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EDITORIAL

Introduction to Special Issue: Decertifying Legal Sex—Prefigurative Law Reform and the Future of Legal Gender

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Introduction

This special issue explores the politics and controversy surrounding the proposal to decertify (or abolish) legal sex status in Britain, focusing on the jurisdiction of England and Wales.[1] Decertification emerged as a law reform idea, from the confluence of several developments: feminist and transgender politics, intellectual movements in critical and prefigurative research, and the institutionalisation of liberal equality paradigms. However, the immediate story starts with legal measures introduced transnationally to accommodate gender transitioning and in some cases to legally recognise gender identities other than as women and men (e.g., see Sharpe 2007; Clarke 2018; Holzer 2018; Renz 2020a). These state legislative projects of incorporation, intent on maintaining broader legal sex and gender structures,[2] provide for some movement away from binary statuses assigned at birth (e.g., Dunne and Mulder 2018; Renz 2020b). Yet, the assumption that minorities should be incorporated within existing classificatory structures, with all the political and

[1] Our analysis includes laws that relate specifically to England and Wales as well as laws which also extend to Scotland and Northern Ireland, e.g., see Ministerial and Other Maternity Allowances Act 2021, s7(1).

[2] Political contestation over the terms of sex and gender—in what they mean, what they include, and how they operate as material enactments—makes their usage complicated. Our use of gender does not refer principally to identity or expression but to socially institutionalised processes that draw and maintain hierarchical distinctions. These also work with and give meaning to material forms of embodiment, conventionally understood as sex. Thus, we refer to gender in contexts where some sex-based feminists would prefer to talk about sex. Where the law refers explicitly to 'sex', we follow this terminology. However, English law is often inconsistent in its usage of these terms.

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administrative difficulties this entails, begs a more foundational question: why retain a structure of legal sex? 'The Future of Legal Gender' (FLaG) project, which formally started in 2018 (in design from 2015), decided to research this question, to ask: are there good reasons to continue to accord sex and gender legal status in England and Wales?[3]

Addressing this question meant investigating the relationship between contemporary socio-political uses of sex and gender categories and the use of these categories in law. While socio-political uses of sex and gender do not necessarily rely on legal categories, FLaG's focus on legal status led us to foreground its role in sustaining (or ameliorating) inequalities in relation to the organisation of wealth, space, esteem, self-expression, power, labour, care, and authority. These inequalities are typically associated with relations between women and men. But in addressing the work undertaken by legal status, inequalities between trans and non-trans, endosex and intersex, and conventional and unconventional (or post-gender) modes of personhood are also important to attend to.

At the same time, like many other jurisdictions, England and Wales has witnessed a shift in recent decades towards gender-neutral law. This can be seen in the move to make pronouns and terms to designate law's subjects increasingly gender-neutral—avoiding 'he' or 'she', as well as previous approaches where 'he' included 'she' (see Grabham 2020).[4] More substantively, many laws, including laws relating to sexual violence, pensions, and employment, are relinquishing gender-based distinctions or, as with marriage and the introduction of same-sex marriage law, rendering such distinctions less sharp. These developments are not unequivocally progressive, however. Gender neutrality may obscure (and so help to sustain) unequal distributions of wealth and labour; it may reinforce law and policy's androcentrism; or it may reinforce (or at least converge with) neoliberal moves towards flexible workers and consumers, free from imposed gender and sex-embodied expectations and restraints (such as the industrial foetal protection policies, discussed by Thomson 1996). Within a context of social inequality, gender plurality, and moves towards neutrality that both maintain and unsettle gender relations, FLaG explored status withdrawal as a political project. To ask: are there any good reasons to maintain the current system of formalised gender status, where membership in a socially unequal, binary category is legally maintained and enforced through birth-registered sex and regulated formal transitioning?[5]

A normative or evaluative question, such as this one, can be approached from different angles. Ours is a critical and feminist perspective—attentive to law's work in upholding and tacitly enabling different forms of subordination, exclusion, exploitation, and violence, including gendered ones. But law's role today is not

[3] The members of the research team were Davina Cooper, Robyn Emerton, Emily Grabham, Hannah Newman, Elizabeth Peel, Flora Renz, and Jessica Smith.

