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The David Bohnett Foundation, which has been the Journal's long standing supporter and champion of LGBTQ causes across the US. Their help has contributed to the mission of the Journal to promote, disseminate, and foster public policy in the field.

A particular thanks to **James Evans**, Publications Coordinator at the Fairbank Center for Chinese Studies, Harvard University, for his beautiful design which we have graciously been permitted to use for our cover.

Finally, thank you to those who support the global cause of LGBTQ rights in ways large and small—not only in speaking out when those rights are threatened and standing up when democrats and autocrats try to marginalize and delegitimize our existence, but also in reaching out and reaching across all ideological lines and having the tough conversations to change hearts and minds that will someday pay invaluable dividends to our collective social, political, and legal progress.

LETTER FROM THE EDITOR

Dear Readers,

Last year, upon the inauguration of the new president, one of my mentors made the prediction that reversal of LGBTQ rights would happen not on the national stage but in state and local contexts. While this has been only partially true, it has become an inspiration for the content of the Journal's eighth volume.

In the 24-hour news cycle, it is a natural tendency to turn to the changes which affect the largest groups of people. But I see it as the mission of the LGBTQ Policy Journal to carve out a space for us to discuss and debate policy issues that affect the community. In fact, with the Journal we are given a unique opportunity as the only such publication in the country. This brings the responsibility to showcase policy lessons, which guide and warrant caution; to illuminate common struggles but question monolithic perceptions of LGBTQ communities; and to inspire inclusive and respectful public policy debate, a mission all publications should espouse.

The eighth volume of the Journal then explores the distinctive meanings and battles LGBTQ rights take on in different contexts.

The Trans Labor Quota Law, unique on a global scale yet rooted in the specific Argentine context, illuminates how trans communities can mobilize and get their message across. Lessons on how legislation may be a double-edged sword are further explored in the analysis of two Indian laws criminalizing homosexuality and granting constitutional rights to transgender individuals respectively. These court cases showcase how introduction of new laws may add momentum to community organizing or provoke backlash, resulting in a curtailment of rights. Further, we observe how legal conceptions of gender identity vary in three countries, discussing the need for gender markers at all.

As we ask ourselves more and more often about the responsibilities of large corporations towards our society, we raise the same questions with regards to the LGBTQ community and employees. Why and how can corporations be good champions, and how does that translate to LGBTQ employees who find themselves covering their sexual orientation or gender identity?

The Journal also takes pride in presenting innovative research design and new intersectional analyses. A prime example is the presented World Bank study, which utilizes a mystery shopping technique to investigate discrimination towards gay and lesbian people in the education and housing sectors in Serbia. Elsewhere, the Journal turns to the much discussed issue of police violence and perceptions, addressing the lack of focus on LGBTQ individuals interactions with and perceptions of police. An intersectional analysis on police perception and mental health of LGBTQ persons remains an understudied area for policymakers.

Finally, in the wake of the trans military ban that reverberated throughout 2017, we turn to the military context. As a result of the military ban, the American public has been exposed to courageous stories of trans soldiers and their service to their country. The Journal, in a piece based on archival research, traces the service of queer women through World War II and highlights the Women's Army Corps' understanding of gender and female sexuality.

As I consider the content for this year's volume, the main goal was to present distinctive contexts where change was made or reversed, creating lessons for all of us as policymakers. It is my hope as well that with this content, the Journal celebrates these change-makers: those who march and chant, and those who speak with their opponents at the same table. Going forward, we will need both.

Ewelina Rudnicka
Editor-in-Chief
Cambridge, MA

Gender Identity Laws: The Legal Status of Global Sex/Gender Identity Recognition

J. Michael Ryan, PhD
Instituto de Ciências Sociais
Universidade de Lisboa

Abstract

Official identity is a powerful thing. More than just feelings, diagnosis, or behaviors, official identity marks the status by which one can gain, or lose, access to certain social rights, responsibilities, and privileges. It can be predicated on biology or on the “determination” of other social identities. And it can serve as the means by which other identities can be determined. The ability to alter one’s official identity is a key mechanism whereby one can essentially change who they are, and what they can become, in the eyes of the law. This paper will examine three principal types of global gender recognition identity laws—those that require official approval by “experts,” those that provide options for a third gender, and those that allow for self-declaration. Case studies will be examined of laws in the United Kingdom, Nepal, and Argentina respectively to demonstrate the potential benefits and shortcomings of each type of law. The conclusion will consider the potential ramifications of removing gender as an official identity marker entirely, a move now considered by some to be the end result or goal of many of these laws.

