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ORIGINAL ARTICLE

Gender (de)certification and the home: A new focus for feminist legal scholarship?

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Abstract

This article considers three sites that draw out the contemporary role of gender categories in the home in the context of a wider project on gender decertification. Firstly, the presence of those who are employed to do care work in the home. Secondly, the introduction of the Domestic Abuse Act 2021 and the way in which the parliamentary debates surrounding the introduction of the DAA highlight appropriate and inappropriate areas of legal intervention in the context of gendered 'intimate' relationships. Finally, the ways in which gender categories are understood in the interactions between schools/children and parents. Overall, this article argues that contemporary discourse on gender categories and trans inclusion/exclusion has primarily focused on issues within the public sphere, while the realm of the private sphere has been somewhat neglected and would benefit from a renewed focus on feminist engagements with the ways in which gender categories and norms are constructed and reinforced in this setting.

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1 | INTRODUCTION

Feminist legal scholarship, both within and beyond the *Journal of Law and Society*, has long engaged with the role of gender and its intersection with the public/private distinction. As feminist legal scholarship has grown and diversified it has become ever more challenging, if not impossible, to succinctly summarise one singular ‘feminist position’ on this topic, especially given that it would be more accurate to speak of *feminisms* in the plural in this context. Feminist legal theory has also become increasingly more embedded in different legal areas themselves, from family law to labour law, to criminal law. At the same time, law itself has become at least on its face more gender neutral, both in its actual language¹ and its content, if one thinks, for example, of the change in the definition of sexual violence in the *Sexual Offences Act 2003*. Nevertheless, in the context of the specific area of gender certification and transgender jurisprudence in particular, much of this longstanding feminist work has in recent years been eclipsed by an intense focus on the role gender categories can and should play in the inclusion/exclusion of trans people and their legal protections.² In doing so, some strands, of what are now often called gender-critical perspectives, have ignored the longevity and the plurality of feminist work on gender in favour of a more monolithic vision of feminism.³

Reflecting on the breadth of engagement in feminist legal theory with the public/private distinction, in this article, I seek to highlight the importance of this body of work for contemporary disputes about gender categories and gender decertification. Drawing on work emerging from the Future of Legal Gender (FLaG) project, this article will consider three sites that sit at the boundary of the public/private distinction and which in different ways highlight the ongoing relevance of, and disputes about, the role of gender certification in much of our everyday life. Firstly, this article will consider the regulation of the presence of those who are employed to do care work in the home and to what extent an employer can legitimately specify the sex/legal gender of those working in this setting. Secondly, the introduction of the Domestic Abuse Act 2021 (DAA) and the way in which the parliamentary debates surrounding its introduction highlight what are deemed to be appropriate and inappropriate areas of legal intervention in the context of gendered ‘intimate’ relationships. Finally, this article will turn to the ways in which gender categories, and information being provided about them, are understood in the interactions between children, parents and the English education system.

2 | DECERTIFICATION

The FLaG project was a 4-year research project funded by the Economic and Social Research Council from 2018 to 2022 to explore the current British system which registers and assigns sex at

¹ E. Grabham, ‘Exploring the Textual Alchemy of Legal Gender: Experimental Statutes and the Message in the Medium’ (2020) 10(2) *Feminists@law*

² For a discussion of some of the challenges created by the current climate, see, e.g., D. Cooper ‘What Does Gender Equality Need? Revisiting the Formal and Informal in Feminist Legal Politics’ (2022) 49(4) *J Law Soc* 800–823; M.A. Walters, ‘Legalizing Transphobia: From Courtroom to Legislature, How Gender-Critical Activism Is Hurting Us All’ (2024) *J Law Soc* 343–366.

