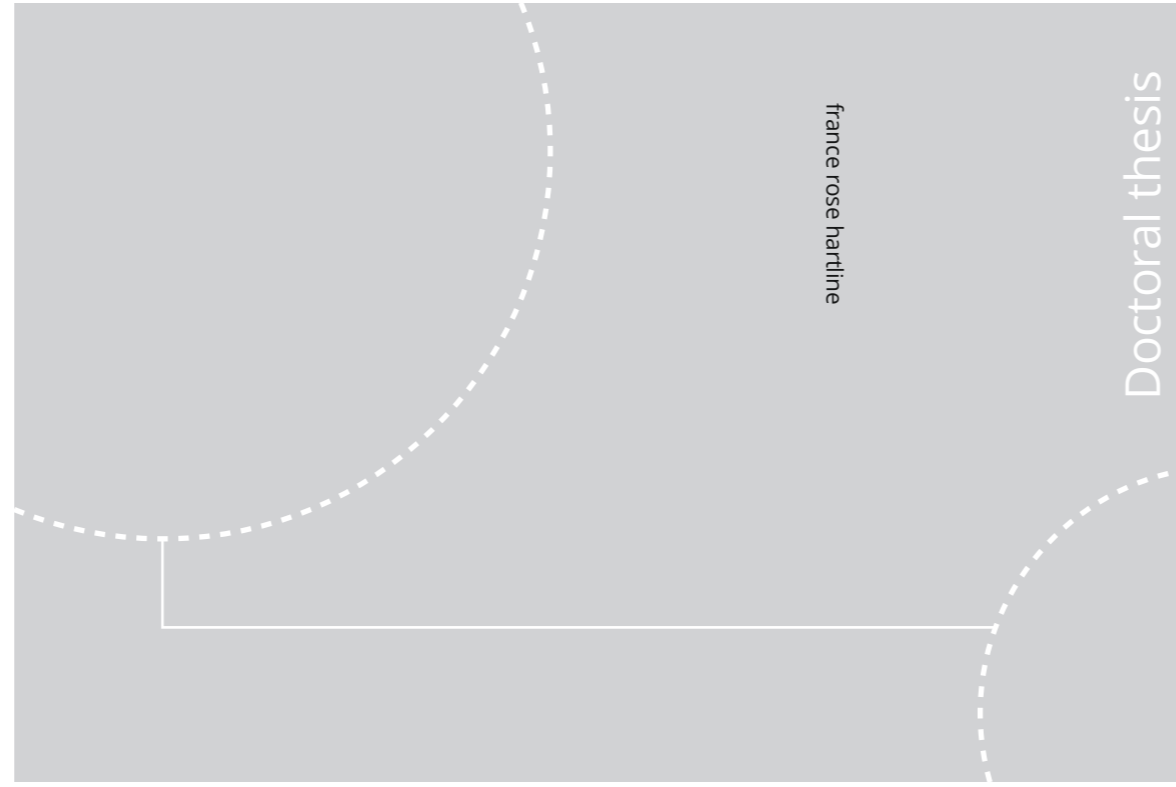


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The (trans)gender equality paradox

Challenging Norway's 2016 law on gender recognition

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Dissertation for the Degree of Philosophiae Doctor
Trondheim, August 2019

Department of Interdisciplinary Studies of Culture
Faculty of Humanities

NTNU: Norwegian University of Science and Technology

Dedicated to my father,
John Donald Hartline (26 September 1945 – 20 January 2019),
who encouraged me to never stop asking questions.

It seems to me that the real political task in a society such as ours is to criticise the workings of institutions, which appear to be both neutral and independent; to criticise and attack them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight against them.

Michel Foucault (1974: 171)

I find a deep affinity between myself as a transsexual woman and the monster in Mary Shelley's Frankenstein. Like the monster, I am too often perceived as less than fully human due to the means of my embodiment; like the monster's as well, my exclusion from human community fuels a deep and abiding rage in me that I, like the monster, direct against the conditions in which I must struggle to exist.

Susan Stryker ([1994] 2006: 238)

Acknowledgments

The three years of my doctoral project have been, without a doubt, the most wonderful years of my life. I am so grateful for and humbled by the opportunity to not only do research in a field I am passionate about, but to also have such support and opportunities offered to me. I would like to begin by thanking the Humanities Faculty of NTNU for hiring me as a doctoral candidate – thank you for seeing the potential in my work and paying me to develop it! A huge thank you to the Department of Interdisciplinary Studies in Culture (KULT) for accepting me so warmly and giving me the space and resources to learn and experiment. I am especially grateful to Siri Sørensen, Guro Kristensen, and Maggi Aune for encouraging and guiding me, Lotte Sæther and Kari Bergheim for being awesome at the practical stuff (and answering my endless questions), and Knut Sørensen and Per Østby for keeping my PhD on track (and also answering my endless questions). I am so happy to have been part of the lovely Gender Studies Centre, where I always felt inspired, supported and valued. Our weekly meetings were a highlight, and the feedback you offered me on my work was always super helpful. How lucky am I to have been a part of this centre! I hope one day I can join again (hint, hint). I would also like to thank my fellow Agraphians for reading so many of my texts and giving such superb help in refining them.

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I could not have grown so much as an academic without my non-NTNU colleagues. Thank you to all the trans studies scholars in the Nordic region for the fantastic workshops, conference and short courses – I am so happy to be a part of this network. A hearty shout out to Wibke Straube and the Centre for Gender Studies at Karlstad University for hosting me as a visiting scholar and emboldening me to assess and improve my research practices. Also, thank you Signe Bremer Gagnesjö for your awesome critical reading on my dissertation – your comments proved instrumental in making my work ready for submission. To Luca Dalen Espseth, Anniken Sørli, Esben Esther Pirelli Benestad, and Janneke van der Ros – thank you for carving the path for trans research in Norway and leaving signposts along the way for novices like me. Many thanks as well to Elian Eve Jentoft and Edward Cerullo for your vital

editing. And a huge thank you to the assessment committee – Elisabeth Engebretsen, Erika Alm, and Berit Gullikstad – for agreeing to take on the task of challenging me!

I am very grateful for my interview participants. Your decision to answer my call and provide me such honest and thorough stories will never be forgotten. I also would like to acknowledge all the trans people and gender-nonconforming people of Norway – for your presence and resilience. I am proud to call myself trans and be part of the movement with you.

I would like to thank my family. To my mom, Ellen, and dad, John, as well as my brother, Devlin, and sister, Laura – thank you for your patience and love during these years! And to my in-laws – Hilde, Sverre, Nina and Sondre – for reminding me when I'm stressed that it will all turn out just fine. My friends Hermann Grøndahl and Angelina Penner, for being so wonderfully reassuring and funny. I am also grateful to my dogs, Freud and Foucault, for forcing me to take breaks and walk in the fresh air every once in a while, and for the cuddles I desperately needed every evening. Most of all, I am incredibly grateful to my awesome partner, Ask Svelmo Nilsen, for reading and commenting on all my texts, sticking by me even in my brief (yet powerful) moments of insanity, and for generally making sure that I kept afloat and did not throw my computer out the window.

And, finally, I would like to thank God for inventing coffee.

Summary

In mid-2016, a law was passed in Norway which allows for one to change legal gender without undergoing the previously required mental illness diagnosis and sterilisation. The implementation of this law on gender recognition (henceforth 'LGR') followed years of campaigning by trans rights advocates, both local and abroad, who argued that the sterilisation requirement for changing legal gender was contrary to human rights law. The requirement for sterilisation was further criticised for the fact that access to the medical treatment to undergo sterilisation was very limited. Only a few trans people were granted access to the process under the gate-keeping practices of the National Treatment Centre for Transsexualism (NBTS). Moreover, with no second opinions or private options available, it meant many were left with a legal gender marker contrary to their personal gender identity.

When the LGR was passed, there was much celebration by advocates in and beyond Norway, particularly given how liberal this law is compared to its counterparts in other countries. It does not require a diagnosis for changing gender, one can change infinite times, the minimum age is sixteen for doing so without parental or court consent and seven with parental or court consent, and there is no mandatory reflection period. However, the LGR only allows changing between 'male' and 'female', and it does not improve access to medical technologies for those who wish to undergo bodily transformation.

My dissertation examines the transformative power the LGR has for trans people and the trans rights movement in Norway, given these limitations. Drawing on this law's socio-historical context, as well as on interviews I collected with twelve individuals who changed legal gender following the law's enactment, I discuss what potential the law has for empowering or disempowering individuals who take advantage of their right to change legal gender without sterilisation. I ask: How does changing legal gender under this law impact upon gendered subjectivities? In what ways does the law shape the landscape of trans rights in Norway? And, ultimately, I wonder: Can a law on gender recognition ever fully recognise and protect gender diversity?

To address these questions, I have considered Norway's particular interpretation and application of gender equality by examining the state's socio-political makeup and the process by which it came to implement the LGR. In doing so, I have employed a poststructural feminist theoretical approach, which aids in understanding how gendered subjectivities are shaped through the law by investigating the juridical limits of recognition. Moreover, against

the backdrop of Norway's sociocultural context, I have applied the critical concepts of recognition, empowerment and citizenship to the analyses I have carried out on the interviews I conducted.

Through this process, I have found that while the LGR *appears* to be inclusive and transformative, the central concept of gender remains largely undisturbed. The law's interpretation of gender maintains not only its binaristic male/female quality but also its condition of gender identity being intrinsic and continuous from birth – which together work to sustain what I call the (cis)gender imaginary. Trans subjectivities, wherein one's identity becomes something else than what has been anticipated according to one's birth assigned gender, are situatedly oppositional to what continues to be regarded as authentic and legitimate experiences of gender in Norwegian society, despite the LGR. This law itself is not enough to substantially transform how gender is interpreted and deployed in power distribution, and to grant it such transformative status can result in personalising the 'failure' to be socially accepted as one's preferred or experienced gender identity. Therefore, while I agree that the LGR does contribute to the destabilisation of gender identity as inherent and inevitably linked to the body's materiality – which is imperative for the broader movement towards trans recognition and empowerment – I contend that it also closes down possibilities for alternative (trans)gender subjectivities, and our awareness of this is essential in the quest for trans liberation.

Sammendrag¹

Stortinget vedtok sommeren 2016 loven om endring av juridisk kjønn (the law on gender recognition, LGR). Denne lovendringen gjorde det mulig for folk å endre juridisk kjønn, uten å måtte diagnostiseres med en psykisk lidelse og gjennomgå obligatorisk sterilisering. Lovendringen skjedde på bakgrunn av flere års aktivistarbeid og lobbyvirksomhet, både fra nasjonale og utenlandske trans-aktivister. Et av hovedargumentene til aktivistene var at kravet om sterilisering for å endre juridisk kjønn brøt med menneskerettighetene. Kravet om sterilisering var ytterligere kritisert for det faktum at tilgang til medisinsk behandling for å gjennomføre steriliseringen var svært begrenset. Kun et fåtall av trans-populasjonen fikk mulighet til å gjennomføre sterilisering, med Nasjonal Behandlingstjeneste for Transseksualisme (NBTS) som portvoktere. I tillegg til dette, gjorde mangelen på en instans for “second opinion” og mangelen på private behandlingstilbud, at flere mennesker satt igjen uten mulighet til juridisk anerkjennelse av kjønn ut fra egen kjønnsidentitet.

Da LGR ble vedtatt ble loven feiret av trans-aktivister i og utenfor Norges grenser, spesielt fordi loven ble ansett som liberal sammenliknet med tilsvarende lover i andre land. LGR krever ingen diagnose for å endre juridisk kjønn og man kan endre juridisk kjønn et ubegrenset antall ganger. Minimumsalderen for å endre juridisk kjønn uten samtykke fra foresatte eller en rettslig kjennelse er 16 år. Fra 7 år kan juridisk kjønn endres med samtykke fra foresatte eller en rettslig kjennelse. Det er ingen obligatorisk “refleksjons-periode”. Likevel, ut fra loven er det kun mulig å endre mellom “mann” og “kvinne”, og loven endrer ikke tilgangen på medisinsk behandling for de som ønsker fysiologiske endringer.

Min avhandling undersøker hvilke muligheter for endring og vekst (“empowerment”) LGR åpner for transpersoner og transbevegelsen i Norge, ut fra rammene som foreligger. Avhandlingen tar utgangspunkt i lovens sosio-historiske kontekst, samt intervjuer jeg gjennomførte med 12 personer som endret juridisk kjønn i kjølevannet av lovvedtaket. På bakgrunn av dette drøfter jeg lovens potensiale for å bidra til både personlig vekst og nedturer (“empowering” og “disempowering”) for personer som benytter seg av muligheten til å endre juridisk kjønn uten sterilisering. Spørsmål jeg stiller er, hvordan påvirker lovvedtaket om endring av juridisk kjønn mulighetene for endrede kjønnede subjektiviteter (“gendered

¹ Many thanks to my partner, Ask Svelmo Nilsen, for this translation.

subjectivities”)? På hvilken måten er loven med på å forme landskapet for transrettigheter i Norge? Og, sist, men ikke minst, stiller jeg spørsmål ved hvorvidt en lov om anerkjennelse av kjønn (“gender recognition”) noen gang fullstendig kan anerkjenne og beskytte kjønnsvarisjon.

For å svare på disse spørsmålene har jeg tatt utgangspunkt i de sosiale og politiske forholdene som kjennetegner den norske staten og prosessen som gjorde at stortinget implementerte LGR i Norge, med henblikk på spesifikk forståelse og anvendelse av (kjønns-)likestilling (“gender equality”). I denne prosessen har jeg gjort bruk av en poststrukturalistisk-feministisk-teoretisk tilnærming. Denne tilnærmingen er fruktbar for å forstå hvordan kjønnede subjektiviteter skapes i samspill med loven, spesielt gjennom å undersøke de juridiske grensene for anerkjennelse (“recognition”). Videre har jeg anvendt konseptene “recognition”, “empowerment” og “citizenship” (statsborgerskap) i en kritisk analyse av intervjuene jeg har gjennomført, spesielt sett opp mot den sosiokulturelle konteksten i Norge.

Gjennom denne prosessen har jeg funnet ut at på tross av LGRs tilsynelatende inkluderende og grensesprengende tilsnitt forblir kjønn som konsept i stor grad uendret. Lovens fortolkning av kjønn forblir ikke bare i en binær kvinne-mann-kvalitet, men baserer seg også på forståelsen av “kjønnsidentitet” som en iboende og sammenhengende kvalitet. Dette bidrar til å opprettholde det jeg vil beskrive som “the (cis)gender imaginary”. Trans-subjektiviteter, som forstås som når ens identitet blir noe annet enn det som ble forventet på bakgrunn av tilkjent kjønn ved fødsel, er fremdeles forstått som en motsats til det som blir ansett som autentiske og legitime erfaringer av kjønn i det norske samfunnet, på tross av LGR. Loven er i seg selv ikke nok til å gjennomgående endre hvordan kjønn forstås og anvendes i fordeling av makt. Å tilkjenne LGR omskapende (“transformative”) kvaliteter kan resultere i at man individualiserer “mislykkede forsøk” på å bli sosialt akseptert i den foretrukne eller opplevde kjønnsidentiteten. På bakgrunn av dette, mener jeg at LGR *både* åpner for destabilisering av kjønnsidentitet som iboende og uunngåelig knyttet til kroppens fysiologi (som er imperativ for anerkjennelse og empowerment for transbevegelsen) og bidrar til å begrense mulighetene for alternative (trans)kjønns-subjektiviteter. Mitt argument er at vi i vår søken etter transfrigjøring er nødt til å være oppmerksom på denne både-og-mekanismen.

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1. Introduction

When I moved to Norway in 2013 to do a masters in art, I was thrilled. I had just come out as a trans man and was excited to move to the place I had long seen as one of the most progressive and queer-friendly countries in the world. I had begun my social and medical transition in South Africa, my previous home of two years, and I looked forward to continuing my transition in Norway. However, when I arrived and began researching what steps I could take in becoming a legal man here, I was dumbfounded by what I found. Sterilisation was required to change juridical gender and that I would likely not be able to get this or any other gender-confirming healthcare due to the state hospital's restrictive protocol. Moreover, there was no legislation in place that protected all trans or otherwise gender-nonconforming people from discrimination. Where was the Scandinavian gender egalitarianism I had learnt about in university? Why was a place so famous for being gay-friendly so poor at supporting its trans citizens?

Evidently, this was a widely held sentiment. During my first few years in Norway, I would witness a surge of local and international advocacy for trans rights, particularly when coerced sterilisation was abolished in neighbouring Sweden (2013)² and Denmark (2014). I was relieved to see there was a fortifying discourse around the appalling lack of state support for trans people compared to what was offered to women and lesbian/gay people. Since my eventual application for gender-confirming treatment was rejected by the university hospital in Oslo – a hospital which held, and continues to hold, a monopoly over trans-specific healthcare – I wondered if I would ever get to change my legal gender on my Norwegian identity cards. After all, with just a doctor's note, I had managed to change it in the United States, a country most certainly not esteemed for its progressive trans or queer rights. I also knew that I could have changed it quite soon without sterilisation in South Africa, had I chosen to stay on there. As I became more masculine appearing (thanks to hormones I acquired somewhat illicitly), the more I stressed about not having the right gender marker on my identity documents, particularly as I was legally male in the US but legally female in Norway. I had no desire to undergo sterilisation, especially not against my will, and I knew

² Refer to Erika Alm's book chapter, 'SOU 1968:28 Intersexuellas könstillhörighet (1968). Kommentar av Erika Alm: När utredningar talar kön: pragmatiska definitioner av könstillhörighet' (2012).

many others felt the same. It felt strange and upsetting to me that this should be happening here; this was not the Norway I had imagined!

I was therefore quite relieved when I heard about the bill (Prop. 74L, 2015-2016) being considered in Norway which would permit legal gender change without sterilisation. It seemed to me the obvious answer to the issues of coerced sterilisation. It infuriated me that it came many years after a number of other countries who are less well known for being progressive, but I resolved to be grateful for it nonetheless. When I decided to apply for a PhD position at NTNU in 2015, I considered studying the bill and its development since I wanted to understand the extent of trans rights in Norway. As luck had it, the bill passed as a law just as I began my PhD in the summer of 2016. I therefore adapted my PhD to focus on the law and its transformative potential for trans people. I was not quite sure in the beginning what I would find. However, I had a hunch that my dissertation would become a critique of this law, and here's why: While this was a clear indication that Norway's parliament was interested to create better living conditions for trans people by (possibly) offering them state recognition without unnecessary medical treatment, some things bothered me straight away. Namely, I was concerned about the lack of non-binary options (outside of man/woman), and the lack of improvement in access to gender-confirming medical treatment. I was left to wonder about just how helpful this law was for trans people. Would it not just be the binary-identifying people who already pass as their preferred gender who would benefit from this law? What does such a law do to the image of gender equality in Norway, particularly trans equality, and how does this image impact upon those who don't really benefit from it, such as non-binary and/or non-passing people? Does the Norwegian state really believe this is what trans equality looks like, and if so, why?

Over the course of my research, my goals and assumptions changed markedly, as I developed a far more nuanced understanding of what trans means, not just in Norway but in the broader (neo)liberalising context that is increasingly shaping how we interpret and experience power. I became aware of the biases I held within myself and how they have coloured my view of trans rights – namely that I had misguidedly equated sociolegal empowerment with being able to 'pass' as a man or woman. I learned the delicate yet masterful ways by which equality can be simultaneously achieved and undermined, an impression of progress can be constructed whilst little changes at all, and a space can be inadvertently created for mobilisation against the system by the system itself.

This dissertation is my endeavour to understand how Norway's law on gender recognition can function to both empower and disempower those whom it is purported to protect. In doing so, I have posed the following questions:

What is the transformative potential of Norway's law on gender recognition for (trans)gender equality in Norway? In what ways is the law limited in its reach, and how does this shape gender norms in Norway?

In what ways can the law empower trans people to feel more secure, visible and capable? In what ways does it undermine one's process of gender identity development, and why?

How do trans identity politics in Norway contribute to how individuals (re)construct their narratives after changing their legal gender, and what does this (re)construction process say about the law on gender recognition?

These three questions are represented respectively in my articles in the order they are listed (refer to the Article Summaries section). Together they illustrate how gender operates to organise people along lines of empowerment. In this way, my doctoral project extends beyond trans-specific issues to gender equality in general. I examine how gender is conceptualised by Norwegian society and state to (re)produce particular variations based on what an ideal citizen looks like, and how this process fuels an impression of equality being achieved on gendered grounds whilst maintaining a self-serving modus of differentiation. The matter of trans is, of course, just one way that the population is managed along hierarchising lines; it happens with race, nationality, religion, and every other social category. My research, therefore, can perhaps offer a space for considering these other social phenomena in two key regards: First, by demonstrating how the illusion of equality is constructed and sustained through legislation, thereby contributing to a further marginalisation of some in the name of social progress; and, second, by illustrating how individuals respond to this disenfranchisement through identity negotiation and reconstruction.

This summary chapter offers a preface to the three scholarly articles to which my doctoral research has been dedicated. The document contains nine sections, including the Introduction, which collectively provide an in-depth examination and elaboration of the concepts, approach, and arguments which are presented in the articles. It is structured as follows: 'Context' (section 2) provides a detailed background of Norway's law on gender recognition and an overview of key terms; 'Article Summaries' (section 3) gives an overview of each article; 'Previous Research' (section 4) discusses what key research I have leaned on in my project, and what my research can add to the growing compendium; 'Methodological Considerations' (section 5) describes the theory behind my data collection and analysis; 'Methods' (section 6) provides the practice and approach behind my data collection and analysis; 'Theoretical Framework' (section 7) reviews the theoretical concepts and arguments

underpinning each of the articles; ‘Crosscut Analysis’ (section 8) considers the three articles together to produce an overarching discussion; and, ‘In Conclusion’ (section 9) closes the summary chapter with final reflections and suggestions for further research.

After the summary chapter, the three articles on which this dissertation is built are presented in full. They are entitled as follows, and will be henceforth referred to by their number (‘Article 1’, for example):

1. (Trans)gender outlaws? A critical analysis of Norway’s 2016 gender self-determination law
2. Assessing the benefits and limitations of Norway’s gender self-determination law: A thematic analysis
3. Examining trans narratives in the wake of Norway’s gender recognition law

At the end of the dissertation, I have included three appendices. Appendix A provides an overview of documents that I reviewed for Article 1 and this summary chapter in analysing the law on gender recognition. Appendix B is the full text of the law, in both translated English and its original Norwegian. Finally, in Appendix C, the interview participation documents can be found.

2. Context

In this section, I provide the contextual backdrop for the development and implementation of Norway's law on gender recognition (LGR). First, I present the background for the law on gender recognition, starting with a brief history of gender and sexuality rights in Norway. Next, I discuss the development of the new law from the early medical practices for gender confirmation, up to the long fight to overturn the sterilisation requirement. Finally, I review terminology, offering a discussion on some key concepts and how I apply them in my dissertation³.

2.1 The Norwegian context: Gender & sexuality rights

To understand how 'gender' is conceptualised in the law on gender recognition, Norway's history of 'gender equality' must first be explored. Norway has for decades been lauded for its extensive work on empowering women. As with all of Scandinavia, it is often characterised as embodying 'state feminism', a term employed by feminist scholars to represent the state's focus on gender equality. The term is derived from the work by Helga Marie Hernes, who, in 1987, famously coined the idea of the 'women-friendly welfare state'. It describes the close link between state welfare and feminism that was cemented in the 1970s and 1980s, whereby the government began taking proactive measures to grant women access to opportunities that otherwise may be unattainable (Hernes, 1987). Policies included improvements in childcare and parental leave, for example, as well as enforced quotas in modes of participation that are traditionally disproportionately represented by men in government and academia, among other areas. Thus, women are enabled to be more involved in the private sphere. By empowering women with greater agency in creating and promoting their own agendas, the public/private divide has been weakened. The divide has underpinned the feminist push for better public care policies and more political parity for women, as it has long been regarded as being fuelled by a patriarchal liberal ideology (Borchorst & Siim, 2008).

The egalitarian values inherent in this shift towards women's public inclusion have contributed to a growing belief that Norway, along with its neighbouring Nordic countries, encompasses the principles of what has been termed a 'Nordic Nirvana' (Lister, 2009).

³ I would like to give special thanks to fellow trans studies scholar, Elian Eve Jentoft, who did a wonderful job fact-checking and cleaning up this section.

Central to this concept is the notion that socio-political citizenship is available to all the country's citizens in equal measure, and one of the strongest indicators underlined in such an ideal characterisation is gender equality (ibid.)⁴. Danish sociologist, Gøsta Esping-Andersen (1990), describes this inclusionary model as 'universalist welfare', saying, 'the universalistic system promotes equality of status. All citizens are endowed with similar rights, irrespective of class or market position. In this sense, the system is meant to cultivate cross-class solidarity, a solidarity in the nation' (ibid., 1990: 25). Such a focus on solidarity, Lister (2009: 246) explains, holds citizenship at the centre in such a way that the bonds between citizens are emphasised through solidarity. In this way, equality between men and women is strategically nurtured through instrumentalist modes of mobilising women in the economic and political sectors (Lister, 2009). Such state-endorsed measures have facilitated the development of normative discourses founded in liberal feminism, at the core of which is the notion that gender equality is a matter of women having equal power to men in all major social institutions (Teigen & Wängnerud, 2009). Based on this standard, the Global Gender Gap Report, published by the World Economic Forum, has for years repeatedly listed Norway as either the best or one of the best places to be a woman in (World Economic Forum, 2018).

These egalitarian values can be traced to sexuality rights as well. In 1981, long before most Western nations, Norway included an amendment to its Penal Code which criminalised hate speech on the grounds of sexual orientation (Tvetter, 2019). Over the next two decades, more changes would be implemented that would expand legal protections into more facets of life, such as employment. Additionally, in 2009, Norway became the sixth nation in the world to put into effect a law (Endringslov til ekteskapsloven mv, 2007-2008) offering complete marriage equality to same-sex couples, after annulling the domestic partnership law it had put in effect in 1993 (Tvetter, 2019). These radical measures have undoubtedly contributed to a relatively strong social acceptance of homosexuality, so much so that Norway has ranked for years as one of the best countries to be gay in (ILGA, 2016). The country's reputation for

⁴ Compare to the oft-used concept 'Nordic exceptionalism', which has a similar meaning. The imagined uniqueness of the Nordic region revolves around a misconstrued degree of inclusion for all people, despite race, nationality, class, language, religion, sexuality, gender, etc. The citizen who is represented by the laws and social values in place typically reflects a privileged status. All these qualities work together to produce a certain type of individual, and that individual is cisgendered, fair-skinned, able-bodied, middle-class, etc. There are many good sources in particular for exploring race, nationality and immigration. The issue of whiteness in regards to what is considered 'good' and 'productive' citizenship ('Nordic whiteness') requires continual attention. See in particular T. Hübinette and C. Lundström's 'Sweden after the Recent Election' (2011) for a discussion on race and citizenship, and S. Keskinen, S. Tuori, K. Irni, and D. Mulinari's book chapter, 'Introduction: Postcolonialism and the Nordic models of welfare and gender', in *Complying with Colonialism* (2009) for a discussion on postcolonialism and gender equality.

being so women-empowering and gay-friendly has fed into process through which the law on gender recognition has been endorsed and was eventually passed. The following outlines this series of events.

2.2 The development of the law on gender recognition

The development and enactment of Norway's law on gender recognition (LGR), which passed in 2016, is a complex story with many key features. The following describes the development of gender-confirming healthcare within Norway and broader Scandinavia. Next, I discuss the events culminating in Norway's gender recognition law. And, finally, I discuss the law itself and its parameters, followed by some comments on public reception.

2.2.1 History of gender-confirming medical treatment in Scandinavia

The series of key events leading up to Norway's LGR spans many decades and is intertwined with broader Scandinavia's trans-related history. This history stretches far back and begins with medical intervention into gender confirmation. Norway's own responses to calls for trans-related support and empowerment are in some ways inseparable from Denmark's and Sweden's, given that they share so much culture and history. Evidence to this effect is that all three countries have tended to make similar changes regarding trans (and many other social) issues at around the same time as each other, as if there is a sort of domino effect inciting Scandinavian social change. Therefore, while this section is about Norway, it will at times refer to broader Scandinavia.

The unfolding of events around trans-related medical intervention in Scandinavia begins in 1930-31, when Danish artist Lili Elbe received the first recorded treatment in the Western world for transsexualism (as it was referred to then), by undergoing a series of gender-confirming surgeries. She was assigned male at birth and lived most of her life appearing and performing masculinity. After moving to Paris with her wife, however, she began appearing in public as a woman named Lili (Blumberg, 2019). Sadly, due to complications from her final surgery, she passed away in 1931. Her transition has been illustrated in David Ebershoff's book, *The Danish Girl* (2000), and a movie was produced in 2015 under the same name. Although Lili was likely the first trans person to undergo genital-based sex reassignment, she is not often credited with this. Better well known is the American woman, Christine Jorgensen, who, like Lili, was assigned male at birth and transitioned to female. In 1951, she travelled to Denmark to undergo a series of surgeries and hormone replacement therapy (the latter of which she had begun in the US). Upon returning to the US soon

thereafter, she shot to fame for her transition. Her life as a transgender woman was well documented in news media, particularly due to her having previously served in the Army during World War II – the contrast of gender performances proved too sensational for the press to pass up. She has remained well-known in this regard, as well as for being (erroneously, of course) the first person to undergo a physical gender change in the world (Sandal, 2017).

Norway's own trans-medical history begins most markedly in 1953, after the news of Christine had been sweeping across the country for several years, undoubtedly contributing to the emergence of requests for gender-confirming treatment. In response, the Department of Justice declared hormone treatment, though not surgery, to be legal for male-to-female transsexuals (Sandal, 2017). Following, in 1955-56, three psychiatrists collected in an expert group to assess and determine the parameters of possible surgical interventions in gender-confirming trans healthcare (ibid.; Sørli, 2013). Together, with the Department of Justice, the decision was made to enable private doctors to decide who required treatment, including surgical treatment. There was a gradual establishment of a sex change practice throughout the late 1950s (Sørli, 2013), which led to the country's first reported 'sex change' surgeries in 1962 and 1963, being female-to-male and male-to-female, respectively (Helsedirektoratet, 2015: 16). The latter case became the first in which one's legal gender identity was changed as a result of being sex-converted (officially in 1964) (Sørli, 2013). Thus was the system of legal gender change established.

In helping trans people gain access to medical technologies for gender confirmation, several organisations were founded following the first 'sex reassignment' surgeries conducted in Norway. In 1966, the first trans organisation was established, Forbundet for transpersoner i Norge (FTPN; Association for transpeople in Norway⁵). Then, in 1974, a working group was formalised at the University Hospital Rikshospitalet (OUS Rikshospitalet), wherein various medical professionals were tasked with treating people who suffered from the 'mental disorder' of transsexualism. In 1979, this working group established the national treatment centre for transsexualism, which is currently called the National Treatment Centre for

⁵ Originally called FPE-NE, for Freedom of Personal Expression, Northern Europe, then later FTP-Norge, meaning Association for transpeople, Norway. FTPN has since then served as a support system for trans people as well as a resource for the public and state in fostering awareness and influencing positive socio-political changes.

Transsexualism (Nasjonal Behandlingstjeneste for Transseksualisme; NBTS⁶). A patient organisation, Harry Benjamin Resource Centre (HBRS, 2019⁷), was established in 2000 and currently operates as a reference group for NBTS's patients. It states its purpose as 'working for people who experience gender dysphoria and who are undergoing gender corrective treatment at Rikshospitalet [the university hospital in Oslo]'⁸.

2.2.2 The gender marker

In Norway, as in Denmark and Sweden, changing legal gender is not simply switching the sex designation around, from female to male (kvinne til mann, in Norwegian) or vice versa. One is required to adjust their personal identity number, which reflects the legal gender one has. In Norway, each legal resident⁹ has a national identity number, otherwise known as a personal number. These identifying numbers have organised Norwegian residents in the National Population Registry §2-2 (Folkeregisteret) since 1964. The personal number is composed of eleven digits, the ninth of which indicates one's legal gender status – odd for male and even for female (Prop. 74L, 2015-2016, §4.1). The law defines legal gender as that which is assigned at birth (Lov om endring av juridisk kjønn, 2015-2016, §1), based on what is registered by the attending health workers. Such is determined by the outward appearance of the infant's genitals at the time of birth¹⁰ (Prop. 74, 2015-2016, §4.1). Though 'gender corrective surgery' has been available since 1961, it was not until the 1970s¹¹ that the Tax Office administration established a procedural process for changing legal gender after gender-confirming medical treatment (Helsedirektoratet, 2012: 6).

Interesting to note is that the requirement to be sterilised in order to change legal gender was never inscribed in law as it was in Denmark and Sweden¹². Rather, it was done as a matter of

⁶ Originally, it was under the name, GID-klinikken (the Gender Identity Disorder clinic) and later Seksjon for transseksualisme (SFT, the Section for Transsexualism).

⁷ Originally called Landsforeningen for Transseksuelle (LFTS) or Landsforeningen for Transkjønnede (LFTK).

⁸ My translation; original text taken from the HBRS website's 'Om HBRS' ('About HBRS') page. Additionally, HBRS writes in this section that it is a 'patient and user organisation that works to inform and increase knowledge regarding gender dysphoria and incongruence, and to be a leader for good and safe treatment options in Norway'. Moreover, it 'works with preventative healthcare' and improving life quality and conditions (my translation).

⁹ Born nationals or those residing over six months in Norway.

¹⁰ Children with unclear genitals are assigned female (Sørli, 2015: 360).

¹¹ According to Amnesty International's 'The state decides who I am' report, 'In 1974, a specific working group was established. In 1979, the national service for treating transsexualism (nasjonal behandlingstjeneste for transseksualism) was set up' (2014b: 71).

¹² In 1972, Sweden became the first country in the Western world to allow for legal gender change on the basis of complete sterilisation [Lag (1972:119) om fastställande av könstillhörighet i vissa fall [Gender Recognition Act] 21 April 1972

practice. One's birth number, according to the population register, can be changed when the birth date or gender status is changed, and the conditions for doing this were not previously regulated by law. Ministry of Health and Care Services (Helse- og Omsorgsdepartementet) explains that, 'according to long-term and firm practice, one's gender marker is changed when the tax directorate has received a letter from Oslo University Hospital that a sex conversion has taken place', or when one's surgery conducted abroad is approved by the Ministry of Health and Care Services (Prop. 74L, 2015-2016, §8.1.1).

The practice of sterilisation and its requirement to change legal gender has been the driving force in the development of the law on gender recognition. This was coupled with a shift in cultural emphasis from a medical perspective of empowerment, i.e. access to medical technologies, to a socio-legal perspective, whereby trans rights are being seen more as an issue of socio-legal recognition and respect (Sørli, 2017: 3). Against this backdrop, the law has begun challenging the 'hegemony of medicine' (ibid.).

2.2.3 Trans-specific healthcare and sterilisation

The requirements to access medical assistance for gender-related matters have not changed much since the 1960s. It is a long process of about 8-10 years on average, which starts with the required referral to NBTS (National Treatment Centre for Transsexualism) (van der Ros, 2014). To get this referral, one's personal general practitioner (GP) must refer the patient to a mental health professional to conduct a 'broad psychological evaluation' (NBTS, 2019; E.E.P. Benestad, personal communication, 13.05.19). After this evaluation, the mental health professional would have the option to make the referral to NBTS (ibid.). At NBTS, one undergoes at least one year of psychiatric assessment and 'real-life' test, the latter of which involves living 'full-time' as one's 'chosen gender' and coming out completely to family and friends (NBTS, 2019). Then, if the patient is determined to in fact be 'born in the wrong body'¹³, they would receive a diagnosis, termed 'transsexualism', based on the International Classification of Diseases (ICD), which is the international guide for mental health (ibid.).

(Sweden)]. Denmark implemented its law in 2014 [Lov om ændring af lov om Det Centrale Personregister, lov nr. 752 of 25 June 2014 (Denmark)].

¹³ The concepts of 'full-time' and 'chosen gender' reflect the medical and legal institutions' terminology based on their interpretations of gender as permanent and inherent. I reproduce them here to demonstrate the way that trans is being formulated and applied in regards to gender-confirming health care and treatment. Similarly, 'born in the wrong body', which is the terminology used by HBRS, requires elaboration. It is a highly contested term in the trans/feminist/queer community. For some, it is a greatly problematic concept, as it is seen to imply that one has an intrinsic gender or sex identity that, by a terrible biological misfortune, is opposite to the one which one has been born with. From this perspective, this is the conceptualisation that better reflects broader sociocultural understandings of gender and sex – that one's gender and sex

The fate of this diagnosis, transsexualism, has recently shifted. Until June 2018, transsexualism was listed under a diagnosis category group called Gender Identity Disorder, which was in the section ‘Mental, Behavioral and Neurodevelopmental disorders’. In 2010, the World Professional Association for Transgender Health (WPATH) board of directors strongly recommended that trans people stop being pathologized due to their gender-nonconforming experiences. The change was supported by TGEU (Transgender Europe), ILGA-Europe (International Lesbian and Gay Alliance), and Amnesty International (Helsedirektorat, 2015: 12-13). As a result, the designation has been changed to ‘gender incongruence’ and moved from the mental disorders category over to ‘Conditions related to sexual health’, effectively de-psychopathologising trans identities and experiences. Rather than indicating a mental disorder, as the diagnosis of transsexualism does, gender incongruence instead describes the experience of a discrepancy between one’s personal gender identity and the gender assigned at birth (WPATH, 2011: 5). However, NBTS is still, at this moment of writing¹⁴ using the ICD-10, as is Norway in general, and plans for adopting ICD-11 are uncertain (E.E.P. Benestad, personal communication, 13.05.19).

With the diagnosis of transsexualism, the patient is started on hormone treatment (lower age limit is generally 16 years), followed by surgical procedures (breast removal or augmentation if the patient is at least sixteen and genital surgery if at least 18 years old) (Tønseth, 2018)¹⁵. For male-to-female patients (MtF), the patient undergoes breast augmentation, which is offered as an option if hormone treatment is not deemed sufficient for breast development, then full castration and vaginal construction. For female-to-male patients (FtM), the patient receives a double mastectomy, hysterectomy (removal of uterus), and oophorectomy (removal of ovaries), with the option of penis construction. In both cases one becomes permanently sterile. The process is fully financially covered by the state (Sørli, 2014: 274-75)¹⁶. If a

should be aligned, and if they are not, then there needs to be reparation through medical assistance. The argument is also that its general application causes a division in the trans community, as it designates which trans experiences are legitimate and deserving of support and respect. However, I feel it is imperative to clarify that, for many, it is a preferred concept, as it is for my project’s interview participants (Ana). This way of describing the experience of being trans (or however one may self-identify) is understandably contested in the broader community; nonetheless, it cannot be disregarded, as often happens, as completely reductive. This is something I have taken a long time to learn, which I will explore more later. It is simply another way of making sense of one’s self, and just as with all identity descriptors, it has its potential and limitations when applied to the larger trans collective.

¹⁴ May, 2019

¹⁵ Surgery options typically can begin after one year on hormone treatment is started. I am not sure how it works to be able to take top surgery (breast removal or augmentation) at sixteen years old and also only be able to begin hormones at that age.

¹⁶ Refer to Tønseth, et al. (2010) for a complete explanation of the surgeries offered in Norway regarding gender affirmation.

person is turned down for treatment, there are no second opinions or private options in Norway, therefore requiring them to travel abroad and paying out of pocket (Amnesty International, 2014b; van der Ros, 2013: 6)¹⁷. In some cases, individuals may manage to get hormone treatment through their private doctor¹⁸. No matter one's degree of attained gender-confirming treatment or where it has been done, however, a person can change legal gender in Norway¹⁹.

NBTS is very selective about whom it decides to treat for 'gender correction', as it is called by HBRS. In fact, about 50-75% of those are referred by their GPs to NBTS for treatment are rejected on the basis of mental health, physical health, age, parental status, or having the 'wrong' personal narrative (van der Ros, 2017: 125; Amnesty International, 2014b: 71-74)²⁰. Regarding this last item, Janneke van der Ros (2013), a scholar on trans experiences in Norway, notes that people are only considered to be 'real transsexuals' if they wish to undergo to complete physical transformation, if they have the typical history of lifelong wrong-body distress, and if they fit the profile of the gender they wish to become. In other words, one must be willing to transition according to normative medical standards of bodily sex, by changing the body as much as possible to appear as what would be considered the opposite sex, including sterilisation, if they are to receive any medical assistance at all (van der Ros, 2013, 2017). In the pre-LGR system, therefore, it was only after completing the sterilisation²¹ that one could be approved for a legal gender marker change, from male to female or female to male. For those who were rejected by NBTS and could not, or would not, travel outside Norway for treatment, they remained fastened to the gender designated at birth. This hurdle has proven detrimental to the well-being of many trans people in Norway (van der

¹⁷ The Health Station for Gender & Sexuality (Helsestasjon for kjønn og seksualitet) in Oslo was developed in the last few years, and it provides hormone blockers and replacement for people up to age 30, after their own evaluation process.

¹⁸ However, this matter is unclear. NBTS has in recent years asserted its right to determine access to hormones and dissuades private doctors from prescribing them for cases of gender confirmation. It seems there is a grey area on whether private doctors can prescribe hormones without NBTS's consent (though, in these cases, the patient must nearly always pay out of pocket); the legality of this has been, and continues to be, up for debate (E.E.P. Benestad, personal communication, 13.05.19).

¹⁹ This is not necessarily the case in, for example, Sweden, where a psychiatric evaluation is still generally required for changing legal gender and the process of legal gender change can be compromised by acquiring medical assistance outside of Sweden.

²⁰ To clarify, protocol requires that patients should not: be suffering from emotional or mental instability, have physical issues that could compromise treatment, be too old (starting treatment at 21 years of age is average), be a parent, or have the wrong personal narrative (van der Ros, 2013).

²¹ It was permitted for one to be sterilised outside of Norway and have it confirmed (via physical examination) in order to qualify for legal gender change.

Ros, 2013). It is not surprising, then, that many organisations continually criticised this system and challenged its ethics, such as TGEU (Transgender Europe), FRI (Association for Gender and Sexuality Diversity; formerly ‘LLH’), and Amnesty International (elaborated upon below).

2.2.4 A shift towards legal recognition

Critiques from social rights groups and user organisations snowballed with legislative and organisational changes, inciting other developments that led to the eventual law on gender recognition. To begin, legal name change, regardless of gender association, became available from 1 January 2003 for citizens of at least sixteen years of age (Navneloven, 2002). Then, in 2008, trans people were added to the national organisation for gay and lesbian rights in Norway, FRI, which soon after vocalised its concerns around the sterilisation requirement, challenging its basis and calling for it to be critically reviewed (Amnesty International, 2016). Later, in 2012, the Norwegian Directorate of Health published a report on the status of trans-related health, saying that a second medical opinion should be permitted in the case that one is turned down by NBTS. However, it also spoke on the sterilisation requirement in place, upholding it as valid on the grounds that the current Sterilisation Act did not prohibit it in cases where it is used for lawful medical treatment or intervention (Amnesty International, 2014b: 70). Though this view had also been held in other national contexts, the tide began turning in that period, likely contributing to a change in perspective in Norway. For example, the German Federal Constitutional Court and the Stockholm Administrative Court of Appeal found, in 2011 and 2013²² respectively, the requirement of sterilisation to be contrary to fundamental human rights (Sørli, 2018). These international changes were made all the more significant due to an agreement which Norway had struck with 46 other Council of Europe member states in 2010 to follow the recommendation of the Council of Europe Committee of Ministers on LGBT rights (CoE CM Rec 2010/5²³). This obligated Norway – by mutual commitment, not law – to begin implementing measures to improve the lives of its LGBT citizens. Of specific note were three recommendations as follows: §20, which says that legal

²² In 2013, Sweden overturned its 1972 law and implemented a new one which abolished the sterilisation requirement, among other things. However, it keeps the requirement for a diagnosis in place (Helsedirektoratet, 2015: 18).

²³ 'Council of Europe: PACE, 'Discrimination against transgender people in Europe' 15th sitting 2015, resolution 2048', para 6.3.1; Council of Europe: Committee of Ministers, 'Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity' (Council of Europe: Committee of Ministers, 2010)

gender change requirements should be reviewed regularly; §21, which says that the process to change legal gender should be very accessible and trans people should get full legal recognition; and §35, which says that access to trans-specific medical treatment should be readily available and based on consent.