Bio

J. Michael Ryan is currently a researcher for the TRANSRIGHTS Project at The University of Lisbon (Portugal) funded by the European Research Council. He received his PhD in Sociology from the University of Maryland (United States). He has previously taught courses at The American University in Cairo (Egypt), Facultad Latinoamericana de Ciencias Sociales (FLACSO) in Quito, Ecuador and the University of Maryland. Before returning to academia, Dr. Ryan worked as a research methodologist at the National Center for Health Statistics in Washington, DC. He is the editor of *Core Concepts in Sociology* (2018) and co-editor of *Gender in the Contemporary Middle East* (with Helen Rizzo, 2018), *Sexualities in the Contemporary Middle East* (with Helen Rizzo, 2018), *The Wiley-Blackwell Encyclopedia of Social Theory* (with Bryan Turner et al. 2018), *The Wiley-Blackwell Encyclopedia of Consumption and Consumer Studies* (with Daniel T. Cook, 2015), and *The Concise Encyclopedia of Sociology* (with George Ritzer, 2011). He has also served as advisory editor on *The Wiley-Blackwell Encyclopedia of Gender and Sexuality Studies*. Dr. Ryan has published on issues related to gender, sexuality, consumer culture, and research methodology.

Official gender identity is a powerful thing. More than just feelings, diagnosis, or behaviors, official identity marks the status by which one can gain, or lose, access to certain social rights, responsibilities, and privileges. It can be predicated on biology or on the “determination” of other social identities. And it can serve as the means by which other identities can be determined. The ability to alter one’s official identity is a key mechanism whereby one can essentially change who they are, and what they can become, in the eyes of the law.

The Yogyakarta Principles, which have become the “standard-setting document”¹ cited by judges, legislators, and government officials around the world on issues related to sexual orientation and gender identity, state that the ability to be legally recognized as one’s preferred gender is a fundamental human right. Principle 3 states that “each person’s self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom” and that “no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation, or hormonal therapy, as a requirement for legal recognition of their gender identity.”² Additionally, The World Professional Association for Transgender Health (WPATH) issued a statement in November 2017 recognizing that,

For optimal physical and mental health, persons must be able to freely express their gender identity, whether or not that identity conforms to the expectations of others. WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status. Such documents are essential to the ability of all people to enjoy rights and opportunities equal to those available to others; to access accommodation, education, employment, and health care; to travel; to navigate everyday transactions; and to enjoy safety.³

A number of international organizations have also issued official statements regarding the rights of trans people and gender identity. For example, The United Nations Human Rights Committee has urged states to “recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates,” citing the rights to privacy, equality, and recognition before the law.⁴ Additionally, in 2011 the UN High Commissioner for Human Rights recommended that states “facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.”⁵ A report by the United Nations Development Programme has also called for action to “build awareness about the importance of the right to legal gender recognition, including its links to other rights.”⁶ And the World Health Organization’s 11th International Classification of Diseases, due out in 2018, will remove all trans-related diagnoses from the mental health chapter. Instead they will be moved to a chapter titled “Conditions Related to Sexual Health” and will include the diagnoses “gender incongruence in adolescence/adulthood” and “gender incongruence in childhood.”⁷

On a regional level, in 2002 The European Court of Human Rights ruled in the case of *Goodwin v. United Kingdom* that Council of Europe member states must provide for the possibility of legal gender recognition based on the “right to private and family life” delineated in Article 8 of the European Convention on Human Rights. And in 2015, the Parliamentary Assembly of the Council of Europe adopted a resolution to “adopt transparent and accessible legal procedure of recognition of gender self-identity without further restrictions” and “to consider the inclusion of the third gender option in gender identity documents for those seeking such a status.”⁸