³ See, e.g., D. Cooper, ‘A Very Binary Drama: The Conceptual Struggle for Gender’s Future’ (2019) 9(1) *Feminists@law*

birth and then uses that sex marker to create a corresponding legal gender status.⁴ Having a legal gender begins with birth registration as female or male and stays with that person throughout their life unless they undergo a formal/legal change of gender.⁵ Obtaining a gender recognition certificate under the *Gender Recognition Act 2004* changes a person's legal gender and sex on their birth certificate, although other types of ID documents operate independently of this. Otherwise, the presumption in law is that a person's legal gender is the sex they are registered with at birth.⁶

The FLA project asked: What would be the implications in England and Wales if the current 'certification' system, which accords people a legal sex and gender, was dismantled so that sex and gender were no longer legally assigned and controlled statuses? Would changing how the law assigns and regulates membership in sex and gender categories help or hinder the challenging work of undoing gender and other forms of systemic and structural inequality?⁷ While the role gender categories should or should not play in public life is currently hotly contested in political and public discourse, something that became very evident in all stages of the FLA project, the same cannot be said in this context for the role of gender categories in private life.⁸ While feminist legal scholars have long challenged the public/private divide and the function of the family within this, the role of gender in the home has been largely absent from many of the more prominent contemporary discussions of the meanings and functions of gender categories and particularly the issue of how these relate to trans inclusion or exclusion. To some extent, the home, then, acts like a missing puzzle piece in these discussions; one can see its shape from the outline made by the pieces around it, but its colour or pattern can only be guessed at.

This is at least in part due to the fact that private life is subject to less legal intervention than public life, and the legal intervention that does take place has uneven effects. In this article, I will consider three examples that draw out the contemporary role of gender categories in the home, namely the presence of those who are employed to do care work in the home, the passing of the DAA and the parliamentary debates surrounding it and, finally, the interaction between schools/children and parents. Overall, these suggest that feminist legal scholars working in the area of gender (de)certification and transgender jurisprudence need to renew their attention to the way in which law and politics intersect in the familial space of the home when it comes to analysing the function and operation of legal gender categories.

Over the last decade or so, there has been intense public, political and legal debate about the role gender categories should play in a range of different contexts from changing rooms in department stores to prisons and amateur and professional sports.⁹ For example, in July 2022, both the Rugby Football Union and the Rugby Football League updated their policies to limit participation

⁴ D. Cooper, R. Emerton, E. Grabham, H.J.H. Newman, E. Peel, F. Renz, J. Smith, *Abolishing Legal Sex Status: The Challenge and Consequences of Gender Related Law Reform*. King's College London (2022).

⁵ F. Renz, *Gender Recognition and the Law: Troubling Transgender Peoples' Engagement with Legal Regulation* Routledge (2024).

⁶ D. Cooper and F. Renz, 'If the State Decertified Gender, What Might Happen to Its Meaning and Value?' (2016) 43(4) *J Law Soc* 483–505.

⁷ D. Cooper and R. Emerton, 'Pulling the Thread of Decertification: What Challenges Are Raised by the Proposal to Reform Legal Gender Status?' (2020) 10(2) *Feminists@law*.

⁸ E. Peel and H.J.H. Newman, 'Gender's Wider Stakes: Lay Attitudes to Legal Gender Reform' (2020) 10(2) *Feminists@law*.

⁹ See, e.g., D. Cooper, 'A Very Binary Drama: The Conceptual Struggle for Gender's Future' (2019) 9(1) *Feminists@law*; S. Cowan et al., 'Sex and Gender Equality Law and Policy: A Response to Murray, Hunter Blackburn and MacKenzie' (2021) 30(1) *Scottish Affairs* 74–95; F. Renz, 'Gender-Based Violence Without a Legal Gender: Imagining Single-Sex Services in Conditions of Decertification' (2023) 31(1) *Feminist Legal Stud* 43.

in women's rugby to players who were assigned female at birth, thereby excluding transgender women and non-binary people.¹⁰ This decision had been preceded by several years of intense and highly acrimonious campaigning by trans groups, anti-trans groups and current and former rugby players about this issue. This offers just one of a large number of possible examples of instances where policies around gender categories and their effect in public settings have been contested by various interested parties over the last decade.¹¹ While such contestations have primarily focused on whether trans women and girls should be included in different kinds of public settings, they of course also implicitly serve to construct and deconstruct broader norms and assumptions around gender and gender categories for everyone. For instance, in the case of the new rugby policy, the public discourse is underpinned by assumptions about who is suited to playing contact sports, who can be trusted to make an informed decision about risk rather than having someone else make it for them, and whose bodies are inherently perceived as carrying more risk while other bodies are perceived as more vulnerable. While one might instinctively feel that, as a relatively high-risk contact sport, rugby requires stricter policies around safety, and that those might extend to sex/gender-based exclusion measures, it should be noted that wheelchair rugby (also known colloquially as 'murderball', which gives an indication of the level of risk and contact involved) has been played in mixed-sex teams for the last 20 years without significant issues, making trans exclusion in standard rugby far from the only option.¹²

3 | DOES DECERTIFICATION MATTER IN THE HOME?

