



“We’re not there yet” but it’s not “pie-in-the-sky”: Legal Consciousness, Decertification and the Equality Sector in England and Wales

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Abstract

Drawing on 38 in-depth, qualitative interviews, this article explores how people working in the equality sector in England and Wales view and use the current law around sex and gender, and how they imagine law’s future, particularly potential decertification, where the state would withdraw from certifying and regulating a person’s sex/gender. Whilst situated in the bureaucratic strand of the literature, the paper also contributes to wider legal consciousness studies. This literature has generally focused on people’s relationships to law in terms of domination, alienation and game-playing. Drawing on idioms and the language of touch, the paper unpacks the way in which equality actors talked about law not as remote or alienating, but as close and familiar; not as oppressive, but as “precious” and hard-won. Some also regarded law as a place of safety in unsafe times. These proposed ‘attached to law’ and ‘protective of law’ strands of consciousness enrich and extend Ewick and Silbey’s classic ‘before the law’ narrative. The findings are also useful for critical legal and feminist scholarship. Combined with the equality sector’s pragmatic and tactical use of law to problem-solve, this close and protective orientation towards law reproduces its hegemony. The paper concludes by exploring a recurrent refrain that, in relation to decertification, “we’re not there yet” and that gender equality would need to be achieved before decertification would “fly”.

Keywords Decertifying sex and gender · Equality governance · Gender equality · Idioms · Legal consciousness · Touch

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Introduction

This article explores how people working in the equality sector in England and Wales¹ view and use the law around sex and gender, and how they imagine law's future in relation to advancing gender equality. It is based on 38 interviews, conducted between 2018 and 2020. These were challenging times for the equality sector, characterised by widespread uncertainty about the future of equality and social justice in a post-Brexit Britain and an increasingly polarised debate around sex- and gender-based rights and protections. The research period also saw a turn towards the courts by feminists seeking to protect sex-based spaces and gender-critical beliefs.²

The interviews formed part of the 'Future of Legal Gender' project; a four-year, collaborative research project led by Davina Cooper (see Cooper et al. 2022; and the introduction to this special issue, Cooper and Renz 2023). At the heart of the overall project, and the equality strand on which this paper is based, lay the question—would changing the way the state currently registers and regulates membership of sex and gender categories help the advancement of gender equality or hinder it?

Currently, English law requires people's sex as recorded at birth to be registered with the local registrar.³ Registered sex, and arguably its assumed corresponding gender,⁴ is treated as the person's life-long legal status, subject only to the provision for transgender people to legally transition across binary sex/gender categories pursuant to the Gender Recognition Act 2004 (GRA). Whilst we considered several possible legal futures, we decided, as a project, to focus on the more radical and less-explored pathway of dismantling, rather than remodelling,⁵ the existing system. The question of decertification arose out of Cooper and Renz's (2016) initial study. Decertification would entail the state withdrawing from registering, certifying and regulating (and hence also affirming and stabilising) sex, and arguably gender, as formal aspects of personhood. Whilst not advocating decertification, we felt it warranted closer attention. First, because English law is increasingly gender-neutral

¹ Whilst interviews were also conducted in Scotland and other jurisdictions for comparative purposes, the project took England and Wales as its jurisdictional focus. In this paper, references to 'English law' are to the laws applying in the jurisdiction of England and Wales (although, in some cases, particular laws also apply to Scotland and/or Northern Ireland). Any laws that apply specifically to Wales or Scotland (i.e., under devolved powers) are referred to accordingly. For an overview of reserved matters and devolved powers in the United Kingdom, see Torrance (2022a, 2022b).

² See further notes 20 and 21 below. On gender-critical philosophical beliefs generally, see, e.g., Zanghellini (2020) and Stock (2021).

³ Births and Deaths Registration Act 1953.

⁴ Whether people have a legal gender, as well as a legal sex, is disputed. However, the terms are used interchangeably and inconsistently, including in legislation, see, e.g., the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 and the Gender Recognition Act 2004, which provides for legal recognition of an 'acquired gender'. Once a person's 'acquired gender' is certified by a Gender Recognition Certificate, this becomes their legal 'sex' 'for all purposes' (s9), and they may apply for a new birth certificate showing their new (legal) sex. For judicial discussion of the interchangeability of sex and gender, see *Fair Play for Women Ltd v The Registrar General for Scotland and the Scottish Ministers* [2022] CSIH 7, paras 20–22.

⁵ For example, by adding one or multiple new categories to the existing binary system, following e.g., Germany, Iceland, Malta and Tasmania (Australia). On the limits of this approach, see Wippler (2016).

in both form and substance (Williams 2008; Grabham 2020). Few circumstances remain in which the law treats people differently based on their legal sex; the equalisation of the state pension age in 1995⁶ and introduction of same-sex marriage in 2013⁷ removed two key remaining sites of difference. Second, many employers and service-providers now recognise non-binary and other self-defined gender identities in their day-to-day practices and policies. Should this trajectory of 'slow law' (Cooper et al. 2022) or 'soft-decertification' (Cooper 2020a) continue, the eventual abolition of state-certified and state-regulated sex status might be its logical, legal conclusion.

But what might be the consequences of decertification? Could decertification help undo the gendered assumptions that attach to, and flow from state-certified, binary sex categories? Or does law not have that power? Would decertification help address, or simply leave untouched, the deep, structural gender inequalities that endure in social and institutional life? Might decertification even hinder gender equality, by weakening state responsibility for remedying it and the means to identify and monitor it? (See Cooper 2020a; Cooper and Emerton 2020). Asking these questions of people involved in the every-day work of equality governance proved informative and illuminating.

On analysing the interview data, legal consciousness emerged as an important theme. Building on previous research on British equality governance (Cooper 1995, 2011; Conley and Page 2017), this paper contributes to the 'bureaucratic' strand of the literature, which examines the legal consciousness of people engaged in the governmental and administrative work of interpreting and applying law on the ground, including the political challenges of governing in the face of disliked law (Cooper 1995). To date, the bureaucratic literature has mostly focused on how front-line workers (and sometimes more senior officers) understand and implement the law in case-by-case decision-making, such as homelessness housing applications (Cowan 2004; Hunter et al 2016) and asylum appeals (Richards 2015). Less attention has been paid to the mid-layer of governance and its role and power in institutional and social meaning-making, including around sex and gender. Silbey (2005, 325) has strongly criticised the overall direction taken by legal consciousness research and the loss of its "critical edge" (c.f., Hertogh 2018, 177 on the benefits of a "secular" approach). This article responds to Silbey's (2005, 360) call for more research looking at "the middle level between citizen and the transcendent rule of law", namely, "the ground of institutional practices" where law (conceived broadly and plurally)⁸ is translated into organisational policy and practice, shaping internal structures, and external, front-line services.⁹ This mid-layer of governance provides rich analytical terrain for a critical, feminist project.

⁶ Pensions Act 1995.

