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Law as Symbolic Other in the Acquisition of  
Personhood for Non-Binary Individuals

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# Law as Symbolic Other in the Acquisition of Personhood for Non-Binary Individuals

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## Abstract

Questo articolo esamina l'esclusione delle persone non binarie e gender-fluid dall'accesso alle disposizioni contenute nel Gender Recognition Act 2004 che hanno lo scopo di fornire il riconoscimento legale della propria identità di genere. In tal modo, questo articolo utilizza la teoria psicoanalitica di Drucilla Cornell della legge come Altro simbolico nel processo degli individui che raggiungono la personalità psichica per fornire una nuova analisi della questione della riforma legale del riconoscimento di genere. Sostiene che l'attuale quadro giuridico, che consente solo il riconoscimento delle identità di genere binarie, nega agli individui non binari il riconoscimento necessario per la piena personalità che, in questo articolo, significa sia la personalità giuridica che viene data a tutti gli esseri umani, sia la personalità psichica, che è la capacità di concepire se stessi come un tutto e di farsela riconoscere dagli altri; La personalità giuridica e le tutele date dalla legge agli esseri umani trascurano attualmente la seconda concettualizzazione della personalità e senza entrambe si sostiene che solo alcuni sono in grado di raggiungere la piena personalità davanti alla legge. Esplorando l'impatto dell'esclusione legale sulla formazione dell'identità, il documento chiede riforme significative, tra cui l'adozione di un modello di autodichiarazione e il riconoscimento legale delle identità non binarie. Queste riforme sono essenziali per garantire che la legge protegga pienamente la dignità e l'autonomia di tutti gli individui con varianti di genere.

*This paper examines the exclusion of non-binary and gender-fluid individuals from accessing the provisions contained in the Gender Recognition Act 2004 which are intended to provide legal recogni-*

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tion of one's gender identity. In so doing, this paper utilises Drucilla Cornell's psychoanalytic theory of the law as a Symbolic Other in the process of individuals achieving psychic personhood to provide a novel analysis of the issue of legal gender recognition reform. It argues that the current legal framework, which only permits recognition of binary gender identities denies non-binary individuals the recognition necessary for full personhood which, in this paper means both legal personhood which all human beings are given and psychic personhood which is the ability to conceive of oneself as a whole and have that recognised by others; legal personhood and protections given in law to human beings currently neglects the second conceptualisation of personhood and without both it is argued that only some are able to achieve full personhood before the law. By exploring the impact of legal exclusion on identity formation, the paper calls for significant reforms, including the adoption of a self-declaration model and the legal recognition of non-binary identities. These reforms are essential to ensure the law fully protects the dignity and autonomy of all gender-variant individuals.

## 1. Introduction

Personhood projects in law are not new.<sup>1</sup> The debate as to how far personhood, as a legal concept, should extend touches on the question of extending this concept to non-humans e.g. animals, artificial intelligence, and non-legal persons<sup>2</sup> e.g. the unborn child<sup>3</sup>. However, although this debate around extending legal personhood in such a way is interesting, the issue that will be argued in this paper is that law has not fully achieved *full* personhood for all actual human legal persons and therefore before personhood is extended to non-humans and non-legal persons the failure of law to fully ascribe personhood status to all human beings must be examined and challenged. The argument in this paper is that personhood is not merely a legal concept but also a psychoanalytic concept and until both are realised full personhood has not been achieved. This paper takes the personhood legal project in relation to one particular group of individuals, non-binary individuals, and examines the extent to which the law has, failed to fully enable individuals within this group to achieve personhood. This paper will examine the extent to which the Gender Recognition Act 2004 provides mechanisms for binary trans individuals to be recognised while at the same time excluding non-binary trans individuals and thus raises important questions regarding the extent of the provisions within the 2004 Act. In so doing, this paper significantly extends the concept of personhood as currently existing within legal projects and seeks to examine what it means to achieve personhood from a psychoanalytic perspective

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- 1 J. Austin, *The Province of Jurisprudence Determined* Clarendon (1832); H.L.A. Hart *The Concept of Law* Oxford University Press (1961); W Blackstone *Commentaries on the Laws of England* (1765-1769).
  - 2 In the UK an unborn child is not classed as a legal person until the child is born and has an existence separate from the mother or other mechanism for maintaining life. Until this point, i.e. the point of individual existence, the foetus has no legal rights or responsibilities. In addition, corporations are non-human legal personalities. The incorporated entity has legal rights and responsibilities separate from those who run the corporation – see the House of Lords judgment in *Salomon v Salomon* [1897] AC 22.
  - 3 L.B. Solum *Legal Personhood for Artificial Intelligences*, in *North Carolina Law Review*, 1992, 70:1231; J. Berg *Of Elephants and Embryos: A Proposed Framework for Legal Personhood* in *Hastings Law Journal*, 2007, 59:369; T.L. Bryant *Sacrificing the Sacrifice of Animals: Legal Personhood for Animals, the Status of Animals as Property, and the Presumed Primacy of Humans* in *Rutgers Law Journal*, 2007, 39:247; J.J. Bryson, M.E. Diamantis, T.D. Grant *Of, for, and by the People: the Legal Lacuna of Synthetic Persons* in *Artificial Intelligence and Law*, 2017, 25(3), 273-291; S.M. Solaiman *Legal Personality of Robots, Corporations, Idols, and Chimpanzees: A Quest for Legitimacy* in *Artificial Intelligence and Law*, 2017, 25(2);125-142.

which although this paper focuses on one relatively small population, necessitates a wider exploration, beyond the scope of this paper, about the role that law plays in the process of all individuals being able to develop their sense of self and full personhood.