One of the challenges for the FLA project was identifying instances where gender categories and a person's legal gender still matter in the present day. In some ways, intense public debates about specific flashpoints might be considered to be aiding this task because they can serve to identify such legal areas. However, these contestations have so far primarily focused on the realm of public life broadly defined, while the role of gender categories in the home in contrast has been largely untouched in the context of these specific debates.¹³

As leading feminist legal scholars including Katherine O'Donovan,¹⁴ Alison Diduck¹⁵ and Joanne Conaghan¹⁶ have long argued, the public/private dualism, where the public sphere stands for political power and the wider public world and the private encompasses primarily the world

¹⁰ England Rugby, 'Gender Participation' (2 August 2022) <<https://www.englandrugby.com/the-rfu/policies/gender-participation>>

¹¹ See, e.g., the decision by the International Chess Federation in 2023 that trans women would not be eligible to compete in women's competitions: FIDE, 'FIDE Regulations on Transgender Chess Players' Registration on FIDE Directory' (2023) <<https://handbook.fide.com/chapter/TransgenderRegulations>>

¹² World Wheelchair Rugby, 'International Rules for the Sport of Wheelchair Rugby' (2023).

¹³ For instance, the campaign group Sex Matters only focuses on the public sphere in its list of areas 'where sex matters' and therefore should remain a legally recognised category, for instance, by highlighting the 'problem' of employers who follow a self-ID approach and in the process 'disregard the needs and beliefs of others': Sex Matters, 'The Workplace' (n.d.) <<https://sex-matters.org/where-sex-matters/the-workplace/>>

¹⁴ K. O'Donovan, 'Public and Private Feminist Legal Debates' (1996) 18 *Adelaide Law Rev* 113–116.

¹⁵ A. Diduck, 'Public Norms and Private Lives: Rights, Fairness and Family Law', in *Rights, Gender and Family Law*, eds J.A. Wallbank, S. Choudhry and J. Herring (2009) 207–226.

¹⁶ J. Conaghan, 'Following the Path to Equality Through Law: Reflections on Baker et al., Equality: From Theory to Action' (2007) 13(2) *Res Publica* 159–170.

of the familial, has traditionally served to shore up patriarchal power in the family and wider public life. Susan Boyd¹⁷ identifies the public/private divide as the root cause of many facets of inequality from reproductive rights to the effect of domestic violence on aboriginal women. The impact of the public/private distinction has been further facilitated by the construction of gender in general, as well as legal gender, as a binary that maps fairly neatly onto this public/private dualism. Private life, generally on grounds of 'privacy', is often subject to less direct legal interventions, barring regulatory structures such as water, planning and electricity that affect the home as a building itself. However, as Olsen (1993) notes, the idea of 'privacy' is far from incontestable and is of course clearly political as much feminist scholarship has explored.¹⁸

The legal intervention that does exist in turn often enforces wider normative understandings of the 'good' family. In practice, this means that those whose family lives are deemed less acceptable and particularly those who need to rely to a greater degree on the welfare state will be affected more frequently by various legal frameworks than those who do not. Hence, one of the few legal frameworks that explicitly engages with gender categories in the home are the rules governing what it means for a property to be overcrowded and therefore unsuitable for tenants who are relying on local authorities and state benefits for housing.¹⁹ These rules specify that if two people over the age of 10, who are of the opposite sex, have to share a room, the premises are overcrowded. Here, legal gender categories primarily signify a greater or lesser need for privacy depending on the legal gender of the young people involved. Implicitly this focus on biological sex is intended to tackle an underlying concern about incestuous sexual relationships between heterosexual young people that are presumed to share a familial relationship if they are living in the same home, which one could argue affirms again that legal intervention in the home mostly occurs to distinguish acceptable or normal behaviour from unacceptable behaviour.

