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'Sorry, You're Not A Winner': considering critical relativism, competing interests and lateral power struggle in ethical critique

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ABSTRACT

Critical discourse studies do not often consider lateral power struggles between social groups with competing and intersecting interests, ideas and identities. As such, there is often little to no consideration of potentially detrimental outcomes or unintended consequences when proposing radical and transformative change. This paper therefore argues for critical relativism in CDS, considering intersecting power structures and struggles between potentially competing social groups. In illustration, this paper takes the case of ongoing antagonism over the socio-legal recognition of transgender identities in the West. Transgender identities are arguably more hotly debated at present than any other in relation to their socio-legal recognition and its perceived implications on other social groups. This paper therefore discusses how the interests of transgender socio-legal gender recognition intersect and compete with the interests of other social groups, whether in reality or only in perception. In so doing, this paper contends that the transformative impetus of CDS must account for the mechanisms and outcomes of lateral struggle. In a world of ever-increasing awareness of the interconnected systems of dominance and resistance, embedding critical relativism in CDS is imperative if it is to evolve and maintain relevance as an approach to meaningfully analysing discourse and championing social change.

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Introduction

A radical teleology and transformative impetus distinguishes critical discourse studies (CDS) from other approaches to linguistic analysis (McKenna, 2004). Indeed, a prioritisation of *what ought to be* over *what is* (cf. Herzog, 2018) and an 'unabashedly normative' critique (van Dijk, 1993, p. 253) are inherent to the radical social change sought by CDS scholars. However, in its pursuit of balancing power relations between the dominant and dominated (van Dijk, 2001), CDS does not often consider the intersecting lateral power struggles

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between social groups with competing and intersecting interests, ideas, and identities. As such, there is often little to no consideration of potentially detrimental outcomes or unintended consequences for other social groups when proposing radical and transformative change. Building on Fairclough and Fairclough's (2018) ethical critique, I therefore argue in this paper for embedding Hautamäki's (2020) critical relativism in CDS to consider the intersecting power structures and struggles between potentially competing social groups.

Critical relativism refers to a commitment to the epistemic virtues of plurality, tolerance and criticality in epistemological stance (see Hautamäki, 2020). Applied to the context of CDS, these epistemic virtues would require a consideration of possible alternative viewpoints to transformative measures championed via critique, including those that conflict with the researcher's own intentions. More specifically, critical relativism in CDS would consider the competing power relations that coincide with the discourse/s under analysis and the potentially – albeit possibly unintentional – detrimental effects that proposed transformations might have on those social groups. That is, CDS should consider more explicitly the interconnectedness of social categorisations in their radically transformative agenda in order that it does more benefit than harm. As such, these epistemic virtues become ethical virtues in the context of CDS.

Offering a primarily theoretical contribution in this paper, I contend that taking a critical relativist and intersectional perspective when considering transformative outcomes for social change unveils potentially detrimental implications for other social groups, whether in reality or only in perception, that could exacerbate existing power struggles. However, to contextualise how critical relativism and intersectionality might be embedded in critique, this paper draws from the ongoing antagonism over the socio-legal recognition of transgender identities in the West. Located squarely at the intersection of gender, sex and sexuality, transgender identities are arguably more hotly debated at present than any other in relation to socio-legal recognition and its perceived implications on other historically oppressed social groups. The antagonism in the case of transgender socio-legal recognition is predicated largely on the rights and resources that some perceive might be diluted and/or reallocated as a result of such recognition in various contexts (see, for example, Freedman & Auchmuty, 2018). Therefore, I explore how the interests of transgender socio-legal gender recognition are constructed as intersecting and competing with the interests of other social groups. In so doing, I discuss how legal understandings of (trans)gender identities, gender-based and sex-based rights construct a structural and institutional environment within which there is an implied competition and conflict between specific social groups. I argue that it is only in considering multiple viewpoints – of structure and discourse – as they pertain to contexts of intersectional and lateral struggle that critique can be considered ethical and justice be championed in the manner CDS scholars purport to pursue.