[4] However, a recent effort to introduce pregnancy-related leave for government ministers received significant pushback against the gender-neutral term 'person', with the government ultimately changing this to 'mother' (Skopeliti 2021); see Ministerial and other Maternity Allowances Act 2021, s1.

[5] For instance, in England and Wales, non-disclosure of one's sex/ gender at birth has vitiated consent for the purpose of sexual offences legislation see, e.g., Sharpe 2018; Boukli and Copson 2019; Travis 2019; Kennedy 2021.

unequivocally on the side of injustice. While contributing to inequalities, law also offers a limited repertoire of mechanisms to counter gender-based and other forms of disadvantage and violence. Thus, any analysis of legal sex status, and its undoing, needs to also address what assistance legal sex and gender categories offer to remedying harms and other wrongs (see also Clarke 2015). This begs, in turn, a further question: do gender and sex-based categories, and membership in those categories, need to be legally established and settled for law to counter inequality? Might categories be formalised but not membership in them? What would this mean and look like?

Exploring the value of legal sex and gender status, and the consequences of moves to informalise or undo this status, cannot be adequately assessed through abstract, transnational generalities. The uses and effects of legal gender categories (such as sex, woman, man, mother, father etc.) depend on specific temporal-legal geographies of gender. The empirical and analytical terrain of this special issue is contemporary Britain, and specifically the jurisdiction of England and Wales, the legal case-study for FLaG's research. However, this special issue also includes a discussion of developments in other jurisdictions by an international group of early career scholars (see Smith et al. 2023).

Internationally, public arguments for retaining (or returning to) a restrictive approach in the legal regulation and use of sex and gender categories are largely associated with the right, and particularly the Christian Right. In Britain, however, it has been feminist arguments for retaining legal sex (and, to a lesser degree, gender) categories which have received the lion's share of attention. The progressive and critical orientation of our research means it is equality-based arguments for retaining formal gender and sex status (rather than conservative ones) that we mainly attended to, and these surface in this special issue. Advocates of retention argued that stable, trackable, standardised categories facilitate measures to counter institutionalised forms of inequality through positive discrimination and affirmative action (see Cooper 2022, 2023a). They also argued that the current system enabled sex-specific provision in support of women's safety and dignity (see also Jeffreys 2014); and facilitated essential data collection on women and men's sex-related experiences (Sullivan 2020). These arguments have received considerable mainstream attention, but it is also important to recognise that other arguments for retaining legal status exist, including those made by transgender activists - attentive to the symbolic and practical value of a legally acquired status, which does not correspond (at least ostensibly) with birth sex.

Conflict over the place of sex in understanding and addressing gender-based inequalities forms a central current in this special issue. Our own approach ties gender neither to biology nor to identity in any strong stable way. In other words, we do not approach gender as a social fiction imposed on real, binary sex or as a psychological truth. Instead, we work from accounts of gender that foreground its social production and manifestation (e.g., Risman 2004; Connell and Messerschmidt 2005; Walby 2007; Fenstermaker and West 2013). These accounts approach gender, variously, as relational, lived, and institutionalised, and as operating through, and in relation to, other structuring processes (hooks 2000; Martin 2004; Schippers 2007; Nash 2019). Through them, gender gives rise to relations of violence, exploitation, constraining

and demeaning cultural norms, and asymmetrical responsibilities for care and emotional comfort. Gender's degradations and injuries have historically been tied to divisions between female and male subjects and to expressing non-normative gendered subjectivities (including lesbian and gay ones). Yet, importantly, gendered processes and practices change—in how gender is forged, in where its social harms fall, in what gender means, and in what it does. Certain gendered formations and regimes may continue to dominate, but they are unlikely to prove totalising. Within organised and less organised communities, people resist, withdraw (at least in part), or assume or prefigure other gendered forms (see, e.g., Mackay 2019). For this reason, the special issue foregrounds the importance of sustaining a contingent approach to the categories and orderings of gender—recognising also that there is no single right way to define gender. This means exploring how gender operates in specific time-places in ways that are attentive to new developments and to new meanings.

