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# ‘An impossible dream’? Non-binary people’s perceptions of legal gender status and reform in the UK

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## ABSTRACT

The meaning and significance of gender is currently a focus of heated and, often, polarised debate in the UK and elsewhere. This article provides a new perspective in the gender debate through focused exploration of UK-based non-binary people’s perceptions of legal gender status and reform. Binary gender/sex systems, such as the legal gender system in the UK, are underpinned by cisgenderism and are challenged by those whose identity falls outside of the binary of woman and man. In contrast to most lay participants in the *Future of Legal Gender* (FLaG) project, the majority of non-binary participants reported support for reform (85.5% (n = 165) in favour) to the current UK legal gender system. Over half (57%, n = 110) were in favour of abolishing legal gender (i.e. the state would no longer assign a legal gender status), although this was constructed as ‘an impossible dream’. Situating non-binary people’s perspectives at the heart of the debate about the certification of gender offers novel insight which could have significant ramifications for how societal structures could support undoing gender in the future.

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non-binary; gender; legal change; social change

## Introduction

The meaning and significance of gender is currently a focus of heated debate in the UK and elsewhere. The ‘gender wars’ are polarised between ‘gender critical feminists’ on the one hand, and feminists and others who are inclusive of trans people, on the other (Cooper, 2019, 2020; Mackay, 2021). This article’s focus specifically on non-binary people’s perspectives is embedded in this societal context, and also makes a new intervention into the terrain of the gender wars. In this article we explore UK-based non-binary people’s perceptions of legal gender status and reform, including the impact legal gender has on their lives, the importance of official legal gender recognition, and preferred options for reform. We suggest that non-binary people’s openness to certified gender being abolished could be a progressive model for a societal commitment to undoing gender more widely. A binary gender/sex system is one which dichotomously classifies gender into two distinct forms – woman and man, or female and male – predicated on clear, fixed distinctions between the two (Westbrook & Schilt, 2014). Binary gender/sex systems have been (and continue to be) widely challenged and contested by those who embrace an understanding of gender as diversely experienced and expressed (Barker, 2018). The 21<sup>st</sup> century rise in the visibility and recognition of gender diverse identities which cohere around non-binary, namely ‘an umbrella term that includes those whose identity falls outside of or between male and female identities; as

a person who can experience both male and female, at different times, or someone who does not experience or want to have a gender identity at all' Monro (2019, p. 126) have the potential to be especially transformative.

The 21<sup>st</sup> century recognition and development of non-binary as an umbrella term means that these identities can often be described as 'emergent'. In his examination of the rise of 'new' sexual and gender identities, Cover (2019) described them as exactly that – 'emergent identities' – stating that 'what emerges differs from the dominant not in the sense of being something alien and wholly incompatible, but as something that draws on the dominant to produce new configurations, meanings, values, and practices' (p. 2). Whilst the specific use of the term 'non-binary' is a recent phenomenon, identities that exist outside of the binary of woman and man are not new, they have been 'clearly articulated within modern Western contexts, long before non-binary emerged as an umbrella term' (Vincent, 2020, p. 2). Furthermore, empirical evidence shows 'neither sex nor gender have ever been limited to only two binary options in the natural world' (Sumerau & Mathers, 2019, p. 3). Instead, the term non-binary has *emerged against* the binary gendered expectations that have dominated society in recent history.

Binary gender/sex systems are underpinned by cisgenderism. Cisgenderism is 'the assumption that assigned sex determines gender [and] [t]he assumption that there are only two genders' (Ellis et al., 2020, p. 290) and thus it undermines individuals' own understandings of their genders and bodies. Cisgenderism can be manifest in various ways, including a lack of official recognition of sex/gender diversity in social, medical and *legislative contexts* (e.g. 'male' and 'female' as the only option on forms), (Ellis et al., 2020, p. 199, our emphasis). An example of cisgenderism in action is Yavorsky's (2016) research exploring trans women's experiences in the workplace, where cisgendered practices devalued trans people, and strengthened hierarchical privileges. Describing a similar concept in their study of contemporary religion, Sumerau et al. (2016) used the term 'cisgendering reality' to describe the erasing, marking, and punishing of transgender experience 'in ways that reproduce conceptions of reality predicated on cisnormativity' (p. 293).

Non-binary people 'queer the normative gender process' (Nordmarken, 2019, p. 37) that cisgenderist assumptions and cisgendered realities are predicated upon, and this poses challenges for them in their everyday lives, as is highlighted by a growing body of recent research exploring the experiences of those with identities outside of the binary. For example, in the US, Jones' (2020) research demonstrated how cisgender privilege operates in cisgendered workplaces in ways that disadvantage non-binary people; and Risman's (2018) study with college students found that non-binary participants faced strong gender policing as children and felt out of place and oppressed in institutions. Furthermore, Barbee and Schrock (2019) described the approach that non-binary people take to signify themselves as non-binary in a cisgendered world, which they called the ungendering of their social selves. This ungendering was portrayed as having benefits of authenticity, pride, and liberation, but also burdens of fear, rejection, and exhaustion. In the UK, a Scottish Trans Equality Network survey of non-binary people explored respondents' experiences of using services, employment, and views on legal gender recognition. Nearly a third (31%) of respondents said they had avoided interacting with public services because of fear of being harassed, being outed, or being read as non-binary, and 32% said they had avoided workplaces/opportunities for the same reasons. This avoidance is an example of the pre-emptive labour non-binary people engage in for the purpose of self-protection (Zamantakis, 2019). Additionally, 64% of respondents said that they would like to have their legal gender/sex on all official documents recorded as something other than 'female' or 'male', and a further 14% said that they would like to have this on some official documents (Valentine, 2016).

