

“There are only two genders – male and female...”¹ An Analysis of Online Responses to Tasmania Removing ‘Gender’ from Birth Certificates

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Abstract

This article details and analyses some of the public online response to the Tasmanian Government’s decision to make the recording of gender on birth certificates an opt-in process. Tasmania is the first jurisdiction in Australia to make such a change, which aims to simplify the legal processes involved in affirming a person’s gender identity (including agender and non-binary status). The data set is comprised of comments posted on Facebook in response to *The Australian* newspaper’s coverage of this event; *The Australian* is Australia’s only truly national daily broadsheet. This article argues that the effect of this overwhelmingly negative ciscentric response, as revealed by the aesthetic of this digital social space, is the generation of an impression of Australians as trans- (and intersex-) averse. This risks undermining the basic good of assurance that transgender and intersex people ought to have: an assurance that they can inhabit public spaces and be treated with dignity and respect (cf. Waldron). To prevent this kind of hostile response in the future, we must find a way to communicate and make resonant to the general public what queer and feminist theorists have been arguing for quite some time: that sex and gender are not synonymous and that *both* gender and sex are social constructs.

Keywords

Birth Certificates; Online Comments; Hate Speech; LGBTI Issues; Cissexism

Biography

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hate speech against women online, and an interdisciplinary Discovery Project that investigates religious freedom and LGBTI+ rights to non-discrimination. She is the author of *Justifying Same-Sex Marriage* (Rowman and Littlefield 2015), as well as articles published in *Hypatia*, *Feminist Philosophy Quarterly*, *Ethical Theory and Moral Practice*, and *Australian Feminist Studies*. You can follow her on Twitter: @LVRSelf.

1. Introduction

Most parents and doctors are so overly invested in the question “Is it a boy or a girl?” that they cannot imagine a world of other possibilities.

— — — David A. Rubin

In April 2019, Tasmania became the first state in Australia to make the recording of sex/gender on birth certificates optional.³ This article conducts a political aesthetic analysis (cf. Waldron 2012) in conjunction with a thematic analysis of the online news commentator response to this move. In so doing it considers the cumulative effect of this speech with respect to transgender and intersex Australians. By elucidating the themes present in online comments and the connections between them, I submit that the overwhelming epistemological and affective resistance to this legislative change reveals, amongst most commentators, a deep investment in two meaning- and identity-generating beliefs: “first, that sex is purely biological; and second, that sex and gender are naturally and normatively dimorphic” (Rubin 2012, p. 889). Such commitments can be described as ciscentric — that is, they take the stance that ‘normal’ subjects have a gender identity that ‘corresponds’ with the sex assigned at birth, wherein it is assumed that there are only male *or* female bodies, unless there are clear ‘markers’ that would indicate otherwise.⁴

Miller and Behm-Morawitz (2017, p. 141) state that a positive reception of laws intended to benefit the trans community by the cisgender majority “may be especially important for transgender individuals’ cultivation of their perceived acceptance and legitimacy in society.” This article argues that the effect of this overwhelmingly negative and ciscentric response to Tasmania’s Justice and Related Legislation (Gender and Marriage Amendments) Bill 2018 (hereafter ‘JRL Bill’) creates a hostile ‘aesthetic’ for transgender and intersex Australians through the literal look of

³ The problem of conflating sex and gender will be discussed explicitly later in the article. The Tasmanian Law Reform Institute (TLRI) clarifies that “Australian legislation and case law generally accepts that while sex is *informed* [note: not determined] by biology, gender is a social identity,” and that the new Part 4A of the Births, Deaths and Marriages Registration Act 1999 (Tasmania, hereafter ‘BDMRA’) “aims to clarify that gender differs from sex, and that a person’s identity is represented by their gender rather than their sex” (2019, pp. 7–8, 13). Should we accept this (and this author does), this seems to still allow for recognition of the more nuanced feminist and queer claim that *both* sex and gender are social identities.

⁴ Such a presumption also involves the tacit but false belief that when an individual is trans, their non-conformity will be visually noticeable (Billard 2019a; Richardson-Self 2019).

negativity cascading upon negativity. This aesthetic may instead cultivate their perceived rejection and illegitimacy in society. Said differently, this impression of Australians as trans- and intersex-hostile, irrespective of its accuracy, can undermine the assurance that the transgender and intersex communities have “of a general commitment [by the cisgender majority] to the fundamentals of justice and dignity that a well-ordered society is supposed to furnish to its citizens” (Waldron 2012, p. 69) – namely, an assurance of being able to go about their day-to-day lives without fear of becoming the targets of hatred and violence. Said positively, they ought to be able to go about their day-to-day lives and expect to be treated with dignity and respect.

To enter shared sociopolitical spaces such as online news comments sections and to be presented with a wall of hostility, misinformation, hate speech, and insults, does not foster such an assurance. To rectify this problem, then, and to ensure that the transgender and intersex communities are afforded this basic good, we must find a way to communicate and make resonant what queer and feminist theorists have been arguing for quite some time: that “when a society is so rigorously structured around cis- and heteronormativity, no other forms of identity can ever be completely embraced” (Åkerlund 2019, p. 1332); thus, to make social equality a real possibility it is crucial that societies come to accept that sex and gender are not synonymous, and that both gender and sex are social constructs.

2. Methods and Scope

This article tracks a portion of the online response to the passage of the JRL Bill through the Tasmanian Parliament. The passage of this Bill changed Tasmania’s default requirement that sex be recorded on a person’s birth certificate. Now, persons must opt-in to have the gender of newborns included on the birth certificate, and residents can elect to remove their sex/gender from their birth certificate if they so choose. The following research questions were posed at the outset of this investigation: (RQ1) Is the public response to this news (as revealed in their online comments) positive, negative, or neutral? (RQ2) What reasons do commentators (fail to) offer for or against this change? (RQ3) What explains the majority response? (RQ4) How, if at all, do commentators distinguish between ‘sex’ and ‘gender’? And (RQ5) how might the online response impact the transgender and intersex communities?