Intersectionality, ethical critique and critical relativism

Variably conceptualised as 'method ... heuristic and analytic tool' (Carbado et al., 2013, p. 303), intersectionality '[insists] on examining the dynamics of difference and sameness' among and between axes of power (Cho et al., 2013, p. 787). As a method, intersectionality has a transformative impetus in favour of the dominated that focuses on the dynamic and multiple processes of power enacted and engendered between (categories of) people and their experiences (MacKinnon, 2013). Given this transparently critical and

transformative orientation, the operationalisation of intersectionality within CDS is a match made in ontological and epistemological heaven. That is, both seek to challenge social and political hegemonies of unequal power relations. Much like intersectionality, the generally top-down approach to critique in CDS also seeks to expose, challenge and change the practices of elite actors – or those with greater access to social power resources – in favour of those that are dominated (see van Dijk, 2001). However, bottom-up approaches to understanding ‘resistance, compliance and acceptance’ are often neglected in CDS (van Dijk, 1993, p. 250) and rarer still are explicit considerations of *lateral* power struggle. This paper proposes an explicit consideration of intersectionality to address such lateral struggles in top-down and bottom-up approaches to critique. I argue that considering lateral power struggle requires an exploration of how practices and power resources are employed and deployed – knowingly or otherwise – in (constructing) competition between social groups in specific contexts.

Insofar as CDS seeks socio-economic and – political change, the application of intersectionality also requires the consideration of the dynamic and overlapping consequences of proposed social transformations. Such social transformations inevitably have both winners and losers (Zafropoulou et al., 2017). Indeed, the consideration of winners and losers in CDS is not new, *per se*, though they are rarely explicitly labelled as such. For instance, Fairclough (1992) explains that the mere act of engaging in critique ‘implies intervention, for example providing resources for those who may be disadvantaged through change’ (p. 9). However, the radical agenda of CDS research (McKenna, 2004) and focus of scholars’ perceptions on *what ought to be* (cf. Herzog, 2018) mean that the positive and negative impact(s) of proposed radical transformations are squarely in the eye of the beholder. Hence, when taking a unidirectional (e.g. top-down) approach to critique, the winners of proposed radical change are most often intended to be the dominated group(s) being championed in the given project and the losers the powerful group(s) and structures under scrutiny. However, given the lack of consideration for lateral struggle in CDS, thought is seldom given to the overlapping and unintentional consequences of proposed transformative changes for other social group(s) with whom there may be competition for rights and resources under existing intersectional power structures and mechanisms. I therefore align myself with Fairclough and Fairclough’s (2018) claim that an *ethical critique* would therefore consider both intended and unintended consequences – including winners and losers – in its proposals for social change.

Graham (2018) claims an ethical impetus in CDS to ‘[anticipate and change] ... the ‘side effects’ of technical developments (whether good for bad) that result in ... increases in inequality’ (p. 200). Of course, this is the case for all developments, including – perhaps more so than many others – developments (whether proposed or enacted) in the social and political order. It is therefore arguably an imperative for CDS scholars to consider the ‘side effects’ of their own proposed developments and transformations of the social world when engaging in critique. Fairclough and Fairclough’s (2018) approach to ethical critique operationalises this aim in its commitment to ‘evaluating diverse and conflicting proposals for action’ (p. 181). That is, Fairclough and Fairclough (2018) explicitly advocate for ‘feasible, achievable solutions to problems ... [that] meet ethical criteria’ and for a consideration of their consequences (p. 180). This paper draws from this commitment to ethical critique, considering how intersectionality might be applied to contexts of lateral power struggle in the consideration of possible or proposed social transformations.

Whether implicitly or explicitly, CDS scholars typically acknowledge their own subjectivities and the values underpinning their critique of specific social formations. Such subjectivities, values and perspectives shape the search for and acquisition of knowledge, subsequently shaping their critique and proposed solutions to social problems. It is through this practice that CDS research implicitly invokes what Hautamäki (2020) refers to as viewpoint relativism, or the notion that ‘epistemic questions are viewpoint-dependent ... [and that] we cannot answer, for example, whether [a statement] is justified without referring to a point of view’ (p. v). That is, CDS scholars inherently critique the un/justness of social formations, proposing solutions based on justifications derived from evidence as analysed from their own point of view (cf. Fairclough & Fairclough, 2018). Indeed, where Fairclough and Fairclough’s (2018) ethical critique advocates specifically for the consideration of multiple perspectives, it implicitly invokes Hautamäki’s (2020) notion of critical relativism, or a viewpoint relativism with commitment to epistemic norms of plurality, tolerance and criticality.