There are also other instances where law intervenes indirectly in the private sphere of the home, by determining how familial relationships relating to gender categories between individuals should be characterised, for example, by confirming that someone can legally be a man but also the mother of a child, as happened in the case of Freddie McConnell, or by giving lesser legal status to unmarried male partners when it comes to children and parental responsibility.²⁰ However, such legal categorisation does, of course, not determine how the parties involved would actually describe or characterise their relationships amongst each other, but rather determines how the state perceives them in the more public facing process of registering a birth.²¹

3.1 | Home and employment

However, for the remainder of this article, I would like to consider three examples where the role of gender categories is not made so explicit, but, nevertheless, offers some crucial challenges for future feminist jurisprudence work in thinking through and potentially highlighting the way in which law can serve to further embed gender norms and gendered assumptions that any decertification project would need to address. Particularly, through the implicit use of gender categories

¹⁷ S.B. Boyd (ed), *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* University of Toronto Press (1997).

¹⁸ F. Olsen, 'Constitutional Law: Feminist Critiques of the Public/Private Distinction' (1993) 10 *Constitutional Commentary* 319.

¹⁹ Ss. 314–325 Housing Act 1985.

²⁰ *R (McConnell and YY) v Registrar General for England and Wales* [2020] EWCA Civ 559.

²¹ S.33 Births and Deaths Registration Act 1953.

that is often invisibilised or perceived as so 'normal' that it falls outside the remit of law. Other than the specific issues of registration, gender categories in a legal sense are mostly only relevant in the context of the private home in instances where the *Equality Act 2010* is potentially applicable, that is where the home becomes a place of employment or service provision. For instance, it would be permissible for someone to advertise for a live-in carer of a specific sex as long as this is a proportionate way of meeting a genuine occupational requirement.²²

This is further supported by Regulation 9 of the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*, which affirms that in the provision of care, the care and treatment provided should reflect the service users' preferences. In a case involving Warwickshire County Council, the Local Government and Social Care Ombudsman noted that for the purposes of providing intimate care the dignity of the service user is paramount and therefore even though there is no legal requirement to provide same-sex carers, a provider should make every effort to do so.²³

This would suggest that in the context of care the legal gender of both the person receiving care and that of the person providing it, is still considered relevant to the extent that there is a legal presumption that it is always better to receive care from someone of the same sex. It is notable that this case was brought on behalf of a young woman, given that the majority of care workers continue to be women, with more than 80% of roles in social care currently filled by women.²⁴ This would presumably pose a serious hurdle to any man who would prefer receiving care from another man, given that it will be disproportionately harder to find suitable care workers. One could speculate that women are inherently seen as more suitable and potentially less 'risky' workers in a care context, given long-standing social norms around the gendered nature of care work and that therefore the limited availability of male care workers may be more of a theoretical than actual problem. However, such exemptions from the *Equality Act* prohibition against discrimination based on the protected characteristic of sex are not just limited to the issue of care work, for instance, although in a rental context, it is generally unlawful discrimination to specify a prospective tenant's sex, a live-in landlord can lawfully specify a preference for a specific sex without violating the *Equality Act's* prohibition on sex discrimination.²⁵ Although in this instance, there is no a detailed justification for this exemption based on case law, one can assume that this is most likely seen as permissible discrimination based on similar perceptions of modesty, dignity and specific understandings of safety.

In general, fewer anti-discrimination and labour law protections are offered in the home, especially if the employee is treated as part of the family.²⁶ This has posed particular challenges for live-in childcare workers, especially nannies and au pairs, who are frequently not covered by anti-discrimination and certain labour rights protections. This deviation from legal rules is specifically justified on the basis that (a) this work takes place in the private space of the family home and (b) workers in this context are seen as being part of the family rather than as traditional

²² Sch 9(1) Equality Act 2010; Equality and Human Rights Commission, 'Frequently Asked Questions About What Is Lawful Advertising for: Jobs; Goods, Facilities and Services; and Accommodation' (2016) <https://www.equalityhumanrights.com/sites/default/files/advertising_-_faq.pdf>

²³ See also Local Government and Social Care Ombudsman, 'Not Providing Same Sex Carers Can Impact Dignity, Says Ombudsman' (2014) <<https://www.lgo.org.uk/information-centre/news/2014/nov/not-providing-same-sex-carers-can-impact-dignity-says-ombudsman>>

²⁴ Skillsforcare, 'Recruiting New Demographics Into Social Care' (2018) <<https://www.skillsforcare.org.uk/About-us/Our-policy-positions/Capacity/Recruiting-new-demographics-into-social-care.aspx>>

²⁵ Schedule 5(1)–5(3) Equality Act 2010.

