presence and remove them if they do so. By eliminating females' right to exclude predatory males based on sex, the EA will eliminate these remedies to female disadvantages, which promote safety, felt psychological security, and equal social participation.

Disregarding Self-ID, Ignoring Male Violence, and Inverting the Burden of Proof

In her response, Mezey contends that I “did not make a sufficient case that the Act's interpretation [read: redefinition] of sex would harm women.” Acknowledging that I did not suggest transwomen pose any particular danger, Mezey perceives my argument to be that “the Act would allow, even encourage cisgender men to present as women and invade women's sex-segregated spaces to prey on them,” but “[t]here are ample data from jurisdictions with anti-discrimination laws that cast doubt on these assertions.” Further, she suggests, my raising these concerns “perhaps unwittingly . . . perpetuate[s] discrimination against the transgender community.” I address each point in turn.

First, Mezey's claim that I contend that males will increasingly “present as women” to access women's spaces is a bit misleading. Although I do believe that will occur (and some evidence suggests it already is occurring), as I discussed, predatory males don't have to present as women to self-ID into women's spaces—say-so is sufficient. Some transwomen have beards, wear suits, and present in stereotypically masculine ways; some of these transwomen are indistinguishable from predatory men, and women cannot tell the difference. But the more concerning point is, even if we could somehow differentiate transwomen from predatory males, under the EA, it would not matter because saying ‘I identify as a woman’ is sufficient to gain legal gender identity access to women's spaces.

We are a society that does not operate on trust and self-ID, which is why obvious adults have to show government ID to buy a beer, differentially abled persons have to procure and display a permit to utilize parking spaces set aside for them, and, when access relates to concerns about safety, we employ onerous requirements for proof of who we say we are (e.g., for air travel, for driving licenses). That my critics think allowing any male to self-ID into female spaces is not only acceptable policy but that it is transphobic to raise concerns about it is positively mystifying. To not think that predatory, voyeuristic males will use self-ID to prey upon women and girls is to disregard females because of course they will; they already have.²⁸ And, as I noted multiple times, because self-ID would eliminate the protected nature of women's provisions, it would undermine the safety of both females and transwomen in those spaces.

Second, I dispute Mezey's assertion that I did not provide sufficient evidence of harm (a discussion that was extended with more examples in the online supplemental information).²⁹ I presented evidence that gender self-ID has caused physical (sexual assault) and psychological (felt insecurity) harm to females, including violations sufficient to stimulate reversal of gender self-ID policies in other countries. However, I must ask, what constitutes “sufficient evidence of harm”? Male predatory violence against women is

²⁸ See examples in Burt, *Scrutinizing the U.S. Equality Act 2019*.

²⁹ See: <https://callieburt.org/research-projects/oscl/scrueqact-online-supplement> (see Questions 10 and 17, in particular).

well-established; indeed, that is a primary rationale for the sex separation of spaces. What proportion of incarcerated females need say that it would undermine their psychological well-being, including felt security, to have to share a prison cell with a male? How many females need be sexually harassed or assaulted by males in prison for the harm to be “sufficient”? How many women need to express that they want a female-only rape-crisis shelter for at least some to be deemed justifiably sex-separated? How many predatory males need to use self-ID to prey on women and girls in formerly sex-separated spaces for this to be considered too great a cost, given alternatives (such as gendered spaces)? Although I think it important that these questions about harm and collateral consequences be discussed,³⁰ again, quoting Kathleen Stock (2018), I object to letting females “be the automatic collateral in sweeping social changes such as those proposed.”³¹

Mezey contends that “[t]here are ample data from jurisdictions with anti-discrimination laws that cast doubt on [my] assertions [read: concerns].” However, Mezey did not cite a single peer-reviewed study in support of this “ample data” claim because robust scientific evidence does not exist.³² This follows from the persistent academic and political failure to consider the policy impact on females. Government-funded studies have assessed difficulties that transwomen experience in sex-separated spaces, for example, and how this affects their safety and psychological well-being.³³ Yet, zero studies have been conducted to examine how women in prisons and shelters might be affected by gender self-ID. These studies are needed because the voices of these women are rarely heard. The physical and psychological well-being of these women—who are disproportionately poor and minority and who have experienced high rates of male sexual violence—matter.

Additionally, I object to Mezey’s putting the burden of proof on females to prove that eliminating their sex-based provisions will cause sufficient harm. Insofar as provisions are set aside for a protected group (females) to exclude another group (males), the burden of proof appropriately lies with those seeking exceptions to demonstrate that said exceptions do not increase harm. Instead, Mezey appears to be claiming that women should have to prove, in advance, the harms that may be caused by gender self-ID. This is inequitable and illogical, in my view.

³⁰ One reviewer objected to these questions as rhetorical but in case it is not clear, I am genuinely curious how Mezey or other critics and supporters of the EA in current form would answer these questions. Considering the costs for females and what costs are acceptable is not, in my view, a rhetorical strategy but an important issue to weigh in the crafting of policy.