These challenges for non-binary people can be understood through Cover's (2019) notion of 'more liveable lives' (p. 6, see also, McGlynn et al., 2020). This proposed that those who have 'deeply felt desires to be something *other*, something which may not have a name, or may not have coherence within contemporary languages of identity' (p. 6) are at risk because they are denied recognition, recognisability, social participation, and belonging; and that a new taxonomy of non-

binary, fluid gender classifications challenges and overrides binary understandings of gender, providing those people with recognition and recognisability, and in turn means they may have 'more liveable lives'. Similarly, Hendricks and Testa's (2012) adaptation of the minority stress model incorporates the unique experiences encountered by transgender and gender nonconforming individuals, examining adverse experiences that are closely related to gender identity and expression, resulting expectations for future victimisation or rejection, and internalised transphobia. Vincent (2020) posits that this minority stress is exacerbated in non-binary people because 'one can only "pass" as man or woman due to the entrenched nature of the gender binary, it is currently impossible for non-binary people to "pass" as their identified gender' (p. 30).

### *Legal gender*

The development and emergence of non-binary identities and gender diversity has recently begun to challenge regulatory structures of gender. As a result, the practice of certifying legal sex/gender close to birth with just the designations 'female' and 'male' has begun to change in a number of jurisdictions globally. These changes have varied between jurisdictions but have included birth registration and legal recognition of a 'third' or 'other' genders, re-registration to a 'third' legal gender as adults, and/or legal recognition of intersex identities. Countries that have adopted changes such as these include Australia, Iceland, India, Nepal, and Pakistan (see, Parsons, 2019 for a summary). However, at the time of writing, the legal gender system in the UK does not recognise a 'third' legal gender option and so the binary system means that there is currently no formal legal recognition of non-binary identities. There is a designation of 'female' or 'male' given close to birth, and via the Gender Recognition Act, 2004, legal recognition can be given for transition from one of these two designations to the other.

The lack of official recognition of non-binary people in the UK legal gender system is underpinned by cisgenderist assumptions, and is a current point of discussion regarding potential reforms to the current, binary system in the UK. A survey conducted by researchers at the University of Exeter found that 88% of the trans and non-binary people they surveyed were in favour of a third gender option being made available to them by the Gender Recognition Act, and that 49.6% were in favour of removing the system entirely by ceasing to record sex at birth (Parsons, 2020a). The question of non-binary legal gender recognition was posed by the UK Government's 2018 public consultation on potential reform of the Gender Recognition Act (2004; Government Equalities Office, 2018). However, most of the public discourse and media commentary regarding this consultation focused on legal gender transition from one binary gender to another, and particularly centred around another potential option for reform, a shift to a system of self-identification when changing legal gender as opposed to requiring a diagnosis of gender dysphoria (e.g. Harrison, 2018).

In 2020, the UK Government announced their response to the public consultation, in which they decided that there would be no shift to a self-identification system, and no changes to legal recognition for non-binary people (Government Equalities Office, 2020). In this response, legal reform was also downplayed as 'not the top priority for transgender people', placing priority instead on reform to healthcare systems. It is in this context, with the possibility of legal recognition for non-binary people in the UK currently shelved, and a growing body of literature highlighting the challenges that non-binary people face as a result of cisgenderist structures, that we place primary focus in this article on the exploration of the impact of legal gender status on non-binary people's everyday life, their appetite for reform to the UK legal gender system, and within this, their preferred options for legal reform.

The wider *Future of Legal Gender* project was focused on understanding the legal implications and feminist politics of decertifying gender (see, Cooper & Emerton, 2020; Cooper et al., 2020; Cooper & Renz, 2016) but most of the lay participants in the research were unsupportive of binary sex not being recorded at birth and were strongly in favour of the status quo (see, Peel, 2021; Peel & Newman, 2020). As we have discussed elsewhere (Peel & Newman, 2020) the 'gender critical' view that conflating sex

with gender is problematic as sex-based oppression is a material reality was over-represented in our data. It has been suggested that the 2018 public consultation on liberalising the UK Gender Recognition Act 2004 ‘mobilised’ the so-called gender wars (Mackay, 2021), and our 2018 FLaG survey data collection was caught in the ‘crossfire’ between a conservative (Ahmed, 2021) backlash and more progressive perspectives. Given this and the socio-political context in the UK dominated by discourse surrounding legal gender transition from one binary gender to another (e.g. Harrison, 2018), a dedicated focus on non-binary<sup>1</sup> identities and perspectives is a significant intervention. Significant not just in terms of centring emergent voices in the gender wars, but also important in terms of signalling a potential emergent shift in legal gender being radically reimagined.