⁷ Marriage (Same-Sex Couples) Act 2013.

⁸ As a critical project, we understood law as encompassing not only 'official' law such as legislation and case-law but also law-like normative structures, such as heteronormativity (see Harding 2010) and the sex/gender binary.

⁹ That is not to say that front-line service-providers act as mere neutral conduits of law and policy. Rather, a cycle of knowledge and power circulates *between* equality actors and service-providers, shaping

The paper also contributes to the wider legal consciousness literature. This literature has previously focused mostly on experiences of domination, oppression, game-playing and alienation. Articulations of close attachments to, and protective orientations towards law are hard to find. For Sarat's (US) welfare beneficiaries, law was "all-over", i.e., all-pervasive (1990, 343). Theirs was "not a law of reason and justification nor a law of sacred texts and shared normative commitments" (345), but a law of power and compulsion. Whilst caught in law's web, these welfare beneficiaries simultaneously felt excluded from it; interpretative power and authoritative meaning-making lay with others. Complying with law and bureaucratic rules, whilst tactically playing the game, was fundamental to their success and survival in the system. Juxtaposed against this long-prevailing narrative of law as all-pervasive, dominant and oppressive, Hertogh (2018) has argued that, for many, law is increasingly remote. Hertogh (2018) found that official interpretations of (Dutch) non-discrimination law were becoming disconnected from normative values and social understandings of equality (87–108). This gradual, mundane process of "alienation" (176), he argued, would eventually undermine law's legitimacy. Ultimately, law would no longer matter; it would become "nobody's law" (177).

This paper furthers the existing scholarship, by tracing interviewees' understandings and expressions of law as close and familiar, rather than remote or alien; as precious and mattering, rather than oppressive or inconsequential. These proposed 'attached to law' and 'protective of law' strands enrich Ewick and Silbey's (1998) classic 'before the law' consciousness by adding further nuance to its meta-story of law as impartial, majestic and problem-solving. The paper also contributes to feminist critiques of law and the long-standing debate about whether feminism should engage in law and law reform (see, e.g., Armstrong 2004; Auchmuty and Van Marle 2012; Smart 1989).

To the extent that the paper is interested in decertification as a future, conscious deployment of law and its formal institutions to effect social change, and in the conditions in which decertification might "fly", it overlaps with legal mobilisation (for a good overview of the conceptual relationship between legal consciousness and legal mobilisation, see Lehoucq and Taylor 2020) and the political opportunity structure discussed by social movement theorists (see, e.g., McAdam et al 1996; McCann 2006; Meyer 2004; Meyer and Minkoff 2004). Whilst beyond the scope of this paper, future research could usefully develop these interconnected lines of analysis (for relevant, contemporary examples, see Lehoucq 2021; Vanhala 2012).

The paper starts by briefly situating the research in relation to Ewick and Silbey's (1998) taxonomy of legal consciousness and describes several key insights from the interdisciplinary literatures on idioms and touch which inform the analysis. An outline of the research methods and the legal and political context follows. The analysis

Footnote 9 (continued)

law's manifestation and evolution at the institutional level. Indeed, policy studies have long challenged the classic top-down or 'conveyor belt' narrative of law's implementation and enforcement. Lipsky's (1980) influential characterisation of street-level workers as the 'ultimate policymakers' is contested, however, by Maynard-Moody and Musheno (2000, 2012), who argue that front-line workers influence policy through their normative choices, but don't act as policymakers per se. See also Headworth (2020).

then proceeds in three parts. Part one takes up the textural language of “fuzziness” and “fudge” and “sticking to the letter of the law” to explore how equality actors view and use current law in their work. It also sheds light on how (some) public sector interviewees understand the state’s and hence their own role in advancing equality (i.e., their ‘state consciousness’).¹⁰ Part two considers interviewees’ hopes and fears around law’s future. Here, it examines more immediate concerns about anyone “touching” or “messing” with existing equality law in the current legal and political climate, before exploring broader and deeper concerns about the risks of “having a go” at decertification, despite the lure of radical reform, which would decentre the state in the regulation of sex and gender. An understanding of law as something “precious” and hard-won is then taken up, to explore an unexpected affiliation and protectionism towards law among feminists, despite law’s long history of oppressing women. Part three addresses the metaphor of society and law being on a journey to a distant, better place and unpacks the recurrent refrain of “we’re not there yet”. It then turns to equality actors’ future imaginings of law around sex/gender, focusing on their hopes (rather than their fears) and the possibilities and promise that decertification might offer.

Situating the Research: Legal Consciousness, Idioms and Touch

Building on the foundational work of Sarat (1990) and Ewick and Silbey (1992, 1998), a substantial body of socio-legal research has explored the everyday life and power of law (on the varieties of legal consciousness research, see, e.g., Halliday 2019). Since complicated and expanded,¹¹ Ewick and Silbey’s original classification of legal consciousness into ‘before the law’, ‘with the law’ and ‘against the law’ continues to have relevance for contemporary research, including research relating to sex, gender and sexual orientation (see, e.g., Cowan 2020; Harding 2010; Hull 2016; Peel and Newman 2023). Briefly, a ‘before the law’ orientation regards the law with respect and reverence and as rational, impartial, objective and majestic. ‘With the law’ understands law as a resource or a game to be played. The reworking of these categories into ‘wielding the law’ as a ‘shield’ or ‘sword’ is also helpful (Halliday et al 2015). The third category, ‘against the law’, is characterised by resistance, where law is viewed as oppressive.

These three categories are not mutually exclusive. Indeed, Ewick and Silbey argued that it is through the co-existence of ‘before the law’ and ‘with the law’ consciousness that law’s legitimacy and power is sustained (1998, 231). This explains why people continue to comply with law and believe in it as a force for good, despite its shortcomings and failures. Such an unstinting faith in law and its promises of

¹⁰ With thanks to Davina Cooper for suggesting this term. On ‘feeling like a state’, see Cooper (2019).

¹¹ E.g., Fritsvold proposed a further category, ‘under the law’, to capture a consciousness among environmental activists that state law protects a fundamentally illegitimate social order (2009); see also Halliday and Morgan (2013). Hertogh’s proposed ‘alienated from law’ consciousness (2018) is discussed above.

equality and social justice has long been critiqued by critical legal scholars (e.g., Ewick and Silbey 1998) and feminists alike (e.g., Smart 1989).

In analysing the interview material, my aim was to attend to the way law unfolded through the everyday practices, exercises of power, and imaginations of people working in the equality sector in England and Wales. A focus on idioms and other rich, descriptive language acted as a means of “tuning up” (Stewart 2011, 448) to that world. Because of their power to construct and convey a shared cultural experience,¹² idioms are particularly useful for legal consciousness research. Indeed, legal scholars have always drawn on idioms and other figurative speech to depict people’s understandings and experiences of law, e.g., “the law is all over” (Sarat 1990, 343), and “everyone knows the game” (Young 2014, 516).