The ability to be legally recognized by your self-determined gender identity is important for many reasons. As M. Dru Levasseur noted, “Justice for transgender people is linked to the validation of self-identity—you are who you know yourself to be.”⁹ A recent European Union (EU) wide survey found that 73 percent of trans-identified respondents expressed the belief that easier gender recognition procedures would allow them to live more comfortably as transgender people.¹⁰ Indeed, one of the complications faced by many trans¹¹ individuals is the difficulty of having conflicting documentation regarding gender identity. This can be the case when specific documents conflict (for example, being recognized as female on a passport but as male on a birth certificate), or when one’s self-presentation does not match the expected presentation implied by a specific document (for example, presenting as female but having documentation indicating status as male). The right to coherent, legal gender identity recognition, however, is not one that is, as of yet, acknowledged by law in many countries around the world. Just as noteworthy is the fact that, in many places where one can be legally recognized as their self-identified gender, there are often considerable costs for obtaining such recognition (e.g., financial and psychological costs, sterilization, divorce, sworn oaths, medical diagnosis, etc.).

Public opinion in favor of allowing individuals the right to change their legal gender identity is following suit with the law. Even as far back as 2002, the statement of the European Court of Human Rights in its *Goodwin v. UK* decision—that there was “uncontested evidence of a continuing international trend in favour of increased social acceptance” of trans people and legal gender recognition—would become the impetus for the UK’s Gender Recognition Act 2004 (see more below).¹² Further, a 2015 European Commission survey found that 63 percent of respondents in the EU thought trans individuals should be able to change

their official documents to match their gender identity.¹³ And according to a November 2017 survey by Pew Research Center, about 44 percent of Americans believe that “someone can be a man or a woman even if that is different from the sex they were assigned at birth.”¹⁴ As Van den Brink et al. have noted, “the impossibility [of changing] one’s legal sex as such is increasingly regarded as old-fashioned and as being in conflict with human dignity.”¹⁵

Sweden became in 1972 the first country in the world to allow individuals to change their legal gender identity marker. Since then, a growing number of legal mandates, combined with the hard work of activists and increasing public support, has spurred even more countries around the world to enact sex/gender identity recognition laws that allow either a) for the registration of intersex individuals, b) for the recognition of third, or nonbinary, genders, c) for individuals to “alter” their official sex/gender identity from that medically assigned at birth, or d) some combination of the above. The implications of these laws are quite diverse and highly context specific. Perhaps more importantly to the individuals living in these jurisdictions, the requirements to be eligible for these new forms of legal recognition are equally as varied, ranging from self-definition to divorce to de facto forced sterilization.

It can be difficult to measure exactly how many countries currently have what might be considered gender-identity-based laws (due, in part, to the varied provisions that could potentially fall under what might be considered such a law). That said, a growing number of countries have laws on the statute books that would generally be accepted as some form of legal provision for allowing a recognition of, or change in, official sex/gender status (among these are Japan, the United Kingdom, Spain, Uruguay, Argentina, Denmark, Malta, Colombia, Ireland, Vietnam, Ecuador, Bolivia, Norway, France, Canada, and Belgium). In addition, many other countries and jurisdictions are

beginning to make some provision for the recognition of a third gender, or of intersex individuals (for example, Nepal, India, Pakistan, Bangladesh, Australia, Canada, Germany, Austria, New Zealand, Thailand, the United Kingdom, and the states of Oregon and California in the United States). There are also other countries that legally recognize post-operative transsexuals but do not recognize transgender individuals (for example, Egypt and Iran). In addition, there are a number of countries where such acts are currently pending approval (Chile, Luxembourg, Brazil, Costa Rica, Peru, and Sweden), more than a dozen others where they are currently being debated, and others (including the United Kingdom and Portugal) where the existing laws are currently under revision to bring them up to improved international standards.