## Methods

The *Attitudes to Gender* online survey aimed to explore people’s everyday understandings and experiences of sex and gender, and their views on legal gender and potential options for reform (see also, Peel & Newman, 2020). The survey consisted of three sections: section one asked participants to provide demographic information, section two focused on gender in everyday life, and section three asked about their attitudes towards legal gender and options for law reform. The online survey was live from October 2018 to December 2018 and was open to anyone aged 18 or over. An offline version was available upon request (this was requested twice, but in both instances the completed survey was not returned). The time in which the survey was live coincided in part with the UK Government’s public consultation on potential reform of the GRA in England and Wales (Government Equalities Office, 2018). Therefore, the regulation of the legal status of transgender and gender diverse people was high in public consciousness. Given the length and complexity of our survey, this heightened public consciousness was beneficial in that we gained far more responses than we had anticipated, and with a high degree of detailed engagement with the free text questions. But as we noted above cisgenderist gender critical views were especially prevalent. The third section of the *Attitudes to Gender* survey focused on attitudes towards legal gender and options for law reform. In the main bulk of this section, participants were required to give their view on a range of opinion statements around legal gender using a 5-point Likert Scale from ‘strongly disagree’ to ‘strongly agree’. In this paper we draw on the findings from a number of these opinion statements, as well as other multiple-choice questions from this section, and qualitative comments from the free text sections.

We received 3101 usable survey responses to the survey. In terms of the overall profile of the respondents, most were resident in England and Wales (74.5%,  $n = 2310$ ) and most were legally female (72.7%,  $n = 2255$ ). Just over fifteen per cent ( $n = 472$ ) did not identify with the sex/gender they were assigned at birth, and 6.2% ( $n = 193$ ) of respondents’ identities lay outside of female or male. It is the survey responses of these 193 people that we focus on, further demographic information for these respondents is provided in [Table 1](#) below.

## Interviews

We also conducted semi-structured one-to-one interviews, further exploring participants understandings, interpretations, and experiences of gender. Interview participants were initially recruited via expressions of interest on completion of the survey. Subsequently, we used a range of methods to recruit further participants. Social media platforms, in particular Twitter, were used to circulate interview recruitment material. We promoted this material via the project’s Twitter handle (@future-gender) and our personal Twitter accounts. We also sent emails to numerous charities, organisations, and community groups who had an interest in gender, faith, law, or equality. As we were also keen to speak to parents of young children, or those working with young children, we additionally circulated our recruitment material via children’s clubs and organisations (e.g. the UK scouts and guides associations).

**Table 1.** Survey participants.

Survey participants' demographic information <sup>a</sup> (n = 193)		
Gender Identity	Agender/no gender	12.44% (n = 24)
	Non-binary/genderqueer	63.21% (n = 122)
	Non-binary/intersex	0.52% (n = 1)
	Other <sup>b</sup>	23.83% (n = 46)
Sexual Identity	Asexual	9.84% (n = 19)
	Bisexual	7.25% (n = 14)
	Gay	2.59% (n = 5)
	Heterosexual/straight	3.1% (n = 6)
	Lesbian	1.04% (n = 2)
	Pansexual	6.22% (n = 12)
	Queer	30.57% (n = 59)
	Other	36.9% (n = 71)
Age	18–19	5.7% (n = 11)
	20–25	19.69% (n = 38)
	26–29	19.17% (n = 37)
	30–39	31.61% (n = 61)
	40–49	14.5% (n = 28)
	50–59	6.22% (n = 12)
	60–69	2.07% (n = 4)
	70–79	0.52% (n = 1)
Religion	Agnostic	8.29% (n = 16)
	Buddhist	1.55% (n = 3)
	Christian	7.25% (n = 14)
	Jewish	5.18% (n = 10)
	Muslim	1.05% (n = 2)
	No religion/Atheist	57.5% (n = 111)
	Pagan	4.15% (n = 8)
	Quaker	1.05% (n = 2)
	Other	11.4% (n = 22)

<sup>a</sup>The mean age of the respondents was 32.93 (range 18–74). Thirty-five of the 193 respondents (18.13%) answered 'yes' when asked if they identify as part of a minority ethnic/racial community (or communities).

<sup>b</sup>Examples included 'bigender', 'genderfluid', 'gender non-conforming' and 'neutrois'.

**Table 2.** Interview participants.

Pseudonym	Age	Gender	Sexual Identity	Religion
Alex	35	Genderqueer/non-binary	Queer	Atheist/No religion
Juan	41	Genderqueer/non-binary	Queer	Atheist/No religion
Billy	24	Non-binary/questioning	Bisexual	Atheist/No religion
Max <sup>a</sup>	46	Genderfluid	Pansexual	Agnostic
Benny <sup>a</sup>	45	Genderqueer	Pansexual	Atheist/No religion

<sup>a</sup>Parent of child/ren under 18.