This study begins to fill some of the gaps in the small but growing body of literature analysing the ways in which transgender status and issues are represented

in news media and online comments sections. To date, this literature has predominantly focused on how news media (rather than online commentators) represent transgender identity, people, and interests (e.g. Åkerlund 2019; Billard 2016, 2019b; Capuzza 2016; Graber 2017; Humphrey 2016). This study is interested in how online commentators characterise and respond to transgender status.⁵ The existing literature also tends to focus on the representations of and discourse about particular transgender individuals, such as Caitlin Jenner, Cate McGregor, Chelsea Manning, and Lucy Meadows (e.g. Gupta 2019; Hackl et. al. 2016; Kerry 2018; Miller and Behm-Morawitz 2017), rather than discussing the challenge that transgender *status* provokes to the gender order of a ciscentric society.⁶ Lastly, little of this scholarship focuses on representations of and discourse about transgender status and persons in the Australian context (excluding Kerry 2018). While there are broad similarities across the gender orders of Western societies, local socio-political trajectories result in subtle nuanced differences when trans-relevant topics emerge into the public sphere, which justifies a more focused study.

The scope of this analysis is limited to comments posted on one social media platform (Facebook) in response to the posts made by one newspaper's page (*The Australian*). Facebook was chosen as the site of collection because it is the largest social networking platform, with 2.41 billion monthly users (Facebook Newsroom 2019). *The Australian* was chosen because it is Australia's only truly national daily broadsheet (Sinclair 2016, p. 3), with twice as many readers online versus print,⁷ and over 845,000 Likes on Facebook as of December 2019. However, it is worth noting here that "The Australian represents its conservative worldview as the centre, the mainstream norm, rather than right-wing" (Sinclair 2016, p. 13). There is no left-wing truly national daily broadsheet newspaper in Australia.

Articles relating to the relevant legislation were identified using the search-bar function on the 'Posts' section of *The Australian's* Facebook page. In total, twelve articles were shared over two distinct news cycles (see Table 1). The first cycle ran from 25 October 2018 – 9 December 2018. The second cycle encompasses Post 12 only,

⁵ Other studies that investigate online news commentary specifically about transgender status or a person who is transgender include Kerry (2018) and Wetzstein and Huber (2016).

⁶ However, note Billard's (2019a) criticism of news media's ongoing focus on passing and the 'deception' narrative with respect to trans individuals, arguing that these serve to *reinforce* a ciscentric gender order in the UK.

⁷ Roy Morgan (2017) reports a 12-month print readership of 922,000 and a digital readership of 1,709,000 at June 2017.

which occurred on 5 April 2019.⁸ I collected data from the 11 posts in the first news cycle during February and March 2019. I conducted a data collection on the second cycle on 8 April 2019. Due to the volume of comments across these posts, the scope was limited to only original comments, not secondary replies, and to news reports rather than opinion pieces. I then removed all comments which were simply a 'tag' of a Friend (i.e. that included no discursive content relating to the legislative changes). The number of comments totalled 1,947. Although these comments are posted publicly, following collection each comment was coded to ensure the anonymity of the commentators. The code consists of two numerals representing the post number, followed by three numerals indicating numerical order of the comments. For example, a comment labelled '01.217' refers to the first post made to Facebook (01) and the 217th comment. Repeat commentators have not been tracked, nor have I tracked any discernible identity traits of the commentators.⁹

To answer RQ1, each comment was sorted into one of four categories: comments which supported the passage of the JRL Bill (positive), comments which opposed its passage (negative), comments which display ambivalence about its passage or raise genuine queries about its impact (ambivalent),¹⁰ and finally comments which were unrelated to the Bill or which were otherwise uncategorizable (unrelated).¹¹

⁸ It is worth noting that *The Australian* published one further article pertaining to the passage of the JRL Bill on 10 April 2019, both in print and online; however, this article was not posted to the Facebook page (Denholm 2019). The reason/s for this are unclear. *The Australian* does not post every article they publish on their Facebook page; however, one would have expected this article to be published, given the JRL Bill's extensive coverage during the first cycle.

⁹ However, Miller and Behm-Morawitz (2017 p. 141) have found that "transphobic persons most often tend to be cisgender and heterosexual, and males tend to exhibit stronger levels of transphobia than in females."

¹⁰ For example, comments such as the following were included in this group: 01.040: "I don't really see an issue with it apart from when you need your birth certificate to apply for passport what would you put, would it be recognised in other parts of the world. Drivers license or anything that requires gender. You can't change one thing without taking into consideration the butterfly effect" (01.040); "Why ban it make it optional" (03.016); and "how many in total are there transgender people in tasmania //???" (11.018).

¹¹ For example, comments such as the following were included in the unrelated group: "This ruling provides a compelling case for the Fremantle Dockers to relocate to Tassie" (12.041); "why is a religious nutter who believes in talking snakes and sky fairies involved?" (09.023); and "Baaaaaa. Look at all the easily baited Murdoch stooges lapping up any lie the Aussie wants to tell" (02.105).

Table 1: Summary of Posts to Facebook by The Australian pertaining to the JRL Bill.

	<i>Post, mm/yy</i>	<i>Positive</i>	<i>Negative</i>	<i>Ambivalent</i>	<i>Unrelated</i>	<i>Total</i>
<i>News Cycle 1</i>	Post 1, 10/18	n = 19 (2.66%)	n = 673 (94.26%)	n = 10 (1.40%)	n = 12 (1.68%)	n = 714 (100%)
	Post 2, 10/18	n = 3 (2.01%)	n = 120 (80.54%)	n = 2 (1.34%)	n = 24 (16.11%)	n = 149 (100%)
	Post 3, 11/18	n = 1 (0.61%)	n = 159 (96.36%)	n = 2 (1.21%)	n = 3 (1.82%)	n = 165 (100%)
	Post 4, 11/18	n = 2 (5.41%)	n = 33 (89.19%)	n = 0 (0.00%)	n = 2 (5.41%)	n = 37 (100.01%)
	Post 5, 11/18	n = 7 (20.00%)	n = 25 (71.43%)	n = 0 (0.00%)	n = 3 (8.57%)	n = 35 (100%)
	Post 6, 11/18	n = 19 (4.82%)	n = 353 (89.59%)	n = 7 (1.78%)	n = 15 (3.81%)	n = 394 (100%)
	Post 7, 11/18	n = 14 (15.56%)	n = 74 (82.22%)	n = 2 (2.22%)	n = 0 (0.00%)	n = 90 (100%)
	Post 8, 11/18	n = 9 (19.15%)	n = 32 (68.09%)	n = 4 (8.51%)	n = 2 (4.26%)	n = 47 (100.01%)
	Post 9, 11/18	n = 5 (17.24%)	n = 15 (51.72%)	n = 0 (0.00%)	n = 9 (31.03%)	n = 29 (99.99%)
	Post 10, 12/18	n = 8 (6.90%)	n = 102 (87.93%)	n = 1 (0.86%)	n = 5 (4.31%)	n = 116 (100%)
	Post 11, 12/18 ¹²	n = 4 (22.22%)	n = 11 (61.11%)	n = 1 (5.56%)	n = 2 (11.11%)	n = 18 (100%)
<i>News Cycle 2</i>	Post 12, 04/19	n = 8 (5.23%)	n = 135 (88.24%)	n = 4 (2.61%)	n = 6 (3.92%)	n = 153 (100%)
Total		n = 99 5.08%	n = 1,732 88.96%	n = 33 1.69%	n = 83 4.26%	n = 1,947 100.01%