One noteworthy thing about the laws described above is that, unlike what might be considered similarly “progressive” laws related to the rights of women or sexual minorities, these laws are truly global in scope, existing in countries as diverse as Japan, Bolivia, Norway, and Nepal. They can be found in countries that are still considered to have comparatively less “progressive” laws pertaining to women and sexual minorities; in countries that are predominantly Catholic, Muslim, Buddhist, and Hindu; and in both countries that are considered among the most, and those considered the least, economically developed. Unlike other types of laws that share similarities across national lines, gender identity recognition laws have emerged in many countries that do not share a common cultural, religious, ideological, political, economic, or legal background. In fact, very little seems to unite these countries other than the fact that they all have some form of such laws.

This paper examines three principal types of global gender recognition identity laws—those that require official approval by “experts,” those that provide options for a third gender, and those that allow for self-declaration. Case studies will be drawn

from legislative frameworks in the United Kingdom, Nepal, and Argentina respectively to explore the potential benefits and shortcomings of each type of law. The conclusion considers the potential ramifications of removing gender as an official identity marker entirely, a move now considered by some scholars and activists to be the end result or goal of many of these laws.

This paper will only deal with countries where there is a legal or administrative possibility of correcting/changing¹⁶ gender identity, and to do so with laws that allow one to modify their official sex/gender identity without having to undergo surgical intervention. A number of countries allow an individual to change their official sex only after having undergone some kind of biological alteration (usually some form of a gender reassignment surgery). However, this article focuses only on those countries where official identity can be altered without requiring surgical intervention (although surgery is still often seen as a “helpful” prerequisite for approval in many such jurisdictions). It is unfortunate, in the opinion of the author, that the vast majority of countries in the world still have no form of legal recognition in place, even to the extent that being trans is often regarded as a criminal offense with severe legal punishments. That said, it is beyond the scope of this paper to deal with every country in the world; instead, the goal is to present a picture of current global gender recognition identity laws with the supported assumption that such laws are likely to be more, not less, commonplace in the future.

The More Things Change... : Binary Maintenance and the UK Gender Recognition Act 2004

A growing critique of gender identity recognition laws is that many, while a step forward for some members of the trans community—those who qualify under the purview of such laws’ requirements—they represent a further, and continued, marginalization of other trans people. The ar-

gument is that they do so by continuing to enforce heteronormative ideals of a gender binary. In other words, while the laws serve to allow those trans individuals who feel either as a man or a woman to have their self-stated gender recognized, they restrict the options for gender to either male or female. With this in mind, scholars and activists have argued that these laws have had the negative side effect of further codifying heteronormative binary ideals of gender into the law.

The Gender Recognition Act of 2004 (GRA)¹⁷ in the United Kingdom made it possible for individuals to alter their official birth certificates, and to do so without having to undergo surgical interventions, take prescribed hormones, or to make a public announcement of their transition. The GRA created Gender Recognition Panels composed of medical and legal professionals tasked with determining if applicants merit a Gender Recognition Certificate (GRC), essentially a change in their officially recognized gender which also allows for altering birth records. In order to qualify for such a certificate, applicants have to be over 18 years of age, have been medically diagnosed with some kind of gender identity disorder, present evidence that they have lived in their preferred gender for at least two years, and declare that they intend to live in their preferred gender for the rest of their lives. The GRA also requires spousal consent if the individual is in a marriage or civil partnership. Further, the law contains a provision, meant to protect the rights and privacy of those who obtain a GRC, whereby it is illegal for someone to ask for a GRC to verify sex, meaning that individuals need only produce a corrected birth certificate for legal identification as their preferred sex.

