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Crafting Prefigurative Law in Turbulent Times: Decertification, DIY Law Reform, and the Dilemmas of Feminist Prototyping

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Abstract
This article explores the challenge of developing a feminist law reform proposal to decertify sex and gender based on research conducted for the 'Future of Legal Gender' project. Locating the proposal to decertify within a do-it-yourself, prefigurative approach to law reform, the article asks: Can a law reform proposal be both instrumental and radical? Can a proposal take shape as a viable legislative text and as a more subversive intervention to unsettle and reimagine gender's relationship to law? This article explores this at two levels. First, it considers the ontological challenges of developing a controversial law reform proposal in terms of its realness (or fictiveness), contours, and temporality, turning to 'slow law' as a credible way of approaching radical reform. Second, it explores the design-based challenges of legal prototyping—foregrounding questions of legitimacy, participation, and purpose, which arise in designing a decertification law. At the heart of this discussion is the relationship between representation and enactment—between what a proposal presents and what its presentation does and does not accomplish.

Keywords Decertification · Deregistration · Gender · Prefigurative law reform · Sex

Introduction

Feminists have long debated law's power and effects.[1] They have argued, and disagreed, over whether law's machinery, authority, and history make law something that can aid progressive change or, conversely, something to avoid, diminish, or disassemble. Like the *pharmakon* state (see Dhawan 2019), feminists often treat law

[1] In an extensive field see, for instance, Smart 1989; Sandland 1995; Armstrong 2004; Menon 2004; Davies 2008; Hunter 2012.

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as both poison and medicine. A judgment is then made—that despite law's double-sided character, law is primarily helpful, or harmful, at least in one specific context or at one specific time. But does such a judgment have to be made, with its determination to either bracket (or manage) any accompanying concerns about working with *or* abandoning law's tools? Can a feminist project simultaneously engage, disengage, and re-engage with law reform?[2] And can multiple moves be combined in a single, experimental legal text?

This is the subject of this article, which explores 'decertification'—a term coined to describe the abolition of sex and gender as part of legal personhood (see Cooper and Renz 2016)—as a 'prefigurative law reform' proposal. Prefiguration is understood in different ways in political and academic debate (see Monticelli 2022). Typically, it refers to socio-political practices that reject a means-ends distinction, instead treating political means as ends and ends as means. Prefiguration also refers to the representation or micro-political enactment of sought-after practices, institutions, and meanings *as if* they were already accomplished. The Introduction to this Special Issue explores prefigurative law reform in more detail as a research methodology. In this article, I focus on one aspect of prefiguration: its do-it-yourself (DIY) quality. Not all prefigurative practices involve DIY. State bodies, for instance, can prefigure new meanings and practices—prefigurative to the extent that their realisation remains unaccomplished.[3] DIY, with its present-oriented, sometimes populist, sometimes expert-disavowing, orientation may also not be prefigurative—or may prefigure reactionary social ambitions. However, my focus here is on DIY as a dimension of progressive, transformative prefigurative politics. In DIY law, rather than wait for government and governmental bodies to develop new laws, other actors—using other processes—carry out this task. DIY offers a participatory democratic register that unsettles the expert/law divide (see also Wintersteiger and Mulqueen 2017), as actors make things they are not expected, authorised, or empowered to make. There are parallels here with hacking and tinkering, where non-authorised actors reassemble or dismantle things to see how they work. In the case of DIY law, having a go is also a way of seeing what might happen. For legal academics with some training in analysing or crafting legal proposals but no authority to propose or create law, this provides space for reflecting on law in general, as well as on the specific law or laws being constructed. But can laws and legal processes prove meaningful when they are developed outside of formal state structures?

There are many examples of DIY, citizen-based practices when it comes to law and adjudication. One example is the citizens' tribunals established to hold governments and corporations to account (see Borowiak 2008; Byrnes and Simm 2018). Another is the globe-crossing Feminist Judgments Project (FJP) in which legal academics write new feminist judgments for older cases—sometimes inhabiting, sometimes refusing, the legal and factual constraints prevailing when the original

[2] For a different contemporary example, see Enright et al. (2020, 12) on Irish feminist abortion activism: "They might be drafting legislative amendments in one environment and distributing 'illegal' (but safe) abortion medication in another."

[3] Identifying state action as prefigurative is controversial since prefiguration is typically depicted as antithetical to state action (see Cooper 2020a).

judgments were written (see Davies 2011; Hunter 2015; Gayoye et al. 2020; Munro 2021).[4] This article explores decertification as a DIY law reform proposal developed by academics in conversation with activists, service providers, lawyers, and public officials. DIY law-making can face in several directions: towards analysis—by providing a lens through which to revisit the status quo; as a prompt to explore new forms of social organisation; and as a way of understanding institutional or legally pluralist practice, such as the policies and provision of employers or local governments. This article draws these different directions together in a two-fold approach: the construction of a formal viable law reform proposal; and a more diffuse and transformative social politics. In the first, decertification depends on its capacity to function as a viable legal instrument, where viability depends on coherence, clarity, and support.[5] Thus, a proposal to decertify sex and gender needs to anticipate and resolve vocalised concerns, show why fears are unnecessary, and, ultimately, gain success, where success is measured through accomplished legislative passage and effective application.[6] Can such an approach to law reform cohabit and share a proposal with another direction that decertification is intended to face, namely towards a more diffuse non-instrumental politics? Here, the name 'decertification' operates as one point in a network of transformative social practices intent on developing new institutions, relations, norms, knowledges, and ways of doing things. This orients decertification away from functioning as a concrete limited solution to a political and social policy dilemma. Instead, its proposition provides a lever for critiquing existing relations, offers one element within imaginings and enactments of alternative gender-scapes and, by gesturing towards something substantially different, stimulates and invites critique of its own agentic and representational limits.

To explore decertification, as a law reform proposal, simultaneously facing in different directions, this article draws on research conducted by the 'Future of Legal Gender' project (FLaG) between 2018 and 2022. The project took the legal jurisdiction of England and Wales as its main case study, supplemented by wider research in Scotland and other countries. Further details on the project's methodology and data can be found in the Introduction to this Special Issue. In this article, I draw on a subset of 67 semi-structured interviews with state policy workers (including municipal officials), trade unionists, gender-based non-governmental organisations (NGOs), and public lawyers, a survey on attitudes towards gender reform that formed an initial step in the FLaG project (see Peel and Newman 2020), feedback from the focus groups which developed and road tested our legislative framework, and broadsheet and social media responses to the project.[7] Using this data, this article seeks to contribute to feminist and other progressive legal studies by exploring the craft and challenges that multivalent law reform projects face when they take up law in a legal practice that works with and, also, unsettles law's normative processes and

[4] On the dilemmas this poses for critical postcolonial approaches, see Gayoye et al. (2020).