The overwhelming majority of commentators conveyed an oppositional stance to the legislation (n = 1732, see Table 1), and so it is these comments which are the focus of the remainder of the article. The comments classified as negative were read closely, from which emerged several categorical themes. The comments were then re-read and sorted into fewer, broader categories, thus answering RQ2: what reasons do

¹² Note that Post 11 uses the same article as Post 10, though with a different headline and description.

commentators (fail to) offer for or against this change? Each theme—excepting purely affective responses—can be taken as the ‘reason’ for opposition (cf. Graber 2017; see Table 2). Comments which displayed more than one theme were cross-counted according to the number of themes present.¹³

¹³ For example, the following comment was coded into the categories ‘Explicit Dimorphic-Sex Commitments,’ ‘Crazy (and Variants),’ ‘Minority Pandering/Going ‘Too Far’/Reverse Discrimination,’ and ‘Children’s Wellbeing’: “People who want the gender of their child documented in the birth certificate should not accept this newgender-neutral [*sic*] nonsense, which only creates confusion in our children and makes a mockery of biology... I believe people should not put up with everything that is getting pushed on them... a small minority (that has got this mental issue) is being made the new "normal" - I'd call that an insult and discrimination against the majority who are male or female!” (01.009).

Table 2: Themes and Frequency of Oppositional Comments (n = 1,732)	
<i>Theme</i>	<i>% responses</i>
Stupid (and Variants)	n = 271 (15.65%)
Disbelief/Incredulity (and Variants)	n = 234 (13.51%)
Crazy (and Variants)	n = 200 (11.55%)
Explicit Dimorphic-Sex Commitments	n = 181 (10.45%)
Purely Affective Responses	n = 164 (9.47%)
Tasmania-Specific Comments	n = 160 (9.24%)
Politicians Failing the Populace	n = 120 (6.93%)
Queerphobia	n = 106 (6.12%)
Minority Pandering/Going 'Too Far'/Reverse Discrimination	n = 90 (5.20%)
Anti-Left Attitudes	n = 82 (4.73%)
Joking/Schadenfreude	n = 77 (4.45%)
<i>Ad Hominem</i> Attacks	n = 66 (3.81%)
Negative Consequences/Self-Defeating Move	n = 66 (3.81%)
Children's Wellbeing	n = 56 (3.23%)
<i>Reductio Ad Absurdum</i>	n = 53 (3.06%)
Slippery Slope	n = 50 (2.89%)
Scaremongering/Hidden Agenda	n = 49 (2.83%)
Bigger Problems to Deal With	n = 48 (2.77%)
Compelled Speech	n = 40 (2.31%)
Social Experiment	n = 39 (2.25%)
Immorality/Wrongness	n = 31 (1.79%)
Religious Objections	n = 26 (1.50%)
Sex/Gender Distinction	n = 24 (1.39%)
Sex-Segregated Spaces/Sex-Specific Rights/Women's Safety	n = 19 (1.10%)

The top quartile has been selected for further qualitative analysis (Sections IV and V) in order to answer RQ3–RQ5. The comments reproduced here are verbatim, except where content in square brackets has been included for clarification of the content. But

before proceeding to this analysis, let us consider the context surrounding the passage of the JRL Bill.

3. Background

In 2017, after years-long campaigning by grassroots activists, Australia finally legalised same-gender marriages. Since marriage is Federally regulated, all states and territories—whose laws must not conflict with Federal law—were required to ensure that their local legislation was consistent. Tasmania was thus obliged to remove the requirement for transgender individuals to obtain a divorce before being legally permitted to change their sex classification on their birth certificate (known colloquially as the ‘forced divorce requirement’) and was given until 9 December 2018 to implement this change.¹⁴ Consequently, the Tasmanian Liberal Government—and note that the Liberal Party of Australia is a centre-right leaning party—introduced the JRL Bill. However, local activists saw the introduction of the JRL Bill as an opportunity to further enshrine the rights of transgender and intersex people under the law, and lobbied for the Tasmanian Greens—a left-leaning political party—to propose a number of amendments to it, including the following amendments to the Births, Deaths, and Marriages Registration Act 1999 (Tas):

- Inserting a new section 28H(2) which states: “Any reference to a person’s sex in any law in force in this State *is deemed to be a reference to the person’s gender as recorded under this Part*” (s21).

Here, ‘gender’ means “(a) the *apparent sex* of an infant specified by the parent; or (b) the *gender identity* of the person as specified on a gender affirmation declaration” (s13, emphasis added).¹⁵

¹⁴ Whilst the issue of marriage equality was for many years the focal point of the queer rights movement in Australia, we must also take note of other advancements. Importantly for the purposes of this article, it is worth noting that in 2016 Tasmania’s anti-discrimination commission Equal Opportunity Tasmania (hereafter EOT) issued a paper examining the steps necessary to provide appropriate legal recognition of transgender and intersex people in Tasmania’s BDMRA. Thus, it is fair to say that the rights of transgender and intersex individuals have been a key concern in this region for some time — the rights of transgender and intersex individuals were not just an afterthought in the wake of marriage equality in Australia (EOT, 2016).