I argue that it is in the combination of intersectionality and critical relativism that ethical critique becomes possible in the context of considering lateral power struggles. Moreover, when considering intersectionality in an ethical critique, I argue that the epistemic virtues of critical relativism become ethical virtues for CDS scholars. For instance, intersectionality has come to ‘signal a kind of pluralism, in which identities are represented as equivalents on a field of competing interest groups’ (Gordon, 2016, p. 347). Indeed, whilst Gordon’s (2016) description is meant as a criticism of modern understandings of intersectionality, which ‘[evacuate] questions of power’ (p. 346), this perception of intersectionality-as-pluralism may be appropriate when considering sites of lateral power struggle between social groups with similar, competing or conflicting statuses of powerlessness within specific social contexts and formations. A prime example of this is in the deconstruction and critique of cis – and heteronormative patriarchal power structures, which disadvantage and dominate women, transgender individuals, and sexual minorities in multiple overlapping but often very different ways. Hence, proposed radical social transformation projects that seek to challenge patriarchal structures explicitly in favour of addressing sex-based oppression would be well served to consider the consequences of such action on other groups dominated within and by those same patriarchal structures and institutions.

Of course, it is important to note that the mere existence of multiple viewpoints does not entail their equal value. Rather, Hautamäki’s (2020) viewpoint relativism refutes this form of extreme relativism, instead prioritising local relativism – or, a ‘[concern] with only certain fields and discourses of knowledge’ (p. xii) – and the critical weighing of points of view on the basis of normative criteria. Hence, the complex ‘field of competing interest groups’ to which Gordon (2016, p. 347) refers is reduced in any given CDS project in line with local and relevant contexts, discourses and knowledges, rather than to any and all possible identities outwith such contexts. Of course, the existence of multiple viewpoints and competing interests must be tolerated if they are to be adequately weighed against specific criteria. In fact, it is this tolerance and criticality that enables the ethical justification of proposed courses of action – and consequences – resulting from critique. This is particularly in fitting with Fairclough and Fairclough’s (2018) proposal, which states that:

A course of action worthy of being adopted is one that has withstood criticism. Agents may decide to discard proposals either because they are likely to be instrumentally inadequate in relation to the goals they are supposed to achieve, or because they find them ethically problematic, for example because the values or goals they are motivated by are unacceptable. (p. 171)

Hence, each plurality (the consideration of multiple proposals), tolerance (the criticism of proposals) and criticality (the measurement of in/adequacy and ‘problematicness’) are invoked in Fairclough and Fairclough’s (2018) ethical critique. The specific consideration of intersectionality in such a procedure, then, enables the explicit consideration of competing, conflicting and cross-cutting power structures, mechanisms and interests that CDS currently neglects, by and large.

Antagonism over transgender identity recognition

To illustrate how critical relativism and intersectionality might interact in an ethical critique, I turn to the context of antagonistic discourses over the socio-legal recognition of transgender identities in the West. Conceptualisations of this recognition, what strategies are necessary to reduce the inequality, and the implications of those strategies differ between social groups. Specifically, there is a constructed contestation between sex – and gender-based rights that has led to extreme social polarisation and cases of legislative regress. I focus here, then, on how transgender recognition is constructed in legislation and ongoing discourses of socio-legal recognition, including how these constructions comprise implied conflicts with sex-based recognition. It is important to note that I do not consider sex – and gender-based rights to be in competition in reality. However, I work here from the position that so-called ‘gender critical’ discourses and ideologies are based on such perceived conflict and competition. I therefore argue it is equally necessary to engage with perceived intersectional struggle in order to critically weigh competing perspectives, acknowledge unintended consequences of in/action, and therefore justify proposed courses of action for effecting social justice.

There have, of course, been social and legislative solutions proposed for remedying the intersectional struggle of gender – and sex-based rights highlighted by antagonism over transgender recognition, including – for example – the absolute denunciation of any and all so-called ‘gender-critical’ feminism (Hines, 2019) and the unqualified inclusion of all transgender identities within feminist movements and activism (Burlton Davies, 2019). However, these all-or-nothing solutions primarily focus on the winners of such social reform and pay little, if any, attention to potential losers. That is, there is little consideration of possible detrimental effects on demographic groups who are interested parties in the resources and rights being (re)distributed, whether or not those effects are based in any intransitive reality or simply in the perception of un/affected parties. For example, a Stonewall spokesperson posits that changes to transgender recognition in legislation ‘will barely affect’ non-transgender individuals (Dingle, 2018), but does not qualify those affects, however remote. Similarly, gender-critical activists cite a disproportionate risk to women and children if trans people are granted access to conventionally single-sex spaces, but this is equally lacking in explanation and evidence (see Hasenbush et al., 2019). Recommending feasible strategies that acknowledge and attempt to accommodate this lateral power struggle is therefore necessary in order to remedy extant

inequality for transgender people with minimal impact on other demographic groups with whom transgender individuals may compete for rights, resources and power – even if only in the *perception* of some.