In total, 44 one-to-one interviews were conducted, including 14 parents of children aged under 18. Where logistically possible, these took place face-to-face, in person (n = 26), whilst some were conducted via video conferencing software or by telephone (n = 18). Interviewees were asked questions about their everyday experiences of gender, and legal gender specifically, as well as their attitudes towards different legal reform options in the UK, for example: 'how does your legal gender status impacts your everyday experiences, if at all?', 'what changes, if any, would you like to see to the current legal gender system in the UK?' and 'what do you think would be the impact of abolishing legal gender?'. Of the 44 interview participants, nine did not identify with the sex/gender they were assigned at birth, and five were non-binary. Table 2 below provides some basic demographic information for these five interview participants, who all live in England or Wales.<sup>2</sup>

## Data analysis

We analysed the quantitative survey data using descriptive statistics and imported the free text comments into NVivo software to facilitate the coding of these aspects of the dataset into different categories, guided by our focus on understanding perceptions of legal gender and reform. The interviews were transcribed verbatim and analysed using thematic analysis, a method for identifying, analysing, and reporting patterns (themes) across a dataset that provide an answer to the research question being addressed (Braun & Clarke, 2006, 2019). We took a reflexive thematic analysis approach, using Braun and Clarke's (2006) six-step process as a 'tool' to guide our interrogation of, and engagement with, the dataset. This is in line with Braun and Clarke's (2019) application of reflexive thematic analysis as theoretically flexible, 'not about following procedures "correctly" (or about "accurate" and "reliable" coding, or achieving consensus between coders), but about the researcher's reflective and thoughtful engagement with their data and their reflexive and thoughtful engagement with the analytic process' (p. 594). In essence, we applied a 'flexible deductive' approach to interrogating these data from a critical realist epistemic stance (Fletcher, 2017), extracting from the interview transcripts the richest examples of the positions regarding legal gender and reform identified in the survey analysis. This process resulted in a focused exploration of i) legal gender in everyday life; ii) appetite for reform; and iii) abolition of legal gender, which we now go onto explore.

## Findings

### Legal gender in everyday life

Of the 193 non-binary online survey respondents, 65.3% (n = 126) agreed or strongly agreed with the statement 'my legal gender affects my everyday experiences', compared to 41.6% (n = 1291) of total survey respondents. When asked about the impact of their legal gender status in their everyday lives, the five interview participants' responses focused largely on filling out forms or any documentation that made legal gender status relevant, and any instances where they had to make a choice between identifying themselves as male or female gender, or other people had made that choice for them. The impact of these occurrences was described as inconvenient and 'annoying' for some, particularly in relation to documentation and form-filling. For example, Juan, said:

'I have mentioned the annoyance that I feel at getting, I don't know, labelled with gendered honorifics that don't match my understanding of myself. That is just through every time you have to fill in a form when gender says, male or female. And I know for example, I don't know if that's a legal issue but equal opportunities forms in the UK rarely have space for any other option and that's a mandatory thing. It's generally first writing I think. Would it make my life easier in the sense of not having to deal with those minor annoyances, to have legal recognition as a non-binary person? Hell, yeah. Would it have any serious practical implications on my life. I don't think so.'

In Juan's account the re-inscription of binary gender options in 'forms' is constructed as 'minor annoyances' and the relationship between non-binary legal recognition and 'life' is downplayed. For Max, however, the impact of their legal gender status on their everyday life is described less as a matter of inconvenience, and more as having an unsettling emotional impact:

'I don't like having to choose officially what my gender is. It jars every time I do have to do that because one, I don't see why it's relevant in most things. I don't see why we need gender labels. I don't think they are doing us any good, really, as a society. I think it's something that because it's a topic that's often on my mind, my legal gender status is not. It doesn't paint the picture of who I am ... If I sent off something and I filled in details and they were going to expect something, somebody to show up that fits that criteria and that's not always going to be the case.'

The ongoing 'jar[ring]' of having to 'choose' a gender in an 'official' sense is positioned in Max's account as not only disavowing 'paint[ing] the picture' of who they are, but also as having societal detriment. This continual need to 'choose' between two binary gender options acts to undo the



ungendering that Barbee and Schrock (2019) depicted non-binary people as having to work to do to achieve the benefits of authenticity and liberation, and hence legal gender status is here represented as a barrier to emancipation from cisgenderist assumptions.

Benny refers to an incident they had experienced at an airport where they had not been taken seriously as a non-binary person. Concerning this incident, they highlight the impact the lack of legal recognition for non-binary identities has had on their interactions with others in situations where legal gender status was made relevant:

'I think it does impact my everyday experiences and I don't think I could have answered this before [Laughs]. That story is one example. In comparison, I offer you the judge at our adoption the other day. He understands the law. He understands he has to take me seriously. Now, he also understands the law doesn't make provision for me, exactly. He's clever enough to put two and two together to pave the right way but no-one is making it yet. The people in the airport, they were only going to take me seriously when someone tells them they have to.'

Benny, here, alludes to the differential impacts that different regulatory contexts have in their life. They suggest that, for those with legal knowledge ('he understands he has to take me seriously') of, one assumes, equalities law then more recognition is afforded to them as non-binary without regulatory 'force'. Airport personnel, in contrast, are produced as embodying legal gender, hence needing to be 'told' to recognise non-binary people. This suggests that Benny perceives the legal gender system, as it is, to be a major contributor to their everyday experiences.

The impacts of legal gender status related to form-filling and documentation,<sup>3</sup> described by the non-binary interview participants as annoying and inconvenient and/or emotionally distressing and unsettling, were also reflected through our survey responses to the statement: 'being female or male is a core social characteristic that should be specified on official documents (e.g. passports)'. The majority (86.5%,  $n = 167$ ) of non-binary survey respondents 'disagreed' or 'strongly disagreed' with this statement, compared to only 35.4% ( $n = 1098$ ) of the total survey respondents. This disagreement with the need for a sex or gender marker to be on official documents, such as passports, is exemplified by the following two comments made by survey respondents:

'The overwhelming majority of people who see my identifying documents do not need to know anything about my gender, genitals, hormone levels, chromosomes, etc.' (survey response, non-binary/genderqueer, 47, queer).