To critically explore the work undertaken by legal gender categories, this special issue focuses on one specific proposal: the 'decertification' of sex and gender. This proposal sits alongside others, most notably the proposal to pluralise the gender categories that are legally recognised (e.g., see Katyal 2017; Clarke 2018; Quinan et al. 2020). This approach is deemed, by some, to be more viable than abolition since pluralisation augments (and updates) the current legal gender structure rather than dismantling it. Decertification is a term borrowed from other quite different contexts to here describe the termination of a state-based system that categorises and recognises people according to legally established and mandated categories of sex and gender (see also Cooper and Renz 2016). Abolition of sex registration at birth and on transitioning are key aspects of a move to dismantle sex and gender's formal legal status. This dismantling would officially allow people to identify with any gender or sex. In relation to gender, decertification would (at least at first glance) remove some of the institutional costs of identifying with several genders simultaneously, of refusing gender markers, or of identifying with a marker, such as agender, that underscores gender's personal absence (see also Ashley 2021). Decertification would also enable gender identifications to change according to the context, and over time. In other words, gender would function in ways more akin to categories of religious affiliation (see Renz and Cooper 2022), which in many jurisdictions, including England and Wales, legally functions as plural, flexible, evolving, refusable, and open.

Decertification, however, is not just a story about legal personhood. It is also a story about the laws, policies, and practices that rely on gender and sex as legally meaningful categories. How would institutional measures that use sex and gender-based categories work if a person's sex and gender could no longer be assumed (see Renz 2023)? Different options here are possible. One is to rely on self-identification; another, more concernedly, reverts to biology—claimed by some as a binary descriptive fact. State law has a role in identifying which methods for determining category membership are possible, and which are prohibited, if sex and/or gender terms continue to have institutional salience. What is important for our purposes here, however, is that decertification neither eradicates nor determines the institutional use of sex and gender terms but prompts—and places a question mark over—their revision.

This special issue tracks decertification along a series of entwined paths, which we introduce in the discussion that follows. They are as a law reform proposal; as a research method to investigate gender and the law; as a broader policy trajectory; and as prefigurative experimentation. But before turning to these paths, we first set out the research data underpinning our analysis.

Research Data: Survey, Interviews, and Focus Groups

Our exploration of decertification, in this special issue, draws on three primary sets of data—all generated by the FLaG project. First, we undertook a survey of public attitudes to gender's future and the reform of formal legal categories in the autumn of 2018. This survey generated over 3000 responses, including over 1000 qualitative responses to open box elicitations (Peel and Newman 2019). Second, between 2018 and 2021, we undertook semi-structured interviews with over 200 stakeholders, scholars, and members of different publics. Stakeholders were based primarily in England and Wales, and included non-governmental organisations (NGOs), equality officials in local government, trade unions, and other statutory bodies, particularly those with a gender, LGBT, or women brief, staff in gender-specific organisations, including schools and domestic violence shelters, officials involved with sports at both local recreational and elite competitive levels, legislative drafters, lawyers, and immigration experts. We also undertook a limited number of interviews outside of our case-study jurisdiction with NGO staff, legal experts, and others alongside reviewing documentary data on jurisdictions that had reformed or were considering reforms to their legal gender classification and transitioning structures. In general, interview selection decisions were informed by the activities of the organisation, in question; the need to understand diverse political perspectives; and the importance of attending to subjugated experiences in relation to gender, socioeconomic class, race, disability, religion, sexuality, age, and nationality, to ensure views on decertification's consequences took account of these experiences.

Third we undertook a series of participatory focus groups and workshops. These ran through the lifetime of the project, intensifying in the final year. They included 'what ifs' with feminist academics—using imagined post-decertification scenarios to backfill our imagined law (see Cooper 2023b); seminars on decertification's core law reform principles with small groups of stakeholders; statutory drafting seminars with legislative drafters, academics, and students; and larger stakeholder events on the policy principles underpinning different versions of decertification.