The paper also explores legal consciousness through its relationship to touch. Whilst a rich interdisciplinary literature exists on touch, particularly within cultural studies (e.g., Sedgwick 2003; Ahmed 2004, 2014; Coleman 2020), its usefulness for thinking about law and governance has been less frequently mined (notable exceptions include Grabham 2009; Cooper 2011). Indeed, touch is a surprisingly underexplored theme in the legal consciousness literature and meta-stories of law generally. This article is interested in two aspects of touch; first as a means of expressing a relationship of proximity (nearness or farness) to law and law reform, both in time and distance, and second, in the reciprocity inherent in touch, in the sense that touching always engages being touched (Ahmed 2004). Meanwhile, touch’s effect may be haptic and/or it may evoke an emotional response or ‘affect’. A particularly important facet of the reciprocity of touch for the purposes of this paper is the impression left, or perceived to be left, on others by touching the law or law reform in a particular way (see Cooper 2011, 2019).

Research Methods

The paper is based on 38 qualitative interviews conducted by the author¹³ with people in equality-based roles in local government ($n=10$) and other public sector bodies ($n=5$); trade unions ($n=10$); non-governmental organisations (NGOs) ($n=12$) and one equal pay consultant in the higher education sector ($n=1$), in England and Wales.¹⁴

The research methods used in the overall project are discussed in the project’s final report (Cooper et al. 2022) and the introduction to this special issue (Cooper and Renz 2023). Interviewees for the equality strand were invited because of their professional experience of working in equality governance, with diverse communities, and across intersecting inequalities. In recruiting local government equality

¹² It is well-established that idioms act as emblematic expressions of culturally commonplace knowledge. For an overview of the literature, see, e.g., Kitzinger (2000) (exploring the power of, and resistance to idioms, through feminist conversation analysis).

¹³ One union interview was conducted by Flora Renz. Two local government interviews were conducted jointly by the author and Davina Cooper.

¹⁴ To retain anonymity, I have used pseudonyms and described work roles generically.

officers, for example, the research group targeted local authorities serving more diverse, urban populations, whilst striving for broad geographical coverage. NGO recruitment was directed at people in senior leadership and policy roles in large umbrella equality NGOs, broad-based equality NGOs and NGOs specifically engaged in advice, education, training and/or campaigning around sex/gender equality. I also approached people identified by the research group or other interviewees as creative thinkers and/or innovators in the field (including from different, e.g., gender diversity and gender critical perspectives).

Recruitment was time-intensive, and take-up was relatively low among unions and local authorities compared with NGOs and non-departmental government public bodies. Lack of time, interest or (perceived) expertise may variously have been at play, and/or unease about engaging in the research, given the wider political landscape. Several respondents expressed reservations about the project, and questioned its claims to be feminist, but agreed to be interviewed. Two union respondents, initially enthusiastic about an academic, feminist project researching this field, declined to participate after a preliminary discussion of the project's aims and scope.

Participation was anonymous, both individually and organisationally. Interviews were mostly in person or, during the COVID epidemic, via video-conferencing. Several were by telephone. Interviews lasted 60–75 minutes, were semi-structured, and conversational in style. They opened with questions about the organisation's hopes for, and agendas around gender equality; how interviewees used the terms sex, gender and gender identity in their work; and examples of current issues and flashpoints around sex and gender (including terminology) and how they had been resolved. Only later were direct questions about law and law reform pursued. For example, what would they be most concerned about if people no longer had a legal sex status? What might be lost and/or gained through decertification? What barriers might there be, and how might they be addressed? Whilst the interviews weren't specifically designed with legal consciousness in mind, the questions prompted 'talk around' the law as well as 'talk about' the law, which provided rich material for this paper. The idioms, metaphors and other figurative language deployed by interviewees occurred naturally in conversation. Their valuableness for exploring the equality sector's legal consciousness emerged on analysis of the interview data.

Legal and Political Context

The interview period was marked by the United Kingdom's withdrawal from the European Union (Brexit), which caused widespread apprehensiveness about the future of equality and social justice in Britain. The legal future of sex/gender, meanwhile, was uncertain and mired in an increasingly polarised debate.

The primary legal framework in which our interviewees worked was the Equality Act 2010, a highwater mark of equality legislation in England and Wales (see, e.g.,

Hepple 2010, 2011; for a contemporary review see Bi 2022).¹⁵ The Act (which also applies to Scotland) prohibits discrimination by employers, organisations and public authorities in the provision of goods, services, education, training and employment. Prohibited discrimination or ‘protected characteristics’ include ‘sex’ (defined as a reference to a man or a woman, s11), ‘pregnancy and maternity’ and ‘gender reassignment’ (broadly defined, despite the Act’s deployment of the medicalised term ‘transsexual’, s7).¹⁶ Unequal pay for equal work between people of the ‘opposite sex’ is also prohibited (s54; see Grabham 2023). Equality actors in the public sector must also oversee compliance with the ‘public sector equality duty’ (s149; on the scope of the duty, see Fredman 2011; Carr 2014; McColgan 2015; Manfredi et al 2018). This positive duty requires public authorities to contribute to the advancement of equality and good relations regarding (inter alia) sex, pregnancy and maternity, and gender reassignment, by embedding equality considerations in their everyday decision-making, policy-design and service-delivery. The general duty is supplemented by specific duties for England, Wales and Scotland.¹⁷

During the research period (and despite being in force since 2010), the scope of the Equality Act’s provisions on separate- and single-sex services and their relationship to the GRA remained unsettled.¹⁸ The UK government’s consultation on GRA reform (GEO 2018) and the potential legal recognition of self-determined gender compounded uncertainty.¹⁹ Caught in a vortex of parliamentary, social media and traditional media attention (see Whittle and Simkiss 2020), debate intensified. The government’s long delay in publishing the consultation results and its response (GEO 2020) aggravated the situation. Several interviewees felt the government was deliberately “kicking things into the long grass”.

Numerous interviewees expressed concern about the legal and reputational risks involved in policy-making and advice-giving in such a highly contested field. This risk was real. Some had received external complaints about organisational policies referring to ‘gender’ rather than ‘sex’ in relation to the Equality Act’s sex-based protections. Some had been challenged over their interpretation of the law around separate- and single-sex services and facilities. Many were anxious about the risk of litigation, as activism around women’s sex-based rights intensified throughout this period and judicial review proceedings were initiated against various government

¹⁵ Several of the Equality Act’s more innovative provisions have not yet been brought into force. In 2021, however, the public sector socio-economic duty (s.1) was enacted in Wales, under devolved powers.

¹⁶ See, generally, e.g., Malleon (2018). On the Employment Tribunal’s inclusion of non-binary within the gender reassignment protected characteristic, see, e.g., Bowcott (2020).

¹⁷ In England, the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 apply; in Wales, the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 apply.

¹⁸ The Equality and Human Rights Commission introduced its long-promised guidance in April 2022 (EHRC 2022). On the contours of this debate, see, e.g., Sharpe (2020) and Asteriti and Bull (2020). On imagining single-sex services in conditions of decertification, see Renz (2023).