[5] For a useful complication of state law as vertical instrumental law, see Margaret Davies's (2008) discussion of 'flat law'.

[6] For critical discussion of an instrumentalist approach to legal reform, see Macdonald and Kong (2006).

[7] For a sample of newspaper responses, see Dalgety 2022; Rustin 2022; Wakefield 2022.

applications. The article advances an understanding of law reform's plural, shape-changing character, where—in conditions of conflict—proposals cannot be pinned down. Through a reflexive discussion of one specific proposal's progress, the article identifies some developmental techniques for progressive multivalent law reform. These draw on slow law and design studies, bringing participatory methods and insights from work on prototyping to the development of a controversial legislative proposal.

My discussion is in two parts. The first part attends to decertification, in general terms, as a prefigurative law reform proposal, focusing on its ontological status and the challenges this generated. I ask here three questions: was decertification a real or fictive proposal; how defined and stable were its contours—in other words, what was it about and who gets to decide that; and when was it for—what was its time? In asking this third question, I introduce the concept of 'slow law' as a way of developing radical legal reform. The second part of the article explores the dilemmas, choices, and paths involved in creating decertification as a legislative text. Here, I draw on design studies scholarship, particularly work on prototyping, to explore the work of creating radical law. Both parts of the article trace the process of facing towards viable law reform as well as towards wider critique and transformation.

Decertification

Decertification sits within a cluster of gender law reform options being internationally debated, advocated and, in some cases, introduced. All, in different ways, depart from the current, legally formalised regime of stable binary sex. One set of options focuses on converting sex and gender into an elective set of categories, based on self-identification, that can be formally registered and recognised (Clarke 2015; Holzer 2018; Hartline 2019; Dietz 2022), and that might include a named third category such as 'nonbinary' or operate as an open-ended class (Katyal 2017; Clarke 2018; Cannoot and Decoster 2020). Decertification, however, is more closely aligned with a different set of options that academics and social activists have explored (see Wippler 2016; Quinan et al. 2020)—sometimes thought of as deregistration. Deregistration removes the requirement for people to officially record their gender or sex, including on birth certificates. However, it does not tend to address the use of sex and gender terms in other areas of law; whether such uses should be terminated or revised; and how the application of gendered legal terms should operate in the absence of sex and gender registration. 'Decertification', by contrast, foregrounds the implications of removing sex and gender from legal personhood for different areas of legal regulation (see also Cooper and Renz 2016; Cooper and Emerton

2020).[8] Decertification does not stop sex and gender from functioning as informal or descriptive statuses, including in ways that state law may attend to for equality remedial purposes (see Cooper 2022). However, the termination of an ascribed legal status for sex and gender, based on an exhaustive binary framework (which accords everyone a place), makes living without a gender also legally possible—nudging law to protect agender identities—analogous to British equality law protections for atheists within religious anti-discrimination provisions (see Renz and Cooper 2022).

Whether decertification is a good idea, from a feminist and critical perspective, cannot be answered in general global terms. It depends on many context-specific factors, including how relations of inequality take shape within particular jurisdictions, the part law plays—and has played historically—in crafting that gendered shape, and the specific policy objectives to which decertification is tied.[9] This Special Issue's analysis is rooted in the contemporary British context, specifically of England and Wales, where legislation has become increasingly gender neutral in content and linguistic form[10]; gender transitioning no longer *officially* requires medical interventions (such as surgery or 'cross-sex' hormones); and diverse gender identifications are claimed and recognised. At the same time, gender-based discrimination, sexual violence, exploitation, stereotyping, and related inequalities endure. In such mixed conditions, arguments for decertification (or deregistration) of sex and gender typically get tied to the rights and interests of people who are transgender, are born with variations in sexual development, or who seek to live outside of established sex and gender categories. Deformalisation, through decertification, reduces the penalties for non-alignment (or inconsistent alignment) with conventional categories and understandings of female and male. Formal recognition of other gender-based categories, such as nonbinary, might also accomplish a similar penalty-reduction—at least for those who fit the new categories. However, decertification provides a more open, counter-disciplinary approach that avoids establishing new gender boxes for state law to recognise and regulate. But alongside the reasons advanced for decertification that are grounded in the damaging experiences faced by people with minoritised genders and sexes, there are other reasons for its advancement in a British context.

Fundamentally, deformalising the classificatory framework for sex and gender treats these classifications as descriptions on which little, politically or

[8] Some argue that only sex constitutes a legal status. However, legally and socially, sex registration gives rise to gender category membership, which is assumed to correspond with birth sex in the absence of a Gender Recognition Certificate. Given wider disputes about the conceptual use of sex and gender, I use 'sex' for patterned bodily forms, and 'gender' for the social relations that shape, among other things, how 'sex' is understood, socially expressed, inhabited, and changed.

[9] On different approaches to decertification (framed as disestablishment) in the US context, see Cruz (2002).

[10] For a legislative counter-development, see the House of Lords debate on an amendment to substitute 'person' with 'mother or expectant mother' in the Ministerial and other Maternity Allowances Bill, 25 February 2021. Here, members of the House successfully opposed the use of gender neutral language for pregnancy and child birth, see https://hansard.parliament.uk/lords/2021-02-25/debates/DFB70DF3-ABA0-4168-8DBF-DBDA63BA4AEE/MinisterialAndOtherMaternityAllowancesBill.

socio-economically, *should* rest. While gender, including in relation to sexed forms of embodiment, rightly matters for remedial social justice purposes, withdrawal of legal status suggests that these are not qualities that the state should otherwise have an interest in perpetuating—whether as lines of social hierarchy or as institutionalised distinctions. Abolishing legal sex status dismantles a structure that legally fixes people in unequal categories (of female and male). It also withdraws legal legitimacy from rules, policies, and institutional norms that treat people differently or require people to present differently because of their legal sex and gender status—school and workplace uniform and personal grooming practices being one example.

At the same time, the symbolic force of states no longer formally constituting people as gendered (or sexed) subjects has generated scepticism. Critics question the power of such a revised legal interpellation to undo gender divisions. As a union official remarked when interviewed:

> 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.

For many feminist critics of decertification, the communicative work of sex registration at birth supports and advances equality measures and helps to name and tackle male violence. From this perspective, state withdrawal from formally determining and confirming sex and gender status appears a privatising move as the state pulls back from attending to inequality or voluntarily gives up the tools that would enable effective engagement. However, decertification can also invoke a more radical gender politics that does not aim to convert sex and gender into private facts but sutures decertification to wider social justice endeavours, oriented to undoing interconnected relations of order and hierarchy in society-centred rather than group-centred ways.