In early 2013, trans studies scholar Janneke van der Ros published the results from the first nationwide study on trans people's living situation in Norway, entitled, 'Alskens folk: Levekår, livssituasjon og livskvalitet for personer med kjønnsidentitetstematikk' ('All sorts of people: Living conditions, life situations and life quality for people with gender identity issues'). Van der Ros found that sufficient knowledge about trans lives and experiences in public institutions was still lacking, resulting in undue discriminatory practices. Not long after the report's publication, Amnesty International launched public criticism towards Norway's Directorate of Health, which was likely one of the principal catalysts leading to the eventual legislative change. Amnesty aired its criticism by publishing an open letter to the Directorate, highlighting the state's failure to protect the human rights of its transgender citizens. The letter states:

Amnesty International is calling on you to ensure that trans individuals can enjoy their human rights, and in particular their rights to the highest attainable standards of health, the right to be free from cruel, inhuman and degrading treatments and the right to be equal before the law, without discrimination on the ground of gender identity. (Dalhuissen, 2013: 1)

The letter expresses Amnesty's concerns dealing with the requirement of diagnosis and 'coerced sterilisation' for legal gender recognition. It recommended the following: to decentralise the health system so that Riksen does not hold a monopoly over trans healthcare; to abolish the requirement for sterilisation in order to change legal gender; and to cease discriminatory practices which hinder individuals' access to hormonal and surgical treatment (Dalhuissen, 2013: 3).

The Norwegian Directorate of Health responded to Amnesty's letter in late 2013 by organising an expert group to assess the conditions faced by trans people. In the meantime, another change was underway. Until January 2014, there was only limited legal protection from discrimination for trans people in Norway. Only those who were patients of Rikshospitalet undergoing treatment for changing sex were protected, leaving others vulnerable. This is in part due to the fact that while Norway's constitution (Section 98(2)) protects individuals from discrimination, it does not list any specific grounds for protection.

Therefore, in mid-2013²⁴, the ‘Discrimination Law on Sexual Orientation’ (2013), was enacted, and it was put in effect on 1 January 2014. It included protection of gender identity and gender expression²⁵.

Soon after, in early 2014, Amnesty International published a report on trans rights in Europe, entitled, ‘The state decides who I am: Lack of recognition for transgender people in Europe’ (2014b). It presented a scathing evaluation of Norway’s treatment of trans people, airing criticisms by both private citizens and public organisations against the healthcare system procedures and the legal requirement for sterilisation. In its thorough review, Amnesty described the limitations set by the regulations around gender recognition and medical access, interspersed with interviews by trans individuals who discuss the frustration and pain it has caused them. Additionally, Amnesty details the dehumanising treatment and practices of the NBTS²⁶, quoting from patients’ shared experiences on the clinic’s lack of respect for one’s personal gender²⁷ pronoun and name, the apparent preference for younger and for more emotionally-stable patients over older people (60+ years) or those who have mental health issues²⁸, the lengthy process one must undergo to achieve sterilisation and thus legal recognition of one’s gender identity, and the continued reliance on the gender binary, among other issues. Amnesty concludes by admonishing Norway for its practices in much the same manner as it did in its open letter to the Directorate of Health in 2013:

Norway violates the rights of transgender people to attain the highest standard of health and to be free from inhuman, cruel and degrading treatments by requiring them to undergo unnecessary medical treatments, including the removal of their reproductive organs, in order to obtain legal recognition of their gender. The lengthy procedure to obtain legal gender recognition and the fact that transgender people who are not diagnosed with “transsexualism” cannot receive legal recognition of their gender unless they undergo treatments abroad and at their own expense, violate their rights to private and family life and to recognition before the law.

²⁴ Such a law had been in place for gay and lesbian people for several decades - the Penal Code was amended in 1981 to prevent discrimination in the provision of goods and services and 1998 regarding employment.

²⁵ This act included the following provision for protection: ‘with the exception of family life and other purely personal relationships’ (Section 2). Since then, this act has been combined with three others to make a unified ‘Equality and Anti-Discrimination Act’, as put in effect on 1 January 2017. It states its purpose as, ‘The purpose of this Act is to promote equality and prevent discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or other significant characteristics of a person. “Equality” means equal status, equal opportunities and equal rights. Equality presupposes accessibility and accommodation.’ Unlike the Sexual Orientation Anti-Discrimination Act, this act extends into all facets of society.

²⁶ Referred to as ‘Trans Unit’ in the report

²⁷ See terminology subsection below for an explanation of this term’s usage in my dissertation.

²⁸ Such as depression, which, as van der Ros (2013) points out, is common amongst those who struggle with gender misrecognition.

There is broad agreement among transgender organizations and other civil society organizations that the current practices on legal gender recognition have to be reformed. In particular, there is a wide consensus that undergoing surgeries resulting in sterilization should not be a precondition to obtain legal gender recognition, irrespective of whether or not some transgender people may seek those surgeries. (Amnesty, 'The state decides who I am', 2014b: 77)

Amnesty International's involvement did not end there. In late 2014, the Norwegian trans activist Jeanette Solstad attempted to change her legal gender, knowing that she would not be able to, as to lay the foundation for a campaign. She had been a principal actress in creating and implementing the Sexual Orientation Anti-Discrimination Act, which was in part intended to set the stage for the ensuing campaign wherein she would challenge her gender-change request denial on the basis of discrimination (Solstad, personal communication, 30.10.16). Her resultant campaign was eventually underwritten by Amnesty, through its 'Write for Rights' project (Amnesty, 2014a), to generate awareness of the sterilisation requirement and to place pressure on the Parliament to enact new legislation. In the campaign, Jeanette's case was described through the following text:

SEEKING LEGAL RECOGNITION OF HER GENDER

John Jeanette Solstad Remø is 65 years old and says 'I have been transgender all my life.' Sadly she had to hide and suppress [sic] this for many years. In Norway, transgender people wishing to legally identify themselves by their chosen gender can only do so by completing a 'real sex conversion'. This involves psychiatric diagnosis and compulsory medical treatment, including surgery and mandatory sterilisation. John Jeanette does not want to go through this. Her right to a private life is violated on a daily basis. Her identity documents indicate that she is male, so whenever she presents them – at the library or the pharmacy or staying at hotels – she faces lengthy questioning. Legal gender recognition for John Jeanette would mean 'that I would be seen as the person that I feel on the inside.'

Amnesty encouraged readers to write to Bent Høie, the minister of Norway's Health and Care services, to urge him 'to allow John Jeanette Solstad Remø to have her gender legally recognised'. Thousands from around the globe contributed with letters to the minister, proving the campaign successful in terms of drawing attention to the critical issue (Sunde, 2016). Whether it led directly to LGR's implementation is perhaps hard to say; however, given what happened next, it is tempting to assume so.

The following year, in early 2015, the Directorate of Health (Helsedirektoratet) published the findings of its expert group's research on trans living conditions in 'Rett til rett kjønn, helse til alle kjønn' (Right to the right gender, health for all genders). At its premise, it agreed with Amnesty International's declaration that the sterilisation requirement was 'contrary to

fundamental human rights' (Directorate, 2015: 174)²⁹. The report states that 'a person's desire to change legal gender must be separated from the medical treatment the person in question may wish to undergo' (Directorate, 2015: 173). This was grounded in the European Convention of Human Rights (ECHR), specifically articles 8 (right to privacy) and 14 (right to protection from discrimination)³⁰ (Council of Europe, 1950).

The Norwegian Ministry of Health and Care Services responded in earnest to the mounting pressure by issuing a bill, Proposisjon 74L (2015-2016), in March 2015. The bill quotes the 2014 conclusion by the Equality and Discrimination Ombud that the practice of requiring hormone treatment, diagnosis and surgery to change one's legal gender is discriminatory under the 2013 Sexual Anti-Discrimination Act. It states:

The Ministry of Health and Care Services suggests in this proposition a new law which will make it easier to change legal gender. People who experience belonging to another gender than the one under which they are registered in the Population Register should have the right to change legal gender without being required to obtain a diagnosis or medical treatment. The right to change legal gender should be based on one's own experience of gender identity. (Ministry of Health and Care Services, 2015: 5; my translation³¹)

The bill cites the ECHR's articles 8 and 14, as noted above, as well as defers to the recommendations of both the Council of Europe (discussed previously) and the Yogyakarta Principles³² (which Norway supports) to prioritise trans people's rights to physical integrity and recognition. The Ministry of Health and Care Services then collected recommendations by expert groups and individuals on the matter of gender self-determination (regjeringen.no, 2015).

In May the following year, the bill was passed by the Parliament and implemented on 1 July 2016 as Lovvedtak 71 (2015-2016). It reads similar to the proposition, saying that 'people who are residents of Norway and who experience belonging to the other gender than they are

²⁹ It furthermore echoed Amnesty's suggestion that the healthcare system for trans people be adjusted to better reflect the needs of its intended patients. It also recommended that a third gender option be considered.

³⁰ The European Court of Human Rights (ECtHR) is the first international organisation to directly address LGBT-related issues (Council of Europe, 1950).

³¹ Original text: 'Helse- og omsorgsdepartementet foreslår i denne proposisjonen en ny lov som skal gjøre det enklere og mindre inngripende å endre juridisk kjønn. Personer som opplever å tilhøre et annet kjønn enn de er registrert med i Folkeregisteret, bør ha rett til å endre juridisk kjønn uten krav om bestemt diagnose eller medisinsk behandling. Retten til å endre juridisk kjønn bør baseres på egen opplevelse av kjønnsidentitet.'

³² These principles guide 'the application of international human rights law in relation to sexual orientation and gender identity' (Yogyakarta Principles, n.p.).

registered in the Population registry have the right to change their legal gender' (§2; my translation).

2.2.5 Norway's 2016 Gender Recognition Law

The following will give an overview of the law, drawing on the proposal to provide further explanation where needed. Also included is a summary of the provisions, as outlined first in Prop. 74L (2015-2016) and inscribed in Lovvedtak 71 (2015-2016)³³.

To begin, changing legal gender requires submitting an electronic form to the tax office. Afterwards, the applicant will receive a letter in the mail with a form to be filled out and returned to the tax office along with copies of their personal identification documents, thereby confirming the decision. The letter for confirmation states the following:

You must arrange for a new passport, bank card, driver's license and other identification papers that contain the personal identification number or otherwise show your gender marker. You should also notify any public authorities you have ongoing cases to deal with where the personal identity number is included in the case processing, and public records that use the personal identity number. Please use the tax office's confirmation of your legal gender change.

The national registry is updated by the tax office. This means that you do not need to notify the tax authorities of your new personal identity number.

If you need a new birth certificate, you will receive it at the Tax Office where you live. If you were born in another country, you must contact the population registry of that country.

You can change back to your original legal gender, but you will not get your original personal identification number back. (my translation)

The provisions of the law can be summarised as follows: Those who are residents of Norway (have lived in Norway at least six months) or are citizens of Norway based abroad, and who experience belonging to the other gender than is registered in the population registry, have the right to change legal gender (Lov om endring av juridisk kjønn, 2016, §2). Children ages seven to fifteen can also change legal gender with guardian/parental consent (Lov om endring av juridisk kjønn, 2016, §3-4). In the case that both legal parents or guardians do not agree, then the court decides³⁴.

The new law was received with celebration both locally and internationally as a 'historic breakthrough' (Amnesty International, 2016: para. 11). Worldwide, it has also been regarded as one of the most liberal laws passed for trans rights, given the following: there is no waiting

³³ The complete text of the law is provided in the Appendix B, both in its original Norwegian and in an English translation.

³⁴ For more on the case of children seeking legal gender change, refer to the work of Anniken Sørli (2015, 2018).

period imposed (Denmark requires six months); no diagnosis is required³⁵ (which is required in Sweden and most other places with a similar law); children as young as six can benefit from this law³⁶; and that it allows for infinite changes (unlike most countries, such as the UK, which require one to commit permanently to the new gender marker) (Amnesty International, 2016: para. 16). It appears that the change has been largely welcomed by the trans community. In the first six months or so after its enactment, over 400 people took advantage of their new right (E. Duurhuus, personal communication, 23 January 2017)³⁷. This number can be compared to the 600 or so individuals reported by HBRS to have undergone the sterilisation-based ‘gender-correction’ in the half century that it was required for changing legal gender (‘Diagnosen transseksualisme – Hva er det?’, n.d.).

There has of course been backlash from various groups, even the trans patient group, HBRS. Mikael Scott Bjerkeli, the president of HBRS, called the law’s implementation ‘rushed’, citing the potential for misuse by those who are not really transgender but rather want to change gender for fun or political positing³⁸. He, along with two other HBRS staff, explains that the law leaves society with the question of ‘how to deal with a penis in the women’s locker room and the vagina and breasts in the men’s locker room’ (Bjerkeli, 2018, para. 12). There have also been complaints by ‘feminist’ public figures, such as Tonje Gjevjon (2017), who argued that real gender can only be determined by biology and not the state, and Margaretha Hamrin (2017), who argues that trans women will take advantage of public spaces like locker rooms and further hurt victims of sexual violence³⁹. Their opinions, and the counter-responses they have garnered⁴⁰, have composed a significant portion of the Norwegian public debates around the issue.

Despite the backlash, the new law has fuelled public discussion on further legislation, namely the introduction of a third gender in Norway. Though originally proposed many decades ago,

³⁵ Norway was the fifth country in the world to enact an LGR based on the self-declaration model (i.e. no diagnosis or medical treatment necessary). The other countries are Ireland, Argentina, Denmark, and Malta.

³⁶ Malta is the only other country that allows children to self-declare their gender identity. Moreover, it is unusual that Norway allows one as young as 16 years old to self-declare without parental or judicial intervention. Denmark, for example, has an 18-year minimum.

³⁷ Unfortunately, despite numerous attempts to get an update on this statistic from the Tax Office, I have not been able to do so and therefore am unsure how many people to date have changed legal gender post-LGR.

³⁸ HBRS had pushed for a reflection period to be imposed during the bill’s hearings (Jussformidlingen, 2015).

³⁹ Since these concerns have been aired, there have yet to be any such reported cases.

⁴⁰ Such as can be seen in Gustafsson, Hellum & Sørli’s 2017 response, ‘Debatt: Endring av juridisk kjønn; Retten til kjønnsidentitet [Debate: Legal gender change; The right to the gender identity]’.

the idea of introducing a legal recognition of ‘hen’ – the gender-neutral pronoun, as borrowed from Swedish but originally from the Finnish neutral pronoun hän – is gaining momentum in the political arena. In 2016, after the Norwegian Directorate of Health’s expert group recommended a third gender option be explored, the Liberal Party (Venstre) proposed it, with some support from other parties, but it failed to pass. However, the Labour Party (Arbeiderpartiet) has included in its 2017-2021 party programme a recommendation to consider a third gender category in order to counteract discrimination (2017: 74).

Additionally, the Norwegian state has indicated that legal gender markers may be altogether removed from the population registry system beginning in the year 2032 (regjeringen.no, 2017). Since the registry will run out of unique personal numbers by 2040, the state’s Finance Department (Finansdepartementet) has suggested that a transition phase should be implemented whereby all those born in 2032 or later will receive a gender-neutral number (ibid.). While this proposal has not yet been further developed⁴¹, the possibility of gender-neutral personal numbers is a promising one.

2.3 Terminology

In this subsection, I discuss some of the key terms and concepts I use in this dissertation and the meaning I attribute to them. While most of these will be elaborated upon at various points in the summary chapter, I feel it is important to provide some definitional foundation in the meantime.

2.3.1 ‘Trans’ and other slippery terms

In following A. Finn Enke’s call for increased ‘transliteracy’ in research, I aim to actively recognise language’s role as a social activity, capable of affecting how gender is activated through everyday applications (2012: 16-17). I seek to respect the fluidness of gender identities, experiences and embodiment as well as to contribute to enhancing cultural awareness of this phenomenon through a more inclusive and reflexive use of language. This is a tricky endeavour, to say the least. Finding a term which can collectively represent the identities and experiences of the population most affected by the new law on gender recognition proves to be a significant challenge. Identifying the group whom I have researched requires imposing a false coherency, undermining my overall intention to make

⁴¹ As of May 2019

space for the infinite diversity of gender – or, at least, to back away as to avoid hindering its flourishing. It is therefore important to state that I do not attempt to categorically define the social group I discuss. So, while I recognise that the group has porous and fluctuating boundaries and thus should be allowed flexibility in its application, I also recognise that language requires that I apply a label in order to discuss my analysis of the LGR's impact.

After much reflection, conferring and reading, I have chosen the terms 'trans' (including 'trans person' or 'trans people')⁴² to represent the collective of individuals considered most centrally in this research project. Trans is perhaps the most commonly used term in the Western context when describing the general population of those who have a personal, social, physical and/or legal identity which does not align with one's birth-assigned gender marker (the latter being always 'male' or 'female' in Norway). It is the preferred term of TGEU, Transgender Europe, a prominent organisation which serves as a source for much data on gender variance in the European context. This is intended to be an all-encompassing term, popularly illustrated by the 'trans umbrella' metaphor. This umbrella covers a vast array of identity markers, fluid and permanent, including but not limited to female-to-male (FtM), male-to-female (MtF), transgender, transsexual, transvestite, crossdresser, drag queen or king, genderqueer, genderfucker, non-binary, nonconforming, androgynous, intersex⁴³, effeminate, butch, and many, many more. In other words, this umbrella is meant to include all those who are not, by choice and/or circumstance, 'cisgender' (explored below).

It is important to note, however, that applying 'trans' as a collective term for those who are not always or fully cisgender can be limiting and reductive, since it implies that its application

⁴² Note that in my call for interview participants, I used the term 'trans* and TGNC', but I did not use these in the eventual research publications. To begin, the asterisk in trans* is borrowed from the Boolean search operation whereby one adds an asterisk after a search query term in order to open the search to all results which begin with and are not limited to that term. Trans* therefore refers to the inclusion of all variations of trans (though not just identificatory terms that begin with 'trans', but all variations of the identification of trans). See Sam Killerman's (2018) explanation of this term on his blog, 'It's pronounced metrosexual', at <https://www.itspronouncedmetrosexual.com/2012/05/what-does-the-asterisk-in-trans-stand-for/>. At the time I sent the call for participants, this was a very popular way to write 'trans' and I wanted to respect that. However, like many terms in the queer and feminist movements, it began garnering much criticism, such as its lack of intersectionality and its implication that any term could successfully be all-inclusive, and it became less fashionable to use. Therefore, in this text, as well as my articles, I have returned to using 'trans'.

TGNC is an initialisation for Trans and Gender Non-Conforming, which I also used with the goal of making the call more inclusive and wide-reaching. It is intended to refer not only to those who use the term 'trans' to described themselves but anyone who do not identify or experience themselves as gender-conforming. However, after some time reading the works of other scholars, particularly those within the Nordic context, I found that this also could be problematic in its assumption that a term could be sufficiently representative. Moreover, I felt that 'TGNC' was likely to fall out of fashion as I could see trans* was beginning to, and I wanted the terminology of my articles and dissertation to remain as relevant and keyword-searchable as possible.

⁴³ Its inclusion is often contested by those who feel the intersex identity should be kept distinct from trans.

is mutually agreed upon by those to whom it is applied. Many people who do not identify fully with the gender that was designated at birth do not perceive themselves as trans in any respect. Rather, they may simply identify as ‘man’ or ‘woman’, ‘boy’ or ‘girl’, ‘male’ or ‘female’, etc. They may even be carefully selective about what parts of themselves they share as to forgo ‘outing’ themselves (exposing or sharing one’s sexuality or gender identity). Alternately, they may use non-normative descriptors, such as non-binary or gender-queer, but still reject their presumed position under the trans umbrella. One may refer to themselves as ‘non-binary’ but not identify as trans. For some (but not all) folk, this can be because they view trans as being about moving from one normatively-defined gender position to another, particularly with the aid of medical intervention and legal recognition⁴⁴. In short, trans is a politically-charged term that can be many types of signifiers; it would be incorrect and unethical, I believe, to simply apply it as a blanket term for anyone who does not identify as cis/cisgender without discussion on its limitations.

I have, furthermore, chosen ‘trans’ instead of other possibilities, namely ‘transgender’ or ‘transsexual’, due to the political factioning internal to the trans rights movement.

Transgender is often employed to signify identity constructions which contribute to the deconstruction of gender, whereas transsexual is more aligned with assimilation into the binary and institutionalised modes of recognition (Johnson, 2014; Roen, 2002; Enke, 2012). These affiliations are not, it must be stated, steadfast by any means. Rather, as will be explored in the Theoretical Framework section, they are tendencies – both textually and subtextually. Trans, I find, largely – though not completely – avoids reference to any side of this division.

It is also imperative to keep in mind that the concept of trans is situatedly Western in origin and application. Vic Muñoz, a scholar on indigenous and trans/queer studies, describes trans as deriving from a Eurocentric medical model (2012: 24) wherein the body is seen as at odds with one’s internal identity. The trans movement can be a site of colonisation, as the trans identity tends to be regarded as inherent and static, and gender is dichotomised and homogenised, all of which are specifically Western conceptualisations (see Oyèwùmí, 2010). Models for rights and empowerment are developed within these (neo)liberalist parameters, and likewise the indicators of oppression and disempowerment are re-designated along non-

⁴⁴ To read more on (trans)feminist approaches to trans-related terminology, turn to the writing of Enke (2002), Meadow (2016), Currah (2009), Stryker, Currah, & Moore (2008), and West (2014).

Western lines, reifying the notion that the global North is reigning the trans movement and that those in the global South are suffering from a lack of awareness and support (Aizura, 2012: 133-134). The movement towards trans equality, furthermore, is tightly intertwined with the nation-state, as empowerment is seen to be conditioned upon state recognition and support – which undermines the potential for community-based support as compensation when the state fails an individual or group. Citizenship is highly racialised and class-based; therefore the ‘successful’ trans person – or *any* person – tends to be projected as white, Western and economically advantaged.

This is particularly evident when it comes to Sápmi culture. In her 2015 master’s thesis, *The Silence in Sápmi – And the Queer Sami Breaking it*, Ane Hedvig Heidrunsdotter Løvold writes that queer Sami people based in Norway and the broader Nordic region are experiencing a double bind of invisibilisation – from being Sami in a white-centred culture and being queer in a way that does not align with the mainstream LGBTI movement’s interpretation of queer. To combat this invisibility, Løvold explains that one of her project’s interview participants said, in his effort to decolonize ‘queer’, he has been promoting a north-Sami term, ‘bonju’, which is comparable to the Norwegian ‘skeiv’ in its original meaning of crooked or bent, not straight (2014: 64). Similarly, some Sami people have adopted the term ‘two-spirit’ from Indigenous communities in North America, which highlights the mix of masculine and feminine qualities and puts focus on gender in relation to the community rather than sexual desire or practice (Driskill, 2011). However, others still have rejected this term on the grounds that the North American indigenous community is too distinct from the Nordic one to adopt their terminology, or because the term reflects a Western conceptualisation, i.e. since the ‘two’ of ‘two-spirit’ implies the gender binary and thus fails to capture gender’s complexity (ibid.). The issue with terms like queer, trans, gay, etc. is that they reflect a particular history and a particular way of envisioning progress, which can not only prove contrary to the history and hopes of Sami, but can also obfuscate how stereotypical gender norms may to some degree be a product of Norwegian Christian colonialism (i.e. læstadianism) and not a tradition of Sápmi culture (Giertsen, 2002). It hides the ways in which Sápmi culture may actually have a history of fostering gender variance, a history which several of the interview participants in Løvold’s research project attest to, based on conversations with elders.

In closing, I maintain in this dissertation that whatever mode of self-presentation one chooses, it draws from one’s need for empowerment and security. There is no correct way to self-

identify, despite what social standards may dictate; for each of us, it is a matter of self-preservation, a point which will be further explored in due course. It is not only fruitless, therefore, but irresponsible to portray a social group as uniform in identity or experience, particularly when the group's primary form of cohesion is the shared experience of persistent misrecognition. With this in mind, I apply 'trans' carefully, as I wish to reference those most impacted by the law in question without reducing their experiences or identities through generalisation.

2.3.2 'Cis'

Cis or cisgender describes the identity of one who fulfils the requirements conventionally accompanying one's gender assigned at sex. I borrow here from fellow scholar, Wibke Straube (2014: 23-24), who writes the following in their doctoral dissertation:

I use ['cis'] to describe a person who has not altered the gender or sex to which they were assigned at birth. I use this term to address a position that is assumed to hold gender privilege in comparison to a trans position. Positions of privilege are often not named. The term cis allows a naming of this privilege and the increased transparency of social power relations. This avoids the situation where positions of privilege remain unnamed while those that "deviate" are highlighted through particular terms. Cis offers an intervention into this.

It would not be helpful, therefore, to simply refer to the social group discussed in this dissertation as 'non-cisgender', as this places 'cisgender' at the centre, resituating it as the norm from which the 'non' have deviated. The term, coined by trans activists in the 1990s, was created to combat the way that sex and gender were continuously and implicitly normalised through the uncritical use of 'man' and 'woman' when referring to people who were not trans (Aultman, 2014: 61). To use cis – as in cisgender, cisman, ciswoman, etc. – is to refocus the constructive aspects of gender as it is experienced by those are culturally located as naturally endowed with a gender, thus exposing the privileges that come with such endowment (Koyama, 2002; Serano, 2007).

Applying cis, however, comes with criticism well worth mentioning. It is seen by some to uphold the presumed naturalness of being born with one's bodily and social characteristics in harmony, which implies that the only people who need to put effort into adjusting one's body, behaviour, desires, etc. to satisfy sociocultural standards are trans people (Aultman, 2014: 61-62). Of course, this is not the case. As I will discuss further in this Summary chapter, *all* individuals are beholden to expectations that necessitate continuous conscious and unconscious self-alignment, sometimes beyond what is possible. Moreover, by virtue of being broad societal standards, these expectations are unattainable, thus rendering the position of cisgender impossible to occupy. To apply the term cis, therefore, runs the risk of contributing

to the myth that there can be such a distinction, in turn emphasising the notion that cispeople are just ‘born that way’, while trans people require a transition. Furthermore, by using the term cisgender to mean ‘not transgender’, and transgender to mean ‘not cisgender’, a dichotomy is forged. The two concepts are constructed into opposing positionalities that run the full gamut, indicating that there are no other spaces to inhabit (Enke, 2013). As will become apparent over the course of this dissertation, it is not really feasible to draw a solid line between cisgender and transgender. In addition, for that matter, it is not possible to demarcate those for whom legal policies are intended from those for whom it is not, nor is it possible to classify who is susceptible to the consequential cultural shifts from who remain largely impervious. In this way, the impact of the law on the system of gender politics reaches beyond the trans population, shifting even minutely the means by which gender as a tool of organisation and identification is regarded by society at large.

I also speak in this text about (cis)genderism and cisnormativity. (Cis)genderism refers to ‘the ideology that delegitimises people’s own designations of their genders and bodies’ (Ansara & Hegarty, 2014: 260; cf. Serano’s term ‘cissexism’, 2007). It is the standard that permeates society, culture, economy, politics, and every other facet of private and public life, and which dictates the terms by which one’s body, identity, desires, and behaviour are to be shaped, read, and valued. The standard is, of course, that of being cisgender – of adhering to the sex and gender (and sexuality) norms assigned with the body’s physical category to which one has been registered at birth. (Cis)genderism points to a modus of thinking and interpreting, an attitude about sex and gender, and a way of interacting with others that promotes a preference for the standard.

Cisnormativity is similar in that it highlights the pronunciation of cisgender over other modes of gendering. However, with this term, I use it for the system of norms which distributes power (via security, life opportunities, etc.) along cisgender pathways. Alm, Bremer and Nord (2016: 5; my translation) recommend considering cisnormativity alongside the more established term ‘heteronormativity’, to clarify its usefulness as a term:

Both concepts focus on the need to understand how recognisable subjects and actions are constituted; how discipline, subjectivation and other power techniques form a system of discursive and material practices that make certain subject positions and behaviours primary and normative. Theorisations of cisnormativity and heteronormativity can be attributed to a common feminist interest in understanding and being able to distinguish and describe social sanctions – in the form of invisibility, exoticizing, ridicule, threats and even physical violence, etc. – which are directed at what are perceived as ambiguities or deviations in terms of sexed bodies, gender identities, gender expressions and sexuality. Through these concepts, the focus is shifted from the positions and behaviours that are perceived as breaking norms to a

critical analysis of the discursive norm systems that constitute certain subject positions as recognisable and others as abject, and which set limits for the culturally recognisable.

A key term here is ‘recognisable’. The purpose of employing cis or any of its terminological variations is to highlight how some are rendered more recognisable than others. It directs us to the filter through which our bodies and selves are redefined over and over again according to what can be fathomed by others. It is, therefore, imperative to recall its presence at all times when thinking about and analysing gender, as it is always there.

For this reason, I place ‘cis’ in parentheses at times, such as when I discuss (cis)genderism and the (cis)gender imaginary. I have chosen to do this because gender and cisgender become operatively conflated, by which I mean that gender and cisgender are sustained as interchangeable concepts. The way we understand ‘cisgender’, I argue, is how we understand gender. This is the privilege of being cisgender – one’s gender is seen as a given, something that does not even require naming or attention, just as ‘race’ tends to be operatively dissociated from whiteness. ‘Cis’ figures as the ‘true’ form of gender, while trans is the ‘failure’ to live up to gender’s norms. This argument will be further elaborated upon in the Crosscut Analysis section.

2.3.3 Empowerment

This term arises frequently throughout my dissertation, since it features alongside disempowerment in Article 2 as the two narrative themes through which I analyse the conducted research interviews. In the Theoretical Framework section, I go more in-depth into how I use empowerment. In the meantime, however, it is well worth explaining the position I take in deploying it. Though empowerment as a concept is politically charged, there is seldom sufficient discussion on how it links to ‘power’ (Cruikshank, 1999). Such a gap in analysis leaves it exposed to a neoliberalist construal and application. It is this severance of power from the equation that allows empowerment to be overtly individualised and personalised by obscuring the ‘relational and structural conditions of “choice” and freedom’ and promoting a ‘turn lemons into lemonade’ mentality (Rushing, 2016: n.p.). This conceptual dissociation is a phenomenon of neoliberalism. Since the 1980s⁴⁵, as can be traced in the rise of liberal feminism, it has become emblematic of self-actualisation (Brown, 2005). This concept

⁴⁵ Especially in regards to (elements of) the second wave of the feminist movement, when women were encouraged ‘take over’ their lives, which was achievable by making decisions contrary to paternalism (Rushing, 2016: n.p.). Inevitably arguments in this regard tended to be insufficiently intersectional as socio-economic success was seen as possible through desire, not circumstance.

describes becoming something worthwhile in society by (re)aligning one's bodies and desires to that which is most redeemable, through a mitigation of the tension between the self and society. Every individual is regarded responsible for themselves no matter the circumstances of their life, and if one fails to prove 'productive' as a fellow social actor and state citizen, then it is seen as a reflection of one's own apathy to excel. As a researcher, I must be careful not to reproduce these notions, even implicitly. I must not blindly impose a reading of empowerment or disempowerment by forgoing extensive consideration of how the power dynamics are at play and what consequences my assumptions could have. Empowerment is, as has become clear by now, a very knotty concept that could prove adverse if used wrongly.

However, I agree with Sara Rushing (2016) that empowerment has not lost all its usefulness after the neoliberalist elements have been given due consideration. Rushing offers a new definition that allows room for regarding the role of power: 'a substantively meaningful experience of the skills and resources necessary to participate in, negotiate about, influence and direct the course of events related to one's own and one's community's existence and aims' (2016: n.p.). This is how I understand and apply it. Empowerment is the feeling of security and confidence, the capacity (or belief in one's capacity) to effect change in one's surroundings. It is not only about feeling in *this* moment like one has a buffer protecting them, it is about being able to envision a livable future, even one which will foster some sort of personally-defined growth. Throughout my dissertation, while I apply empowerment to refer to one's increased agency to self-determine and a strengthened sense of security against corporeal and/or psychic detriment, I also maintain a critical focus on where this sense of security comes from, why it has taken this shape, and how it informs one's identity and life choices.

2.3.4 Trans identity politics

I discuss 'identity politics' quite often in my dissertation, since I have written one of my articles (Article 3) on the impact of the LGR on narrative reconstructions and the role of trans identity politics, using Katrine Roen's (2002) 'liberal' versus 'radical' model. With identity politics, or more specifically 'trans identity politics', I refer to the tendencies in how trans or gender-nonconforming individuals lay claims to justice based on modes of identity construction. As described at length in the Theoretical Framework section, the radical positionality points to a tendency to eschew institutional and sociocultural classification, while the liberal positionality points to a tendency to embrace it. Therefore, at times I link the

radical positionality to those who identify as non-binary and the liberal positionality to those who identify as binary, though these links are not at all concrete or stable.

This term is a difficult one to use, as it can become problematic if not critically analysed through its application. Therefore, I have provided a more in-depth look at this trans identity politics in the Theoretical Framework section (7.2.4).

2.3.5 A few more terms

Passing

‘Passing’ has been defined by many scholars and activists, but I prefer how scholar Alyosxa Tudor (2017: 21) describes it: ‘making oneself readable as privileged from a discriminated positioning’. The failure to pass leads to abjection, invisibilisation, and disenfranchisement, as one is perceived as outside the norms of what constitutes a person, a human, and a body worth protecting (see Enke, 2012). When I use the term in this Summary chapter, I am applying it to the act of appearing and being read as cisgender rather than transgender and in alignment with one’s personal gender.

Personal gender

Particularly when discussing ‘passing’ or the legal gender marker one chooses to change to, I use the term ‘personal gender’ to refer to the gender identity category which one would like to be perceived as belonging to, in that moment or in general.

Third person singular: ‘they’

In cases where a generic third person (‘one’) is referred to, I use the singular form of the pronoun ‘they’ as to avoid both unnecessary gendering and cumbersome repetition of the word ‘one’⁴⁶. Accordingly, I use the seemingly incorrect term ‘themselves’ for the reflexive formation of the singular they. This is also referred to as a gender-neutral pronoun or gender-inclusive pronoun⁴⁷. According to scholar Finn Enke (2012), the singular use of ‘they’ dates back to the fifteenth century and is more common in non-North American contexts where the gender-ascribing ‘he’ is used in reference to a hypothetical person. ‘He’ is the standard even

⁴⁶ Thus, the sentence, ‘One can now change one’s gender marker oneself to align with one’s personal identity if one wants’ would become ‘One can change their gender marker themselves to align with their personal identity if they want’.

⁴⁷ Also used by the trans community to accommodate gender neutrality in the singular form is ‘ze’/‘hir’/‘hir’ (subject/object/reflexive). This is however in less frequency, despite having been developed specifically by the trans community for the trans community some decades ago, due to the rising use of the singular they (Enke, 2012). I do not employ ze/hir/hir in my dissertation.

when the person is not hypothetical but the gender is not (yet) known⁴⁸. Obviously, this is a practice I wish to avoid.

The LGR

Finally, another term which deserves explanation is the way the new law is labelled. There exists no single term which describes a law which allows someone to choose their own gender identity, in great part due to the variations in contexts where it happens as well as the differences in the actual laws themselves. In Norway, the law registered name is ‘Lov om endring av juridiske kjønn’, or literally ‘Law on changing of legal gender’. It could be translated to be what the UK calls its own, namely ‘Gender Recognition Act’ or GRA; Anniken Sørli, a Norwegian trans studies scholar, uses this term in their doctoral dissertation on this new Norwegian law. Otherwise, it could be translated to ‘the law on gender recognition’, as TGEU (Transgender Europe) calls it. This is the version I will use. For shorthand, sometimes I will write ‘the law’ or ‘the LGR’.

⁴⁸ An example would be, ‘When I go to the doctor, I will ask him about my medicine’, or ‘I hope the next person to come in here will close the door behind himself’.

3. Article Summaries

This summary chapter is built upon three research articles which are at the core of my doctoral dissertation. The following offers an overview of each article, with a summary of each text's contents and primary arguments. The titles of the articles are as follows:

Article 1: '(Trans)gender outlaws? A critical analysis of Norway's 2016 gender self-determination law' (2018)

Article 2: 'Assessing the benefits and limitations of Norway's gender self-determination law: A thematic analysis' (under review)

Article 3: 'Examining trans narratives in the wake of Norway's gender recognition law' (2019)

Each of the articles opens by presenting an overview of the LGR's development and implementation, as well as the law's sociolegal parameters, as to provide the context for the ensuing discussion. At that point, they diverge from one another, each focussing on a specific topic: in Article 1, I present a critical analysis of the law within a jurisprudence framework; in Article 2, I use Thematic Analysis to discuss how the law is both empowering and disempowering for those who change gender; and, in Article 3, I apply Thematic Narrative Analysis to examine how individuals negotiate their gender identity to compensate for the law's incomplete recognition.

3.1 Article 1: (Trans)gender outlaws? A critical analysis of Norway's 2016 gender self-determination law

The first article is a theoretical exploration of Norway's 2016 law on gender recognition, focussing on its potential and limitations to empower its intended users. In this article, I argue that the law's reach is not as extensive as it first appears, by posing then addressing questions regarding the transformative limitations of the new law. I ask, 'If some people are excluded from the law's reach, then how can it be so widely celebrated as having a progressive approach to gender and human rights? How are "gender" and "transgender" understood in the new law, and how is this interpretation shaped by gendered citizenship in Norway?'

I attend to the issue of the law's potential to empower users by showing how gender as a concept is employed by and through the law. The law's implementation stemmed from a growing demand to acknowledge trans people's agency in gender self-determination. The coercion of sterilisation was determined by the Health Ministry to have been breaching two

articles of the European Convention on Human Rights: one's right to privacy (Article 8) and right to protection from discrimination (Article 14) (Council of Europe, 1950). Gender identity is regarded as internal, unchanging and incomplete without state recognition. Such an interpretation negates the dynamic process of subjectivation, whereby one's identity, and hence one's selfhood, is constructed at the intersection of personal, social and legal identification (Foucault, 1997). The implicit emphasis on state recognition as the ultimate mode of gender identity validation furthermore delegitimises the non-normative identities of those who fall outside the male/female paradigm. Likewise, the emphasis on legal recognition as the ultimate mode of gender confirmation denies the importance of social recognition – a process that is for many trans people greatly dependent upon physical transformation. Those who do not 'pass' as their personal gender are likely insufficiently buffered by their new juridical sex identity since the social identity materialises primarily in the space between two social actors.

Hence, the law's potential to empower its users by offering validation and protection is limited to those who fit the parameters of what is permitted. Namely, an individual who identifies within the gender binary and does not require medical intervention (or does not require 'passing') is most likely to benefit, in terms of having greater alignment with one's legal gender marker. Returning to the trans political landscape discussed above, this demonstrates that the liberal end of the spectrum is, at least *in theory*, better represented.

The law therefore appears to be inclusive and transformative despite its limitations because its application of gender echoes the broader socio-cultural conceptualisation that understands gender to be intrinsic and dimorphic. Since the issue facing trans people is socio-medically whittled down to the problem of being 'born in the wrong body', permitting legal gender change offers an obvious and simple solution. This reflects how citizenship is created and maintained in Norway, given its particular context as a social welfare state. The state's role in shaping society and organising its actors is markedly extensive, lending greater weight to the state's conference of recognition. One's personhood hinges significantly on one's validation by the state, as recognition from other social actors intensifies in the wake of legal recognition.

To conclude, I assert in this article that while the law on gender recognition appears to rectify the lack of state validation for trans people, its potential to empower *all* trans people is encumbered by its limitation to the gender binary and the lack of concurrent improvements in medical access. The impression that the law is serving all its intended constituents draws from

the socio-cultural understanding of gender within the liberal political framework, a misconception which furthers the marginalisation of those who cannot or will not ‘pass’ as one or the other ‘normal’ gender and blend quietly into the cisnormative matrix. Though the new law undoubtedly helps erode the tenuous yet unyielding link between gender identity and bodily sex, I close the article by encouraging further investigation into how laws on gender recognition in Norway and abroad can fuel misconceptions around trans identities and ultimately thwart the movement for trans equality.

3.2 Article 2: Assessing the benefits and limitations of Norway’s gender self-determination law: A thematic analysis

In Article 2, I offer an analysis of the interviews I collected with twelve individuals who changed legal gender after the LGR was passed. The analysis attends to the diversity within the trans community by focussing on how the law can empower or disempower its users.

I begin the article by outlining the law’s implementation and parameters in order to set the stage for understanding the infeasibility of the law to fully address the needs of trans people. Just as in Article 1, I highlight the lack of non-binary options and the lack of concurrent changes in medical access in considering whom the law might benefit or disadvantage more than others. I pose the following questions: In what ways can the law empower a person to feel more secure, visible, and capable? In what ways does it undermine one’s process of gender identity development, and why?

Building from the theoretical findings of Article 1, in Article 2 I dig deeper into the importance of recognition for trans people in a social welfare state such as Norway. Typically, subjugated groups lack a comparable amount of (socio-legal) recognition as (economic) redistribution (N. Fraser, 1995). However, due to Norway’s extensive anti-discrimination protection and labour laws, trans people are generally more economically stable compared to many other countries. The fight for equality stems largely from a lack of state and social validation. Given the importance of the welfare state in shaping socio-cultural values and the emphasis on ‘sameness’ (Stephen, 2001), state recognition is rather important for social attitudes to change. Recognition from the state, however, does not automatically convert into social recognition. Nor does it necessarily empower an individual with a sense of validity. The diversity of ways in which gender is embodied, experienced, and enacted, and the lack of uniformity in circumstances faced by individuals who fall under the trans umbrella, ensure

that the impact of legal recognition differs not only from one individual to another, but for each individual personally.

The interviews, conducted in late 2016 with twelve individuals, reflect the variations in experience after changing legal gender. Using Thematic Analysis (Braun and Clarke, 2006) to examine the interview data, I found two distinct patterns in how experiences were characterised: participants reported feeling moments of empowerment or moments of disempowerment. The moments of empowerment could be further divided into ‘validation’ (feeling authenticated and visible) and ‘security’ (feeling more courageous and safer). The moments of disempowerment, on the other hand, were characterised as either ‘still misrecognised by society’ or ‘not recognised by the state’. Though each individual tended to lean more towards one than the other, each exhibited moments of both overarching themes. In the Analysis and Discussion section, I give consideration to the complexity of responses by each participant by endeavouring to offer a balanced account.

The Analysis and Discussion section explores each theme and subtheme by first elucidating its applied meaning, then demonstrating its relevance through selected quotes from the interviews. The themes are outlined as follows: Under Empowerment, ‘validation’ is defined as being acknowledged by the state as having an authentic gender identity as well as being regarded as having agency over one’s own selfhood. As recognition is a reciprocal process, this can strengthen the bond between an actor and the state, and consequently between an actor and others as one’s identity is increasingly validated by society at large. Similarly, an increase in ‘security’ stems from an internal sense of being valued, but it also reflects one’s change in behaviour due to heightened confidence. Many participants reported feeling more courageous to assert their gender identity when being challenged by other social actors, since the state’s confirmation acted as a safeguard against others’ attempts to invalidate them. This could be applied regardless of one’s ability to ‘pass’ as their personal gender.

Alternatively, the law’s limitations became apparent when examining reported experiences of disempowerment. The overall sentiment was that while having the correct legal gender marker was appreciated, it did not rectify all the issues as anticipated or hoped for. The analysis uncovered the subtheme of ‘still not recognised by society’. As mentioned above, social recognition is distinct from legal recognition, meaning that the state’s declaration of one’s gender does not oblige others to concur with it. None of the participants had undergone sterilisation, due to either a lack of desire or a lack of opportunity (hence their decision to change legal gender after the law’s passing). While all of them expressed a strong desire to be

regarded as their personal gender, some experienced a lack of social validation due to not appearing along conventional gender lines. Thus, they continued to feel pressured to censure themselves, particularly in intimate spaces such as locker rooms or public restrooms. For them, the risk of being publicly shamed or outed, despite what one's identification papers say, was not immediately or fully remedied by legal recognition.

Furthermore, even the state's attempt to recognise the agency of trans people to self-declare their gender identity proved insufficient for some. Since only the binary is offered, a few of the participants report that they felt pressured to choose the opposite gender because it better represented how they were read socially and thus felt less risky, but it still did not represent the way they personally identified. On a similar note, a few expressed frustration that the state was performing the bare minimum to fix its poor human rights track record while also pretending to be addressing the needs of all trans people equally. The message seems to be that only the right kind of trans people – namely binary and already passing or don't need to pass – are worthy of the state's support. In addition, the simplicity with which the sterilisation requirement was removed felt for some to be a mockery of the suffering and strife experienced by all those forced to either be sterilised or be continually misgendered by the state.

3.3 Article 3: Examining trans narratives in the wake of Norway's gender recognition law

In Article 3, I analyse modes of identity negotiation by individuals who, after changing legal gender, still struggle with feeling misrepresented and misrecognised due to the law's limitations. Such disempowerment manifests along trans political lines, as outlined by the radical/liberal spectrum, which represents tendencies and strategies for self-identifying and laying claims to rights. Liberal refers to the 'either/or' approach (Roen, 2002: 505), whereby one upholds the gender binary and relies on institutional support for personal validation. Contrarily, the radical end, or 'both/neither' politics, prefers deconstructing the gender binary and renouncing institutional intervention. The needs and desires associated with each camp differ significantly, though only at the poles, as people tend to have attributes of both.