¹⁹ Whilst the UK government did not proceed with substantive (UK-wide) GRA reform, in March 2022, the Scottish government introduced its own Gender Recognition Reform (Scotland) Bill, which envisages de-medicalised, self-declared gender recognition for Scotland. The Bill passed its first stage in Holyrood, the Scottish parliament, in October 2022.

policies.²⁰ Some interviewees expressed concern about having internal discussions around these issues, and people's ability to speak freely. Notably, during the research period, an employment case was underway regarding non-renewal of a consultant's contract with a think-tank after she privately tweeted gender-critical views. The case sought (successfully on appeal) to establish legal protection under the Equality Act for the philosophical belief that a person's sex is a material reality not to be conflated with gender or gender identity.²¹

Having a sense of these challenging and uncertain times gives important context to the everyday world in which the interviewees were operating when interviewed, and their hopes, fears and concerns around future law reform around sex and gender.

Findings

The interviews crossed three temporalities: law in the here and now, law in the near, conceivable future and law as it could be. The following explores key findings by time-frame.

Law in the Here and Now: Fudge, Fuzziness and Sticking

This first part explores how equality actors viewed and used existing law around sex and gender. It highlights an interesting and unexpected thread of positive talk about law's "fuzziness" and the value of "fudging" it, which contrasted strikingly with descriptions of law as setting a clear-cut standard for compliance and the benefits for equality governance of "sticking to the letter of the law".

Law as a "baseline" and "the powder I keep dry"

Interviewees generally described law and its usefulness for equality governance consistently with conventional categories of legal consciousness. For Anne (public sector body, senior leadership), law provided a clear, minimum standard of behaviour:

I kind of think the law is kind of like the foundation or the baseline. It's like the minimum and then everything we do above that should be the maximum

²⁰ Cases include a challenge to Oxfordshire County Council's guidance to schools on transgender inclusion (see, e.g., Lynch 2020); *Fair Play for Women v UK Statistics Authority*, Claim No. CO/715/2021, challenging Office of National Statistics guidance on the sex question in the 2021 census (for scholarly commentary, see, e.g., Sullivan 2020 and Hines' and Fugard's replies in 23(5) *International Journal of Social Research Methodology*); and *R (FDJ) v Secretary of State for Justice* [2021] EWHC 1746 (Admin), challenging Ministry of Justice policy on housing transgender women in women's prisons. See also Parsons (2021) on a failed challenge to the legality of the ECHR's guidance on the Equality Act. On similar debates in Scotland, see, e.g., Murray and Blackburn (2019) and Cowan et al (2020). The meaning of 'woman' in the *Gender Representation on Public Boards (Scotland) Act 2018*, [2022] CSIH 4 P697/20 and official guidance on the sex question in the Scottish 2022 census, [2022] CSOH 20 have also come before the Scottish courts.

²¹ *Maya Forstater v CGD Europe* UKEAT/0105/20/JOJ, June 2021. For legal commentary pre-appeal, see Cooper (2020b) and Monaghan (2020); see also Cowan and Morris (2022).

and that is sort of what society does and what people aspire to. I do think you need that sort of foundation.

The concept of law as a normative baseline, which is generally respected in society and shapes what “society does”, is redolent of ‘before the law’ consciousness. Others referenced law’s hegemonic power as a means of compelling compliance when other approaches failed, which is also consistent with ‘before the law’ consciousness (i.e., where law is used as a sword, Halliday et al 2015). In this articulation, law was regarded as a fall-back (rather than a baseline) to conclusively resolve disputes or proscribe action. Jamie (NGO), whose role involved advising schools on LGBTQ inclusion and equality stated: “The Equality Act is incredibly helpful. I think it’s just having it there as a safety net really, that is what it feels like. We never go in heavy and hard with that. That’s the powder I keep dry.”²² Vanessa (trade union, senior leadership) remarked, “It’s not that I am saying women have been particularly well served by the law, but it has been something that we have been able to go back to and say, ‘you can’t do this.’”

The ideological tension between relying on law’s remote, imperative power to enforce women’s rights, whilst recognising law’s historically poor treatment of women, was apparent in several interviews, including Vanessa’s, yet none of the interviewees specifically referred to struggling with their own participation in reproducing law’s hegemonic power (Ewick and Silbey 1992, 1998; Smart 1989; see further below).

“I was quite happy with the fuzziness ... let’s just fudge it”

A particularly interesting motif in the interviews was the frequent portrayal of the law around sex/ gender as “fudge”-like and “fuzzy”. While the term ‘fudge’ was sometimes used with negative connotations, law’s ambiguity was also—sometimes simultaneously—regarded as productively enabling different understandings and interpretations of sex/gender to co-exist. This view is rarely heard in the current, divided debate around law’s interpretation and law’s future in relation to sex and gender. Sarah (NGO, women’s equality, policy role), described law as providing a constructive, conceptual fudge between “the biological and subjective reality of the situation”, continuing:

The reality of biological sex existing, gender identity existing and being something that is perceived and held by a person, in contrast to their sex as assigned at birth, it feels important that those are both in law. Working out how the fudge can best be maintained, that is where the law is now.

The “fudge” also spared the government from taking a definitive stance on this heavily contested issue: “I can’t see the government wanting to change that.”

Many interviewees stated that it would facilitate their work (and public understanding) if the law were clearer. When probed whether ambiguity could sometimes be useful, Jamie (NGO, above) replied, “It is and it isn’t. I think it’s positive because we can use a bit of greyness to our benefit. But other people who don’t like what we do can use it to *their* benefit.”

²² This expression alludes to gunpowder, which needed to be kept dry, in readiness for battle.

Finola (NGO, women's equality, senior leadership) spoke of law's productive "nebulousness". For her, retaining legal space for the coexistence of different conceptual understandings of sex and gender, and the category 'woman', was important. By "fudging it", Finola remarked, the GRA had provided a way of legally recognising transgender women while leaving open the contested feminist question of whether, ontologically, transgender women are women: "I was quite happy with that fuzziness. Some radical feminists will argue against this and say absolutely the only way to define it [woman] is as adult human female. I was like, let's just fudge it."

Finola also mentioned the practical value of legal ambiguity: "I think what we had was fuzzy areas which worked". Her regret at their loss could be read as a reference to (anticipated) GRA reform, but it also hinted at more general nostalgia for a bygone era when sex and gender categories weren't (as) problematic. Perhaps also for a time of less public and political scrutiny, affording bodies (both human and organisational) more freedom and flexibility. Finola was also saddened by the loss of flexibility and collaboration within feminism. Both sides of the debate were "hardening", she felt, and some radical feminists no longer wanted "all the kind of fuzzy areas and give and take and stuff like that". Rather, they sought to "draw a line in the sand" to clearly demarcate the boundary of the category 'woman'. Whilst this idiom usually implies finality, a line drawn in the sand risks being washed away by a future tide. Thus, the underlying incongruity in the expression captures a sense of the precariousness of territorial lines drawn at any particular moment.