## 2. Trans Personhood Rights in Traditional Legal Theory

Before exploring personhood rights for non-binary individuals it is important to consider the wider project undertaken in the latter quarter of the twentieth century aimed at achieving to legal recognition of gender identity in the UK and the role that the European Court of Human Rights in particular played in this. Trans jurisprudence has been a topic of interest for a number of years however the focus has been almost entirely based on achieving substantive equality for transsexuals<sup>4</sup> in the fields of employment and family law. In recent years, as a result of a focused legal campaign by individuals in both the domestic<sup>5</sup> and European Courts<sup>6</sup> regarding rights for trans people, there has been growing recognition, and legal protection, of the rights of trans individuals to be able to live in their acquired gender<sup>7</sup> and participate fully as autonomous people in civil, economic, and social society<sup>8</sup>. The protections gained via legal recognition are to be welcomed as amounting to equality for trans people however this welcome ought not to be uncritical. A critique of the law which gives recognition, and therefore protection, is necessary to highlight the ways in which access to the protections are not guaranteed to all trans people, in particular non-binary trans people, and how the laws therefore impact on the self-determination and personhood of non-binary individuals. An uncritical focus on the mere existence of international and domestic protections has led to a complex situation which this paper attempts to address: the human rights based laws which protect binary trans personhood, interpreted as the lawful ability to live and be recognised in one's acquired gender free from discrimination, fail to take into consideration the ability, or otherwise, of all (binary and non-binary) gender variant individuals to authoritatively determine their identity free from the consideration of others, namely the medical profession, and free from the limitations of the law. The human rights-based laws such as the right to one's identity as protected by Article 8 of the European Convention on Human Rights 1950 (ECHR), which has been interpreted as including the right to one's gender identity<sup>9</sup>, are considered by those working in this field to amount to protection of trans personhood<sup>10</sup>. However, these human

4 Taken to mean those who medically and or legally transition from the sex assigned at birth to the opposite sex. Does not include gender variant, non-binary, or genderqueer people.

5 As evidenced by the cases of *Corbett v Corbett* [1971] P. 83; *Bellinger v Bellinger* [2002] Fam. 150.

6 As evidenced by the cases of *Rees v United Kingdom* [1987] 2 F.L.R. 111; *B v France* [1992] 2 F.L.R. 249; *Van Oosterwijk v. Belgium* 3 E.H.R.R. 581; *Goodwin v United Kingdom* [2002] I.R.L.R. 664; *Van Kück v Germany* [2003] 2 F.C.R. 421; *L v Lithuania* (2008) 46 E.H.R.R. 22; *X, Y and Z v United Kingdom* [1997] 2 F.L.R. 892; *Cossey v United Kingdom* [1991] 2 F.L.R. 492.

7 Has a specific meaning within the Gender Recognition Act 2004.

8 Such as the Equal Treatment Directive (76/207/EEC) as interpreted in the case of *P v S and Cornwall County Council* (C13/94) [1996] All E.R. (EC) 397 as prohibiting discrimination in the workplace on the basis of an employee's gender reassignment; Council Directive 2006/54/EC. Such as the Gender Recognition Act 2004; The Sex Discrimination (Gender Reassignment) Regulations 1999 SI 1999/1102 which amended the Sex Discrimination Act 1975; the Sex Discrimination (Amendment of Legislation) Regulations 2009; The Protection from Harassment Act 1997.

9 *Van Kück v Germany* (2007) 37 E.H.R.R. 51; *I v United Kingdom* (2003) 36 E.H.R.R. 53; *Goodwin v United Kingdom* (2002) 35 E.H.R.R. 18.

10 Declaration of Montreal; Yogyakarta Principles.

rights-based laws are very limited in their application; these rights only apply to binary trans people who meet the criteria for legal recognition set out in the domestic laws of their Contracting State<sup>11</sup>.

As a result of the work of activist groups fighting for the rights of trans individuals to be free from criminalisation and discrimination there have been calls for the recognition of trans rights in international human rights laws as well as in domestic laws. Human rights, particularly those conceptualised as civil and political rights as in the European Convention on Human Rights (ECHR) or the Universal Declaration of Human Rights are inalienable rights inherent to all human beings regardless of status. Tahmindjis argues that such inherent inalienable rights are “classed as a form of natural rights”<sup>12</sup> and are therefore rights which exist for all human beings regardless of personal characteristics. Bamforth writes that it cannot be doubted that “issues of gender and sexuality fall squarely within the concerns of international and national human rights law”<sup>13</sup>. Bamforth therefore reiterates that human rights protections apply both to sexual minority groups and trans people and these particular groups cannot be excluded from both international and national human rights protections because of their sexual or gender identity. The issue is that the law now tends to protect gender and sexual minority individuals but in so doing places very strict boundaries around which gender and sexual minority individuals will be recognised and protected; the very process of recognition for some provides, in itself, a mechanism for further exclusion of others. As Sandland notes, the law “*can be read as a case study demonstrating the truism that any act of inclusion also excludes*”<sup>14</sup>.

The main document specifically considering sexual orientation and gender identity (SOGI) rights is the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*<sup>15</sup> (the Yogyakarta Principles) which were drafted and adopted by a worldwide international panel of experts meeting in Yogyakarta, Indonesia in 2006. Although the principles have no legal effect in that they are not an international human rights treaty they are intended to be guidelines to which nations should aspire when legislating for the LGBT community. O’Flaherty and Fisher note that the Yogyakarta Principles “are intended as a coherent and comprehensive identification of the obligation of States to respect, protect and fulfil the human rights of all persons regardless of their sexual orientation or gender identity.”<sup>16</sup> The Yogyakarta Principles note that:

International human rights law imposes an absolute prohibition of discrimination in regard to the full enjoyment of all human rights, civil, cultural, economic, political and social, that respect for sexual rights, sexual orientation and gender identity is integral to the realisation of equality between men and women<sup>17</sup>.

There are 29 Principles in total which deal with the universality of international human rights

11 These rights stem from the European Convention on Human Rights and therefore only apply to contracting states.

12 P. Tahmindjis *Sexuality and International Human Rights Law* in *Journal of Homosexuality*, 2005, 48 (3/4): 9-29, 9.

13 N. Bamforth *Introduction* in *Sex Rights*, N Bamforth (ed), Oxford, Oxford University Press, 2005, 1.

14 R. Sandland *Feminism and the Gender Recognition Act 2004* in *Feminist Legal Studies*, 2005, 13(1):43-66.

15 Yogyakarta Principles of the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, *Asia-Pacific Journal on Human Rights and the Law*, 2008, 9(2):86-113.

16 M. O’Flaherty and J Fisher *Sexual orientation, gender identity and international human rights law: contextualising the Yogyakarta Principles* in *Human Rights Law Review*, 2008, 8(2):207-248, 207.

17 Yogyakarta Principles of the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2008) *Asia-Pacific Journal on Human Rights and the Law* 9(2):86-113, 87.

law<sup>18</sup> and traditional civil and political rights similar to those in the ECHR<sup>19</sup>. Other rights contained in the Yogyakarta Principles include the right to express oneself including the right to express one's sexual or gender identity free from persecution,<sup>20</sup> the right to claim asylum based on sexual orientation and gender identity,<sup>21</sup> and the right to participate in family life<sup>22</sup> and public life<sup>23</sup> without fear of persecution. The rights contained in the Yogyakarta Principles are merely aspirational and are in no way legally enforceable, however they highlight that this group of people need protection in law and deserve the respect, dignity, and basic human rights expected by others.