¹⁵ In other words, any Tasmanian law which mentions ‘sex’ would be henceforth interpreted as meaning either ‘the apparent sex of an infant’ or ‘the gender identity of the person’ as legally declared’. The TLRI has provided an extensive survey of the particular laws which still make reference to sex and provide a number of recommendations for further amendments to Tasmanian law (2019).

- Omitting the definition of ‘sexual reassignment surgery’ and substituting it with a definition of ‘sex characteristics’ (s13C).

This refers to “a person’s physical, hormonal or genetic features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, genes, hormones, and secondary sex characteristics”.

- Under the new section 28D, the Registrar would not be allowed to request any medical certificates or documentation in determining that someone’s birth registration may be altered (s21).

This would effectively de-medicalise the legal process of gender identity recognition.

- The new section 28C would allow a person to request a copy of their birth certificate which includes *no* reference to their gender (s21).
- The new section 28K would specify that “Historical records of information changed or removed under this Part are to be maintained in a manner determined by the Registrar” (s21).

This means that a child’s sex (as specified by the parent) will still be registered at birth, but that this record will be separately maintained from the birth certificate. And,

- To henceforth cease recording ‘gender’ on birth certificates altogether (Denholm 2018a).

Feminist and queer scholars and activists increasingly regard this last practice—the recording of sex/gender on birth certificates—as the *ascription of a social property*, a legal and social identity, onto the infant, rather than its simply tracking a natural, given physical property (Sveinsdóttir 2011, p. 63; Fileborn et. al., 2019). As we shall see, this is not an attitude largely shared by the commenting public.

The centre-right leaning Liberal Government was vehemently opposed to the proposed amendments to the JRL Bill. However, the Tasmanian Labor Party (the opposition, who are a centre-left leaning party) initially sided with the Greens. This is significant because the make-up of the Tasmanian Parliament at the time saw the Liberal Party holding 13 seats in the House of Assembly, including the Speaker of the House, with Labor and the Greens collectively occupying the remaining 12 (ten and two seats, respectively). Notably, since the Speaker must “maintain, in an impartial, non-partisan manner, the order and security of the House and restrain unruly or unparliamentary behaviour,” the Speaker does not usually have a vote (Parliament of Tasmania 2014). “Instead they have a casting vote which is used to decide an issue that has been deadlocked on an equal vote” (Parliament of Tasmania 2014). With this,

and a Legislative Council dominated by independent candidates (of which there were nine, versus Labor's four and the Liberal's two), the power of the Liberal Government to block or pass legislation was clearly precarious. The Speaker, Sue Hickey, is also known to be an ally to the queer community.¹⁶

The possibility of 'gender free' birth certificates generated much media interest and a massive online response. The news broke in late-October 2018 and was swiftly followed by critical opinion pieces,¹⁷ with former Federal Opposition Leader Bill Shorten commenting that the Australian Labor Party (ALP) had no greater plan to "erase" gender from birth certificates or other cardinal documents (Ferguson 2018). Around a week later, it was reported that Tasmanian Labor had withdrawn their support for the Greens' amendment which would prevent the inclusion of a child's gender on its birth certificate. However, while the headline gave the impression that Labor's support for the Greens' amendments to the JRL Bill had been wholly abandoned (and many online commentators thought this was true), the article in fact articulated that Labor would instead offer a choice to parents by allowing them to 'opt-in' to recording their child's gender on the certificate (Denholm 2018b). The issue remained in the news cycle and on 21 November 2018 the revised JRL Bill passed the Lower House. In a stunning move, the Speaker of the House crossed the floor to vote against the Government. Hickey was labelled a "turncoat" (Denholm and Ferguson 2018),¹⁸ the Prime Minister of Australia Scott Morrison tweeted that "Labor's plan to remove gender from birth certificates in Tasmania is ridiculous," whilst the Premier of Tasmania Will Hodgman scrambled to delay consideration of the reforms by the Legislative Council, with the Attorney-General Elise Archer requesting the advice of the Tasmanian Law Reform Institute (TRLI) with regard to the potential impact of the Bill.¹⁹ The Premier's delay was successful, and the media continued reporting on the

¹⁶ Prior to her election to State Parliament in 2018 she was the Lord Mayor of the Hobart City Council. During her time in this role, the Council voted to publicly support marriage equality and undertook to write to all political parties with federal representation advising them of that support (Howard 2015). In August 2017, the Council also decided unanimously to fly the rainbow pride flag on the Hobart City Council building until same-sex marriage was legalised in Australia (Cooper 2017).

¹⁷ These include Albrechsten (2018); Kenny (2018); Shanahan (2018); and a piece by an author known only as 'The Mocker' (2018).

¹⁸ It is worth mentioning that Hickey also became the target of public and private *ad hominem* attacks. Aside from online comments, taunts such as "are you a man with a vagina?" and "Will you stamp out transphobia, by exercising your right to enter the gents' toilet, and urinate standing up?" (amongst many others) were privately emailed to her (personal communication).

¹⁹ These issues included "what, if any, reforms should be made in relation to the definitions or use of terms relating to sex and/or gender in Tasmanian legislation," and "What categories of sex/gender should be displayed on birth certificates and other documents" (TLRI 2019, 2). The TRLI released their

potential “unintended consequences” that the JRL Bill could have through to early December 2018. The JRL Bill did not return to the news cycle again until April 2019, when the Legislative Council finally cast their vote. Despite receiving an e-petition signed by 422 Tasmanians opposing the “extremely serious consequences and undue haste” of the JRL Bill, the Bill was passed.²⁰ The JRL Act received Royal Assent on 8 May 2019, and commenced on 5 September 2019 (TLRI 2019, 7).