³¹ As of this writing, Hannah Tubbs, a 26-year-old transwoman, recently convicted of sexually molesting a minor girl (age 10) in a women’s bathroom eight years ago, when living as James Tubbs and two weeks shy of his eighteenth birthday, was just sentenced as a female to the juvenile facility (Sylmar Juvenile Hall). Prosecutors report that Tubbs did not identify as a transwoman until after Tubbs was arrested; see Ruiz, M. and Melugin, B. 2022. California Trans Child Molester Hannah Tubbs Gloats Over Light Sentence in Jailhouse Phone Calls. *Fox 11*. <https://www.foxla.com/news/hannah-tubbs-george-gascon-jailhouse-phone-calls-los-angeles>; Ryan, H. and Queally, J. 2022. Why L.A. D.A. Gascón Reversed Himself on Sentencing of Woman Who Assaulted 10-Year-Old. *Los Angeles Times*. <https://www.latimes.com/california/story/2022-02-21/gascon-reversed-himself-sentence-hannah-tubbs-who-assaulted-child>.

³² Although Mezey’s initial claim about “ample evidence” was made without citations, later in the paper three citations were added to same claim. All were non-empirical, non-scholarly pieces by or quoting organizations with particular political aims (namely, treating gender self-ID as sex), such as an HRC report consisting primarily of anecdotes (personal “stories”) as well as a CNN article that did not include the terms “violence” or “sexual assault.”

³³ E.g., Jenness, V., Sexton, L., and Sumner, J. 2019. Sexual Victimization against Transgender Women in Prison: Consent and Coercion in Context. *Criminology* 57 (4): 603–31.

Finally, to Mezey's worry that my discussing the fact the EA would allow males to use gender self-ID to prey on females may "perpetuate discrimination against transgender people," I can only say that need not follow from recognition of facts about male predation (see my discussion of this point: 392). Given that concerns about male predation are a primary justification for including transwomen in females' protected spaces, we agree that male predators pose a threat to women's safety. We disagree that only transwomen can raise concerns about male predatory behavior.

Irrelevant and/or Incorrect

Mezey criticizes my article for "ignor[ing] current legal theory and practice that sex discrimination encompasses gender identity discrimination in federal law." This critique is vague and, in my view, misguided. This is not settled theory or case law. The recent *Bostock* ruling (590 US ___[2020])—that an employer cannot fire a person simply for being homosexual or transgender—which followed the publication of my article, was important and widely publicized precisely because of the legal uncertainty around these issues. Crucially, the ruling was explicitly narrow. Writing for the majority, Justice Gorsuch emphasized that the ruling did not address provisions where sex distinctions are allowed. The Court did not extend its holding to other statutes, such as Title IX, or to sex distinctions allowed in Title VII, noting, for example, "we do not purport to address bathrooms, locker rooms, or anything else of the kind." Sex-based provisions are the focus of my critique of the EA.

Mezey also interprets me as holding the belief that females' "oppression is greater" than transwomen's oppression. This is not my argument. I noted that the incidents of harassment and violence against females are much more numerous than those directed against transwomen, but I acknowledged that this is a function of females' outnumbering transwomen by ~100-fold. Getting mired in an adjudication about which group is "more oppressed" is a futile distraction. Even if transwomen were "more oppressed" than females, it would remain unnecessary—and therefore morally objectionable—to sacrifice the safety of females in order to protect transwomen when alternatives exist that protect both groups. I outlined ways to extend such protections recognizing that *both* groups are vulnerable and should be protected.³⁴ These proposals were largely ignored by my critics.

Disregarding my deemphasizing bathrooms on my list of concerns and the suggestions for gendered provisions,³⁵ Mezey misrepresents my argument as asserting that "access to bathrooms and other sex-segregated places [should] remain segregated by biological sex." I explicitly proposed having *both* sex-separated and gendered (or unisex) bathrooms in workplaces and schools. Pivoting and briefly addressing my proposals on gendered spaces, Mezey objects on the basis that protected gendered spaces would "force transgender individuals to be singled out." First, this does not necessarily follow, as gendered or unisex spaces would be open to anyone. Second, as I discussed, this potential pain of exclusion is counterbalanced by the harm both psychological (loss of felt security and privacy) and physical (violence) to some females

³⁴ For example, I noted: "Both females and trans people should be protected from mistreatment and discrimination. How we do this in a manner that does not elevate one group's disadvantages or challenges as more important or worthy of addressing than other is complicated" (Scrutinizing the U.S. Equality Act 2019, 389).

³⁵ See Scrutinizing the U.S. Equality Act 2019, fn. 46.

from gender self-ID. In the end, given the reality of male sexual violence, I contend it is both ill-advised and morally indefensible to reject a compromise policy prioritizing safety at a cost to inclusivity in favor of a self-ID policy prioritizing inclusivity at a cost of safety.