The GRA received royal assent in July of 2004 and went into effect in April 2005. After the ruling, a body of research began to emerge examining the GRA's legal implications, including what it meant for understandings of gender and sex in the UK

legal system.¹⁸ At the time of its enactment, the GRA was widely seen as one of the most progressive trans rights laws in the world, in that it did not require surgical interventions or taking prescribed hormones in order to alter official natal biological identity as registered on a birth certificate. This implied that individuals who did not have the desire or the financial resources to undergo bodily modifications could still seek an alteration in their official identity. Further, by not requiring such bodily modifications, the GRA became the first gender recognition legislation in the world that did not require de facto sterilization (something previously implied where surgical or hormonal interventions were required).¹⁹

Many celebrated the fact that the GRA seemed to break the ties between biological sex and social gender.²⁰ Indeed, the Act itself uses the language of gender rather than sex defining “acquired gender” as “the gender to which the person has changed” or “the gender in which the person is living.”²¹ That said, many have argued that the GRA also serves to further perpetuate the legal notion of a binary gender order.^{22,23} For example, there is no room in the GRA for the recognition of a third gender, or of intersex individuals. In fact, the GRA only allows one to alter their identity from “one” gender to “the other.” Thus, as Hines has argued, those who “transgress” gender—for example, “Married trans people who chose not to divorce and those who construct gender identities outside the gender binary—remain on the margins of citizenship.”²⁴ In this way, the GRA, while allowing for change on an individual level, still maintains the larger rigid social dichotomy of two, and only two, sexes. As Sandland has noted, “The legal act of recognition of transsexualism can be read as a case study demonstrating the truism that any act of inclusion also excludes.”²⁵

The GRA also falls short of full natal/non-natal gender equality in that it still allows for a number of exceptions to full legal recognition. For example, it includes a right

of conscience for Church of England clergy, allowing them to not perform marriages or other church related services for certain individuals. Similarly, the descent of peerages, which determines how noble titles are inherited within families, remains unchanged. The GRA allows single-sex sports institutions and associations to exclude people whose present gender identity differs from the gender assigned at birth if it is deemed necessary to maintain “fair competition or the safety of the competitors.”²⁶ For non-governmental entities—such as universities—the GRA leaves it up to each entity’s discretion as to whether or not it will alter its official records to reflect changes in an individual’s legal gender identity.

Another drawback of the GRA is that it requires individuals to swear an oath that they intend to live as their “newly” acquired gender for the rest of their lives. Thus, while it is progressive in the sense that it allows individuals to alter their legal identity to reflect who they feel they truly are, it does not allow for gender fluidity and further hinders individuals who might experience multiple changes in gender identity across the life course. It is also seen by many as an unfair burden as few other civil rights, including marriage, require a lifelong commitment before they can be obtained, as Emily Grabham has noted:

Government authorities can cope with people changing other intrinsic aspects of their identity fairly often: they respond to people being born and dying, they respond to changes of address, they respond to people ageing and therefore becoming eligible and ineligible for benefits. They also respond to people changing their marital or civil partnership status, their motor vehicle, their employer (for purposes of tax and national insurance), and their name. Gender transition, in purely administrative terms, is no more of a burden than any other of these life events. The

possibility of gender transition happening more than once is not as much of an administrative problem as the Act would make it seem.”²⁷

Perhaps the most important shortcoming of the GRA is that individuals wishing to alter their official gender identity must still submit themselves to an application process, including approval from a number of outside sources. A recent report by Transgender Europe argues that “it is particularly problematic that a person’s self-determination is limited by depending on a third party’s opinion.”²⁸ For example, for those who are married, spousal consent is required on the basis that the other partner agreed to enter into a particular type of legal union—either same-sex or opposite-sex—and so the alteration of official identity by one partner fundamentally alters the “nature” of the union itself. Further, the medical/psychiatric community must still make a diagnosis of gender dysphoria, thereby maintaining the idea that being trans is an illness and continuing the pathologizing of trans individuals. Additionally, in order to obtain recognition, individuals must go before a panel and plead their case before a panel of so-called experts, rarely their peers, thus leaving the decision as to the legal reflection of their own identity firmly in the hands of others.²⁹

Neither/Or: Adding a Third Gender Option in Nepal

One of the leading complaints about many existing gender identity laws is that they fail to account for individuals who fall outside of a typical heteronormative gender binary. In other words, while they extend rights to some individuals—namely those who see themselves as either male or female—they continue to marginalize others—namely those who see themselves as neither male nor female, or both male and female. The rights of nonbinary individuals, however, are beginning to be recognized as countries like Pakistan, Canada, Australia, New Zea-

land, India, Nepal, and others are allowing for legal identification as third gender. As van den Brink et al. have noted, “The perception of gender identity issues seems to be changing rapidly. Especially the idea that gender identity cannot always be squeezed in one of two legal boxes is gaining ground.”³⁰