Decertification as a Proposal for New Law

In this special issue, we explore decertification as a speculative future law reform. Articles by Emily Grabham (2023), Flora Renz (2023) and Davina Cooper (2023b) address different aspects of decertification's legal imagining and design attuned to the challenge of designing a progressive legal measure that sutures decertification to equality, sociality, and care rather than to libertarian registers of freedom. At first glance, decertification offers a way for the state to mitigate the harms that legal gender status causes for those who disidentify with their birth-registered sex and do not

see third categories as the solution (see also Newman and Peel 2022). Decertification also challenges the institutionalisation of a heterosexual order anchored in two hierarchically related, ostensibly complementary categories—namely, women and men (Cannoot and Decoster 2020), unsettling the symbolic work, which gender and sex perform as legally designated and enforced distinctions (Clarke 2019). Gender-neutral laws may mean that law's enforcement of gendered differences has declined. However, registering people's sex at birth, in ways that gender them throughout the life course, legitimates and legalises a wide array of stereotypical expectations and norms: from adults' gendering of young children to compulsory dress-codes, conventional roles and pairings in dance, media, and popular culture, militarised forms of masculinity, and feminised responsibility for intimacy and care.

The withdrawal of formally sexed designations from individuals has a symbolic power that can be read, positively, as undermining heteronormative gender norms. However, it has also been read negatively, as undermining the critical and remedial attention which gender and sex require, while creating greater precarity for those whose gender and sex is frequently questioned or challenged. These concerns are tied to the uncertainty of whether decertification would contribute to undoing gendered forms of subordination, a matter on which critics expressed scepticism. They worried that decertification would demote gender as a state policy target, masking gender-based inequalities so that they no longer seemed to exist. Robyn Emerton's (2023) article explores the anxiety expressed by some we interviewed who feared decertification would make things worse for women. Several research participants suggested formal decertification should only be introduced once gender equality had been accomplished, not in advance of it. 'Women' typically functioned as the key category of concern, but some interviewees suggested that the effects of dismantling legal sex status would fall unequally, and most harshly, on culturally and economically vulnerable women, such as religious women who would no longer be able to use leisure centre changing rooms because people with penises might share a common changing room space (a view others rejected). An interlinked issue prompted by the research concerned the socio-economically unequal effects of decertification; that it would be frontline workers and users of public provision who would be at the sharp end of its implementation—those occupying hospital wards rather than private hospital rooms, for example, or those obliged to use shelters and domestic violence refuges or who are incarcerated. At the same time, others saw state withdrawal from regulating gender as an important aspiration. Here, decertification's value was less as an immediately viable (de)regulatory structure, than as a gesture towards a utopian form of freedom in—or away from—gender.

Divergent views about decertification, as a speculative legal proposal, invoked different notions of what the content of such a law would or should be. While critics often assumed that decertification would lead state and state law to wash its hands of gender- or sex-based inequalities, this was not the version of decertification that we studied. There are considerable costs for progressive politics when governments refuse to use categories of inequality remedially—an issue addressed by several scholars exploring decertification in other jurisdictions (e.g., Braunschweig 2020; Varman 2022; Wilkinson 2022). As a feminist and critical project, we rejected a libertarian policy of full disestablishment (see Cruz 2004) in which state law and

state bodies would withdraw recognition of gender as a damaging structure of inequality. It is important that state apparatuses can respond to gender-based inequalities, exploitation, and violence (as the Roundtable also explores; see Smith et al. (2023). In this regard, how gender parallels and relates to other remedial categories is important to attend to.