Sex Denialism

Professor Upadhyay's (2021) response, entitled 'Coloniality of White Feminism and its Transphobia', which contains a description of the diversity of gender across cultures and contexts, is best summarized in their own words:

In this comment, I challenge Burt's colonial epistemological framework in her theorizations of sex, gender, and transness. Drawing upon anti-racist, decolonial, and trans of color feminisms, I argue that transphobia is inherent to white feminisms due to its roots in colonialism. Heteropatriarchy and cisnormativity are products of colonialism, and feminists who espouse transphobic discourses invariably reproduce colonial and white supremacist frameworks of patriarchy and gender violence.

Deeming my approach "transphobic" and "cisnormative" "white feminism," they argue I endorse a heteropatriarchal, racist, colonial view of gender as a binary. I do not. Nowhere do I suggest that gender is a binary. In fact, across several pages in my article (379–84), I make the *opposite* argument—that gender is a social construction imposed on male and female bodies that should be challenged. In my reading, there is much upon which Upadhyay and I agree: traditional notions of "womanhood" and "manhood" are artificial, restrictive, and perpetuate racist and heterosexist ideas that reinforce power structures and there is no right way to be a woman or a man; (one just is one or the other).

Our disagreement is rooted in divergent views about the material reality of sex and the distinction between sex and gender (a topic I discussed at length in my article, which was neglected). I believe sexual dimorphism is real and that sex matters in some contexts; they disagree. In Upadhyay's account, sex is replaced with socially constructed gender, and the reality of sexual dimorphism is transmuted into a belief in sexual dimorphism, which serves to perpetuate "cis-white" heteropatriarchy. We can agree that hegemonic ideals of "womanhood," which I explicitly reject, perpetuate inequalities. However, one can—and I do—reject hegemonic gender norms of femininity and masculinity as defining of "womanhood" and "manhood" without denying the material reality of sex and, by implication, the existence of sexism.³⁶ Stripped of all its gendered trappings, male–female differences and females' reproductive burden remain.

Upadhyay charges me with hypocrisy for expressing concerns for how a policy of gender self-ID would affect incarcerated females because incarcerated women are disproportionately racial/ethnic minorities. I do not follow their logic. Recognizing that disadvantaged, minority females are overrepresented in sex-separated spaces, such as prisons and shelters, and that, therefore, minority females will be made disproportionately vulnerable to predatory males by gender self-ID policies is not hypocritical, in my view.

Finally, Upadhyay notes they "[hope] that in the future, cis-white feminists reflect on their own colonial epistemological frameworks before they analyze trans peoples and issues and reinforcing [sic] transphobia." How my arguments about female protections are "transphobic," "colonialist," "white feminism" is unclear; what is clear is that Upadhyay's

³⁶ See Jones, J. C. 2020. Unreasonable Ideas: A Reply to Alison Phipps. Retrieved from <https://janeclarejones.com/2020/01/15/unreasonable-ideas-a-reply-to-alison-hippys>.

claim that the replacement of sex with gender identity under the law is a “trans issue” about “trans people.” Manifestly, it is about sex and gender; however, since Upadhyay has dismissed the reality of sex as something socially constructed from gender, sex and, therefore, sexism and sex-based rights don’t exist. On Uphadyay’s view, there is no conflict of rights between sex and gender identity because they do not distinguish between gender (identity) and sex. This is a matter about which we will have to agree to disagree. However, that gender self-ID undermines the safety of women (however defined) is a topic I hope we can agree is pressing and deserves more discussion.

Spectral Sex, Identity Validation, and Unrealistic Solutions

In her response, Sherrick (2021) interprets my objection to the Equality Act’s form as due to an “expressed concern that in allowing gender to supersede sex, the Equality Act will endanger ciswomen.” She avers that I argued “only ciswomen should be allowed to enter [women’s] spaces.”³⁷ Then, emphasizing trans people’s high “victimization and suicide rates,” Sherrick argues that gender should supersede sex “to ensure trans people are protected and that their identities are validated.”

Correcting the Record

As I discussed, my concern is not merely with the safety of “ciswomen” (incidentally a term I does not use in my article). As I noted, protected spaces cannot exist without gatekeeping. Unchallengeable gender self-ID policies allow male predators to opt in and thereby undermine the safety of everyone in those spaces (females and transwomen). If predation weren’t sexed, this situation would be different; however, predation is sexed. Relevant facts Sherrick and others continue to neglect include that males perpetrate >98% of rapes,³⁸ and have, as a group, significantly greater size and strength, which allows them to overpower most females if they so choose. Females, as a group, are physically vulnerable to males, which is a primary rationale for sex-separated spaces and provisions.