We cannot know what would happen to gender if people, in England and Wales, no longer bore a legal sex. In part this is due to the unknown form and timing of the reform. Decertification, as I discuss, is not a fixed legal provision, with a clear, singular form. Its introduction involves legal policy choices with their own varied tempo (see Cooper et al. 2022). Law reform also enters a complex world, inhabited by different normative and legal orders (and not only by them), that structure a new law's meaning and effects (see also Macdonald and Kong 2006). Different sites respond to legal change in different ways. If the state withdrew its declaratory structure, other bodies might take up the regulatory task of naming and managing membership in sex and gender categories; and this might not be done in progressive ways. Indeed, some bodies already do this according to their own formal norms, as in orthodox religious communities[11] and elite sports.[12] Others, such as grassroots

[11] See, for instance, *J v B and The Children* [2017] EWFC 4 overturned in *Re M (Children)* [2017] EWCA Civ 2164 (appealing denial of direct contact for a transgender woman with her children in Manchester's orthodox Charedi community).

[12] On the category 'woman' in elite sports, and reliance on testosterone levels to qualify, see Henne 2014; Karkazis and Jordan-Young 2018; Erikainen 2019.

communities, do this informally. The complexity of the poly-normative landscape, which already exists, with multiple authorities charged (and self-charged) with the work of assigning, naming, and recognising sex and gender status (or identity) contributes to the difficulty in knowing what effect decertification might have. In this article, I want to approach these uncertainties from the perspective of crafting a law reform proposal as a DIY act. Decertification's task was to delineate possible legal change in the future, while also acting in the present as a prompt for critical and hopeful thinking. In the rest of this discussion, I explore the challenge of combining these two agenda. First, I focus on the ontological issues raised by DIY law reform—what is being made and performed when law reform is prefigured? I then turn to the practical issues of constructing a text that is reflexive, progressive, and unsettling.

The Ontology of Prefigurative Law Reform

When it comes to law reform proposals, questions of status, scope, and timing often prove contentious, and this is especially evident for DIY prefigurative law reform initiatives. Their ontological precarity and uncertainty makes them vulnerable to challenge and to being depicted in diverse and conflicting ways. Focusing on the experience of developing decertification as a law reform proposal, I want to explore this predicament. I start with the question of status: is decertification, as a prefigurative law reform proposal, 'real'?

The Realness of DIY Law

It is not unusual for progressive DIY initiatives to face uncertainty over their 'factual' status. The FJP is one where the question of being real or fictional arose. To the extent the judgments were responses to 'past' cases, written by academics roleplaying judges, judgments tended to be perceived as simulations or fictive, lacking the authorising conditions, and so power, of a valid judgment (see also Rackley 2012). This kind of DIY activity, then, is quite different from community activists who undertake urban improvements, such as installing cycle signs, mini parks, and street benches (Douglas 2014; Thorpe 2020). While these initiatives may also be unauthorised or unexpected, the structures put in place are performative in the sense of being efficacious if people choose to use them. A legal judgment or law may appear subject to the same condition: namely, is it treated as valid? This standard, however, is hard for a DIY judgment or law to attain, particularly in cases where buy-in needs to come from disinterested, hostile, and of course historic, others.

Yet, the legal form of decertification being explored here is different. It is not a legislative provision but a law reform proposal, with seemingly far more feasible efficacy conditions as a proposition about what law could become. But does this mean that any proposal about law is a 'real' law reform proposal or does a proposal require something more official or authorising—at its strongest a vertical pathway into legislative enactment? A different approach is adopted by Macdonald and Kong

(2006, 27), whose legally pluralist account embraces "non-hierarchical, interactive, and … quite informal" law reform activities. Macdonald and Kong (2006, 27) write:

> Simply because the Law Commission of Canada has the name and pedigree of the state does not mean that it is the only extant law reform commission. … The synagogue, the trade union, the neighbourhood, and the family are as much institutions of law reform as the Law Commission of Canada.

And, we might add, academic research projects. Recognising that law proposals can come from very diverse places is important, with its recognition that law is also made in different places. Of course, this poses questions about the power and authority that different proposers and proposals carry. But while questions of power may here signal decertification's lack of status—as a prefigurative law reform proposal that stretches beyond what is currently viable, being a 'real' proposal is also subject to an assessment of what it means to be a proposal. And here, prefigurative law reform surfaces as something other, and more, than a second-rate simulation. To the extent it also means acting as if law reform proposals were subject to different processes, 'real' might indicate a proposal that has been successfully crafted through democratic forms of deliberation. Prefigurative law reform might also mean granting non-state institutions preference as sites of legal policy development.

I consider the prefigurative character of law-writing further in the second half of this article. However, whether a law reform proposal is real or fictive is also not a singular fixed determination. Prefigurative proposals may begin life as speculative ideas about future reforms and later (even much later) become new laws. But to the extent that they remain as proposals, why does it matter whether a proposal is understood as real or not? One dimension, from the perspective of those designing a proposal, concerns the proposal's legitimacy and authority—an issue I return to. Another is how claims about real or fictive status get deployed by others. At times, critics of decertification drew attention to the fictiveness of FLaG's proposal, emphasising and, seemingly, accentuating its insignificance by declaring that it was not real. At other moments, realness got deployed as a signal of the proposal's danger. This was not an idle experiment but something coming to pass. Both perspectives were expressed in discussions about the research project on the Mumsnet platform.[13]

> From that thread it doesn't sound like this is some kind of random academic musing. They want to go the whole hog and have sex legally abolished as a category… This could be happening faster than we expect.

Another contributor to the thread commented, "I think they have massively overestimated what they can do here and their influence in changing the law."

[13] Mumsnet is a digital platform for parents to get peer-advice and support. It also contains discussion threads relating to other matters. During the period of our research, several threads about the FLaG project appeared on Mumsnet. Permission to quote, anonymously, from them was provided by Mumsnet.

Determining What the Proposal Is

In assessing whether decertification is a real law reform proposal, a second ontological issue surfaces: what is the proposal? FLaG's account of decertification generated bursts of opposition. Reading damning newspaper and social media commentaries, I often wanted to say, "no, you've misunderstood what decertification is." But are the substance and contours of a law reform proposal singular and settled? If multiple claims exist about what a thing is, which determination, if any, is the right one? Do the creators of a proposal 'own' it, such that they get to say what it is—recognising here too that creators' crafting of the legal thing may be plural and changing.