Transgender identities and behaviours are located at the intersection of gender, sex and sexuality. Indeed, the very definition of *transgender* relies on an incongruence between avowed gender identity and assigned bio-physiological sex at birth. This conceptualisation of gender as reliant on sex, in combination with the diversity of transgender identities, gives rise to potential problems regarding how sexual orientation and practices are framed for transgender individuals (cf. [Monro & Richardson, 2010](#)). Indeed, the inextricability of sex and gender in definitions, explanations and representations of transgender identities and behaviours also has potential pitfalls if/when they are accommodated in legislation. Moreover, the socio-legal recognition of transgender identities and behaviours may arguably (re)construct hierarchies of rights and responsibilities among social groups who are similarly powerless in existing cis – and heteronormative patriarchal social formations. The following sections explore how issues resulting from recognising transgender identities are constructed both in legislation and in responses to social movements. In so doing, this paper seeks to offer a brief contextualising example of how ethical critique might be applied in the case of (trans)gender recognition. It is prudent to note, however, that I do not propose in this paper a justification for specific proposed course(s) of action. Rather, I intend only to expose the lateral and intersectional power dynamics amongst social groups that would influence the ethical justification of social transformation(s) from one perspective or another.

Legislation: conflation and competition between sex, sexuality and (trans)gender

The term *transgender* and its associated concepts have multiple interpretations, not least of all in legislation, which invoke a pluralism within the identity category itself. Indeed, since the coinage of the terms *transvestite* and *transsexual* ([Hirschfield, 1910](#)), the term *transgender* has come to '[encompass] all gender-variant identities and bodies' ([Webster, 2018](#), p. 206). That is, *transgender* can be used to refer to any identity or person whose psychosocial gender identity does not match their bio-physiological sex determined at birth. The difference in opinion on what constitutes a (recognisable) transgender identity also has implications in practice. For example, in legislation, the recognition of gender-variance relies on multiple different terminologies. The UK's Equality Act ([2010](#)) uses the terms 'gender reassignment' and 'transsexual' in specific reference to protecting gender-variant individuals from discrimination. The former refers to the social, physiological and psychological practices of sex/gender transition, and the latter refers to those who have undergone, are currently undergoing, or are planning to undergo those practices (cf. Equality Act, [2010](#)). Though the terms are considered 'outdated and misleading' by some (Equality and Human Rights Commission, [2020](#)), it is generally considered in most applications of the law that the terms are widely applicable to all who can be accurately described as 'transgender'. In the USA, reference to transgender persons in federal legislation is subsumed under the concept of 'gender identity' (cf. Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, [2009](#)), which is alternately subsumed further under 'sexual orientation' (cf. Exec. Order No., 11246, [2014](#)).

Whilst this may be less outdated than the terminology used in UK law, the connotation of gender identity as inextricable from sexual orientation is still likely to be considered misleading and, therefore, a cause of disagreement for some. Disagreements on how transgender identities should be recognised can, despite possible well-meaning intentions, lead to antagonism between – *inter alia* – transgender persons and policymakers, or between transgender persons and other social groups. Indeed, non-binary identities, which are also subsumed under the *transgender* umbrella and whose recognition has its own practical implications, are generally not recognised specifically in law whatsoever. This discursive construction of inextricability between (trans)gender, sex and sexuality in equality legislation reinforces an understanding of how intersecting identities and practices are subsumed under umbrella categories that obfuscate differences and enforce interpretations of sameness. It is in unveiling this discursive dynamic of difference and sameness (cf. Cho et al., 2013, p. 787) within the cis – and heteronormative power structure of legislation in the West that the application of intersectionality becomes abundantly relevant. That is, the axes of such patriarchal power structures – spanning sex-, gender – and sexuality-based forms of oppression – are conceptually condensed and lateral dimensions of power struggle therein are singularised. As such, it becomes clear how perceptions of competition and conflict might arise when proposed social change for one group dominated by patriarchal power is considered without its potential effects on other social groups, whose experiences of patriarchal oppression may differ in one dimension or another.