In theory non-binary trans people themselves are not excluded from the general international human rights standards. However, it may seem to these individuals who have been seeking recognition in domestic and European Courts that they were not as protected as other binary trans and cisgendered individuals in international human rights law. This is a justified conclusion when it is considered that these courts have continued to hold that there is no right to non-binary legal recognition. Although, as briefly argued above, it is widely thought that trans people have achieved legal personhood it is not as clear cut as the law and traditional legal analysis presents. As noted in the introduction, personhood is not just a legal concept, it is also a psychoanalytic concept and the next section will provide an overview of the argument made by Drucilla Cornell<sup>24</sup> in her groundbreaking book *The Imaginary Domain*. It is argued that true achievement of *full* personhood requires legal recognition and protection which follows on from the development of psychic personhood and laws which fail to be based on psychic personhood ultimately limit the ability of individuals to actually achieve that psychic personhood as such laws amount to a denial of the person's sense of self and ability to actualise it. Once the overview of Cornell's thesis is concluded it will be applied to the Gender Recognition Act 2004 to highlight how this piece of legislation limits the development of full personhood specifically to non-binary trans individuals but also potentially to some binary trans individuals.

### 3. Psychoanalytic Approach to Personhood: Drucilla Cornell's Theory

Personhood is not merely about the formal recognition of rights; it is also about the deeper, psychological process of becoming a recognised subject within society. Legal theory is such that the personhood of legal persons is not questioned; it is accepted that human beings have legal personhood by virtue of being human beings. However, this is not the only way that personhood can be conceptualised; it is also possible to take a non-legal view of personhood and to then examine the role that law plays in enabling psychic personhood to develop or not develop. In her influential work *The Imaginary Domain*<sup>25</sup>, Drucilla Cornell applies psychoanalytic theory, particularly drawing from Lacan, to

18 Principles 1-3.

19 Principles 4-11.

20 Principle 19.

21 Principle 23.

22 Principle 24.

23 Principle 25.

24 Drucilla Cornell (1950–2022) was a distinguished American philosopher, feminist legal scholar, and activist, whose work bridged critical theory, poststructuralism, and legal studies. She was particularly known for her influential contributions to feminist jurisprudence and her theory of the "imaginary domain," she argued for the legal recognition of individual autonomy and dignity as essential for ethical and just societies.

25 D. Cornell, *The Imaginary Domain: Abortion, Pornography and Sexual Harassment* (Routledge, London, 1995).

argue that the law functions as a Symbolic Other in the stage of personhood formation of an individual. By adopting a Cornelian analysis of the laws as applied to trans people (binary and non-binary) in the next section, it will be seen that whereas the trans rights project to achieve personhood rights, such as the right to marry and the right to protection from discrimination in the workplace, has largely been achieved by means of human rights and anti-discrimination laws, personhood as conceptualised in Cornell's analysis is much more fragile and harder to achieve in law particularly when we consider those trans people who identify outside of binary gender. This part of the paper explores Cornell's concept of the Symbolic Other as it applies to law in the process of recognition of one's gender identity in the UK and ultimate achievement of personhood, in Cornelian terms, for such individuals and in so doing questions how law as Symbolic Other places limitations on who is to be recognised in the UK and also on whose gender identity is deemed worthy of recognition and protection by the law.

### 3.1. Background to Cornell's Thesis

In her 1995 book entitled *The Imaginary Domain* Drucilla Cornell posits that the process of becoming a person in law is a psychic project which relies upon recognition being given by the 'Other'; it is through this recognition that an individual gets value and meaning. Cornell claims that "[i]n psychoanalytic terms such value [of a person], in the most primordial sense of even achieving a sense of oneself as a self, is always bestowed by the Other".<sup>26</sup> For Cornell the Other does not need to be an actual person but rather she claims that "we can begin to think of a legal system as a Symbolic Other; a system that does not merely recognise, but constitutes and confirms who is to be valued, who is to matter." Central to Cornell's thesis is the concept of minimum conditions of individuation by which she means the conditions that need to be in existence before an individual can achieve personhood.

### 3.2 Minimum Conditions of Individuation

Cornell theorises what she calls the 'minimum conditions of individuation'. She claims that within the concept there are three requirements which will, when combined, allow an individual to develop personhood. In fact she argues that without these conditions being fulfilled, an individual will never fully achieve personhood; she writes that these three conditions "insure [sic] a minimum degree of individuation which I defend as necessary for the equivalent chance to transform ourselves into individuated beings who can participate in public and political life as equal citizens."<sup>27</sup> It should be noted here that when Cornell uses the term individuation she is not meaning individual. She claims:

when psychoanalysis speaks of individuation it should not be conflated with individualism. Respect for our dignity and our imaginary domain allows us to individuate ourselves enough so that we can claim our desire and take responsibility for our lives.<sup>28</sup>

Individuation therefore is about separating the self from others and achieving personhood as a desiring subject<sup>29</sup>.

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26 *Ibid.*, p.41.

27 D. Cornell, n.25, p. 4

28 D. Cornell, *Autonomy Re-Imagined* in *JPCS: Journal for the Psychoanalysis of Culture & Society*, 2003, 8(1):144-149, p.145

29 *Ibid.*

According to Cornell the project of becoming a person is dependent on protecting the psychic space which allows personhood to develop; as Cornell argues, “without minimum conditions of individuation, we cannot effectively get the project of becoming a person off the ground”<sup>30</sup>. She continues, “[t]he equal worth of personhood of each one of us must be legally guaranteed, at least in part, in the name of the equivalent chance to take on that project”<sup>31</sup>. The project of becoming a person is simply that, a project. According to Cornell it is not a pre-given but rather becoming a person is about being able to participate in public life in a way in which the individual’s subjective conceptualisation of the self is respected. Cornell argues that “[w]hat we think of as “individuality” and “the person” are not assumed as a given but respected as part of a project, one that must be open to each one of us on an equivalent basis”<sup>32</sup>. If individuals are unable to access space in which to develop a sense of self then their project of becoming a person is severely hindered. Cornell’s minimum conditions of individuation are firstly bodily integrity, secondly “access to symbolic forms sufficient to achieve linguistic skills permitting the differentiation of oneself from others” and thirdly “the protection of the imaginary domain itself”<sup>33</sup> all three of which need to be in place to ensure the person’s sense of self develops. This paper is specifically concerned with the third minimum condition of individuation – the imaginary domain.