It is tempting to say that, when others' depictions diverge, they have misinterpreted—sometimes, it would seem, deliberately misinterpreted—what a proposal is. Yet, a more fruitful line of engagement moves away from the question of which version is the right one to focus on different cuts or framings. What do such framings enact, and what are they intended to enact, in conditions where allies, critics, and those who assert authorship over a proposal, compete to hegemonise not only their assessment of whether the proposal is a good one or 'real', but also, more generally, what the thing in question is? Hal Colebatch's (2006, 311) account of the evolving, plural, and dynamic character of policy provides a good description of this contestation as we experienced it:

> The game changes as it progresses. New issues emerge; … decisions are made and announced but their significance is not always clear: they may be seen as more or less important over time. They are markers in a continuing process rather than the end of an exercise in decision-making. Moreover, action is going on simultaneously on different stages, linked to one another but with distinct casts and scripts.

Colebatch's account foregrounds how policies or, in our case, law reform proposals are structured and shaped by time in ways that can make them difficult to pin down. It also suggests we approach policy reform, including through law, as not only protean and full of life but as multiple in its actualisation across different planes of enactment (organisational texts, everyday speech, allocative decisions by service provider etc.), while also subject to different interpretive 'cuts'.[14] But questions of plurality and evolution foreground a third ontological dimension of decertification as a law reform policy: what is its 'when'?

The Temporality of Prefigurative Law Reform and "Slow Law"

Construction of a law reform proposal can suggest immediacy: if decertification is a worthwhile measure, it should be introduced now. This is an assumption brought to much law reform work, where proposals are read alongside the contemporary conditions that structure and drive their assessment as valuable or, conversely, as harmful.

[14] I explore these themes further in relation to the controversial 1980s municipal policy development of 'positive images' of lesbians and gay men, see Cooper (1994, Chapter 6).

Decertification is a contemporary law reform proposal, but it is also a rehearsal or anticipation of a legal change that may better occupy another time (see Emerton 2023; Peel and Newman 2023). An equal pay expert made this point, when interviewed, arguing for the importance of clear, stable, sex categories for effective equal pay audits (see also Grabham 2023):

> People at the bottom end of the age scale, younger people do not see the need for equal pay to be crisp and tight, and based on sex, because they are not suffering a detriment. It's those over 40 that still are, and this will continue for 30 years. So, yeah, give them that flexibility. Delete sex in 30 years' time when the requirement for equal pay has gone away.

Whether equal pay will have been accomplished in thirty years in England and Wales is, of course, far from clear. However, what these remarks demonstrate is the tension of a prefigurative legal proposal that folds in different temporalities: the 'now' that shapes the concerns, difficulties, and terminology through which a law reform proposal is constructed and read; and the uncertain, imagined, future time of reform. Reaching 'ahead' to make contact with, and to attend to, non-immediate law is important. One interviewee, from an LGBT NGO, commented:

> I think it's a really exciting thought experiment… So much of the work that we do as a lobbying organisation is much more immediate… [C]an we add another gender marker, how can we make sure that nonbinary identities are reflected in census, … how can we capture more of people's experiences on the assumption that sex and gender will have legal status? … The idea that it could be a protected characteristic without having unique legal status, I think, has huge potential to free people from a particular kind of restriction.

At the same time, prefiguring a future proposal comes up against concerns rooted in the proposal's contemporary meaning and understanding. One worry to confront decertification concerned the attachment—emotional and political—that some people had to their sex or gender and, so, what they feared decertification would take away. This worry related to people who had legally transitioned as well as cis women. The same interviewee remarked:

> Gender is a hard-won thing for many people, you know, trans people in particular, but not exclusively, and the right to be recognised as a thing that you believe strongly is true about yourself, and the right to be seen as a kind of legal category and framework, is core to how a lot of people understand themselves. And for that to lose power is liberating in some senses but is also the loss of something that is considered to be important.

Another interviewee from a trade union said, "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."

Might decertification, then, be better approached as 'slow law'? Van Klink (2018) uses the phrase 'slow law' to explore contexts where legislation stabilises and consolidates socially acceptable change rather than running ahead of it. As such, 'slow

law' can seem a moderating approach, withholding law's capacity to spearhead significant societal change. An interviewee from the sexual violence sector remarked, "The problem with law, is it's slow. It's slow to change. …Whilst I value clarity, the way that the law works means it is going to be a slow beast." But slow also has been used positively, to capture a distinctive way of doing food, cities, design, and related practices (e.g., Petrini 2003; Strauss and Fuad-Luke 2008).[15] I want to take up this more positive association to think of 'slow law' as a way of doing law reform that attends, including sometimes with pleasure, to law's process (a focus that prefiguration, in its attentiveness to the substance and not just the utility of 'means', also foregrounds). Slow law, here, is not an argument for delayed or deferred change (see discussion in Francot 2020) so much as a recognition that radical change, including legal change, is about making something new and this may need to build in time, allowing difficulties to be identified and addressed, and legislative 'support objects' to be embedded. This is recognised in 'slow design' which attends to design as creative, participatory, engaging, reflective, ambitious, and innovative (see Strauss and Fuad-Luke 2008) rather than an instrumental process that precedes, and is assessed in relation to, a specific product's emergence. As I discuss below, a law reform like decertification may require various social and legal changes in advance of or alongside its enactment. Rather than slowing down change or providing reasons not to pursue reform, an important feature of 'slow law', and the reason I have moved towards it here, is that it allows political aspirations to be articulated that stretch beyond what is presently viable, confronting both the obstacles and building blocks that need to be in place. 'Slow law' is experimental law. But it is not teleological. It assumes the conditions, interests and agendas driving action will change. It also recognises that the rhythms of prototyping reform will fluctuate—accelerating, slowing down, and reversing as the political context evolves. Change is not necessarily sequential and linear—as contemporary political and legal reversals to gender self-determination in England and Wales demonstrate.[16]

'Slow law' may also be useful where new subjectivities are called for. Liberal accounts of autonomy, which treat the individual as the best and legitimate author of their interests, tie progressive politics to interest-meeting, and tie interests to (often) individually asserted identifications. Decertification can align with an interest-based politics, focused on the needs of those seeking to transition or to live outside of conventional gender categories. However, the attempt to reshape societal processes of gendering, including of gendered subject formation, by dismantling one key institutional bracket that holds the current system in place also gives decertification a broader, more transformative reach. In conditions where people read decertification

[15] Slow food and slow cities are also movements that have generated criticism, including for celebrating unaffordable goods and gentrification. While important, I do not explore these criticisms further here.

[16] For instance, in 2021, litigation in England and Wales led to narrower official Census guidance on how to answer the sex question. See judgment for interim relief, *Fair Play for Women v UK Statistics Authority* Claim No CO/715/2021. This reversed the online help guidance in the 2011 Census, https://webarchive.nationalarchives.gov.uk/ukgwa/20110324104243/http:/help.census.gov.uk/england/help/help-and-information/Aboutthequestions/Individualquestions1to15/Topics/Question2Yoursex_U0002B.html. Accessed 7 October 2022.

as the loss of a valuable attachment, 'slow law' may provide a necessary legal tempo (see also Emerton 2023).