At the same time as gender, sex and sexuality are conflated in legislation, there is also a simultaneous presupposition that transgender identities are recognised as a separate class of citizens, distinct from gender-congruent males and females. This presupposition is consolidated by the express recognition of sex as a separate protected characteristic within the same or similar anti-discrimination acts (cf. UK – Equality Act, 2010; USA – Civil Rights Act, 1964). Indeed, in the pursuit of recognising sex as a protected characteristic – for example, in single-sex services, such as some domestic violence refuge shelters – negative discrimination towards ‘gender reassignment’ is potentially lawful (Equality and Human Rights Commission, 2020). This constructed implication of legislative antagonism – between protecting the characteristics of gender reassignment and sex assigned at birth – is further consolidated by cases of sportspersons, who identify as transgender, having their gender identity legally recognised and simultaneously being barred from participating in single-sex competitive sports in their acquired gender (and legal sex, in some cases). Hence, legal recognition of transgender identity does not equate to the recognition of a transgender individual as either male or female (or otherwise) in law, despite claims to the contrary by some gender-critical voices. Indeed, the recognition of individuals as their acquired gender or sex often requires bureaucratic, medicalised, and sometimes surgical intervention. In order to obtain identity documentation – for example, a passport – in an acquired gender in the US, citizens simply need a letter from a medical professional that confirms a person is seeking medical intervention and ‘intends to [permanently] change gender’ (Kyger, 2016, p. 119). This is much the same in the United Kingdom. Citizens of the UK can also apply to a council of medical professionals in order to have ‘legal recognition’ of their acquired gender and have their birth certificate reflect an acquired sex (see Gender Recognition Act, 2004). There is clearly a mismatch between identity recognition in practice and recognition in law – at

least in the United Kingdom. It is also prudent to note that markers of gender on identity documentation – in either country – are more accurately considered markers of legal sex. Inevitably, this dual legal and practical conflation of sex and gender can again give rise to antagonistic and hierarchical discourse/s of inequality, not least of all by blurring the distinction between protected characteristics and related practices or provision. This social and linguistic indistinction between gender and sex has led to very recent politico-legal shifts in the UK, including changes in policies for housing trans women prisoners (Ministry of Justice, 2023) and debates on potential changes to the definition of sex as a protected characteristic in the Equality Act (Hansard, 2023).

The current move towards recognition in mainstream transgender discourse/s is that of self-determined gender identity (see Stonewall, 2020), which is borne out of antipathy from some transgender persons towards medical requirements of gender identity recognition, or at least from pluralistic understandings of gender recognition between transgender persons and government agents. The simultaneous conflation and competition between sex and gender currently constructed in legislation illuminates a structural inconsistency in how groups of people are categorised, acknowledged, and accommodated in law. Indeed, whilst the conflation between gender and sex implies an interpretation that the two categories are ‘equivalents on a field of competing interest groups’ (Gordon, 2016, p. 347), the simultaneous hierarchical competition constructed between sex and gender in the application of law highlights clear differences of relative power between the two within cis – and heteronormative patriarchal power structures. Hence, an intersectional consideration of *unintended consequences* for social groups structurally bound in competition must be taken into account when considering proposals for transformative social change. In applying Hautamäki’s (2020) viewpoint relativism, this intersectional consideration would require an explicit tolerance of pluralistic viewpoints and a clear critical weighing of consequences against transparent normative criteria.

An example of how critical relativism might be applied at the level of analysing socio-legal structures in this intersectional context of lateral power struggle can be drawn from the notion of self-identification as a logical and feasible route to transgender socio-legal recognition. The level of recognition and protection for transgender individuals is largely consistent among nation states in the West. Identity documents can be amended to reflect acquired gender in 41 of 51 European states, though there are in some states prerequisite medico-legal conditions including sterilisation, genital reconfiguration and a mental health diagnosis (Ambrecht, 2016). The same is true of Australia, Canada, New Zealand, and the United States of America.¹ However consistently applied, there is evident inequity for transgender individuals in terms of both recognition and protection against discrimination. Indeed, even where legal recognition exists, transgender activists and allies consider the essential medico-legal prerequisites to be discriminatory in nature (see Kyger, 2016). Self-declaration of gender identity to change legal documentation – such as in Argentina, Belgium, Ireland, Malta and Norway (Trans Media Watch, 2017) – is therefore considered by many transgender advocates as the answer to equal recognition (see Stonewall, 2020). Such amendments to legal gender recognition processes have recently been proposed in the United Kingdom (Mordaunt, 2018) and enacted in some states of the US, including California (Gender Recognition Act [California Senate Bill 179], 2019). Proponents of such measures suggest that self-declaration in legal gender changes respects the autonomy of the individual, removes the need for