'It doesn't really serve a purpose. People often argue it's for identification purposes, but someone's appearance might be totally different to their sex as defined by the appearance of their baby genitals.' (survey response, non-binary/genderqueer, 33, bisexual).

The importance of personal choice, though, regarding identity documents such as passports was highlighted by Billy, one of the five non-binary interview participants. Billy expressed the potential problems that they anticipated arising for them if they had a neutral marker on their passport:

'I can understand on a passport that if I am, if I wanted to travel to a country that is less socially accepting of things, on my passport I might want to keep it to still say, Mr [name] so that I can just wear jeans and a shirt and have long hair and go through security and it's fine. You are not going to get questioned about things, because I can see that if, on your passport you had Mx [name] and I had a reasonably androgynous presentation that it would cause issues. I think for some things it's helpful. I think you should be able to choose what documents.'

Billy's focus on the nuance of different jurisdictions and the implications for less visibility of identity markers (such as Mr and Mx) in certain cultural contexts highlights another practical challenge of legal gender in everyday life. The potential difficulties of having an alternative marker identified by Billy here could be suggested as indicative of support for the removal of sex and/or gender markers entirely from identity documents such as passports. But if not blanket support *per se* (as they say 'for some things it's helpful'), certainly support for more 'choice' at the interface between legal gender's accessibility via regulatory documentation and the avoidance of 'issues' in daily life. Having the choice to use a gender-neutral 'X' marker on UK passports has been the subject of a campaign and legal case led by Christie Elan-Cane, which has been unsuccessful thus far (Parsons, 2020b).



### *Appetite for reform*

The 193 non-binary online survey respondents demonstrated a much higher degree of support for change to the British legal gender system than our overall total survey sample. In response to the opinion statement 'The British system for assigning male/female at birth should be reformed', 85.5% (n = 165) of non-binary respondents 'agreed' or 'strongly agreed'. In comparison, only 29.2% (n = 904) of the total survey sample 'agreed' or 'strongly agreed' with this statement, and over half (55.8%, n = 1729) 'disagreed' or 'strongly disagreed' with the notion of legal reform. Additionally, 91.2% (n = 176) of non-binary survey respondents also 'disagreed' or 'strongly disagreed' with the statement, 'Intersex and non-binary people should not be treated as distinct genders but be fitted into categories of male and female'. Half (50.5%, n = 1567) of the total survey respondents 'disagreed' or 'strongly disagreed' with this statement.

The responses to the above statements show non-binary survey respondents to have a high level of appetite for legal reform that would give formal recognition to their identities. Desire for this reform was shown to be much less across the total sample of survey respondents than amongst the non-binary respondents. Of the five interview participants, all expressed a need for change to the legal gender system in the UK as it currently exists, and conveyed a view that introducing a third, or multiple, legal gender options outside of female and male would be a logical and important first step for that reform. Max, for example, suggested that this option for reform would be important for the normalisation of genders outside of female and male and the level to which they would be taken seriously:

'I think having multiple categories just normalises things for everybody. Not everybody is thinking about this all the time like I am. They just think, "oh well, you know, there is male and female". If there is a recognised gender choice . . . I've had to pull so many people up [at work] for saying, "the opposite gender". "If you have transitioned to the opposite gender" and I am like, "excuse me, it's not two, why are you saying opposite". Then it's to cover as many bases as you can, I think. And then there is less stigma if you aren't one or the other. People understand I think if it's coming from a government level that actually, this must be serious.'

Max, here, uses active voicing to convey a sense of the immediacy of the problem of transition being constructed in binary terms. And they emphasise plurality in legal options ('cover as many bases as you can') as a strategy to reduce 'stigma' as well as reform acting as a normalising force for all ('everybody').

For Billy, the fact that a third, or multiple legal gender options outside of female and male are not already available for people within the UK legal gender system is concerning:

'From what I've seen it's- you have to pick one or the other. I think that that is disappointing is the most polite word for what is quite frankly a disgusting level of discontent for people. You recognise that some people don't identify with the sex that they were born with and so as an agency whoever's in charge of this is aware of that concept and idea. Surely, they must know that there are people out there who want to either identify as non-binary or they.'

Billy's 'disappointment' here conveys a notion of the state (in vague terms 'whoever's in charge of this') as problematically ignorant ('surely they must know') of non-binary people's right to legal recognition. They also highlight the harms of this lack of non-binary recognition, 'disgusting level of discontent', which sits in contrast with those who did not emphasise the importance of legal visibility.

Juan compared the UK legal gender system to that of other countries who have already implemented this change, but also highlighted potential complications or conflicts in how this should be implemented:

'First of all, yes, it seems clear by now that there is a lot of us who don't fit into the legally assigned boxes. So at least the third option needs to be there, and it is already in some other legal systems. The UK is just trailing behind the edge of the curve. I am not sure how I would want that to be implemented though. I am comfortable with non-binary as an umbrella term, but not everybody is. I would kind of want that recognition to be given.'