Sherrick ignores my policy suggestions to protect transwomen, including the creation of gender-neutral or gendered spaces. As noted, I did not argue that all spaces should remain sex separated; rather, I proposed the coexistence of gendered and sex-separated spaces with the specification that for some provisions where sex may be salient (e.g., rape crisis or domestic violence shelters), at least one should be female only. Females have unique needs and experiences like transwomen, and both would benefit from provisions that are set aside for them.

³⁷ Sherrick states in footnote 1 that my “use of ‘female spaces’ excludes GNCT [gender non-conforming/transgender] individuals.” It does not; ‘female spaces’ exclude males; gender is irrelevant. Sherrick, A. 2021. Gender Identity and Trans Equality: A Comment on Burt 2020. *Feminist Criminology* 16 (4): 532–38. doi:10.1177/15570851211006471.

³⁸ Michele C. Black, Kathleen C. Basile, Matthew J. Breiding, Sharon G. Smith, Mikel L. Walters, Melissa T. Merrick, Jieru Chen and Mark R. Stevens. 2011. *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Where sexual assault is defined as “any completed or attempted unwanted vaginal (for women), oral, or anal penetration through the use of physical force (such as being pinned or held down, or by the use of violence) or threats to physically harm and includes times when the victim was drunk, high, drugged, or passed out and unable to consent.” A broader sexual violence measure, which includes sexual assault, “being made to penetrate someone else,” “sexual coercion, “unwanted sexual contact,” or ‘non-contact unwanted sexual experiences’,” reveals that males perpetrate >92% of assaults against women (Black et al., NISVS).

Still Two Sexes

Arguing that the “science behind gender and sex” is “neither simple nor binary,” Sherrick objects to my recognizing that humans are a sexually dimorphic species. In support of her claims, she cites a widely promulgated (and panned) article by a freelance journalist, Claire Ainsworth,³⁹ which depicts discrete differences in sexual development as existing on a continuum. As I discussed in my article, sex is not a continuum (see 376–79). People with differences in sexual development (DSD) conditions are still male or female. The spectral view of sex implies that people with DSD conditions are “less female” or “less male”—an objectionable implication that is invariably neglected. For example, on this spectral view, a female with an imperforate hymen (a common form of vaginal atresia caused by the failure of the hymen to open during development which causes vaginal obstruction)—a condition that often is not identified until menarche and is frequently successfully treated with surgical incision—would be considered “less female” than females without this condition. I object (so, too, do biologists, see Wright and Hilton [2020]⁴⁰ and people with DSD⁴¹ conditions, see Graham [2019]⁴²).

Sherrick also cites Anne Fausto-Sterling’s (1993) work, *The Five Sexes*, as evidence against human sexual dimorphism and in favor of a more-than-two sex view. However, Fausto-Sterling has noted that this work was “tongue-in-cheek” and not to be taken literally.⁴³ There is no third sex (much less a fourth or fifth one).⁴⁴

Crucially, my article is not about people with DSD/intersex conditions. As I argued, whether or how to conceive of sex with regard to DSD conditions is orthogonal to concerns about transgender issues. Whether or not sex is properly conceived as binary (I believe it is) or more of a spectrum given variations in sexual development is irrelevant for policies around how we accommodate transgender people. Being transgender and having DSD/intersex conditions are different things. Transwomen are by definition not (biological) females, which is why females cannot be transwomen.

Safety First, Identity Validation (Maybe) Later

Sherrick contends that my contention that the so-called “Wrong Body Model” (i.e., that a person might be a female trapped in a male body) is scientifically unsubstantiated serves

³⁹ <https://www.scientificamerican.com/article/sex-redefined-the-idea-of-2-sexes-is-overly-simplistic1>.

⁴⁰ Wright, C., and Hilton, E. 2020. The Dangerous Denial of Sex. *The Wall Street Journal*. Retrieved from <https://www.wsj.com/articles/the-dangerous-denial-of-sex-11581638089>.

⁴¹ DSD conditions were formerly known as “intersex conditions” and refer to those in which sexual differentiation does not proceed without a hitch, resulting in variation in male and female phenotypes. “Intersex” is a misleading term for most people with DSD conditions because they are not “in-between male and female.” DSD conditions are also called VSD (variations in sexual development) and less commonly “disorders in sexual development.”

⁴² Graham, C. 2019. An open letter to Prof. Alice Roberts on the subject of DSDs and kindness. Retrieved from <https://mrkhvoice.com/index.php/2019/09/12/an-open-letter-to-prof-alice-roberts-on-the-subject-of-dsds-and-kindness>.

⁴³ Fausto-Sterling, A. 2000. The Five Sexes, Revisted. *The Sciences* 40 (4): 18–23. In this 2000 article, Fausto-Sterling noted: “I had intended to be provocative, but I had also written with tongue firmly in cheek.” One can also see her more recent statements that she was being ironic on social media. See https://twitter.com/Fausto_Sterling/status/1229806460340768768?s=20.