There are a range of identities used to describe third gender individuals in Nepal including *methi*, *kothi*, and *hijra*, among others.³¹ The consistency across terms is that they are used to describe individuals who either do not feel their current gender matches that which was assigned to them at birth, or those who do not identify as either male or female. Although falling short of proper conceptualization, third gender can be thought of as an umbrella category used to represent those who many in the West might refer to as transgender. Third gender individuals have historically played a visible role in Nepali society. Bochenek and Knight have argued that,

While thorough academic research on Nepal’s third gender category is lacking, among the explanations for its local cultural relevance are: the historical presence and, thus, contemporary cultural acknowledgement of gender-variant people such as hijras; the local religious traditions containing important third gender (nonmale/female gender performing) characters; and the intense media focus on the violence against gender-variant people as the contemporary sexual and gender minority rights movement emerged in Nepal.³²

The Supreme Court of Nepal’s 2007 *Pant v. Nepal* decision has been hailed by some as “the most far-reaching and progressive SOGI [sexual orientation and gender identity] rights decision in South Asia.”³³ Prior to this decision, both same-sex sexual relations in Nepal and cross-dressing were considered crimes, and there was no legal recognition of third genders. The *Pant*

decision, however, created recognition for a third legal gender, outlawed all discrimination against sexual and gender identity minorities, and ordered significant government action to make sure the decision was enforced. The court also ruled that gender was based on “self-feeling” thereby excluding the necessity of medical, psychiatric, or legal intervention or approval to have one’s gender recognized. The court decision read in part:

If any legal provisions exist that restrict the people of third gender from enjoying fundamental rights and other human rights provided by Part III of the Constitution and international conventions relating to the human rights which Nepal has already ratified and applied as national laws, with their own identity, such provisions shall be considered as arbitrary, unreasonable and discriminatory.³⁴

This right has been further enshrined in Nepal’s new constitution, which guarantees individuals the right to choose their own gender identity. Further, the government has enacted a “National Plan of Action on Human Rights” which includes plans such as “guarantee[ing] the right to dignified life of sexual and gender minorities,” “conduct[ing] awareness programs to eliminate myths and misbeliefs against sexual and gender minorities,” and guaranteeing the right to identify as third gender on all official documents.³⁵ In addition, the official federal census of Nepal became the first in the world to include a third gender category in 2011.

Despite this seeming progress, there have been several issues with implementation of the laws. Bochenek and Knight have noted that “Since the court’s decision, the Government of Nepal has implemented the third gender category in piecemeal but progressive moves. However, full implementation as the court mandated remains far from a reality.”³⁶ In fact, it was not until 2013, a full six years after the court’s decision, that the

first identity cards were issued to individuals requesting a third gender identity. Even since then, there have been numerous complaints of individuals being turned away for discriminatory reasons or bureaucratic and technical inabilities to comply. For example, although the full federal census allowed for registration as a third gender, the more limited and in-depth version of the census still only allowed options for male or female. Further, many Nepalese third gender individuals continue to report high levels of discrimination and violence in society in large. As Boyce and Coyle have noted, “There is dissonance in Nepal between a progressive legislative environment in respect of gender and sexual minority issues and everyday sociocultural ambivalence toward such sexual and gender minority persons.”³⁷ Despite these setbacks, however, the legal situation in societies recognizing a third gender has represented significant progress in destabilizing the global hegemony of a gender binary and in allowing individuals outside of that binary to find representation and recognition.