Here Juan suggests that a third option for gender legally is a minimum requirement ('at least') and presents Britain as relatively unprogressive when set in a global context. For them incremental inclusive reform is an implementation issue (namely a question over the designation of the third legal category) but that doesn't detract from the principle of legal recognition.

These complications and conflicts that could arise from a third, or multiple, legal gender option/s outside of female and male were further demonstrated in interview participants' preference for another option for legal reform, the abolition<sup>4</sup> of gender as a legal status, as we go on to explore in the next section.

Amongst non-binary survey respondents, there was also high degree of support for legal gender reform that would enable self-identification of gender. In response to the question: 'Should the government (and other official bodies) recognise whatever identity or status a person claims is theirs when it comes to ...',<sup>5</sup> 83.9% (n = 162) of non-binary survey respondents answered 'yes' to gender. Additionally, in response to the statement 'Legal sex/gender status should not be assigned at birth but decided by individuals themselves', only 5.2% (n = 10) of non-binary survey respondents disagreed with this statement compared to nearly half (45.4%, n = 1409) of the rest of the survey respondents.

### *Abolition of legal gender*

There was a higher degree of support among non-binary survey respondents for the abolition of gender as a legal status than the survey respondents overall. Over half (57%, n = 110) of the non-binary respondents selected 'yes' to the statement, 'gender should be abolished as a legal status', in comparison to 30.2% (n = 936) of all survey respondents. In addition, 78.8% (n = 152) of non-binary survey respondents 'agreed' or 'strongly agreed' with the statement: 'identification as male/female should be removed from birth certificates', compared to 22.2% (n = 689) of total survey respondents. Over sixty percent (63%, n = 1955) of all the survey respondents 'disagreed' or 'strongly disagreed' with this statement, compared with just 11.4% (n = 22) of non-binary survey respondents. Support for the abolition of gender as a legal status was discussed by all five non-binary interview participants and was largely interpreted as a better option than adding a third, or multiple legal, gender categories outside of female and male. However, it was also described as a less realistic, less achievable option. For example, Benny described abolition as their preferred option for legal reform, but also described it as an 'impossible dream':

'There are reasons and there are things they need to know. Hardly ever does it matter the rest of the time, apart from where it ends up offending people. If you were saying to me, say, for example, you have got a choice between having three genders now recognised and however that's—I don't even care what that third category was ... or you could have gender abolished altogether, in law, in legal terms. I would totally go for the latter. I would say do that first. If we have the choice, that would be the way to go because it's the whole fact that it [legal gender] exists like that that is causing the problem. It is really. It's just rooted in ways to describe people that aren't men, and we don't need it. I wish we could do that. It feels like an impossible dream. I so wish we could.'

One of the interesting aspects of Benny's account of legal gender as 'causing the problem' is the way in which it implicates an androcentric view of the operation of certifying gender by the state ('It's just rooted in ways to describe people that aren't men'). Often self-determination is foregrounded in the understanding of those with non-normative genders but here we observe a structural analysis in Benny. The support for the abolition of gender as a legal status was prevalent throughout the five interview participants. They articulated the harmful impact that they felt having a legal gender status, or other gender labels, has. For example, Max said regarding the disappearance of legal gender:

'God, I would love that. I would absolutely love that. That would be my, yeah, I think that is what should happen – absolutely and race as well. I think let's stop calling, you know, putting people into these pigeon holes for what really now isn't. I don't understand why we do it. If there was a campaign, I would join it ... It does, if you

go on my website it will say, are gender labels and race labels even necessary in this day and age. I don't know. Maybe they are in some cases, I am sure. In my life, I don't think they are. I think it can be more harmful than warrants whatever, whoever it is that needs to know what gender you are. I think their need for that information isn't as great as my need for not being able to put that information.'

Max's account emphasises the restraint of the state in 'pigeon holing' and 'labelling' people regarding gender, and also ethnicity. They contrast the personal with the generic, and also the State's need to determine and 'know' gender identity ('their need') with personal 'need'. What foregrounds Max's account here is an enthusiasm and desire for abolition.

Similarly to Max, Juan also questioned the need for a legal gender status, and expressed abolition of it as their preference for legal gender reform:

'Frankly, if you ask me what we should do is do without any legal concept of gender. I don't see the point. Why should we have one. Why does the State need to know whether you are a masculine presenting or feminine presenting person. The biological issues might be important in very limited contexts and then, well yes, we talk about them with your neurologist or with the person sewing your pants, but that's it. I fail to see the relevance of that anymore. [...] Why would we need that anymore, we don't is the answer and I think that gender will eventually go the same way. It's not necessary to the legal system.'

Here Juan emphatically doesn't 'see the point' of legal gender and foregrounds the removal of gender from the realm of the State as a precursor to the abolition of gender in toto, 'eventually'. Alex considered the potential impacts of abolition of gender as a legal status, and the way in which sex and/or gender might play out in society without legality, for example, through maintaining a record of biological sex:

'That makes perfect sense to abolish it, because you could still record biological sex, but leave gender to be decided as a person develops and grows up and chooses and also gender is allowed to change, because it's how you develop and change, like you are never the same like ten years previous and forward. I think biological sex obviously recorded and then that again if you go to transition can change. Gender should be decided by the individual and should be allowed to change throughout that person's life as well. You should be able to change how it's recorded. Therefore, by getting rid of it at birth being assigned makes perfect sense ... if we got rid of its like legal status, people can record it if they want, but they don't have to ... I think it would give a lot more flexibility to people.'