"I'm getting splinters in my backside"

In addition to positive comments about law's malleability, some interviewees drew on the more traditional, negative inference of 'fudge' to describe law as giving the impression of solving a problem, whilst not doing so in practice. Lack of legal clarity around separate- and single-sex services spaces was a recurrent theme, particularly in the context of domestic and sexual violence services.²³ Sarah (NGO, above) reflected:

The lack of any real guidance from the government does not give those [domestic and sexual violence] service providers much support, which is something we consistently hear. A very valid complaint is that it [the law] looks like it allows them to weigh things up and make a proportionate decision, but unless they really have any idea what the law might consider to be proportionate, they are actually a bit at sea. Again, it comes back to the fact that we have got a fudge.

Rosa, who commissioned local government domestic and sexual violence services, perfectly captured the tension between principles and practice in this field. As a feminist working in local government, she generally preferred localised policies, yet the lack of direction from central government had rendered the situation almost ungovernable:

²³ Similar concerns were raised in the Women's and Equalities Committee inquiry on enforcing the Equality Act, which coincided with the research period, see WEC (2019, paras 156–190).

Central government and local authorities have a role to play in setting policies. That is a difficult role. I hear all the arguments... I am getting splinters in my backside because I see both sides. From a commissioner's perspective, I would welcome central government... it's almost like the 'it's the way it is and that's what we have to adhere to' instead of the Wild West format that we have at the moment.

In this sense-laden description, Rosa could "hear" and "see" both sides of the debate (about whether local authorities should be free to procure specialist women-only services that don't include transgender women and/or don't offer services for men) and described being physically hurt in engaging with law and trying to come up with a commissioning policy. The hard, piercing imagery of splinters contrasts dramatically with others' accounts of law's soft, malleable fudgy-ness. Rosa's portrayal of current conditions as the "Wild West" suggests that the terrain was both ungoverned *and ungovernable*. Governing through "fudging it" was not a realistic option; a certain appeal lay in central government taking over and restoring order. Further, the perpetual debate about law's parameters was sapping crucial energy from the everyday work of responding to urgent need; Rosa described herself as "down in the trenches" fighting for service provision with ever-decreasing resources.

"Sticking to the letter of the law"

Whilst Rosa could see the benefit, hypothetically, of being able to "adhere" to definitive rules, some local government interviewees described "sticking to the letter of the law" as their current, habitual way of working. Such close attachment to law resonated with a 'before the law' understanding of law as rational, impartial and problem-solving, but had further interesting dimensions. First—contrasting with talk about law's "fuzziness"—"sticking to the letter of the law" presupposed that law was clear-cut and unambiguous. Second, it implied a formal or literal approach, sometimes with negative undertones. Carys (broad-based equality NGO, senior leadership) lamented that, compared to Wales, England's much weaker public sector equality duty had led to an impoverished, bureaucratic approach:

... the Wales-specific duties under the Equality Act are very very different from the English ones [detailed description of the Welsh duties]. In England, all of that has gone by the wayside, equality is now a 'as long as you are sticking to the law, just do it'.

Certainly, "sticking to the letter of the law", was a recurrent theme among local government interviewees (though not reflective of all). When asked to describe the council's values and long-term vision in relation to sex and gender, for example, Mike (local government, equality officer) replied:

So obviously it's a public authority. We work under the public sector equality duty in terms of the Equality Act [...] In terms of sex and gender identity, we are working very much within the legal framework. In terms of our day-to-day conversations, we try to keep up-to-date in terms of what is appropriate, while always recognising the kind of letter of the law.

With the extensive 'juridification' (putting into formal law) of equality and social justice norms in Britain over the last 30 years (see, e.g., Cooper 1995), it is unsurprising that some (especially newer) local government equality officers might routinely make close reference to the law in describing their work and the council's values. This doesn't necessarily indicate a thin or impoverished approach to equality. Initially describing the council's values and aspirations legalistically, Mike later emphasised that "we *want* to do this agenda, anyway" and that equality and diversity lay "at the heart of what we are as an organisation, as well as being a legal responsibility".²⁴ He therefore depicted the council's commitment to advancing equality as both normatively- and legally-driven.

For some local government interviewees, sticking to the letter of the law was necessary to avoid conflict or resolve issues in challenging times. An element of self-protection also seemed at play. Here, law's remote, impartial, formal authority was used as a shield (Halliday et al. 2015). Tolu (local government, equality officer) remarked, "if you are sticking to the letter of the law, it can't be called into question". Alex (local government, equality officer) described how a fellow equality officer had resolved a difficult situation, where several councillors objected to council policy on transgender women's access to women's changing facilities:

At the end of the day, the local authority officer just said, 'I have to follow the law. The law is this'. [...] The only way to respond to that political concern is to simply say 'I am following the letter of the law'.

"I don't think we should be blazing a trail"

Reliance on law as a shield leads to a third, and perhaps the most important aspect of sticking or staying close to the law, that is, an understanding of law as a place of safety in unsafe times. Public sector interviewees were particularly alert to the potential legal and reputational risks entailed in being progressive or "creative" around equality. For example, Anne (above, public sector) remarked:

Fundamentally, we are an organisation that won't take too many risks. You do have to be mindful of what the law allows you to do and what it doesn't allow you to do and the more creative you may want to be, while that could be laudable in terms of inclusion or reaching out to different groups or whatever it might be, it probably puts you at greater risk of challenge. There is a legal risk. And, for a lot of organisations, reputational risk is [...] as important as the legal risks.

Some, like Nicky (public sector, equality officer), also implied that public sector bodies were *duty-bound* to stay close to the law and to tread cautiously:

I know people do watch us and they do take our lead on things ... if we are not seen to be doing the right thing, it gives the wrong message ... I don't think we [the organisation] should be blazing a trail if you like.

²⁴ See Maynard-Moody and Musheno (2012) on how interviewees frequently gave stock answers when asked how they understood justice, yet proffered much more considered, nuanced replies to context-specific questions about delivering justice in everyday practice, problem-solving and decision-making.

This remark shed interesting light on Nicky's perception of the state's and hence her role (her 'state consciousness') in advancing equality and on the nature of her duty to the public.²⁵ When talking about doing—and being seen to be doing—"the right thing", she described this as moving with the times, whilst not being at the forefront of change (or "blazing a trail"). Will (public sector body, equality officer) described how, organisationally, they had their "fingers burned" when they introduced a policy (subsequently withdrawn) of recognising self-identified gender. The risk of burning oneself legally or reputationally by blazing a new trail rather than taking an existing path, is manifest. This (almost ecological) metaphor of law as something that must be treated with care and caution also emerged in discussions around law's future.