A key premise in my article is that people can shift along the spectrum through identity negotiation, a tactic to compensate for one's lack of sufficient power. I explore this mode of maintaining a 'livable life' (Butler, 1990) through methods of self-empowerment in order to demonstrate the varying ways in which Norway's law on gender recognition does not fully

address the needs of its intended users. I present an analysis of two of the twelve interview participants who represent two distinct and complementary perspectives – liberal and radical – regarding what the trans movement should work towards. In doing so, they situate themselves politically through a personal narrative tailored for enhanced group membership.

To analyse these two interviews, I apply Catherine K. Riessman's Thematic Narrative Analysis (TNA) (2008). Narratives are ways of organising experiences and interpretations so as to make sense of the world after something has happened. TNA examines only the content of what is said in order to find links between the predominant thematic elements. Doing so helps extract meanings from the shared narratives, giving a deeper and richer reading to what is being told. It uncovers ways of adjusting in moments of insecurity and internalised struggle. Such moments, I argue, arose in waves after the individuals changed gender due to the schism between the implicit promise of the law to provide full socio-legal equality and the reality of continued misrecognition.

In the analysis and discussion section, I consider Evelyn (early 30s), who identifies as 'transwoman', 'queer' and 'feminist', and Bente (early 60s), who identifies as 'woman' personally but 'transwoman' socially. Each has struggled after changing to become legally 'female' due to a continued lack of recognition. The following summarises the two participants' modes of negotiation. To begin, Evelyn reports that having the correct legal gender ('female') has offered her little relief from social misrecognition. She still feels intense pressure to conform her body according to feminine standards of beauty specifically and passing as a woman generally. Despite trying to access medical assistance through the state hospital, she was turned down for not being sufficiently 'transsexual' to get the diagnosis necessary for pursuing treatment, since she was not sure she wanted to have all the gender-confirming treatment available, particularly vaginoplasty. As a result, she says she experiences not being regarded as a 'woman' since her body does not fit the norm, even though she identifies as more feminine than masculine. This lack of social recognition has been detrimental for her emotional health, so she decided that she would stop trying to pass as a woman and instead embrace a gender in-betweenness. This in-betweenness is her strategy to claim autonomy over her identity construction, since she appropriates her lack of normalcy by proactively maintaining it. Evelyn also denounces the feminine beauty standards she long felt obligated to follow, explaining that the problem lies with society and its ideals, not people's bodies. People who change their bodies in order to fit in are not doing it for well-informed reasons, she says. By establishing her position as counter to social expectations around

gender, and by defining her values through opposition to those who uphold gender norms, Evelyn grounds herself towards the radical end of the trans political spectrum.

Bente, on the other hand, explains that she feels empowered by the new legal gender marker (female). For her, it has been a sensation of getting ‘rid of the chains’ because she is no longer ‘trapped’ by her bodily form. Previously, Bente felt compelled to lie about herself and hide her identity; legal recognition freed her from this self-imposed invisibility. However, she has been denied medical intervention by NBTS, and therefore cannot transition fully as wished. In this way, she feels she is still a trans woman instead of a ‘normal’ woman, which makes her see herself as ‘incomplete’. She has felt stuck for years in this in-between state. In order to strengthen her sense of womanhood following legal gender change, Bente relies greatly on legal recognition to compensate for what she herself regards as a lack of physical normalcy. She aligns herself with liberal identity politics, saying that those who do not undergo what she personally sees as a ‘complete’ transition, i.e. having both hormones and bottom/top surgeries, are not truly trans and therefore not capable of becoming real men or women. In this way, she validates her experiences and identity by locating them within a realm of established politics: a realm in which she feels visible and valued.

In Article 3, therefore, I demonstrate how Norway’s LGR is truncated in its ability to fully empower trans people due to the limitations it poses for representing their needs. The truncation becomes evident by Evelyn and Bente’s strategy to renegotiate their post-legal gender change identity along political lines. The LGR appears to reinforce the divide in the trans community and movement by promoting liberal desires and needs over radical. The promotion gives an impression that binary-identifying trans people are being better represented and supported by the LGR, and that non-binary trans people are being further cast aside. However, the comparison of Evelyn and Bente’s experiences compels us to reconsider this simplistic interpretation of the law’s impact and to see that even binary-identifying people can be misrepresented by the LGR. Therefore, it is not so much about binary versus non-binary when it comes to the law’s reach, despite the law’s use of the male/female duality. Rather, it is about social recognition and how one negotiates their identity in the face of misrecognition.

4. Previous Research

The topic of legal gender recognition, specifically in regards to the right to change legal gender, is a relatively new one, given that the emergence of such legislation – or, in some cases, just debates around it – is a recent phenomenon. While there is a fair share of theoretical work available, there is little empirically-driven research concerning legal gender change in the Scandinavian context, and even less still in the Norwegian context. Therefore, the selection of literature from which I drew the fodder for my discussion is limited.

Nonetheless, the literature presented below has guided my project not only by showing what topic had yet to be investigated, but by providing the theoretical and conceptual foundation upon which I was able to develop my own work. These works are inspiring and rich with insight, so I also present them with the hope that they will inspire you, the reader, in your own research.

The following is organised thematically and regionally, beginning with trans law scholarship outside of Scandinavia (specifically, the US and UK), followed by pivotal theoretical writing on the intersection of trans, law and identity, and finally what has been written within the Scandinavian context on trans and law.

4.1 Outside of Scandinavia: The US and the UK

There exists a fair share of scholarly literature on legal gender recognition outside of the Scandinavian context, though most of what I found to be useful for my work was limited to the US and UK contexts. Although scholarship from these contexts is not always helpful with developing an image of trans equality in Norway, it does provide a comparative perspective for demonstrating how legal and social rights do not always line up. Hence, the analytical processes, arguments and reflections applied by these scholars has helped guide my own.

In the United States, Paisley Currah, an American professor of political science, writes primarily on social and legal discrimination against trans people. With Sharon Minter, he critiques anti-discrimination legislation, arguing how it often can legally circumvent trans people altogether by conceptually orienting trans issues outside of the existing civil rights purview (2000). Currah demonstrates how trans is defined by and through civil rights legislation in dehumanising and demoralising ways. Similarly, along with Lisa Jean Moore (2009), he reflects on the legal reform which makes sterilisation a condition for birth

certificate gender change in New York City, in order to investigate how gender ideologies are being discursively reinforced and the sex/gender binary is being kept in place.

Also in the US context, legal scholar Dean Spade investigates current trans politics and various modes of resisting state violence. In his 2015 book, *Normal Life*, he presents a critical analysis of legal reforms targeting trans lives and examines how they reflect and interact with other systems of power. Though Spade is primarily focussed on the US context, his research speaks more generally to the neoliberal innerworkings of law, whereby life chances are administered along normalising pathways. He applies what he calls a ‘critical trans politics’ to demonstrate how ‘legal equality demands are a feature of systemic injustice, not a remedy’ (2015: 19). He argues that trans people are not really benefitting by being included in existing systems; these systems need to be dismantled entirely. Spade also explains how laws which are intended to protect and empower trans people, such as anti-discrimination laws, misunderstand power and therefore are not necessarily helpful. In fact, he argues, they may make things worse, because they are informed by neoliberalist understandings of oppressive power and violence, which are seen as highly individualised rather than systemic. Together Currah’s and Spade’s works have assisted me in understanding the role of (neo)liberalism in constructing a contemporary take on power, rights and identity, and how this has become foundational in trans-rights law reforms.

The UK context provides quite a bit of writing on legal gender recognition, given the nation’s Gender Recognition Act (GRA) of 2004, which allowed legal gender change without sterilisation (but requires a diagnosis and two years living as their personal gender). Each scholar presents a unique perspective on the GRA, all of which discuss its shortcomings in representing and protecting trans people. I will give a brief overview of some of the works I have referred to in my process. Ralph Sandland (2005) explores how the GRA upholds the binary and reinforces gender norms. Stephen Whittle and Lewis Turner (2007) echo Sandland’s and other scholars’ concerns about the binary limitation, but they do offer a bit of positive reflection, noting that ‘as we can now have men with vaginas and women with penises, the act does undermine the binary of two morphologically distinct sexes’ (n.p.). Andrew N. Sharpe (2009) critiques the GRA for promoting a stronger focus on biological sex, trans as mental illness, and the gender binary. Emily Grabham (2010) offers an interesting account of how the element of time is used by the GRA in maintaining trans people’s citizenships as incomplete or subpar. Sally Hines (2010) shows how the GRA strengthens the divide between ‘deserving’ and ‘undeserving’ transsexuals, based on how much they achieve

citizenship norms around hetero- and cis-normativity. Finally, Alex Harris (2012) analyses the GRA through a poststructuralist lens to expose its limitations based on how gender is conceptually employed by the law.

The body of literature on the UK's Gender Recognition Act is helpful in that it offers insight developed over many years as to how a relatively progressive, yet practically restrictive, law on recognition constructs trans subjectivities. The above-mentioned scholars all offer important approaches to examining any law on gender recognition, especially one which discards the sterilisation requirement since this element's presence or absence is perhaps the most marked difference between the various types of gender recognition laws. Nonetheless, some smaller, yet important distinctions make this literature restrictively applicable, such as the GRA's requirements (for example, the medical diagnosis requirement).

4.2 Theoretical takes on law and trans

From a more theoretical perspective on legal gender recognition, Gayle Salamon dedicates a section in her book, *Assuming a Body* (2010), to discuss the power of state-issued identity documents to enact sex as a material category and marker of 'truth'. She attributes an authority to the ID that surpasses one's own self-experience and outward performance of sex. Sex is not, Salamon writes, a 'private property, but rather property *that belongs to the state itself*' (2010: 183; emphasis in original). Trans people, like intersex people, demonstrate the contextuality of sex, and the state attempts to contain this instability through (re)enforced bureaucratising measures. I draw from her work in my discussions on how citizens are created within a particular normativising mould.

Another scholar who offers valuable theoretical writing on trans and gender is Paddy McQueen, who focuses on recognition in his book, *Subjectivity, Gender and the Struggle for Recognition* (2015). I have found the entire book to be useful, but in particular chapters 5 through 6 offer a salient starting point for interrogating what he calls the 'limits and ambivalence' of legal gender recognition (2015: 125). McQueen critiques the conventional models of recognition, showing how they misinterpret power distribution and can thus induce or exacerbate problems of recognition rather than solve them. He focusses on trans claims for power and the legislative obstacles which hinder them, as to examine the socio-cultural and legal parameters for self-actualisation and interrelational recognition. McQueen shows how different recognition needs are based on different life circumstances, but that we are all

ultimately seeking the same thing: a livable life. As can be seen in my dissertation, this is a reasoning I return to again and again when arguing the limits of the LGR.

Jill Marshall gives attention to rights and empowerment, and the role of human rights law in shaping subjectivities, in her book *Human Rights Law and Personal Identity* (2014). Her book does not focus on trans specifically, except at certain moments when trans issues are applied as an example. Nonetheless, her book proves extremely helpful overall in understanding how human rights legislation is oftentimes not *really* about empowering subjugated groups. Marshall explains how human rights principles are based on (neo)liberal understandings of personal identity and empowerment, and therefore their application in underwriting civil rights policies gives an impression of substantiated equality when in fact existing cultural values and ideas – such as the mind/body split, gender binary, gender as eternal and intrinsically situated – are undisturbed. Her critical analyses of how identity, personhood and freedom are employed by law is essential for understanding how laws like Norway's LGR can appear liberatory but serve to undermine its own ostensible objective.

Katrina Roen, a New Zealand-based scholar working on trans politics, youth and psychology, has written one of the articles that has proved most influential in my work: "'Either/or" and "both/neither": Discursive tensions in transgender politics' (2002). Her discussion and analysis were based on research conducted on Aotearoa/New Zealand residents, but her theory is more generally applicable to the (neo)liberal context of the West. Roen presents what she has found to be two primary approaches to trans identity politics, which she calls radical and liberal. She discusses how these two political groups are set up at odds with one another based on the broader politics around trans rights and protection, and she shows how this dynamic contributes to a hierarchy within the trans political movement based on rejecting (radical) or conforming (liberal) to the norms and requirements for accessing institutional support. Most importantly, Roen critiques the (still) common argument that liberal politics are holding back the trans movement and radical politics are the only way forward. She negates this by pointing out that people strategize for their survival, so what works for one may not work for another, based on life circumstances and needs. This is an argument that shifted my approach from early on in my research project, because it made me aware of my own radical-over-liberal hierarchising tendency – a tendency which is common in the trans activist community. Her article also compelled me to consider how these positionalities are far from stable, and that we must think in terms of livability not idealism.

Finally, Andrew N. Sharpe, who was briefly mentioned above, is a legal scholar with a trans focus and is also an activist based in Australia. Sharpe has two notable books which prove useful in understanding Norway's LGR, namely *Transgender jurisprudence* (2002) and *Foucault's monsters and the challenge of law* (2009). In the former, he investigates the historical development of trans and how its construction within society and medicine have informed contemporary legal interpretations of trans. Sharpe examines the dynamic intersection of law and trans politics within the Anglo-Western context, highlighting the role of law in giving meaning to trans bodies, a meaning which is embedded in and reproductive of a 'judicial anxiety' (2009: 5) over their uncategorisable bodily aesthetics. Similarly, in the second book, he uncovers the law's function in relegating certain bodies to the margins, rendering them monstrous (non-human). Sharpe shows that this designation of monstrosity is historically-situated, the legacy of which continues to colour contemporary (de)humanising measures and practices. Both books discuss how legislation around trans bodies and identities can appear progressive but not necessarily be so, as any legislation based on sex tends to serve to regulate sex and gender according to existing ideals. His work has awakened me to a new way of regarding the link between humanness and the law, showing me that my analysis would be incomplete without its due consideration.

4.3 Law, trans and Scandinavia

Here I will begin with Chris Dietz, a British scholar who has written on Denmark's 2014 law reform which, like in Norway, overturned the sterilisation requirement and adopted a self-declaration model. In his article, 'Governing legal embodiment' (2018), Dietz investigates how this seemingly radical model may actually be normativising, which he demonstrates by using embodiment as a launching point. He shows how the mind/body split remains not only intact, but in fact is key to the law reform's development and deployment. Much like I do in my own work, he challenges the potential of Denmark's LGR to enable alternative processes of self-realisation and possibilities for embodied resistance. The complexities of gender experience cannot be captured by the law reform, he argues, particularly as trans-specific health options are so limited. Again, as I argue, he contends that the fallibility of the law lies in the space between the stated intentions of the lawmakers and the experiences of those who are meant to benefit from the law (2018: n.p.).

In Sweden, there are many great scholars in the field of trans studies. There is not a great deal of work specifically on legal gender recognition, as most have focussed on the sterilisation requirement for legal gender change that was in place until 2013 or the difficulties around

accessing desired or necessary health care in Sweden. However, much of this research attends to how medicalised body is formulated and reproduced by the state's legislation. This provides a useful foundation for understanding how Swedish society formulates trans identities and experiences in such a way that upholds the gender traditions the country is known for combatting. In this regard, the two scholars whose work has resonated most with mine are Erika Alm and Signe Bremer Gagnesjö⁴⁹. Alm has written extensively on intersex and trans bodily experiences, such as they are shaped by rhetoric on acceptable bodily forms via biomedicalization (2017, with Linander, Hammarström, & Harryson), and how this rhetoric has materialised through legal and medical regulations and practices over the past half-century (2006, 2018). They analyse the link between medical and juridical discourses in generating knowledge around bodies, closing and opening of bodily experiences and understandings in the development of one's being (2013). Similarly, Signe Bremer Gagnesjö writes on the link between legal recognition and the body's materiality. They examine the potential (or lack thereof) for Swedish psychiatric medicine – which, until the 2014 law on gender recognition, was elemental to the trans-specific healthcare gatekeeping practices – to adjust its understanding of femininity to include bodies that defy medical convention by having a penis (2013). Also in reference to Sweden before the law change, Bremer has written on the construction of trans narratives around the process of the trans-specific healthcare required for legal gender recognition, and what these narratives indicate in terms of how the personhood and the livelihoods are shaped by healthcare experiences and legal (non)recognition (2011).

Within the Norwegian context, there are several scholars who have greatly influenced my research and guided me both contextually and theoretically. First, Luca Dalen Espseth, who finished his masters in gender studies in Oslo in 2017, wrote on trans-gendered discourses in media, law and organisations, and analysed the ways in which such discourses have established systems of meaning around trans that have opened up or closed down life opportunities for trans people in Norway. On a similar note, Katrina Roen, as introduced above, writes in tandem with Rolv Mikkel Blakar and Hilde Eileen Nafstad (2011) on trans discourses within the Norwegian context. In particular, they analyse common politicised discourses around transsexuality and transgenderism, and the divisiveness it fosters along

⁴⁹ Who has also published under the name Signe Bremer.

political identity lines (specifically, the radical vs. liberal politics discussed above). Ultimately, Roen, Blakar and Nafstad show that trans is becoming more visible in Norway, but there continues to be a bodily-fixation in general discourse that points to a general unawareness that trans is infinitely diverse.

Like Chris Dietz, Anniken Sørli and Janneke van der Ros have conducted research quite similar to mine and thus have provided a solid framework for developing my own project. Beginning with Sørli, they are a law scholar based in Oslo who completed their doctoral degree in 2018. Their dissertation research question is, ‘How does the law operationalise the right to gender identity, and how does this fit with transgender persons needs for recognition?’ (2018: 5). They focus on the socio-legal standards on gender in a shaping a trans person’s life. This is done by looking at four life stages: childhood, adolescence, adulthood, and parenthood. Sørli looked at Norway’s LGR, particularly in regards to the first two stages, and also to Norway’s trans-specific healthcare restrictions, particularly concerning the last two stages. Perhaps what is most notable about Sørli’s work is they address an often-overlooked gap in trans literature – trans and gender-nonconforming identities and experiences in childhood.

Finally, Janneke van der Ros also has been pivotal in developing scholarship on trans in Norway. An associate professor in Lillehammer, she has written extensively on trans rights in the specific context of Norway, focussing on the illusion of gender equality and the impact that Norway’s own socio-political environment has had on the interpretation of gender and citizenship. She gives due attention to Norwegian welfare-based values and how they inform equality and personhood, noting that the lack of trans empowerment points to the state’s failure to live up to its own standards, particularly regarding the previous sterilisation requirement (2014; 2017). With Surya Monro (2018), van der Ros demonstrates the insufficient citizenships offered to transsexual and transgender people in Norway due to the perpetuation of the gender binary in trans specific policy.

Janneke van der Ros, Anniken Sørli and Luca Dalen Espseth all discuss Norway’s 2016 law on gender recognition to varying depths, and their work has provided valuable background into some of the elements that have proven key to my own work. Namely, I have been drawn to examine the intersection of trans-specific healthcare and legal recognition, the relationship between social and legal recognition, Norway’s political discourses on equality, the socio-political shift from welfare to (neo)liberal, and the developmental linkages between women’s

and sexual minorities' rights. In this way, our works are intimately related, so there are inevitably some overlaps in content and argument.

There are, however, a few paths I have traversed which distinguish my research from the rest. I give a particularly critical account of recognition, one which has allowed for an alternate reading of the law on gender recognition to that which I have encountered both within Scandinavia and elsewhere⁵⁰. I also problematise the concepts of equality, identity and gender in how they applied by the LGR compared to how they are experienced by trans people – and, by extension, all people – in Norway. I examine the governmentality at work in the LGR which serves to not only uphold the gender binary (as argued by others), but to reinforce the hierarchy within the trans community by giving an impression of preference for some trans bodies over others. Finally, I feel my work distinguishes itself in that, by theoretically developing the idea and grounding it through interview analyses, I attend to the paradox of trans equality in Norway and relate this to the broader issue of perpetuated gender norms in what is generally regarded as a highly gender egalitarian context, as explored and demonstrated through the term I have developed, 'the (cis)gender imaginary'.

⁵⁰ I, of course, may be unaware of existing similar arguments regarding laws on gender recognition as those presented in my cross-cut analysis, in which case I apologise! However, I take a chance in stating this because I feel that the context of my arguments is likely specific enough to render them unique, despite any theoretical similarities that may very well be found.

5. Methodological Considerations

When I set out to address the central research question of ‘what is the transformative potential of Norway’s 2016 law on gender recognition for those who change legal gender?’, I sought to unearth and question the norms which have been used to paint the landscape of trans equality in Norway. I wanted to understand how and why – in the Norwegian state’s response to local and international calls for better treatment for trans people – the law was devised. I wondered, furthermore, how this conceptualisation of what it means to be equal, empowered, recognised, and gendered has impacted upon those whom the law was (ostensibly) developed to protect. To investigate these queries, I decided to examine the law itself, as well as to speak with people who had taken advantage of it. In this section, I offer a discussion on the methodological approach I have employed and the theoretical framework which informs it, followed by an overview of the project’s methods of data collection and analysis.

In the following subsection, I begin by describing a feminist ethical approach, then discuss how I have applied it to my own work. Afterwards, I present the purpose and theory behind my approach to data collection and analysis.

5.1 Ethics, positionality and reflexivity

Over the course of my doctoral project, I have been exploring what it means to be an ethical feminist scholar and working to develop what I feel is a more ethical approach to research. The project has provided me with a great many opportunities to confer with others in academia and a wide variety of texts by feminist scholars, which have challenged me to reconsider my role in knowledge production and dissemination. This process has proven highly valuable for me as a person and scholar, as I have striven to continually recognise the unique opportunity I have to contribute to the burgeoning collection of trans-specific research and the responsibility that comes with that. The following presents an overview of the methodological foundation I have laid for the development of my work.

Feminist and queer studies, and in particular trans studies, have been flourishing with an ever-increasing focus on ethical standards of representation. Nonetheless, I feel what counts as ethical is too seldom considered with sufficient judiciousness, and such oversight can contribute to the lopsided power dynamics of the researcher/subject dyad. Though it often is arguably inadvertent, the researcher’s ‘re’-presentation of the subject can serve to further disempower the subject (Gorman-Murray, Johnston & Waitt, 2016: 98). As is generally the

case, personal interpretations, fuelled by personal experiences, lead to particular conclusions. However, the ‘personal’ is, of course, always political, and feminist research carries with it no exception. When it comes to scientifically-approved research, the one who conducts and publishes is likely privileged – via symbolic capital, for example – and therefore susceptible to making unconscious conclusions within a privilege-based framework. One who has socio-economic clout is more likely to produce and publish work along pre-defined avenues of institutional visibility.

In this way, ‘knowledge’ is born – socio-culturally-driven interpretations of the world are repeatedly produced until they become commonplace and seemingly unquestionable. Acceptable versions of reality disproportionately reflect the perspectives of those with the most cultural capital, rendering alternative versions of reality as ‘Other’. Without even meaning to, a researcher, even a feminist/queer one, who neglects to maintain a critically reflexive approach about their role in the research production, contributes to the same system of normativisation that they set out to disrupt (Browne, 2006).

In response to this tendency, the conceptual practice of reflexivity has been growing steadily for many decades as largely a product of feminist and queer studies. My own investigation into this practice takes me back to the late 1980s, with the work of Sandra Harding (1989) and Donna Haraway (1988). Harding and Haraway’s approaches stem from an eloquently argued response to the fixation of (social) science on the inherently knowable. They call for a feminist perspective as to foster a critical take on so-called objectivity in scientific research, thus deactivating universalising claims to truth (to be expanded upon below). Reflexivity, in their application, is employed through a continual self-awareness, a sense of accountability to the knowledge produced. The feminist researcher should, without exception, strive to uncover and counter the power relations at play in the research process. The questions should always be: How is the derived ‘knowledge’ situated along a historical trajectory of privilege and visibility, and how can its distortive consequences be avoided? What can be posited as ‘truth’ and ‘data’, if – as feminist thinking contends – the subjects we study are tenuous and perpetually becoming (Browne & Nash, 2010: 1)?

Furthermore, Jane Elliott (2005: 154-155) has written about how reflexivity requires one to be ‘explicit about the operation of power in the process of researching and representing people’, as a means of avoiding a ‘crisis of representation’. Elliott (ibid: 155) goes on to explain that ‘reflexive awareness’ is done through an honest, thoughtful and analytic account of how the researcher’s own biography has impacted upon the collection and analysis of data. Another

way to define reflexivity is as ‘a strategy for situating knowledges... , a means of avoiding the false neutrality and universality of so much academic knowledge’ (Rose, 1997: 306). This presumed neutrality, I believe, is what can seriously undermine the positive impact of our work, as it operates as an underground conduit for privileged perspectives to flow onward without notice. It is a difficult task to counter this neutrality without also countering our ultimate goal of sharing what we see as pivotal knowledge. Donna Haraway describes this hurdle which we feminist researchers face as a ‘necessary multiple desire’ – we strive to account for our privilege whilst making a claim to truth (1988: 579).

Reflexivity is an encapsulating process, I have found, and an endless one at that. I have never stopped, nor do I ever expect to stop, looking back on and critiquing the claims I have made – some reflections on which I will expand upon next. After all, as Kim V.L. England (1994: 82) writes, research requires a ‘self-critical sympathetic introspection and the self-conscious analytical scrutiny of the self as researcher’. The reflexive approach is not only about how one thinks about their own work, however; it extends into considering how one’s work will be received, and possibly codified, by the scientific community (Moss, 1995: 445). Will it contribute to destabilising harmful notions about the research issue/group? Or will it reinforce them? These are questions I have carried with me throughout my project, as I find myself wondering what exactly I can or should produce for the larger trans and feminist studies community. I am compelled to ask myself again and again, What sort of voices I will be strengthening or diminishing? What direction am I helping current and future research move in? What subjects and issues am I claiming to be worthy of attention, and in what ways? What sort of ideas am I helping to produce about what it means to be trans?

5.1.1 Positionality

With this in mind, I have been inspired to consider my own positionality as a researcher on trans issues within the Norwegian context. I am a trans man in his mid-30s, and I ‘pass’ as a man and appear cisgendered almost all the time, though my typically-female anatomy precludes or complicates participation in certain spaces. I use the term ‘queer’ (or sometimes ‘gay’) to identify myself sexuality-wise, and I am partnered with another person who identifies and ‘passes’ as a man. I am white, middle-class, well-educated and able-bodied⁵¹.

⁵¹ With the exception of an invisible disability – namely, auditory processing disorder, which impacts my ability to distinguish between sounds and to absorb and retain oral information.

English is my native tongue, and though I can read and write Norwegian well, I struggle to understand it when it is spoken, or to speak it well myself. I grew up in the southern United States but do not identify actively as American, though I recognise and appreciate how my southern-American upbringing really influences my view of the world.

As is evident, I am greatly privileged in many ways. Moreover, I have not experienced much discrimination on the basis of being trans or queer, especially not in Norway⁵². Thanks in large part to my privileges of race, nationality, able-bodied-ness, apparent gender-normativity (my 'passing'), the fact that I have transitioned to masculine rather than to feminine⁵³, and many other things I am likely not even aware of, my trans-ness has not hindered access to a life of quality for me as much as it undoubtedly has for many others. For example, at this moment of writing I am still registered as legally female in Norway, and while this has raised the occasional curious question at the pharmacy or in immigration situations (such as applying for a new residency permit), it cannot be denied that my personal history protects me from the extensive prejudice and obstacles experienced by so many others, including some of those whom I interviewed for this project.

However, simply stating one's identity markers is not enough for reflexivity; only by investigating their significance in one's research can detrimental effects be allayed (Gill, 1998: 32, cited in Elliott, 2005: 158). This is pertinent to all steps in the research project but perhaps particularly so when it comes to my analysis of the data. For example, when seeking to understand how we as researchers are crafting the narratives (and lives) from interview data, we must first maintain awareness of the angle from which we approach this data. Mauthner and Doucet offer a voice-centred relational method which calls for a 'reader-response' (1998: 126). 'Reader-response' means that the researcher reads the interview transcript with the intention of assessing one's own response to it. Elliott (2005: 158) recommends this step be taken first, since, as Mauthner and Doucet propose (1998: 127), it helps highlight the boundary between the participant's own narrative and that of the researcher. Similarly, Hollway and Jefferson write that the researcher, in the initial stages of analysis, should ask themselves: What do I notice and why do I notice that? (2000: 55). What

⁵² I have experienced a great deal of discrimination from my family, however, which is in its own way as detrimental if not more so than experiencing it from social and legal institutions. Nonetheless, I do not feel it necessary to reflect on that here.

⁵³ Trans women and feminine-identifying trans people are, at least in the Western context, nearly always faced with greater discrimination than trans men and masculine-identifying trans people (Stryker & Bettcher, 2016).

stands out and embeds itself into the mind from the start speaks volumes to the researcher's perspective, pointing to possible emotional obstacles to analysing with sufficient self-awareness. This is the pivotal moment for engaging reflexivity.

In our work as researchers, we weigh and sift experiences, make choices regarding what is significant, what is trivial, what to include, and what to exclude. We do not simply chronicle 'what happened next', but place the 'next' in meaningful context. By doing so we craft narratives, and we write lives. (Richardson, 1990: 10-11)

As much as possible, these narratives need to reflect the complexities of the participant's experiences. The participant is a 'multiple subject', who has an assemblage of positions with varying power (Madge, 1993: 296). One must be careful, in Richardson's (1990: 25-26) terms, to not cast the interview participants into a 'collective story' by implying the trans person's inevitable submission to conformative pressure. This collective story is one which I became aware of early on, one which seems to pervade research on trans lives and experiences. It is not moreover always a matter of casting *all* trans people as downfallen, but at times regarding some trans experiences, situations or lives as better off, or conversely worse off, than others. These assumptions are based on personal interpretations of what the gendered landscape looks like – assumptions which are, as it is inevitably so, informed by personal experiences within a particular framework of interpretation.

5.1.2 Reflecting on my reflexivity

While my engagement in ethical feminist research has been constant throughout my research project, my understanding of what it means to practice an ethical approach has been enhanced significantly over the three years of my project. Looking back now, I can see that when I decided to begin conducting my research, I did not adequately consider the impact of my particular background on how I would conduct and interpret the interview data. It was not until I was amidst the first round of interview analysis that I began to recognise the impact of this short-sightedness, as will be expanded upon below. It is a bit embarrassing now to realise how uncritical I was and how much I was participating in the exact normativity I was intending to challenge. However, I am of course relieved to have become aware of this bias, and to have done so with enough time to work to overcome it to, I believe, a considerable degree. With that said, I do not claim to be an expert on reflexivity, or even necessarily fantastic at it, though I do feel that over these years I have managed to become adept at it. Part of developing an ethical approach for me has been recognising my own convictions and detecting how they may have seeped into my analyses. This is, it goes without saying, an

ongoing endeavour. Like many things that require an awareness of self, it is an endless process that requires looking inward and outward at the same time.

A salient example of this evolving reflexivity is that, in the beginning of my project, it started to dawn on me how much my confidence about my research had rested on the fact that I shared a similar minority status with the intended subjects⁵⁴. I was a trans researcher interviewing trans people on trans issues to make conclusions about trans lives as they were shaped by trans rights. And this, along with my long and heavy involvement in trans-related activism, led me to believe that I would be somehow endowed with a particular intuition or perspective that would enrich the interviews and analysis in a unique way when compared to cisgender people. I assumed that I could maybe even tap into a special knowledge base of experience, shared only by us trans folk, to fill data gaps and draw logical assumptions. I expected it must be an advantage for my work that I too have experienced being misgendered throughout life. It meant that I could offer a degree of empathy, insight and elaboration not available to those outside our little circle. Of course, there were differences between us as trans individuals, but as a relatively clever guy, surely it's easy enough to aptly represent the diversity of my subjects. No problem.

However, I figured wrong.

It is not to say that whatever degree of shared experience I have has offered no guidance in my data collection and analysis, because it undoubtedly has done so. I believe I embody a degree of sensitivity unique to those of us who have enduringly and painfully failed to live up to the gender norms constantly thrust upon us. In other words, it's not just a matter of cognitive awareness of what being trans means or could mean that has streamlined my research; it is also a matter of emotional awareness, which has, I would argue, worked as a sort of sixth sense when it came to deciding what leads to pursue.

Nonetheless, I began to see that I was sometimes cornering myself and my work by relying too much on an imagined commonality. I was committing what Gorman-Murray, Johnston and Waitt (2016: 100) term 'credibility fallacy', an assumption that a shared minority status can only serve to strengthen the research process. I was neglecting to consider how such

⁵⁴ I attribute some of this short-sightedness to the fact that I had not studied gender studies before beginning my PhD; most of my involvement with gender-related studies was as an activist and artist, and for me this offered a rather different approach to tackling trans issues. I learned a lot of lessons about bias very quickly once I started my doctoral research!

intimate knowledge about being trans might in fact hinder the process, since my own experience was after all just that: mine and only mine. While I was of course aware of this on a cognitive level, undertaking a reflective approach as described above allowed me to see that I had inadvertently been forgoing sufficient objectivity. Such a lack of critical reflection was rendering my approach and interpretations susceptible to a bias towards my own personal/political agenda or assumptions, thereby undoing any afforded benefits. Ultimately, in other words, I could end up further oppressing those whom I sought to represent – an ironic twist in a project with empowerment as the bottom line.

Moreover, on this note, I had to actively become aware of my political standpoint as a trans person, activist, and academic. When it concerns my own life choices, I have long been more ideologically aligned with the radical side – while admittedly somewhat liberalist in practice. I believe in the constructedness of gender and the inexorable damage gender norms inflict. I held this conviction so strongly that, when I began the project, my goal was to show how the law on gender recognition was still failing ‘us’ (the perceived trans collective). I thought the research project could be my magnum opus – a nerd’s ‘bash back’ at the cis- and hetero-normative system. Needless to say, I do not have the same mindset anymore. It has become much more nuanced and balanced, and for that I am glad. The means by which I have shifted my mindset is presented next.

5.2 Developing an approach

In collecting, analysing and discussing my research material, I have sought a methodological approach which contributes to growing efforts to destigmatise and legitimise gender/sex non-normativity. Such an approach needs to be able to both recognise and celebrate the messiness inherent to identity construction. Being trans is particularly messy – it is an embodiment in flux, a shifting experience, a way of living, surviving and being, a call to something beyond the anticipated, a rupture in social acceptability, an enduring failure to be quantifiable. Though beautiful and powerful in many ways, its embodiment is currently, and perhaps inescapably, confined to the margins of what it means to be socio-culturally regarded as human. Moreover, attempts to capture moments of self-determination are often obscured by overarching cultural narratives on what it means to be empowered. Any approach, therefore, comes with an implicit caveat that compels one to consider both the precarity of the subject’s life as well as their own power to shape it.

The following subsection outlines the methodological approach I have developed and applied during the research process, which encompasses feminist takes on knowledge production and research, in tandem with transfeminist understandings of identity, embodiment and experience.

As a side note, I feel it is worth mentioning that while I present the theoretical tools I have adopted in developing a transfeminist approach, the theory of this section is distinct from that of the Theoretical Framework section later on, wherein I elaborate on and develop upon the theoretical concepts I have used in my articles to show how I have drawn certain conclusions. As will become clear, in this section, I am presenting the means by which I have cultivated my approach to conducting the research for my project. I explore research philosophies by other scholars and activists in order to demonstrate how I have been inspired to take on my project in a respectful, engaging and meaningful way. While there is inevitably some overlap topic-wise – for example, both sections explore feminist and queer scholarship – the discussions serve distinctive purposes.

5.2.1 Feminist approach to knowledge production and research

In recent decades, there has been an increasing interest in academic research to examine the processes and devices by which knowledge is generated and disseminated. This academic turn owes its emergence to postmodern feminist scholars who directed sociological attention to the pitfalls of presumed objectivity (see Haraway, 1988). Particularly in the early stages, appeals were made by scholars fed up with patriarchal claims to ‘truth’ remaining unchallenged:

In an analytic article or in the prose of a research report, evocative phrases are censored, as is the author’s voice, the pronouns of the life-world are replaced by *the*, and the values and experiences are denied. For these procedures the rationale is science. The aim is objectivity. But objectivity is often a masculine elan that permits celebrating the disregard of the subject matter while projecting the subjectivity of men who rule. I speak here not against science but against the ruling science of positivism... Creating a discourse for the subject’s experience involves finding new ways of both writing and speaking. (Paget, 1990: 148; emphasis in original)

Feminist scholarship has sought to redress the positivist inclinations of conventional modes of social science research by introducing compelling arguments for more ‘methodological mindfulness’ (Sprague, 2016: 30). Such mindfulness centres on the ability to step outside the proverbial box of traditional social science by giving ample attention to how knowledge is produced and the implications it carries. This is a response to what is called upon by the ‘feminist methodologies of ignorance’ that are ‘born out of the realization that we cannot fully understand the complex practices of knowledge production and the variety of features that

account for why something is known, without also understanding the practices that account for *not* knowing' (Tuana & Sullivan, 2006: vii; emphasis in original).

Such an approach challenges what John Law calls the Euro-American assumptions of 'inhereness' and 'out-thereness', a 'method assemblage [which] enacts – or seeks to enact, or understands itself as constituted in – a reality that is independent, prior, singular and definite' (2004: 131). To this effect, Law warns against adopting what is too often misguidedly regarded as a 'healthy research life' when conducting research, a practice of upholding traditional scientific approaches and interpretations as the sole valid means of acquiring information (2004: 9). In particular, he contends, we as researchers must come to recognise the role of our methods in co-constructing reality. The result of research is neither fact nor fiction, but rather a narrative with the appearance of truth. This is because the researcher is motivated by specific perspectives, infused by subjugated and critical knowledges (Rose, 1997: 308). The notion of the objective, external researcher and the disconnected subject of study is always counterproductive, perhaps especially so when investigating queer- and trans-related issues (Gorman-Murray, Johnston & Waitt, 2016).

Said another way, data is not collected 'in a social vacuum', as Robyn Dowling points out (2000: 25). It is a joint project (see Mishler, 1986) between the researcher and the subject, guided by a multitude of largely-obscure variables. Feminist research has both the capacity and responsibility to 'dismantle the smokescreen surrounding the canons of neopositivist research – impartiality and objectivist neutrality – which supposedly prevent the researcher from contaminating the data' (England, 1994: 81). Simply put, it all boils down to this: to research gender is to *do* gender (McDowell, 1992). Feminist approaches position the subject of study at the centre of inquiry with a view to confront knowledges which seems to include the subject but really acts to exclude it (Hesse-Biber, 2014: 4). To do this is to become both the insider and the outsider, to defy convention and straddle the researcher/researched line (Minh-ha, 1991: 218). Accordingly, it is not enough to present one's methods and methodologies in describing how one arrived at certain conclusions; one must also carefully unfold the myriad processes involved. Doing so opens a space to readers for multiple interpretations, as it humbly rejects the presumed certainty of the researcher's findings. As Sprague (2016) reminds us, a feminist approach calls for actively shifting from sociological conventions of positivist epistemology towards a critical, transparent, reflective and ultimately empowering approach. Gillian Rose (1997: 319) builds on this:

We cannot know everything, nor can we survey power as if we can fully understand, control or redistribute it. What we may be able to do is something rather more modest but, perhaps, rather more radical: to inscribe into our research practices some absences and fallibilities while recognizing that the significance of this does not rest entirely in our own hands.

Entwined in this approach is the desire to avoid committing epistemic injustice (Aultman, 2018). This requires maintaining an awareness of my positionality and the way it colours my research, whilst leaving open a space for ‘ordinary’ everyday experiences to be understood as knowledge in and of themselves – a feat made possible through an affective intelligence (Aultman, 2018: 23). What I mean by this is that, as the researcher, I must be careful not to misconstrue moments of enacted agency as meaningless reflexes to external pressures. The phenomenon of gender infiltrates so much of our lives that it is not always immediately obvious how we are negotiating its barriers or responding to its demands. It would accordingly follow that I must not blindly regard all acts which seem to be negotiations as conscious strategies of resistance. Therefore, I have worked on how to best interpret the stories shared by interview participants and understand how legal recognition has contributed to these stories, as described below.

5.2.2 Lens of interpretation

Unearthing how trans subjectivities are formed necessitates a deconstructive analytical approach. For this, I have leaned on a postmodern interpretation of power, enacted through a queer theoretical lens. Power, in this way, is constitutive, fluid and ever-shifting (see Foucault, 1978). Such is the foundation for queer theory, which challenges the normative social orderings of subjectivities and identities by exposing the power relations which produce them (Browne & Nash, 2010: 5). This rendering reveals the inherent instability of identity and brings to the fore the contextuality that guides the individual’s subjective shaping. Gender, in this light, is understood as a governing tool that excludes or includes different bodies, experiences and identities. Queer theory proves quite useful in examining social regulation and the production of subjectivity, as it marks the historicity of cultural norms, thereby evoking critical questions about common-sense ideas. Through this power-oriented lens, the parameters of liveability can be traced and contested.

However, I must be careful with this lens, as its employment can put my research at risk of being swallowed up by deconstructivist relativism. It is important to find a balance between the constructedness of identity and the materiality of its implications for liveability. To discount the materiality of social structures negates the possibility for reorganising these structures in restitutive ways (Holmwood, 2000). It is a privilege, I have learnt, to be able to

theorise over a cup of coffee about the instability and intrinsic falseness of identity markers and social groups (Waugh 1992), as there are so many others struggling endlessly through everyday encounters with identity- and group-based discrimination. Joey Sprague (2016: 42) offers the salient example of the gender binary to clarify this point of theory-reality tension, saying that while the essentialist dichotomy of gender (and sex) is a rich source of passionate scholarly debate, it should not deflect ground-level efforts to continue addressing the lived realities of women and trans people who must contend with the tenable consequences of gender-binary norms. Gayatri Spivak reiterates this point: '[I]t is absolutely on target to take a stand against the discourses of essentialism, ...[but] strategically we cannot' (1984/5: 184, cited in Fraser, M. 2012: 5).

This concern reflects the broader debate on poststructuralism⁵⁵ and its use as a framework for analysing social inequality, such as that which is gender-based. At the centre of the debate is the argument that it is counterproductive to take a constructivist stance when considering social issues, because social issues such as inequality and erasure are themselves undeniably experienced and thus *real*. Poststructuralism is sequestered to the theory realm; efforts to translate its principles into practice could result in a blindly ironic reproduction of existing power dynamics. It is therefore unhelpful to speak of fluidity, constructedness and related poststructuralist conceptualisations without careful consideration of the material impacts current socio-cultural understandings have on people, especially those most currently vulnerable. J. Jack Halberstam (quoted in Nataf, 1996: 57) writes:

The end of identity in this gender fiction does not mean a limitless and boundless shifting of positions and forms... It further hints at the inevitable exclusivity of any claim to identity and refuses the respectability of being named, identified, known.

Hines (2007: 83) seconds this perspective, whose own research on trans narratives and modes of identity construction have indicated a 'tension between the conceptualisation of identity as fluid and the subjective investment in identity'.

For this reason, there has been pushback within feminist scholarship against queer methods and methodologies (see Brim & Ghaziani, 2016). 'Queer' is seen as antithetical to 'research' given its anti-foundationalism (McCann, 2016). Tey Meadow (2016: 319) cites Browne and Nash's interpretation of queer as 'fluid, unstable and perpetually becoming' (2010: 1) to argue

⁵⁵ Also, scholars like S. Benhabib (1995) and P. Waugh (1992) see postmodernism as not fully free of 'patriarchal metanarratives', but E. Grosz (1995) and A.A. Jardine (1985) argue that the best way to dismantle patriarchal systems of thought is for feminist scholars to immerse themselves in it and find strategies for moving beyond it (see M. Fraser 2012: 5).

that such an interpretation makes the endeavour of ‘fashion[ing] a concrete methodology or indeed anything resembling a coherent subject’ seem impossible. And, indeed, many a scholar have resisted queer approaches on these grounds, arguing that a subject must be established if there is to be any meaningful work done in response to subjugation. Seidman summarises this point nicely (1993: 133):

This very refusal to anchor experience in identifications ends up, ironically, denying differences by either submerging them in an undifferentiated oppositional mass or by blocking the development of individual and social differences through the disciplining compulsory imperative to remain undifferentiated.

I indeed agree that, if left unchecked, a queer approach to research could operate to invisibilise or misrepresent those whom it purports to understand better. In an interview with Sarah Ahmed, Judith Butler (2016: 490) acknowledges the growing criticism by some trans people around the application of the term ‘queer’ when describing the struggles they face, since it can operate as a tool of exclusion:

If ‘queer’ means that we are generally people whose gender and sexuality is ‘unfixed’ then what room is there in a queer movement for those who understand themselves as requiring – and wanting – a clear gender category within a binary frame? Or what room is there for people who require a gender designation that is more or less unequivocal in order to function well and to be relieved of certain forms of social ostracism?