unnecessary medical gatekeeping, and prevents the breach of individuals' right to privacy (Equal Recognition, 2020). Critics argue that recognition of gender identity on the sole basis of self-declaration is a 'conflict of rights' that threatens to erase the lived experience/s of embodied female socialisation, removes existing rights to sex-segregation in some public spaces, and is open to abuse (Freedman & Auchmuty, 2018). This notion of female socialisation and abuse of rights is frequently cited by some self-declared gender-critical voices. Such critics conceptualise transgender women as privileged by patriarchal power structures, having benefited from male socialisation (see Earles, 2019). Transgender men are not often represented in antagonistic discourses (see Hines, 2019), which is reflective of their underrepresentation in transgender discourse more generally (Hines, 2014). In fact, where transgender men are represented in antagonistic discourses, they are sometimes constructed as doing so to escape female oppression (e.g. Green, 2006) or actively erasing lesbian identities (e.g. Fair Play for Women, 2018). It is evident, then, that – whether in reality or only in perception – respect for the transgender individual's autonomy and lived experience inherent in legal self-identification of gender/sex is simultaneously threatening to the identities and lived experiences of other demographic groups. Hence, reform that enables legal gender recognition based solely on self-identification benefits the transgender population at the potential (perceived) detriment to the population of gender-critical women. It is only by tolerating and acknowledging these pluralistic understandings that an ethical critique can justify the consequences of a proposed social transformation project by weighing the benefits and detriments against specific normative criteria. However, tolerating and acknowledging the plurality of viewpoints does not assume their equal value. Similarly, if there are specific and transparent normative criteria against which viewpoints and consequences are critically weighed, then such critique – and, by extension, its consequences – can be considered ethical within the parameters of the purported aims of CDS (cf. Fairclough & Fairclough, 2018). Consciously weighing alternative viewpoints – of real *and* perceived potential detriment – against these normative criteria therefore enables a clearer ethical justification for proposed in/action.

The issue of legal recognition via self-identification is also one of social recognition, and it has consequences for the current simultaneous conflation and competition between gender and sex. Moreover, social recognition on the basis of identity is akin to Honneth's *merit-based* recognition (1995), which refers to recognition 'on the basis of characteristics and attributes shared with solidary social groups' (Connolly, 2015, p. 406). In the context of transgender discourse, social recognition refers to the general recognition of preferred gender identity, including pronouns, titles, and relevant associated attributes (e.g. of womanhood/manhood, in the case of binary transgender identities). Legal recognition of identity arguably makes social recognition easier insofar as it enables an apparent reification of legal belonging to a sexed demographic group. Indeed, social recognition is also enshrined in law where gender identity, reassignment, and/or expression are protected from discrimination. That is, it is considered discriminatory practice, and therefore illegal, to create hostility in the provision of – *inter alia* – services, education and employment by knowingly misgendering or otherwise not recognising an individual's preferred gender identity. Like legal recognition, the legal force of social recognition has also been the source of much contention and antagonism, with critics citing negative rights of free speech as enabling individuals not to recognise

preferred gender identities/pronouns socially (cf. Hines, 2019, p. 153). It is prudent to note, however, that where services and spaces require sex-segregation, they may deny service or access on the basis of trans/gender identity if it 'is a proportionate means of achieving a legitimate aim' (Mordaunt, 2018, p. 9). Some critics claim that this inevitably changes if a transgender individual's preferred gender identity – or, rather, sex – is legally recognised. Current gatekeeping mechanisms, such as gender recognition certificates in the UK, mean that the legal recognition of acquired sex has been taken up by only a very small proportion of trans people (see Hansard, 2023). At present, whilst biological sex trumps gender in terms of social recognition in very specific circumstances, social recognition is arguably ensured by legislative force in some other circumstances. However, it is important to note that the inclusion of trans people in single-sex spaces is less a top-down governmental decision and more an organisational and institutional decision.