The Equality Act 2010 organises recognition, positive action, and antidiscrimination provision according to a series of "protected characteristics": sex, gender reassignment, religion and belief, race, disability, sexual orientation, marital and civil partnership status, and age. In England and Wales, remedies for discrimination based on a protected characteristic is broadened by allowing claims based on perception and association. Thus, someone who experiences discrimination because they are perceived to be a woman can bring a case, under the Equality Act 2010, regardless of whether socially or legally they live as a woman. The protected characteristics that make up equality law demonstrate different approaches to legal status and different levels of protection and entitlement—a legacy of their legal and political histories, including during the Act's development and passage. But does formalisation of certain category memberships, when compared to others, make a difference? Are protections from discrimination or positive action more effective for sex, than for informally inhabited categories such as sexual orientation, because sex has a formal legal status (also recognising the singling out of sex in certain contexts, such as Equality Act 2010, s104(7), which makes it permissible to create sex-based electoral shortlists if the sex in question is underrepresented)?[6] Research participants had different responses to this question (see also Cooper 2022). Interestingly, the legal academics we spoke with tended to be more ambivalent about the difference legal status made compared to others, particularly feminist NGOs, who were often much more certain that pinning down category membership enhanced equality protections.

Whether the decertification of gender and sex will hurt or help equality measures depends on how it is crafted. Decertification should not be understood as simply deregulating sex and gender, but rather as reorganising how categories and membership in them are determined; and this can take different legal and policy forms. Some aspects of decertification seem crucial, such as the removal of sex from birth certificates. Other aspects are policy questions to be decided upon. For instance, can sex and gender function as descriptive facts about subjects that state law recognises; and, if they can, on what basis should state recognition take place? Assuming gender-specific provision can continue, how should it operate legally? Should access, for example, to a women-only service depend on the self-identification of the prospective user? Or should organisations, such as sports or religious associations, be able to set their own criteria in identifying what gender membership involves? If they can set criteria, what modes of assessment should be permissible? The legislative principles we developed to demonstrate what decertification could entail offer one legal response to these questions (see Cooper et al. 2022, 37–39).

One context where concerns arise about dismantling the binary legal structure, and about informalisation, more generally, are where legal mechanisms

[6] The protected characteristic of sex is an exception to Equality Act s104(6), which states "Selection arrangements do not include short-listing only such persons as have a particular protected characteristic".

address structural disadvantage. Liberal legal frameworks have typically proven weak here, preferring to focus on remedies for individuals experiencing a detriment. In England and Wales, some limited legal measures exist to address more structural forms of gendered inequality, including through group-based remedies. One is equal pay for 'equal work', a regulatory provision that targets differential pay between women and men. In her article, Emily Grabham (2023) explores the effects of decertification on equal pay provisions. Aspects of equal pay law assume a binary framework through, for example, the use of a comparator of the 'opposite' sex. Grabham suggests that the current equal pay machinery may be able to cope, without too much difficulty, with a transition from binary to multiple genders, and, even, a transition from formal to informal status. The larger question though is whether this is sufficient. The fact that the current system can incorporate decertification, through certain technical adjustments, does not make it a sufficient means of ameliorating both unequal and low pay.

Identifying more profound social and legal policy shifts, beyond the terms of decertification, is a theme running through this collection of articles. Decertification may appear politically unviable as a legal reform in England and Wales at the current time, but, in many ways, it is a moderate change that simply detaches sex and gender from legal status as Margaret Davies (2023) addresses in her Afterword. When it comes to embedded and structural forms of inequality, changes other than (and beyond) status deformalisation are also necessary. We do not adopt a stance that values any decline in state governance. At the same time, while decertification is a limited measure that will need other changes (including reforms) in advance of it to function progressively as Cooper (2023b) explores in her article, we do not dismiss the dislocations that critics speculate may follow the decertification of sex and gender status.

Flora Renz's (2023) article, for instance, critically considers the benefits and risks of decertification for women's domestic violence shelters. She addresses the implications for women's shelters of not having a standardised, legally formalised category of 'women'; and critically assesses the reliance that shelters may place, instead, on risk management and increased privacy to manage sexed bodily difference. This risk/privacy reliance is a broader feature of new gender regimes, which recognise that spatial allocations by gender may no longer organise people according to their genitals. Yet, it is a reliance with limitations—not least in treating bodies as carriers of future harm that can be safely managed through pre-emptive action or walls (see also Cooper and Emerton 2020). Renz's article also asks how we can assess the likely harms and weaknesses of a speculative future change when there is no contemporary evidence to work with. The approach Renz adopts is to consider what can be learned from the present-day experience of how gender-segregated services respond to transgender users since contemporary gender transitioning also troubles the assumption that legal categories align consistently with a binary framework of embodied sex.