Prefigurative law reform raises difficult ontological questions of status, scope, and timing, which cannot be easily settled. Decertification is a proposal that is multiple and changing. It isn't a single, discrete, fixed thing. At the same time, FLaG gave shape to the idea of abolishing legal sex in the form of an imaginary legislative text. A text may seem more singular and pin-downable than an abstract proposal. But even in this form, a law to decertify is protean and evolving. In the discussion that follows, I explore the design and construction of decertification through legal prototyping, drawing on work in design studies. Design provides helpful methods for approaching law reform as a technology of viable legal change, as a ground from which to critique present-day arrangements, and as a prompt for more transformative thinking (see also Perry-Kessaris 2019, 2021). Academic work on prototyping also exposes some of the tensions that can arise when law-writing seeks to embrace these different, even incompatible, tasks.[17] My aim is not to argue for one task over another, but to consider how they are *held* (together) in the prototyping process.

Prototyping Feminist Law

Law-writing represents change, graphically, in its depiction of an alternate framework of practices and relations. Law-writing also crafts mechanisms for change's accomplishment or, at least, its pursuit.[18] Doing and representing are sometimes identified as distinct and separate processes. However, as work on prototyping explores, representations can also act—beyond fashioning a recipe or instruction manual for how change or rules are to be performed. Alex Wilkie (2014, 479) describes prototyping "as the local and material enactment of a future system design in the present… which in turn work[s] to bring about a future in the present". In the case of imagined law, what is represented, and what such representations do, may pull in contrasting directions. Here, I want to explore the tension in DIY lawmaking between producing a viable and easily recognisable simulacrum of statutory law and using a law-like text as a critical and exploratory prompt where, as Sanders and Stappers (2014, 6) write, "the thing being made is not a forerunner of the future product, but a vehicle for observation, reflection, interpretation, discussion and expression". Marcus (2014, 400–401) describes a similar dimorphism in relation to pragmatic and expressive experimental prototyping:

> Type 1 is prototyping … located in a production process that pressures or channels it toward a final version that … can be effectively implemented to solve a problem. … Type 2 is less restrained prototyping … for the pleasure of social experimentation itself with awareness of, but studied disregard for,

[17] Prototypes are not necessarily progressive technologies of innovative governance, for a more cautionary perspective, see Johns (2019).

[18] On reading law as a social 'tool', see Riles (2005).

> the need to end in an official or authoritative version, … or an implementable solution.

Law reform projects sit along a continuum between these two approaches, with conventional projects veering towards the former. To explore the challenges of combining these types experimentally in a single legal text. I begin with the task of developing a legislative prototype that responds to (and fits within) the legal infrastructure that currently exists.

Mapping the Legislative Terrain

State withdrawal from determining, registering, or confirming sex and gender demands 'infrastructural' (Hillgren et al. 2011) change in how gender and sex, as legal categories, are produced, known, and deployed. Creating a legislative text (even a speculative future one) helps to concretise and specify some of these changes. It forces difficult issues to be addressed and choices to be made. And thinking through the legal niceties and technical requirements of a new arrangement advances our understanding of law as a mechanism for reform; how different legal areas fit together; and how gender and sex are used and produced in legislation, case-law, and through other legal rules and norms. But if prototyping involves translating and illustrating infrastructural change, what kind of legal text should be designed (see also Macdonald 2010)? Should it aspire to be comprehensive, and so indicate all the revisions that legal change would require; selectively identify a few key provisions to demonstrate different legal techniques; or remain more general and gestural, akin to a legislative guide, which describes the proposed law's purpose and key principles, gives some options for development, and tops and tails it with a commentary or critical analysis?

In deciding which approach to take, one early challenge was to identify the relevant legal provisions that a decertification law would need to address. Unless we proposed a very simple law, a decertification statute would require something more than a single provision removing sex from birth certificates. Remaking the legal status of sex and gender in relation to legal personhood, as a feminist project (see Bartlett and Henderson 2016), tugs at many strands of a wider legislative web. We therefore needed to identify and consider the statutory places where sex and gender mattered and made a difference, to determine and assess the "specifications" of the legal system being revised (Bødker and Grønbæk 1991, 198; see also Wilkie 2014). However, one practical difficulty was knowing which existing laws would be affected by the removal of legal sex and gender status since, perhaps surprisingly, no comprehensive list of affected laws seemed readily available.

A useful starting point was the Gender Recognition Act (GRA) 2004, which explained how a person's change of legal gender (and sex) would intersect various other laws, including laws addressing marriage, parenthood, and peerages. Decertification would affect the same or similar laws. Through conversations with legal scholars, speculative scanning of areas which might use sex and gender as organising legal terms, and serendipitous encounters, we gradually developed a schedule

of legislative provisions, which explicitly or implicitly dealt with sex and gender. These included provisions dealing with biological sex or sex-associated body parts (from sexual violence laws to laws relating to embryos); laws addressing gender inequality and discrimination, including in relation to single-sex provision, and sex-based classifications (e.g., the Equality Act 2010); laws that differentiated formally or substantively between gendered types of parenthood (e.g., on maternity, paternity, and parental provision); and laws which regulated rights, statuses and resources differentially according to the sexed composition of the relevant parties (e.g., legal provisions on overcrowding and marriage).

Identifying and assessing current law to consider the effects of decertification on diverse legislative provisions was an important first step. But in looking backwards towards the legislative framework we had inherited, we also wanted to look forwards, to consider the kinds of dilemmas that decertification might generate (see also Renz 2020). What legal support objects might be required so decertification constituted progressive reform? A technique used in policy design is 'backcasting', which involves tracing back from desired, possible futures to explore the means of their accomplishment (see Robinson 1982, 2003; Carlsson-Kanyama et al. 2008; Lupton 2018). A senior member of a gender diversity organisation described their adoption of a similar process:

> It's about thinking a little bit up and a little bit beyond just to maybe help us work backwards from that point. I've toyed with what is the twenty-year strategy. How do we get from a to b if we can have our eyes on the prize?