4. Findings

As mentioned, almost 89% of the comments analysed were negative (see Table 1). But certain sorts of responses were more common than others. It is with respect to RQ3–5 that I now turn to a qualitative analysis of the top quartile of negative themes: casting the move as stupid; disbelief and incredulity; casting the move and the trans community as crazy; outlining an explicit commitment to the Truth of sexual dimorphism; expressions of negative affect; and Tasmania-focused comments. Note that in the first three categories I emphasise the repetition of certain words and their synonyms. This is because the repetition of a perspective risks legitimating that perspective (Gupta 2019). Thus, it is not just the presentation of the idea, but its persistence that matters here, especially for the transgender and intersex communities.

i. Stupid (and Variants):

The word “stupid” was used to negatively describe the proposal to make birth certificates ‘gender-free’ (or opt-in)—for example: “This is the most stupid law ever. Next people will be identifying themselves as a vacuum cleaner. Oh hang on....” (06.046) and “Stupid idea, stupid, stupid who thinks up this crap” (01.627)—as well as to describe those persons who support such proposals—for example: “What a total bunch of tools we have in politics making these decisions, have they nothing more important to discuss than this stupid issue” (06.030) and “This causes security concerns. Tasmania, how stupid can you be?” (16.240). It appeared a total of 118 times. The JRL Bill and its supporters were also called idiots/idiotic (48 times), lacking in common sense (32 times), morons/moronic (17 times), retards/retarded (and variations, such as “Leftard” and “fucktard”, 14 times), brainless/brain-dead (13 times), nonsense (12 times), dumb (11 times), fools (10 times), imbeciles (4 times),

Issues Paper on Legal Recognition of Sex and Gender in June 2019, which was notably after the passage of the JRL Act.

²⁰ Tasmania, Legislative Council 2019. *Debates* 19 April, 1 – 69, at 1.

clowns (4 times), numskulls (twice), “Half witted” (01.051), “Asinine” (07.060), “Silly” (01.343), and “a 6 pack short of a dozen” (01.244). Something that is seen to be ‘stupid’ is considered as lacking in intelligence, good sense, and judgement. Each appearance of this word, as well as synonymous terms, conveys an underlying conviction on the part of the commentators that there is something about the proposed reforms, and by extension the people backing them, that is *simply illogical*. One must therefore ask what precisely is seen to be illogical and what other beliefs one must hold for the proposed changes to be viewed as such. But we must also note that these terms are often used as pejoratives, conveying contempt and disapproval. Thus, we must equally consider why the move arouses such affect-laden dispositions.

ii. Disbelief/Incredulity (and Variants)

Like accusations of stupidity, a common response to the news was literal disbelief, speechlessness, and incredulity (an unreadiness to believe, rather than shock or disbelief). Literal disbelief was present in comments like: “April 1, any one?????” (01.277) and “Fake news i would think” (01.285). Others commented that they were speechless, though they seemed to believe the event was being accurately reported; for example: “I actually have no words” (01.109) and “I am speechless. !!!!!!!!!” (06.157). This indicates that the proposal and eventual legal change came both as a complete surprise and a total shock to some. As one commentator wrote, “How is this even a topic for discussion??? ...” (02.002). Most common of all in this thematic strand, however, were comments displaying incredulousness. Many commentators responded “what the...”/“WTF” (what the fuck?)/“what the hell” (29 times). They also responded with “FFS” (for fuck sake, 6 times), “OMG” (oh my God, 7 times), and said that the move was a “disgrace” (6 times). They wrote variations of “what a joke!” (22 times), and variations of “this cannot be happening” (4 times). Others wrote that the change was “absurd”—that which is against or without reason (9 times)—“ridiculous”—that which arouses or deserves mockery or derision because of its absurdity (69 times)—and “ludicrous”—that which is suited to occasion derisive laughter in being ridiculous or absurd (5 times). The significant use of the term ‘ridiculous’ in particular, including by the Prime Minister of Australia on Twitter, indicates not simply a belief that the move is without reason—which is an affectively neutral claim—but that its very absurdity makes it *worthy* of derision, which is an affectively negative, and in particular, quite hostile response. That is to say, this incredulity generally has a negative affective valence, much like the pejorative ‘stupid’.

iii. Crazy (and Variants)

The words “crazy” and “craziness” appeared 24 times in response to the news of the JRL Bill. Many variations of these terms were also used in the comments. These included “mad”/“madness” (42 times), “loony”/“lunatic” (28 times), “insane”/“insanity” (25 times), “nuts”/“nutters” (14 times), “lost the plot”/“lost their mind” (10 times), references to “asylums” (8 times), “sick” (8 times), “deranged” (7 times), “confused” (4 times), “delusional” (3 times), and “fruitcakes” (3 times), as well as juxtapositions to “sanity” (19 times) and what is “normal” (6 times).

There were two general types of usage. In the first instance, people used the terms to mean stupid or unreasonable. For example, one commentator wrote: “This is total insanity and the worst part is everybody knows it” (05.020). Another said: “Is this for real... It can't be.. What stupidity.. Is the world gone completely mad?” (06.123). Others used the terms to refer to mental illness. This alleged mental illness was supposedly on the part of those who supported the JRL Bill—for example: “This left his [*sic*] stuff is getting crazy” (10.041). But the trans community were also represented by many commentators as being mentally ill by virtue of their status as trans. Commentators wrote, for example: “Pandering to the mentally unwell is not progress. A better option would be to allow the adult to choose at a later time when they are in command of their own destiny what they would like the certificate to reflect” (01.467); “Oh hell no, no one will EVER convince me to accept their gender dysphoria as 'normal', EVER.....” (04.026); and “Trannies have a mental illness” (09.022). What we see here is the ongoing medicalisation and pathologization of the transgender community as a way of demeaning and Othering this group. We also see ableism directed towards allies who support the refiguration of the challenges trans and intersex people face as social justice issues. Indeed, refusal to recognise the move to make optional the inclusion of sex/gender on birth certificates as an issue of social justice can be read as a refusal to recognise (except in the most restricted way) the validity of trans identities (Butler 2004). Such ableist comments display contempt and hostility via this Othering discourse that positions the trans community and their allies as *abnormal*.

iv. Explicit Dimorphic-Sex Commitments

Many commentators were so committed to the unquestionable Truth of sexual dimorphism as a scientific fact that explicitly pointing to this Truth was the entire basis of their comment. Scientific facts—*the Truth*—cannot be denied simply because it is willed or preferred by some, they seem to believe. And suggesting otherwise sparked, for some, a negative affective disposition to the proposed changes. Take the following comments, for example: “Teaching us we don't have to face the real truth what a joke” (01.136); “It should never have got this far. Absolutely pathetic idea. There are boys and girls. Period.” (03.036); “F[uck]-ing dill. We are male [a]n[d] Female.” (04.009); and “May be able to change the law, but never able to change DNA” (07.008). The tone of the comments ranges from foreboding to hostility, annoyance, exasperation, aggression, and sarcasm.