### 3.3. The Imaginary Domain

For Cornell the imaginary domain is “a fundamental schema within which we struggle to know ourselves”<sup>34</sup>. It is not a real place but rather it is a psychic matrix within which exists a basic sense of self but which is fragile to the imaginings of others. She notes that in legal terms the imaginary domain has to be the “moral and psychic right to represent and articulate the meaning of our desire and our sexuality within the ethical framework of respect and dignity of all others”<sup>35</sup>. So, it is the place where individuals are able to project an image of themselves, a place where in one’s mind one can be oneself. She argues that law needs to protect this psychic space and not allow one’s mind to be poisoned by imaginings of *actual others* (for example by prohibiting discrimination and hate speech) or indeed from *symbolic others* – those systems, such as law, which have sufficient authority to deem someone worthy of protection and recognition or not<sup>36</sup>. The importance of the psychic domain in achieving Cornelian personhood cannot be underestimated; if the psychic domain, the imaginary domain, is not protected and individuals are unable to project a self-image and to positively identify with that self-image then the reality for that person’s life and interaction with others is marred and will probably give rise to a high degree of psychic suffering; if one cannot be oneself because one’s imaginary domain has not been protected then the very real impact on how one lives out one’s everyday existence is immense; the individual is devalued, indeed degraded to borrow a phrase from Cornell.

Within Cornell’s analysis the project of becoming a person is so fragile and continuously under

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30 D. Cornell, n.25, p. 4

31 D. Cornell, n.25, p. 5

32 D. Cornell, n.25, p. 4

33 *Ibid.*

34 D. Cornell, n.28, p. 146.

35 *Ibid.*, p.144.

36 For a parallel, but related, discussion on the authority of law see J L Austin *How to Do Things with Words*, Oxford, Oxford University Press, 1962; see also M Foucault *The History of Sexuality Volume 1*, New York, Pantheon, 1978.



threat from external sources that it is possible that an individual's quest for selfhood, for individuation, for personhood, can be entirely destroyed; this destruction, according to Cornell is as a result of an actual or symbolic assault on a person's bodily integrity<sup>37</sup>. So, the imaginary domain and bodily integrity are intertwined. The imaginary domain is necessary for one to be able to project an image of oneself as a coherent whole, to imagine oneself as who one believes oneself to be. An assault on the projection of bodily integrity occurs where the individual is no longer able to imagine his body as a whole, as he imagines it, but rather his body is placed "in the hands and imaginings of others"<sup>38</sup>. This is clearly evident in the way that the law approaches gender variance whereby such individuals have to rely on the law recognising them and therefore validating their psychic identity; rendering such individuals particularly vulnerable to a symbolic assault on their imaginary domain. The crucial part of Cornell's analysis for the purpose of this paper is that it provides a segway between legal personhood and psychoanalytic personhood and outlines how the law is crucial in developing psychic personhood which then seeks acknowledgement and validation from the law. So although every human being has legal personhood it could be argued that until every human being has legal and psychic personhood they have not achieved full personhood in the sense of being an individual who stands before the law being seen and accepted by the law. Therefore it could be argued that without that validation of one's psychic personhood legal personhood is somewhat of a fiction as the person who is not given recognition and protection is not being protected and seen as themselves but rather their self is being defined by others; the validation of psychic personhood is given by law through the role of law as a Symbolic Other.

### 3.4. Law as Symbolic Other

Cornell largely bases her analysis on the work of Jacques Lacan who argues that one of the most important stages in human development is what he called the 'mirror stage'. According to Lacan the mirror stage occurs before the child reaches the age of eighteen months and occurs as a result of the child recognising their reflection. This recognition is not merely of the image but is the child's first perception of wholeness. The mirror stage however has an important function; it operates as a projection of what the child might become in the future.

But, for Cornell the Other does not need to be an actual person. Rather, she claims that "we can begin to think of a legal system as a symbolic Other; a system that does not merely recognise, but constitutes and confirms who is to be valued, who is to matter"<sup>39</sup>. If the legal system is understood as a symbolic Other, then this "allows for a fuller appreciation of how the denial of legal and social symbolization can be so significant to whoever is confirmed as a self"<sup>40</sup>.

Traditional legal philosophy sees the 'self' as a pre-existing entity; a Cartesian 'I am' whereas this alternative conceptualisation proposed by Cornell's minimum conditions of individuation sees the self as being a psychoanalytic process dependent upon validation by an Other, in this case the legal system. Whereas human rights advocates treat trans people as an 'I am', as a coherent whole whose rights ought to be recognised and protected, Cornell argues that the self is never fully in existence, rather it is fluid, it is fragile in that it needs constant recognition and validation from the Other. So, the

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37 D. Cornell n.25, p.38.

38 *Ibid.*

39 D. Cornell, n.25, p.42.

40 *Ibid.*

law is not about protecting a pre-existing self but rather about allowing the self space to develop and exist and be validated. The trans rights project has largely achieved validation from the law as 'Other' in respect of anti-discrimination and human rights laws for binary individuals however such a project has failed to obtain validation for non-binary individuals who continue to be excluded from the protections in the Gender Recognition Act 2004.

The law operates on two specific levels regarding non-binary individuals; on the one hand, at a surface level, it either protects and validates individuality and identity or it does not through its function as a symbolic other and on a deeper level, one which has not yet been explored, the law operates in line with what Cornell calls 'degradation' which exists to impose an imagining onto another individual. According to Cornell a person is degraded when he has another person's imagining imposed on him. Cornell writes that "[i]t is the challenge to the worthiness to be happy and to be regarded as equal in one's personhood that I describe as degradation"<sup>41</sup>. In relation to binary trans people this degradation is reinforced when the law requires that individuals obtain a diagnosis of gender dysphoria before being given access to the protection of the Gender Recognition Act 2004. In relation to non-binary trans people it operates where their actual existence is denied.<sup>42</sup> This imposes on all trans individuals the imagining of another; in the current medical model of gender variance which underpins the Gender Recognition Act 2004 the psychiatrist 'gives' the 'disordered' person their identity, such an identity cannot be obtained unless given by a medical professional. This raises issues around narrative power. A person's narrative is important to an understanding of who that person is. If a patient is forced to alter their narrative to fit the medical model of gender dysphoria then that person's narrative is not a true representation of that person's identity rather it is forced on the individual in an attempt to make the person meet the diagnostic criteria contained in the DSM-5 or ICD-10.