⁴⁴ See Burt, Scrutinizing the U.S. Equality Act 2019, 376.

to “invalidate trans identities.”⁴⁵ The idea that objecting to the “Wrong Body Model” is inherently invalidating or transphobic is belied by the fact that some prominent trans scholar-activists also reject it.⁴⁶ For example, Bettcher conceives of the “Wrong Body Model” as “naturalizing sex and gender in a troubling way,” even as “frightening” (234).

Throughout Sherrick prioritizes the validation of trans people’s identities in the crafting of public policies. I disagree. The issues I address concern balancing protections and rights for two groups: females and transwomen. Separate female spaces exist for reasons I discuss in my article, including but not limited to physical safety from males and felt psychological security. Given that my critics are not arguing for unisex (or all gender) spaces, that separate women’s provisions are necessary and/or justified appears accepted. The crucial question left unaddressed by my critics is: What is the justification for allowing any male to self-ID into women’s spaces rather than creating new gender/neutral spaces alongside sex-separated ones? Echoing Mezey before her, the answer, according to Sherrick, is: identity validation. Specifically, Sherrick maintains that women (however defined) should allow any male to self-ID into their (formerly) protected spaces on a say-so to validate the identities of transwomen. The fact that males constitute >98% of women rapists is apparently of no consequence because, as Sherrick argues, some females rape too. That female–female sexual assault occurs at a rate >20-fold lower than that of male–female sexual assault is also evidently of no concern.⁴⁷ I don’t understand why (and she doesn’t explain).

There is no doubt that many transwomen suffer. The EA, however, seeks to ameliorate the suffering of transwomen with policy changes that seem to display an almost callous disregard for their effects on females. A solution that would require a female with PTSD from male sexual assault (and evidence suggests that 30% of females suffer from PTSD more than 9 months after sexual assault⁴⁸) to share a room in a women’s shelter with a bepenised male against her wishes (and this has already happened) is dismissive of *her* experiences; it invalidates her pain or at least dismisses her pain as of lesser import than the pain caused by invalidating the identities of transwomen.

It bears repeating that access to women’s provisions is not the solution to the problems that transwomen face. Jenness et al. (2019) documented harassment and violence, including sexual assaults, against transwomen in men’s prison. Yet, when asked if they would choose to be housed in the women’s estate if given the option, ~65% said they would opt to remain in the men’s prison.⁴⁹ The EA’s redefining sex to gender self-ID

⁴⁵ My quote, in context, is as follows: “The [gender-as-innate-sex] account is incoherent both because it does not define what ‘gender identity’ is and because explaining how one might have a gender identity–sex mismatch requires a biologically implausible sexed mind–body dualism. Equally important, the idea that ‘gender identity is an innate, fixed property of human beings that is independent of biological sex—that a person might be a “a female trapped in a male body”—is not supported by scientific evidence’. If a brain is in a male body, it is a male brain (and vice versa).” (Burt, *Scrutinizing the U.S. Equality Act 2019*, 386–87).

⁴⁶ Bettcher, T. M. 2013. Trans Women and the Meaning of “Woman.” In *The Philosophy of Sex: Contemporary Readings*. Edited by N. Power, R. Halwani and A. Soble, Lanham: Rowman & Littlefield, 233–50; Hayton, D. 2018. A Plea to Trans Activists: We Can Protect Trans Rights Without Denying Biology. *Quillette*. 30 March. Retrieved from <https://quillette.com/2018/03/30/plea-trans-activists-can-protect-trans-rights-without-denying-biology>.

⁴⁷ Black et al. NISVS.

⁴⁸ See discussion in Burt, *Scrutinizing the U.S. Equality Act 2019*.

⁴⁹ Jenness et al., *Sexual Victimization against Transgender Women in Prison*. For example, Jenness et al. noted: “[i]n response to being asked whether she would prefer to be housed in a prison for men or in a prison for women, [their transwoman interviewee] responded without hesitation: “men.” She explained

would thus not change the incarceration situation of most of these transwomen, who would choose to remain in the men's prison. Consequently, under the EA, females lose their sex-separated prisons,⁵⁰ and predatory males can opt into women's formerly protected spaces "for transwomen," even as the situation of most transwomen—who remain in the men's prison—is unchanged.

It also bears repeating that the evidence base supporting these policy changes remains appallingly weak. There is, for example, no evidence that the problems that transgender people face would be markedly reduced by replacing sex-based protections with those based on gender self-ID. Moreover, as I noted, there is no robust research on the effects of these policies on females.⁵¹ As I discussed, harm to females caused by males who self-identify into women's spaces has already led to the reversal of gender self-ID policies in other countries, including the UK.

Unrealistic Solutions

This brings me to Sherrick's solutions, which include laudable policy suggestions that I endorse. As solutions to the immediate problem of predatory males that would be exacerbated by gender self-ID policies, however, they fall well short of potentially efficacious. One solution involves limiting access to women's spaces to people without histories of sexual assault. However, given evidence that at least a large majority of sexual assaults are not reported,⁵² most (hidden) offenders would be unrestricted. Moreover, women's shelters are already woefully overburdened and underfunded and scarcely need another task. Another solution involves "training police officers how to intervene and deescalate sexual violence situations"; I am not sure how this is supposed to work. To my knowledge few to zero sexual assaults occur in the presence of police officers who could intervene.