The experiences of being gendered – as becomes repeatedly demonstrated in my (and countless others’) research analyses and discussions – shape one’s life in undeniably real ways. It is therefore not helpful to denounce gender categories as meaningless constructions, not only because it diminishes people’s experiences of themselves, but because it also demeans those who adhere to gender categories (see Rubin, 2003). The discussion does not have to be – or, rather, *should* not be – reduced to ‘either-or’. To wit, it is not simply a matter of those who manage to escape gender’s grip and those who succumb to it, just as it is not a matter of those who fail gender norms and those who successfully uphold them. There needs to be a space for understanding the complexity inherent to trans experiences without invoking a hierarchy of authority.

This is a lesson that I have learnt over the course of my doctoral project. As discussed previously, I personally identify and practice along the more radical lines of trans politics, as I interpret trans equality to be ultimately achievable through complete deconstruction of gender. In the beginning of my project, this coloured my process of data analysis by encouraging me to distinguish between those who adhere to the binary and those who do not as those who are still trapped and those who have escaped, respectively. My doctoral research, as I have been describing above, has opened me to another understanding, one

which negates this hierarchising tendency and rather regards these different positionalities and desires – from the radical to the liberal – to be all equally legitimate modes of identity negotiation and survival.

5.2.3 Trans as a deconstructive tool

A central issue that Marie-Louise Holm describes in their dissertation, *Fleshing Out the Self* (2017), is that the subject of trans becomes a tool for exposing the instability of cisnormativity. While they agree that trans can prove fruitful in this effort, they explain that trans people become a sort of show pony for some feminist or queer research, as arguments on the constructedness of gender returns time and again to the case of trans (see also Namaste, 2009, 2000; and Raun, 2014). Meanwhile, cisnormative bodies and experiences remain relatively untouched. This is problematic not only because it ignores the constructedness of (cis)genderism, but also because it situates trans in the realm of subversion, thereby devaluing those who seek to embody more socially normative gender identities (see Katri, 2017). The onus is put, in other words, on trans people to continually negate cisnormativity by engaging in consciously subversive acts; failure to fail gender becomes stigmatised (see MacDonald, 1998; Hines, 2010). One's endeavour to simply claim liveability can be easily considered secondary from an uncritically queer or feminist perspective. Ensuing analysis and discussion on trans narratives, such as those collected in interviews, would in this way focus on whether or not the subject's identity and experiences challenged gender norms. In doing this, the researcher appropriates the story being told and discounts social-psychological experiences by relaying it within a framework of prevailing cultural beliefs around gender (Rubin, 2003: 163). Such a rendering 'results in an instrumentalised and truncated reading of trans. This forecloses a more complex and diverse understanding of trans and fails to include a critical reflection about who gets to speak for trans identity' (Raun, 2014: 15). On the same token, in moments where one is seen to perform gender according to hegemonic norms, the act may be uncritically interpreted as acquiescence to conformative pressure. The dichotomisation of conscious subversion versus unconscious conformity reifies cisnormativity as the default status.

In response to this, trans scholars have increasingly as of late called for a shift in focus from the macrolevel to the micro (Holm, 2017: 118), leading to a growing schism between queer and trans methodologies. Such a move reflects the emergent framework on trans ethical research, which emphasises, among other things, careful consideration of who is speaking and for whom. Tobias Raun, a trans and media scholar, argues that trans-specific research should

be a dialogical process that allows the story to breathe, instead of an endeavour to draw finalising conclusions (2014; see also Frank, 2010). No researcher has the whole story, Raun explains (2014: 19); therefore, the researcher must not only leave room for alternative interpretations but also keep the experiences of the subject at the centre. To do ethical trans research and analysis is to give significant weight to the ‘embodied experience of the speaking subject’ (Stryker, 2006: 12). This becomes a difficult task in moments when, for example, the subject describes experiences which are contrary to how we ourselves (as researchers) understand the phenomenon (Rubin, 2003).

In the next subsection, I discuss how trans studies and feminist studies can work together, via transfeminism, to produce a valuable approach.

Trans Studies, Gender Studies, & Transfeminism

Trans studies took shape in the 1990s as a response to the perceived shortcoming of gender studies⁵⁶ to adequately represent trans issues. Though gender studies at this time was an innovative field which sought to challenge applications of gender in all disciplines (Pulkkinen, 2015; van der Sanden, 2006; Hesse-Biber, 2004), it proved divisive on the matter of transgender due to what has been perceived as a low trans-literacy rate amongst many gender studies scholars (Enke, 2012: 2). Advocates for a separate approach argued that gender studies was too often contributing to the uncritically pathological and reductive information distributed on trans and gender-nonconforming people. Eventually, there was enough pressure by factions employing anti-trans techniques for some scholars to break away from the field and create a more specialised one – hence the birth of trans studies (Stryker & Currah, 2014). It expanded the scope from a traditional focus on women and sexuality to the extensive diversity of gender identity, expression and experience. As Susan Stryker, one of the renowned founders of trans studies, wrote in 2004, ‘[T]ransgender studies is following its own trajectory and has the potential to address emerging problems in the critical study of gender and sexuality, identity, embodiment, and desire in ways that gay, lesbian, and queer studies have not always successfully managed’ (214).

In the broader sense of academic research, trans studies shifts trans people to the position of the subject of knowledge, not just the object. Such an approach lies in stark opposition to the traditional medico-juridical approach in which gender-nonconformity is examined through a

⁵⁶ Also referred to as LGBT studies, feminist studies, gay and lesbian studies, and women’s studies.

positivist lens of deviance, informed by pathologising and criminalising notions of citizenship, embodiment and personhood. The task of trans studies, as Stryker and Currah (2014: 5) write, is to understand

historical significant shifts in attitude...and the new forms of sociality that have emerged from them. It seeks as well to reevaluate prior understandings of gender, sex, sexuality, embodiment, and identity, in light of recent transgender phenomena, from critical perspectives informed by and in dialogue with transgender practices and knowledge formations.

Through this approach, modes of knowledge production are scrutinised and reshaped by putting forth methodological queries that demand, namely, transparency and reflexivity. Gender, as a tool for drawing definitive conclusions in research, is gutted and unravelled, and the assumptions which its reductive use has led to are brought to the fore. This allows for a collaborative analysis of the ‘textual violence’ (Stone, 1994: 295) that has fuelled contemporary (mis)understandings of trans.

Given the topic of my research, it is logical to assume that much of the scholarship and methodology I employ is borrowed from the field of trans studies, and it is of course true that this field has guided my research immensely. Namely, I have sought to strike a balance between personal experiences and institutionalised power dynamics by underlining both agency and subjugation when considering how trans subjectivities are created. This means balancing a focus on everyday life experiences, modes of embodiment, and negotiations of identity, with a focus on the disciplining of bodies and the regulation of identity categories. In other words, I give due consideration to the multiple dynamics in play in the process of intersubjectivity.

However, while trans studies theoretically fosters an emphasised focus on trans experiences, identities and embodiments, in practice there tends to be an inordinate amount of attention paid to the most transgressive modes of gendering (Enke, 2012: 5). In practice, it means using the concept of ‘transgender’ to refer primarily or exclusively to those who *trans* (cross) from one side of the gender/sex binary to the other. While these more obvious examples of transgender are important to examine, placing so much emphasis on them can be ultimately restrictive. A. Finn Enke (2012: 5-6, emphases in original) explains:

[L]imiting the definition of transgender this way may perpetuate the marginalization of trans by reinforcing the misconception that ‘trans’ describes a very small number of visible people who (by definition) are not everywhere. It may constrict itself by requiring certain conformities of people who would take up the name. And, most dangerously, restricting trans to its MTF and FTM manifestations may inhibit alliances by signalling investments in the *relative* normativities and privileges accorded to ‘less’ gender-transgressive phenomena (e.g., being a feminist, being a lesbian, being a masculine

woman); such investments avoid and sometimes actively refuse the possibility that trans issues *are* feminist issues and are *within*, not beyond, the scope of feminism.

For this reason, I have sought to shape my perspective to one which understands all people as being gendered⁵⁷ via cisnormativity⁵⁸, with differences being based on the ways in which the gendering is enacted and/or experienced, and the implications it has for the individual's sense of self. It is best done by combining the trans studies' focus on non-normatively gendered experiences and the role of social structures in shaping subjectivities with feminist groundwork on multiple differences of embodied personhood and the intersectionality of compounding oppressions (Stryker & Bettcher, 2016: 8). Together, the result is transfeminism, which, in its epistemological form, works to highlight the material effects of trans subjugation by examining the different factors which interact with (trans)gender. Transfeminism is the 'intersection of feminism and trans activism' and calls for 'an expansion and deepening of intersectional feminism through a critique of the gender essentialism and unacknowledged transphobia within mainstream feminist discourses on sex' (Garriga-López, 2019: 1619-21). The purpose is to advance social efforts towards equality and empowerment. It challenges feminist scholarship to forgo tendencies to congeal gender categories in such a way that invisibilises certain axes of oppression⁵⁹ as well as trans scholarship to expand the concept of trans to proactively include all transgressions of gender norms. Therefore, feminism and trans researchers can find a common ground for establishing a coalition, which, as J. Jack Halberstam (2005) points out, is ultimately beneficial for everyone.

Transfeminism takes as its starting point the feminist underpinnings of gender as being made through 'complex social and technical manipulations that naturalize some while abjecting others' (Enke, 2012: 1). Gender intersects with other social factors (such as class, race and nationality), and shapes how bodies, identities and experiences are given meaning. Feminist and trans scholars agree – gender can be 'trouble':

Gender may trouble every imaginable social relation and fuel every imaginable social hierarchy; it may also threaten to undo itself and us with it, even as gender scholars simultaneously practice, undo, and reinvest in gender. (Enke, 2012: 1)

⁵⁷ Refer to Gayle Salamon's riveting book, *Assuming a Body: Transgender and the Rhetorics of Materiality* (2011), for an in-depth discussion on how all people experience a disjuncture between how one experiences their own gender and how one feels they are perceivable. Reconciling this difference is a challenge faced by every person, no matter how they identify.

⁵⁸ Refer to the Context section for an elaboration on cisnormativity.

⁵⁹ For example, the (typically inadvertent) exclusion of trans women, especially trans women of colour, from discussion.

Where transfeminism breaks away from feminism is the intensity and direction of focus on transgender. It has developed within trans studies as a new approach to conducting and analysing trans-specific research. Though trans studies has found a home in gender studies, in the sense of being accepted as a (sub)field of study, discussion on trans, Enke (2012) points out, tends to be periphery to discussion on women, leaving links between trans and women largely untouched (see also Stryker, Currah & Moore, 2008).

While the subjects of study are typically trans, transfeminism puts gender at the centre of analysis and discussion. It prioritises an interpretation of gender as being one which implicates *everyone*; it is not so much the degree to which one is gendered but rather the way in which one experiences the effects of gender that distinguishes gender identity groups. It is because of this that trans studies scholar Paisley Currah (2016: 2) describes transfeminism as ‘third wave feminism’, noting its

refusal to accede to the ontological priority of any particular group; its capacity to make visible the effects of power on vastly different scales, from the molecular to the global; and its general rejection of traditional political forms (the nation, the party, legal institutions⁶⁰) in favor of situating resistance in cultural moments and provisional events.

In other words, the propensity of feminist and trans studies to draw lines around identity groups in such a way that precludes the possibility to see the interlinks between different experiences of oppression is confronted by transfeminism.

The transfeminist perspective has been crucial in my research analysis. It has long been my conviction that the goal of trans-specific research should be to demonstrate how we are *all* trans – in the sense that we all perform/experience/embody gender transgressions at some, or maybe many, points in our lives – whilst acknowledging how the consequences of such transgressions are experienced differently at gender’s intersections with other social factors.

Additionally, I have sought in my research articles to demonstrate that (cis)genderism is a normativising standard that holds us all in its grip by convincing us of its unquestionable authenticity, not unlike the dancing shadows of Plato’s cave wall. The cisgender/trans gender binary on which so much advocacy and scholarship relies may no longer serve the purpose it

⁶⁰ In eschewing ‘legal institutions’ as arbiters of livelihood, transfeminism, in my reading of it (in the writings of Currah and others), does not negate the importance of law as a short-term solution to issues of recognition and protection. Rather, it understands legal institutions as limited in their capacity to attend to the needs of all those whom it purports to represent and therefore inadequate for broad, lasting transformation regarding gender equality. Therefore, while changing the law at this time is necessary, ultimately Transfeminists must forge another way forward, one which is built on resisting the reductive processes inherent to law and other regulatory institutions.

once did. In fact, it may operate to obscure more than it exposes (Currah, 2016: 3), as it implies that the struggles faced by trans people are unique to being trans, rather than variations in manifestation of the same gender norms. Nonetheless, as discussed above, it remains crucial to recognise and understand the material implications of cisnormativity.

6. Methods: Data collection and analytical tools

In this section, I explain how I collected the data for analysis on the law on gender recognition and the interviews I conducted. Next, I present how I did my analysis of the data and the interviews, describing the conceptual analysis applied to the law, and the Thematic Analysis and Thematic Narrative Analysis applied to the interviews.

6.1 Law on gender recognition (LGR)

The majority of the data I used in analysing the law on gender recognition (Lovvedtak 71 (2015-2016)) was the content of the law itself, in which I examined the stipulations established for changing legal gender. I considered this along with the legislation bill (Proposition 74L (2015-2016)), the measures taken and responses published by advocates for the sterilisation abolishment, and the Norwegian Ministry of Health and Care Services' response⁶¹. Also gathered in this perspective were other states' laws on gender recognition, Norway's and broader Scandinavia's legislative history regarding trans- and gay/lesbian-related laws, such as prohibiting discrimination. None of these texts served distinctively as an empirical source of analysis, but rather the landscape of (trans)gender equality in Norway was painted through a collective evaluation. In Appendix A, I provide an overview of these documents.

In other words, all these documents and events together constitute the development of the law and provide insight into how and why the law was created and passed. I chose this selection of material because it paints an image of what the trans community (in parts or as a whole) was requesting from the Norwegian state, and how the state responded. I sorted through them by identifying how transgender, gender and equality were being regarded and employed by the various actors in the law's development process. This includes how advocates proposed or demanded changes, how the government formulated these needs and addressed them, and the end products of the legislation bill and then the law itself. I wondered, what implications were made about what trans people would get out of this law, based on the law itself and the events leading up to it? How was trans as an identity or experience being presented? What do the parameters of the law say about how the state regards trans people, identity development, and empowerment? These questions lay the foundation for what I would later analyse when

⁶¹ These documents and proceedings are presented in the Context section.

considering the discourses at play in how recognition and power for trans people was being negotiated.

6.2 Analysing the law on gender recognition (LGR)

Considering the law and its development, I apply a legal analysis informed by trans jurisprudence theory. The purpose is to understand how gender, sex, identity, human rights, equality and recognition are conceptualised in the law, so as to lay the foundation for examining personal narratives around experience of legal gender change. Trans jurisprudence is a theoretical lens for interpreting the legal regulation of gender and sex recognition by unpacking the hegemonic conditions of the law, thereby making it possible to demonstrate how a law such as LGR serves to reify gender norms rather than destabilise them (Sharpe, 2002). By analysing the law on gender recognition through trans jurisprudence, the cultural values around gender, embodiment and citizenship become apparent, and the ‘threat’ of the transgender/transsexual body is exposed as the driving factor behind the (restrictive) legislation. Moreover, it fosters insight into how gender regulatory laws extend beyond the trans community and impact upon society in general.

The full analysis of LGR using trans jurisprudence is presented in Article 1, entitled, ‘(Trans)gender outlaws? A critical analysis of Norway’s 2016 gender self-determination law’ (2018)⁶².

6.3 Interviews

In describing the process before conducting the interviews, I am providing a substantial amount of detail in the hope of offering both a degree of transparency to my project’s development – since, after all, many of my ideas are drawn on the basis of what the interview participants have shared – as well as a guide for future research on similar topics within Norway, including ideas for what to do and what could be done better.

6.3.1 Preparation

To review, the gender recognition law passed on 6 June 2016 and was implemented on 1 July 2016⁶³. I decided to conduct my fieldwork a few months afterwards, in October and

⁶² This article, and the other two articles noted below, are provided in full in this doctoral dissertation.

⁶³ In the first month, nearly 200 people applied to change legal gender (<https://www.thelocal.no/20160801/nearly-200-norwegians-apply-to-change-gender-under-new-law>).

November 2016, as I wanted to get both a fresh perspective of how the process went for each of the interview participants, as well as some insight into how changing legal gender had impacted upon their lives thus far. Initially I intended to conduct two interviews (eight months apart) with the goal of capturing the development of the participants' lives as they settled into their new legal gender. However, it quickly became apparent that while this would be interesting, it was beyond the scope of the project in terms of feasibility time-wise and necessity content-wise. This is because that while an analysis on how lives have unfolded over several years since changing legal gender, and how this has impacted the participants' identities and decisions around body-transformation, would be fascinating and useful, the core purpose of the project – to understand the limitations and potential of the LGR – was attainable through just one round of interviews. That said, I would like to do a follow-up study in the future, if the opportunity arises.

Practice interviews

To prepare for the interviews, I decided to conduct 'practice interviews' with four individuals over email, Facebook Message and phone. This was done in August 2016 and was meant to help figure out both the subject pool I should seek and the question guide for the interviews. These interviews were conducted with two trans-identifying people whom I found through informal networking (they were friends of friends), and two trans-identifying friends who offered to help. Two of these individuals had changed their legal gender, one had not yet but was planning to, and the fourth was not planning to.

Originally, before I conducted these practice interviews, I had intended to interview only those who had undergone no medical intervention at all then changed, or planned to change, legal gender after the law's implementation. However, the results of these convinced me to open up my subject pool to anyone who had taken advantage of the law and was 18 years or older. The primary reason for this was that I realised I was only trying to find people who had not undergone any medical intervention because I had wrongly equated this status with not being able to appear as one's personal gender identity. There are, of course, many different medical procedures and treatments one can undertake in the aim to modify one's gender appearance. And while such intervention often leads to better passing, it is not always so. One may pass as the desired gender without any medical intervention at all. I therefore decided to interview anyone who had changed or was planning to soon change legal gender after the

law's implementation. Some participants I eventually interviewed had taken gender-confirming medical steps, though, as would be expected, none had undergone sterilisation⁶⁴.

Ethical approval

After building a foundation for my fieldwork, I submitted my project in mid-August 2016 for consideration to the research ethics committee (Norsk Senter for Forskningsdata; NSD). The project was approved soon after, in time for the interviews to begin.

6.3.2 Recruitment

In recruiting the interview participants, I primarily used networking (snowballing) and online forum posts. The trans community in Norway is quite small and tightly linked, so these two methods were sufficient on their own. Some saw my online posts or heard from other participants and contacted me; I contacted a few myself that had been recommended by colleagues. I corresponded with each by email or Facebook messenger to arrange everything. The goal number of participants was twelve to fifteen, and recruitment garnered fourteen interested individuals. However, two of these were eventually dropped from the pool, as one severed communication early on in the process, before we met in person, and another did not actually qualify for the study, which I found out during our interview⁶⁵.

The recruitment text⁶⁶ I used was formulated as follows (the Norwegian version⁶⁷ then English):

Norsk forskningsprosjekt om Trans*personer søker informanter/deltakere:
Søker trans*personer som har offisielt byttet kjønnsmarkør eller er i ferd med å gjøre det nå.

Hei

Mitt navn er France Rose Hartline og jeg er doktorgradsstipendiat i tverrfaglige kjønnsstudier ved Norges Tekniske og Naturvitenskapelige Universitet, NTNU. Området jeg forsker på er trans*personer og personer med ikke konforme kjønnsidentiteter og deres erfaringer i Norge. Til dette prosjektet trenger jeg informanter som kan hjelpe meg i forskningsprosjektet. Det vil dreie seg om et én times intervju to ganger i løpet av de neste åtte månedene. Det første intervjuet vil være i oktober/november i år og det andre i løpet av mai/juni neste år. Dersom du er interessert i å delta og ikke befinner deg i Trondheimsområdet vil jeg reise til deg på et tidspunkt som passer for deg.

⁶⁴ It should be noted that hypothetically one could have been sterilised and still qualified for the interview, as they could have done this either before the law (but did not choose to change legal gender until later) or in the months between the law implementation and the interview.

⁶⁵ I completed the interview anyway, as I hoped it would provide some insight into another side of the process which I could investigate at a later date.

⁶⁶ Refer to Context section for clarification on the use of trans with an asterisk ('trans*') and 'TGNC'.

⁶⁷ Translated from English to Bokmål Norwegian by a trans-identified friend.

Jeg er interessert i å komme i kontakt med deg som er trans*person eller har en ikke konform kjønnsidentitet og har offisielt byttet kjønnsmerkør eller er i ferd med å gjøre det nå. Jeg ønsker å finne ut av hvordan den nye lovendringen, som gjør det mulig å bytte kjønnsmerkør uten sterilisering, påvirker livene til trans*personer og personer med ikke konforme kjønnsidentiteter.

Dersom du er i målgruppen for dette prosjektet håper jeg virkelig at du vil hjelpe meg videre i prosjektet mitt og tilbyr deg å være informant. Din identitet vil selvfølgelig bli beskyttet. Det er nødvendig å forstå hva trans*personer og personer med ikke konform kjønnsidentitet i Norge trenger for å kunne leve gode liv som likeverdige individer i samfunnet. Min forskning tar sikte på å bidra til positiv utvikling for trans*personer og personer med ikke konforme kjønnsidentiteter!

Alle identiteter vil selvfølgelig bli beskyttet i henhold til NSD sine retningslinjer for etisk forskning.

Du kan sende meg en e-post på france.rose.hartline(a)ntnu.no eller via facebook messenger (France Rose Hartline) hvis du har spørsmål eller ønsker at jeg forklarer litt mer.

Intervjuene vil bli holdt på engelsk eller norsk.

Kun personer som er 18 år og eldre. Og, alle deltakernes identiteter vil bli beskyttet gjennom fullstendig anonymitet, i overensstemmelse med NSDs etiske standard.

Norwegian Transgender research study: Looking for Participants:

Now looking for ANY Norway-based trans* people who have legally changed their sex since Prop 74L was passed!

Hi Everyone,

My name is France Rose Hartline, and I am currently doing a doctoral research project in Gender Studies at NTNU. My topic is Trans*gender and Gender-Nonconforming (TGNC) experiences in Norway, and I am looking for participants who would like to help out! It's a one-hour interview conducted twice over the next 8 months. If you are not in the Trondheim area, I will travel to you for both interviews at a time that works best for you. The first interview is in October or November this year, and the second one is in May or June next year.

I am interested in Norwegian trans* or gender-nonconforming (TGNC) people who have changed their legal sex (or are going to soon), I want to learn how the recent law change - which allows one to change their legal sex without sterilisation - affects the experiences of these TGNC people.

If this project relates to you, I really hope you will help out by offering to be interviewed (everyone's identity is protected). We need to better understand what we as trans* and gender-nonconforming people should have in Norway so we can live openly, comfortably and <fully> equally. My research aims to help with future developments for TGNC people!

You can message me at france.rose.hartline(a)ntnu.no or via facebook messenger (France Rose Hartline), and I will explain more on the project.

Interviews can be held in English or Norwegian.

Notes: Ages 18 and above only. And, all participants' identities will be protected through complete anonymity, in adherence with NSD ethical research guidelines.

The following explains the methods of recruitment I used: Advertising online and networking.

Advertising online

In late September 2016, I posted a call for participants on various online forums. I posted in English, Norwegian or both. Most of the forums were on Facebook, through various Norwegian or Scandinavian queer, LGBTI or trans-specific pages. Because of the length of

the call's text – which in hindsight could have been *much* shorter – I decided to post in only English or only Norwegian on some sites. The sites and the language/s used are as follows:

Facebook	Page: 'Skeiv Verden Midt-Norge' (Queer World Central Norway)	English only
Facebook	Page: 'Skeive Studenter Trondheim' (Queer Students Trondheim)	English only
Facebook	Page: 'Skeiv Ungdom Oslo' (Queer Youth Oslo)	Norwegian only
Facebook	Page: 'FRI – Foreningen for kjønns- og seksualitetsmangfold' (FREE – Association for gender and sexuality diversity)	Norwegian and English
Facebook	Page: 'Åpen gruppe for alle transpersoner i Skandinavia' (Open group for all transpeople in Scandinavia)	Norwegian and English
Facebook	Page: 'Transgender Studies in a Nordic Context'	Norwegian and English
Skeiv.no ⁶⁸	[Norwegian website for queer networking]	Norwegian

I also contacted Forbundet for Transpersoner i Norge (FTPN; The Association for Transpeople in Norway) to ask if the call (in both English and Norwegian) could be distributed to their members. One of the leaders replied and said she would post it on their three Facebook pages. Additionally, I contacted Transgender Europe (TGEU), Gaysir, FRI, Skeiv Ungdom and HBRS (Harry Benjamin Resource Centre) to ask if the call for participants could be distributed to their email server lists. TGEU, Skeiv Verden and FRI did not respond, so I am not sure if they ever went out. Gaysir said they would not distribute it because they did not use the listserv for such things, but I could pay to advertise it on their website if I wished (I turned it down). And, HBRS turned down my request due to the terminology I used, as I chose 'trans* and gender non-conforming' over 'transsexual'⁶⁹.

⁶⁸ In order to post on Skeiv.no, I had to make a user profile. I also had to adapt the text to be much shorter given the space limitation imposed by the website. People could respond directly to my post by messaging my user account; however, it cost money (about 50 NOK) to see each message without a subscription, so in the end I just used this forum as advertisement for the project, and I hoped that people would also see the post in other places (where my email address was included).

⁶⁹ I chose not to change the wording and therefore did not advertise using their network, though in hindsight I wish I had put aside my personal conviction about avoiding the use of the medicalised term 'transsexual' and adapted the call accordingly. I

Networking (snowballing)

I also found participants through snowballing. I asked contacts of mine for references. To ensure some diversity of location (geographically and rural vs urban), I made an effort to find people from all over Norway and both within large cities and outside of them. I sent the call for participants text (above) in both English and Norwegian to my contacts for them to forward on to their own contacts. My contacts consisted of leaders of various queer, LGBTI or trans organisations or groups, and some trans activists and advocates.

Follow-up recruitment

After the first round of recruitment, I was a bit dismayed that I had only managed to find ten participants and, even more concerning, each of these participants identified as women, transwomen, feminine and/or male-to-female transsexual. There were no masculine, male, man or female-to-male identifying people in my participant pool, nor did there appear to be any non-binary identifying (though this was not exactly true as it turned out). The limited diversity was not necessarily surprising, given that the trans community has long been composed of far more feminine than masculine identifying people, and non-binary identifying people who change legal gender seem to be the minority. However, the impetus of my project was trans in general. I therefore reached out in early October to many of my contacts from the first round of recruitment, asking for references. Thankfully, this worked, and I gathered three more participants, all of whom identified along the masculine end of the spectrum.

I also was concerned about the fact that I did not have any participants who identified, as far as I could determine, as Saami. This was also not very surprising, since my snowballing technique, i.e. reaching out through the people I knew personally at the time, kept my radius to within the geographical southern half of Norway as well as a largely white and Western. I decided to contact a friend who had worked on a project related to queer Saami, and she referred me to two people, both of whom also happened to identify on the masculine end of the spectrum. One of these individuals whom I interviewed, however, did not actually qualify for the study, and the other did not raise the matter of identifying as Saami or his experiences

was worried about using exclusionary or reductive wording and therefore promoting a body-based interpretation of trans experiences; however, I can see now that this was based on my political positioning at the time, as I discussed in the Terminology subsection previously. I should have realised that people who are part of the HBRG group (and even some who are not) do in fact prefer the term transsexual and are not necessarily being victimised by its use. In an unfortunate twist, therefore, I had likely excluded a good number of potential interview participants by eschewing a term that I considered too exclusive.

with being Saami during the interview. I did not ask him during the interview to elaborate on this as I did not want to encourage forging discussion to meet an implied goal⁷⁰.

In the end, as noted previously, there were fourteen individuals who were interested to participate. I emailed each person with a project overview document, which was a more thorough description of the project and interview process written only in English, and was composed specifically for the participants. I sent this along with the consent form that I would bring to the interview for completion (see Appendix C for both documents). I asked each participant to read the documents and confirm with me that they did in fact qualify for the study -- that they were Norwegian residents, 18 years old minimum, and had changed legal gender following the gender recognition law's implementation. I requested they confirm their interest to participate in my study. Then I said that I would conduct the interviews in September or October, and I asked about their availability. Finally, I offered to provide a translator if they preferred to have the interview in Norwegian. All but one of the potential participants confirmed their qualification as well as that they were still interested, and no one requested a translator.

6.3.3 Participants

As mentioned above, I have drawn from twelve participant interviews, with each participant being interviewed once. Below is an overview of the participants, under pseudonyms⁷¹.

Name	Age	Self-identification (their own terms)
Torill	early 60s	woman; or sometimes transwoman as activist
Evelyn	early 30s	transwoman
Dolores	late 50s	woman; no longer trans

⁷⁰ Looking back, I wish that I had asked if he would like to reflect on his heritage and its role in his gender identity development as a trans or gender-nonconforming person. At that time, I reasoned that if a participant did not discuss a particular facet of their lives, then it was likely because it did not play a strong enough role to warrant entering their narrative or they did not feel comfortable to do so. I sought to give this participant, just as the other participants, ample space to discuss their experiences however they liked. I made it clear in the beginning of the interview that nothing was off-topic, and that they could speak on whatever felt right. I tried to not give any specific directions beyond the general questions (provided below), as I did not want to impress upon the participant that I needed that to be discussed and they should find a way to link it to their experiences. For the same reason, I did not instigate discussion around race or nationality with the two foreign-born participants, or class with those who indicated (but did not elaborate on) being of lower-class socioeconomically. I wanted the participants to let their narratives unfold in the space between us with minimal guidance from me, with me only interjecting to make sure we addressed all the question points. Nonetheless, I can see now that I perhaps could have encouraged some topics to enter the space, even if only to hear the participant clarify their lack of belonging. I wonder, in a way, if I inadvertently dissuaded discussion around certain things by not bringing them up.

⁷¹ All but one indicated they would be comfortable or even eager to have their real names being used, but, at the advice of my supervisors, I decided to anonymise all of them.

Ana	late 30s	woman or born in the wrong body; never trans
Lene	early 30s	transgender, feminine
Thomas	early 20s	male; sometimes transman
Silje	early 30s	female, woman or girl; sometimes transwoman
Camilla	late 20s	born girl
Bente	early 60s	transgender woman; not yet woman
Jørgen	late teens	dude or transman ('no asterisk' ⁷²)
Anders	early 20s	transman
Thea	mid 20s	girl, trans, or transgirl ('no asterisk')

For the Norwegian-born participants, I selected their pseudonyms by referring to <https://www.ssb.no/> (Statistisk Sentralbyrå (Statistics Norway)), which provides a list of the 50 most common names for any decade, organised by gender (masculine and feminine). For each participant, I chose a name from this list according to their decade of birth. I chose this method in part because I was not at that time so familiar with Norwegian names that I felt comfortable to make one up. I also wanted the name to reflect the person's generation and age, a decision based on the fact that names in Norway tend to change more with time than do those in my own Anglo-context. The implied gender of the name was made to match that of the participants' own names. For the two foreign-born participants, I chose a name common to many cultures and nations, as to avoid revealing their nationalities at birth.

The participants had rather diverse backgrounds. Some were city-based while others were suburban or rural dwellers. I did not ask about socioeconomic status though a few indicated that they used to be or still are of lower-class status. Ten were native Norwegian citizens and two (Ana and Evelyn) were immigrants who have been based in Norway for over a decade. The ages varied greatly, as can be seen in the chart above, and the education levels as well as the types of occupation also were varied. In terms of race and ethnicity, diversity was rather limited – one participant identified as Sami, one as non-white (Ana; to protect her anonymity I will not state how she identified), while the rest either identified as white or did not specify.

⁷² 'No asterisk' means that they do not prefer the asterisk that some include after the word 'trans' (trans*). See the terminology subsection in the Context section.

I should also note that all were fluent in both Norwegian and English, which is a matter I discuss in the next section.

All participants, as noted above, had changed their legal gender in the months between the law's implementation and our interview. Some had done it straight away after it became possible on 1 July 2016; others waited several months. For all, there had been some time to reflect on the process before we spoke.

6.3.4 Interview guide

In an effort to foster a more natural flow of conversation in the interview and encouraging the participant to help guide the discussion, I opted to use a semi-structured approach. The interview guide therefore provided a flexible overview of the points I wished to address with the participant. I intended the interview to be exploratory whilst still somewhat structured (Kvale, 2007: 38). I wanted to keep a space open for encountering ideas and issues that I could not anticipate, but I also wanted to ensure that I addressed the questions I considered crucial to testing my hypothesis that the law was limited in its ability to meet the needs of trans people in Norway. The guide had three parts: notes for myself in beginning the interview, the questions to ask, and notes for myself in closing the interview. It was structured as follows:

Setting up	<i>Introduce myself: name, degree, gender</i>
	<i>Project outline & purpose</i>
	<i>Interview outline & purpose</i>
	<i>Request use of audio recorder</i>
	<i>Anonymity option & explanation of records handling</i>
	<i>Ethics: NSD & participation options (e.g. can withdraw at any time)</i>
	<i>Confirm participation and offer consent form</i>
	<i>Clarify time limit and state current time; turn on recorder</i>
Points to address	How do you identify, in terms of sex and gender? / Tell me a bit about yourself.
	How would you characterise your experiences as [insert self-identifying term] in general in Norway?
	What medical intervention have you undergone, or do you plan to? / Why have you decided against medical intervention?

Why have you chosen to legally change your sex⁷³? / [When do you plan to do it or when did you do it?]

In what ways have you expected your life to be different after you change your legal sex?

How do you expect your behaviour to change? [F.ex. interactions with others, risk-taking, life changes, etc.]

Have you had any concerns about the legal sex marker change?

If a third-gender option became available, would you choose it? / Do you feel it would suit you better?

For those who have already changed their legal sex, especially if it was some time before the interview, ask some second interview questions at end of first:

- What have been your experiences since you changed?
- Surprises? Disappointments?
- Expectations?
- What are some concrete life experience examples?

Closing *Ask if anything needs to be clarified or expanded upon*
Confirm end of interview and switch off recorder
Discuss next interview
Discuss extended participation
State that I may be in touch to clarify any unclear points
State they can contact to follow up with additional information, if needed
Close by expressing gratitude

6.3.5 Conducting the interviews

I conducted each interview in person, except with one participant, who felt most comfortable to do it via Google Chat online. With the others, I either met them at their home (n=6), in a

⁷³ As can be seen, I do not use 'sex' in my dissertation or article text as I did in the interview guide. Rather, I ended up preferring the term 'gender', as I became aware with extensive trans and queer academic reading that this was more commonly used. I suspect this general preference is due to the long-standing debate around the emphasis on biological versus social, and many scholars have become more comfortable using 'gender' when discussing the constructed differentiation that underpins the masculine/feminine binary.

public place (n=5) or in a private meeting room (n=1). I had given them the option of meeting where they preferred.

During each interview, I employed what Norwegian psychologist Steinar Kvale (2007: 63-4) calls 'active listening', which he describes as the interviewer's ability to listen carefully, detect emerging themes, and determine what direction to take the interview in based on what I believe will enrich the data. Resultingly, the direction of my research topic and what I felt should be examined shifted gradually with each interview. Therefore, I engaged what Seale, et al. (2004: 7) call a 'situated methodology', as I adjusted each interview with the newly revised ultimate goal in mind. For example, although I generally asked all the key questions of the interview guide, I spent more time focussing on certain elements which became increasingly important, such as one's experience of legal recognition versus social recognition.

I carried out the interviews in several trips. Most happened to be clustered in or around several big cities, with a few scattered elsewhere. I travelled to each location to meet with them for the prearranged appointment. Some days had multiple interviews – an approach I do not recommend, as it is exhausting, particularly for someone as introverted as myself. The best interviews were those which happened alone in the day. They gave me ample time to prepare before and to recover and review afterwards. All the interviews were conducted in English, as agreed to beforehand. They lasted between 35 minutes and 1 hour 25 minutes and were all audio recorded with permission. Likewise, the online chat transcript was saved with permission.

During the interview, I kept the interview guide in front of me, but I looked at it only when necessary in order to maintain a good connection with the participants. Similarly, I took some notes during it, but only regarding topics to address later on, since it was being recorded. I sought to facilitate a relaxed environment, in part by diminishing as much as possible the lopsided power dynamic between me, as the researcher, and the participant, as the research subject.

I opened the interviews by properly introducing myself. In doing so, I included that I myself identify as trans, as I wanted us to be on as equal level as possible. Moreover, I suspected they would feel more confident and speak more freely if they did not have worry about explaining terms, feelings or ideas that most outside the community are largely unfamiliar with.

However, I tried to remain politically objective (as much as one can, anyway!), as I did not want to dissuade candour. In looking back at the transcripts, though, I can see I did not always

succeed in this, as I sometimes expressed a bit more agreement with those who conveyed opinions much in line with my own (as discussed under Methodological Considerations section). On the other hand, I maintained what I believe was a professional and respectful position at times when the participant posed very different beliefs.

With the first question, I asked how they identified in terms of gender, sex and sexuality. It proved an efficient way to break the ice, and it helped ensure that I used the correct terminology during the remainder of the discussion⁷⁴. I wanted to facilitate trust by honouring their personal identities and not impose my interpretations on them. For example, several of my participants did not use the term ‘trans’ or ‘transgender’ to describe themselves, so questions were formulated accordingly. Next, I asked for a general characterisation of their experiences as non-normatively gendered or however they personally identified, as this was for most a good jumping off point to tell me about their histories. I enquired as to why they made the decision to change legal gender. I also encouraged them to talk about what the process was like, in every aspect – from the practical parts to the emotional. Towards the end of the interview, focus shifted to how their lives have been impacted thus far, including what they had expected and what they had not. I closed off by asking if there was anything I should have addressed or if they had anything to add. I also confirmed with all the participants that they would be willing to speak with me again via email or Facebook messenger should I want to provide or address anything more; likewise, I offered that they contact me if they thought of anything to add. Neither the participants nor I took advantage of these offers; personally, I did not find it necessary to reach out again, as I felt I had acquired enough for the analyses.

6.3.6 Coding and analysis preparation

Within about a week after conducting each interview, I transcribed it from the audio recording and added my handwritten notes and mental memos. Then, after having transcribed them all, I reviewed the transcriptions as a whole several times over, allowing for time between reads to refresh my mind. In doing so, recurring themes became apparent, which I categorised as codes. There were seven codes: self-identity; personal history (general); personal history (trans-specific); medical intervention; legal gender change; response to new legal gender

⁷⁴ With one of the participants, however, I struggled at times with using the correct terminology. She explained in the beginning that she did not apply the term ‘trans’ to herself, but rather ‘born in the wrong body’, and at least twice during the interview I accidentally referred to her or her experiences as ‘trans’. She kindly and patiently corrected me. This was the first interview of the twelve, and I made an extra effort not to make that mistake again in the remainder of the interviews.

marker; and other notable yet uncategorisable bits. I wrote summaries on each participant, using short descriptions of each code. I employed a process which Saldaña calls ‘analytic memo writing’. Analytic memos during the qualitative data analysis process are intended to help the researcher document and reflect on: (1) the coding process and code choices; (2) how the process of enquiry is forming; and, (3) the emerging (sub)categories, patterns, ideas and themes in the data, which may lead to a theory (Saldaña, 2009: 32). With loose parameters, these memos allow more creativity when it comes to reflecting on the subject matter, encouraging me to more critically consider what questions may be important to ask, what overarching patterns may be emerging, what if any ethical/personal/procedural issues there are in the study, and what future research possibilities may be (ibid.: 35-39). Analytic memos serve as a ‘transitional process’ from coding to the eventual write-up (ibid.: 41), so they helped me with fleshing out the data into something substantive and conclusive.

Therefore, through this process, I began to discover what topics to investigate more deeply, which led me away from my pre-interview assumptions. These assumptions were largely common-sense ones, so moving away from them required that I take a ‘pragmatic approach’ (Seale, et al., 2004: 5).

Further analysis included applying Riessman’s (2008) Thematic Narrative Analysis and Braun and Clarke’s (2006) Thematic Analysis. Such is elaborated on in the Methodological Considerations section below.

6.3.7 Dissemination

As per the requirements of my doctoral project, three scholarly articles were developed for peer-reviewed publication. The first of these articles was more theoretical and hence did not use the interviews; however, the direction I took in the article was inspired by them. Articles 2 and 3 applied the interview data. Refer to the Article Summaries section for an elaboration of this.

In addition to scholarly articles, I have used the findings of my research in academic conferences and academic or activist workshops. On many occasions, I have presented my research and the findings I had thus far, including direct quotes from the interviews. From the first month of my doctoral project, as it developed, I have taken advantage of nearly every opportunity to report my work. Thanks to a generous research budget offered by my research institution, I have been able to travel around Europe and even a bit beyond to share my developing work and receive feedback on it. This sharing of my work and receiving feedback

on it has greatly informed my research approach, as I have benefited from the expertise of fellow academics and activists both within and outside of the trans field. They have helped me find suitable literature and enhance my critical engagement with the material.

6.4 Analysing the interviews

6.4.1 Thematic Analysis (Braun & Clarke, 2006, 2012)

Thematic Analysis (TA) was developed by feminist psychology scholars Virginia Braun and Victoria Clarke and first presented in their article, ‘Using thematic analysis in psychology’ in 2006. It is an analytical method that had been in use for decades, and, based on approaches already in use, Braun and Clarke developed an organised guideline for the field of psychology. They (2012: 57, emphasis in original) define TA as

a method for systematically identifying, organising, and offering insight into patterns of meaning (themes) across a data set. Through focussing on meaning *across* a data set, TA allows the researcher to see and make sense of collective or shared meanings and experiences. (...). This method, then, is a way of identifying what is common to the way a topic is talked or written about and making sense of those commonalities.

Their version of Thematic Analysis, Braun and Clarke explain (Jankowski, 2017: 6-7), is developed within a feminist framework, one which gives back ‘political edge’ by facilitating discussion on not just *what* the thematic patterns are but *why* they are patterns. Moreover, as opposed to what they call mainstream qualitative research, their TA encourages reflexivity on what sort of voice is being created by the researcher and why, and it also challenges neoliberal notions of choice by carving a space for questioning how power operates in personal decisions (ibid: 7-10).

Braun and Clarke (2012: 60-69) offer six phases for conducting TA: 1) becoming familiar with your data and finding possibly relevant points by reading over the material multiple times; 2) coding recurrent ideas or concepts which are either descriptive (based on participants’ meanings) or interpretive (based on inferred meanings), or – as is more often the case in qualitative analysis – both of these; 3) sifting for themes, which ‘capture something important about the data in relation to the research question, and represents some level of *patterned* response or meaning within the data set’ (2006: 82, emphasis in original); 4) review the developing themes for quality and relevance; 5) organise and analyse the data within the broader conceptual framework; and, 6) create the final report which supports an answer to the research question via the analysis of themes.

When I began the analysis, I knew generally that I wanted to understand how legal recognition of one's personal gender marker made one feel. I was curious as to whether one felt more authentic, recognised, or valued, or if one had little or no emotional reaction at all. I wondered, to put it another way, what potential the state's recognition of one's gender had for making trans people feel better internally about themselves. Therefore, I searched for (coded) moments within each of the twelve interviews which expressed one's reaction – whether positive, negative or neutral – to their new legal gender. Without exception, every interview participant had experiences to share in this regard.

The variety of discussions on their emotional responses to the new legal gender boiled down to one concept: 'empowerment'. To review⁷⁵, with this term I refer to the experiential qualities of independence, confidence and agency. One's (perceived) ability to take control over one's own life, and therefore over one's own fate, is encompassed in the concept of empowerment. On the flip side of this coin is 'disempowerment', whereby one feels their agency and autonomy have been compromised. There were, moreover, at least two identifiable subthemes to each theme. Empowerment materialised as 'validation' (affirming one's agency) and 'security' (making one act more confidently), and disempowerment as 'still not recognised by society' and 'misrecognised by the state'.

Initially, I had anticipated a relatively clean divide in how experiences could be defined – that each participant would report overall feeling *either* empowered *or* disempowered. However, it became quickly clear that there was no such neat organisation. Each individual had multiple experiences which reflected, in varying degrees, both of these qualities – sometimes at once. This phenomenon admittedly made the process of analysis a bit more challenging than I had expected, but also ultimately it was far more interesting and revealing. With a mindful approach, as discussed previously in this section, I was eventually able to spot my assumption that there would be a clean divide in experience and I took it upon myself to better understand how this was possible and why it was significant, as explored in Article 2.