Decertification as a Research Method

Conventional law reform research gets to a reform proposal in the latter stages of a project after problems have been identified and studied. This research, in contrast, started with a 'solution.' This was not intended to short-circuit analysis of the social harms which decertification functioned as a response to but was a recognition of the extensive discussion, scholarship, and community understandings that already exist detailing the harms of gender socialisation, and its unequal imposed categories. Approaching decertification as a research tool allowed us to explore, among other things, the concerns, hopes, and feelings associated with law and gender in both their present and imagined future form (see also Peel and Newman 2020). Decertification provided a prompt that encouraged people to talk about their investments and, for some, their attempted disinvestments from contemporary gender-based categories. In this way, a proposal to change current arrangements generated a richly diverse set of views and understandings about the status quo.

Taking up this theme, Robyn Emerton's (2023) article draws on decertification as a speculative law reform proposal to explore the legal consciousness of equality governance workers. At the heart of her discussion are the idioms about law and law reform that surfaced when workers were asked their views about abolishing legal gender status. Touch, fragility, preciousness, wildness, getting burned, and prematurity emerge as powerful tropes. Elizabeth Peel and Hannah Newman's (2023) article also takes up ideas of legal consciousness. Approaching gender (including in the discursive form of 'sex') as a normative order loosely analogous to law, they examine attachments and views on gender/sex and its reform prompted by asking interviewees about decertification. Starting from Patricia Ewick and Susan Silbey's (1998) typology of being before, with, and against the law, they probe research participants' talk, identifying a range of perspectives that include deference to legal sex and gender, ambivalence regarding its significance, and support for the abolition of legal certification.

Decertification also has a further methodological application. Alongside refracting current investments and attitudes towards gender and law, our study of decertification between 2018 and 2022 also gave rise to its production as a law reform proposal. We discuss this further below. However, one aspect of its production was its performative dimension in terms of what the birthing of a law reform proposal (even a do-it-yourself one) could and would do. FLaG's study took place amid a bitter fight over proposed reforms to liberalise the Gender Recognition Act 2004 (GRA), and sex-based rights feminists' pushback against policy reforms oriented towards self-identification (see Hines 2020; Nicholas 2021). This fight has surfaced in several jurisdictions, including Canada, the USA, and Australia but, as a fight between feminists, it has proven particularly fraught in England (see Pearce et al. 2020). While much of it has played out in social and mainstream media, feminist organisations, and institutions, such as universities, during the period of our research a series of legal cases were also brought challenging, in different ways, moves towards self-identification and the institutional diminution of sex-based approaches

to the category 'woman'.[7] The qualitative data which Emerton (2023), and Peel and Newman (2023) analyse in their articles on legal and gender consciousness, respectively, need to be read within this light. People's concerns about decertification were very strongly influenced by the conflict taking place over gender classifications and self-identification. But views about GRA reforms did not just circulate through the research (see Peel and Newman 2020). With its open survey and explicit focus on decertification as an imaginary legal reform, the research also became an actant, drawn on, most vividly, by those opposed to classificatory change to demonstrate what was at stake. As a reflexive research project, this take-up of decertification by critics also formed an integral part of the data we studied (see Cooper 2023b).

Decertification as a Policy Pathway

The third way we approach decertification is as a policy pathway and wider political logic,[8] pulling institutional practice towards an informalisation already underway. In England and Wales, such moves were evident among community organisations, trade unions, and public agencies as they hollowed out state law's continuing formal reliance on a gender order based on binary sex.[9] Approaching decertification as a movement for change that is not limited by state law's regulatory framework resonates with a legally pluralist approach (e.g., see Griffiths 1986; Merry 1988; Renz 2023). While state law has symbolic traction as critics and supporters of decertification, in different ways, confirmed, what our research also evidenced was the extent of changes already taking place.

