

Recognition Against Liberation: On the UK's Unreformed Gender Recognition Act

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Sometimes, in politics, the decision to do nothing actually does a great deal. The UK government's recent decision not to update the Gender Recognition Act (GRA) is a case in point. Despite appearing to be nothing more than a particularly unimaginative response to a public consultation, the decision can be seen as an important and telling episode in the British state's approach to identity politics, and an indicator of its biopolitical priorities, broadly construed.

To appreciate the significance of the decision for our current conjuncture, we need to see it in context. Recall the enormous reluctance with which the state agreed to recognise transgender identities in the early 2000s. The European Court of Human Rights (ECHR) heard three separate cases (in 1997, 1998, and 2002) of British people who felt the state was discriminating against them due to their gender. The government did its best to ignore the complaints. At this time, the UK was one of only four countries in the EU that refused to allow trans people to change their official gender. Finally, the ECHR forced the government's hand; the Gender Recognition Act 2004 was the result.¹

That the GRA was able to transform the legal definition of gender in the UK is testament to the dedication of trans activists, who campaigned to influence the formulation of the Act. Effectively disarticulating gender from biological sex, the GRA does not require applicants to undergo surgery in order to gain recognition. Given that many trans people either don't want or can't afford surgery, this represents an important achievement. In many other areas, however, the GRA fails to meet the needs of the UK's trans community: it excludes nonbinary people; grants veto power to the spouse of an applicant; requires a diagnosis of gender dysphoria; and insists that the applicant retain their "acquired" gender for the rest of their life.

¹ Sally Hines, *Gender Diversity, Recognition and Citizenship* (London: Palgrave Macmillan, 2013).

These barriers to recognition produce one of the most exclusionary systems in Europe. Earlier this year, the European Commission assessed gender recognition legislation in 28 countries and found the UK to be below international human rights standards, rating it only slightly higher than the handful of states that provide no recognition of transgenderism at all.²

So it's hardly surprising that the public consultation registered overwhelming support for a radical overhaul of the GRA. Over 100,000 people completed the government's questionnaire about reform, with the majority of respondents asking for the Act to be de-medicalised, and for the numerous other arbitrary and insulting obstacles, including the notorious "spousal veto", to be removed. The government has chosen to disregard these requests entirely, while also ignoring the European Commission's critique. In the face of incontrovertible evidence that the GRA is not fit for purpose – failing to provide an accessible mechanism for binary trans people and neglecting nonbinary people altogether – the state would rather appear ossified and insensitive than change its position.

It's therefore necessary to ask whether we have misunderstood the aim of the Act. The claim that everything is working just fine is simply inexplicable as long as we assume that the objective is to help trans people. If the GRA is indeed fit for purpose, as the authorities contend, then what exactly is that purpose? One way to find out might be to consider what the GRA does well. It certainly succeeds in centralising the process of adjudicating recognition requests, for one thing. To be more specific, the Act establishes an unequivocally asymmetrical power relation, putting applicants at the mercy of the Gender Recognition Panel and other representatives of the state, namely medical practitioners and psychiatrists, who must support an application for it to be deemed acceptable.

The GRA is also remarkably good at upholding binary and cisnormative notions of gender. Perhaps the initial exclusion of nonbinary identity from the legislation back in 2004 can be explained as an oversight caused by unawareness of the prevalence of nonbinary gender. But that's obviously no longer the case today, as nonbinary issues frequently stimulate public discourse, and around half of trans people also identify as nonbinary – as the government well knows.³ The decision to continue the exclusion thus represents an official intervention into the debate over whether nonbinary identities are "valid".

What I'm suggesting is that we're mistaken to think that the Gender Recognition Act is a flawed attempt to improve trans lives. It is, on the contrary, a rather effective instrument of assimilation and containment. The Act empowers the authorities to regulate gender through a centralised apparatus of biopolitical population management, rather than the distributed system of self-identification that many had hoped for. The refusal to cede control speaks to a desire to harness the criteria of recognition for political ends. Pushing back against the increased

² European Commission's Directorate General for Justice and Consumers, 'Legal Gender Recognition in the EU: The Journeys of Trans People towards Full Equality' (2020).

³ 'National LGBT Survey: Summary Report' (London: Government Equalities Office, 2018).

prominence of queer perspectives, the government legislates compulsory binary gender, demanding that trans people who need or want official recognition tacitly endorse the erasure of nonbinary identities by legitimising the conditions of engagement.⁴

In similar fashion, the retention of medical and psychiatric criteria pointedly re-pathologises transness at a time when public discourse is challenging the received wisdom that trans people are either mentally ill or sexually deviant. By asserting the normalcy of cis gender, making trans an aberration, the Act requires applicants to comply with cis standards, assimilate into cis culture, and collaborate in the project of neutralising the threat to cisheteropatriarchy that trans represents. Of course, many will go through the motions of compliance while privately disavowing these coercions. But no-one should have to do that.

The GRA may never have been good, but by refusing to update it to reflect the rapidly changing needs of trans people, the government has weaponised it. More than a missed opportunity or a preservation of the status quo, this is an attempt to suppress the movement for trans liberation.

⁴ For similar arguments from a US perspective, see Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Durham: Duke University Press, 2015).