I am Who I say I am: Gender Self-Declaration in Argentina

Arguably the gold standard in gender identity laws are those which rely purely on self-determination and remove the necessity of medical intervention or approval by a medical professional or judge. These self-determination models are often regarded as falling in line with general human rights laws that guarantee bodily integrity and freedom of personal expression.³⁸ As Romeo has noted,

This conception of gender—a self-determination model—has the potential to provide a broader regime of rights for gender-transgressive people that could encompass the right of any person to have their gender identity recognized, to access safe and appropriate sex-segregated spaces, to receive healthcare related to their gender identity, and to be free from discrimination on these grounds.³⁹

Further, Hutton has noted that “Self-determination is at the heart of the third of the Yogyakarta Principles, ‘the Right to Recognition before the Law.’”⁴⁰ Indeed, Principle Three states that

Everyone has the right to recognition everywhere as a person before the law ... each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom ... no status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity.⁴¹

After years of advocacy by the trans community, the “Ley de Genero” was approved on 8 May 2012 by the Argentine Senate in a unanimous vote of 55-0 (with one abstention) and became the first gender recognition law in the world to allow for self-determination.⁴² Kohler and Ehrt argue that on a global level this law represented “no less than a paradigm shift in Legal Gender Recognition Legislation.”⁴³ Indeed, the law has been hailed by a number of international agencies, including the United Nations, as the standard by which to measure gender identity recognition, and has been used as a model for other countries implementing self-determination laws. To date, six other countries (Malta, Ireland, Denmark, Norway, Sweden, and Belgium) have modeled their own gender identity laws on Argentina’s.

The Ley de Genero (henceforth referred to as the Ley) is considered progressive in that it does not require any bodily modifications—neither surgery nor hormones—nor approval by any medical, psychiatric, or legal professional in order for an individual to request a change in their legal gender. In fact, rather than “applicants,” individuals are now seen as autonomous in their ability to have their gender identity recognized. To date, there have been no refusals and no reported cases of fraud. More than 3,000

individuals made use of the law in its first year alone, with more than 10,000 having done so since then. The only requirements are that individuals be over the age of 18 years (although provisions exist for those under 18—see below) and provide the National Bureau of Vital Statistics with details of their new name and picture to ensure consistent amendment of birth certificate, public records, and a new identity card. All existing legal ties, including marriage and adoption, are unaffected, as the individual's national identity number remains the same. Further, it is illegal to include any mention of a change in the new documents so the individual's right to privacy is also protected.

The Ley also includes a number of other benefits regarded as important for bringing greater equality and ease of access—there is no cost to apply, the process takes only a couple of weeks, and the paperwork is relatively simple, reducing bureaucratic burden. It also includes a provision allowing for access to trans-related health care (and not only gender recognition surgeries) to be covered at full cost under the national Mandatory Medical Plan. In 2015, a subsidiary healthcare policy and practical guidelines on trans specific healthcare were also adopted with the goal of facilitating access and quality.

Another element of the Ley that has been applauded by many in the trans community is the consideration for minors to also be able to access a change in their gender identity. Minors under the age of 18 must follow the same procedure as adults with the requirement that minors have a children's lawyer and make requests through a legal representative. The Ley contains further provisions that even if the legal representative of the minor denies approval, the child may still make a claim to be approved by a judge. In 2013, a six-year-old girl named Lulu made headlines when she became the youngest person at that time to legally change their gender.⁴⁴

In addition to becoming the global gold standard for gender recognition identity

laws, perhaps even more importantly, the Ley has had positive effects for the well-being of trans citizens of Argentina. According to a poll conducted by Ipsos with BuzzFeed News and the UCLA Law School's Williams Institute, 48 percent of Argentinians support allowing individuals to change their legal sex without any restrictions, making it the second highest approval rating of those countries surveyed after Spain.⁴⁵ Research has indicated that trans people are generally reporting positive changes, especially in areas of education, healthcare, employment, safety, and civil rights.⁴⁶ It has also been reported that access to voting without discrimination has meant many trans individuals are now able to safely cast their ballots for the first time.⁴⁷

Conclusion: Does Gender Matter? The Future of Gender Identity Recognition

The Yogyakarta Principles have become a global standard by which many governments are reshaping their legal understandings of gender identity recognition. The newly released Yogyakarta Plus 10 includes Principle 31, which states that adherents shall “Ensure that official identity documents only include personal information that is relevant, reasonable, and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licenses, and as part of their legal personality.”⁴⁸ Along this line, many have argued that the legal recording of gender should become a thing of the past, especially in situations where such information is neither relevant nor necessary.^{49,50} Christopher Hutton has argued that “If legal sex follows self-definition in terms of gender identity and is fully decoupled from marital or parental status, medical intervention, and social pressure to conform, then it is on the verge of disappearing as a legal status.” Gender, it seems, may be on the brink of no longer mattering, at least in terms of official records.