However, other commentators presented themselves as cool and calm, imminently rational respondents. Consider, for example, the following: “You either have a Y chromosome or you don't. Full stop. There are only two sex's: male and female. What you choose to become is not based on science. This is immature policy written for a minority group based on emotion, not facts” (01.067); “If they're one of the 1 in 20,000 born with ambiguous genetalia [*sic*] then fair enough, otherwise no. You are what you are. Anything else is just dress-ups” (03.040); “Funny thing is that most of the people who were behind this would be the first to tell any one questioning the validity of climate change, that science is on their side. When it suits them” (03.042); and “Gender is a tool of women's oppression. Biology matters. Free speech matters. Feelings should never over ride science” (04.021).²¹ Such a ‘devoid of emotion’ approach is unsurprising. Throughout the history of Western thought (cf. Lloyd 1984), sentimentality and emotion have “been cleaved from the thinking, reasoning mind, which is typically privileged over the feeling heart. It is only through cool, calm calculation that one arrives at the correct answer” (Phillips and Milner 2017, p. 174). This indicates that, in the minds of at least some commentators, the proposal to remove (or make it non-standard to list) gender on birth certificates is not about ensuring non-discrimination for trans (and intersex) people. Rather, it is a bewildering denial of scientific, biological facts, i.e. *reality*.

Finally, note that many commentators took the opportunity to emphasise their commitment to the Truth of sexual dimorphism *and* to simultaneously assert that trans people suffer from a mental illness, and hence to deny the validity of their identity;

²¹ This comment is one of only very few that distinguishes between ‘sex’ and ‘gender’. Note, nonetheless, that this is not done in the service of bringing attention to social justice issues facing the transgender community, but rather as a way to restrict trans rights.

for example: “Since the beginning of mankind, however you believe that happened. There has only ever been two genders, they are defined at birth with your genitals. These days There is still only two genders and dozens of mental illnesses.” (07.090) and “Mental disorders at its finest. There are only two genitals therefore can only be two genders. Male and female all in between is just mental disorders because your genitals should be made different to suit the disorder.” (12.143). Here, again, we witness the pathologisation and Othering of the transgender community through this ableist discourse and refusal of recognition. While it is true that gender dysphoria has had a long history of inclusion into the Diagnostic and Statistical Manual of Mental Disorders (DSM) under a variety of different names,²² there have been calls to remove this diagnosis altogether, akin to the removal of homosexuality, as access to medical services is increasingly conceptualised in social justice terms (Drescher 2015).²³ However, there is a clear refusal to accept such a reorientation among some commentators, likely because it stirs up “the moral certainty of a world of two sexes and the respective scheme of sex categorisation” that is so fundamental to these commentators’ own identity-formation (Wetzstein and Huber 2016, p. 445).

v. Purely Affective Responses

At the opposing end of the spectrum, we find responses which were purely affective, which demonstrated an oppositional feeling to the JRL Bill and its supporters without providing reasons in support of that negative orientation. The range of negative affects disseminated included anger, sadness, disgust, a sense of dejectedness, annoyance, resistance, and feeling nonplussed. For instance, consider the following comments: “What a sad sad world we are becoming” (01.107); “Ok. Let’s start packing everything up people, form an orderly queue. Sigh.” (01.154); “Disgusting!” (01.632); “No” (04.013); “*massive effing [fucking] eyeroll*” (06.158); “don't know whether to laugh or cry!” (06.298); and “what a load of utter crap.” (10.110). It is also worth mentioning that the commentators who presumed that the JRL Bill had been abandoned early-on in the first phase exhibited positive affective responses, writing things like: “Excellent” (03.051); “Yay!” (03.073); “OOOOoooooh how exciteing [sic].” (03.085); “Great that’s

²² The diagnosis of gender dysphoria can also be found in the *International Statistical Classification of Diseases and Related Health Problems* as ‘gender incongruence’. It is further listed as ‘gender incongruence’ by the World Health Organisation, who no longer recognise this as a ‘disorder’ (Haynes 2019).

²³ It is worth noting that although ‘homosexuality’ (the term) was removed as a diagnostic category from the DSM-II in 1973, it continued to classify homosexuality as a mental disorder in some circumstances until its complete removal in the DSM-5 in 2013 (Drescher 2015, p. 387).

good.” (03.100); and “thank f*ck” (03.124). There were also several comments made entirely of emoji, suggestive of a non-verbal embodied response. There were, for example, ‘face-palm’ emoji 🤦 (01.404), ‘scowl’ emoji 😠 (01.539), ‘eyeroll’ emoji 🙄 (01.464), ‘shock’ emoji 😱 (01.514), ‘tearful’ emoji 😭 (06.225), ‘speechless’ emoji 😶 (06.262), ‘blushing’ emoji 😊 (06.255), ‘thinking’ emoji 🤔 (06.208), ‘expletive’ emoji 🦖 (06.260), ‘nauseous’ emoji 🤢 (11.009), and ‘vomit’ emoji 🤮 (12.149). We should not be surprised that this is so, after all, as Phillips and Milner (2017 p. 174) write, “affect is often a driving force behind that participation [in public debate].” Affective resistance to social change tells us something about the ‘mood’ of this newspaper’s readership; they are also sufficient for undermining transgender and intersex people’s assurance that they will be treated with dignity and respect, even though (and perhaps especially because) no reason for this negativity is offered.