After developing the themes of empowerment and disempowerment, I examined the link between personal interpretation and socio-cultural ideas. To do this, I employed a contextualist approach, whereby I use a mix of essentialist and constructivist methods (Braun & Clarke, 2006: 81). The essentialist method is carried out by focussing on the way that the

⁷⁵ Refer to the Terminology subsection for a more in-depth look at how I use 'empowerment' and 'disempowerment'.

participants describe and make sense of their experiences and subsequently create their realities from these interpretations. The constructivist method looks at how personal experiences and realities are created against the backdrop of one's socio-cultural context (ibid.). In this vein, I considered both how participants described and rationalised their experiences as well as how these experiences are guided by broader social and cultural norms. By analysing these two frameworks simultaneously, it offered insight into how legal recognition impacts upon one's sense of self, and how the impact of Norway's LGR is specifically shaped by the Norwegian context. This analysis is presented in Article 2, which is entitled, 'Assessing the benefits and limitations of Norway's self-determination law: A thematic analysis' (under review).

6.4.2 Thematic Narrative Analysis (Riessman, 2008)

I conducted a second analysis on the interview material, but this time I used only two interviews. I wanted to explore how one might work to make sense of their experiences through their narrative constructions, particularly in regards to how they might use it to reconcile gaps between how they expected changing legal gender would impact their lives and what they actually have experienced. The way that the participants relayed their stories often reflected elements of trans identity politics (which I define as tendencies in claims for justice), of which there are two primary camps: radical and liberal. As discussed previously in the Terminology subsection, the radical positionality points to a tendency to eschew institutional and sociocultural classification, while the liberal points to a tendency to embrace it. It occurred to me that this political alignment might be a way of validating one's experiences and decisions. I therefore chose two participants whose interviews made for distinct examples of alignment within these two camps. I wanted to investigate their ways of negotiating their gender/sex identity after gaining state recognition for their personal gender marker.

In analysing these two interviews, I applied Catherine Kohler Riessman's (2008) analytical tool called Thematic Narrative Analysis (TNA). Using TNA, the content of the entire interview is examined, rather than only certain components as done with TA. It is the 'what' rather than the 'how' that is considered. By analysing the full narrative, one can discover the mode by which the storyteller (re)constructs their experiences to attend to disruptions in the

expected narratological development⁷⁶. Narratives are, Riessman writes (2008: 54), a tool for creating new interpretations of life events with the aim of restoring one's selfhood in the wake of the unforeseen. Moreover, as with my use of TA, I examined the interconnections of the individuals' stories with broader socio-cultural values around gender, identity and recognition. In showing how the reformulations applied by the participants drew on trans political discourse, I gained insight into how significant trans identity politics are in impressing upon making sense of one's identity. It was particularly the case, I found, when it came to accounting for difference between how one wanted to be and how one was, despite legal recognition. The analysis is presented in the article, 'Examining trans narratives in the wake of Norway's gender recognition law' (2019).

⁷⁶ For more on this subject, refer to Ann Phoenix's 'Analysing narrative contexts' (2013) and Gareth Williams' 'The genesis of chronic illness: Narrative re-construction' (1984).

7. Theoretical Framework

In this section, I present the theoretical framework used in my articles for unfolding the processes by which legal gender recognition in Norway has developed as a response to the issue of trans inequality. This comprises the theoretical concepts and arguments I employ in my three research articles. Due to the limited space allowed by scholarly journals for published articles, the theory discussions in my articles are succinct and unelaborated. I therefore use this section to explore and develop the theoretical foundation supporting my research findings and claims.

In the following, I begin by outlining poststructural feminism and demonstrating its applicability as a perspective. Afterwards, I explore the concepts of identity, recognition and gender through this lens, followed by a discussion on law and citizenship as it pertains to gender equality. Finally, I provide an overview of the human rights framework for social justice and its role in establishing what gender equality means in Norway.

7.1 Laying the groundwork and shaping the lens: Poststructuralist feminism

Throughout this project I have sought to understand how the law on gender recognition is limited in its capacity to empower those who change legal gender, so it has been necessary to examine how the operative concepts of identity and recognition are interpreted and applied through the law, and how these concepts intersect with gender. As will be elaborated upon in the Crosscut Analysis section, I believe that the limitations of this law are to be found in the gap between the law's interpretation of these concepts and the way that they are experienced by those changing legal gender. To examine this gap necessitates employing a poststructuralist lens informed by feminism, through which it becomes possible to inspect how gender operates as a socio-juridical tool for power distribution and population management. This examination has served as the basis for the development of my three articles. The following discussion, therefore, on poststructuralism provides an overview of the perspective for my research and my writing. I discuss poststructuralism at length to demonstrate the differences in how gender, identity and rights are formulated compared to the previous era of structuralist thought, as these two eras represent the opposing modes of understanding what gender equality means. The differences parallel how I argue the LGR and society interpret gender equality and how trans people experience gender and power, which is key to understanding the struggles faced by trans rights advocates.

Poststructuralism is a movement founded by European philosophers in the latter half of the 20th century that challenges the assumed naturalness of social structures. It exposes dualistic tendencies in how rights, identity, and power are understood. The term ‘poststructuralism’ is broadly used, especially in feminist and queer theory and practice, so it is worth exploring what it means in its application here⁷⁷. The prefix ‘post’ distinguishes this movement from its predecessor, structuralism, which reigned in schools of thought from late 19th century to early 20th century. Structuralists contended that by studying social behaviour, universal tendencies (‘structures’) could be unearthed, such as through language and its use to signify the objectively knowable (Scales, 2009: 395-6). Structural thinking was (and still is) founded on binaristic, deterministic interpretations of human behaviour and social phenomena. Within academia, this framework underpinned the humanities and social sciences in the first half of the 20th century (Browne & Nash, 2010). While its heyday is long over, having given way to the poststructuralist turn of mid-20th century, certain structuralist leanings endure today. Notably, as poststructural feminists are quick to point out, persistent gender-based relations, such as patriarchy and cisnormativity, are foundationally structural (Koyama, 2002; Grewal & Kaplan, 2001; Flax, 1987). These systems of power distinguish between groups along historically-treaded (yet culturally sanctified) lines of gender and sex, which reify social, economic and legal inequalities. Such positioning implicitly negates the constructedness of identity markers and support a biological determinist approach to power distribution (Weedon, 1997: 3). Rather than regarding, to give an example, men and women to be products of long-standing social systems of identification, they are classified within the structuralist framework as immutable as anything else seen to be dictated by nature.

Poststructuralist theory is a response to this reductiveness, driven by the motive to unravel the processes that have been concealed by positivist traditions in knowledge production. In addressing how gender norms are established and upheld, it coalesces with feminism to produce poststructuralist feminism. This strand of feminism examines the processes by which the gendered subject comes to be, challenging the notion that the subject is self-contained and

⁷⁷ I use poststructuralism because it gives due focus to the role of the individual in processes of signification (thus giving the individual some sense of agency) as opposed to postmodernism which seems to negate the individual’s capacity. Also, poststructuralism has more to do with philosophy, while postmodernism is time-based and concerns more the style of film and literature produced during its era. See Eivind Røssaak’s *Det Postmoderne og de Intellektuelle* [The Postmodern and the Intellectuals] (1998) for more on this distinction.

atomistic with a gender identity which is innately situated (Davies & Gannon, 2005: 312). It calls essentialist conceptualisations into question by exploring their historical purpose and exposing the ramifications of their deployment (ibid.). For instance, by demonstrating the hegemonic underpinnings of the man/woman binary and the toll it has taken on non-normative gender identities, it becomes clear how and why gender norms have operated to regulate modes of identification in the way they have. In unfolding long-standing conceptual practices around gender, the metastructures shaping our lives are exposed, allowing for meaningful critique and change.

Poststructuralist feminism brings forward the inner-workings of socio-political apparatuses operating at the centre of interrelational practices by disclosing the modes by which ideologies and meanings have come to be employed and reproduced. It offers an analytical ‘shift in emphasis from the fixed meaning of things to the political dimension of meaning-making activities’ (Bacchi & Eveline, 2010: 4). By addressing on the role of socio-political dynamics in creating realities, the means by which gendered subjectivities materialise becomes apparent, as well as their inherent instability and relativistic contingencies. This opens a space for highlighting the dialectical (non-essentialist) process by which subjectivities are constructed (Hall, 2004: 100).

Poststructuralist feminism upends the classically humanist perspective of subjectivity by demonstrating the subject as *becoming* and not being (Bacchi & Eveline, 2010: 7). In doing so, it takes a marked departure from liberal feminism, which emerged in the late 19th and early 20th centuries to address women’s lack of political and economic mobility. Liberal feminism employs the humanist perspective that the individual – in this case, the woman – is a thinking subject capable of rational decision-making, and not just a body prone to irrational impulses (Weedon, 1997: 77)⁷⁸. The cartesian distinction has been a tactical and ultimately effective tactic for getting women access to the public sphere. Through a poststructuralist lens, however, it becomes clear that relying on the notion of reason not only places the onus of self-realisation and happiness on the subject themselves, but also downplays the role of society in facilitating, or precluding, such personal empowerment (Cruikshank, 1999). As noted above, poststructuralist feminism, in contrast, regards women (or, more broadly, the

⁷⁸ Refer back to my discussion on empowerment (2.3.3, in the Terminology subsection) for another discussion on this approach to gender equality.

gendered subject) not as something elemental to the self but as co-constitutively developed through social dynamics (Weedon, 1997: 79). Thus, the quality of life and access to crucial resources is seen as highly regulated by power structures outside the individual. Existing systems of oppression and opportunity can be unpacked through theoretical and methodological processes to discern how subjectivities are formed along predetermined, yet continually shifting, lines. Unravelling the processes of gendered subjectivation gives insight into how, and why, legal and social recognition impact upon one's gendered sense of self.

I believe it is indisputable, therefore, that a feminist take on poststructuralism is essential for carving a space to interrogate long-established notions of what gender means and to determine how these understandings have come into practice and continue to shape self and society. As self-evidently useful as it is, such an innovative framework does not come without its nay-sayers. Critiques of poststructuralist feminism have centred on, among other things, its anti-humanism, whereby the autonomy of individuals (namely of women) is seen to be devalued, even voided (Weedon, 1997: 71). This is because the focus on subjectivity is shifted from a self-determinist, agentic self-creation, to the complex processes of becoming. Furthermore, some scholars have argued that such an approach conflates the subjugating experiences of women with men, thus undermining the unique experiences that women face (see Deveaux, 1994; Bartky, 1988). However, as Chris Weedon argues, the issue with humanist discourse is that it over-emphasises the essence of each individual as well as one's capacity for achieving reason over desire (1997: 77). This maintains that each subject has intrinsic self-awaiting realisation, and it can only materialise through rationality — sustaining rather than subverting ontological claims of difference. Moreover, as within the liberal and radical feminism paradigms, differences of experience are hierarchised, prioritising the least deviant lives and identities over those which appear to deeply challenge existing social structures. Weedon argues that poststructuralist feminism has the capacity to look beyond the individualising interpretations of oppression, as its concern is with 'understanding the position of individual women in society and the ways in which they are both governed by and resist specific forms of power' (1997: 71). I have found this framework to be instrumental in uncovering how gender recognition is shaped by law and society, and how it informs one's gendered sense of self. It allows for simultaneous consideration of how one is impacted upon by gender norms and how the individual negotiates these norms to claim a livable life.

7.1.1 Gender & queer

Within the poststructural feminist framework, gender is seen as a way of engaging with the world, of seeing oneself, of experiencing stimuli, and of negotiating structural hierarchies. This is, of course, the subjective way of describing it. Gender is also a social tool for organising bodies, determining life chances, and placing (or removing) value on people, activities, ideas, and objects. It is a political device for seeking or possessing control, as well as for liberating or disenfranchising individuals and social groups. Gender is an experience, a category, an activity. It changes with time. While gender, in all its forms, is fluid, contextual and dynamic, it is (like all identity markers) reductively interpreted and deployed as a means for exercising power. At every level of society, from the global to the organisational to the individual, gender norms are simultaneously enforced and resisted. Most relevant to my articles are the norms of gender as binary and static, as these underpin how the law and society understand individual identities and experiences around gender.

In this regard, my poststructural feminist lens is informed substantially by queer theory, which developed in the 1990s as a strategy for upturning normativising interpretations of sexual practices and desire. Queer theory highlights the processes by which 'queer' maintains a position situatedly oppositional to norms; what is queer is definitionally plastic, as it constantly transforms itself as norms mutate. Queer theory carves out a 'zone of possibilities' for experiencing alternative embodiments (Edelman, 1994: 114). It developed operationally as a response to several political phenomena. Namely, it was a response to the gay and lesbian movement, which, in seeking to establish a collective identity for mass resistance, excluded non-normative sexual desires, practices and identities. Also, it was a response to the HIV/AIDS crisis and the homophobic representations circulating (establishing it as a 'gay disease') that were preventing health resources from becoming more accessible. Both these responses promoted an anti-identitarian approach to understanding disempowerment, shifting sexuality and gender from the realm of essence ('being') to practice ('doing'). On this matter, I am firmly placed in the ontological tradition of how I understand 'doing gender', alongside critical thinkers such as Judith Butler and J. Jack Halberstam.

7.1.2 Performativity

As touched upon above, the distinction between *being* gender and *doing* gender is crucial for understanding how and why legal recognition may fail to address the needs of those whom it purports to protect. The three articles of this dissertation examine how this distinction informs

the way gender identity and recognition are interpreted and employed differently by the law than they are experienced by those who have changed legal gender. The dichotomy of being and doing reflects the broader theoretical movements of structuralism and poststructuralism, respectively. Moving away from seeing gender as being (as essential) and rather regarding gender as doing (as performative) allows for a discussion on why some forms of gendered living are more possible than others, and why some people ‘seem to embody the unthinkable or even the unlive-able’ (Butler, 2009: iii-iv).

To review, through a feminist poststructuralist lens, gender is seen as performative in the sense that it does not emanate from some internal point but rather is realised at the nexus of recognition and personal experience. Neither exclusively a conscious decision nor a mindless gesture, performativity describes a ‘stylised repetition of acts’, which is the enactment through which an identity is constituted and agency is implied (Butler, 1988: 519; *ibid.*, 2015: 45). It is to behave in a way that produces an impression of gender, thereby instituting a gendered self. It draws on socio-cultural inclinations of what gender means, as grounded in what I call the (cis)gender imaginary⁷⁹. Borrowing the Lacanian term of ‘imaginary’, which describes a conjured representation of reality that obscures its contextuality (Althusser, 2011), the (cis)gender imaginary is a normativising and hegemonic mode of interpreting gendered identity and experience. It echoes Butler’s (1993: xiii) concept of the heterosexual matrix, which ‘requires the simultaneous production of a domain of abject beings, those who are not yet “subjects,” but who form the constitutive outside to the domain of the subject’. The (cis)gender imaginary is not an ideology in itself, but it is intimately entwined with cisgender (and heterosexual) ideologies. It is within this imaginary that gender norms are reproduced and the field of appearance is maintained. The field of appearance determines the conditions for intelligibility, determining the degree to which one is eligible for recognition and subjecthood (Butler, 2015: 39). Judith Butler explains that even though ‘we think of subjects as the kind of beings who ask for recognition in the law or in political life’, maybe we should rather consider how the terms of recognition ‘condition in advance who will count as a subject, and who will not’ (Butler, 2009: iv). As will be discussed next, the field of

⁷⁹ The (cis)gender imaginary is a concept I have developed. It is in part inspired by C. Ingraham’s work on the ‘heterosexual imaginary’ (1994). I present a deeper discussion on it in the Crosscut Analysis section.

appearance determines who is considered fully human and deserving of state and social recognition.

7.2 Recognition and empowerment

Investigating the role of socio-legal recognition in constructing subjectivities is elemental to understanding how Norway's law on gender recognition shapes the gender identities of its users, particularly when it comes to results that are contrary to expectation. The following explores the issues my three articles investigate regarding legal gender recognition and its engagement with social recognition in constructing the gendered subject, agency and negotiation, and the consequences of misrecognition.

7.2.1 Socio-legal recognition

To begin, what should be noted about legal recognition in the case of Norway is that it is perhaps unusually important for trans people when compared to other subjugated groups. Subjugated groups, in following Nancy Fraser's work (1995), struggle for recognition and for redistribution; the amount of each depends on the group, but all have some mix of the two. Trans people in Norway of course do have some claims for redistribution, since access to materials (via job and housing security) can be greatly jeopardised. However, since January 2014, one is formally safeguarded from discrimination in Norway on the basis of gender identity and expression, so the right to redistributive claims is relatively – though not to say wholly – protected. Recognition, therefore, reigns as most crucial, in both legal categorisation and social intelligibility. Moreover, legal recognition for groups and individuals plays a particularly significant role due to the country's history as a social welfare state. Characteristic to Nordic countries is the high level of trust between the state and its citizens (Delhey & Newton, 2005). The state is expected to protect and provide for its citizens, making the state's role in recognising and validating its constituents more meaningful than in contexts where the state and its institutions are revered less (*ibid.*).

Norway's law on gender recognition (LGR) is based on the self-determination model, which means that one does not require a state or medical authority's permission to change legal gender⁸⁰. Being recognised as capable of self-determination is important because it signals

⁸⁰ For an articulate examination of the self-determination model of legal gender recognition, refer to Peter Dunne's "'I decide who I am': The right to self-determination in legal gender recognition" (2014).

that the state sees the individual as an autonomous being with a self-governing capacity, rather than a body without reason (van den Brink & Owen, 2007; Honneth, 1995). The clinical gaze is weakened, as one's subjectivity is shifted from the realm of pathology (pre-LGR) to the realm of self-determination. One is seen as rational and agential, and therefore worthy of human dignity, which invokes selfhood. Being permitted to change legal gender without undergoing physical transformation inscribes humanising value on the individual, as it awards one's psychic identity over their physiological one. In the cartesian sense, the mind is seen to be ruling over the body – an important distinction in considering the trans individual, as the pathologising view of trans interprets the body as overruling the mind through wanton impulses⁸¹. The 'mind over matter' attitude all lays the foundation for what constitutes citizenship, a concept to be explored in due time.

Legal recognition extends beyond the state's approval – the state operates as a placeholder for the public (Honneth, 1995), rendering state recognition the catalyst for social recognition. In moments of precarity, such as when one is not being recognised by another as is desired, the state's word (as inscribed on one's ID) weighs more heavily, offering protection for the misrecognised individual from the potential desubjectification of mis-gendering (Mayeda, 2009). For such individuals, legal recognition affords them a 'livable life' by enacting social subjectivity through legal subjectivity (Butler, as cited in West, 2014: 58). The state therefore plays a significant role in authorising the identities of its subjects; through its discourse, it (re)produces subjectivities within its existing parameters (Bacchi & Eveline, 2010). Identity construction, such as that of gender, is an intersubjective process that requires A to be recognised by B as is wished for by A, and for A to value this recognition by B (McBride, 2013). Therefore, B must be some sort of authority in order for its recognition of A to shape A's self-identity, and the state operates as this authority.

However, as explored in-depth in all three articles, the LGR's reach is circumvented by two key issues: the maintenance of the male/female binary and the lack of concurrent medical treatment improvement. The limitations these impose are compounded by the fact that legal recognition does not automatically translate into social recognition. While legal and social recognition are indeed intertwined and co-constitutive, this process of mutual impact is very

⁸¹ Recall the previously discussed structuralist and liberalist interpretations of personhood and empowerment.

gradual, allowing for a palpable divide between how the law classifies an individual and how other social actors regard that person. Therefore, even with legal recognition, as demonstrated through participant interviews in Articles 2 and 3, social recognition can continue lacking significantly, thereby undermining one's claim to validation and security.

On this note, I agree with McQueen's (2015) and McBride's (2013) argument that the 'deficit model of recognition', as used by notable scholars such as Axel Honneth, Nancy Fraser and Charles Taylor, is insufficient. The model postulates that issues of (mis)recognition can be resolved by broadening the boundaries of institutional practices in recognition. It ignores the undercurrent of power that constructs the framework of lived possibilities. Rather, as I have shown in Article 1, recognition must be analysed as a tool which can simultaneously open and foreclose options for self-materialisation. It is not a matter of recognition being insufficient so much as a matter of its hierarchising mechanics. In this model, institutional tools of power distribution, such as laws, are seen to be capable of rehabilitating the subjecthood of those who have suffered due to mis-recognition. Furthermore, it understands social justice as realisable through external recognition, as well as self-completion as possible through external recognition. McQueen (2015) argues this is an inaccurate reading, stating that such laws do not in fact resolve issues of mis-recognition so much as reinforce a perception of achieved social justice whilst leaving the broader socio-cultural causes of inequality largely unchallenged.

7.2.2 Misrecognition & monstrosity

Subjectivities, as touched on previously, are constructed in the space between ourselves and others, and recognition fuels this process of subject-construction (McQueen, 2015). Returning to the concept of the field of appearance as presented above, Judith Butler (2015: 35) makes a crucial point about intelligibility:

The question of recognition is an important one, for if we say that we believe all human subjects deserve equal recognition, we presume that all human subjects are equally recognisable. But what if the highly regulated field of appearance does not admit everyone, requiring zones where many are expected not to appear or are legally proscribed from doing so? What if that field is regulated in such a way that only certain kinds of being can appear as recognisable subjects, and others cannot? Indeed, the compulsory demand to appear in one way rather than another functions as a precondition of appearing at all. And this means that embodying the norm or norms by which one gains recognisable status is a way of ratifying and reproducing certain norms of recognition over others, and so constraining the field of the recognizable.

With 'only certain kinds of being' able to appear, those who cannot find themselves undergoing the process of invisibilisation, or 'othering', and this has consequences for one's

selfhood. Without apt recognition, one experiences ‘misrecognition’, which induces the experience of erasure, invalidation and instability (McBride, 2013). Thereby one’s subjectivity is challenged, as well as one’s right to demand and maintain dignity – a crucial quality for claiming human rights (Marshall, 2014; Douzinas, 2013). As can be seen in the stories shared by interview participants in Articles 2 and 3, to not be recognised as one’s personally experienced gender is to exist outside the law and society and to be left without representation, thus hindering one’s personal and socio-legal identity construction (Zanghellini, 2009). In failing a system of norms, one undergoes abjection (Phillips, 2014), as one lies beyond the boundaries of the intelligible, fated to always be forcibly and falsely re-scripted within the confines of the discursively possible. The social self is perceived as ambiguous and in need of control from an outside force (such as the state). The very existence of the abject other challenges the presumed naturalness of (cis)genderism, evoking disgust and suspicion from those whose very normal-ness depends on these abject others, as their evoked reactions are imperative in re-confirming their own normative identities. After all, ‘society can only define itself against its strangers’ (Bauman, 1998: 12, cited in Sharpe, 2009: 5). Deviance is invoked in order to reify dominant gender identities by establishing and reifying the ‘normal’, thereby casting certain identities to ‘the realm of the untenable, monstrous or impossible’ (McQueen, 2015: 127).

Maintaining the (cis)gender imaginary entails challenging the humanness of those who threaten the imaginary, by relegating them to the boundaries of recognisable subjecthood. Renowned trans studies scholar, Susan Stryker ([1994] 2006: 238), likens this process to becoming a monster:

I find a deep affinity between myself as a transsexual woman and the monster in Mary Shelley’s *Frankenstein*. Like the monster, I am too often perceived as less than fully human due to the means of my embodiment; like the monster’s as well, my exclusion from human community fuels a deep and abiding rage in me that I, like the monster, direct against the conditions in which I must struggle to exist.

We can link this back to Judith Butler’s quote as presented above, wherein she discusses the concept of the field of appearance and the precondition for occupying it – namely, adherence to social norms. Like Frankenstein’s monster, Stryker feels that her body sets her so far apart from what is expected that her humanity is called into question, therefore putting her very existence at peril. It resonates with Foucault’s work on the abnormal and his discussion of how the outsider, the monster, is constituted (1999/1974-75). Contradicting both law and nature, Foucault’s monster is one which not only appears, or behaves, irregularly but also

upheaves structural norms by revealing their impermanence. As Donna Haraway writes (2006: 115), '[m]onsters have always defined the limits of community in Western imagination'; they are the 'constitutive outside' of the dialogical structure inherent to socio-political identities (Butler, 1993: 15). Disciplinary powers are constructed to capture only certain individuals and groups whilst casting out others, and while there is no longer a legal category for monster as there once was (at least not explicitly), the legacy of this way of treating those who do not fit is evident today in both legal and informal modes of normativisation (Sharpe, 2009; see also, Haraway, 2006)⁸². One becomes wrought with precarity when one becomes 'monstrous' (Nordmarken, 2014). To exist without proper socio-political recognition is to live 'at the limits of recognisability (...), [and] to live at such a limit means that the very legibility, the very viability, of one's life is called into question' (Butler, 2016).

7.2.3 Corporeal resistance & precarity

Nevertheless, it would not be useful, or even fair, to subscribe to an over-deterministic paradigm for understanding subjectivity. The fabric of social relations has plenty threads to pull, and, as demonstrated in Articles 2 and 3, these threads are being restitched in uncountable ways.

Since the subject is not solely at the mercy of the state, given that political subjects are always in the process of becoming rather than simply being (Bacchi & Eveline, 2010), the resultant tension between what the state declares one to be and what one declares oneself to be causes small yet significant ruptures in the imagined continuity of state-sanctioned discourse (Hall, 2004; Butler, 1993). There is always such a gap; one's subjectivity can never be completely protected (Douzinas, 2013), just as one can never be fully recognised (Butler, 2009).

Extending this logic to the production of self through legal recognition, McQueen (2014: 546) writes that ruptures and resistances in the sanctioned practices of citizenship make way for new forms of political subjectivity.

This is perhaps most noticeable for trans people, particularly those who have not changed their bodies to conform with standards on bodily construction, as is the case for many who

⁸² Scholar Anthony Wagner provides a moving description of his process of becoming aware of his difference and how he has worked to embrace his monstrosity through the artistic production of elves and beasts (2010).

have changed legal gender in Norway following the law's implementation. To give an example, a legal woman whose body resembles greatly (or in part) a conventional male performs legal female-ness differently than is anticipated of one who appears typically female. Sonny Nordmarken refers to this as living 'queerly between', which means to 'occupy multiple positions at once, and different positions at different times, depending on how people read [the individual]' (2014: 38). There is an endless range of possibilities. The parameters of gender norms have been breached and new ways of presenting are emerging.

Of course, in following Butler's field of appearance, there is a limit to how much one can be recognised outside of the norms before one's life becomes too precarious. Until that point, though, this tension can be for some an opportunity to challenge the situatedness of gender identities. Nordmarken contends that one can make one's monstrosity 'human' by claiming agency (2014: 38). It becomes a political tool for appropriating that which is used for othering, much like in the movement to reclaim 'queer' from its status as a derogatory term. Returning to the example above, one who resists the normativising expectations of the legal status of 'female' by performing contra-femininity subverts the legal concept of 'female'. My doctoral research explores this matter in Article 3 and, to a lesser extent, Article 2 by discussing how the research participants reclaim their otherness after changing legal gender left them with less internal shift than they yearned for. In reclaiming their gender non-normativity through outward gestures of subversion, they take part in rewriting what being legally female or male means (Morgan, 2017). By refusing to undergo (or accepting that they cannot undergo) full body transformation, and by being open about their trans-ness in strategic ways, they become 'queerly between' by employing 'corporeal resistance' (Nordmarken, 2014: 38-9). These acts of resistance can be carried out through strategic retellings, as I explore in Article 3, where I show how personal narratives can be a tool for reconstructing one's past and making claims to a particular identity group for self-empowerment. Roen, Blakar and Nafstad (2011) refer to this as 'discursive resistance' – the project of discursively re-writing oneself into subjecthood.

It should be clarified, however, that corporeal resistance is not always a conscious effort nor is it always desired, and sometimes resistance can happen without the subject even knowing. It is more helpful therefore to understand corporeal resistance not simply as a strategy, but more broadly rather as an inevitable by-product of gender regulation – paradoxical though it may seem. As discussed above, gender norms reflect an idealised version of gender

(‘cisgender’) that is impossible to encapsulate. All reiterations of gender are faulty to some degree, and these breakages – sometimes tiny and sometimes huge – contest the (cis)gender imaginary, thus carving out a small yet significant space for alternative embodiments. Myriad social factors intersect to determine just how far someone can challenge the norms before one’s livelihood becomes too compromised. The limit is describable through the concept of precarity.

Precarity lies as the foundation of biopower. To live precariously is to live in uncertainty, at the margins of society, in a state of suspension between life and death, as the possibility of social and/or physical death is always present (Butler, 2009: 25). As shown in Articles 2 and 3, the feasibility and durability of lives are shaken by a lack of social and state recognition. When one’s personhood is questioned, livelihood is put at risk due to enacted modes of violence – physical, economic and/or symbolic. This is the operation of biopower, which Foucault uses to highlight the way in which bodies are disciplined and populations are regulated (1976). It describes the modern version of life control, whereby it is no longer so much about either postponing or compelling death, but about fostering livelihoods or subjugating lives to the point of self-destruction (such as by self-harming, addiction or suicide) (ibid.). Trans people are, unsurprisingly perhaps, a key at-risk population for self-destructive behaviour, including suicide attempts (Marshall, et al., 2016). The result of biopolitics can be to condition trans individuals to regard themselves as less than, even as disposable. On the personal level, this internalisation effects precarity, and precarity effects further internalisation. In my research, I find this conceptualisation of violence to be quite important, as it points us away from traditional (arguably neo-colonial) interpretations of violence based on bodily force – whereby a perpetrator physically attacks a victim – and understands violent power to be far more complex in origin and dissemination. It is a matter I take up below in section 7.3.3 with Dean Spade’s work on neoliberalism, law and trans rights.

7.2.4 Trans identity politics

As discussed in the Context section, there are uncountable ways to identify as trans; after all, one of the hallmarks of movements like the trans movement is diversity of experience, embodiment, and identity. Nonetheless, as an identity politics movement, there are often distinguishable patterns of identity alignment. I refer to Katrina Roen’s writing (2002), wherein she classifies between the ‘both/neither’ and ‘either/or’ ways of self-identifying. When activated as a political device for claiming empowerment, I adopt her terminology of

‘radical’ and ‘liberal’, which represent ‘both/neither’ and ‘either/or’ respectively (ibid.). These two opposing concepts bookend a rich spectrum of embodiments, ideologies and experiences. Moreover, like all identity political spectrums, this spectrum can be occupied at multiple points, even simultaneously, as one manoeuvres various social situations to which one must adjust their sense of self and their appearance to others. Rather than being exclusive camps, as I have explained previously, radical and liberal trans identity politics describe tendencies in identity-based claims for justice. When I use the term ‘group’, I do not refer to a steadfast collection of people, but rather to a side, an approach or – better still, a positionality – which one may drift towards in moments of political tension as a means of making sense of the struggle and a strategy for claiming power.

Moreover, I recognise that identity politics is seen to be a product of an era that we, as poststructural feminists, should be moving beyond, as identity politics are seen by many to reinforce the notion of individuals having stable identities (McQueen, 2016: 75). We instead should be investing in radical political projects that promote a post-identity politics, to leave behind the capitalistic practices of the 1970s and 80s when groups were defined in ways that essentialised identities and imposed or strengthened identity hierarchies (McQueen, 2016). It is perhaps needless to say that I fully agree with this. However, I write on trans identity politics with a view to represent the ways that the trans community is at times, or even often, divided, and the way that this has shaped personal narratives around identity and legal gender change. Throughout my Summary chapter, I refer to the phenomenon I encountered in my interview process and analysis. I believe Nancy Fraser’s contention of two decades ago that we are in an era of a ‘politics of recognition’ still rings true, and, as discussed previously, in Norway the need for recognition tends to be more prominent than redistribution when it comes to social justice claims around gender (1998). Fraser defines this era of recognition politics to be about a ‘different friendly world, where assimilation to the majority or dominant cultural norms is no longer the process of equal respect’ (ibid.: 1). The way that gender equality and trans rights is being attended to in the Norwegian context reflects this principle, as it has shifted from compelling people to adapt their bodies and behaviours to gender norms in order to change legal gender (as captured by the medical model) to permitting one to self-declare without physical adaptation (the recognition model). However, as will be discussed more in-depth, assimilation is still heavily emphasised through sociocultural expectations despite the new law, and by demonstrating this, I am able to reiterate how and why recognition is still not being achieved. So, while I as a person would like to see us move

beyond identity politics, I feel it would be neglectful and short-sighted to imply that we have done so to any significant degree. Next, with this said, I will describe the political landscape in Norway's trans movement, which underpins the analysis I conduct in Article 3.

As happens in political identity movements, and recognition politics more broadly, trans identity politics is rife with internal tensions, and these tend to coagulate in the space between the two poles of radical and liberal (Roen, 2002). Though not all those who identify more towards one end or the other would subscribe to such a strategy (and one's personal values may not match their world-view values), there are plenty of occasions upon which, in responding to society's continual subjugation, a group seeks to distinguish itself as more valid than the other through establishing a hierarchy (*ibid.*; van der Ros & Motmans, 2015). I explore this phenomenon from an individualised perspective in Article 3. From the radical end come critiques of the liberal side 'selling out' to gender conformative pressures and undermining the fight for freedom for norms (see for example Kate Bornstein's (1995) call for trans people to fight gender oppression and live openly). Assimilation is regarded as the easy-way-out, the cowardly response to the dominant party's (i.e. cisgender people and institutions) exclusionary techniques (van der Ros & Motmans, 2015). Their obedience to gender normativity, the radical side argues, only serves to strengthen the system that trans people have long suffered from and therefore should be shutting down. The liberal side, on the other hand, criticises radical politics for being too subversive and untenable, thereby undercutting the potential for so many trans people to be taken seriously by broader society and gain respect (*ibid.*). It is seen to cheapen and diminish the experiences of those who truly do feel binary – like 'real' men or real women – thus making them look, and even sometimes feel, superficial and brain-washed.

Both political groups to some degree fight for empowerment based on difference, relying on the distinctiveness of their social group from the dominant group as the basis for rights claims. Both sides, furthermore, share a desire to overcome what they regard as 'false consciousness' (Rubin, 1998: 276), or the oppressor's systematic obfuscation of the dynamics of oppression and the consequent demoralisation of one's gender diverse identity. However, a more radical approach considers the oppressor to be historically and contextually situated, a product of structural differentiation and hierarchisation, while the liberal approach interprets institutional authorities to be the oppressive party (van der Ros & Motmans, 2015). Therefore, in their restitutive efforts, radical-minded actors seek to undermine the system of gender

entirely with the intention of freeing all people from its repressive grip. It often comes in the form of openly challenging gender norms, particularly those concerning the binary, forgoing gender-conforming bodily changes, and similarly subversive acts (see Weeks, 1998; Warner, 2000). A radical claim to gender validity often – but not always – materialises as non-binary, either as an adopted identity term or as an embodiment via bodily sex/gender identity misalignment (refer to the above-mentioned ‘queerly between’, Nordmarken, 2014).

Liberal-minded actors, on the other hand, tend to seek assimilation to erase the differences which are seen to keep one subjugated (Roen, 2002). There is greater emphasis on institutional support, such as access to legal, medical and social resources and recognition. This emphasis reflects more the liberalist or structuralist interpretation of identity and individuality as that which has a core self and an inner authenticity (Taylor, 1994). People who identify and perform more towards the liberal end of the political spectrum are more likely to transition physically, legally and socially within the binary, as well as identify as ‘formerly’ transsexual (Roen, 2002). Liberal trans identity politics therefore are more acceptable to the general public because, by prioritising assimilation over disruption, they both uphold the institutions of law and society as the ultimate authorities on gender identity and avoid challenging the underlying structures (Warner, 2000; Beger, 2000).

Again, I feel compelled to clarify that how I have described ‘radical’ and ‘liberal’ reflects the most extreme tendencies; people move along the spectrum according to circumstance, shifting political alignments repeatedly. One does not have to choose between one or the other position, nor does one have to choose any position at all. These positionalities are not stable or permanent; they are inhabited temporarily for a particularly reason, be it deliberate or not. What I describe here are the two most recognisable political strategies for (re)claiming power over one’s body and identity and (re)creating restorative narratives. The effects of (neo)liberal citizenship – the process by which some are deemed productive and valuable while others are not – has fuelled a divisiveness in the trans community (see Aizura, 2006, Beger, 2000). In large part, trans people are responding to the parameters set by the state (for security) by either fitting inside these parameters or rejecting them; most do a complex mix of both. However, these two possibilities (assimilate or reject) are so pronounced in this ‘era of recognition’ that it has become an elemental part of the trans political movement. These possibilities have manifested as the two primary pathways for claiming justice.

On this note, while radical trans politics appears to reflect more the doctrines of poststructuralist feminism while liberal appears more akin to structuralist, this is in no way a measure of their validity or importance as political positionings in the movement for trans equality. I feel this is an important point to make because this value-laden comparison tends to permeate trans and gender studies, and there can be too little discussion around the consequences of uncritically viewing the positionings this way. It is easy to assume that radical trans politics are the way forward and that the liberal approach is some simplistic approach that is perhaps necessary for some people now but really not beneficial in the end. And, as one who subscribes passionately to poststructuralist feminist thought in his academic research, it has been a difficult matter to wrap my head around. In fact, it had taken me quite some time before I understood how I had long been unconsciously employing this hierarchising distinction. If we, however, step back and consider the matter of the livable life and precarity, it becomes clearer as to why we should be more careful in our assumptions⁸³.

7.2.5 Cisnormative capital

In doing so, I find useful the term ‘cisnormative capital’ for understanding how different positionalities and circumstances inform one’s options for negotiating gender. Though I do not name it as such in the three articles, I apply this concept’s line of reasoning in the arguments on how legal gender recognition impacts different people in varied ways. Cisnormative capital is inspired by Bourdieu’s work on capital (1986), which describes one’s access to or acquisition of resources and is used to illuminate the processes of socio-cultural reproduction and structural inequality. Bourdieu distinguishes between four primary types of capital by how they are acquired: (1) economic, on the basis of financial means; (2) social, on the basis of institutionalised relationships of mutual recognition and acquaintance; (3) symbolic, on the basis of prestige or honour; and, (4) cultural, on the basis of social assets which enable social mobility. Cisnormative capital reflects a mix of all four, with greatest emphasis on social capital and cultural capital – specifically the form of embodied cultural capital, which refers to the assets acquired through socialisation to particular cultural traditions. Within this framework, the ability to adjust oneself according to cisgender norms –

⁸³ Refer to, for example, the book *Second Skins* (1998), wherein author Jay Prosser argues (somewhat controversially) that theorists such as Judith Butler demean the experiences of transsexuality by promoting gender subversion over physical transition.

to take the measures necessary to materialise within the field of appearance – is dependent upon one’s access to and acquisition of the necessary resources for ‘passing’ as cisgender. The economic means for medical and material interventions to appear more feminine or masculine, as well as to move to geographic locations which permit greater diversity; the symbolic means to be respected in spite of one’s differences; the social means to have a strong network of support; and the cultural means to perform in socially acceptable ways, based on sufficient education, racial or ethnic privilege, bodily ability, etc. The amount one is able to challenge cisnormative standards without risking too much precarity is dependent upon one’s other capitals, as these capitals work to compensate for the loss of power caused by deviation from gender norms. This framework is useful in understanding how social actors are, to some extent, drawn towards different political positionings based on the other factors informing their socio-economic standing. One’s degree of ‘practical sense’, as Bourdieu puts it, informs one’s ability (conscious or not) to perform appropriately within a particular social field.

Through this lens, we could see that some people may adhere more strongly to the gender binary if they lack the sufficient capital to protect them from a precarious life in the event that they stray from it. Doing so could give them more respect from other actors and the state and even help secure resources, such as a job, housing, etc., that may be denied to them otherwise on the grounds of being too different⁸⁴. Others, contrarily, may feel more empowered by eschewing the binary in favour of something more radical, and they are able to give up so much cisnormative capital because they are empowered otherwise. When one has social support and economic stability, it can be easier to take risks. For others still, they may feel only able to challenge norms in some circumstances where they have capital to back them, but not in others.

That being said, I should note that I do not follow Bourdieu’s tendency to emphasise circumstance over agency. This is where feminist poststructuralism departs from Bourdieu’s work, as feminist poststructuralism avoids seeing the social subject as a blank slate bound to ‘corporeal sedimentation’ in order to maintain both one’s agency in the process of becoming as well as the eternally mutative nature of subjectivity (Lovell, 2001: 30). I do not moreover

⁸⁴ Even with legal protection against discrimination based on gender identity and expression, as discrimination is not always clear-cut and obvious.

believe that all our decisions and desires are shaped by capital; people identify and perform as binary or nonbinary, or some mix of the two, because this feels most right for them – it is not only about what is possible. The theory of capital cannot capture all the complexities of how gender is meaningful to us and our lives. Rather, I suggest this framework as an additional tool for understanding how, in securing a livable life, trans politics intersects with agency, negotiation, subjectivity, and liveability. It helps demonstrate why political alignments should not, and cannot, be equated to any implicit hierarchisation in gender and feminist studies.

Another point to address is the common poststructuralist perspective that no matter which side one identifies with, it requires subscribing to a group identity which is defined in opposition to the dominant party *by* the dominant party (Connolly, 2002). Put another way, ‘trans’ from this angle is seen as a categorical tool historically constructed to ‘other’ those who do not sufficiently abide by the socio-culturally established norms of gender embodiment, experience and identification. To reclaim an identity in the fight for rights is to reinforce the marginalised group’s distinction from and definitional reliance on the group from which the oppression stems. It also requires a certain degree of ‘strategic essentialism’, which Spivak (1988) uses to describe the generalisation of a group’s identity in order to achieve something. These are seen as undesirable consequences of trans identity politics, and, from the common poststructuralist perspective, the goal should be to move past identity politics entirely. The argument reflects the postmodern critique of liberal-capitalism of identity group association in the project to access rights, as rights are seen to be controlled by those who are privileged.

However, I believe this can be an unnecessarily victimising interpretation. It is a monolithic perception of power, as it regards a social group’s identity as wholly subjugated (and the privileged as wholly governing), therefore precluding the possibility for a minority subject to enact their agency and negotiate their positionality. As identity is a continual negotiation of power, subject-positions constitute not only the designations enforced by the privileged but *also* the appropriative and restitutive qualities as deemed by the subject. Butler’s concept of performativity comes back into play here, as she uses this to demonstrate that a poststructuralist approach need not be so abstract and anti-materialistic in understanding power relations. Gender is continually disarticulated through subject performativity, both wilfully and unconsciously.

Within the Norwegian context, the make-up of the trans identity politics, and the issues of gender equality to which it responds, is premised on the country's particular socio-legal history and its impact on rights and identity development. The next subsection explores this matter in depth.

7.3 Society, law and citizenship

Through my articles, particularly Article 1, I examine what the LGR can offer for trans people seeking empowerment as well as why this law may be regarded as more progressive for trans equality than it really is. Much of what my research has uncovered to explain this is linked to the shift in Norway over these past few decades towards a post-welfare, neoliberal framework in economics and policy. The shift has set the stage for how oppression and rights are interpreted and equality is deployed. To understand how the law on gender recognition has developed and the way trans equality is formulated requires examining the make-up of citizenship and application of human rights law within the Nordic context. To lay the foundation for this discussion, I will in the following subsection briefly step aside from pure theory in order to provide the background necessary.

7.3.1 The rise of neoliberalism

Since the 1970s, Norway has been shifting from a welfare-based, social democratic state to a post-welfare, neoliberal state (Baeten, Berg & Lund Hansen: 2016: 201). The former characterises what is known as the Nordic Model, whereby a universalist approach is taken to promote and protect individual rights and life opportunities. The model came about after the defeat of fascism during World War II, resulting in large part from a successful collective bargaining by labour unions for more autonomy from employers (Wahl, 2018). The defeat lay the foundation for policies enhancing social justice. Notable qualities of the Nordic Model include a focus on social cohesion, broad access to public services (such as free education and healthcare), generous social welfare benefits, low levels of socio-economic disparity, high workforce union rates, progressive egalitarianist policies, and a labour market overseen by the state (Kamali & Jönsson (Eds.), 2018; Sümer, Halsaa & Roseneil, 2014: 283). Though the Nordic region is still considered to encompass these socio-economic values and practices of the Nordic Model, there has been a gradual yet palpable shift towards a more liberal governmentality, with a greater emphasis on the privatisation of services, deregulation of markets, and the shift of welfare provisions to lower governmental levels (Baeten, Berg &

Lund Hansen, 2013: 209). The change has, of course, recently snowballed with upsurge of fiscal and regulatory conservatism.

In Norway, as with the rest of the Nordic region, neoliberalist ideologies have seeped in slowly, taking hold with their allure of resolving issues which arose in the 1970s when Norway began experiencing an economic crisis that disrupted the growth and stability it had been experiencing since after WWII (Wahl, 2018). Social democratic parties followed suit by adopting more neoliberal ideologies and practices. The universalism at the core of the Nordic Model, according to Baeten, Berg and Lund Hansen (2013: 209), is being eroded to the point of no longer resembling the original nonpecuniary welfare model. In other words, life opportunities have become increasingly guided by economic standing and pronounced individualism, leading to a growing socio-economic disparity. Åsbjørn Wahl (2018) refers to this as ‘the crisis of social democracy’ (2018). Nonetheless, universalist undertones in culture and society persist, as will be discussed below.