²⁶ See, e.g., *Jose v Julio* [2011] 12 WLUK 220.

employees. Again, it seems worth noting that most workers in this context will be female, and the work they are carrying out has often not been seen as traditional employment for women, due to it being characterised as inherently gendered behaviour that supposedly comes more ‘naturally’ to women. Therefore, these exemptions from existing legislation are certainly not purely benign, or offered solely in the interest of preserving a sense of dignity, but do further the exploitation of a predominantly female workforce by excluding them from crucial labour law standards. This, therefore, offers one area where the challenge of gender decertification, and how this would impact existing legal rules and norms, also sheds light on the continuing role of gender norms in this somewhat grey boundary area of the public/private divide.

3.2 | Domestic Abuse Act 2021

The home then continues to be treated differently than the public sphere when it comes to the wider issue of gender equality. Hence, anti-discrimination policies have limited application in this context unless the home also simultaneously functions as a formal business or employment setting and even fewer protections are available to address potential bias than would be applicable in other contexts. The hybrid status of in-home employment, which seems to fall somewhat between the public/private distinction but also generally involves obviously gendered forms of labour, can clearly be seen in the government’s recent deliberations around the 2021 *Domestic Abuse Bill*, which later became the DAA.²⁷

The DAA describes domestic abuse as involving parties A and B who ‘are personally connected to each other’ and that ‘personally connected’ for the purpose of this legislation means relatives and romantic relationships regardless of whether these are underpinned by a formal legal relationship.²⁸ In some ways, the DAA has made significant progress in addressing domestic abuse, as it recognises forms of abuse, such as coercive control, that often disproportionately impact women and were not previously covered by other types of legislation. However, the government in proposing the DAA wanted to explicitly exclude personal assistants and carers supporting disabled people, who are employed in the home, from the remit of the DAA, despite the fact that these are generally also ‘intimate’ relationships as this was not seen as the proper scope for legislation on ‘domestic’ abuse.²⁹ Baroness Williams of Trafford, as then Minister of State, in introducing the Bill in the House of Lords argued that domestic abuse is about ‘affectionate emotional bonds’ between two parties and therefore cannot be committed by both paid and unpaid carers and that, further, paid carers are involved in different ‘power relationships’ and because of this should be excluded from the definition of domestic abuse.³⁰

The government in a later stage of the debate rejected amendments made by a group of disabled peers that would have included care work, whether paid or unpaid, in the definition of intimate relationships. While ill-treatment and neglect are in principle covered by the *Criminal Justice and Courts Act 2015*, this is unlikely to cover many of the more subtle forms of abuse in the context of care work and the debate around the *Domestic Abuse Bill* repeatedly highlighted that protections

²⁷ Domestic Abuse Bill (as amended in committee) <<https://publications.parliament.uk/pa/bills/lbill/58-01/171/5801171.pdf>>

²⁸ Ss.1-2 Domestic Abuse Bill.

²⁹ Disability News Service, ‘Disabled Peer Secures Victory Over Government on Domestic Abuse Bill’ (11 March 2021). <<https://www.disabilitynewsservice.com/disabled-peer-secures-victory-over-government-on-domestic-abuse-bill/>>

³⁰ Hansard, ‘Domestic Abuse Bill’ (8 March 2021) 810, Column 1375.

for disabled people in this area were generally inadequate. This gap in the DAA seems to highlight the ongoing challenge of treating the home as a private space, and therefore a space of safety and support, in the context of domestic and gender-based violence where the home is generally anything but a safe space given that, firstly, most abuse takes place in a domestic setting and, secondly, disabled people are disproportionately at risk of experiencing abuse by people caring for them, whether paid or unpaid.³¹ These are of course also deeply gendered relationships, with disabled women being at an increased risk of abuse compared to men and, as mentioned above, carers are also disproportionately likely to be women.