vi. Tasmania-Specific Comments

International readers may not be aware that there is a long-running ‘joke’ in Australia with respect to the Tasmanian demographic: that they have two heads. Though the origin of the joke is uncertain (Cooper 2019), one popular explanation is that Tasmanians are thought to be ‘inbred’ as a consequence of their geographical isolation and Tasmania’s small population. (Such inbreeding is also said to have resulted in Tasmanians having six fingers and webbed toes.) Given the overwhelming interpretation of the JRL Bill and its supporters as stupid, crazy, and denying basic biology, it is not surprising that—when reaching into the grab-bag of insults—tropes of inbreeding and physical deformities were commonly latched upon by the commentators. Witness: “If you’re born in tassie [Tasmania] you Prob[ably] are born neutral seing [*sic*] your parents are related” (03.133), and “Well it’s been said for years that Tasmanians have two heads! So perhaps ‘they’ is the correct pronoun after all!! Hahahahaha!” (10.013). Others did not go so far as to joke that Tasmanian’s are inbred; however, they were not shy in asserting Tasmanian’s stupidity and craziness, with commentators quipping: “Tasmanian political I.D[:] Mental ability...Not a lot. Gender..... Idiot” (03.165). The fact that Tasmania is an island also allowed commentators to deny that it is a true part of Australia, or to suggest that Australia ought to oust Tasmania. For example: “I always thought Tasmania needed to be independent” (06.025) and “Annex Tasmania. Thought it was part of Australia, not New Zealand” (12.037). It is clear that these place-specific comments would not have arisen as a distinct theme if a similar Bill was proposed in another Australian state with a different national reputation. As with assertions of stupidity and craziness, this

is just another strategy for Othering and demeaning transgender and intersex people and their allies.

5. Discussion

Turning now to RQ3: What explains the majority response? I submit that an arousal of negative affect and a commitment to the Truth of sexual dimorphism are natural 'bookends' to the most frequent negative evaluations of the JRL Bill.²⁴ Challenges to the Truth of sexual dimorphism are challenges to a ciscentric society's foundational social and identity-shaping narratives. And challenges to narratives of this mythic proportion are often "viscerally and acutely felt in the body as disgust, nausea, horror or rage," for they "bite deeply into the identity of the individual [who comments online] and her/his place and status within the community" (Gatens 2004, p. 285). Indeed, as Whitney Phillips and Ryan Milner (2017, p. 169) put it, 'rationality' and 'affect' are "evil twins of public debate;" they constitute a binary where each component "represents the flip side of the other." I take this to mean that each is always infused with the other, that there is no 'pure' rationality devoid of affect, and no affect totally devoid of a particular 'logic' (though we can accept that such a logic may be working at the preconscious level). It is helpful, then, to imagine that the explicit yet calm presentation of an epistemic commitment to the Truth of sexual dimorphism exists at the farthest point on a plane of oppositional responses, with basic expressions of negative affects residing at the opposing end. A comment may be 'more emotive' and 'less reasoned', or vice versa, but reason and affect remain always connected.

Whatever the comment's composure, this affective investment in the Truth of sexual dimorphism serves to *enframe* its content (La Caze 2002, p. 11). This affective investment thus "engage[s] the whole person—reason *and imagination*, rationality *and affect*, mind *and body*" (Gatens 2004, p. 285, original emphasis). Challenges to the certainty of the Truth of sexual dimorphism cannot but challenge persons whose fundamental self-understanding is predicated on the security of their own sexed identity, as this comment demonstrates:

²⁴ Perhaps all oppositional responses exist on this shelf. It is entirely possible that this latent epistemic commitment explains the majority, if not all of the oppositional comments, though such an investigation is beyond the scope of this article.

“How stupid can people get , by not saying what we are at birth ,is taking away what we are born , male ,or female ,,,, what idiotic thing will be put in its place,o m g we have lost the plot ,nutters all around us ,,,,we need help!!!!” (01.055).

Such a proposal undermines the ‘sacred’ social myth that sex is naturally dimorphic by threatening to remove this moment of identity-based classification, of *recognition-as*, from the original legal production of the person (Bouchard 2017, p. 25; Butler 2004, p. 2; see also Lennon 2012; Sveinsdóttir 2011). These assertions of absurdity, inbreeding, stupidity, and mental illness (as well as the simple expression of disbelief and incredulity at the very suggestion of legal reform) are entirely predictable once we realise this *emotional* commitment to sexual dimorphism enframes the oppositional response. This belief is a false belief, yet people still have affective investments in it, and for this reason they are unlikely to (easily) give that belief up. It is both a *meaning-generating* and *identity-generating* belief, and it functions as such quite separately from its status as a true/false belief.

Turning now to RQ4: It is impossible to underestimate how important the sex/gender distinction has been for feminist and queer activism and theory. Since at least the 1970s, English-speaking feminists have argued for a sex/gender distinction, and specifically that “gender roles, notably those that perpetuate male domination and female subordination, were learned, not inborn” (Rubin 2012, p. 889). However, this is not to say that the simplistic binary sex/gender, nature/culture distinction has been adopted by feminist theorists (Gatens 1996). Indeed, in questioning the role of the body in relation to women’s oppression, the tide has not turned backward toward a renewed essentialism; rather, the very ‘naturalness’ of sex itself has been contested (Butler, 2006). However, alongside my diagnosis that most comments display either an implicit or explicit commitment to the Truth of sexual dimorphism, we also find that there is a general lack of distinction between ‘sex’ and ‘gender’ made by the commentators.²⁵ Only 1.39% of oppositional comments made reference to the sex/gender distinction, and they did so in order to reinforce the notion that sex is Truly dimorphic—for example: “Sex, not gender. Why can't you get it right? You have a biologically determined SEX: male or female. Gender is a personal and socio cultural construct.” (03.114). It was far more common to see commentators conflating sex and gender, to wit: “So the X and Y chromosomes have no say in a[]gender anymore?” (01.010); “Why don[']t they have two sections....biological[]gender at birth, then

²⁵ I am not alone in noticing this issue. In fact, the TLRI (2019, p. 5) took the time to set out definitions for both ‘sex’ and ‘gender’ (among others) in their Issue Paper because “the terms ‘sex’ and ‘gender’ are often conflated.”

preferred gender?" (01.117); and so on.²⁶ In order for there to be a real possibility that other identities can be completely embraced in Australia today, it is crucial that our society comes to accept that sex and gender are not synonymous, and that both gender and sex social constructs. Feminist and queer troubling of both sex and gender—and, indeed, the structuring of gender as *prior* to sex (Sveinsdóttir 2011)—has not yet penetrated into this central sexual imaginary, and I contend that equality cannot be achieved until this is so (see also Richardson-Self 2019).