The reason these solutions fail is quite simple. The emphasis, held not just by Sherrick but ostensibly by all who support the EA in current form, if not explicitly than implicitly, of balancing the goals of "validating trans identities" and "keeping women safe" is misguided. I'm unconvinced that public policies should be in the business of promoting identity validation, but if they are, validation should be secondary to physical and psychological safety.

Discussion

However dramatic or attractive a particular vision may be, ultimately everyone must live in the world of reality. To the extent that reality has been filtered to fit a vision,

her rationale, as follows: "Women are more vicious. They scare me. Around men, I know I have my fan base. I'm more pretty than most of the girls in here . . ." Jenness et al. noted: "Most of the transgender women in men's prisons also expressed this preference [to remain housed in the men's prison over the women's if given the choice] (64.9 percent compared with 35.1 percent)" (622).

⁵⁰ Since this manuscript was written, the Women's Liberation Front (WoLF) filed a lawsuit (*Chandler v. CDCR*) on behalf of four incarcerated California women and the non-profit organization Woman II Woman to overturn California's SB 132, which allows males to be incarcerated in California women's prisons on the basis of gender identity.

⁵¹ See also Murray, K., Blackburn, L. H., and Mackenzie, L. 2020. Losing Sight of Women's Rights (Again): A Response to Cowan et al. *Scottish Affairs* 1–21. doi:10.3366/scot.2020.0348.

⁵² Clay-Warner, J., and Burt, C. H. (2005). Rape Reporting after Reforms: Have Times Really Changed? *Violence Against Women* 11 (2): 150–76.

this filtered information is a misleading guide to making decisions in an unforgiving reality, to which we must all adjust, because it is not going to adjust to us.⁵³

My article addressed a sensitive, complex issue—how to balance competing sex-based and gender-identity-based rights and protections—that eludes facile solutions and has relevance for diverse groups with sometimes divergent interests. I remain resolute that feminist criminologists, politicians, and citizens alike have a responsibility to consider and discuss how sweeping legislation that would prioritize unchallengeable gender self-ID over biological sex would affect females. This does not imply a prioritization of females or a lack of concern, much less hatred, for transgender people. Rather, recognizing that our knowledge is always incomplete, we must welcome critique and engage in open dialogue to promote social progress. The stakes are bigger than the outcomes of “gender debate,” including the US Equality Act.

A Closing Word on the “Creeping Crusade of Conformism”

If we want to live in a truly tolerant world, we should reject every demand to cage, censor, parole or punish speech. No matter how sympathetic a case the censors make, and however much you might abhor the words others use. Behind the universal lip service paid to the principle, if we forget the true meaning of free speech the losers will not only be those relatively few who find themselves banned or prosecuted for ‘speech crimes’. We will all be the poorer for allowing the creation of a culture in which people become scared to say what they mean, development of knowledge is stifled, political debates effectively suspended, and where from the university campus to the internet we are living with a bland, ‘safe’ environment in which anodyne becomes the new normal. ~M. Hume⁵⁴

He who denies to another this right [to their opinion and free speech], makes a slave of himself to his present opinion, because he precludes himself the right of changing it. ~T. Paine⁵⁵

Academic responses to my article and arguments were varied but included (mostly private) support, substantive engagement, and open efforts to retract my article and punish me for dissenting from the prevailing orthodoxy via slander (e.g., labeling me a transphobe and my raising concerns about a gender-self ID policy as “bigoted transphobia”) and by removing me from the editorial board, asserting that my presence would send the wrong message, discourage LGBT+ submissions to the journals, and cause “harm” to the wider LGBT+ community.⁵⁶ These official and unofficial attempts to punish those who raise concerns about the replacement of sex with gender identity can have expansive chilling effects. The very real threat of punishment increases self-censorship and thereby undermines free inquiry and viewpoint heterodoxy.⁵⁷ As people increasingly become unwilling to engage in a systematic analysis of current ideas, unchallenged beliefs morph into unquestionable dogma, making those who raise concerns about such visions and

⁵³ Sowell, T. 2012. *Intellectuals and Society*. London: Hachette.

⁵⁴ Hume, Trigger Warning.

⁵⁵ Paine, T. 1877. *The Age of Reason*. New York: D. M. Bennett.

⁵⁶ That I have long been an open supporter of LGB civil rights, am a lesbian, and support non-discrimination protections for transgender people was apparently irrelevant to scholars labeling me as “anti-LGBT.”

⁵⁷ Suissa and Sullivan, The Gender Wars; Wight, Critical Dogmatism.

the policies that flow from them villains (here transphobic ones) whose arguments can be dismissed without engagement.