For Alex the issue isn't around 'recording' sex but the temporal aspect, and (perhaps) the current conflation legally between sex and gender because of assignment 'at birth'. Again, Alex foregrounds the choice and fluidity aspects of gender ('more flexibility') which is framed as only possible once it's legal authority – and by implication inflexibility – is removed ('got rid'). Billy, similarly to other interview participants, questioned the need for a legal gender status and, when considering the potential impacts of abolition, struggled to identify any specific impacts that they thought this might have:

'I don't see why it has to be a legal status at all ... what's the point of having a legal status. There is nothing that I am aware of that I can think of that fundamentally would legally be different, the process, the procedure, your rights, the way you live life, if the government did not know your gender compared to knowing it.'

Billy offers a totalising account of the impact of the lack of certification of legal gender by Government, and they do so by listing significant, and broad spheres where the Government not 'knowing it' would have no appreciable impact.

Juan, when considering the potential impacts of abolition of gender as a legal status, spoke of the difficulties of limiting references to biological sex to medical professionals, but recognised the need for this to be talked about in these situations:

'Just widely speculating, I am pretty sure that there would be a rather concerted attempt to limit any effects that such an abolition may have by reintroducing the category surreptitiously in other guises. And such as well, we should talk about biological sex in this case, because it matters. It should be, it would be probably a really hard fight to make sure that that doesn't happen that any references to biological sex or any biological sex determining characteristics whether they are chromosomal, hormonal or anatomical are confidential and limited

to ones GP and other physicians, maybe. But that will probably be a difficult thing to achieve. Other than that, what else is there that legal recognition of gender impacts, very little. Once we achieved equal marriage, which we still haven't all over the place . . . once we are there, I think that most of the legal implications of gender have already been nullified.'

Although Juan doesn't specify who or what would be marshalled for a 'concerted effort' to reinstate gender 'surreptitiously' they discuss the importance of biological sex ('it matters') in the private, confidential context of the medical setting. There is a future orientation in Juan's account (as in Benny's) regarding other legislative equalities (namely equal marriage across the globe) creating the conditions over time for legal gender becoming redundant. This sits in contrasts with the immediacy conveyed by Billy – the youngest interviewee – that the societal conditions for gender's irrelevance legally was now ('I don't see why it has to be a legal status at all'). Juan also identified areas where legal gender status may currently still be made relevant, and some of the considerations that may need to be made, particularly in regard to the language used, if the abolition of gender as a legal status occurred:

'will there be a need to think about how we manage situations, for example, such as prisons where it might matter to not have inmates with different sets of biological equipment together. Well yes, probably . . . Will there be a need to change other institutions? Well marriage doesn't care anymore. The military apparently doesn't care anymore. Employers are not supposed to care anymore. We might have to reword some Acts to talk about people who can get pregnant versus people who are- where we now talk about women and that's something we should be doing anyway, because not every woman can get pregnant and not everybody who can get pregnant is a woman. We will need to be a bit more precise about what are we talking about really, is it the presence of a uterus, is it the ability to get pregnant, is it the level of testosterone in their body and we'll sort of be forced to tease out the jumbled ones once that confusing concept of gender is removed from the statutes.'

For Juan, the removal of the 'confusing concept of gender' will allow for better precision and specificity with respect to body parts and capabilities, but within a societal context in which – largely – there is a legal mandate not 'to care' in a discriminatory way. One potential impact that is often raised in considerations of the abolition of gender as a legal status is the one it might have on protecting from discrimination on the basis of gender. The findings from non-binary respondents to our survey demonstrated strong support for law protecting people who are discriminated against on the basis of gender (through the protected characteristic designation 'sex'), whilst not suggesting that legal gender status was important in the law being able to do this. In response to the statement, 'the law needs to protect people who are discriminated against because of their gender', nearly all (94.8%,  $n = 183$ ) of the non-binary survey respondents 'agreed' or 'strongly agreed'. However, in response to the statement 'people don't need to be legally defined as female/male for law and government to counter discrimination on the basis of gender', 74.6% ( $n = 144$ ) of non-binary survey respondents 'agreed' or 'strongly agreed' with this statement, compared to 34.4% ( $n = 1067$ ) of total survey respondents.

In summary then, the non-binary participants in this research (both the online survey respondents and the interview participants) suggested that legal gender status currently does impact their everyday life, largely due to the repeated need for them to choose between female and male because their gender is not legally recognised. This highlights the impact of the cisgenderism currently underpinning the UK legal gender system for non-binary people living in the UK, and the limits placed on their authenticity and liberation by perpetually being required to make this choice. The impacts of this ranged from being an inconvenience or annoyance for some, to being emotionally distressing and unsettling for others. Hence they demonstrated a large appetite for reform to the legal gender system, including for reform that would introduce a third, or multiple, legal gender categories outside of female and male, and for reform to a self-identification model.