In their articles, Renz (2023) and Emerton (2023) consider views on the use and revision of sex and gender categories among feminist service providers, local government, and other bodies. The roundtable discussion led by Smith et al. (2023) reflects on similar practices in other jurisdictions. Policy moves are important in demonstrating that decertification does not depend on, or take shape through, state law alone. Decertification can, also, involve a meshing of different levels of governance, over an extended duration, as bodies lean away from previous categories and incline towards new possibilities (see generally Honig 2021). Consequently, decertification does not assume any singular shape. There are different ways in which decertification has and can develop, with state bodies and agencies playing, accordingly, different roles.

Perhaps what comes through most clearly, however, in reflecting on the involvement of different state bodies and agencies in advancing decertification (as something more complex and multi-faceted than a single legislative act), is a sense of

[7] For examples of cases brought, see *Forstater v. CGD Europe and others* [2021] UKEAT/0105/20/JOJ; *Authentic Equity Alliance C.I.C. v. Commission for Equality and Human Rights* CO/4116/2020; *Fair Play for Women v. UK Statistics Authority* CO/715/2021; see also *R (FDJ) v. Secretary of State for Justice (Rev 1)* [2021] EWHC 1746 (Admin). For sampled news coverage, see Parsons 2021; Topping 2021.

[8] Thanks to Margaret Davies for drawing out this point.

[9] For instance, girls' schools, despite relying on birth certificates for admissions, have made allowances for trans girls, trans boys and non-binary students in ways that go beyond the minimum standards for inclusion set out by the Equality Act 2010, see e.g. Renz 2020c.

unevenness and flux. During the period of our research, many public agencies and state sectors confronted grassroots practices, norms, and identifications that rejected standardised binary categories of state law. How agencies responded to these rejections reflected their mission, culture, constraints, resources, political placement, and personnel, as well as wider political and governmental currents. While opposition to the liberalisation of gender categories from sex-based feminists and others ran through the period of our research, a sharpening of government policy and ministerial discourse was evident, in the early 2020s, in favour of the status quo of legal sex.[10] Approaching decertification as a mesh of processes and practices folds opposition and resistance into an account of its development. Take-up of law and political campaigning to thwart and impede gender's informalisation may have a dampening effect, but it also shapes how decertification takes place. And here, it is also important to approach decertification as something more than a set of distinct legal and policy planes. As Margaret Davies' (2023) Afterword suggests, decertification is a sociocultural development that is also biosocial in how it is lived and inhabited.

Decertification as Experimental Prefigurative Law Reform Practice

Through the course of this research project, we approached decertification as an experimental and reflexive law reform process—that also involved others.[11] Developing decertification as an experimental prefigurative law reform practice is the fourth use to which decertification was put. Legal and governmental simulations can take different forms. Young people's parliaments and model United Nations, for instance, are intended to get children and youths roleplaying core political institutions to understand how they work. Similar processes occur in mainstream legal education when law students are asked to act as judges, writing judgments for legal cases. Learning is invariably part of any roleplay but drawing on prior examples of critical institutional play (such as feminist judgment writing), our aim was to simulate law with a difference. This difference had several aspects. One aspect, discussed further by Cooper (2023b), involved experimenting with legislative form to capture the limits, possibilities, and challenges of writing speculative law. In other words, could a legislative text on decertification be crafted that did not simply mimic the formalistic ambition and confidence of a conventional English statute, but was instead self-reflexive and polyphonic? A second aspect was to produce a law reform proposal outside the bounds of current political debate (even as it might capture the broad societal direction of travel). Decertification might be considered politically outlandish. We wanted to give it careful thought; to treat it as a legitimate proposal, worth paying attention to.

In her Afterword, Davies (2023) reflects on the plural temporalities that decertification invokes. Treating a contentious legal proposal associated with the future

[10] See for instance Maskell 2022.