We experimented with 'what if?' scenarios—plausible, hypothetical, policy dilemmas that might arise in conditions of decertification. For instance, a local authority that wanted to conduct a survey to identify the gendered burden of unpaid care responsibilities; a group of women employees who wanted to bring a case for promotion discrimination; Labour Party members seeking to devise a positive action policy framework for agender and nonbinary members; a hospital that wanted to retain sex-based allocation policies for wards. These scenarios raised the question of whether the policy preferences that surfaced should or could be legal post-decertification. But we also wanted to use the scenarios to identify and fine-tune the granularity of the legal decertification framework; and to reverse engineer supplementary legal provisions (see also Marcus 2014), assessing what else would need to be in place for decertification to operate as a feminist reform. While we obviously could not know the future, we sought to make it present as a dilemmatic normative space that could help us determine action in the now.[19] In thinking about how areas of law could be revised, we did not simply want to produce a technically viable law reform, even a feminist one. We also wanted to craft a text that would contribute to a wider

[19] Thus, our approach diverged from planning methods that seek to pre-empt possible undesirable futures (Anderson 2010; De Goede and Simon 2013). It also diverged from "speculative design to explore possible and desirable futures" with citizen participants, (Policy Lab, https://openpolicy.blog.gov.uk/2019/11/01/using-speculative-design-to-explore-the-future-of-open-justice/Accessed 7 October 2022).

progressive, transformative gender politics. Here, our development of an imagined law confronted two key challenges: of legitimacy and participation.

Legal Legitimacy

Concerns over legitimacy have vexed many feminist law reform projects, even as the dilemmas that legitimacy poses face in different directions. One set of dilemmas is whether experimenting with legal form undermines the legitimacy of the proposals for politicians and policymakers, in turn diminishing the efficacy of what is produced—where efficacy depends on a convincing, technical legal performance. This concern was raised by several feminist legal scholars that Emily Grabham (2020) interviewed, attentive to the need to produce texts that were legally intelligible including in conventional terms. Legitimacy concerns, however, also face in other directions. One to surface in our research was whether foregrounding legal reform, as the means for addressing gender inequality and gender's hierarchical classifications, validated the law and policy apparatuses involved. This concern runs through many progressive legal projects (e.g. Wintersteiger and Mulqueen 2017)[20] and, at times, has led to law's decentring within feminist imaginings of transformative change.[21]

For us, giving law significance and so, legitimacy, seemed inevitable at some level, since our project was about legal status reform. But it also arose in two more specific ways. First, prototyping legislation, through an iterative process of drafting, reflecting, and consulting, pulled us into the mechanics of law, with its criteria, tests, standards, permitted exceptions, and structures of adjudication and scrutiny as we sought to create a legislative text that, in conditions of enduring gender inequality, could tackle the legal and policy difficulties that decertifying sex and gender invoked (see Cooper et al. 2022, 38–39). More generally, we were pulled into the fantasy of imagining we could imagine the future and then write into law what needed to be there. And so, even as we attempted to extricate ourselves from the thicket of legal and lawyerly ways of doing things (see also Grabham 2020), we remained tied to the structuring effects of legal techniques and legal imaginaries in shaping what could and should be done.[22] Second, our focus on legislative reform pulled us into a relation of tender proximity with existing institutions. Many laws that fold in sex and gender, as terms of differentiation, regulate institutions that are deeply problematic

[20] The challenge of how to avoid legitimating and entrenching contemporary conditions also surfaced in the Feminist Judgments Project (FJP). While FJP initially adopted the principle that their judgments should be based on legislation and case-law law extant when the original case was heard (see Hunter et al. 2010) drawing on the approach adopted by the Women's Court of Canada (Majury 2006), some feminist judgment-writers argued that this would keep racialised colonial laws and decisions as the descriptive and normative ground for a feminist judgment (see Douglas et al. 2014). Irene Watson's (2014) contribution, in the Australian context, demonstrates one refusal to operate within the parameters of Australian legal norms and style, deliberately drawing instead on Aboriginal storytelling norms to construct a legal decision.

[21] See, for instance, Smart (1989), also response by Hunter (2012).

[22] For similar concerns in writing feminist judgments, see Davies 2011; Fitz-Gibbon and Maher 2015.

from a critical or progressive perspective, including prisons, marriage, and inherited titles. Would narrowly revising these institutional structures, so that they were compatible with the abolition of legal gender and sex-based status, present these institutions as otherwise acceptable? A related concern was the welfare structures that would shape how decertification was actualised and experienced: the availability of hospital beds or public toilets, for instance; the quality and extent of provision for those escaping relationship-violence (see Renz 2023). Gender-specific facilities, such as women-only services, aimed at disadvantaged communities seemed to be at the sharp end of any decertification reform. A union official remarked:

> There is not enough cake. It is women who are at the hard edge of it. In terms of austerity policies, it's black women, disabled women who are at the bottom of the pile and are being asked to give up the bit of cake they have got... I think if we were honest about sharing out the cake, then we are going to have to make a bigger cake.

Cake idioms can overstate the zero-sum character of people's interests. However, the welfare landscape of decertification's discussion and future legal progression were important concerns (see Emerton 2023, Renz 2023). We did not want to normalise the inadequate arrangements of the present by showing how decertification could operate effectively within them. Approached as a prototyping dilemma, could we place decertification law instead within a more progressive, better resourced socio-legal, welfare landscape—where present conditions were no longer determinative?

We experimented here with different techniques. In our first decertification prototype, we backfilled it with other fictive laws, imagined as if they were already in place. For instance, we treated hereditary titles as abolished to avoid simply proposing a revision that would require the eldest child (rather than eldest son) to inherit. We also treated prison detention as largely abolished, and welfare austerity as having been abandoned, thanks to other imagined laws and policies. This approach enabled us to link our project to other progressive initiatives—both those that had developed imaginary laws, such as the crowdsourced UK People's Constitution (Gearty 2015); and to wider campaigns for reform. But there is an endlessness to this process. Initially, we identified laws that seemed clearly antithetical to a critical research project, and so ones not to validate by narrowly amending their gender-differentiated character, and we imagined new progressive-seeming laws that could be introduced. But, in the process, those laws that we had chosen merely to amend so that they no longer assumed people had a legal gender or sex status came into view—including on mandatory searches, abortion law, and equal pay machinery (see also Grabham 2023). These legal provisions were similarly subject to feminist criticism, and it proved hard to justify the difference in approach—both to ourselves and others—beyond a desire to illustrate the twin approaches of technical revision and a broader critical agenda.