Cornell advocates what she calls the 'degradation prohibition' as a way of ensuring that individual subjects are given equality under the law and that such degradation as outlined above should not occur<sup>43</sup>. Cornell argues that in a modern legal system individuals ought to be protected as independent equal persons and she claims that in order for this to occur individuals must be protected from a 'grading down' of his or her sex. She defines degradation thus

Someone is degraded when they are reduced to stereotypes of their "sex" or have imposed upon them objectified fantasies of their "sex" so that they are viewed and treated as unworthy of equal citizenship. We are degraded, in other words, when our "sex" is defined, symbolised and treated as antithetical to equal personhood and citizenship<sup>44</sup>.

Although Cornell discusses the degradation prohibition in relation to abortion rights, pornography and sexual harassment in the workplace, Cornell's degradation prohibition is fundamentally important to this paper. Cornell argues that the degradation prohibition operates to ensure that individuals are not placed on a scale of worthiness. She claims that "hierarchical gradations of any of us as unworthy of personhood violates the postulation of each one of us as an equal person called for by a democratic and modern legal system"<sup>45</sup>. This sentiment is reflected in human rights and anti-discrimination laws which aim to protect trans people.

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41 D. Cornell, n.25, p.11.

42 For more on the importance of law recognising non-binary individuals see C Gray 'Elan Cane (United Kingdom) in *Queer Judgments* N. Ferreira, M. Moscati and S. Raj (eds), Coventry, Counterpress, 2025, forthcoming.

43 D. Cornell, n.25, p.8 – 13

44 D. Cornell n.25, p.10.

45 *Ibid.*

#### 4. The Denial of Psychic Personhood: Applying Psychoanalysis to Gender Identity Recognition Laws and the Exclusion of Non-Binary Identities

As mentioned above, in the UK the main piece of legislation purporting to give protection to those whose gender identity somewhat differs from the norm is the Gender Recognition Act 2004. This is a UK wide piece of legislation but reforms in the area of marriage law in particular led to some divergence between the approach taken in Scotland and that taken in England and Wales in relation to how someone is recognised under the legislation. These divergences are minor though; the fundamental requirements for providing a Gender Recognition Certificate, the paperwork which deems one to be of the sex opposite to that registered at birth, are fundamentally the same across the UK jurisdictions and this led to some of the legal problems when the Scottish Government sought to reform gender recognition laws for Scotland under the Gender Recognition Reform(Scotland) Bill which was passed on December 2022. The Bill never received Royal Assent as it was challenged by the Secretary of State for Scotland as being outwith the legislative competence of the Scottish parliament<sup>46</sup>.

Additionally, there are some protections given to trans people, both binary and non-binary, under the Equality Act 2010 but these merely protect from discrimination and different treatment and do not amount to full legal recognition of one's sense of self.

Although this paper is somewhat critical of the Gender Recognition Act 2004 it has to be noted that it *has* been seen as a positive piece of legislation in that it *does* provide some solutions for those individuals who were marginalised and discriminated against because of their gender identity. Cowan, for example, claims, that the Gender Recognition Act 2004 “embodies what could be termed groundbreaking reform”<sup>47</sup>. In addition, Jeffreys claims that the Gender Recognition Act 2004 is a piece of radical legislation<sup>48</sup>. The Gender Recognition Act 2004 is indeed ground-breaking and radical because, according to Sharpe, when it was passed it located “the UK at the forefront of global transgender law reform”<sup>49</sup>. Historically the UK was one of the most resistant of all EU States to legislate to recognise trans people but when it was passed the Gender Recognition Act 2004 placed the UK in “pole position among progressive states willing to legally recognise the sex claims of transgender people”<sup>50</sup> and as a result many trans people are now able to participate in public life in the sex opposite to the sex assigned on birth. Section 9(1) of the Gender Recognition Act 2004 provides that

[w]here a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman).

However not everyone who seeks a Gender Recognition Certificate will be successful in obtaining one. Those seeking legal recognition must satisfy a number of conditions contained in the legisla-

<sup>46</sup> Scottish Ministers, Petitioners [2023] CSOH 89.

<sup>47</sup> S. Cowan, *Looking back (to)wards the body: medicalization and the GRA* in *Social and Legal Studies* 2009, 18(2):247-252; 247.

<sup>48</sup> S. Jeffreys, *They know it when they see it: the UK Gender Recognition Act 2004* in *British Journal of Politics & International Relations*, 2008, 10(2):328-345; 328.

<sup>49</sup> A.N. Sharpe *A critique of the Gender Recognition Act 2004* in *Journal of Bioethical Inquiry*, 2007, 4(1):33-42; 37.

<sup>50</sup> *Ibid.*, p.33. The reason it was ground-breaking was that it required no body modification prior to obtaining a legal change of sex. At the moment other countries are beginning to adopt this approach, for example Sweden has recently reformed their law to no longer require sterilisation prior to obtaining legal recognition.

tion<sup>51</sup>. Section 1 provides that a person aged 18 or over may apply to the Gender Recognition Panel for a Certificate on the basis of either “living in the other gender”<sup>52</sup> or “having changed gender under the law of a country or territory outside the United Kingdom”<sup>53</sup>. It becomes clear when subsequent provisions are considered that “living in the other gender” means identifying as a member of the opposite sex either having undergone, or not having undergone, medical procedures to change one’s body but either way the individual must still have a diagnosis of gender dysphoria from a competent medical professional so one cannot choose simply to live in the other gender and expect that to be recognised by law in any of the UK jurisdictions. According to the Joint Human Rights Committee the Gender Recognition Panel is one of the essential elements in the scheme of legal gender recognition<sup>54</sup>. Membership of the Panel is outlined in Schedule 1 paragraph 1(2) and (3) which provides that members are to be appointed by the Lord Chancellor. Members have to be either legally or medically qualified and there must be at least one medically qualified member and one legally qualified member on each panel determining applications. In relation to medical qualifications Schedule 1 para 1(2)(b) provides that the medical member must be a registered medical practitioner or a registered psychologist. In relation to legal members paragraph 1(3) outlines the qualifications required: “a person who has a seven year general qualification”<sup>55</sup>, “an advocate or solicitor in Scotland of at least seven years’ standing”<sup>56</sup>, and “a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years’ standing”<sup>57</sup>. As such the Panel is in reality a medico-legal tribunal<sup>58</sup> which is tasked with examining the evidence to determine whether or not the applicant is entitled to a change of *legal* sex and thus worthy of the protection of the law. This in itself establishes that the Panel as well as the 2004 Act have the authority and power of the symbolic other that Cornell conceptualised; both have the ability to accept or deny the reality of an individual’s psychic personhood meaning that those denied a gender recognition certificate are unable to actualise their psychic personhood and never develop individuation as a separate, whole, self.