Presently, the application of the derogatory label “TERF” to gender critical feminists and knee-jerk labeling of their arguments as intolerable “transphobia” is now accepted not only in public debates but in published articles, including responses to my article.⁵⁸ Like other academics so labeled, I have explicitly, and will again, reject claims that I fear, dislike, or otherwise think any less of transgender or gender non-conforming individuals. Moreover, my arguments do not evidence any transphobia (as a hatred or fear of transgender people qua transgender people). Indeed, the opposite might be argued, as I clearly note a concern for and a need to protect transgender people from hardships and discrimination. I wrote, for example:

The fact that trans individuals experience significant hardships on the basis of their gender expressions or status in society must be acknowledge and addressed. Being or identifying as trans should not be a barrier to full participation in social life, and all people should be respected and extended compassion regardless of the way they do, feel, or experience gender. (394)

Further, despite how some critics misrepresented my arguments as suggesting that transwomen are dangerous, I clearly acknowledged that I was not suggesting transwomen are especially dangerous, stating: “In suggesting that this issue requires more attention, I am unequivocally *not* suggesting that trans people in general or transwomen, specifically, pose a particular danger to women and girls” (p. 373; emphasis in original). Throughout my article, I articulated support for policies designed to protect transgender people from discrimination. However, in this milieu, simply stating facts about biological sex and recognizing the distinction between sex and gender is enough to attract name-calling rather than engagement and censure rather than consideration—all in the name of tolerance and social progress. The term “transphobia” has now been subject to concept creep and is applied loosely to those who disagree with an activist’s claim in a manner that shuts down discussion. Simply by dint of recognizing that biological sex exists and that, because of their sex, transwomen and females have different experiences and may have unique needs in some contexts, I, like others, have been deemed a bigoted transphobe whose presence is “harmful” and whose arguments can be dismissed.⁵⁹

Although an outlier in some ways, this “transgender debate” is but a microcosm of the trend in academia and liberal society more broadly, which Hume (2015) refers to as a broader “creeping crusade of conformism” in Western societies.⁶⁰ Again, I do not doubt that those who seek to squelch open discussion and dissent have good intentions. However, these silencing efforts are profoundly misguided and myopic. The endeavor to encourage progress and tolerance by censoring and/or slandering those who disagree may work to manufacture public consent in the short term; however, history suggests it does not work in the long run. When the dominant ideas and truths of an era are

⁵⁸ See also Allen et al., On an Alleged Case of Propaganda.

⁵⁹ See, e.g., Button, J. 2021. Gender, Sex and Power: The Debate Dividing Universities. *The Sydney Morning Herald*. November 21. Retrieved from <https://www.smh.com.au/national/gender-sex-and-power-the-debate-dividing-universities-20211118-p599zz.html#comments>; Turner, Professor Kathleen Stock and the Toxic Gender Debate.

⁶⁰ Hume, Trigger Warning. See also Haidt, and Lukianoff, G. 2018. *The Coddling of the American Mind*; Suissa and Sullivan, The Gender Wars; Wight, Critical Dogmatism.

determined by those with the power to silence dissent, we are at the mercy of those in power to define our reality.

Ultimately, the losers of this censorious climate are not merely those whose ideas are suppressed or who are punished for their “bigotry,” “phobia,” or “heresy,” but all of us. We all lose out on “open-minded discussion and free debate that offers our best hope of getting at the truth and deciding a way forward on controversial issues.”⁶¹ Open, critical discussions have long been recognized as central to the maintenance and progress of both science and democracy.⁶² History is replete with examples of insufficient discussion producing flawed policies with unintended negative consequences, which might have been foreseen with open critical discussion and input from a variety of diverse interest groups.

As several scholars have noted, over the past few decades, the topics of free speech and academic freedom have been increasingly seen as “conservative issues.”⁶³ To be sure, arguments and ideas that fall on the right side of the political spectrum are more likely to be censored in academia today than those on the left. That is to say, you are far more likely to get in trouble for voicing opposition to gay marriage or gender self-ID than for voicing support.⁶⁴ Yet this view of free speech and opposition to censorship as a conservative issue is historically short-sighted.⁶⁵ The importance of free speech to social progress and liberation struggles is perhaps most clearly evidenced by the efforts of authoritarians to quash free speech to maintain their power. For example, as Hume (2015) noted, in the USA in the 19th century, the slave-owning classes did all they could to suppress public discussion of slavery to impede the discussion of anti-slavery positions and thereby shut down challenges. Conversely, the triumphs of recent struggles for freedoms and equality in Western societies, including the women’s rights, racial equality, and LGB liberation movements, were rooted in free and critical discussions including the right to criticize existing social arrangements and to outline paths to a more tolerant society. Ironically, on the heels of these recent successes, those groups previously championing free speech as a means to social progress (e.g., ACLU, HRC, Stonewall) have now, with their increased power and influence, turned against it, working to restrict free speech and critical dialogue to protect the identity groups whose interests they claim to represent.⁶⁶