Hopes and Fears Around Law's Future: Touching, Messing and "Having a Go"

This part explores interviewees' hopes and fears around law's future, moving from more tangible, conceivable law reform to the future-orientated proposal of decertification. It highlights an unexpectedly strong sense of protectiveness towards law among equality actors, which, whilst grounded in respect and/or reverence, adds new nuance to previous characterisations of 'before the law' consciousness.

Concerns about anyone "messing with" and "touching" the law

For many interviewees, the pending outcome of the government's consultation on GRA reform was of most immediate concern. Some, particularly those working on LGBT equality, feared that the government would "mess with" the GRA, and indeed make a mess of it, despite purportedly intending to "clean it up". Rowan (NGO, LGBT equality) stated: "My worry is they [the government] are going to mess with it [the GRA] now. I'm a bit apprehensive about what is to come." Steph (NGO, policy role focusing on transgender equality) remarked:

We've campaigned and campaigned for the GRA and it's got to the stage where it's just... it's almost like, do we even want, in this current climate, the MPs cleaning it up because it could actually... what is at risk is they make really negative changes to it, or they do make positive changes but they offset that by doing what they promised not to do, which is go in and make changes to single-sex spaces.

Broader and deeper concerns about the future of equality in a Conservative-led, post-Brexit Britain were also at play. Many interviewees felt it was "not the right time" for *any* type of law reform around equality. Pete (union, equality officer) remarked: "Not that we would be looking for the Equality Act to be opened up right now. Our belief is that, politically, this is not the right time, and we don't trust our current government."

Equality actors were also wary of "touching" the Equality Act themselves. According to Tess (broad-based equality NGO, senior leadership): "nobody wants to touch the Equality Act within the sector because anything would be regressive".

²⁵ cf. Maynard-Moody and Musheno (2000) on street-workers' understanding of themselves as citizen-agents who enforce values and help create and maintain the normative order of society, rather than state-agents who implement the law.

In contrast with the government's "messaging", interviewees consistently described themselves as "touching the law", connoting thoughtful, conscious and socially responsible engagement with law (see Cooper 2011, 16–18). Various interviewees mentioned previous, broad consensus within the equality sector to lobby for improvements to the Equality Act. Now, they wouldn't touch it, even from a distance, with a "barge pole", as Mel (NGO, LGBT equality) remarked:²⁶

We wanted the Equality Act to be better, now we wouldn't touch it with a barge pole because it is just not worth risking the meagre rights everyone has, to try and get better, because in this climate you are not going to get better, for everyone across the board regardless of whether it's LGBT, race, faith, anything. We wouldn't support anyone bringing that up for reform at the moment. We are not in safe times.

"But we fought so hard for that, so why would we then take it away?"

As the discussion moved towards decertification as a future law reform proposal, tension between maintaining the status quo and engaging in law reform became even clearer. This was illuminating from both feminist and critical law perspectives. Some interviewees expressed a strong, perhaps surprising faith and trust in the current law, given their feminist roots. For example, Tess (above, NGO) remarked that state-certified sex must be there for a (good) reason, and, by implication, serve women well: "why would you have it, if it doesn't serve a purpose and you can actually achieve things better in a different way?". Mary (equal pay adviser in higher education), when discussing the Equal Pay's 'opposite-sex' mechanism for assessing equal pay, expressed confidence in law and its institutions: "When they developed the Equal Pay Act, if there had been a softer alternative that would work, they would probably have created it. It had to be this unambiguous in order to work".

Feminists have long argued whether law's history, authority and apparatus can aid progressive change, or whether law should be decentred or even abandoned in feminist activism (see, especially, Auchmuty and Van Marle 2012; Smart 1989; and for a good summary of different feminist perspectives, see Armstrong 2004). Talking about decertification seemed to magnify this feminist dilemma. Many interviewees could see the potential in radical law reform de-centering the state's disciplinary power. However, talking about decertification also prompted a certain protectionism towards law and its legacy. This tension was encapsulated by Vanessa's observation (above, union):

The law does not work for women. The criminal justice system towards women is an absolute disgrace. On the one hand, I am not sure about how you... about *why* you would get rid of sex as a right, as a thing, in law. But on the other hand, I don't think the law has served women well at all.

For Tess (above, NGO), law's legacy, and specifically the equality sector's long "fight" to obtain legal protections, was significant:

²⁶ Subsequent to the research period, in July 2022, the parliamentary research organisation Equality Act Review launched a campaign and published a report calling for the Equality Act to be reviewed, see Bi (2022).

Within the sector, that will be behind a lot of people's fears about removing legal protections or legal anything. You fought so hard to get them in order to get some recourse and the role of law as a lever, not just in individual cases, but at a more systemic level in policy change.

The fact that decertification would remove the need for legal gender recognition under the GRA occasionally elicited a similar response. Steph (above, NGO, transgender equality role) remarked: "but we fought so hard for that, so why would we then take that away?"

It was clear that something deeply symbolic was attached to the act of removing, rather than adding something to the law. Decertification was perceived by a number of interviewees, in both women's equality and broader equality roles, as part of a trajectory of loss. Loss of language relating to women's biological functions (e.g., pregnancy and maternity), and the move towards gender-neutral language in legal, policy and other texts was often referenced in this context.²⁷ Vanessa (above, union) saw decertification as taking away women's name "in the law":

I think at this point in time, women are feeling so oppressed that the idea that you would take away their name in the law is too frightening. I am not saying that it couldn't be a thing, I don't think it's the thing that we should be doing now.

Concern about the potential loss of women as a legal, biological sex-based class and a related weakening of women's rights was also frequently expressed. As explained in interviews, the state's withdrawal from legally certifying sex/gender wouldn't necessarily prevent sex (or gender) from functioning as an informal or descriptive status elsewhere in law. People don't have a state-certified sexual orientation or religion, for example, yet the Equality Act prohibits discrimination on these grounds. This clarification didn't seem to assuage concern. Anne (above, public sector) was representative of many interviewees, when asked what would most concern them about the removal of legal sex status:

Losing women's rights. And I don't mean just in sport. Women's rights are basically based upon their biology. Women, girls experiencing FGM, lack of access to abortion and reproduction, or lack of education, all of those things aren't based upon gender, they are based upon sex and the way that girls get treated, and my concern is, if we scrap biological sex as a category, we lose women's and girls' rights.

"I'm treating it as a really precious thing ... be very careful"

A particularly striking metaphor about the 'preciousness' of law surfaced in the interview with Carys (above, NGO):

²⁷ On gender-neutral legislative drafting policy, see Grabham (2020). On parliamentary resistance, see, e.g., the House of Lords' rejection, in February 2021, of the proposed wording 'pregnant person' rather than 'mother' in the Ministerial and Other Allowances Maternity Act 2021 <https://hansard.parliament.uk/lords/2021-02-22/debates/EF8A7974-0A9C-4F17-B9DC-B7D26E52D52F/MinisterialAndOtherMaternityAllowancesBill>. Accessed 30 October 2022.