However, the Panel’s power is not unfettered. Currently section 2 provides that the Panel *must* issue a Certificate *if it is satisfied* that the applicant meets the criteria outlined below<sup>59</sup>. Determination of the application depends on which type of application the individual is making. If the applicant has applied for legal recognition of his gender identity under s.1(1)(a) then s.2(1) provides that the Panel must grant the application if they are satisfied that the applicant:

(a) has or has had gender dysphoria<sup>60</sup>

51 A.N. Sharpe, *Gender recognition in the UK: a great leap forward* in *Social & Legal Studies*, 2009, 18(2):241-245; 243.

52 Gender Recognition Act 2004 s.1(1)(a).

53 GRA 2004 s.1(1)(b).

54 Joint Committee on Human Rights *Draft Gender Recognition Bill*, 20 November 2003 HL Paper 188-I & II, HC 1276-I & II; [52].

55 GRA 2004 sch.1 para 1(3)(a).

56 GRA 2004 sch.1 para 1(3)(b).

57 GRA 2004 sch.1 para 1(3)(c).

58 R. Sandland, *Running to stand still* in *Social & Legal Studies*, 2009, 18(2):253-257; 255.

59 There are two bases upon which to apply. A s.1(1)(a) application is made on the basis of living in the other gender and a s.1(1)(b) application is made on the basis of having changed sex under the law of a country or territory out with the United Kingdom.

60 The phrasing might first seem awkward but ‘has had’ was deemed appropriate because Gender Dysphoria is a medical condition with specific diagnostic criteria. The argument being that if a person has undergone the recognised treatment for gender dysphoria (medical transition) then they will likely no longer be suffering from gender dysphoria. If the phrase

- (b) has lived in the acquired gender throughout the period of two years ending with the date on which the application is made,
- (c) intends to continue to live in the acquired gender until death, and
- (d) complies with the requirements imposed by and under section 3.

If the applicant is making his or her application under s.1(1)(b) then under s.2(2) the Panel must grant a Certificate if satisfied:

- (a) that the country or territory under the law of which the applicant has changed gender is an approved country or territory, and<sup>61</sup>
- (b) that the applicant complies with the requirements imposed under section 3<sup>62</sup>.

The evidence required to support an application for recognition of gender identity is contained in s.3 which provides that if the applicant is applying under s.1(1)(a) i.e. living in the other gender at the time of the application then subsection (1) provides that his or her application to the panel must include:

- (a) a report made by a registered medical practitioner practising in the field of gender dysphoria and a report made by another registered medical practitioner (who may, but need not, practise in that field), or
- (b) a report made by a registered psychologist practising in that field and a report made by a registered medical practitioner (who may, but need not, practise in that field).

Section 3(2) provides that the reports outlined above must include “details of the diagnosis of the applicant's gender dysphoria.”<sup>63</sup> Therefore in order to have one's gender identity recognised in all of the UK jurisdictions the individual must undertake a relatively long process of obtaining a diagnosis of gender dysphoria, of living in the acquired gender for a period of two years and of convincing a Panel that they intend to live for the remainder of their lives in their acquired gender. There have been proposals to reform this area of law and the Labour Party mentioned in their recent manifesto ahead of the 2024 general election that they would look at reform however, no steps have been taken to make the required changes and, even if they are made they will not likely go far enough as they are likely to exclude any form of self-declaration model and any form of non-binary legal recognition and so whereas the UK was at the forefront of global gender recognition laws when the legislation was passed in 2004 it is now rapidly falling behind.

In addition to the Gender Recognition Act 2004 the Equality Act 2010 also provides some level of protection for all trans individuals across the UK but the 2010 Act does not provide a change of legal sex or legal recognition of non-binary identity; it merely provides a protection from discrimination in certain areas of life. Section 7(1) of the Equality Act 2010 provides that

[a] person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

There has been very little case law relating to section 7. The one case that provides any sense of

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'has had' was not included anyone who had medically transitioned and was living at ease with their gender would be excluded from the provisions of the legislation and be unable to obtain a Gender Recognition Certificate.

61 GRA 2004 s.2(2)(a).

62 GRA 2004 s.2(2)(b).

63 GRA 2004 s.3(2).

how this section applies is the employment discrimination case of *Taylor v Jaguar Land Rover*<sup>64</sup> in which it was held that a non-binary individual is entitled to protection from discrimination in the field of employment. This implies some degree of self-determination and flexibility within the Equality Act 2010; however, the protection in section 7 is very limited: it only applied in the context of employment and provides no change of legal status. Therefore, this leads us to question the extent to which the law has achieved psychoanalytic personhood for those who identify as non-binary; the law is clear that those who have a binary gender identity can be provided with legal recognition should they meet the criteria and those who identify as non-binary can only be (at the moment) protected in their employment but do not enjoy full legal recognition.

The denial of legal recognition of non-binary identity within the Gender Recognition Act 2004 has recently been further reinforced in various courts in the UK. In *R (Castellucci) v The Gender Recognition Panel and the Minister for Women and Equalities*<sup>65</sup> Divisional Court held that there is no right to recognition of non-binary identity under the provisions of the 2004 Act.

The exclusion of non-binary and gender-fluid individuals from legal recognition represents a critical failure of the UK's gender identity laws. This exclusion is not only a practical issue but also a deeper symbolic one, as it speaks to the law's role in determining which identities are deemed legitimate and worthy of recognition. To understand the broader implications of this exclusion, it is essential to apply a psychoanalytic framework, particularly Drucilla Cornell's theory of the law as the Symbolic Other.

The law plays a central role in shaping how individuals understand themselves and how they are understood by society. As a Symbolic Other, the law provides the categories and structures through which individuals achieve recognition and personhood. For those who conform to societal norms, such as binary gender roles, the law offers validation and legal rights. However, for those who deviate from these norms—specifically non-binary and gender-fluid individuals—the law becomes a site of exclusion, denying them the recognition necessary for full personhood.

## 4.1. Legal Exclusion and the Marginalization of Non-Binary Identities

The current legal framework applying to gender identity recognition across the UK, which includes the Gender Recognition Act 2004 and the Equality Act 2010, operates within a binary model of gender, recognising only male and female identities and the current political narrative is that even if reform is carried out such reform will exclude non-binary identities reinforcing that gender, in the UK, is binary. This binary framework fails to accommodate non-binary and other gender-fluid individuals, leaving them without a legal pathway to amend their gender or access rights and protections that are available to their binary counterparts. The inability to obtain legal recognition has significant consequences for non-binary individuals, both in practical and symbolic terms.