It should be remembered that gender has not always been a marker of official legal identity. As Hutton has also noted,

Legal sex has no explicit foundation in statute or case law. The registration regimes that arose in the nineteenth century for births, marriages and deaths, the introduction of the passport and other forms of state-sponsored identity, erected a scaffold for the creation of legal sex, without explicitly setting out its biomedical, sociopolitical and legal basis.⁵²

AJ Neuman Wipfler has made similar arguments, noting that the categories of data recorded on birth certificates in the United States “have changed no fewer than twelve times since their inception as identification documents in 1900.”⁵³ One argument for the elimination of sex/gender as an officially registered category, therefore, is precisely the fact that it is a relatively recent category of identification. That said, there are also arguments to be made that although a recent practice, the registration of sex *does* matter, as it has come to be a defining characteristic of contemporary life and one on which a number of social rights, responsibilities, and privileges have come to be predicated.

There is a growing movement to completely eliminate, if not downright abolish, gender as a marker of official identity.^{54,55} Reasons for such elimination include that gender is not something that should be regulated, monitored, or controlled by any external authority; that there is often imprecision of such registration in capturing the “truth” of lived daily experiences; that other supposedly “foundational” indicators—such as disability and religion—are rarely recorded on most documents in most countries; and that the registration of such information can lead to continued and further discrimination of individuals who do not fit neatly into the highly limited identification options available on official documentation.

That said, there remain powerful arguments as to why gender should continue to matter. As Scott has noted,

Categories that may have begun as the artificial inventions of cadastral surveyors, census takers, judges, or police officers can end by becoming categories that organize people’s daily experience precisely because they are embedded in state-created institutions that structure that experience.⁵⁶

This embeddedness in daily life means that the category of gender still matters for many and in many ways. Arguments in favor of retaining gender as a marker of official identity include that it is necessary to record discrimination, especially against gender minorities; gender is often a gatekeeper to other rights—such as marriage, adoption, affirmative action, admission to single-sex social groups and institutions, etc.; the vast majority of individuals do still identify as male or female, so taking away this marker is a case of minority rights encroaching on the rights of the majority; and, an argument put forward by many in the trans community itself, many people have fought for a long time to have their change in gender recognized, thus simply removing gender as a marker undermines the decades of hard work that went into their ability to be recognized in the first place.

The future of gender identity recognition laws will be interesting to watch, especially as the world becomes increasingly globalized and questions of inter-state legal compatibility continue to be foregrounded. Additionally, issues related to refugees, migrants, immigrants, tourists, and others who travel and live outside of their home jurisdictions will no doubt continue to raise questions of the inter-state compatibility of global gender recognition. Further, the role of intersex individuals and activists will no doubt also play a role in the future of global gender identity recognition. Finally, the continued push by international

organizations such as the United Nations, World Health Organization, and others will also help to keep questions of legal gender identity recognition on the agendas of many countries for some time to come. As Neuman Wipfler has noted, “Whatever solution the trans rights movement pursues must ultimately address two somewhat conflicting needs: the need for government recognition and substantiation of gender identity and the need to be free from government prescription of gender identity.”⁵⁷ Regardless of how, and when, gender identity recognition laws are implemented, there seems little doubt that the future belongs to an expanded understanding of gender and increased recognition of those who fall outside the imposed heteronormative gender binary.

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End Notes

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as an imperfect shorthand to refer to individuals who fall outside of the hegemonic heteronormative gender binary, including, but limited to, those who identify as transgender, transsexual, genderqueer, third gender, or gender nonbinary, among many other terms.

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