When it comes to this shift, which I introduce in Article 1, there seems to be a general obliviousness amongst the non-Nordic general public, as made evident by the relative lack of critical discussion around the shortcomings of the Nordic region to uphold the notorious Nordic Model. Baeten, Berg and Lund Hansen address this matter in a special issue of the journal, *Geografiska Annaler: Series B, Human Geography*, wherein they emphasise the degree to which social democracy in the Nordic context has been mythologised as shatterproof (2013). They write about their experiences in academia specifically, reflecting on international workshops they have hosted to discuss neoliberalism and the Nordic welfare states, ‘[S]cholars not familiar with the Nordic context seemed to be relatively unaware of [the issue of waning welfarism] and continue to think of Nordic countries as leading examples of successful social-democratic societies with progressive sociospatial politics (and policies)’ (2013: 510).

Similarly, Brunila and Edström (2013) question whether the Nordic region is actually upholding the principal qualities of the Nordic Model any longer, given the rise of neoliberalisation, particularly since the 1990s. Neoliberalisation shifts priority from holistic (social welfare-based) to individualistic (personal responsibility-based) modes of state regulation. The following discussion outlines the relevance of this shift for gender equality in Norway.

7.3.2 The neoliberalist turn and gender equality

Despite the fact that one of the qualities most often associated with the Nordic region is that of gender equality, what gender equality means in the Nordic region generally – and Norway specifically – has transformed a significant degree over the last few decades. The principles underlying the socio-cultural and ecopolitical interpretations of gender equality have mutated in such a way that they more strongly reflect broader neoliberal ideas of self-sufficiency and essential identities.

Though neoliberalism has arguably opened a space for the development and recognition of diversity to a degree which was previously unachievable, there are reasons to be critical when it comes to how much neoliberalism has empowered trans people. The promotion and protection of gender diversity may not be as far-reaching or inclusive as it first seems. Gupta (2012: 2), who writes on feminism in the neoliberal turn, contests the notion that gender equality has flourished under neoliberalism, saying, ‘neoliberal values created a space for a bright, brassy and ultimately fake feminism’. The fight for equality (or ‘sameness’, (Richardson, 2005)) has resulted in not only the overall normative structures being left largely in place, but also in that only *some* people are being granted access to these spaces of privilege. Of course, such people are those who do not deviate too much from the norm already and therefore do not overly challenge the normative structures. They can be given access by those inhabiting these exclusive spaces without forcing the privileged to have to question their own value beyond reproach; the privileged can pat themselves on the back for being so open-minded and progressive – qualities oft-revered in a neoliberalist society. ‘[N]eo-liberalism is a political rationality that is not only anti-social but also requires an anti-democratic and violent form of statehood. However, neoliberalism is not solely based on coercion and force, but paradoxically also on consensus’ (Ludwig, 2016).

7.3.3 Anti-discrimination and rights

Neoliberal capitalism has increasingly fostered a society which strives for and celebrates self-determination and expression rather than self-control and repression. Personal agency is seen to manifest in the power to present one’s authentic self. The ostensible augmentation in personal agency, via the increased emphasis on it, obscures the structural mechanisms of control which continue to guide or even compel personal decisions. Therefore, although diversity is seen in this way to be protected, it is actually being shaped heavily by hidden systems of power. The diversity which is allowed to flourish is perhaps not so diverse. The

calls for rights which garner the most attention and respect most often do not deviate so far from what is already the norm, as this is seen as (and likely is) the most effective way for breaking the existing mould. Think of the ‘we’re just like you’ and ‘we’re normal too’ campaigns employed in movements for legalised same-sex marriage, adoption rights, and so forth. Advocacy is centred on relating to the dominant party rather than distinguishing from it with the intent of humanising and valorising the marginalised. The strategy is effective – and ultimately necessary – because of how rights and power operate within a neoliberal capitalist order. Rather than upturning the system of power by redefining (or deconstructing) them, achieving empowerment calls for ‘a fundamental restructuring of sexual politics so that individuals and the population can be made governable as well as govern themselves according to neoliberal “regimes of truth”’ (Ludwig, 2016: 419-20). Rights in this context are about inclusion and incorporation into the existing system.

In specific regards to trans rights, American law professor and activist Dean Spade explores how they are shaped by neoliberalism, talking about how ‘universalising liberal rights discourse’ misunderstands power and presents limited and muddled interpretations of trans equality (2009: 354). With the neoliberal focus on equality being achieved through inclusion in and assimilation to the dominant group, trans lives become disposable and precarious (ibid.). This is due to the way that ‘oppression’ (and ‘violence’, as introduced above) is understood – as happening within a perpetrator-victim dyad (2009: 360). Such an interpretation invisibilises systemic oppression in two ways: first, by treating ‘perpetrators’ as rogue individuals acting on their own internally-sourced ill will; and second, by regarding the ‘victim’s experience of oppression as specific to that encounter’ (Spade, 2015: 51). In other words, if the perpetrator or acts of perpetration are removed, then such oppressiveness will cease to exist. Spade refers to this framework of understanding oppression as being ‘liberal rights-focussed’ (2015: 51). Common examples of systemic inequality being regarded as individualised or small-scale include when ‘whites only’ signs were displayed by businesses and restrooms or the issue of job applications being rejected on the basis of race, gender, class, etc. (ibid.). Such acts of oppression have often been erroneously seen to constitute a ‘violation requiring remediation’, requiring that only the persons directly involved should be dealt with in order to rectify the injustice. This continues to be the most obvious and prevalent way of imagining discrimination, oppression and resolution. By focussing on the actions of individuals against other individuals, however, the broader system which fosters and, to a degree, compels or condones such behaviour, is hidden. This liberalist reasoning is reflected

in the reductive logic underpinning the deficit model of recognition, as described previously. Just as oppression is seen to emanate from one single source – be it an individual, group or institution – so is the restitutive power of recognition.

Moreover, the concept of victimhood is created in this light, as the legitimacy of one's status as a victim of a crime is dependent upon one's status as a body worthy of protection. Sala Lamble (2008) explains that the most well-known trans-focussed event in the global West, TDOR (Trans Day of Remembrance, annually on 20 November), is depicted in the media in a way that valorises white and/or middle-class victims of transphobia over those who are people of colour and/or lower-class. The 'good victim' narrative reinforces the divide between 'innocent victims' and bodies deserving disposal. Lamble writes, 'By predicating political strategies on innocent victimhood, violence against individuals who deviate from the ideal becomes less visible and more tolerable' (2008: 27). The trans rights movement image is often rife with tokenised (desirable) versions of trans-ness that go beyond just the ability to 'pass' – white, able-bodied, thin, economically stable, mentally-sound, attractive, etc. – and claims of recognition are valued based on what a deserving trans person looks like. The issue of image mounts pressure on those who deviate from this to assimilate and sends a message to those who cannot or will not assimilate that their lives are not worth as much in the eyes of society and of the state (Moran & Sharpe, 2004). The message can, and often does, become internalised, contributing to an ever-greater degree of precarity, as explored previously.

Within the Nordic region, these neoliberal notions of individuality and rights intersect with social welfare notions of equality, to make what Norwegian scholar Marianne Gullestad (2002: 46) calls 'egalitarian individualism'. While this is a quality pervasive in Western cultures, Gullestad explains that it is especially pronounced in the Nordic region generally and in Norway specifically. There is a cultural emphasis on *likhet* (a Norwegian concept, translating into likeness, similarity and equality), as achieved through sameness. In interactions between individuals, recognition in this model relies on commonalities being valued and upheld over differences. Gullestad calls it 'imagined sameness' (2002: 47). She applies this specifically to the issue of immigration, race and nationalism, and her discussion on this matter offers a useful approach to understanding how sameness in Norway and the Nordic region is elemental to how gender identities are shaped. The following excerpt from Gullestad's writing (2002: 47) elaborates her application of imagined sameness:

The egalitarian logic can be woven into both egalitarian and hierarchical models of society. It is not only tied to the term *likhet*, but also to a whole range of other expressions such as ‘to fit in together’ (*å passe sammen*) and ‘to share the same ideas’ (*ha sammenfallende synspunkter*). Often it implies that there is a problem when others are perceived to be ‘too different’. Then the parties often avoid each other. Open conflicts are seen as a threat to other basic values, such as ‘peace and quiet’. Avoidance can happen prior to the establishment of imagined sameness, and when it is no longer possible to maintain. In this way differences are concealed by avoiding those people who, for one reason or another, are perceived as ‘too different’, and by playing them down in social interaction with those who are regarded as compatible. The result is that the dividing-lines between people in terms of social class have become blurred.

The implicit doctrine of sameness underpins the framework of rights, equality and recognition in Norway, by predicating access to power on social homogeneity. The legal subject’s conditions for political parity and state recognition are established in this way. The universality of rights – the ostensible extension of rights to all people – is based on a universal subject, derived from a historically informed perception of what makes a productive and worthy citizen. In order to gain legal power requires the subject to sufficiently align oneself with this image (Butler, 2015: 52).

A dynamic similar to the above-discussed ‘perpetrator-victim dyad’ can be seen between the individual and the neoliberal state. Issues of gender recognition, and any resultant legal policies, are regarded in this context as being either state-level administrative shortcomings or individual problems. Spade draws on Michel Foucault to elaborate the point that the state’s power does not solely act to repress individuals but rather is part of a complex system of coercion, reinforcement and conditioning (2015: 51-4). It is how, Spade explains, the state’s administration can distribute life chances along particular pathways and promote some ways of being over others, whilst seeming to offer equality to marginalised groups (ibid.).

This logic echoes Foucault’s (1991) discussions on governmentality, particularly when this concept is understood as the disciplining power at the centre of gender regulation. The law is decentralised in this framework of understanding power, as power is ‘not primarily operating through prohibition or permission but rather through the arrangement and distribution of security and insecurity’ (Spade, 2015: 57). Spade aptly terms this operation ‘population management’ (ibid.). Programmes that distribute rights and designate identity-based access, such as health care and identification documents, are what fuel this management, as I explored in my previous discussion on biopolitics and precarity. Though these programmes appear neutral, Spade contends, they ‘produce clear ideas about the characteristics of who the national population is and which “societal others” should be characterised as “drains” or “threats” to that population’ (ibid.). Legal reforms and policies, which are implemented with

the ostensible intent to give more access and rights to certain social groups, are examples of how the population continues to be managed in a way that does not undermine existing regulatory principles. Andrew Sharpe (2002) designates gender recognition laws and legal reforms as examples of governmentality, as they do not free the body (or thus individual) from its sex but rather ‘re-sex’ the body along normative gender lines. Understanding the law, and the role of the state, from a framework of governmentality is therefore imperative for seeing past the seeming neutrality of state regimes, as it allows us to detect how the state operates in a way that is extra-legal without being illegal (Butler, 2004: 94). This applies likewise to how gendered citizenship should be analysed, as will be unfolded next.

7.3.4 Trans jurisprudence and citizenship

In the three project articles, I explore the role of the state in affecting one’s gender identity through recognition as to understand the means by which legal recognition shapes gendered subjectivities. As noted previously, there is a particularly high level of trust by citizens in the Norwegian state, given its previous social welfare status, thus rendering formal recognition relatively crucial in the process of identity construction. The law on gender recognition was designed to include trans people more in the public realm by legally sanctioning their personal gender identity without enforcing sterilisation. However, if one’s gender identity is not sufficiently captured by legal recognition, then one is left to wonder how much one can be a citizen. As will be further explored in the Crosscut Analysis section, the matter of how gender identity and citizenship intertwine to inform one’s subjectivity warrants investigation. In the following, I will introduce trans jurisprudence then explore citizenship.

Jurisprudence, or theory of law, can be employed in various forms as a way of analysing legislation through a particular lens. Such analyses are a product of resistance to discriminatory law and legal reforms, demonstrating how they form legal subjectivities. In 1980, Ann C. Scales published an inspiring article entitled ‘Towards a Feminist Jurisprudence’, in which she argued that a feminist perspective was imperative for assessing and challenging existing legislation in order to expose their gender-based discrimination. Such would serve as a lens through which to understand how a law impacts on the lives of a

particular social group, such as women in the case of Scales' argument. In doing so, it would become apparent how a law or legal system was failing to empower all its citizens equally⁸⁵.

Transgender (or trans) jurisprudence, a concept which emerged 25 years later in Andrew Sharpe's aptly-named book, *Transgender Jurisprudence* (2002), builds on previous undertakings to interrogate and challenge law, such as that of feminist legal scholars. Sharpe seeks to move beyond the tendency of legal inquiries' preoccupation with law's repressive power, opting instead to regard law in the Foucauldian sense as a site of socio-cultural production (2002: 4). Such an approach opens a space for examining the regulatory schemes which control and shape bodies, identities and experiences. It exposes the medico-legal understandings of sex, gender and sexuality underpinning law (2006), as well as demonstrates how law is responding to the 'threat' posed by transgender bodies and identities⁸⁶. By analysing a law through this lens, we can see how citizenship is being constructed based on gender, and how this in turn informs broader understandings of whether trans people qualify as good or bad.

Citizenship is in this way more complicated and less straightforward than it may seem based on how it is used in everyday rhetoric. When stripped of its complexity, it can become operatively restrictive in its application. American scholar Isaac West explains that when citizenship is regarded as simply the 'rights and privileges afforded to citizens', it correlates state-specific modes of recognition with actualised citizenship (2014: 17). This not only implies that the law is clear cut, but it also equates successful citizenship with complete lawful obedience. Such logic, West argues, 'obscures the ways in which citizenship is actually practiced and lived in our movements through space and time' (ibid.). A state's model of citizenship is informed by the concept of 'productivity', definable as the contribution towards an ideal social order (ibid.). One's degree of acquired citizenship is based on one's level of productivity; therefore, if one has not achieved a sufficient level of productivity, then their citizenship is called into question.

⁸⁵ However, this is a tricky endeavour. While feminist jurisprudence, in the words of feminist sociologist Carol Smart (1989: 44), is essential in the quest to 'ameliorate the daily problems of operating within an apparently impervious system of law/knowledge', it requires that feminist advocates do not attempt to address the inequities inherent to law. The law must be de-centred from its androcentrism in order to expose and destabilise the silent yet potent claims to truth. It is a matter of challenging the legal imperialism at work.

⁸⁶ Also see Aleardo Zanghellini's (2009) work queer jurisprudence, and the potential for 'queer' to compel empowering law reforms, as well as its potential to be misused or misapplied.

To be a citizen is to be a member of society, and, over the past few centuries, nation-states have come to value this type of identity above all others (Appadurai & Holston, 1996). Citizenship ‘subordinates and coordinates all other identities – of religion, estate, family, gender, ethnicity, region, and the like – to its framework of a uniform body of law’, and therefore it ‘erodes local hierarchies, statuses, and privileges in favor of national jurisdictions and contractual relations based in principle on an equality of rights’ (ibid.: 187). However, as with any tool of exclusion, the ostracised react by mobilising resistances which lead to significant transformations in what is deemed acceptable for society (ibid.). This is integral to the democratic process, as this is how laws are challenged and changed. Nonetheless, it must not be overlooked that the ability to challenge the status quo depends greatly on the ability to be seen and heard by society at large. Visibility – or what Butler refers to as ‘intelligibility’, as discussed previously – is more feasible for some people than others. When one’s citizenship is devalued because that person is regarded as too different and thus unable to be neatly categorised according to existing norms (due to being non-normatively gendered, for example), then their ability to incite change becomes challenged (Bacchi & Beasley, 2002; Butler, 2009). Without complete citizenship, one’s role as a social actor is less powerful, and this disempowerment manifests across many facets of everyday life and livelihood. Due to the emphasised state-subject dyad in the Nordic region, legal subjectivities are intricately interwoven with personal and social subjectivities (Esping-Andersen, 1990). Therefore, when one’s citizenship is challenged, one’s relationship with the state is jeopardised, destabilising to a significant degree one’s personhood.

In this way, embodiment is entwined with citizenship, since ‘bodies give substance to citizenship, and citizenship matters to bodies’ (Bacchi & Beasley, 2002: 324). One who is seen to have control over their body is regarded as more autonomous and thus in possession of a more complete citizenship. Thus the ‘good transsexual’ is distinguished from the ‘bad’, as the former characterises the form of transgenderism acceptable to society on account of its assimilative quality because it does not significantly unsettle the (cis)gender imaginary. This distinction, however, extends beyond being normatively gendered and able to ‘pass’, as it permeates issues of race (Skidmore, 2011), sterilisation and reproduction (Honkasalo, 2018) and nationalism (Puar, 2007; Aizura, 2006) – all of which are intimately intertwined and contribute to the image of national belonging (Tudor, 2017; Aizura, 2006). The LGR, like other neoliberalist laws seen to promote minority ‘inclusion’, is rooted in a national imaginary that is generated by a globally-recognised branding of exceptionalism (Puar, 2007). Norway’s

imaginary of exceptionalism lies in gender equality (Brunila & Edström, 2013), and the regulatory script that dictates what kind of trans is acceptable is intimately entwined with historically sanctioned images of racial purity⁸⁷. In this way, whiteness continues to coincide with gender equality, and the nationalist framework depicts the ideal trans person as gender normative, productive, and white. Assimilation depends not only on ‘passing’ as cisgender (and erasing one’s trans past) but on appearing as a ‘native’ Norwegian. Without these qualities, one will likely not acquire sufficient national capital (Hage, 1998, cited in Aizura, 2006) to achieve a relatively complete citizenship⁸⁸.

To better understand the distinction between the good and the bad transsexual on a conceptual level, it is worth introducing here the concepts of formal versus substantive citizenship, as outlined by Appadurai and Holston (1996: 190). Formal citizenship refers to one’s membership in a nation-state, and substantive refers to civil, economic, political and cultural rights a person has and uses (ibid.). Appadurai and Holston distinguish between the two in order to show that one can technically be a citizen of a country but that does not automatically confer the same rights to this person as it may to another. So, while formal citizenship is more clear-cut, substantive has gradations. This is how people can fall through the cracks.

Formal citizenship is upheld as more valid and relevant than substantive, since in the neoliberal context the state’s recognition of an individual is considered paramount for enhancing personal empowerment and life opportunities. When it comes to analysing gender equality, I agree with feminist scholars such as Ruth Lister (1997) and Pnina Werbner and Nira Yuval-Davis (1999) who argue that it is most useful to consider both formal and substantive together, rather than just one or the other. By seeing how they work together to define the limits of citizenship, it becomes possible to see how citizenship constructs subjectivities (Rose & Canning, 2002: 5). This is important to note because there are two

⁸⁷ For an engaged discussion on the links between nationalism, sterilisation and racial purity, refer to Signe Bremer’s engaging article, ‘Det är såklart vi ska hjälpa dig’ [‘Of course, we will help you’] (2009). They link the forced sterilisation procedures in Sweden from 1935 to 1975 to the requirement for changing legal gender that was in place at the time of writing (and was changed with the gender recognition act of 2013). Sterilisation, along with the protection of children and the nation’s future, stems from the state’s desire to maintain a desirable population. Similarly, turn to the work of Julian Honkasalo (2018) for a look at the link between limited reproductive rights and the (still current) sterilisation requirement for Finnish trans people to change legal gender.

⁸⁸ Of course, the notion of ‘complete citizenship’ is quite problematic, and I would not contend that it is attainable (just as cisgenderism is not, in its purest sense, attainable). However, that discussion extends beyond the scope of this subsection’s purpose.

stories being told when it comes to citizenship: there are the rights one expects to have, based on a universalist understanding of what being a citizen means – and implicitly or explicitly promised by one’s formal status; and there are the rights one *actually* has, in line with one’s substantive status. Sometimes these deviate so far from another for so many people that a broad-scale change must occur. When the disjuncture of formal and substantive citizenship for a social group becomes too great, Appadurai and Holston (1996: 190-1) explain that there are two possible responses: either reactionary movements arise to make citizenship more exclusionary in order to weed out the undesired (such as has been seen recently with new conservative immigration policies); or citizenship is made more inclusive through policy reforms. Gender recognition laws for the most part fall in the second category, but only to a certain degree. As will be discussed next, such laws nearly always introduce or maintain exclusionary measures. The following discussion on human rights law demonstrates the link between neoliberal interpretations of identity and rights, and the paradoxical means by which trans equality rights can be instated and undermined simultaneously.

7.3.5 Human rights law & social justice

As has been explored thus far, the principles underlying the gender recognition law in Norway, as well as in other states, are informed by certain interpretations and applications of the concepts of human rights, identity, power, recognition and gender. When situated within a neoliberal context, these concepts interlink to (co)produce a ‘truth’ of what it means to be free, empowered and content – a truth which, as will be discussed below, awards greater validity to some lives than others, to the detriment of a great many trans people. Since the principles of human rights have been applied in developing the gender recognition law, it is necessary to examine what human rights mean and how they do (or do not) encompass the vast array of gender diverse experiences and identities.

As presented in the Context section, the law on gender recognition in Norway and abroad is built upon the Yogyakarta Principles [YP] (2007) and the Universal Declaration of Human Rights (UDHR, established by the European Convention on Human Rights [ECHR]). To review, on the matter of gender identity, the YP says that it is ‘each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily gender, including dress, speech and mannerisms)’ (2007). As

for the UDHR, Norway's Ministry of Health cites two principles: the right to privacy (Article 8) and the right to be protected from discrimination (Article 14).

Both the YP and the UDHR are grounded in the broader international human rights discourse, which uses as its starting point the position that, as human beings, we are all born free and equal. This underscores all ensuing rhetoric – the resultant principles on which human rights law is premised – on what guarantees liberty and equality. As we have seen, these ideas have not blossomed from thin air; they are the products of a liberal modernist framework which, among other things, considers humans to be indelibly constitutive of some intrinsic self. Jill Marshall writes on the paradoxes inherent to human rights legislation in her wonderful book, *Human Rights Law and Personal Identity* (2014), wherein she demonstrates how laws intended to empower people actually operate to sustain or even augment the normativising structures central to targeted modes of oppression. Marshall explains that with the rise of modernity, finding and establishing one's 'true selfhood' has become increasingly a project for all individuals. This is accomplished via self-realisation and autonomy, which ostensibly lay the groundwork for freedom (Marshall 2014: 2). Subjectivity is seen as, in other words, wholly dependent upon one's self-discovery. However, identity is a life-long project, one which we will never complete, because while completion is the purported goal, achievement of such would prove impossible. It is the belief that we can become fully developed that drives us, and the inability to do so that keeps us alive. These are notions I discuss in regards to the concept of empowerment (in Terminology subsection) and apply in my arguments in Articles 1 and 2.

Marshall states that freedom can hence be seen as a type of slavery, since we become bound to our identity projects. She quotes Nikolas Rose's contention (1999: ix; cited in Marshall 2014: 2) that 'whatever the constraints, obstacles and limitations that are encountered, each individual must render his or her life meaningful as if it were the outcome of individual choices made in furtherance of a biographical project of self-realization'.

Thus, recognition of one's personal identity is crucial in sustaining a livable life, and personal identity is, within the framework of (neo)liberal identity construction, pre-political and immutable. On the same token, one's ability to be free is seen as inherent; therefore, one's personal identity is intrinsically apolitical and able to be guided purely by personal desire and need. Our capacity for freedom, furthermore, informs our capacity for citizenship and subjecthood (Rushing, 2016).

This perspective appeals to an age-old belief in the sanctity of humanity and a commonality that binds us all together (Marshall 2014: 27). It crystallises the distinction between humans and other living beings by declaring humanity to be in some way precious and most deserving of protection. It moreover points to an undeniable capacity of humans to be agential – more specifically, logical, just and moral by one’s own volition. Such beliefs stem from an overarching conviction in the potential for humanity to be rid of evil; the global adoption of some abstract code of morality is only possible if all people are, at their core and by default, ‘good’. This is the essence of ‘dignity’, as fashioned by contemporary socio-political rhetoric.

In order for every person to be granted complete selfhood, oppressive measures (the evils of society) must be abated, and it requires a system of rights to ensure that the most basic measures are available to all. With these basic needs met, humans are, according to the paradigm of agency, not only able to achieve goodness – which becomes synonymous with being a ‘good citizen’ – but are *required* to achieve goodness, as a part of being a worthy individual and citizen. We are all ultimately responsible for ourselves, as per what Butler calls our ‘neoliberal morality’ (2015: 24). To enforce basic rights, human rights laws are enacted. These are intended to neutralise the differences between people which have served to disenfranchise some and bolster others (Marshall, 2014: 27). It is meant to even the playing field so everyone has an equal chance to define themselves as they want or need – assuming, of course, that what one wants or needs falls in line with socio-political standards of citizenship. If one falls outside these standards, then they are considered to have failed and thus do not warrant protection for this diversion.

Because human rights law is intended to reconnect the individual with some internal self that has been thwarted from materialising under unjust regulation, any laws that are created to ameliorate this are inevitably going to reflect social standards of what humanity should look like, rather than what it *does* look like. And, since centuries of liberalist interpretations of identity have established personhood as atomistic and fixed, human rights laws require a reducible, immutable self that precludes any representation of fluidity. It moreover divorces individuals from one another by overemphasising agency and understating intersubjectivity.

Similarly – as echoed by the previous discussion on liberalist understandings of oppression – discrimination is applied as the denial of one to be recognised *as they are* (Marshall 2014: 188-9). One’s authenticity is called into question through the act of misrecognition, and ‘when a person is treated as though significant elements of his [sic] life count for nothing, it is

natural for him to experience this as, in a certain way, an assault upon his reality' (Frankfurt, 1997: 153, as cited in Marshall, 2014: 188). To address this, human rights law applies measures to ensure due recognition.

Herein lies the paradox of human rights law: Though each person is considered atomistic and agentic, they are also regarded as reliant upon others for self-realisation (Marshall 2014: 183). Likewise, while human rights law seems to acknowledge that subjectivity arises at the nexus of choice (or the illusion thereof) and interpersonal recognition, identity is presumed to be based on an immutable essence which guides one's decisions and is wholly detached from others. This is how human rights law not only is able to contravene its own purpose, but it can do so under the guise of social justice. The underlying assumption of human rights law is that – given one's agency and the default (or achievable) status of goodness on account of being human – a person's right to self-materialisation can be protected and promoted. It merely requires a continual reform of existing legislation combined with a collective endeavour towards lived dignity. It furthermore depends on the ability for all people to be fully intelligible to all others.

Marshall argues that achieving this is not simple; in fact, it is not even possible, because our subjectivities are in a constant state of flux and thus cannot be captured by law (2014: 185). She points to anti-discrimination laws as evidence of this, saying that their inability to reflect all our individualistic and contextually-situated needs proves this (ibid.). What these laws do capture is 'a reflection, a representation, a persona' (ibid.), sculpted against the backdrop of what it means to be human or, more specifically, gendered. The material intertwining of humanness and gender is an endless loop of mutual reinforcement since, as Butler writes (2004: 11), gender 'figures as a precondition for the production and maintenance of legible humanity'.

8. Crosscut Analysis

In this cross-cutting analysis, I will examine the three scholarly articles collectively with the intent of offering a deeper and more critical investigation into Norway's 2016 law on gender recognition (LGR). It becomes evident through the theoretical analysis of the law I provide in Article 1, coupled with the participant interviews presented and analysed in Articles 2 and 3, that while Norway's LGR has some benefits for trans people and the movement towards (trans)gender equality, it still has significant limitations that are largely invisibilised by sociocultural discourse on what constitutes empowerment.

To reiterate, the LGR is beneficial in that it operates to undermine long-standing interpretations of gender being explicitly body-based as well as offers trans people greater autonomy over their own identity constructions. However, my findings show that the new law is limited in its effectiveness to empower those who have changed legal gender following its implementation, due to the gap between how gender, identity and power are applied by the law and how they are experienced by trans people. It is this gap which I will examine in this section, as to show how it enables and forecloses alternative modes of gender identification. Drawing on the three aforementioned scholarly articles, I will illustrate the impact of the new law on trans subjectivities and the trans political landscape, with a particular focus on the (trans)gender equality paradox, the (cis)gender imaginary, and their implications for the law on gender recognition. I argue that it allows for trans equality to appear achieved whilst maintaining a power imbalance, to the detriment of Norway's trans people, and arguably society as a whole. This is the (trans)gender equality paradox – the simultaneous empowerment and disempowerment of trans people by a law that facilitates the illusion of full recognition and protection. In the following, I will present this illusion of equality in order to lay the groundwork for the following section, in which I will draw on all three articles to discuss the role of the paradox in how it impacts trans subjectivities and the trans political landscape.

8.1 The (trans)gender equality paradox

Throughout my three articles, I contend that LGR appears, on the surface, to have substantially addressed trans inequality by abolishing the sterilisation requirement and allowing national residents aged sixteen and over to decide for themselves which gender they want be legally registered as. The operative term here is 'appears', and I will get to that soon;

however, it is first more pertinent to address what is meant by ‘substantially’⁸⁹. The claim that the law was intended to empower trans people was never stated explicitly by the law-makers, the bill or the eventual law. Therefore, my dissertation carries the double burden of demonstrating the ostensible purpose of the LGR, and elucidating the failure of the LGR to realise this ostensible purpose to a significant degree. This is a tall order to fill! However, I feel it is necessary because the implicit promise is part-and-parcel of Norway’s maintained national narrative of socio-cultural egalitarianism – a narrative which, as I will argue, ultimately serves to weaken progress toward trans equality, and gender equality generally. It is against this backdrop of presumed egalitarianism, and within the framework of (neo)liberalism, that the illusion of trans equality has been constructed in the wake the LGR’s implementation.

Substantiating my claim about Norway’s trans equality illusion first requires stepping back to examine the LGR and its implications from various angles. In the Context section, I presented the process of the law’s implementation, from the socio-cultural background which fuelled the campaign to abolish sterilisation, to the gender recognition bill that was eventually proposed and passed. This overview is salient as it paints a picture of what gender equality and recognition mean in the Norwegian context, and how this LGR was presumably intended to rehabilitate those who had been inadequately represented or protected previously. As discussed in the Context section, the LGR was the Directorate of Health’s response to a long campaign regarding the human rights violations imposed by the sterilisation requirement. It followed a great deal of pressure externally, from Amnesty International, Transgender Europe and similar reforms in neighbouring countries, as well as internally from Norway’s own trans people and rights advocates. In other words, the LGR was ostensibly developed to free trans people of the subpar conditions the sterilisation requirement had held them in. Or, at the very least (as could be derived from a more conservative construal), it was developed to substantially ameliorate the burden of being denied due recognition.

However, as I contend in Article 1, the impetus of the LGR in terms of recognising and protecting trans people requires a critical reading of the law that extends beyond its circumstances for implementation and the government’s stated reasons in passing it. This becomes possible through trans jurisprudence (critical legal theory from a trans rights

⁸⁹ To be clear, I do not use this exact term ‘substantially’ throughout my articles, but the point that there has not been as much change as the law would seem to create is maintained and explored in each article.

perspective), which is explored further in the Theoretical Framework section. I use the term ‘impetus’ here to refer to the collective rationale, both deliberate and circumstantial, of those involved in the process of creating and passing the LGR. Laws in general reflect socio-cultural conceptions and norms and therefore have largely predetermined parameters based on what would be acceptable to the legislative bodies and the public. Therefore, we cannot simply attribute the LGR and any of its shortcomings (or transformative potential, for that matter) to those who had explicit power to pass it; rather, it was created within the conceptual framework of how gender, identity, and power were already understood and applied by society at large. As I have outlined in the Theoretical Framework section and demonstrated in Article 1, it was this framework which fostered an interpretation of gender recognition and protection not fully in line with the lived experiences of those who sought empowerment through legal gender change. The resultant gap illustrates the ambivalence of the law when it comes to recognition, as illustrated by its capacity to both positively and negatively impact upon those who seek recognition (McQueen, 2015: 125).

In the following, I will expand on this paradoxical quality of the LGR by exploring the concept of the ‘(cis)gender imaginary’, as introduced in the Theoretical Framework section. By leaning on the interviews and analyses of my conducted research (in Articles 2 and 3), as well as the conceptual arguments in Article 1, I will demonstrate that while the LGR does contribute to the destabilisation of socio-cultural norms around gender, it is ultimately quite limited in its ability to transform the landscape of trans rights and empowerment.

8.2 The (cis)gender imaginary

Over the course of my three-year project, my view has shifted in regards to the exclusionary mechanics of the LGR. Initially, I had presumed the law’s shortcomings were primarily its maintained binary-gender restriction (precluding non-binary people from legal recognition) and the lack of concurrent improvement in medical access (precluding many trans people from being able to be personally and/or socially intelligible as their personal gender, despite legal recognition of that gender). And, while these are indeed shortcomings and thus warrant criticism and overturning, I have found that they are not so much the cause of exclusion as they are symptoms of some larger exclusionary dynamic. They are, in other words, parts of a massive machine, always in operation yet hidden behind the scenes – one to which I refer throughout my articles but do not give name to.

This ‘machine’ is what I call the (cis)gender imaginary. As described in the Theoretical Framework section, the (cis)gender imaginary is the space in which cisnormativity is sustained and recycled. It is the standard against which all bodies, behaviours, desires and identities are measured and conferred value. It is the system of gender ideals, intersecting with sex, sexuality, race, class, nationality, and every other social facet. These ideals are contextually-situated and ever-shifting, being sustained through socio-cultural consensus on both their materiality and, importantly, their impenetrability.

Rethinking the LGR in the (cis)gender imaginary offers a perspective that is, I believe, much richer, more critical, and holistic. It carves a space for questions that can illuminate the larger issue at hand – namely, the particular formulation of socio-cultural gender norms and their impact on gender equality. It permits a more integrative investigation into how (trans)gendered subjectivities are being shaped by the law, as well as why these constructions have not resulted in as much positive feedback among the project’s research participants as one might expect of such a comparatively progressive law.

As becomes clear when considering the three articles together, the logics of (cis)genderism are not significantly challenged or destabilised by the law on gender recognition. The parameters within which one’s subjectivity can materialise remain largely undisturbed. Undoubtedly, the message that one’s legal gender does not have to match one’s bodily sex (as these concepts are understood within a liberalist framework), and that trans people are in the eyes of the state worthy of determining their own gender identity, is a powerful one, as I demonstrate in Article 2. It can strengthen the relationship between the subject and the state, as the subject feels validated and respected. Also, it can help improve one’s life quality since, particularly in a (post)welfare state like Norway, legal ascription can weigh quite significantly on one’s own gendered sense of self and on how others perceive that person. Nonetheless, I have found, this positive potential does not necessarily always outweigh the law’s potential to resituate trans people outside the realm of the possible.

8.3 Beyond the binary

Some scholars regard laws like Norway’s LGR, which only allow male or female reassignment, to be chiefly detrimental to non-binary identifying individuals when compared to binary-identifying, but I do not believe this claim is substantiated. In fact, I believe, this interpretation would only serve to obscure the actual underlying causes of trans inequality. In the Theoretical Framework section, I described my application of recognition theory, one

which is contrary to perhaps the most mainstream version of recognition, what McBride (2013) calls the ‘deficit model’. This model sees misrecognition as resolvable through improved recognition measures, such as new or better laws. This is the model that has informed social justice-based laws such as Norway’s LGR. Arguments that the LGR is only helpful to those who identify as binary are based within this model. The implied solution is that a new law be created which recognises non-binary people, such as one which allows a third gender. Of course, at first glance, this argument that binary trans people are benefiting more makes sense. The male/female limitation of the new law indeed precludes non-binary, intersex⁹⁰ or agender identities from gaining legal validation as their personal gender identity. Moreover, the lack of non-binary, agender or intersex options signals to society that these identities are invalid and undeserving of state, and thus social, recognition. And, while this may indeed seem to imply that those who identify as binary can therefore be properly classified by the state, I have not found this to be the case. As becomes clear in Articles 2 and 3, many binary-identifying people, while expressing a feeling of being validated and secure from being legally recognised, also describe continuing to feel mis-recognition from society and non-recognition from the state. This was especially the case in regards to intimate social spaces such as public bathrooms and locker rooms.

Undoubtedly, part of the reason for this lack of social recognition is due to the fact that the law does not carry with it the definite option of medical intervention; the monopoly of the state hospital still holds sway in that regard and most applicants continue to be denied treatment. Therefore, it would be reasonable to assume that a large portion of those who change legal gender *and* wish for a full medical transition will not be able to access it. However, undergoing full sex reassignment is not a condition for experiencing full recognition by the LGR. Whether someone passes within the binary or identifies as binary, the (cis)gender imaginary is at work, rescripting our bodies, identities, histories and desires to fit the framework of what is intelligible. If one performs outside the cisnormative matrix in any form, their identity is (re)constructed accordingly. For even those who pass completely as their personal gender, their gender category carries with it inferences of a particular past, one which fits the story of gender being continuous, stable and inherent – contrary to both

⁹⁰ Refer to Swedish scholar Erika Alm’s book chapter, ‘What constitutes an in/significant organ? The vicissitudes of juridical and medical decision-making regarding genital surgery for intersex and trans people in Sweden’ (2018) for an enlightening discussion on how intersex (and trans) bodies have been discursively constructed in legal and medical literature since the 1960s.

poststructural feminist understandings of trans and, it goes without saying at this point, the lived experiences of many if not most trans people. To be legally male or legally female is to have one's non-male or non-female past rewritten. One's trans-ness is cast out of the picture as a (cis)gendered history is forged. Thus, one remains at risk of being discovered as a 'gender pretender' or 'gender deceiver', as per the rules of the cisnormative 'reality enforcement' (Bettcher, 2014). This risk can be reduced through a successful cis-performance (i.e. passing), but it can never be fully mitigated within the (cis)gender imaginary, because to be cis requires a continuity and stability contrary to not only trans experiences, but to *all* gender experiences. No matter how one identifies, one's identity and experiences are measured against the standards of (cis)genderism, which becomes particularly tumultuous for those whose lives are built upon far more diverse stories of gender.

The impact of LGR's role in reifying the (cis)gender imaginary becomes particularly apparent in Article 3. In this article, I analyse interviews I held with two participants to show how these participants strategically align within trans identity politics in negotiating the validity of their gender identity construction following legal gender change. While all twelve of my interview participants demonstrated this tendency for political alignment, the two selected participants, Bente and Evelyn, provided what I felt were the strongest examples for analysis. They use recollective narratives to reconstruct their experiences of changing legal gender in such a way that compensates for the lack of empowerment they expected or desired. Their narratives reflect trans identity narrative structures already established within the trans community, which, through a thematic narrative analysis, I read as their strategy for seeking authentication in their trans identity and experiences – authentication that has failed to materialise with legal gender recognition. Though each identifies as a woman, neither feels the law's recognition has offered them a legitimate place within what they have learnt to recognise as socioculturally-ratified womanhood.

Nonbinary trans people are also bound in this reformulative matrix; however, in terms of the law, the situation of being excluded from recognition has not changed much. For those who do not identify full-time more towards one end of the binary than the other, their desires could be regarded as reflecting more radical identity politics, as explored in Article 3. Never having been written into the state's recognition, nonbinary trans people have already had to develop tools for re-empowerment which help with restituting one's personhood in the face of the state's (continued) disavowal. The LGR would offer an improvement in circumstance for many who, like the interview participant Lene in Article 2, pass as the opposite gender but do

not identify within the binary. Nonetheless, the reliance on the law to compensate for what has been missing in terms of recognition is less for those who identify as nonbinary because their more radical positionalities have compelled them to find other means of ensuring a livable life.

This is certainly *not* to say that on the whole nonbinary trans people are thriving compared to binary trans people. Rather, I am arguing that the all-too-common contention that binary-sustaining laws are far more beneficial for binary-identifying people is misguided and potentially dangerous. Furthermore, I contend that laws around gender recognition are incapable of allowing gender diversity to flourish, and ultimately we need to be working towards abolishing them altogether. For a law to protect and empower a person based on being trans, it must first be able to recognise the trans person, to confirm that individual's transness. The stories of my interview participants, and the critical analysis I made of the LGR, have made me suspicious of the law's capacity to fully, or even perhaps sufficiently, represent transness.

8.4 Everyone's a little bit transgender

The reason I feel the (cis)gender imaginary can be useful in understanding the transformative potential of the LGR is that it allows us to move beyond what concerns trans people specifically. By considering the cisgender standards at play, we can see how this imaginary captures and reformulates *all* people. Only focussing on the reinforcement of the binary or the limited access to gender-confirming medical technologies risks painting a picture in which binary is seen to be rewarded over nonbinary for any person no matter how they identify, and that bodily reconstruction ensures improved recognition. Of course, there are circumstances in which one or both of these contentions can prove true; the point is, rather, that transforming how gender operates to inform subjectivities, open or close life choices, and impose or alleviate precarity is impossible without understanding how it implicates all of us within its normativising system. The cisgender standard is wholly unattainable, and it is necessarily so. Trans people experience the most severe consequences of the failure to conform to it, but everybody, including cis-identifying people, inevitably fail to conform and thus are rendered now and again to be deviant. The degree to which this deviance impedes on one's standard of living is what is used to conceptually distinguish between trans and cisgender people, experiences and identities. This forged divide can be useful in the push for more inclusive legislation and to draw attention to how gender intersects with other social assets to strip people of their ability to sustain life. However, employing an overreliance on it can do more

harm than good, because it reinforces the idea that trans people are unique in their struggle to have their gender identity recognised, and therefore the problem is simply a matter of including more trans people in legal recognition. And, likewise, this upholds the notion that cis people (or ‘normal’ people) are already protected by laws and recognised by other social actors. The issue of how gender is formulated by law and society in such a way to maintain trans as ‘other’ is precluded from entering the discussion.

In this light, I find the LGR to be reifying the divide between trans and cis. While it appears to be instating a specially-tailored legal option for empowering those who have been unduly disempowered, what it also carries with it is the assumption, or even requirement, that trans people assimilate to (cis)genderism enough as to not disturb it. My research interviews make clear that the way that gender is formulated by the law is hardly changed. At this time, and under this law, ‘trans recognition’ may very well be a paradoxical phrase, as ‘trans subjectivities’ may not really be possible⁹¹.

The (cis)gender imaginary, however, does not only operate through the law; it is sustained through society, culture, economy, politics, and every other means of power distribution. As I said above, the imaginary is malleable and constantly in flux, just as are all power dynamics. There is always a possibility for change, and there is always change underway. Though the boundaries of this possibility are invariably narrow – as shifts must be gradual lest they risk disaffection – the enterprise of normalcy is constantly under negotiation. Disrupture happens through the enactment of agency, the capacity to alter the status quo – if even microscopically. The subject is not only formed, but is formative (Butler, 1997), and the formative (transformative) effects materialise through agency.

Each of the interview participants demonstrate their agency through negotiating their identity, claiming their validity, and declaring their personhoods in spite of the law’s insufficient recognition and society’s continued misrecognition. They (re)define their experiences to give them meaning: they seek out moments in which they achieve some degree of what they desire from legal recognition, they look outside the law to compensate for what has not been provided, and they connect themselves with broader social movements in validating their efforts and needs.

⁹¹ Refer to Gayle Salamon’s 2011 *Assuming a Body: Transgender and the Rhetorics of Materiality* for an elaboration on how trans subjectivities may not be truly compossible with trans materialities.

To enact agency is to perform otherwise than required by the norms. It is not simply a matter of being brave, but of sustaining a livable life, though this oftentimes requires resistance beyond imagination. It is about overcoming the precarity imposed by the (cis)gender imaginary, about rebelling and resisting the conditions which threaten to destabilise us. It is about survival, but it is not only trans people who must survive; it is everyone who battles pressures to conform to gender norms in the name of survival. And though it is not the responsibility of trans people to expose the (cis)gender imaginary, we should collectively take advantage of the fact that laws like the LGR can bring this imaginary into focus and make it available to be challenged.

The question we should be asking ourselves should not be, ‘How could Norway’s law on gender recognition be changed to better protect and empower trans people?’ It should be, ‘Can laws improve trans lives at all? And, if so, how can it do so in a way that does not strengthen the trans/cis schism?’ Ultimately, we need to ask ourselves, ‘Why is gender being regulated by law at all? Couldn’t legal gender markers be doing more harm than good in Norway’s movement towards gender equality?’

These questions extend beyond the scope of my dissertation, but I pose them here to encourage further consideration. Though Norway’s LGR unquestionably fosters movement away from traditional notions of sex and gender, it is far from the final step towards trans equality.