If gender identity becomes sexed identity upon legal recognition, it arguably equates gender-congruent men and women with their transgender counterparts in many aspects. One viewpoint on this consequence would evaluate this (re)construction of equality as a societal benefit, ensuring equal rights to recognition among all citizens along the same axes of identity (i.e. gender and sex) by *adding* to the rights of one group. Another viewpoint on this consequence would evaluate it as *subtracting* from the rights of one group in order to make two distinct groups equivalent under the law and reproducing patriarchal systems of power in the process (see Hansard, 2023). Such viewpoints are borne from pluralistic experiences of the social world. A tolerance of such plurality enables the identification of local consequences in contexts of lateral struggle and a position from which a critical weighing of their justifiability can reasonably be made. As such, we need to weigh perceived positive and negative outcomes to justify in/action for proposed change. That is, acknowledging the bases of gender-critical viewpoints is a necessary process for explaining the realities, rather than misconceptions, of transgender recognition.

Discussion: social change, un/intended consequences, 'winners' and 'losers'

There are two key intersectional dynamics at issue in the above contextualisation of transgender socio-legal recognition in the West: (1) the diversity of transgender identities and their differential recognition; (2) gender and sex are simultaneously conflated in identity documentation and hierarchically distinct in equality legislation. Viewing and evaluating these dynamics from competing perspectives enables a consideration of ethical justification for future action(s). Whilst I do not purport to propose such ethically justified action, I have sought here to highlight the lateral power struggles implicated in such intersectional conjunctures and the consequences of social reform, whether real or perceived.

Current definitions of *transgender* subsume a superdiverse set of identities and behaviours within its remit. Although research has previously identified evidence for heterogeneity among identity groups subsumed under the transgender umbrella, the reduction of all gender-variant identities to a catch-all label continues in both lay and scientific parlance (see Webster, 2018). In legislation, however, varying uses of *transgender* and its associated concepts raise questions about the universality with which protections and recognition can be applied to the superdiversity of transgender identities and

behaviours. For example, the UK's specific reference to gender reassignment indicates protection from discrimination on the grounds of behaviours relating to socio-physiological transition. This conceptualisation of transgender vis-à-vis a directional process of binary gender identity and expression therefore raises questions about the intersectional axes of power *within* the umbrella category of transgender. That is, those who do not engage in expected practices of gender reassignment – including genital reconfiguration surgery and/or hegemonically gendered physical expression (cf. Webster, 2019) – may perceive their protection under law to be different from those who do. This is further reinforced by specific reference to *transsexual persons* in the Equality Act (2010). Indeed, whilst non-binary identities and behaviours are largely held to be forms of gender-variance, the specification of gender reassignment calls into question the equity with which socio-legal protections are applied to those who are collectively categorised as *transgender*. Moreover, critics of transgender recognition may perceive such protections to be differentially applicable for those engaged in gender reassignment processes and those who are not. Hence, there are overlapping issues and experiences of gender reassignment and (non-)binary gender identity at play in transgender recognition. In other contexts, like in the USA, transgender status is recognised and protected in law under the umbrella category of *gender identity*, which is perhaps more inclusive of the superdiversity of transgender identities and behaviours than the UK's protection on the basis of gender reassignment. However, its alternate conflation with *sexual orientation* in other US legislation is itself reflective of intersectional dynamics that differentially influence transgender individuals' identities and experiences (cf. Monro & Richardson, 2010). Specifically, it is reflective of the hegemonic normativity of coincident gender-congruence and heterosexuality. This conflation of transgender identity and non-heterosexuality is variably seen by proponents as a mutually beneficial community of inclusion and by critics as a diversion from the inherently sexed underpinnings of sexual identity and behaviour (cf. Webster, 2022). As such there are evidently overlapping forces and issues, in both the UK and the USA, that impact upon the experiences of specific actors within existing structures and mechanisms of socio-legal recognition and protection. These differential experiences exist both *within* the transgender social categorisation and *between* transgender and other social categories. Feasible solutions to continuing inequalities would need to consider these intersectional dynamics in future consideration of how equality legislation represents, recognises and protects transgender identities and behaviours.

There is also a simultaneous conflation and implied hierarchical distinction between sex and gender in varying forms of socio-legal recognition. Equality legislation distinguishes between sex and gender (i.e. expression, identity, reassignment) as separate protected characteristics. Indeed, albeit in very specific circumstances, organisations are legally entitled to discriminate on the grounds of gender reassignment in order to maintain protections on the grounds of sex. As such, in the UK at least, there is implied competition and hierarchy between sex and gender, with sex assigned at birth being prioritised over acquired gender. Indeed, the prioritisation of sex in the West is reflected in the reliance on sex markers, rather than gender markers, for identity documentation. However, the capacity for individuals to amend identity documentation on the basis of acquired gender, rather than sex assigned at birth, implies a simultaneous conflation of the two in some forms of socio-legal recognition.