In contrast, in the context of current public debates around the role gender should play in public life, the home almost seems to function as a protean gendered space, where gender can exist and develop in all kinds of ways, but one that is largely imagined as untouched by outside influences, and particularly legal intervention or certification of gender categories. For instance, while the recent government consultation on bathroom provision in public spaces attracted a significant amount of responses including from NGOs, political parties, architects and those opposed to trans inclusion³²; in the context of the home, relatively little attention is paid to bathrooms and the gendered bodies that utilise them, other than in the context of building regulations setting minimum standards for new or converted dwellings when it comes to bathroom provision. While the addition of more bathrooms to private homes suggests a broader move towards increased bodily privacy, this is not an area that has received particular public, legal or political attention. This seems somewhat emblematic of the wider terrain, where both so-called gender critical advocates and those treating gender as a matter of personal identity formation, focus primarily on the perceived danger posed by imagined strangers in the public sphere, while the home instead provides a supposed setting of privacy and security and distance from the outside world.

3.3 | Gender and education

One final instance where gender categories and their certification seem to implicitly carry some relevance for the home is when it comes to educational efforts around gender categories and gender as an identity and how such efforts impact the protected space of the home. Attempts towards trans and non-binary inclusion in settings involving children and young people are understood by some as either imposing trans identities on children against the wishes of parents or carers or as harming children by exposing them to the supposed danger posed by trans children.³³ This can be seen at an official level by the Department for Education's 2023 draft guidance on 'Gender Questioning Children' in schools,³⁴ which the then government argued was taking a 'parent first

³¹ See, e.g., M. Warrington, "I Must Get Out": The Geographies of Domestic Violence' (2001) 26(3) *Transactions of the Institute of British Geographers* 365–382; R. Pain, 'Whither Women's Fear? Perceptions of Sexual Violence in Public and Private Space' (1997) 4(4) *Int Rev Victimology* 297.

³² LGBTQIA+ Greens 'Response to the Government Consultation on "Toilet Provision for Men and Women"' (2021) <<https://lgbtqiqa.greenparty.org.uk/2021/02/10/response-to-the-government-consultation-on-toilet-provision-for-men-and-women/>>; Fair Play for Women, 'Gender-Neutral Toilets: Our Response to Government's Call for Evidence on Toilet Provision in the UK' (2021) <<https://fairplayforwomen.com/toilet-provision-in-the-uk/>>

³³ F. Renz, 'The Challenge of Same-Sex Provision: How Many Girls Does a Girls' School Need?' (2020) 10(1) *Feminists@law*.

³⁴ Department for Education, 'Gender Questioning Children: Non-Statutory Guidance for Schools and Colleges in England' (2023) <https://consult.education.gov.uk/equalities-political-impartiality-anti-bullying-team/gender-questioning-children-proposed-guidance/supporting_documents/Gender%20Questioning%20Children%20%20nonstatutory%20guidance.pdf>

approach'.³⁵ The guidance is particularly notable for seemingly either disregarding or seeking to disapply the non-discrimination rules for the protected characteristic of gender reassignment as applicable to young trans and non-binary people in an education setting. In doing so, the guidance, both implicitly and explicitly, seems to rank the views of parents about their child's gender as more important than either the views of education professionals or those of the child in question.

The government is hardly alone in its particular concern about gender categories in education, for instance, the lobbying group Transgender Trend created a children's book specifically intended for parents in order to address 'concerns about the new sex education and relationships lessons' in response to the new relationship and sex education curriculum.³⁶ The book is meant to counter other understandings of sex and gender categories that children might be exposed to outside the home. Similarly, an edited collection involving the same campaigners argues that children are 'transgendered' by medicine, social policy and the law against the wishes of parents and that, consequently, parents need to use the private space of the home to fight back against this.³⁷ Other pieces by the same group argue that LGBTQ children are not rejected by their families but rather are the ones rejecting their families due to 'the policies of schools, summer camps, therapists, doctors and social communities [which] reinforce the notion that being trans is cool [sic] and normal and should be supported no matter what'³⁸ or that an increase in children identifying as non-binary or trans could be due to 'the increase in sexual harassment and sexual assault at schools'.³⁹ The idea that it is possible to move between gender categories, or live outside them, is then portrayed in these accounts as an outside influence from either well-meaning educators and medical professionals, or one that derives from experiences of sexual violence in the public space of the school, which the private space of the home needs to safeguard against.