Backfilling our decertification law with imagined other laws (depicted as already in place) also generated a quite different objection. One commentator suggested that making decertification contingent on the introduction of other imagined laws evaded

critics' concerns. For instance, we had tackled the problem of 'mixed-sex' wards by imagining that greater public spending would enable hospital patients to choose whether they stayed in a 'same-gender' room or one allocated on another basis.[23] Rather than craft decertification itself in ways that bore the full weight of addressing and resolving critics' objections, we had dealt, she suggested, with the difficulties through creating an imaginary statutory landscape. This criticism speaks to the wider challenge, addressed in this article, of trying to combine viable law reform with more experimentally expansive and critical approaches in a single legal text. It also reflects the uncertainty surrounding 'slow law'. Our intention was to demonstrate what else might need to be in place for decertification to work successfully as a progressive measure. But the generally assumed immediacy of law reform proposals—that they express a workable solution at the time of their writing—erases this contingency on extended time. One civil service lawyer made a similar point based on their work:

> One of the things… is that you try and get people to imagine how things could be. But then, they tend to think that the thing that you're describing is the exact same in *every other* respect. But actually, because as you said, it's quite speculative and doesn't exist, like lots of other things would need change alongside it for it to really work. But people tend to—and understandably, they put it in the context of today, and they put all the paraphernalia around it which is very much based on what they already know. That really—it makes it difficult to move forward.

This problem was intensified for us by the political climate dominating the period of research, where the gravitational force of contemporary disagreement—particularly over who counted as a woman—seemed to gobble up forward time, making it difficult to consider a future where other, quite different concerns and agendas might exist.

Participation in Divisive Conditions

Law reform proposals, like other things progressively designed, invoke the need for participation or co-creation by marginalised and excluded others (see Traganou 2011; Bardzell 2018), particularly when advancing social justice agendas. But participatory co-creation is difficult when there are deeply entrenched and polarised divisions among potential participants. For instance, consulting people through a survey (a relatively thin form of participation) can find its methods repurposed, as respondents use the findings for other ends. One union official told us,

> There was a concerted attempt to answer parts of the public facing aspects of your work and to try and push the results in a particular direction. I think this is one of the dangers of doing this sort of work in public. … I've already seen people, like, crowing about their success.

[23] This, of course, may prompt questions about how 'same-gender' is to be determined (and by whom).

Involving people through surveys or consulting on legal texts is also complicated by the absence of a shared language. In this conflict, what gender and sex should be treated as meaning was central to the disagreement (see Cooper 2019).

The survey we conducted in autumn 2018 grappled with competing language uses, anchored in a research decision to use the terms 'sex' and 'gender' in flexible, polysemic ways (see Peel and Newman 2020). While some respondents accepted this, others interpreted our mixed-language use as incoherent and biased (see also Peel and Newman 2019). One noted, "conflates sex and gender, apparently due to bias towards the trans agenda. Poorly designed survey. Will be surprised if it's rigorously analysed and honestly reported."

Polarised opinions also emerged in interviewees' views about decertification itself. The feminist research principle that good research embraces and anchors itself in feminist viewpoints appeared impossible to operationalise in any straight-forward fashion with feminists sharply and bitterly divided. At the same time, divergent and polarised views fed the issues and concerns we addressed, and the legal pathways we pursued, as we revised and reformulated our legislative text. Political discussions about sex and who counts as a woman, taking place contemporaneously, fed into our prototyping. While we were critical of approaches that over-emphasised biology (particularly as fixed and dimorphic) in accounts of gender inequality, we attended to them in ways that reveal the temporal specificity of legal simulations, such as this one, in shaping what gets attended to and addressed (see Cooper et al. 2022).

There is an argument that feminist participatory research should not simply slot external views into an already devised and settled structure. Instead, the process as well as the outcomes should be reached through and from a participatory place (see discussion in Binder et al. 2015). This more substantive participatory role was not part of our formal design. At the same time, wider views about our research and gender politics, more generally, organically shaped the research's development and process. What it did not do, however, was determine our theoretical framework or the normative principles we worked with. Remaining at a distance from the prevailing alternative paradigms of sex-based rights and gender-as-identity, we combined a more structural account of gender with substantive principles that emphasised progressive social justice norms of equality, inclusion, anti-subordination, non-intrusiveness, respect, and care. Our hope was that this would help us navigate competing claims. It might also help us attend to those political perspectives that seemed silent or buried, such as systemic or institutional accounts of gender, as we developed our legislative prototypes.

Public divisions can feel deeply embedded, but they are not fixed, stable phenomena. Publics form in response to specific agendas and in response to how subjects are collectively hailed (Barnett 2008; Mahony and Clarke 2013). This suggests that changing the gender-prompts around which people gather, for instance through prototyping new legislative agenda, might bring differently constituted publics to the fore or at least support other axes of divergence (see Binder et al. 2015). But this aspiration, by necessity, had to confront a deeply scored discursive landscape with increasingly settled lines of disagreement. In the final part of this article, I consider what prototyping might contribute to the

process of public-formation, and specifically, to the challenge of creating new or different discussions around law and gender.

Prototyping to Stimulate Critique

As a critical law reform project, FLaG sought to re-stage the sequential relationship between participation and decertification. The proposal to decertify sex and gender was not intended to represent the *outcome* of participation and dialogue but, rather, act as an invitation or prompt for it. In other words, decertification was less a conclusion than a starting point, less a place we were trying to reach, than a tricky proposal that might stimulate, illuminate, and probe different pathways and ambitions for gender's reconstruction. As Hillgren et al. (2011, 179) remark:

> Conducting prototyping in social innovation evokes dilemmas that cannot be easily solved. In this sense, even if these activities do not always evolve into a concrete product or service, we believe that acting out these 'things' reveals questions, controversies and opportunities that can have an impact for social change in the long run. (See also Franzato 2011; Wilkie 2014)

Sanders and Stappers (2014, 9) focus on "probes", "materials that have been designed to provoke or elicit response. For example, a postcard without a message." The provocation of asking a question about ending a legal status that has long been accepted as social fact, and the value of such a question for progressive politics (regardless of individual answers) was flagged by several interviewees. While some respondents were indifferent or found the discussion untimely, frustrating, and even angering, others liked the 'imaginative leap':

> I think that one of the challenges with legal reform is that, because it is incremental, it is always bound to what is one step away from where we currently are and I think … the kind of radical in me always wants to think about what the horizons are. What is the unimaginable thing? And if we can try to take the imaginative leap to imagine the unimaginable then, I think, we create space to do the work that happens on the way, rather than foreclosing opportunity before it's even got going. And also, I think, just to push things and to explore possibilities, I think, without the restrictions of how would this be legally workable right now. (LGBT NGO interviewee)

Sparking divergent reactions can be done for many reasons. Several writers, in design studies, discuss prototyping as a way of encouraging conflict or dissensus—"a break in the way we perceive and experience the world" (Keshavarz and Maze 2013, 19). Tironi (2018) describes a process of 'speculative prototyping', in which friction is deliberately encouraged to stimulate innovation. Yet, turning up the gas on an already over-heated subject (see also Sundqvist 2014, on 'heating up') needs to be done with immense care. It can lead to participation. But it can also lead to harms and injury; and it can cause activist and governmental bodies to pull back and turn their attention to other things. Our aim was not to encourage

friction or conflict. We did not seek to be provocative to generate reaction, but to use decertification to encourage new conversations about gender's future and the place of state law in that future.