Practically, the lack of legal recognition makes it difficult for non-binary individuals to navigate key areas of life, such as healthcare, employment, and legal documentation. For example, non-binary individuals are often forced to choose a binary gender on official documents like passports<sup>66</sup> and

64 ET/134471/2018 (15 September 2020).

65 [2024] EWHC 54 (Admin).

66 For a legal analysis of the possibility of gender neutral passports see *R (on the application of Elan-Cane) v Secretary of State for the Home Department* [2021] UKSC 56 also see C. Gray n.44.

driver's licenses, even though this does not reflect their lived experience. This not only leads to frequent misgendering but also creates barriers to accessing services and protections that are based on gender classification. Without legal recognition, non-binary individuals are denied the ability to participate fully in society, reinforcing their marginalisation.

Symbolically, the exclusion of non-binary individuals from the legal framework represents a denial of their personhood. Drucilla Cornell's psychoanalytic theory helps to explain this process by framing the law as a Symbolic Other that defines the boundaries of personhood. In this role, the law offers recognition to some while denying it to others, effectively determining which identities are considered valid and worthy of recognition. For non-binary individuals, the law's refusal to recognise their gender identity amounts to a denial of their right to define themselves, limiting their ability to achieve full personhood.

## **4.2. The Law as (Mirror and) Gatekeeper of Identity**

As noted above, Lacanian psychoanalysis, on which Cornell's work is based, posits that the self is formed through a process of external recognition by those in authority, usually the mother. Cornell extends this concept to the legal sphere, arguing that the law functions as a Symbolic Other that reflects acceptance or exclusion back to individuals, thereby shaping their understanding of themselves. For non-binary individuals, legal recognition is a form of symbolic validation that affirms their identity within the legal and social order; failure to provide legal recognition is a symbolic erasure of the non-binary personhood; it is the law reflecting back that such individuals are not equal.

The lack of legal recognition of non-binary people then means that the law also acts as a gatekeeper, determining who is eligible for recognition and under what conditions. The Gender Recognition Act 2004, for example, imposes stringent criteria for obtaining legal gender recognition, including the requirement for a medical diagnosis of gender dysphoria and evidence of living in the acquired gender for two years. These requirements reinforce a medicalised and binary understanding of gender, which excludes non-binary individuals who do not fit within this framework; it also excludes binary trans people who have not participated in the medical process or who have been unable to obtain a diagnosis for whatever reason. By imposing these barriers, the law restricts access to recognition for those whose gender identity does not conform to binary categories, and whose identity even as binary trans people cannot be argued convincingly enough before others, effectively closing the gate to personhood for non-binary and gender-fluid individuals.

## **5. Legal Reform of Gender Recognition Laws: A (Full) Personhood Imperative**

The exclusion of non-binary and gender-fluid individuals from the UK's legal framework highlights the need for significant reforms to the Gender Recognition Act 2004. These reforms should focus on creating a more inclusive and flexible legal system that recognises the full spectrum of gender diversity and ultimately which respects the principle of self-determination. Drawing on Drucilla Cornell's psychoanalytic framework, the following proposals aim to ensure that all individuals, regardless of their gender identity, can achieve full personhood under the law. The quest to develop this area of law

is not new and arguments have been made for several years that the 2004 Act needs to be reformed.<sup>67</sup> These reforms focus on making the law more accessible and inclusive for binary trans people while also calling for legal recognition of non-binary identity so there will be some overlap between binary and non-binary identity recognition in the following sections.

## 5.1. Toward a More Inclusive Legal Framework

In recent years, there has been growing pressure on the UK government to reform the Gender Recognition Act 2004 to better reflect the diversity of gender identities. In 2020, the UK government launched a public consultation on reforming the Gender Recognition Act 2004, with many advocating for the introduction of a self-declaration model for legal gender recognition, similar to those adopted in Ireland, Denmark, and Argentina. Under a self-declaration model, individuals would be able to change their legal gender based on their self-identified gender, without the need for medical approval or invasive procedures. This approach prioritises individual autonomy and reflects the principle of self-determination, recognising that individuals are the best authorities on their own gender identity.

However, despite widespread support for reform from LGBTQ+ advocacy groups, the UK government has so far resisted making significant changes to the GRA 2004. Instead, the government has introduced minor reforms aimed at simplifying the application process for obtaining a Gender Recognition Certificate, such as reducing the cost and streamlining the administrative process. These changes, while welcomed by some, fall short of addressing the fundamental issues of inclusivity and recognition for non-binary individuals. The government's refusal to adopt a self-declaration model has been widely criticised, with many arguing that the continued reliance on a medicalised, binary framework undermines the dignity and autonomy of gender-variant individuals.

The failure to recognise non-binary individuals in the UK's stands in stark contrast to the progress made in other jurisdictions. Countries such as Canada, New Zealand, and Germany have introduced legal recognition for non-binary identities, offering a model for the UK to follow.

## 5.2. Introducing a Self-Declaration Model

One of the most important reforms needed is the introduction of a self-declaration model for gender recognition but this will only impact on the rights of binary trans people to achieve legal recognition leaving non-binary trans people unable to achieve full personhood as being defined as having their sense of self validated through the law. The process of obtaining a Gender Recognition Certificate was set out above so will not be repeated here. This medicalised approach pathologises gender variance and places the power of recognition in the hands of medical professionals, rather than the individual themselves thus, in a Cornelian sense, degrading the individual by ensuring that the individual is reliant on others first seeking, then acknowledging, and then recognising the individual's sense of self as valid.

A self-declaration model, as adopted in countries like Ireland, Denmark, and Argentina, would allow individuals to change their legal gender based on their self-identified gender, without the need for medical approval or external validation. This approach aligns with the principle of self-

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<sup>67</sup> For example, see C. Gray, *A Critique of the Legal Recognition of Transsexuals in UK Law*, PhD Thesis, 2016, Glasgow University.



determination and respects the bodily integrity and autonomy of individuals and is essentially a de-medicalisation of the process. The current requirement for a diagnosis of gender dysphoria frames gender variance as a medical disorder that must be treated or validated by healthcare professionals. This pathologisation of gender identity undermines the dignity and autonomy of individuals, particularly those who do not wish to engage with the medical system.