On a more individualised level, the parenting forum Mumsnet frequently features in its 'Feminism Chat' section posts from parents who are concerned about the role outside influences might have on their child's understanding of gender and gender categories. In just the 3 month period from 1 January 2021 to 1 April 2021, 20 separate threads were created in this forum that involved posters asking others for advice about how to engage with their children on the matter of gender and gender categories.⁴⁰ These threads are primarily characterised by a fear of outside influences that might encourage children to hold particular views about sex and gender categories. In particular, and in line with gender-critical lobby groups campaigning on this issue, a majority of these threads express concerns over the influence schools have on children. As one poster explained:

My son has been like this since he was toddler buying his first shoes[...]. I don't think it's an influence from anyone, he's just obsessed with sparkles. My main concern is that the

³⁵ Department for Education, the Rt Hon Kemi Badenoch MP and the Rt Hon Gillian Keegan MP, 'Parent First Approach at the Core of New Guidance on Gender Questioning Children' (2023) <<https://www.gov.uk/government/news/parent-first-approach-at-the-core-of-new-guidance-on-gender-questioning-children#:~:text=The%20draft%20guidance%20clarifies%20that,before%20any%20decision%20is%20taken>>

³⁶ Transgender Trend, 'My Body Is Me! by Rachel Rooney and Illustrated by Jessica Ahlberg' (n.d.) <<https://www.transgendertrend.com/my-body-is-me/>>

³⁷ H. Brunsell-Evans and M. Moore (eds), *Transgender Children and Young People: Born in Your Own Body* (2017).

³⁸ T. Traster, 'Trans Kids May Reject Family, Not the Other Way Around' (2020) <<https://www.transgendertrend.com/trans-kids-reject-family-not-other-way-around/>>

³⁹ Transgender Trend, 'Breast Binding, Sexual Objectification & Grooming' (2019) <<https://www.transgendertrend.com/breast-binding-sexual-objectification-grooming/>>

⁴⁰ A total of more than 1,000 posts spread across the 20 threads, with an average of 54 individual posts per thread.

*school will push him in a direction he's not going to naturally go by himself. The school have already asked me to suggest some lgbtq books which I've got no idea on. So I think they see my son in his pink shoes and assume he's likely gay or wants to be a girl. I'm not anti trans or anti anyone, i just don't want my son being pushed or influenced in any direction.*⁴¹

Here gender and gender categories, as well as sexuality, are seen as something that might involve undue influence or as something that one can be pushed into by others, while gender expression prior to school entry is seen as not involving any other influences and is somehow more natural ('he's just obsessed with sparkles'). In response, another poster urged the original poster to communicate to the school immediately that her 'child be taken out of class for any lessons using Stonewall's material' presumably to avoid further outside influence from an explicitly pro-LGBTQ+ organisation.

While schools are the most frequent area of concern, there is also a focus on online communities and the influence of children's peers, many of which they would of course encounter in school. For instance, two posts in one thread focused particularly on how these ideas are communicated amongst young people:

My own [daughter] is very nearly 10, I am terrified of the time coming when she will be exposed to all this. I'm not sure they talk about it yet and she doesn't have a wide social circle so don't think they discuss it yet thankfully. Thank you for the comments above, it's good to have some ideas on how to discuss it when it does happen as I don't think the trend will be gone by the time she starts secondary school.

*I started discussing this stuff with the kids at a pretty young age because I didn't want to run the risk of schools/peers getting to [my child] first. It's worked out well as they have a very good handle on what's been happening, and they can provide reasoned logical discussion and debate with their friends. Which helps them too.*⁴²

Here parents are seen as needing to take pro-active steps ('discussing this stuff') to ensure their child is first exposed to understandings of sex/gender by their parents, rather than through peer groups or in schools. Notable here is the language of different understandings of gender being a 'trend' that one should 'debate', while the information provided in the home is seen as being underpinned by 'reasoned logical discussion', thereby implicitly making all other understandings illogical. In another thread, a poster explicitly drew on the language of disease transmission to explain why her daughters' understanding of gender was different to that of herself and her sons:

To make things worse, my family members all have strong autistic traits (some are diagnosed with ASD). I am convinced that our [daughters'] confusion is because of their awareness that they don't fit comfortably in society, and social media and social