There is evidently a plurality of perspectives among nation states on how far gender and sex can be conflated via identity documentation, between the extremes of self-declaration and state-enforced sterilisation. Of course, these differential prerequisites to procuring identity documentation matching an acquired gender identity – albeit conflated with a sexed identity – engender, themselves, plural perspectives on their necessity, their accessibility and (*crucially*) their humanity. Self-declaration – sometimes referred to as self-identification – is perhaps considered the ‘gold standard’ of transgender identity recognition in the form of legal documentation. Proponents cite agency and autonomy over gender identity, whilst critics cite an erosion of existing rights allocated on the basis of sex. There is, at the least, a *perception* from some that interests regarding sex and gender (reassignment) exist in competition with one another in various contexts of socio-legal recognition. Specifically, when gender and sex are conflated in identity documentation, there exists the potential for the erosion of the hierarchy between sex and gender (reassignment) in some equality legislation. That is, if sex recognition is gained via identity documentation without medico-legal gatekeeping, the lawful bases for discrimination on the grounds of gender reassignment to maintain protections on the grounds of sex may appear to dissipate. At the same time, where identity recognition is not possible without significant medical intervention that is not universally accessible (or desirable), the conventionally presupposed rights to live with freedom and dignity are called into question. As such, there are intersecting forces and dynamics at work that differentially influence the lives, experiences and (possible) practices of individuals on the basis of the simultaneously hierarchical relationship between and conflation of gender and sex. It is these contestations that are at the heart of recent movements towards politico-legal regress in the UK and the US.

There are evidently plural perspectives on transgender recognition in the West, from both legislative and social positions. At present, the antagonism over how transgender socio-legal recognition may – or may not – be extended has devolved to a point where there is no tolerance on either side for alternative viewpoints. As such, there is zero potential for critically assessing the justification for specific action – or, in some cases, *inaction*. Indeed, the competition between some transgender and sexed identities requires a specific consideration of the un/intended consequences of proposed action(s) if a feasible state of ceasefire is to be reached and justice might be seen to exist. Again, I do not purport here to have the answers. Rather, this case study simply highlights the problems inherent in intersectional and lateral power struggle when seeking social change.

Conclusion

In the same vein as Fairclough and Fairclough’s (2018) ethical critique, I sought in this paper to highlight the benefit of a commitment to plurality, tolerance and criticality (cf. Hautamäki, 2020) in CDS research. Specifically, I focused on the importance of considering intersecting interests and lateral power struggle in the identification of potentially detrimental outcomes, whether real or only perceived, for proposed social transformation(s). Instead of proposing action on the basis of my own subjectivities, the case study exploring the existing issue of transgender socio-legal recognition highlights how perceptions of competing interests along intersecting axes of power (i.e. gender and sex) might influence the ethical justification for proposed action(s). At the very least, it highlights the significant influence of viewpoint relativism on the analysis and evaluation of specific social formations.

This somewhat radical approach to highlighting the role of intersectionality in the ethical and conceptual underpinning of critical discourse studies will likely not be without its own critics. However, I contend that CDS must account for lateral struggle when considering the intersections of power and oppression if it is to engage in the ethical critique it seeks. In a world of ever-increasing awareness of the interconnected systems of dominance, resistance and transformation, embedding critical relativism in the teleology of CDS is imperative if it is to evolve and maintain relevance as an approach to meaningfully analysing discourse and championing social change. At the very least, acknowledging the potential consequences of transformation outwith the de(con)struction of dominant structures allows research audiences and relevant publics the means to generate their own conclusions about the ethics, benefits and harms of a study's proposed course of action.

Note

1. Legal recognition for federal documents (i.e. passports) in these nations is possible with varying medio-legal requirements. State and territorial identity documents (e.g. driver's licenses) are not changeable in all jurisdictions and/or have more stringent medico-legal prerequisites.

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Notes on contributor

Dr Lexi Webster is the Deputy Director of Digital Humanities at the University of Southampton. Lexi's research primarily combines corpus linguistics and socio-cognitive discourse studies to explore identity constructions, behaviours and cognitive models, including the implications they have for actors, institutions and social structures. Thus far, this research has extended primarily to an exploration of gender and sexuality in online discourses, focusing on the connections and divisions that are (re)constructed between and within social groups and social contexts.

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