Finally, RQ5: how might the online response impact the transgender and intersex communities? One way of exploring the possible effect of this speech is via a political aesthetic analysis. Waldron argues that the literal look of a social space can be enough to undermine the assurance that certain groups have that they will be treated with the basic respect and decency to which they are entitled simply as members of the human community. Put differently, it is an assurance that one will not have to “face hostility, violence, discrimination, or exclusion by others” just because of who one is (Waldron 2012, p. 4). Such speech suggesting otherwise would be “an assault on the public good of inclusiveness” (Waldron 2012, p. 6). And groups whose contemporary or very recent past has been characterised by oppression, like transgender and intersex people, are more vulnerable to having this assurance undermined than are those who have never been oppressed because of their corresponding, structurally ‘superior’ trait, namely cisgender identity (Waldron 2012, p. 103). Waldron (2012 p. 82) asks us to imagine what a well-ordered or *just* society would look like—would it be littered with semi-permanent trans-hostile and intersex-denying speech, or would it be free of it?—noting that “the look of a society is one of its primary ways of conveying assurance to its members about how they are likely to be treated.” Thus, whether the commentators in this space represent the attitudes of the broader Australian community or not is quite irrelevant when it comes to the possible impact on the transgender and intersex people witnessing this cascade of negative responses. From a social justice perspective, we ought to be extremely concerned that the response in this space is overwhelmingly, visibly oppositional. The aesthetics of the space need only to make it appear that Australia is trans- and intersex-hostile for the assurance of these groups to be undermined and for them to suffer a dignitarian harm as a result.

²⁶ It is also possible that the news reporting is entrenching this conflation in the minds of ordinary Australians and, in spite of the JRL Bill’s aim “to clarify that gender differs from sex, and that a person’s identity is represented by their gender rather than their sex” (TLRI, 2019, p. 13), the legislature itself may be having this effect too. After all, it does define gender as the apparent sex of an infant specified by the parent or the gender identity of the person as specified on a gender affirmation declaration.

6. Conclusion

At the outset of this study, I stated that my aim was to elucidate the latent assumptions and norms that generate epistemological and affective resistance to the passage of the JRL Bill. Looking at one far end of the spectrum, we see that the epistemic commitment to the Truth of sexual dimorphism is responsible for closing off some modes of interpretation, allowing only a narrow range of responses. This is significant because what is taken to be True and unquestionable—whether explicitly or tacitly—figures how the proposal to amend the law is received. But resistance to these changes is also an affective issue, and it is entirely plausible that embodied resistance to these changes occurs prior to the application of an epistemic justification for one's stance. Put differently, resistance to the JRL Bill may have no rational basis at all, but, insofar as the commentators "*felt themselves to have reasons,*" they may have "*employed ad hoc standards and post hoc rationalizations*" to make it seem so (Manne 2018, p. 253). And while it is true that some of these commentators may be 'passively ignorant'—their lack of knowledge attributable to unawareness of intersex conditions and a mistaken belief that sex/gender are synonymous terms (which, in fairness, the JRL Bill does likewise conflate)—this is certainly not true for all commentators. For some, there is wilful resistance to challenges to the ciscentric sexual imaginary, demonstrating an 'active' rather than passive ignorance. This is an ignorance involving cognitive resistance (a will *not* to know), affective and bodily resistance (in the form of apathy, disinterest, agitation, anxiety, and rage), and defence mechanisms, such as shifting the burden of proof or conflating the issue with others (Medina 2016, p. 191).²⁷ In such a state, commitments which dictate *how many sexes/genders there are* and *who counts as belonging to a sex/gender* "*link together emotions, imagination and intellect;*" in short, "*they act on and through our embodied selves*" (Gatens 2004, p. 284). Strung out on a plank between negative affective resistance and a commitment to the Truth of sexual dimorphism, the interpretation that the JRL Bill is stupid, crazy, and frankly unbelievable *makes sense*. It is not *unreasonable*. (Or, put in philosophical language, the position is 'valid'.) But this does not mandate tolerance for such speech by the queer community; we ought to push back against such interpretations of this legal change because the positions are unsound (i.e. based on false premises).²⁸

²⁷ For example, consider this explicit demonstration of active ignorance: "Why the hell do we always pander to the very small minority? I don't care what a person identifies as, so long as I'm not forced to change the way I think or speak to accommodate them ... I have rights too." (10.083).

²⁸ For more on the (in)appropriateness of tolerance with respect to queer rights, see Richardson-Self (2014).

The question that remains, then, is how to communicate what queer and feminist theorists have (largely) agreed upon for decades—that gender and sex are not synonymous, yet they are nonetheless *both* social constructs, and that sex is not naturally sexually dimorphic (as the existence of intersex bodies proves)—to the general public in a way that is resonant and ensures uptake. And this matters because what happens online does not stay online. As Phillips and Milner (2017 p. 170) note, “whatever tenuous boundaries exist between ‘online’ and ‘offline’ are obliterated in the context of public debate, where digital participation is integrated into embodied experiences, and embodied experiences are integrated into digital mediation.” Even if the comments collected here display the opinions of only “a highly polarized minority” (Phillips and Milner 2017, p. 168), the fact that *The Australian* is Australia’s only daily national newspaper, and the fact that over 60% of Australians actively use Facebook (Cowling 2019), means that even a warped picture of reality can nonetheless create the conditions that undermine the assurance of the transgender and intersex communities that they will not have to face violence and hostility for simply being who they are.²⁹ This assurance-undermining trait of the online comments is not and cannot be mitigated by the mere fact that the law is now (and *for now*) on the queer community’s side. Deep equality is dependent on “what hundreds or thousands of ordinary citizens do singly and together” in our shared social and political spaces (Waldron 2012, p. 93).³⁰

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²⁹ Note: I have not argued that the data analysed here *is* representative of the Australian attitude towards the transgender and intersex communities at large. I also have not claimed that these comments were left by Australians. This is a political aesthetic analysis which asks what effect the reception of this speech can have on transgender and intersex Australians who view the material. It is important for my analysis that there is no other daily national broadsheet to compare the online response. A limitation of this study is that there are other online Australian news sources (such as ABC News) which does not publish a print newspaper, but nonetheless produces national content. Further research ought to undertake this comparative work.

³⁰ The phrase ‘deep equality’ is Lori Beaman’s (2017), elsewhere I have called this ‘equal regard’ (Richardson-Self 2014).

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