⁴¹ Musment, 'Stonewall at School and My SON Likes to Wear "Girls" Clothes' (2021). <https://www.mumsnet.com/Talk/womens_rights/4164786-stonewall-at-school-and-my-son-likes-to-wear-girls-clothes>

⁴² Mumsnet, 'Where Are Kids Learning About Gender and Sexuality?' (2021) <https://www.mumsnet.com/Talk/womens_rights/4187096-Where-are-kids-learning-about-gender-and-sexuality>

*infection has put this idea in their heads that the reason they don't fit may be that they are trans.*⁴³

In these accounts, both individual and at a group level, the outside world becomes a space of danger regarding gender categories and their manifestation, in which authorities and peers may exert undue influence on young people and children that would run counter to the understanding of gender that has been communicated at home. Particularly striking is the language of 'infection' or contagion, where the assumption is that outside understandings of gender categories may infiltrate the private space of the home in the same way as a potentially dangerous virus would and which being autistic somehow makes a person more vulnerable too.

Consequently, a number of posters expressed relief at the fact that their children had been confined to the home due to Covid-19 and therefore were less influenced by others, while others highlighted that they had banned the watching of specific TV channels, such as the BBC/CBeebies that they saw as running counter to their own views on gender.⁴⁴ The inclusion of CBeebies also suggests that the age groups where parents worry about outside influence are getting younger. For instance, in 2022, there was significant outrage on social media and in the news about a reading group for toddlers in a local library featuring a new gender-neutral alien mascot.⁴⁵ The home then provides an important space of distance from this perceived and dangerous imposition of gender by others, which in turn largely invisibilises the ways in which gender and notions of gender categories matters in the home, be that in the allocation and doing of domestic labour, behavioural norms, religious practice or informal dress codes.

4 | CONCLUDING THOUGHTS

The three examples discussed here of employment in the home, the expansion of domestic violence legislation, and the impact of education and social settings on children and their parents, highlight the persistence of gender categories and gendering processes in the context of the public/private distinction. While all three could be seen to fall solely within the private sphere of the home, they also clearly intersect with the public domain and in particular with different kinds of attempts at legal regulation, from employment law to criminal law, to education policy and its interaction with equality law. While there has been longstanding feminist engagement with these different issues, in contemporary debates about the persistence and relevance of gender categories and the question of trans inclusion/exclusion, such feminist engagements have been somewhat overshadowed by the sheer intensity of the focus on more public sphere-oriented issues.

The fact that gender categories often operate in subtler and less visible ways in the home than they do in the wider public sphere means their impact and function are less frequently challenged in contemporary public and legal debates about the continuing relevance of gender certification than the impact of gender categories in more public settings. However, this does not mean that their impact is any less significant in the home than it is in public. In many ways, the

⁴³ Mumsnet, 'Do You Talk About This at Home?' (2021) <https://www.mumsnet.com/Talk/womens_rights/4158749-Do-you-talk-about-this-at-home>

⁴⁴ Mumsnet, 'The BBC Is Pushing an Adult Trans Activist Agenda Onto Children' (2021) <https://www.mumsnet.com/Talk/womens_rights/4146015-The-BBC-is-pushing-an-adult-trans-activist-agenda-onto-children>

⁴⁵ J. Reaidi, 'Outrage Over "Trans" Herts Libraries Children's Mascot Tala' (2022). *Watford Observer* <<https://www.watfordobserver.co.uk/news/22968261.outrage-trans-herts-libraries-childrens-mascot-tala/>>

three examples chosen here, where issues sit at the boundaries of the public/private distinction, also parallel the process of gender certification more broadly in that law seeks to 'simply' assign them into either realm, with the issue of carers or personal assistance, for instance, being seen as a matter for employment law rather than as an 'intimate relationship' subject to the DAA. Conversely, matters affecting children are seen as a private matter in which a child is effectively private property of its parent, who thereby becomes the only acceptable source of any 'gendering' processes. Given the somewhat murky boundary status of these different settings and examples, they are nevertheless crucial sites in which to investigate the persistence and intended as well as unintended effects of legal gender certification. As such, it seems important this terrain is not simply ceded to a more conservative understanding of gender and gender categories and that instead there is a renewed focus by feminist legal theorists working in this area on the ways in which gender categories operate in the private space of the home in this context.

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