9. In Conclusion: Where do we go from here?

Throughout this dissertation, I have critically examined Norway's 2016 law on gender recognition (LGR), which allows one to change legal gender without undergoing the previously required sterilisation. While this law is comparably quite progressive, given that it is based on the self-declaration model and is available to Norwegian residents from age sixteen, the binary model of male/female it maintains and the state's lack of improved access to gender-confirming medical technologies render this law insufficient in many significant aspects. Moreover, as I elaborate upon in the Crosscut Analysis section, cisnormative standards are not substantially disrupted by the law due to the means by which gender, power, identity and equality are interpreted and employed by the LGR – which underscore the above-stated limitations. I recognise that the potential for the law to empower trans people and further the movement for trans equality exists and can be found in two places, namely its applied disassociation of gender (as identity) from sex (as bodily make-up), and the message that trans people are capable of authoring their own gender identity outside of medical confines (so long as this authorship upholds the binary, of course).

However, I contend that this transformative potential is outweighed by the power of the (cis)gender imaginary, the space in which bodies and identities continue to be measured against a (cis)gender ideal and, in failing, are relegated towards the margins of what it means to be human. In the interviews, the participants provide evidence of this enduring imaginary through their narratives on experienced proscriptions to fully enter the spaces delegated for men and women despite having the corresponding legal gender marker. Though many speak of feeling more secure and valid by the state's recognition, they also demonstrate a need to resist the continued lack of complete recognition through reconstruction of their experiences in ways that resolve their continued incongruences and reinstate a sense of belonging, such as within a larger trans ideology movement. This is due to the fact that the law itself is developed within a (neo)liberal framework that finds identity to be intrinsically situated and power to be more individualised than structural. I also have found that by understanding identity and power this way, it casts trans people as either successful in their endeavour for empowerment (and thus good citizens) or as failing (and thus monstrous). Agency is reoriented as that which enables a trans person to become legally and socially recognisable; all other performative acts, such as those which confound conformity, be they conscious or

not, are therefore symptoms of deviance and indicative of a non-personhood, undeserving of state and societal respect.

I have entitled this section ‘Where do we go from here?’ because this matter is not, and cannot be as of yet, concluded. In searching for the most appropriate way to finalise three years of research, I have reflected on what other scholars believe we in the trans community should be collectively striving for in the face of insufficient institutional empowerment. As would be expected, there are many variations of what I regard as a ‘trans utopia’, and thus many paths to choose from.

Law scholar and trans activist Dean Spade believes we – trans scholars, advocates and individuals – should gather together to form a critical trans politics. He writes that we as trans people have, as it stands now, impossible lives, and that ‘[i]nside this impossibility, ... lies our specific political potential – a potential to reformulate demands and strategies to meet those demands that exceed the containment of neoliberal politics’ (2015: 19). A critical trans politics, he contends, is currently emerging and should continue to be nurtured, as it ‘refuses empty promises on “equal opportunity” and “safety”. ... [It] is reconceptualising the role of law reform in social movements, acknowledging that legal equality demands are a feature of systemic injustice, not a remedy’ (ibid.). Spade, on this note, warns against regarding legal reforms and what they can (presumably) offer us as the end goal, saying that they should rather be seen as a tactic in a broader social movement towards equality (2015: 60-61). I agree with this fully. I believe that laws and law reforms, such those espousing gender recognition, have tactical value in the fight for equality, but that they cannot on their own encompass our needs and desires. Legal recognition requires a reductive scheme that eschews the infinite diversity and contextuality underwriting our lives. It is inevitable that any law, no matter how seemingly progressive or radical, will foreclose the possibilities of embodiment and citizenship by default of its proscriptive nature. Social values will, as a matter of principle, always be deeply entwined with the law and come to reflect them, and likewise will the law be always compelled to respond to socio-cultural expectations. While the boundaries of the livable life can indeed be expanded with ever greater momentum, we must acknowledge that this expansion can be just as hindered as facilitated by laws that tout better opportunities for the disenfranchised.

To this end, Paddy McQueen raises a salient point, asking what a livable life might mean if legal recognition will always be a struggle (2015: 158). How can we mobilise to both maximise the positive potential of legal recognition as well as determine the means by which

a better future can be secured? I do not have an answer for that. Frankly, I suspect no one does. What I can say – rather, what I feel *compelled* to say – is that one of the most detrimental aspects of our current trans politics in Norway is the divisiveness at the root of rights claims. Specifically, I am referring to the belief that only binary trans people are benefiting from Norway's LGR and that non-binary are being further cast away – a belief symptomatic of a larger political schism of liberal (institutional-support seeking and typically binary-identifying) and radical (institution-defying and typically non-binary identifying) political camps. Law-focussed trans advocacy requires, I would argue, an approach that values and upholds all desires and needs, from the liberal end of the political spectrum to the radical. As I have discussed in this dissertation, these desires and needs are all equally valuable, as they reflect both personal socio-economic circumstances and the broader socio-political environment in which one is striving to establish a livable life. Every single person is simply trying to survive as best they can, and there is no wrong or right way to seek empowerment. Recognition requirements are therefore as unique and varied as the population itself. Thus, any claims to a universal approach to seeking trans empowerment will inevitably reinscribe some individuals and their experiences as deviant or impossible – which would be, and *has been*, a cruelly ironic outcome in the movement for trans empowerment and visibility.

My position is shared by American scholar in trans rights and law, Paisley Currah (2009: 256), who articulates it well:

[I]t is a mistake to assume the goals of defending gender as a coherent legal category and disestablishing it need be characterized by a zero-sum calculus. Instead, I think the solution lies in ensuring that the many, often conflicting, narratives of transgender identity that now appear in social and legal arenas continue to circulate and proliferate. Rather than trying to make sense of all these contradictory accounts of sex, gender, and the relationship between them, rather than trying to develop the 'one perfect theory' to unify them within the context of the larger transgender rights imaginary, we should, as a movement, be celebrating the incoherencies between them even as we continue to pursue rights claims by invoking particular constructions of gender definition.

Following Currah's lead, I would contend that what is necessary for improving the lives of trans people in Norway is to first recognise that there is no single grand solution, just a collection of smaller ones that can cumulatively promote something better than what we have now. Taking it even further, perhaps mitigating the precarity of misrecognition can only happen by accepting the law's inability to fully see us and the circumstances of our lives. Legal recognition requires a 'sense of finality and unity in [one's] identity', making any stability gained through its employ tenuous and impermanent (McQueen, 2015: 159). Paddy McQueen (*ibid.*) goes on to say the following:

The question then becomes how we respond to this failure, and what this failure says about recognition and the subject. If the allure of organic wholeness is nothing more than a mythical construction depicting an idealised subjectivity, then a liveable life will mean living with this failure rather than forever striving towards an unobtainable sense of completeness and unity.

Failure is inherent to recognition, particularly legal recognition. I have sought to demonstrate this failure in my dissertation, as I believe the awareness of such to be integral in redressing its effects. It is imperative that we understand the law to be, on its own, inadequate in resolving trans misrecognition. And, while the ensuing question may seem to point to ‘how can we diminish and recover from this failure?’, I think first the question of ‘who is really failing?’ must be asked.

‘In its own quiet way, a program for gender revolution’⁹²

In the quest for trans empowerment, it is essential to understand and accept that gender is being failed by all people, not just trans people. Just as we are all dependent upon gender for the ‘production and maintenance of legible humanity’ (Butler, 2004: 11), are all our lives made variably precarious by it. What distinguishes trans – as a movement, identity, and experience – is the degree to which gender is being failed, the degree to which lives are made precarious, and the degree to which an established solidarity is required for survival. In this way, the exclusionary effects of Norway’s LGR do not only impact upon trans people, they impact upon all people, as they reify the boundaries that cannot be crossed and the identities that cannot be substantially realised. The LGR reminds us of who is seen to be deserving of recognition and who is not, and I believe that ultimately, we should be striving to get rid of legal gender markers altogether.

However, the current transformative potential of Norway’s LGR does not end with its insufficiencies. It has, I believe, laid the groundwork for something bigger, something which exceeds the seeming limits of legal gender recognition. The law cannot contain our disruptive desires to materialise beyond the boundaries, nor can it capture the infinite possibilities of embodied resistance. The landscape of gender norms is endlessly shifting, and, with our livelihoods at stake, we manoeuvre this landscape with ever more determination, grasping what we can and making it our own.

⁹² Quote by trans-identifying Sociology scholar in masculinities studies, R.W. Connell (2009: 110).

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Article 1: (Trans)gender outlaws? A critical analysis of Norway's 2016 gender self-determination law⁹³

Abstract

In July 2016, Norway enacted a law that allows for one to determine one's juridical gender without the previously required medical sterilisation. Widely heralded as a significant step toward complete gender equality, this was seen by many as finally resulting in legal equality for those who are trans. However, the law's potential to empower the trans movement may be quite limited, given the lack of options outside the male/female binary and the absence of improved access to gender-confirming medical technologies. Such limitations, this article argues, preclude the law from either sufficiently addressing the needs of many transpeople or meaningfully challenging prevailing gender norms. How, then, can the law be celebrated as a landmark achievement for trans rights in Norway? This article seeks to explain the apparent contradiction by considering the law's founding principles as they apply to the trans political landscape in Norway, in order to illustrate how the law's inception and application have been informed by particular interpretations of identity, gender, and sex. Moreover, it analyses the potential impact of the law's shortcomings on the people for whom it was meant to represent, using a queer analytical approach to understand how the law can empower some trans whilst further marginalising others.

Keywords: trans, transgender, Norway, gender recognition law, gender equality, gender self-determination

Introduction

Norway, like its Nordic neighbours, is renowned in the West for its progressive approach to gender equality. As a welfare state⁹⁴, it emphasises gender egalitarian values that prioritise breaking down the socio-political barriers hindering access to both resources and recognition. Such an emphasis has resulted in women having an increased political and economic participation, as well as remarkable comparability to men in education levels and health.

⁹³ Published in 2018 in *Tidschrift Voor Genderstudies*. Citation included in References list.

⁹⁴ This is a shared trait amongst the Nordic countries, all of which embody the Nordic Model (or Nordic Social Democracy). For an engaging critique on the applicability of this model to gender equality, refer to Anette Borchorst and Birte Siim's article 'Theorizing Scandinavian gender equality' (2008).

Furthermore, Norway has demonstrated a great deal of support for sexual minority rights, providing the right to same-sex marriage and protection from discrimination for sexual identity⁹⁵.

These egalitarian values, however, have fallen short of reaching Norway's trans⁹⁶ individuals. The lack of comparable progress for transpeople has stood in stark contrast to that of women and sexual minorities, garnering negative attention from trans advocates both local and abroad. Most notably, this is because, until recently, transpeople were required to undergo full bodily sex reassignment and be surgically sterilised before being able to legally change their gender status⁹⁷. In July 2016, however, the battle to overwrite this requirement finally met success when the Norwegian state passed the law Lovvedtak 71 (2015-2016), which allows for one to self-declare one's legal gender⁹⁸.

Accordingly, much fanfare followed from the queer community and its allies. The common refrain was, and continues to be, that transpeople finally have access to legal gender identity. As John Jeanette Solstad Remø, a Norwegian trans woman and one of the main actors in the legislative process, proudly told Amnesty International Norway soon after the law proposal's conception in 2015, 'transgender people like me will finally be respected for who we *really* are' ('Norway: Historic breakthrough for transgender rights', 2015, para. 11; emphasis added). As a 'historic breakthrough' ('Norway: Historic breakthrough', 2016, para. 11), it has also been regarded as one of the most liberal laws passed in the world for trans rights ('Norway Preps "breakthrough" on gender change', 2016, para. 16). It appears that, on the whole, the change has been warmly welcomed by the trans community. In the first half year or so after its enactment, more than 400 people took advantage of it (E. Duurhuus, personal

⁹⁵ Norway legalised same-sex marriage in 2009, being the first Scandinavian country and sixth country in the world to do so.

⁹⁶ 'Trans' and 'transpeople' are used to denote either or both transgender or transsexual, and they describe all those who do not identify as cisgender. Not all non-cisgender individuals identify as trans/transpeople, but through many discussions and much research, I have decided that, for my work, it is perhaps the most all-encompassing and flexible term. I draw inspiration from Transgender Europe's (TGEU) website, on which it says it 'uses "trans people" as an umbrella term to refer to people whose gender identity and/or expression differ from the sex they were assigned at birth, including, but not limited to, non-binary, genderqueer, and gender non-conforming people' ('Healthcare study', 2016, para. 2). Additionally, I follow the example of trans studies researcher, Janneke van der Ros (2017), in the terminology she uses. N.B. When appropriate, this article uses either 'transgender' or 'transsexual' in its place with specific intention.

⁹⁷ The administrative practice required those seeking to change legal gender status to undergo the completed process (from diagnosis to surgeries), as outlined by the National Treatment Centre for Transsexualism (NBTS; discussed below) (Sørlie, 2015: 360).

⁹⁸ Except when specifically discussing bodily sex or in borrowing the term 'sex' from the cited source, this article will use the term 'gender'. In Norwegian, the same word is used for both gender and sex (kjønn), so there is no distinction made in the discussed law or any of its accompanying documents.

communication, 23 January 2017)⁹⁹. To give a comparison, HBRS reports that only about 600 people were ‘gender-corrected’ (had undergone full sex reassignment and thus were eligible to change their legal gender status), in the 50 or more years the practice is reported to have happened (‘Diagnosen transseksualisme – Hva er det?’, n.d.).

However, the law only allows ‘male’ or ‘female’ status. The lack of alternative options leaves non-binary identifying individuals in a legal lurch, as they must essentially align themselves with what would be for them a false gender identity. This can have significant negative consequences for such individuals, as they experience their identity to be constantly negated or invisibilised. Additionally, there has been no concurrent change in access to medical technologies¹⁰⁰. The state hospital’s National Treatment Centre for Transsexualism (NBTS) in Oslo continues to hold a monopoly over options for physical modifications related to gender identity, using a system for assessment and treatment that is greatly criticised by the trans community for its antiquated notions of sex and gender (Van der Ros, 2013; 2017)¹⁰¹.

Therefore, it is necessary to critically assess the transformative limitations of the new law for Norway’s trans population. To do so requires discerning its implications by asking the following questions: How can the law be simultaneously socio-politically empowering and exclusionary for the trans population? How are trans identities understood in the new law, and how are they shaped by gendered citizenship in Norway? This article explores how notions of gender, identity, and citizenship are interpreted and used in conferring legal gender recognition. It begins by outlining the development of the new law and then explores the trans political landscape in Norway. Following, it considers the gender binary’s role in the law, and how the right to self-determine one’s gender identity is interpreted through human rights discourse. Finally, it discusses the law’s foundation in the body/mind split, then explores how it contributes to (re)producing gendered citizenships.

⁹⁹ A representative of the tax office (Skatteetaten), which registers gender status changes.

¹⁰⁰ Refer to Prop. 74L (2015-2016), 8.5.3, §8.

¹⁰¹ The state hospital in Oslo (Rikshospitalet) maintains control over the sole resource centre for Norwegian transpeople, at the National Treatment Centre for Transsexualism (NBTS). One must be first diagnosed with transsexualism, then undergo extensive evaluation for years before being offered access to physical transformation. In the case that one is not accepted for treatment, the patient is unable to either overturn the decision with a second opinion or access private medical options within Norway.

Norway's legal gender self-determination law: From conception to inception

In March 2013, Amnesty International published an open letter to the Norwegian Ministry of Health and Care Services calling for Norway to 'ensure that trans individuals can enjoy their human rights', citing the 'coercion' of sterilisation for legal recognition as 'cruel, inhuman and degrading' (Dalhuisen, 2013: 1). Moreover, the first study on the living conditions of transpeople in Norway¹⁰² (delivered to the Ministry of Health in early 2013) found that there was a noticeable impact on trans life quality due to, amongst other things, inadequate health care options and professional competency. It gave several specific recommendations for improving living conditions, including the abolishment of the requirement for sterilisation in changing legal gender.

Late 2013, the Norwegian government responded by organising an expert group through the Norwegian Directorate of Health, with the goal of reviewing the conditions for changing legal gender and for accessing trans-related health care. In 2015, the expert group published its report¹⁰³ with an array of recommendations. In regard to health care, it suggested that there needed to be a 'significant decentralisation of medical services' (The Norwegian Directorate of Health, 2015: 176) offered to those who experience gender identity issues. Also, they deemed the requirement of sterilisation to be contrary to human rights as outlined by the European Convention on Human Rights, recommending that 'a person's desire to change legal gender must be separated from the medical treatment the person in question may wish to undergo' (The Norwegian Directorate of Health, 2015: 173).

Thus far, there has been no change in the system of medical services for trans people. However, regarding the latter issue, the Directorate's decision echoed the Equality and Discrimination Ombud, which had determined in a 2014 investigation that the current practices were discriminatory under the Sexual Orientation Anti-Discrimination Act¹⁰⁴. Since

¹⁰² The study's findings were published in a report entitled *Alskens folk: Levekår, livssituasjon og livskvalitet for personer med kjønnsidentitets-tematikk*, headed by Janneke van der Ros and published by Likestillingssenteret in Hamar, Norway. It stemmed from a larger research project, *Bedre livskvalitet for lesbiske, homofile, bifile og transpersoner 2009-2012*, which was commissioned by The Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) to assess the living conditions of LGBT persons in Norway.

¹⁰³ The report is entitled, *Rett til rett kjønn – Helse til alle kjønn: Utredning av vilkår for endring av juridisk kjønn og organisering av helsetjenester for personer som opplever kjønnsinkongruens og kjønnsdysfori*. (English: *The right to the right gender – Health for all genders: Examination of the conditions for the change of legal gender and the organization of health services for people experiencing gender incongruence and gender dysphoria*; my translation).

¹⁰⁴ Act No 58 of 21 June 2013; original name: *Lov om forbud mot diskriminering på grunn av seksuell orientering, kjønnsidentitet og kjønnsuttrykk*.

its reform in 2014, this act protects individuals from discrimination based on sexual orientation, gender identity, and gender expression. The Equality and Discrimination Ombud recommended that the assessment/diagnosis model be replaced by the declaration model, allowing one to declare one's legal sex identity to the national registry. Further pressure on the government came from trans activists, notably John Jeanette Solstad Remø, who collaborated with Amnesty International's Write for Rights letter-writing campaign in late 2014 (Londres, 2015). Remø gathered significant support from around the world defending her quest to be allowed to change her legal gender marker to 'female' without surgery.

The increasing international attention, in addition to mounting pressure by trans advocates regarding the sterilisation requirement, proved successful in effecting change. In April 2016, the Norwegian Ministry of Health and Care Services proposed the bill, Proposition 74L (2015-16)¹⁰⁵, to the Norwegian Parliament, which passed in June and came into effect on 1 July, 2016¹⁰⁶. The law states its intention as follows: 'People who are residents of Norway and who experience belonging to the other gender than they are registered in the National Registry have the right to change their juridical gender' (Lovvedtak 71 (2015-2016), §2; my translation)¹⁰⁷. The law¹⁰⁸ defines 'legal gender status' as that which the person is registered under in the National Registry (Lovvedtak 71 (2015-2016), §1). This is a designation drawn at birth based on the outward appearance of the child's genitals¹⁰⁹, which is reported to the Norwegian Tax Administration via a birth certificate (Sørli, 2015). This status is reflected in all identity documents through a personal identification number, wherein the ninth of eleven digits is even for 'female' and odd for 'male'¹¹⁰.

¹⁰⁵ Lov om endring av juridisk kjønn – Prop. 74 L (2015-2016) Proposisjon til Stortinget (forslag til lovvedtak).

¹⁰⁶ Act No 46 of 17 June 2016.

¹⁰⁷ Theoretically, one does not have to identify as trans or as another gender identity than what was assigned at birth in order to change legal gender. Therefore, one who identifies as cisgender (man with male body or woman with female body) may also change his or her legal gender if so wished.

¹⁰⁸ In the law, there are specific stipulations around age of consent (16 and older without parental interference) and for name changing (lowered from 18 to 16) (Lovvedtak 71 (2015-2016), §4). Children under 6 years can only have the change if they are diagnosed with an 'uncertain somatic sex' (intersex) (Lovvedtak 71 (2015-2016), §4). Additionally, it outlines the options for children aged 7 to 16, saying that at least one parent must approve, and in the case that the two parents disagree, the court has the right to intervene and decide (Lovvedtak 71 (2015-2016), §5). It limits this option to those who are residents of Norway, as well as Norwegian citizens living abroad (Lovvedtak 71 (2015-2016), §9). In terms of medical access that is specific to one's bodily sex (such as hormone replacement therapy or breast reduction), this is determined based on one's sex as designated at birth, rather than on the new legal gender identity. The same is applied for issues of parental dispute over custody (Lovvedtak 71 (2015-2016), §5).

¹⁰⁹ Determined by the doctor or midwife (Sørli, 2015). In the case that the bodily sex is unknown, 'female' is registered (Sørli, 2015). This article does not discuss specifically the topic of intersex.

¹¹⁰ In June 2017, the Ministry of Finance submitted a proposal regarding the future of personal numbers, in particular its gender-identifying digit. It suggested that the ninth digit be regarded as neutral (not distinguishing a gender) by the year

The process of legally changing one's gender marker is now – as per the Council of Europe's recommendation – 'quick, transparent and accessible' (2010¹¹¹). One sends a letter of request directly to the Tax Office, and the process to satisfy the request generally takes just a few weeks. Then one can replace all identification cards, including passport, driver's license, and birth certificate.

Norway follows in the wake of other countries, such as Malta, Denmark, and Argentina, who have abolished the sterilisation requirement and require only self-declaration to change legal gender. Some countries, such as Sweden, Finland, the United Kingdom, and Germany, also have abolished the sterilisation requirement but still require a diagnosis (of 'transsexualism' or 'gender dysphoria'). Norway's gender recognition law, however, differs from most others in two ways: it allows for an infinite number of gender marker changes, and it does not impose a latency period between the application and the new gender marker's issuance. However, as will be discussed later, it does not permit a third gender option, as do, for example, Canada, Australia, Pakistan, and Nepal. The following offers a contextual background against which to understand the new law and its impact on the Norwegian trans movement.

Trans politics in Norway

Just as in the broader trans political movement, Norwegian trans politics range from liberal to radical (Roen, 2002: 502). Liberal trans politics favour the concept of 'transsexuality' over 'transgender', whereby the former is the medico-legal term and the latter is preferred by queer rights activists. Liberal politics prioritise the battle for legal rights and medical access, as well as self-transformation in order to 'pass' (be regarded) as one of the two socially normative genders. Radical trans politics, to the contrary, seek to dismantle the system of gender identification entirely. Concerns are not about meeting cisnormative standards: gender identity is rather interpreted through a poststructuralist lens, whereby the gender binary is seen as a social construct that requires proactive deconstructive measures to free *all* people

2032, as Norway is projected to run out of personal numbers by 2040 (Ministry of Finance, 2017). The proposal is, at the time of this writing (August 2017), under consideration. (<https://www.regjeringen.no/no/dokumenter/horing---forslag-til-ny-personidentifikator-fodselsnummer/id2544699/>).

¹¹¹ Paragraph 21, under Section IV. 'Right to respect for private and family life'.

from its confines. It is in this camp that the concept of ‘queer’ is deployed as the appropriative embrace of one’s failure to conform¹¹².

In the Norwegian trans movement, this distinction emerges most noticeably when comparing the two most predominant trans advocate organisations, the Harry Benjamin Resource Centre (HBRS) and FRI¹¹³. HBRS is a user organisation that provides practical support for those who have been diagnosed with ‘transsexualism’¹¹⁴ at the National Treatment Centre for Transsexualism (NBTS, located at Rikshospitalet, University of Oslo). It assists people with their ‘gender-correcting process’¹¹⁵ in order to, according its website¹¹⁶, ease the psychological burden of being perceived as belonging to the opposite sex from what is experienced by the individual over one’s lifetime. The latter, contrarily, places greater emphasis on exploring and celebrating the diversity of gender, sex, and sexuality. It tends to challenge normative constructions such as the gender binary, and it encourages its members and the public to consider more understandings of trans than only ‘born in the wrong body’ (Van der Ros, 2017).

At first glance, these political platforms seem wholly irreconcilable, as the liberal group seeks to make the gender binary more accommodating while the radical seeks to obliterate it. However, they nonetheless bookend a diverse range of efforts that can benefit everyone (in varying degrees and timeframes), and they share the same goal of empowering those lacking sufficient cis-privilege¹¹⁷ (Roen, 2002: 502). It is perhaps inevitable, though, that the groups’ consolidated motives will reflect a more normative structuring of gender and identity, precluding representation of more radical approaches. This is a by-product of identity politics, since, in order to gain positive public visibility, a marginalised group must align itself with dominant ideologies by minimising its deviation from norms. This helps explain why the more normative needs of transpeople not only tend to be prioritised, but, when they are met, it

¹¹² See J. Halberstam (2011).

¹¹³ Foreningen for kjønnsog seksualitetsmangfold (Organisation for Gender and Sexuality Diversity).

¹¹⁴ HBRS defines transsexualism with the following: ‘People with a diagnosis of transsexualism experience from childhood or adolescence that they mentally belong to the opposite sex of his or her physical sex’ (‘Diagnosen transseksualisme’, n.d., para. 6; my translation).

¹¹⁵ The term in HBRS’s original text is *kjønnskorrigerende prosess* through which one’s *kjønnsinkongruens* and *kjønnsdysfori* (‘gender incongruity’ and ‘gender dysphoria’) are corrected (‘Diagnosen transseksualisme’, n.d.).

¹¹⁶ <http://hbrs.no/no/transseksualisme/>.

¹¹⁷ See Nancy Fraser’s writing on affirmative versus transformative remedies for injustice (1995). Van der Ros applies this idea to the case of Norway’s legislation on trans rights in her 2017 article.

is taken to represent an accomplishment for the broader trans population. Trans rights, in other words, become synonymous with the right to *switch* genders. This, however, is not specific to Norway, but is rather another example of how the trans landscape is shaped by liberal rights as they emerge within a gender-normative context.

Gender as an organising principle in the new law

Despite the benefits the law on gender self-determination can provide, a careful examination is warranted if we are to determine the law's potential to empower those whom it is intended to represent. To critically analyse the law for how it understands and shapes gender identities requires looking at it through a queer lens. This article's theoretical framework is inspired and guided by the emerging field of queer jurisprudence (Stychin, 1995; Zanghellini, 2009), in which normative and conceptual inquiries seek to explain how and why the law contributes to codifying norms rather than deconstructing them (Zanghellini, 2009, pp. 1-2). Like feminist jurisprudence, which maintains that the law has played a significant role in the historical subordination of women (Cain, 1988), queer jurisprudence highlights the enduring impact of law's heteronormative practices. It draws a distinction between jurisdictions of civility and of conscience, whereby the former refers to governance obtained through efficient organisation of subjects, and the latter prioritises a holistic approach to subject wellbeing (Dorsett & McVeigh, 2012). This is particularly pertinent to laws that are passed with the (ostensible) intent of affirming and validating previously marginalised groups, since they appear to be of conscience but are in fact of civility¹¹⁸. Therefore, while exploring how the new law understands gender identity, it is important to remain critical of how the uncovered understandings not only are shaped by sociocultural norms, but also serve to reproduce them.

Such transformative limitations of the law are perhaps most evident in regard to its restriction of legal gender options to 'male' and 'female'. In the survey 'Being Trans in the European Union' (European Union Agency for Fundamental Rights, 2014), three quarters of the respondents reported that they do not identify within the binary¹¹⁹. If this statistic is to be

¹¹⁸ See Nancy Fraser's writing on affirmative versus transformative remedies for injustice (1995). Van der Ros applies this idea to the case of Norway's legislation on trans rights in her 2017 article.

¹¹⁹ The survey sought to analyse the 'opinions and experiences of trans persons' in the EU (104). One of the questions it asked respondents was 'Are/were you a transgender person?' (104). If answered 'yes', then the respondent was offered a set of sub-identities to choose from, including 'Other', which would provide a text field to allow for input by the respondent. Those who chose 'Other' and indicated in the text field that they were not, nor ever had been, trans (n=192) were removed from the final data set via data cleaning. Of the remaining respondents (n=6579), 27% identified as (or were coded as identifying as, through their 'Other' text field) 'Transsexual', 'Woman with transsexual past' or 'Man with transsexual past'

applied to the Norwegian context¹²⁰, only about a quarter of those for whom the law is intended in Norway can acquire gender-identity recognition in line with their personal gender identity¹²¹. The remaining are caught in a ‘definitional dilemma’ (Greenberg, 2002), indicating that the law is not as wholly representative as it seems *prima facie*. The law’s implementation implies that trans people require special treatment in order to gain equal treatment, rather than that gender norms require reconsideration. In other words, the only thing keeping transpeople from being ‘mainstream’ is the unfortunate case of a body/mind misalignment (Spade, 2009: 362). If such an aberration can be fixed, then these people can once again be a productive part of society. However, if a transperson does not or cannot fit the mould offered, then this is a personal matter that must be addressed, not a social or cultural matter.

Classification within the gender binary connotes non-binary identifying people as contrary to the law, thus enhancing their vulnerability. However, this does not breach human rights law as it is posited by the European Convention on Human Rights (ECHR). Herein lies the paradox that operates to disempower non-binary individuals even whilst appearing to empower those who identify as trans: because gender identity is understood as pre-existing the materialisation of the socio-political subject, gender’s reinstatement is rendered juridical (and therefore able to be regulated) by default. Judith Butler elaborates on the reproduction of the gender binary through her term ‘heterosexual matrix’, a system that

enables certain sexed identifications and forecloses and/or disavows other identifications. [...] [I]t requires the simultaneous production of a domain of abject beings, those who are not yet ‘subjects,’ but who form the constitutive outside to the domain of the subject. (1993: xiii)

Bodies and their subsumed identities only become intelligible through a predefined framework, thereby inhibiting new gender formations.

What about a third gender option in Norway, then? It would provide the opportunity to inhabit an alternative legal position, perhaps (further) disrupting the ‘heterosexual matrix’ as it is sustained through the law. In other words, it could open the door for more critical discussion

(Table A3: 107). The remaining portion chose ‘Gender variant’, ‘Queer’, ‘Transgender’, ‘Cross-dresser’, or ‘Other’. The survey does not appear to accommodate or account for intersex-identifying people.

¹²⁰ To date, no such survey has been conducted in Norway.

¹²¹ It is interesting to note that only about a quarter of those who apply to the state’s university hospital for gender identity related treatment are accepted as being real ‘transsexuals’ (Van der Ros, 2014: 6). However, the overlap implied is limited, as many applicants are rejected due to factors aside from perceived degree of gender binarism, such as age (being too old) or mental health (having psychological disorders (presumably) unrelated to gender identity issues) (Van der Ros, 2013; 2017).

around the purpose and need for legal gender divisions. There is some indication that this option could materialise within a few years in Norway¹²². However, a gender *triad* would still be a system of gender regulation that would, inevitably, also fail to represent the vastness of gendered subjectivities. Therefore, no matter whether there are two options or three, as long as gender is instantiated as a juridical means of categorisation, this sustains a particular formulation of identity that simultaneously assumes a pre-political self and warrants any resulting legislation to be based on an essentialist notion of human rights. In order to underline how gender norms are perpetuated through legal protection of rights and dignity, the following section will explore how human rights discourse and standards have shaped the law's socio-legal interpretations of gender identity.

Gender identity in human rights law

The process of Norway's gender recognition law's implementation – from discussions to proposals – has been situated in the realm of human rights law, as instituted by the European Convention on Human Rights (ECHR). In the Universal Declaration of Human Rights (1950), ECHR outlines its intent to protect the dignity of humans by promoting 'equal humanity', as all individuals are entitled to such dignity and freedom by default of being human. In her critical analysis of human rights law, Jill Marshall explains the principled basis of the Declaration: '[Our] ability to be personally free is inherent in us in some way, within our "core", in our "human nature". This exists, regardless of what laws, governments or others say' (2014: 26).

Amnesty International and Transgender Europe (TGEU) each cites ECHR's Declaration and the Yogyakarta Principles¹²³ in their calls for Norway to adjust its legislation on legal gender identity. From the Yogyakarta, Articles 8 (right to privacy) and 14 (right to protection from discrimination) are invoked in pertinence to gender identity and expression. Article 8 states as its first point: 'Everyone has the right to respect for his [sic] private and family life, his home and his correspondence'. This is used in 4.2.1 of the self-determination law's proposal, Prop. 74L (2015-2016), to substantiate the right to self-determine one's gender: 'The European

¹²² At the time of writing, some LGBT NGOs are in the process of obtaining legal defence to challenge the lack of third gender option (J.J. Solstad Remø, personal communication, 27.04.17).

¹²³ International principles relating to sexual orientation and gender identity (2016).

Court of Human Rights determines a person's gender identity to be a personal relationship protected through the right to privacy under Article 8'.

Here, 'privacy' is personal, not spatial, and it relies on an ontologically essentialist understanding of the individual and identity. As Marshall states, it purports that 'it is important to retain an ability and capacity that is each person's domain to enable them to think reflectively without interference; to be in control of their own faculties' (2014: 36). In other words, one must be free to explore the 'inner' self in order to discover one's core identity. Gender identity determination, therefore, should not be a matter of public regulation since it is wholly private in nature.

In employing Article 8 to articulate the rights of transpeople, it is assumed that transpeople – just as all people – have an innate gender identity, and liberation from gender oppression, therefore, requires that this be allowed to emerge in the form of due state recognition. Aside from relying on an essentialist idea of gender, this is also problematic in that it implies that state recognition is the ultimate form of recognition and thus the ultimate mode of empowerment. In other words, to substantiate one's claim to a gender identity requires state validation. This interprets identity as preceding political subjectivity, whereby one's legal status should reflect that which exists *a priori*.

The implication of the law is that the burdens associated with having the wrong gender marker can be ameliorated substantially by granting one the power to adjust it¹²⁴. Therefore, for those who feel their 'intrinsically correct' gender is *opposite* to the one registered at birth, they should be permitted to amend this. As a liberalist approach to sovereignty, it regards the political subject and the political power system as essentially distinct from one another, instead of as mutually reinforcing. This juridico-discursive model assumes that only acts upon the individual through repression rather than also partaking in actively inscribing the individual through subjectivation (Foucault, 1997a). Such an approach fails, in other words, to recognise how the (trans)gendered subject is created through the state's application of gender as an organising concept (in this case binary and unchanging).

By assuming individuals have both the power to self-actualise along personal lines of desire as well as the responsibility for the consequences of social aberration, such a liberalist

¹²⁴ c.f. Dean Spade's writing on 'inclusion focus' (2009).

approach negates the importance of social and intersubjective processes of gender identity construction (Harari, 2016). This falls in line with notions of individualism founded in neoliberalist discourse on legal personality and rights (Pylkkänen, 2007), which have been gaining traction in Norway. Since the 1990s, Norway's political economy has been shifting from welfare-based to neoliberalist. In its move towards post-welfarism, Norwegian equality legislation strays from the previous social democratic ideals of social transformation and emphasises an individualist approach to inclusion (Baeten, Berg, & Hansen, 2016: 209; Ludwig, 2016: 426). However, neoliberalist methods of inclusion are often fraught with exclusionary practices, as a major paradox of neoliberalism is that it purports to be amoral and objective despite reproducing norms (Barnard Center for Research on Women, 2013). This obscures the normativising effects of legislation intended to promote gender equality. The legal gender self-declaration law, in particular, continually excludes some transpeople by foreclosing the possibility of challenging the constructedness of the mind/body division. This reductive interpretation is unfolded in the next section.

When the body and the mind do not match

Norwegian scholar on transgender rights Janneke van der Ros calls specifically for a clarification as to for whom 'gender equality' in Norway is intended (2014; 2015). She argues that 'gender' is too narrow a signifier in gender equality legislation, as it excludes non-normative bodies from full recognition. It relies on the Cartesian notion of the body/mind split, whereby the body is a 'signifying medium, [...] rendering public and communicable what is essentially private [...] [and is] a vehicle for the expression of an otherwise sealed and self-contained, incommunicable psyche' (Grosz, 1994: 9). Following this view, the mind should have control over the body; when it does not, a person is rendered less valuable as a citizen, since the mind, not the body, is the primary tool of production. Gender recognition laws, such as Norway's, demonstrate the state's shift from a biologically determinant focus to a psychosocial one.

The Cartesian dualism founds the prevailing narrative of what it means to be trans: 'born in the wrong body'. This trope of transsexualism illustrates in a culturally intelligible way what it (supposedly) means to be trans through the paradigm of 'mind over body'. The trans body is seen as a biological aberration, a mistake of nature, as it fails to reflect the gender identity inside the mind – the identity that is *intrinsic* to the individual, rather than being socio-historically situated (Davy, 2011: 5). It is on these grounds that trans rights are most publicly (and successfully) fought, because it does not disturb traditional ideas of mind and body. To

denounce this divide in favour of a post-structuralist explanation, which would claim that both the mind and body are largely the products of socio-cultural construction and cannot be effectively divorced, would likely stray too far from widely accepted views of human identity, individualism, and gender.

In a way, the new law challenges the seeming naturalness of the mind/ body dualism, since it inevitably produces some bodies that are gendered differently legally than socially or physically. However, the dualism persists in socio-cultural understandings of gender experience and identity, and it causes many who have changed their legal gender to become or continue to be ‘unintelligible bodies’ (Butler, 1993). Such individuals are faced with the constant prospect of being ‘outed’¹²⁵, particularly in situations that require the use of gender-marking ID cards¹²⁶. This is a position far too precarious for many individuals. To inhabit such a radical space – by having a legal gender that differs from one’s socially-perceived gender – requires sufficient capital¹²⁷, such as social support or economic standing, to buffer their fall from cisnormative grace. This is a privilege that too few have, and, without it, there is risk of considerable discomfort, shame, or even danger.

Mapping the law’s materiality in gendered citizenship production

In considering how rights are not operatively monolithic – but rather represent a dialectical process between social status and legal status – it is useful to consider the distinction between formal and substantive forms of citizenship (Appadurai & Holston, 1996). State-sanctioned modes of identification cannot be regarded as the (sole) solution to a problem of misrecognition since, as discussed previously, legalised identity does not instantaneously and completely translate into social empowerment. Formal citizenship only pertains to the nation-state’s affordance, while substantive refers to socio-cultural and civil rights (Appadurai & Holston, 1996: 190). So, as Appadurai and Holston explain, ‘[m]uch of the turmoil of citizenship derives from the following problem: Although in theory full access to rights depends on membership, in practice that which constitutes citizenship substantively is often independent of its formal status’ (Appadurai & Holston, 1996: 190). Membership into, in this

¹²⁵ Having one’s lack of coherence between legal gender and socially-recognised gender exposed.

¹²⁶ Such as travelling, particularly abroad; opening a bank account; picking up prescriptions at the pharmacy; getting a marriage license; buying property; getting gym membership; etc. In Norway, nearly all ID cards have the personal number on them, so nearly any instance that requires showing ID means that one is presenting one’s legal gender marker.

¹²⁷ See Pierre Bourdieu’s work on capital (1986).

case, an accepted gender identity category cannot be conferred only through the new law; it must also be conferred by other social actors. Moreover, if these other social actors do not recognise gender identities outside of the cisnormative matrix¹²⁸, then such citizenship is not attainable.

However, the transformative potential of the dialectical nature of law and society should not be overlooked, as legal recognition has the semiotic power to bestow validity. This is not just experienced by the individual in question, but on behalf of this person through the eyes of other individuals. A law on identity recognition draws from context-specific notions of what signifies personhood. As Anniken Sørli, a scholar on trans-identifying children in Norway, writes, 'In democracies, law emanates from the citizens who navigate their lives amid these norms. It is within this context that our identities are formed. For transgender people, identity formation takes place alongside provisions on legal gender' (2015: 354). Through a lens of legal positivism, it can be explained that such a law is based on and informed by social norms and practices (Spade, 2009). By reflecting that which is seen to be natural, even a small deviation by positive legislation from hegemonic social values serves to challenge public understandings of, in this case, gender in such a way that it destabilises previous conceptions.

Political subjectivities are constructed through notions of citizenship, and dominant gender narratives operate as a shaping mechanism for these subjectivities (McQueen, 2014). When particular bodies are prevented from accessing certain legal rights, they are rendered less productive and, hence, less apt to gain validation. Citizenship is 'the communicative negotiation of the actual or perceived rights, obligations, and privileges among members of a collective' (West, 2013: 6) and 'a means for political claims and demands to be made, and hence a vehicle for enacting political subjectivity' (McQueen, 2014: 534). Since citizenship is granted to some bodies but not others, it operates as a means of disseminating value and life chances along pre-arranged pathways. This explanation of how citizens are produced by and through regulated modes of citizenship is central to understanding how gender identity is produced (and not just defined) by Norway's law on gender recognition.

Notions of citizenship are indelibly linked to notions of productivity, and, in practice, these two concepts are mutually reinforcing (Vipond, 2015). If the body is not productive (both

¹²⁸ Which correlates the gender binary with the sex binary according to socio-cultural expectations.

economically and socially), one cannot have full citizenship¹²⁹. Following Foucault's theory on biopolitics (1997b), Van der Ros (2014) describes the exclusionary practices of Norway in regard to gender identities. She focuses primarily on the restricted access to medical technologies, noting that there are two types of political bodies: those in control of their bodies and those not in control, which can be understood as ideal citizens and non-citizens, respectively (2014: 8-9). This echoes the earlier discussion on the precedence of the mind over the body. Transpeople whose bodies are not aligned with their gender identity are denied full citizenship on the grounds that they are not in control of their bodies. Only those who fully transform their bodies, essentially erasing their trans history, are (in the socio-political sense) deemed in control and, therefore, again recognisable as worthy citizens. Following Ingraham's (1994) writings on the heterosexual imaginary, this process is fuelled by the *gender imaginary*. The imaginary is a system or an order that retells a lived fiction, endlessly adjusting it to fit the necessary context yet simultaneously never disclosing its inherent instability. It obscures the historicity of gender in terms of its development, fluidity, and transformative structural power¹³⁰. Freedom from gender-based oppression, according to the imaginary, is founded through the process of self-discovery and sanctioned through legal validation.

This harks back to the prioritisation of dignity within human rights law, whereby freedom from oppression is seen as the right to dignity through self-determination (Marshall, 2014). To obtain dignity requires that one has both an internal identity that precedes political subjectivation as well as the necessary modus of recognition (both legal and social) for this essentialist self. Without this, one cannot materialise through citizenship, rendering the person less valuable. This instantiation reifies normalising notions of what constitutes personhood,

¹²⁹ 'Full citizenship' connotes unconditioned support by the state, such as through equal access to publicly afforded services (such as required health care and protection from discrimination), right to self-identify and be recognised accordingly, and political representation in line with personal needs. Of course, even those who do not identify as trans are likely to lack state support regarding gender equality in some ways, as experiencing gender variance or questions around gender identity is common (see Van der Ros, 2017, 133). Therefore, the use of 'full' in this text implies a sufficient degree of state recognition and representation – sufficient in the sense that, relative to others in regard to gender-based rights, one feels equal. However, like perfect femininity or masculinity, full citizenship is perhaps an unattainable ideal, even for those whose gender identities appear to fit the stereotypes. It is for transpeople that such divergence from the ideal is severe enough to significantly disrupt their lives and weaken their senses of self. For a thorough and enlightening discussion on the welfare state's failure to aptly serve its transgender citizens, refer to Van der Ros's 2017 article, 'The Norwegian state and transgender citizens: A complicated relationship'.

¹³⁰ The gender imaginary underlines the broader gender equality myth in Norway, whereby the image of equality is maintained through an exclusionary conceptualisation of 'gender' or 'women'. Refer to the works of Teigen and Wängnerud (2009), Lister (2009), and Svarstad, Daugstad, Vistad, and Guldvik (2006).

which feeds back into how dignity, and the requisite rights for achieving it, are interpreted through law and society.

Closing remarks

It would appear that Norway's new law on gender self-determination does not disrupt cultural gender norms as significantly as it may seem at first; contrarily, it may even serve to preserve these norms. To some degree, this may be inevitable since, as long as gender is regulated through law, there will be divisions between normal and abnormal gender identities. After all, the law that produces gendered citizenships requires an object-other against whom coherent cisgenderism can be sustained (Stychin, 1995: 1). So, while Norwegian culture emphasises, at least in principle, a universalist approach to human rights that animates state-sponsorship for gender equality (Sümer, Halsaa, & Roseneil, 2014: 283; Lister, 2009), gender equality, and the subjects it purports to protect, continues to be implicated in a cisnormative framework. This can be summed up by considering nonnormative gender identities through a legal positivist lens: to be truly genderqueer, in the sense of rejecting norms, is necessarily antithetical to legislation on rights and identity.

However, it would be remiss to forego exploring the potential rips the law's implementation has caused in Norway's social fabric. Allowing for individuals to self-declare their gender demonstrates an emerging awareness of the fluidity between male and female (Sandland, 2007). Indeed, the conceptual dissociation of gender identity from bodily sex facilitates challenging other normative constructions that have been little contested by society at large. Perhaps it will catalyse a gradual disintegration of the gender imaginary. Along with Janneke van der Ros (2015), I believe that removing the sterilisation requirement gradually lessens the pressure for trans-identifying individuals to conform their bodies, and, over time, through increased visibility of non-normativities, the sex-gender corollary will fade. Therefore, while Norway's new law does not empower all transpeople equally, it does problematise many taken-for-granted understandings of gender and identity in Norwegian culture.