You would either leave it [the law] as it is or be *very* careful what you are opening the door to. Do you know what I mean? I am treating it as a really precious thing. Just be very careful ... I can see the other side as to why people do want to open a debate about gender and having legal status. Again, just be very careful to weigh that, so we don't lose the progress that has been made with gender.

When asked why the law was precious, and what law had achieved in terms of gender equality, she elaborated:

I go into a room and I sort of say, 'I'm a woman, and being a woman means x, y and z'. And people will go, 'yeah, yeah, you have got a point'. I go into a room and I say, 'I'm a black person and being black means x, y and z'. And they go, 'ah, but ...'. It's like it doesn't have the...you still have to fight for the space to make people understand that there is an experiential difference as a black person than there is... you have to fight for the space to this day. Whereas you don't have to do that for being a woman. That is what I mean.

For Carys, law's power and authority contributed to a level of cultural and societal understanding of gendered experiences, which, in her lived experience, was absent in relation to ethnicity. If sex/gender were decertified, she feared that society's understanding of such experiences (for example, that as a woman "you are more likely to be at the receiving end of harassment and discrimination and everything through to rape") might become "more murky" and "less easy to articulate". The word 'precious' not only portrayed law as valuable and cherished, but also conveyed a sense of law's fragility and precarity. There was risk in touching the law, which should be consciously considered, including (by implication) by our project, as underscored by the threefold repetition of her cautionary words: "be *very* careful."

Concerns about "having a go" at decertification

Several interviewees expressed concern about the very idea of a project exploring decertification, particularly if undertaken carelessly or casually (on the politics of non-authorised actors 'tinkering' with law through experimental 'DIY' law reform, see Cooper 2023). Vanessa (above, union) remarked:

If it [decertification] genuinely meant that we could all express ourselves and live our lives free from all the things I've said, okay, brilliant. But I can't see any articulation of that, other than 'let's have a go' and I would be concerned that 'having a go' could erase or eradicate the rights we've got and the potential to get better rights.

Whilst Vanessa saw some merit in radical reform, her duty to safeguard members' existing and even potential rights was paramount:

There is something to be said for just chucking it all up in the air and starting again... [but] from a trade union point of view, we would not like that very much, because there would be too much uncertainty for our members.

Conversely, Charlie (NGO, LGBT equality) referred to “smashing things up” as an organisational goal: “What we are trying to do is to basically smash all that [Victorian values] to pieces. And start again”.

Tess (above, NGO) emphasised the strategic importance of lobbying for the right proposal, to maximise the political opportunity for transformative change. In Tess’s experience, the opportunity to secure government/ parliamentary attention on a “big thing” tended to come along every 10 years and therefore needed to be used wisely:

And so, you want your next big thing to be something that is really going to make a big difference. This could be it. It could be transformative. But it might not be. [Pause] Sometimes things need disrupting though as well. You can’t—otherwise you would just always have the status quo.

Decertification in the Distant Future: Law Reform as a Journey, “Thinking Big” and “Imagining the Unimaginable”

In addition to a general consensus that it wasn’t the right time, politically, for (any) equality-related law reform, interviewees were unanimous in the view that society wasn’t ready for decertification. This part explores the metaphor of society and law reform being on a journey to a distant (better) place and interviewees’ thoughts on the necessary conditions for decertification.

“We’re not there yet”

Interviewees’ consensus that society wasn’t ready for decertification dovetailed with the project’s findings on lay people’s views (Peel and Newman 2023). Two aspects of readiness were raised, first, the level of public understanding and support for such radical law reform, and second, the status of gender equality in society. While society was commonly portrayed as being on a journey, the recurring motif in relation to both aspects of readiness was that “we’re not there yet”. Several interviewees, including Oliver (local government, equality officer), described decertification as being so completely beyond the public’s contemplation that it would “blow their minds” or “make their heads explode”:

Adding trans as a category is hard enough, getting rid of legal sex and gender entirely would make people’s heads explode! We’re not there yet. Although I would say that the law has to push things, that would be pushing things too far. People aren’t ready for it.

Tess (above, NGO) felt that decertification lacked sufficient societal support and hence momentum to get off the ground:

We aren’t looking at decertification. I think that’s not going to fly. I think there is also a lot of community education and public education and awareness-raising that needs to happen before that will be able to be palatable to a lot of people. I think the law can pre-empt, it did on sexual orientation, and it should do on all other areas of equality, *but* it needs to be at a point when there are enough people who are in support, where there is enough of a conversation that isn’t simply saying, ‘well, I don’t understand this’.

These quotes represented a general view among interviewees (shared more widely by feminist and sociolegal scholars, see, e.g., MacDonald and Kong 2006), that while law can pre-empt or push forward societal change, it does not have sufficient power to remake social life. Rather, effective law reform requires a certain level of social support behind it. Pete (union, equality officer) remarked: "I think there would need to be a lot of work to get to that place where people would recognise why, and I don't think we are there yet".

The idea of "not being there yet" was at times suggestive of the liberal narrative that society is on a linear journey towards enlightenment, which will be translated, in incremental stages, into law. Given feminism's long-standing critique of this progress narrative (for an overview, see Hunter 2013), it was interesting how frequently it surfaced in interviews, through language around movement and distance, journeys and destinations. Pooja (NGO, higher education equality role) spoke of society and law reform being on a "journey" to a "nice place":

I don't think people understand ... I do think we need a few years' debate, analysis, research to get us to a nice place where there is a legal framework that not everybody might agree with, but that people understand the journey and the reasons we have the law as it is.

Arriving at the point of decertification was perceived to be so distant that many spoke of it as entering the realm of utopia. Pooja remarked: "I guess, I think, like I said, in a utopian society, I think it would work. But I don't think society is ready for it". When asked what the signs of readiness would be, she replied:

You know, where it doesn't matter what your gender is in terms of what career you go into and what your attainment is like in the school system. What degree you might choose to do. What pay you might get in employment. How you are treated as a result.

Similarly, for many others (particularly those focusing on women's equality), the issue wasn't simply about society not sufficiently understanding the issue *and therefore* not being ready for decertification, rather it was about needing to attain a gender equal society *before* such a legal move could be made. Tess (above, union) used the following striking metaphor:

It's like taking a number plate off a car and saying you have changed the car. You haven't changed the car and the car is still a car. That is not going to deal with pollution, is it? I think it's the wrong way round.

Many interviewees, like Rowan (above, NGO), nevertheless thought it was important to start the discussion:

I think the benefits of not having it as [a] legal [status] is just kind of about—I think some of it is just getting the state a little bit out of people's lives. I think we do need to start having these conversations because it's very easy to think, just because it is like this at the moment, it's the way it's always going to be.

"Everyone thinks it's pie-in-the-sky, but look this can happen"

When asked, finally, what they thought the value (if any) was of a project exploring law reform options not currently on the table, unsurprisingly perhaps (having agreed to participate), most interviewees said they had found the conversation useful. Some wanted to reflect more or to continue the discussion with colleagues. These perceived benefits resonated encouragingly with the project's 'prefigurative' intentions (see Cooper 2018 and, on prefigurative politics more generally, Cooper 2020c).