By removing the requirement for medical intervention, the law would respect the bodily integrity and self-determination of gender-variant individuals. De-medicalising gender recognition would also align with the broader human rights principle that individuals have the right to define their own identity without interference from external authorities. This reform is essential for ensuring that all individuals, including non-binary and gender-fluid individuals, can access legal recognition without having to conform to medicalised narratives. By removing the requirement for medical intervention, the law would also protect the Imaginary Domain as outlined by Cornell, allowing individuals to freely define and project their identity without interference from the state. However, despite the fact that it now seems very unlikely that a self-determination model of gender identity recognition will be introduced in any of the UK jurisdictions any time soon it is argued in this paper that such reform is actually nowhere near sufficient to meet the needs of all trans people.

### 5.3. Legal Recognition of Non-Binary Identities

Another critical reform is the legal recognition of non-binary and gender-fluid identities. As it stands, the Gender Recognition Act 2004 operates within a binary framework, recognising only male and female genders albeit that it seems as though the Equality Act 2010 could tentatively pave the way for protection from discrimination for non-binary people in the circumstances to which the Act applies e.g. the provision of goods and services but this does not amount to legal recognition of non-binary identity bringing with it the legal consequences of being recognised by the law as a particular sex. This exclusion of non-binary individuals denies them the legal recognition necessary to access rights and protections that are available to their binary counterparts.

Reforming the 2004 Act to include legal recognition for non-binary identities would provide non-binary individuals with access to the symbolic forms necessary for asserting their personhood. This could involve the introduction of a third gender marker on official documents or the option to forgo gender markers altogether but the case of *R (on the application of Elan Cane) v Secretary of State for the Home Department*<sup>68</sup> has firmly closed that door in the UK. By expanding the legal framework to recognise non-binary identities, the law would affirm the legitimacy of non-binary identities and provide the rights and protections necessary for them to fully participate in society.

While the UK has made significant strides in recognising trans individuals it is clear that the law has a long way to go in this area. The Scottish government attempted to make some progress in 2022 with the Gender Recognition Reform (Scotland) Bill but that was quickly stopped via legal process by the Westminster government and it now seems that the Scottish reform will not proceed, at least for some time. Not only does the need to undergo wholesale reform to bring it in line with advancements in other jurisdictions it needs to be radical and accept that non-binary individuals should be given the same legal recognition and protections as their binary friends and family. It would now seem that this area of law reform sits wholly with the Westminster government and very limited proposals for reform have been brought forward thus ensuring that not only do all trans people require to undergo a lengthy, costly, and invasive process to obtain basic protections of the law enjoyed by cisgendered

68 [2021] UKSC 56.

people non-binary people are not even deemed worthy of acknowledgement and therefore in Cornelian terms will never be able to project themselves as coherent whole selves and will remain subject to the imaginings of others. It is possible to reform the law successfully to recognise non-binary identities and to allow more self-determination in the process. Argentina's Gender Identity Law, passed in 2012, is one of the most progressive examples. This law allows individuals to change their legal gender based on their self-perception, without the need for medical approval or intervention. Argentina's model prioritises self-determination, reflecting a shift away from the medicalization of gender identity.

Similarly, Canada has taken steps to recognize non-binary individuals through the introduction of a third gender marker on official documents. In 2017, the Canadian government announced that Canadians could identify as "X" on their passports, reflecting a move toward greater inclusivity. New Zealand and parts of the United States have introduced similar reforms, recognising that gender identity is not fixed within a binary structure.

These international developments serve as evidence that legal systems can move beyond binary models of gender recognition. By prioritising individual autonomy and self-identification, these countries have created legal frameworks that offer full recognition and protection to all gender-variant individuals. The UK, by contrast, has yet to adopt similar reforms, leaving non-binary individuals without the legal recognition necessary to claim their full personhood.

## 6. Conclusion

Individuals whose gender identities fall outside the male-female binary remain invisible under UK law, lacking the legal personhood necessary to fully participate in society. Evidence from advocacy groups like *Stonewall* and *Gendered Intelligence* shows that this exclusion significantly impacts non-binary individuals' ability to access healthcare, legal protections, and social recognition

The failure of the UK's legal systems to recognise non-binary identities is increasingly seen as a violation of basic human rights. The absence of legal recognition not only prevents non-binary individuals from accessing key rights and services, but it also undermines their dignity and autonomy. Legal scholars have argued that denying legal recognition to non-binary individuals is incompatible with the principles of equality and non-discrimination that underpin international human rights law.

In jurisdictions where non-binary recognition has been introduced, such as Canada and New Zealand, evidence suggests that legal recognition has had a profound impact on the lives of non-binary individuals.<sup>69</sup> It has allowed them to navigate legal and social systems with greater ease, reduced instances of misgendering, and provided access to healthcare and other services in line with their gender identity. In contrast, in countries like the UK, where non-binary individuals are forced to choose

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<sup>69</sup> See A. Holmes – P. Ferrer, *Canadian Bill C-16: Decolonizing the Protection of Two-Spirit, Gender Non-binary and Transgender People in Journal of Political Studies* (2018),13; K.K.H. Tan, S.J. Ellis, and J.F. Veale, 'It's how the world around you treats you for being trans': Mental health and wellbeing of transgender people in Aotearoa New Zealand in *Psychology & Sexuality*, 2022, 13(5), 1109-1121; L. Hamley, K. Tan, and E. Kerekere *The glue that binds us: Positive relationships and identity pride for Māori who are trans and non-binary in Health Promotion Journal of Australia*, 2024 June 12; K.K.H. Tan, R.J. Watson, and J.F. Veale *Barriers to possessing gender-concordant identity documents and transgender and nonbinary people's mental health in Aotearoa/New Zealand in LGBT Health*, 2022, 9(6):401-410. C.L. Quinan and M. Hunt, *Non-Binary Gender Markers: Mobility, Migration, and Media Reception*, in *European Journal of Women's Studies*, 2023), 30(3), 380-390; C. Nakhid, T.S. Long, M. Fu, M. Tuwe, A. Abu Ali, L. Vano, P. Subramanian, C. Yachinta, C. Farrugia *Nothing for us, except by us - Support for Queer Ethnic Young People in Aotearoa New Zealand in Equality, Diversity, and Inclusion*, 2024, June, 13.

between male or female on official documents, they continue to face significant barriers to full participation in society; it is time now for the UK to fully commit to ensuring equality for all citizens and embark on a process of updating the law to provide recognition for non-binary identities and ensure that non-binary individuals are able to fully participate in civil society not only because the UK is now falling behind other jurisdictions but because to do would send a strong message to this vulnerable group that they are seen, recognised and valid within our society.