Prototyping recognises the uncertainty of what things do. However, the conventional assumption is that, by creating new iterations, eventually a version will be produced that meets the demands and hopes attached to it. Our challenge, in designing a decertification law through several iterations, was to create a text that would demonstrate what law reform could entail without immunising itself from criticism—especially when it came to law's limits in responding to gender differentiation and inequality.[24] Devising a law (even an imagined one) prompts challenging questions about law's force, ethos, and effects. A decertification statute, for instance, invites questions about the place of state law in changing how sex and gender operate in society alongside a reconsideration of the importance of policies, norms, values, and practices in producing the gender relations we live with (see Cooper 2020b). Eliciting these reflections is important. It is typically assumed that law reform projects invest in law as the means of resolving problems, signalling state law's capacity to respond, in ways that can over-estimate state law's authority, power, and independence from other social processes. By contrast, we aimed to produce a legal text that was ambivalent about legal authority, even as it took up law's form—describing itself as law while not looking quite like law.

Deliberately producing a critical object in ways that disrupt expectations about what it is for, and how it should be used, is tricky, however. Creating something intended to stimulate, by shaping *how other things are criticised*, is unremarkable. Producing a thing, particularly a thing anchored in a propositional logic—as with a law reform measure—for self-criticism, and so causing the proposing work of the proposal to be constantly deferred, unsettled, or disavowed, is far less acceptable, especially in conditions of conflict, where a proposal is either something to support or to reject. In other contexts, prototypes are created for self-critique, but outside of sectors which relish experimental practice, critique is usually oriented towards improvement. In relation to law, the perceived refusal to stand behind and justify the legal object created, *in the terms that the object itself explicitly enunciates*, can expose the creative agents and process to charges of irresponsibility and even foolery (see also Emerton 2023). Thus, while creating critical prompts may stimulate a response, this is not necessarily in the terms sought or in relation to the thinking pathways that the legal designers have developed. As a lawyer working in the public sector told us, reflecting on their own work, "it's there and you see it's there on social media, but it's lots of disparate voices and they are not engaging with you, they are just talking about your work kind of in parallel to you". When such criticism gets converted into derision or scorn, the legal choices and dilemmas that a proposal might have hoped to prompt can become ignored or sidestepped as criticism moves to a different, at time more personal, register.

[24] While some critics assumed the project was one of legal advocacy, our aim in producing an experimental statute was also to critically explore legislation's limits and risks.

Conclusion

This article has addressed the challenges that progressive DIY law reform confronts in seeking, simultaneously, to construct a viable proposal for change and to advance a broader, more diffuse, transformative politics. Focusing on decertification, I have explored these challenges across two planes: the ontology of a proposal and the dilemmas in designing a legal text. Presenting decertification as a law reform proposal generated ontological questions that crystalised as three binary choices: is it real or fictive, this or that, now or in some future then? Ontological disagreements may not have been what disagreement over decertification was fundamentally about. However, they provided essential material in the proposal's opposition and in its advocacy. It is tempting to want to pin down the ontology of a law reform—to determine exactly what it is. Yet, the 'as if' of prefigurative initiatives undercuts this process. Acting as if things were otherwise combines the fictive and real, the future and present, in the interlayered, mutating, and plural character of what something, including a law reform proposal, means and is (Cooper 2020a).

This is not an argument for indeterminacy and multiple, slippery ontologies in all contexts. However, developing decertification as a multidirectional law reform proposal, facing viable legislative reform as well as wider critical and transformative options, contributed to a lack of sharp definition. Facing simultaneously in multiple directions is tricky,[25] but the turbulence and rough politics of gender's public discourse, in 2020s Britain, makes such an undertaking necessary if also more difficult. This necessity is for two primary reasons. First, to avoid being trapped by the imperative to sign up to one polarised set of options, objectives, and modes of action or the other as conflict dichotomises what can be thought about or said. For instance, some critics demanded that we focus our efforts and evaluation on viable, tangible law reform, scorning more utopian, experimental impulses. A commentator on a Mumsnet thread about the FLaG research remarked, "when you're dealing with policy, 'queering the norm' isn't really what you want to be doing. Might go down well at a gender studies conference but not so much in the real world." In such conditions, projects can feel pulled into taking sides, to define themselves and their agenda through their choice of allies and antagonists. This can reinforce the polarities in operation and accede to ways of acting, such as trading insults on Twitter, that participants might otherwise have avoided. Second, progressive change is not simple, uncontested, or clear-cut—whether in its formative conditions or in its substance. This becomes clear in conditions of struggle where progressive arguments are sutured to different positions, even as competing antagonists represent their desired change, and the means for its accomplishment, as self-evidently what progressive politics require.

One way of operating in conditions of conflict is to adopt a pacifist stance that not only refuses to fight but refuses to act as if a fight is taking place. What such a stance accomplishes is interesting to consider; however, it was not the position we

[25] Some state laws may seem to do this when they combine or fuse indigenous knowledges and understandings with traditional legal rationalities from the global north, e.g., see Te Awa Tupua (Whanganui River Claims Settlement) Act 2017. Thanks to Margaret Davies for drawing my attention to this law.

adopted. In crafting a legislative framework, we were affected by the perspectives, arguments, and concerns of those we interviewed, including people directly or indirectly affected by the contemporary conflict over gender categories. These politics, particularly around self-identification, who counts as a woman, and the place of sex, run seam-like through our legal text-writing. At the same time, we sought to evade capture by contemporary lines of conflict. As a prefigurative project, we strove to think beyond its cleavages and exigencies—to make space for different imagined futures—from gender's abolition as an institutionalised social structure to its evolution as a register of plural and changing expression that no longer tracks social inequality.

The future also surfaced in a further way—namely, as a present-to come, where past ideas might be retrieved or re-evaluated. Utopian fiction demonstrates how the aspirations of earlier times can prove harmful or at least anachronistic from the perspective of a future date. Nevertheless, past aspirations, and their anticipatory rehearsal, do get later taken up for other uses. In this context, it may seem a wishful orientation, turning towards an imaginary future where more fruitful conversations about decertification and its potential can take place. But the ways in which the present may be taken up in the future also suggests a reversal: where future-presents, with all their openness and inconclusiveness, function as imaginary interlocutors in contemporary discussions. If law reform is a "conversation" (MacDonald and Kong 2006, 27), can imagined future times become part of the conversation and, in the context of thinking about decertification, what might they say?

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