Jaden (above, union) remarked of decertification that "everyone thinks it's pie-in-the-sky at the moment", but that the project was valuable in saying "look, this can happen, and this is how it could happen". Jem (NGO trans/gender equality, senior leadership) commented:

In order to put a person on the moon, you have got to think up the idea of putting a person on the moon. You need to be creative and think big. I think it [decertification] is thinking big.

Comparing decertification with "putting a person on the moon" was striking, particularly when juxtaposed against the earlier, very 'grounded' descriptions of current law as a "baseline" or "foundation". It also conveyed the potential realisation of seemingly impossible dreams. Jaden (above, union) saw freedom and possibility in "a kind of more utopian door being thrown open" by decertification, which contrasted with others' fear of the unknown and the stark warning of Carys (above, NGO) to be "very careful what you are opening the door to". Jaden exclaimed: "imagine a world where none of this stuff matters!". She was "intrigued" by the idea. Unlike legal recognition for non-binary gender, the idea of decertifying sex/gender wasn't yet talked about within her circles. Thinking about "the leap between those two things" was inspiring.

Many other interviews were rich with imagery around movement and covering distance when talking about the future possibility of decertification. Dynamic verbs, such as "leaping", replaced more static imagery around the status quo, like "sticking" and "plodding". For example, when asked earlier whether any differences or tensions existed between the union's LGBT and women's branches in interpreting the law around sex and gender, Jaden replied, "we just plod along in our own little silos". Jem (above, NGO) said they didn't have any organisational aspirations for the future, "we are just running to stand still".

The recurrent imagery of leaping, flying and feet leaving the ground in relation to decertification also contrasted with interviewees' descriptions of adding a third gender category to the existing legal framework, Jamie (above, NGO) remarked: "Recognising a third gender is more of a stepping-stone. I would see it as a stepping-stone towards getting to a better place".

Kate (above, NGO, LGBT equality) spoke about decertification as "taking an imaginative leap", compared with conventional legal reform, which was "bound" by the present and advanced incrementally, "one step" at a time:

One of the challenges with legal reform is that, because it is always incremental it is always bound to one step away from where we currently are. The radical in me [thinks] what is the unimaginable thing and if we can try to take the

imaginative leap to imagine the unimaginable, we create space to do the work that happens along the way rather than foreclosing it.

Kate's words eloquently capture how taking decertification as an experimental or prefigurative law reform proposal not only encourages radical thinking in terms of "imagining the unimaginable" but also "creates the space" to do "the work along the way" (on the related concept of 'slow law', see Cooper 2023). By anticipating and articulating a potential legal future, a prefigurative project can contribute to a transformative progressive politics beyond the constraints of current social and legal norms and the strong eddies of prevailing political debates.

Concluding Remarks

In conclusion, the interviews offered a far from unitary 'equality governance' perspective. Rather they illustrated the multiple, and sometimes contradictory, ways in which equality actors understood and used law as part of their everyday work. Two new, interesting strands of 'before the law' consciousness emerged from the research, namely 'attached to law' and 'protective of law'. Both approaches see value in law, whilst acknowledging its shortcomings. They both express—the first as a form of governance, the second as a commitment to law and law's legacy—a closeness to law which is hard to find in both the bureaucratic and the general legal consciousness literature.

The 'attached to law' orientation, which was prevalent among public sector interviewees, particularly those in local government, is interesting as it understands law not only as a regulator and enforcer but also as a place of safety. "Sticking to the letter of the law" was useful for its hegemonic power in establishing and ensuring a "baseline" of equality compliance and as a "fall-back" for resolving disputes. But its main benefit was minimising legal and reputational risk in challenging and "unsafe" times. Within the public sector, some interviewees seemed to regard it as their duty, as agents of the state, to stay close to the law, even though it stymied more creative and aspirational initiatives. This close attachment to centralised state law, and reliance on it as a safe harbour, is very different from the radical, decentralised pursuance of progressive equality politics under the left-wing 'shadow state' in Thatcherite Britain (see Cooper 1995; Conley and Page 2017). It also sits uneasily with feminist and local government principles of localised policies and context-specific decision-making. This aspect of the research findings ('state consciousness') warrants further analysis.

Decertification as a potential future law reform proposal also elicited a strong protective response towards law and its legacy among many of our interviewees. One element of this 'protective of law' orientation was a desire to hold on to hard-won ground, whether in relation to women's sex-based rights and protections, transgender people's gender identity-based rights and protections or equality rights more broadly. This heightened sense of territoriality was not surprising given the broader political and legal context. What was unexpected however, was how various interviewees, from different branches of equality governance, saw productive value

in law's "fuzzy areas" and "fudging it" and how, for some, retaining current legal ambiguities was more conducive to the feminist ethics of co-operation, collaboration and "give and take" than others' desire to "draw a line in the sand".

Another striking element of the 'protective of law' orientation was evident in Carys' description of the law as "precious", which conveyed a strong belief that the law and its legacy should not be taken for granted; that it should be consciously valued, tended and nurtured, not pulled up by the roots. At times, the equality sector came across as law's custodian, protecting it from others' interference and from potential harm and destruction. Some felt a need (or duty) to follow established pathways, rather than "blazing a trail" through the forest.

Many interviewees suggested *any* law reform in this field would be too uncertain and risky a proposal in the current post-Brexit political landscape, and that rare political opportunities for transformative social change needed to be used wisely. Further, despite the lure of radical reform, society was not yet ready for decertification. Most interviewees felt that, whilst law had significant discursive power and could consolidate or precipitate social and cultural change, it could not *drive* such change. Whilst public education was important, many felt that decertification would only "fly" as a law reform proposal when gender equality had *already* been achieved. The interconnected literatures and lines of analyses in legal mobilisation and social movement theory could usefully be mined here in future research.

As a prefigurative project, the 'Future of Legal Gender' was not about advocating or introducing decertification as a law reform proposal now, but about anticipating its future introduction. The ways interviewees thought about decertification as a possible future law reform pathway were inevitably shaped by the current legal and political landscape and their more immediate hopes, fears and concerns. Over time, however, the conditions, interests and agendas shaping action, activism and equality governance are likely to change. The interviews demonstrated the value of "thinking big"; that, by focusing on an imagined future, which lies on the far horizon of present possibilities, we can free (or "unstick") ourselves from current legal and political constraints and open our minds to the prospect of different futures. As this special issue argues, articulating future aspirations and legal pathways can also help build momentum towards change. As compellingly articulated by Kate, by taking the "imaginative leap" to consider radical future law proposals like decertification, we can "create space to do the work that happens along the way, rather than foreclosing it". This assertion holds true, whether the road or "journey" ultimately leads to decertification, or the direction of travel and its legal destination change along the way.

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