[11] Decertification is part of a growing field of DIY (do-it-yourself) legal and institutional projects. Here, rather than law reform being something only official bodies undertake, other bodies also take up the task (Macdonald and Kong 2006).

as if it was a currently viable reform is an exercise in prefigurative institutional experimentation. Prefiguration is a helpful framework for thinking about initiatives that anticipate and embody hoped-for future possibilities (see Monticelli 2022), by enacting changes that are sought (Yates 2015; Mensink 2020; see also Carroll et al. 2019). Such a move refuses the conventional political division between means and ends (Van de Sande 2013; Swain 2019). Against the notion that bad means can be justified if they secure good ends, prefiguration treats the means as part of the ends and, also, as anticipating them—since how politics is conducted shapes the society it gives rise to. Prefiguration also treats desired ends as operationalisable and as doing stuff. Rather than await a better society in the future or rely on campaigning and political pressure to induce more powerful forces to secure it, prefigurative politics embodies hoped-for changes in the now. Prefiguration has become a popular and influential framework within anarchist and social movement circles. However, the critical orientation that many social movement activists and anarchists adopt towards state and law means prefiguration's terms have been little utilised in relation to them. Yet, state and law can be sites of prefigurative practice, where hopeful practices (such as British local government's 1980s introduction of nuclear free zones) exceed what can be realised (Cooper 2020). Prefiguration may be carried out, officially, by state bodies. It can also be undertaken by actors, informally, within or in relation to state apparatuses.

But what does it mean to formulate a prefigurative law reform proposal within the course of research; and does it necessarily function as 'a proposal'? Can a proposal not be proposed? Approaching decertification, prefiguratively, emphasises its status as an experimental legal proposal that imagines and rehearses future law, but this does not mean decertification should be introduced in England and Wales today. We do not argue, in this special issue, for decertification's implementation as a contemporary law reform. Instead, we outline some legislative principles for its future enactment mindful that these principles carry the DNA of the geopolitical time of their imagining—namely, of early 2020s Britain, where views on different sides, and particularly the hesitations and anxieties that decertification elicited, shaped the legislative principles formed. These anxieties also provide reasons why decertification may be a candidate for 'slow law' rather than something to advance immediately in this jurisdiction as Cooper (2023b) explores in her article.

This special issue focuses on the decertification of gender and sex, but the prefigurative law reform methods developed in the research discussed have wider reach—being applicable to many ideas for progressive policy and legal reform currently identified as too radical for governmental attention.[12] Some may characterise the deliberate take up of speculative policy reforms as a form of play—a characterisation that is often made dismissively. Play is a tricky description given its association, for many, with light-heartedness, frivolity, and messing about, where little or nothing is at stake. In the context of decertification, the different stakes and investments in gender-related law reform were sharply evident. At the same time, play has been used, in other contexts, as a modality of action that can be serious and developmental (see Statler et al. 2011), and that can have consequences beyond its

[12] For an exploration of 'prefigurative legality', see also Cohen and Moran (2023).

'magic circle'. What play foregrounds, beyond experimenting and roleplaying structures differently, is a testing, stretching, and knotting that pulls things into different connections and relations with others—and sometimes holds things apart (see Cooper 2019). Parliamentary law-making may rarely feel like play (or, to the extent that it does, this is typically a negative assessment). But academic research can be a space where experimental play—including through legislative design—imagines, rehearses, and takes seriously different futures, free of the pragmatism and short-term political calculation that dog proposals developed for immediate introduction.

In reaching out to hoped-for future possibilities and retrieving them as worthy recipients of present-day attention, the involvement of others is central. In the articles that follow, we discuss some of the challenges of engaging stakeholders given the polarised and increasingly bitter character of disputes over sex and gender categories. However, holding on to play is to hold on to an important source of invitation. This is about something far more than being playful. It is about inviting others to participate in the testing and reshaping of social relations. Reimagining gender's relationship to legal categories is not sufficient to bring them into being. But it plays a part.

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