For the interview participants in this study though, it was evident that they viewed these options for reform as the very least that they would like to happen, and that their preference would be for gender to be abolished as a legal status altogether. However, they largely conveyed this as something that would be unlikely to happen in the near future, exemplified by one participant's

description of it as an option for reform that remains 'an impossible dream'. Whilst some of those interviewed struggled to identify specific impacts that the abolition of legal gender could have, there was recognition that great consideration would have to be given to a number of areas if this occurred, including statutes and specific situations where biological sex matters. However, the consensus was that this would be possible, and that it would be a positive move that would give everyone more freedom and flexibility.

## Conclusion

The non-binary survey and interview participants in this research demonstrated strong support for reform to the currently binary UK legal gender system. The impact of legal gender on their everyday lives ranged from causing minor inconvenience to emotional distress, but for all of the interview participants it was apparent that their current legal gender status, and the need to choose between one of two binary genders, had a negative impact on their ability to 'ungender' their social selves (Barbee & Schrock, 2019). Within their enthusiasm for reform, the interview participants in particular expressed a preference for the abolition of gender as a legal status, rather than other options for reform such as the introduction of a third or multiple alternative gender categories. While 'an impossible dream' currently, the introduction of a third gender category was perceived as a smaller progressive step, but one which would be welcomed as a more realistic and viable option at this moment in time.<sup>6</sup> This high appetite for reform can again be linked to participants' descriptions of the impact that legal gender status, and their lack of legal recognition, had on their everyday lives.

The desire amongst participants for legal recognition, and/or for the current regulatory structures that exclude them to be dismantled, links to Cover's (2019) notion of 'more liveable lives' (p. 6), who posited that those who are not officially recognised are denied recognisability, social participation, and belonging. This aligns then with the perspectives of the non-binary participants in this research, who indicated that they would benefit from any of the discussed reform options due to the increased social and legal recognition that they would bring. The impact of legal gender on the everyday lives of the participants in this research, and the proposition that legal reform would make their lives 'more liveable' can also be understood using Hendricks and Testa's (2012) adaptation of the minority stress model, as the everyday impacts that our participants described of inconvenience and emotional distress can be attributed to minority stress.

As we outlined above, the survey data we draw upon in this article (from 193 non-binary survey respondents) is taken from a larger total of 3,101 survey respondents. Across the total survey respondents, there was a much stronger investment in the status quo regarding a binary two-sex registration of gender close to birth, which we have previously discussed with reference to cisgenderism and endosexism (see, Peel & Newman, 2020). The non-binary interview participants that were a central focus in this article highlighted examples of cisgenderism in action when speaking about the impact of legal gender on their everyday lives, for example, Juan's discussion of equal opportunities forms and other form-filling situations where there is no suitable gender option for non-binary people, with a choice of only 'female' or 'male'. Living within a binary, cisgenderist regulatory structure, and not being able to establish their non-binary identity in any official way, posed a difficult part of their everyday experiences as a non-binary person living in the UK.

The non-binary participants in this research have indicated then that their legal gender status currently has a negative impact on their lives, and that they are in strong favour of reform to the UK legal gender system. The choice between 'female' and 'male' is one which they are forced to repeatedly negotiate in a variety of daily circumstances, and one that has a negative impact on their ability to live their lives by reinforcing cisgendered assumptions and undermining the work that they do to 'ungender' themselves. The current binary sex/gender system is limiting and oppressive to them. Legal gender reform, either in the form of a third gender option, or abolition of gender as a legal status, would remove the need to make the choice between female and male (and

accompanying emotional distress), and hence remove the limits the current system places on them. The implication is that this would make non-binary people's lives 'more liveable', partly by helping them to enjoy the benefits of authenticity, pride, and liberation that Barbee and Schrock (2019) found to be experienced by those who were able to signify themselves as non-binary. The findings of this research then contradict the UK Government's inference (Government Equalities Office, 2020) that legal gender reform was not of high importance to non-binary (and trans) people, and instead they promote the importance of legal gender reform for non-binary people living in the UK. Furthermore, non-binary people's openness to certified gender being abolished could be a progressive model for a societal commitment to undoing gender more widely.

## Notes

1. We use the term 'non-binary' as an umbrella term for all those participants in our research whose gender identity lies outside of female and male, e.g. non-binary, genderqueer, agender, other genders.
2. All interviewees were British except Juan who was born in a South American country.
3. Currently, UK passports display a sex/gender marker of male or female. This can be changed from one of these binary markers to another by the passport holder without a change to their legal gender. To make this change to a UK birth certificate though, a Gender Recognition Certificate (GRC), obtained through following the process of changing legal gender, is required.
4. The wider Future of Legal Gender (FLaG) project typically utilised the term 'decertification' as opposed to 'abolition' (Cooper et al., 2020). For the purposes of this analysis we've decided to use 'abolition' in concert with the language and sentiment of the non-binary participants who engaged in this research.
5. This survey question listed a number of multiple-choice categories and respondents were asked to tick all that apply. The categories listed were: age, disability, ethnicity, gender, religion, sexual orientation or identity, all of the above, none of the above, other (please specify), don't know.
6. Comparison can be made to legal change in the UK with regard to equal marriage whereby civil partnership constituted a 'stepping stone' (see, for example, Jowett & Peel, 2017).

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