For all these reasons, free and open inquiry is not just a hollow academic creed or an abstract right of individual self-expression.⁶⁷ As Hume (2015) articulated, it is the collective tool which humanity uses to develop and refine understanding, to debate and decide on the truth of scientific claims and arrive at informed thoughtful sociopolitical policies. Productive academic and public dialogue depend on the consideration and evaluation of multiple perspectives and the public battle of ideas. As McMahon, Minerva, and Singer (2020) averred: “it is only by discussing *all* ideas—even those that many regard as offensive or immoral—that we get closer to the truth. Moral, intellectual, and material progress in human history are the results of a constant exchange of ideas” (p.2,

⁶¹ Hume, Trigger Warning.

⁶² Mill, *On Liberty*.

⁶³ Lukianoff, *Unlearning Liberty*; Wight 2020.

⁶⁴ Lukianoff, *Unlearning Liberty*.

⁶⁵ Suissa and Sullivan, The Gender Wars.

⁶⁶ Hume, Trigger Warning.

⁶⁷ Suissa and Sullivan, The Gender Wars; Wight, Critical Dogmatism.

emphasis in original).⁶⁸ Through open debate we can figure out not only where we want to go and why but how we get there most effectively (minimizing harm, including unintended negative consequences). “The answer to bad words or ideas is not to end speech or lock up the speaker. It is more speech—to resist or simply to rubbish the ideas objected to . . . The best way [to counter] ideas we despise is not to try to bury them alive, but to drag them out into the light of day and debate them to the bitter end.”⁶⁹

The “liberal science system” has a commitment to facilitating critical thinking, including challenging the most ardent orthodox beliefs of the day—the right to go against the consensus, to question the taken-for-granted, and even to raise questions that some consider offensive.⁷⁰ After all, what is offensive to some is an ardent belief of another. This, of course, does not imply the freedom to be heard or the right to have an idea published, for example, and there are truly harmful words that serve no purpose except to injure. Academics, like the public, do not have a responsibility to entertain truly offensive ideas; however, we do have a responsibility to think deeply about ideas and avoid rejecting views we disagree with as “offensive” or “harmful.” We must take great care to avoid knee-jerk labeling and dismissing ideas as “wrong” because we disagree, not only because that might be applied to our own ideas but also because sometimes “bad” ideas turn out to be breakthroughs and “wrong” ideas can stimulate great advancements in understanding.⁷¹

To be sure, the liberal science system’s commitment to free inquiry does not imply a freedom from criticism or the right to have one’s views published. Free speech does not involve freedom from criticism, including arguments suggesting your views are wrong. Rather, as I have discussed, critique lies at the heart of free inquiry and is essential to progress, including scientific and social advancement and the correction of mistakes. Stated clearly, my objection to the campaign of conformity and censorship is not a call to stifle criticism but to welcome it. There is, however, a distinction between critique and efforts at censorship. “No Debate” sloganeering, efforts at retracting papers that have undergone the normal publication process, and calling academics “harmful” for holding different positions, even harassing them—in a few cases leading to actual threats to personal safety and livelihood of academics⁷²—are patently not academic critiques. The effect, if not aim, of such tactics is to prevent certain viewpoints from being aired, and when unsuccessful, to punish those who air or publish such viewpoints, which deters others from speaking out.

Thus, I join those who seek to push back against the creeping crusade of conformism afflicting academia and the wider society.⁷³ If we want to produce the best science and social policies, we must not just protect diversity of opinion, we must encourage it, seeking out criticism and being skeptical of ideas that have not undergone sufficient scrutiny. In questioning assumptions and scrutinizing ideas, we must dare to say the “wrong” thing and engage with those with whom we disagree. If history is our guide, we will all be the better for it. After all, “without the willingness of some to insist on their right to question

⁶⁸ McMahan, J., Minerva, F., and Singer, P. 2021. Editorial. *Journal of Controversial Ideas* 1 (1): 1–5. doi:10.35995/jci01010011.

⁶⁹ Hume, Trigger Warning.

⁷⁰ Rauch. *Kindly Inquisitors*. Lukianoff: *Unlearning Liberty*.

⁷¹ Mill, *On Liberty*.

⁷² Turner, Professor Kathleen Stock and the Toxic Gender Debate.

⁷³ (see Hume, Trigger Warning; Lukianoff, *Unlearning Liberty*; Haidt and Lukianoff, *The Coddling of the American Mind*; Rauch, *Kindly Inquisitors*; Suissa and Sullivan, *The Gender Wars*.)

everything and to speak what they believed to be true, we might still be living on a flat Earth at the centre of the known Universe, where women were denied the vote but granted the right to be burnt as witches.”⁷⁴

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⁷⁴ Hume, Trigger Warning.