As a concluding note, this article encourages further investigation into legal gender recognition laws as they continue to be implemented. Though this work gives particular attention to the Norwegian context, notions of identity, gender, and sex are greatly uniform throughout much of the Western context. The conceptual premises that fuel normative interpretations of trans rights resonate across cultures, lending to a shared battle against the barriers that disempower transpeople. Therefore, it is the intention of this article to contribute

to the problematisation of the status quo of gender equality legislation, even (or perhaps especially) in contexts that are celebrated for their progressiveness.

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Article 2: 'Assessing the benefits and limitations of Norway's gender self-determination law: A thematic analysis'¹³¹

Abstract

In July 2016, a gender self-determination law was passed in Norway which allows one to change legal gender (male/female) without the previously required sterilisation. Though this move by the Norwegian state has been widely celebrated by trans rights advocates for its progressive approach to gender recognition, the law's limitation to the male/female binary and the lack of concurrent improvement in medical assistance raise concerns about how far-reaching and transformative it actually is. Given the diversity of trans experiences and identities, this article seeks to address the following question: In what ways is the law on gender recognition capable of empowering those who change legal gender, and in what ways can it prove limiting or detrimental? To answer this, I conducted in-depth interviews with 12 individuals who changed their legal gender soon after the law's enactment. Applying Thematic Analysis to the interviews, I uncover and analyse moments of empowerment and disempowerment in order to explore the potential of legal gender recognition to shape one's personhood and citizenship in the Norwegian context.

Keywords: trans identity; transgender; gender recognition law; transsexualism; thematic analysis; gender equality; Norway

This article is awaiting publication and is not included in NTNU Open

¹³¹ As of August 2019, this article is under review for publication.

Article 3: 'Examining trans narratives in the wake of Norway's gender recognition law'¹³³

Abstract

This article argues that Norway's law on legal gender recognition does not sufficiently empower trans individuals. Applying thematic narrative analysis to two interviews, the article demonstrates that the law's reliance on the gender binary and lack of improved medical access compel trans people to negotiate their identities along trans political lines.

Introduction

A law on gender self-declaration was passed in Norway in 2016, allowing individuals to change legal gender without the previously required sterilisation¹³⁴. This change was celebrated, since it recognised trans people's ability to make decisions about their own identities. However, the lack of concurrent improvement in access to medical technologies and the law's adherence to the gender binary have made it difficult for many people to be recognised as they personally identify. This article presents the interview narratives of two transgender women who changed legal gender but still struggle to be seen as they wish. In discussing their experiences of misrecognition or invisibility, each woman draws on socio-political discourse from one of two prominent trans political positionings, which are described in this text as radical (denouncing gender conventions) and liberal (following gender conventions) (Roen, 2002). The article explores how the trans women's use of these two discourses serves to align them with a larger social group, thus helping them construct (or reconstruct) their experiences in such a way that validates their identity. This understanding of trans political positionings informs this article's analysis of how individuals use existing discourses to cope with a lack of social acceptance of their gender identity despite having legally changed it.

To explore these narrative (re)constructions, I employ Catherine Kohler Riessman's thematic narrative analysis (Riessman, 2008). This is a method of narrative analysis wherein each story

¹³³ Published in 2019 in *a/b: Auto/Biography Studies*. Citation included in References list.

¹³⁴ In 1979, the Norwegian tax office administration implemented the requirement of irreversible sterilisation for one to be permitted to change legal gender, from male to female or vice versa. Sterilisation is, at minimum, the removal of ovaries (for female-to-male) or testicles (male-to-female). In 2016, a new law (Lovvedtak 71) was passed and implemented, allowing for one to self-declare one's gender (male or female) by registering with the tax office (Sørli, 2015: 360; van der Ros, 2013: 9).

is examined as a whole to find thematic red threads so that the collection of stories can be compared to uncover an overall thematic pattern. The determined pattern is the starting point for exploring a social issue within a broader context because it links personal experience with broader social structures. This article engages with both autobiography studies and trans studies. It unfolds personal narratives to locate the power dynamics that shape individual experiences, and it demonstrates how the individual constructs and negotiates identity through the narrative. This pattern of identity negotiation through political positioning is examined in the following text. First, an overview of Norway's gender recognition law as well as the landscape of trans politics is provided to set the background for the analysis and discussion. Next, the method of interview collection and the chosen methodology, thematic narrative analysis, are outlined. Finally, the article analyses the two selected narratives using thematic narrative analysis, followed by a discussion of the analytical results.

Background

The Law's Development and Implementation

As a social democratic and welfare state, Norway tends to emphasise the importance of breaking down the socio-political barriers that hinder egalitarianism. Welfare states, such as those that compose the Nordic model¹³⁵, have a far-reaching role in shaping citizens' lives because there exists an implicit yet strong level of trust between the state and its actors (Delhey & Newton, 2005: 311). The state is expected to take care of its citizens, rendering formal recognition of groups and individuals particularly powerful in shaping their positions as citizens and subjects. Particularly with regard to gender and sexuality, Norway, like its neighbours, has for several decades been globally renowned as embodying a progressive approach to issues of inequality (Lister, 2008; Pylkkänen, 2008). In light of this reputation for progressive support systems, activist individuals and organisations alike have publicly addressed the lack of similar support for trans people in an effort to encourage the Norwegian parliament toward improvement.

Perhaps most notable was a publicly issued letter by Amnesty International in March 2013 that admonished the Norwegian Ministry of Health for what it perceived as the violation of

¹³⁵ The Nordic model refers to the social and economic commonality of the Nordic countries (Norway, Sweden, Denmark, Iceland, Finland, and the Faroe Islands). They are collectively regarded as welfare states with a focus on communitarianism, and they are seen to share a high level of interpersonal and institutional trust (Delhey & Newton, 2005).

the human rights of trans citizens¹³⁶. It pointed to the sterilisation requirement, the restricted access to medical assistance, and the pathologising of ‘transsexualism’ in medical practice. The letter cited the Yogyakarta Principles¹³⁷, to which Norway had committed in 2008. The Norwegian government responded by organising an expert group to review the current conditions faced by trans people. In 2015, it published a report, ‘Right to the right gender’ (‘Rett til rett kjønn’), which asserted that coerced sterilisation violates fundamental human rights. The report recommended that one should be allowed to self-declare one’s legal gender without any intervention by legal or medical authorities. Moreover, the report suggested that medical access become less restricted, since many people who needed gender-confirming assistance were being turned down because of age, lack of employment, psychological issues, or simply not seeming ‘transsexual’ enough (Helsedirektoratet, 2015; van der Ros, 2015)¹³⁸. As few as 25 percent of applicants were admitted as patients into the clinic located at the Oslo University Hospital’s National Transsexualism Treatment Centre (NBTS) (van der Ros, 2014). With little recourse to second opinions or private options, many were left with no chance of bodily transformation or legal gender change. The rejected patients had no option but to travel abroad and pay privately for surgery, something that many could not afford. Accordingly, scholar on Norwegian trans rights Janneke van der Ros contends that ‘the state, in its functions as welfare state and legal state, has renounced its responsibilities toward a large number of people with gender incongruence’ (van der Ros, 2017).

Soon after the ministry’s report was published, the state drafted a bill for a new act on legal gender change, designated as Prop. 74L (2015–2016). Its principal purpose is stated as follows:

The Health and Social Services Department suggests in this proposal a new law which will make it easier and less restrictive to change the legal gender. Persons who belong to the other gender than they are registered with in the Population Register should be entitled to change legal gender without the

¹³⁶ John Dalhuisen to Jonas Gahr Støre, Mar 22, 2013, <https://tinyurl.com/y7qdz5c>.

¹³⁷ These principles, ratified in 2006, call on all states to abet and uphold respect and dignity for all persons, regardless of gender identity or sexual orientation. Principle 3 is cited specifically by the ministry, since it dictates that no person should be denied recognition before the law based on gender or sexuality, nor should they be forced to undergo medical changes in order to gain such recognition (Helsedirektoratet, 2015: 84; International Commission of Jurists, 2007: 11–12).

¹³⁸ The diagnosis of ‘transsexualism’ (F.64.0 in ICD-10, the International Statistical Classification of Diseases and Related Health Problems, the WHO’s medical classification text like the DSM in the US) is the first requirement to be considered for medical treatment (Rett til rett kjønn, 2015: VI). The diagnosis requirements include feeling that one is “born in the wrong body” (that the biological sex is opposite to one’s mental or internal sex identity). This carries with it a sense of wrongness about the body since a young age, a disgust or severe discomfort with one’s body, and (most significantly) a desire to transform that body to the ‘opposite’ sex (Espseth, 2017; van der Ros, 2013).

requirement for specific diagnosis or medical treatment. The right to change legal gender should be based on their own experience of gender identity¹³⁹.

The bill reflects the many concerns listed in the report, but only one was addressed in legislation—the issue of coerced sterilisation, leaving the restricted access to medical assistance in place. The new law is designated as Lovvedtak 71 and is called the Law on Legal Gender Change (Lov om endring av juridisk kjønn). This was passed in May 2016 and implemented two months later. With this act in place, one no longer has to undergo sterilisation in order to change legal gender. All that is required is registration with the tax office¹⁴⁰. Unsurprisingly, in Norway and abroad, there has been much celebration within activist organisations¹⁴¹ because this has marked the end of a long fight against wholly unnecessary and inhumane treatment. Under this new law, trans people in Norway were finally regarded as capable of making decisions over how they would identify and were endowed with new agency that they had previously been denied.

Trans Identity Politics

However, the new law on gender self-determination has a few critical limitations¹⁴². The law allows only for a switch between male and female, and there have been no concurrent changes in access to medical technologies. The former limitation impacts nonbinary or otherwise gender-nonconforming people — perhaps as many as 75 percent of trans individuals (European Union Agency, 2014: 107) — who are thus automatically excluded from the law's reach. Though many of this 75 percent do in fact identify as 'men' or 'women', the issue is that the law reiterates the assumed naturalness of the male-female binary, keeping it difficult for individuals to challenge gender norms in an effective manner. As for the latter limitation concerning access to medical technologies, the continued monopoly of NBTS over medical options for gender confirmation means that many who change legal gender are not necessarily regarded as that gender identity by society, despite the state's recognition.

¹³⁹ Prop. 74 L (2015–2016) Lov om endring av juridisk kjønn [Proposition to the Parliament (bill)], para. 1.1, 5; (my translation).

¹⁴⁰ One who is a Norwegian resident and who is at least sixteen years of age can submit a request online to the tax office to change legal gender. After receiving a letter of confirmation and returning it, the process typically takes a few weeks to have the new gender registered. Then one can change their identification documents accordingly, including their birth certificate if desired. For most purposes, one is identifiable only as the new gender. However, in medical cases, particularly bodily-sex related ones, one is regarded in their birth-assigned gender. See Prop. 74L, 2015–2016: 8.5.3 at <https://www.regjeringen.no/no/dokumenter/prop.-74-l-20152016/id2479716/>

¹⁴¹ E.g. Transgender Europe, Amnesty International, FRI (Norwegian LGBT organization), and Human Rights Watch all issued news articles celebrating the change.

¹⁴² See hartline (2018) and van der Ros (2017).

Because of these limitations, many trans people are still struggling to secure validation for their identities. Individuals who change their legal gender but still deal with misrecognition must therefore continue to negotiate their gendered identities in order to carve a social space for themselves. To compensate for this lack of social recognition, individuals seek affirmation from their identity group. Within the trans population, there are two lines along which most trans people often identify. According to Katrina Roen, a Norwegian scholar on transgender politics, trans identity politics¹⁴³ can be roughly divided into radical (gender transgression) and liberal (binary gender adherence), with the former rejecting gender norms around body appearance and behaviour and the latter seeking to work with them (Roen, 2002: 505).

Radical politics tend to favor deconstructing the gender binary in an effort to eventually rid society of gender altogether, which often manifests in rejecting state recognition and regulated medical access. This positioning draws on postmodernist conceptions of the self that regard identity as fluid and unstable. Gender, like other identity markers, is not a matter of nature but of performativity (Hall, 2011), and one's subjectivity can be enacted through corporeal resistance to normalising social values on gender and sex (Nordmarken, 2014: 40).

In contrast, liberal politics often emphasise legal recognition and access to medical technologies as a means to better fit social gender norms. This comes with a collective emphasis on 'passing' as the intended gender in the strategic quest for personal empowerment through social validation. It draws on a 'liberal-humanist version of subjectivity', wherein the self is intrinsic and requires external forces, such as recognition and medical intervention, to materialise (Weedon, 1997: 72). This bifurcation reflects patterns of identity construction whereby marginalised individuals tend to seek empowerment through either complete dissociation from hegemonic values (and appropriation of imposed otherness) or by making personal accommodations to better fit them (Howard, 2000: 371).

Employing a radical approach or a liberal approach are two modes of making sense of one's place in the world. The approaches serve as strategies of resistance against misrecognition, thus negotiating one's differences in an empowering way. Though these two political positionings are not mutually exclusive and can therefore be simultaneously or alternately

¹⁴³ 'Politics' here is used to denote one's value system alignment and group identification, more so than the conventional sense of governance and state organisation.

inhabited¹⁴⁴, one tends to situate oneself firmly within one camp or the other when faced with misrecognition (Roen, 2002). By drawing on political discourse, one taps into a mode of identification already established within the broader social sphere. This identification fosters intelligibility for the individual, which is vital because it confers agency and personhood – requirements for a ‘livable life’ (Butler, 2004: 39). Through the use of thematic narrative analysis, this article examines the interview narratives of two trans individuals to demonstrate how political positioning is used in negotiating their identities.

Method and Methodological Approach

Method

In the autumn of 2016, a few months after the law on gender recognition was passed, I conducted in-depth interviews with twelve individuals around Norway who had changed legal gender without sterilisation. The participants came from various areas, ranging from a rural village to a large city, and they ranged in age between late teens and late sixties. The group was a mix of identities, including man, woman, trans man, trans woman, queer, trans, MtF (male-to-female), FtM (female-to-male), and for a few it was a mix of these depending on the situation. Most had had some hormone therapy, and a few had had minor surgeries (laser hair removal), but none had undergone chest or genital sex reassignment surgeries.

With the exception of one participant who requested an online chat, the interviews took place in person. They were held either in the participant’s home or in a public setting, according to the participant’s request. Each, aside from the online chat, lasted between thirty-five minutes and one hour twenty minutes, and each was audio recorded with permission for later transcription. All data has been anonymised by omitting identifying information and applying pseudonyms. The interviews were loosely structured with open-ended questions. I used a guide to ensure I addressed all the points, but the participants spoke with minimal interruption. I asked how they identify gender-wise, their general experiences in Norway as a trans (or otherwise identifying) person, their experiences around changing legal gender, and what has changed (or not) in their lives since then. The timeline of when participants had

¹⁴⁴ In other words, these identity camps are not stable groupings; rather, they can operate as means of achieving visibility, respect, safety, or comfort. An individual could, for example, identify within the binary in everyday life but participate in the eradication of legal gender markers or use different personal pronouns depending on the space.

changed their legal gender varied from immediately after the law's implementation on July 1 to soon before the interview was conducted.

Methodology

To elucidate how a trans individual negotiates identity construction in the wake of legal gender recognition, I will apply thematic narrative analysis. From the twelve conducted interviews and analyses, I have selected two narratives that best represent the two trends I have identified among the participants. These trends share underlying assumptions and methods of identity negotiation that shape all the narratives from the analysis, though these assumptions manifest in different ways. The following two narratives are by no means representative of all twelve narratives, but rather they illustrate crucial and common elements in different trans narratives. The two chosen narratives are distinct yet complementary, making them useful in demonstrating how legal recognition has not served to fully address the needs of those whom the law is intended to help.

Thematic narrative analysis organises the interview transcripts in such a way that the focus is exclusively on the content—the ‘what’, rather than the ‘how’ or ‘why’ (Riessman, 2008: 53). Each interview transcript is analysed on its own in order to identify possible key moments or aspects. Then, after all the interviews have been analysed, the group as a whole is assessed in order to uncover shared themes, and the interviews that demonstrate the selected patterns are set aside for a deeper analysis. In re-examining these selected interviews, the investigated theme (which is, in this case, identity negotiation through political positioning) is teased out of each interview's elements and collected to form a larger picture, one that links the shared narratives to broader social structures. In the analytical discussion, the implications of these links are explored. Using thematic narrative analysis to explore identity construction is particularly useful because it is this link between the personal (micro) and the societal (macro) that fosters a deeper understanding of how individuals negotiate their positions in society. As Catherine Kohler Riessman writes, thematic narrative analysis can illustrate how ‘stories can have effects beyond their meanings for individual storytellers, creating possibilities for social identities, group belonging, and collective action’ (Riessman, 2008: 55).

Narrative can be a means by which one organises experiences and interpretations in order to situate oneself in a broader context (Phoenix, 2007). It is a mode of sense-making that helps the individual to (re)claim control of their identity construction. When lives are interrupted by something that challenges one's understanding of the world, one response is to reconstruct the multiple stories that constitute the event to rehabilitate one's selfhood (Riessman, 2008: 57;

Williams, 1984). Narratives are not simply reiterations of events but rather are reformulations of reality that foster one's personhood by resolving incongruences (Phoenix, 2007: 182). A person's account is 'an attempt to establish points of reference between body, self, and society and to reconstruct a sense of order from the fragmentation' that one has experienced (Williams, 1984: 177). These 'modalities' make narrative analysis, and thematic narrative analysis in particular, very suitable for investigating trans experiences. Trans people encounter a multitude of situations in their everyday lives where functional narrative practices can be seen as pivotal coping strategies.

It is imperative to keep in mind that, as Jane Elliott says, narratives reflect elements from one's environment: '[W]hile each person has the capacity to produce a narrative about themselves that is creative and original, this narrative will take as its template existing narratives which each individual has learned and internalized' (J. Elliott, 2005: 127). The way in which a person makes sense of their experiences draws on modes of articulation that are available to them. In order to make oneself visible (and thus a subject), one employs discursive practices that situate them firmly within a preconceived realm of identity formulation (Phoenix, 2007: 185; Roen, Blakar & Nafstad, 2011). This is the basis of identity politics, as touched upon above. It is a methodical claim to livelihood, since, as Ann Phoenix writes, 'the telling is a prerequisite to recognition' (Phoenix, 2007: 185).

The following section applies Riessman's thematic narrative analysis to the narratives of Evelyn and Bente.

Two Narratives on Identity Negotiation

Evelyn

Evelyn (early thirties) identifies as a trans woman, as well as 'queer' and a 'feminist', and she prefers feminine pronouns. Originally hailing from elsewhere in Europe, she moved to Norway for study and work a bit more than a decade ago. Currently she lives in a city and is fully employed in an administrative job. Evelyn first came out as a trans woman in her late twenties, after many years of feeling shame and self-denial. Her initial experience of coming out was quite painful, and she describes it as an issue of not being 'normal':

I was put through so much gigantic, enormous pressure from my family, friends, girlfriend, everything, society... I sort of backed down and said, 'No, no, you're right, you're right, I'm normal!' And then I tried to be normal again, and then I completely lost it. Then I came out again, and loud and clear.

She has felt pressure on a multitude of levels, ranging from interpersonal relationships to society as a whole, to conform to standards. Her narrative is shaped around the assumption

that because of her transness, she cannot manage to be normal, so she actively seeks to form an identity outside what she deems to be a personally unattainable standard.

In her narrative, Evelyn presents various situations where this lack of normalcy is problematic, both in encounters with strangers on an emotional level and in important interpersonal relationships. She says, 'You can't escape the feeling that you're on the bottom'. She describes how she has had a few terrifying encounters with transphobia. Evelyn shares a story about a recent violent attack she experienced in a queer bar. A man tried to strangle her in the women's bathroom after she corrected his misgendering¹⁴⁵ of her. She notified the bar security, but they refused to help. Though extreme, this incident resonates with many other encounters Evelyn has had where she was left feeling 'different':

It's something one lesbian told me once – that she really liked me, but I'm trans, so it wouldn't work. And, there's a lot of things like this... So, it makes all the acceptance you feel generally kind of lessen. Because there are so many small experiences like this that are not necessarily so big, but there are so many of them. And [it's there] just to remind you: 'You're not a cis person. You're different, and we can see that'.

Evelyn's emphasis on the rejection of 'You're not a cis person' highlights the way her narrative is shaped as outside the norm.

Turning to her medical treatment plan, Evelyn tells me that after she applied for gender-confirming treatment at the university hospital's NBTS, she was eventually started on hormone replacement therapy. She was also added to the waiting list for vaginoplasty, but she was removed following her most recent clinic appointment wherein she had admitted to feeling ambivalent about the surgery. Evelyn confides that she is not certain whether she wants to get rid of an organ that 'works so well', even though it's 'in the way'. The hormones, on the other hand, have been positive for her. Immediately after beginning hormone therapy, her body began transforming (her beard hair thinned and her breasts 'popped out'). However, she explains that these changes have overall been minimal, and because of this, she does not pass as a woman to people outside the trans community. Evelyn draws this conclusion from her interactions with others:

I don't think I pass at all... I know people might think I look like a guy sometimes... In the queer community, people tell me, "Oh, you look so much like a girl", but within the straight cis community, it's a bit different... It's mostly cis males, really, that tell me these kinds of things [that I look like a guy].

¹⁴⁵ To misgender is to refer to someone's gender incorrectly, whether deliberately or not.

Despite such struggles, Evelyn passionately expresses that she does not want to conform to feminine ideals.

I decided early on not to try [to pass]. Because I thought for myself—it's like, I think the concept of passing is ridiculously harmful, but at the same time, I completely understand [wanting to pass] because it's really painful to be misgendered or, you know, to not be believed, and things like this. But what I don't like about the concept is that it's the society that dictates [for] us how a woman should be like, or how a man should look like. And I find this completely ridiculous, because we've got all types of people out there, and then nobody should be able to tell me that I have to change this, this, and this to be seen as a woman. Even though it is actually true that if I want to be seen more as a woman and misgendered less, I could take face operations, I could work on my voice, I could do lots of things. And then, yeah, I would probably be misgendered much less. But I think I'd hate myself because I would just not be able to say 'fuck' to society [laughs].

Evelyn's ambivalence around having sex reassignment surgery and the decision she made to not pass indicate a desire to forgo all attempts at conforming. For her, rejecting social pressures to present herself a particular way is a way of re-empowering herself. An important part of her narrative is to claim autonomy over her selfhood and take ownership over her non-normalcy. Evelyn re-inscribes her agency through appropriation of the Otherness imposed on her.

In a similar vein, Evelyn is critical about adhering to the beauty culture. She describes others as submitting themselves to the 'beauty pressure', which she actively avoids.

We have some nice role models, like Laverne Cox¹⁴⁶... [but] they're usually very beautiful people. And that's the beauty pressure. And a friend of mine is going to do massive face surgery soon, and I have another friend who did it. And I see people doing these things to their faces, and I understand it, because [laughs softly] I think about it myself quite often. Because it's really annoying to be misgendered, but it's even more annoying that you feel the pressure to do such things. Because it's really expensive, and it's really invasive surgery. And it's coming not necessarily from the right place. So, I guess that's why I want to strategize being proud about [not passing], because I think society is fucked up. And I don't want to conform.

By distinguishing herself from those who uphold standards of beauty, Evelyn demonstrates that she does not give weight to these things. Even though she acknowledges that the process of bodily transformation can alleviate misrecognition – something she herself struggles with – she denigrates it as an uninformed decision. This is another way of strategically placing herself in opposition to those who submit to social norms, in order to secure her position as an agential outsider. This strategy resembles the process of empowerment through dissociation from hegemonic values, as described by Judith Howard (2000: 371). Moreover, Evelyn

¹⁴⁶ An American trans woman who is a well-known public figure.

expresses a lot of pride in her decision to not conform, which becomes evident when she tells me about being seen as a role model. In this case she is highlighting her socially informed identity, one that is underpinned by her strength to defy social pressures: 'I've been told by other people that I'm sort of a role model [laughs], which I find a bit funny... I usually have a very self-confident image about me, even though I don't pass or even try to pass'.

I ask Evelyn whether changing legal gender has given her more confidence. She replies with a firm, 'Oh no, not at all', and clarifies that it has not benefited her much at all:

It doesn't really change much in my life right now, except being annoying bureaucratically, this personal number thing... I really don't see the benefits of it yet... Once I got it, I was like, 'Ha! This went much faster than I thought'. And I thought that was kind of fun, and I thought, 'Okay, a new number for me to remember'. But that's fine, I remember numbers fine. But I really didn't feel anything at all. It had a much stronger effect when I changed my name legally. That was like a super moment.

Evelyn's blasé account of receiving a new legal gender underlines her lack of personal investment in institutionalised modes of recognition. She says she looks forward only to getting her passport back with an 'F' instead of 'M', since it means she will not have to worry as much about looking feminine at the airport in order to be gendered by security or customs properly. Regarding everyday life, she feels that the law does not significantly change how trans people are regarded in general: 'In terms of rights, I don't think the legal gender changes anything about how society sees us. It really doesn't. It's just a number... For me it doesn't change anything'.

Evelyn's emphasis on the need for social change pulls away from her personal experience as a trans person toward how she connects with others in the trans community. Notably, she opens by talking about how 'we' are still lacking equality, thereby identifying herself with others with whom she feels connected through a shared cause. By aligning herself with like-minded others, she situates herself solidly within the radical political narrative (Roen, 2002):

I think we need way more political campaigns, because I think it's not enough to talk about equal rights. I think it's very much in how people see each other, like society and things like this. And I think it's very related to feminism... [Regarding the new law], I don't think it's equality because trans persons are still being discriminated [against]. So, to me, equality would look like children who are not forced to conform. And if they express some gender nonconformity, that there's no pressure on them. That they can explore themselves and tell the world who they are, instead of schools, teachers, parents, papers [IDs].

Evelyn again uses an opposing position (against those who uphold beauty standards), but she does so this time by envisioning the 'we', thus placing herself within a larger group of like-minded individuals. She draws on radical rhetoric, which critiques the exclusionary effects of standards on trans acceptance. Moreover, by delineating and celebrating her own social group as one that eliminates the need for 'normal', and by denouncing others as superficial, she

justifies her personal alignment as the one that is best for society at large. She also contends that legal recognition cannot compensate for social misrecognition, since true empowerment requires that one's transness is essentially unremarkable:

But also, [we need] more campaigns in opposition to discrimination against people who don't pass. Because we have a thing, I guess it's our society [that makes us] so focused on beauty and all, like every trans person who is beautiful, we celebrate them so much. But we don't talk about the older trans person who doesn't manage to come out before they're much older, and don't pass at all, and their difficulties and stuff. And it should be equal rights for them as well, and they don't deserve discrimination either. They don't deserve to be blamed for destroying a family [just] because they come as trans, which is what I have been blamed for. You know, it's not a legal thing anymore, it's just discrimination and society and how it works... I would like the world to come to a place where, when a person has come out as a trans person, the people around them are just like, [clicks tongue] 'Cool!' And that's it. And there's no problem, it's not a huge thing, it's so normal. I would like the world to know that being trans is normal, because, what's normality anyway? [Laughs].

It is noteworthy that Evelyn is highlighting what she perceives to be a common endeavour toward what is 'normal'. This further indicates that normalcy is a core organising principle in her narrative. Evelyn explains her decision to change legal gender, despite the inability of legal recognition to fully eradicate discrimination, by viewing the law's implementation as a sign that social values will change:

It's really huge to make the government acknowledge this [legal gender change]. So, it is a huge battle. And I think that's actually why I did the [legal gender] change, because I wanted to be part of the battle. But really, when it comes to my feelings, regarding everything that's happened to me personally, it's not helped much. But on the whole level... I think it's important to be recognised enough. *Awareness*.

Evelyn links her decision to change legal gender back to her role as an activist, indicating that her decision was about being a part of something bigger than herself rather than seeking validation for her own identity. However, this can also be understood as important for Evelyn's narrating of a personal identity, since she is 'one who is part of the battle'. In this, she is again drawing on radical politics discourse, and this shapes the narrative of herself as an actor for social change. She copes with the continued social misrecognition by emphasising her agency (and thus her claim to subjectivity) in rejecting social pressures and actively striving to dismantle norms.

Bente

Bente is in her early sixties and identifies as a woman personally, but often feels she is still a trans woman socially. She currently lives in a small town, having moved from another small town after coming out a few years prior. She was previously married, but her wife did not accept her identity, so they divorced. Bente describes that the pressure inside her to come out had been building for a long time:

I always understood that there was something weird about me, from when I was a little boy, but in the early days, you didn't know [what it was], you didn't have a name [for it]. It was nothing that you heard about. And I could keep it inside for a while, but after that time went, I felt I just couldn't keep it inside, because it was growing.

Bente refers to something 'weird' inside her, something that has been there since she was very young. It points to a sense of an intrinsic self, in which some integral part of herself has been hidden away for many decades, waiting to finally emerge.

Continuing this theme, Bente reflects on finally being honest about who she is to herself and to others.

I've been lying to myself and I've been lying to all the others in my life. I don't feel the meaning of lying anymore. Many male-to-female [trans women] also use a wig, and yes, I have a wig. But, as I said, I've been lying to myself and to others for a long time. I try to make it my own hair because I won't lie about the hair, at least. That's why I don't use a wig. And you see a lot of male-to-female on Facebook who show up in different pictures with different wigs [laughs]. If, for instance, I lose my hair, then of course I'll wear a wig. But I won't have five, six different wigs looking mostly the same.

By noting that other women she knows use a wig but she does not, Bente offers a clear image of what she is not. Moreover, perhaps by admitting that she owns a wig but chooses not to wear it, she is indicating that she used to be like these other trans women but has made a decision to move away from that. From this it is evident that a huge part of Bente's narrative is organised around being, or perhaps becoming, 'normal'. She does not want to stand out from cis women, and she is arranging her narrative around behaviour that she sees as appropriate.

Bente decided to try to become a patient at NBTS. However, this proved difficult because her doctor's referral was denied, so she requested it from her psychologist, who said it must be done by yet another doctor, which was also denied. This process of coming out and trying to be referred to NBTS had been going on for about six years by the time of the interview. The issue of medical treatment is quite important to Bente, since she feels like she is now caught in an involuntary in-betweenness, a continued state of transgender-ness. She wants to develop beyond this and become a 'real' woman:

I feel people see me as a woman. When I look in the mirror, just before I take off all my clothes, I see myself as a woman... I feel I'm a woman, but as long as I don't get the hormones or the surgery, I feel like a transgender, yeah... [When I go camping], I feel it is more right if I go to the lady's toilet instead of the man's toilet, I feel it is more right. But I usually look for the handicapped toilet.

Even though Bente experiences being regarded as a woman by others, the fact that her body does not fully reflect anatomical femaleness holds her back from enacting her womanhood entirely. In an intimate space such as a public toilet, she protects herself from the possibility

of being discovered (and thus having her female identity challenged) by carefully avoiding women's toilets. This is in accordance with embracing gender norms (Roen, 2002) and adjusting herself to hegemonic values (Howard, 2000). She is very clear about the fact that she will not challenge the sociocultural concepts of womanhood by entering spaces where it can be deemed inappropriate by others.

Furthermore, when I ask her whether she will still do sex reassignment surgery despite it no longer being required for legal gender change, Bente agrees readily. She refers to the notion of being 'incomplete', drawing on the liberal discourse of 'born in the wrong body', whereby mind and body do not match and one's intrinsic gender can materialise only through corporeal transformation:

I would go all the way [complete all the surgeries]... Because it's a victory to get where I am, but it's not complete. Not at all. Because I'm not quite yet the person I am, the person I should have been.

Echoing Roen's liberal transgender politics, Bente employs the strategy of negation in constructing her identity:

Many will take hormones to get breasts, but they won't get the surgery. But I think that's probably younger people, like a female-to-male [transgender man], who feels inside herself like she is a girl and won't have surgery because maybe she wants to have a baby. And my opinion is that if they won't have the surgery because maybe they want to have a baby, that's not right... Because they will be half woman or half boy. There are many [like this], yes.

The way Bente describes the choices of people who do not surgically transform their bodies in line with the sex binary indicates a deep level of discomfort. Her way of discussing them as 'not right' and 'half woman or half boy' relegates them to the abject domain (P. Elliott, 2016: 61). She accordingly constructs her own experiences (with the implicit goal of 'wholeness') as natural and normal, pointing back to authenticity of her gender identity. Bente also distinguishes herself based on age by describing the others as 'younger people', a distinction that arises another time when she explains her frustration with not being accepted as a patient at NBTs. In this case, she tells me that she does not understand why younger patients are accepted far more than older ones, since 'a young person might not even end up being trans; it might just be a phase'. Older people like herself, on the other hand, have lived all their lives and 'are most likely sure' of their identity. This process of identification through negation is evident as a recurring theme in Bente's narrative (Nirta, 2014: 16).

Bente tells me that she welcomed the law on legal gender change. This was for her a step in the right direction, a way of getting closer to her true self.

When I heard about it, I thought, 'Great!' Because that number in my personal number was not me. Never should have been me. So, when I got the new sex, it was very thrilling for me, yes... I feel joy. I feel joy because it was one victory for me. Because only one year ago, you had to take the surgery to get the personal number. John Jeanette [the key activist for the new law] has done a big, big job.

She sees herself as representable by her personal identification number—it is intended to reflect her internal identity. She finds happiness in it, as well as empowerment:

I feel stronger... Earlier, I was weak because all the time I was hiding. And when I was hiding and I couldn't stand up for what I was, it meant I was also talking much less, and was [trapped] inside me. You feel you are trapped inside. You can't think normally, you can't say normal things. But when you get rid of the chains, you feel free, then you can think more naturally and logically because you don't need to be two persons. As long as you are trapped in yourself, and yourself is not the person you see, then you will stay back and invite arguing. But when you have only one thing to take care of, then you'll be stronger. If you have more to think of, you can't be as strong as you should have been... When I came out, I was trapped in my own body. And to get rid of the chains, I could only put on the clothes I like. I could feel more natural because I didn't have to act. I always had to act. I tried to use everything to [keep people from getting] suspicious of me. I admit, I wasn't the person who talked most friendly about homos or lesbians. [But] I am much more tolerant now, more tolerant than the people in [my previous town].

Bente highlights how escaping the 'chains' allowed her true self to come to fruition – she is no longer 'trapped in her body'. She emphasises being 'normal' in behaviour and interaction. She refers to her previous self as 'acting', taking on a false identity in order to hide. This can be seen in connection with Bente's statements about wishing for medical treatment because it highlights her emphasis on transitioning fully. She sees the legal change as a stepping stone toward realness, and the quest for realness is not only important to her, it is necessary for her to become her 'true' self. For Bente the legal change is of great importance, but what is paramount for her is aligning completely with hegemonic understandings of gender (Howard, 2000) and thereby erase her state of transness. In her mentioning of attitudes toward 'homos and lesbians', it seems like her narrative has somewhat shifted. She reveals that she used to partake in homophobic conversations. She connects this to a way of disguising, so that her true self would not be discovered. When experiencing acceptance, her narrative becomes more flexible. She feels increasingly validated and free, and her need for a narrative that contributes to homophobia (and self-presentation through rejection of others) is decreased.

Discussion

Both Evelyn and Bente construct their narrative around their conceptions of normalcy and strategies for self-empowerment, in terms of either rejecting or accepting social standards on gender. Evelyn stresses that gender norms, especially regarding passing in the binary and being beautiful, are destructive to society because they repress people's decisions about their own identities. Contrarily, Bente sees these standards as a key to a happy life and a complete

sense of self. These standards are attainable, in Bente's eyes, through improved state support. There is a clear alignment of Evelyn and Bente with radical trans politics and liberal trans politics, respectively.

These alignments are strategies for negotiating one's position in society after legal gender change. Evelyn expresses ambivalence about the new law and rebuts its capacity to significantly mitigate social marginalisation. By implying the new law does not really help anyone, she resituates her lack of personal empowerment as inevitable. Therefore, it does not reflect her own inability to conform but rather the state's failure to adequately address an important issue (restrictive social values). Bente, on the other hand, sees herself—or her body, to be exact—as the core issue, with the state and society having the capacity to empower her. With an inalterable truth (her womanhood) sequestered inside herself, valuable recognition from society is impossible without adjusting external presentation. In the meantime, she secures her identity by strongly aligning with others who uphold gender norms, which indicates an endeavour to procure a secure future as a 'real' woman. The new law signals to Bente that the state (and its society) are finally beginning to recognise the needs of trans people, and therefore all her needs will eventually be met.

Evelyn and Bente also construct their identities by clarifying what they are not. Each does this by derogating the group they wish to dissociate from, stripping the other group of validity by emphasising their lack of authenticity or capacity for self-determination (P. Elliott, 2016: 61). This strategy reflects one's fear of being undervalued and marginalised; by actively marginalising another, one appropriates a more empowered (and intelligible) space. For Evelyn, this space is within the radical trans political movement, and for Bente it is within the liberal.

Evelyn's self-presentation as an activist, moreover, signifies her agency as a person who actively defies the pressures that threaten to further disempower trans people. By changing legal gender, she sees herself as part of a larger movement to eventually replace the state and (hegemonically structured) society with an alternative organisation of society, one that will in the future allow for children to not go through what she and many others have because of gender norms. Her denial of conformity by having an androgynous appearance and male body (at least for the time being) is a way of not giving in to the expectation of society to embody the perceived normalcy of other legal women. Again, she shifts her non-normalcy to being an issue of society and not of herself. Bente, in contrast, focuses on working toward authenticity, finding life's value to be in honesty rather than falseness. Her struggle with disempowerment

stems from having the wrong body. Legal gender change has aided her personal journey toward self-materialisation by showing that the state recognises who she really is. She emphasises the significance of this recognition by declaring that it is not really meaningful if one does not also undertake sex reassignment surgery.

Conclusion

By applying thematic narrative analysis to the interviews, a commonality between the two participants emerges. Both Evelyn and Bente are actively negotiating their gender identities through alignment with their trans identity group, and the two groups represent what Roen has identified as the two primary political positionings in the trans community. By identifying with one or the other side, the participant situates herself within a preestablished mode of identification. Such negotiations for validation signify a lack of adequate empowerment via legal recognition. This is specifically because the law is not accompanied by improved access to medical technologies, nor does the law sufficiently challenge the gender binary's presumed naturalness in a way that permits a variety of gendered expressions and embodiments without social retribution.

Because these interviews were gathered soon after the law's implementation, they reflect early interpretations of the new legal gender's impact. It is interesting in itself to witness the immediate reactions of the interviewed participants and to analyse such freshly informed narratives. Further research on this topic, collected over a period of time or at a much later date, could be beneficial in elaborating on the impact of legal gender recognition on personal identity construction, since it could account for any social changes that have resulted from the new law. Moreover, given that narratives can serve as a strategy for reclaiming one's agency (Williams, 1984; Phoenix, 2007), thematic narrative analysis within trans studies can be a crucial tool for understanding how trans people cope with the struggles of social acceptance and recognition.

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Appendix A: Law-related documents

Overview of documents related to the law on gender recognition, as presented in the Context section. Full citations for most documents, including weblinks where relevant, are provided in the Reference List. Those not included in the reference list have a weblink included below.

Publications (international)

Council of Europe

‘European Convention for the Protection of Human Rights and Fundamental Freedoms’ (1950)

Also known as ECHR; an international convention established by the Council of Europe to promote and protect human rights. Of particular importance are Article 8 (the right to privacy) and Article 14 (the prohibition of discrimination). These were cited by various groups as being breached due to coerced sterilisation and thus motivated the LGR’s eventual proposal.

‘Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity’ (2010)

The Norwegian government decided to commit itself to the recommendations by the Council of Europe’s Committee of Ministers on LGBT rights in 2010 to improve the lives of its LGBT residents. Specifically, the following were prioritised: §20 (which says that legal gender change requirements should be reviewed regularly), §21 (which says that the process to change legal gender should be very accessible and trans people should get full legal recognition), and §35 (which says that access to trans-specific medical treatment should be readily available and based on consent). Norway’s commitment to this contributed to the growing momentum that resulted in the LGR being proposed.

‘Study on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity. Legal report: Norway’ (Løvdal, 2011)

Independent research report arranged by Council of Europe and conducted by Lene Løvdal. Provides an overall legal framework for LGBT rights in all public life aspects.

The Yogyakarta Principles

‘The Yogyakarta Principles’ (2006)

An international guide to human rights in regards to sexual orientation and gender identity, outlined in 29 principles. Norway has endorsed these principles since around 2006.

Amnesty International

‘Open letter: The Norwegian government must fulfil the rights of trans individuals’ (Dalhuisen, 2013)

Letter to Norway’s Minister of Health and Care Services (Jonas Gahr Støre) to express AI’s concerns regarding the sterilisation requirement and requesting its abolishment in the name of human rights.

‘Write for Rights’ campaign (2014a)

Campaign carried out for Norwegian transwoman John Jeanette Solstad Remø to collect signatures to appeal the government's decision to deny her request for legal gender change without sterilisation. This was elemental in the eventual law proposal on gender recognition.

‘The state decides who I am: Lack of recognition for transgender people’ (2014b)

An overview of legal gender recognition and human rights practices related to gender in Europe (specifically Norway on pages 70-78).

‘Norway: Historic breakthrough for transgender rights’ (2016)

News publication on Amnesty International's website celebrating Norway's LGR.

Publications (Norway)

Norwegian Ministry of Children and Equality

‘Improving quality of life among lesbians, gays, bisexuals and trans persons (2009-2012)’ (2008)

An overview of the status quo of LGBT persons in Norway and the Norwegian government's three-year action plan for addressing the stated issues in concerns to all facets of everyday life.

Norwegian Ministry of Foreign Affairs

‘Promoting the human rights of LGBT – lesbian, gay, bisexual and transgender – people: Guidelines for systematising and strengthening embassy efforts’ (2010)

A guide for Norwegian embassy workers on promoting the human rights of Norwegian LGBT citizens abroad, with a particular focus on embassies located in the global South.

Norwegian Directorate of Health

‘The right to the right gender’, [Rett til rett kjønn] (2015)

Full name: The right to the right gender – health for all genders: Investigation of the conditions for changing legal gender and organisation of health services for people who experience gender incongruence and dysphoria, [Rett til rett kjønn – helse til alle kjønn: Utredning av vilkår for endring av juridisk kjønn og organisering av helsetjenester for personer som opplever kjønnsinkongruens og kjønnsdysfori]

Report by expert group appointed the Norwegian Directorate of Health in October 2013 to investigate the status quo of people in Norway who deal with gender dysphoria and incongruence (as understood through the diagnosis of gender identity disorders (ICD-10: F.64)). An assessment of two key elements: the sterilisation requirement for changing legal gender and the health services available in Norway for gender-confirming medical treatment. The report includes recommendations that the sterilisation requirement be removed and a self-determination model be instated. The report further elaborates recommendations regarding the stipulations for changing legal gender.

Regjeringen.no

‘Hearing: Suggestions regarding the law on changing legal gender’, [Høring – forslag til lov om endring av juridisk kjønn] (2015)

Open call by Department of Health and Care for feedback from relevant persons, groups and organisations on the matter of the proposed law on gender change without required sterilisation, as

outlined in the department's proposal document, 'Høringsnotat – Forslag til lov om endring av juridisk kjønn' (2015).

The webpage at the link below provides a full overview of the hearing process, including all the feedback responses ('Høringssvar').

<https://www.regjeringen.no/no/dokumenter/horing---forslag-til-lov-om-endring-av-juridisk-kjonn/id2423028/>

'LGBTI Action Plan: Safety, diversity, openness' [Handlingsplan LHBTI: Trygghet, mangfold, åpenhet] (2016)

Full name: LGBTI Action Plan: Safety, diversity, openness - Government's action plan against discrimination on the grounds of sexual orientation, gender identity and gender expression 2017-2020, [Handlingsplan LHBTI: Trygghet, mangfold, åpenhet – Regjeringens handlingsplan mot diskriminering på grunn av seksuell orientering, kjønnsidentitet og kjønnsuttrykk 2017–2020]

A three-year action plan that proposes ideas for developing knowledge around LGBTI issues to help improve the lives of LGBTI people in Norway. Unfortunately, there are few concrete or unique suggestions regarding trans people, which is stated to be due in part to a lack of quantitative data on this group.

Relevant Norwegian legislation

'Name law', [Navneloven] (2002)

Full name: Law on personal names, [Loven om personnavn]

Allows one to, among other things, change one's first name (once per ten years) regardless of the gender affiliation the name has, thus allowing one to have a traditionally masculine name despite being legally female, for example.

'Same-sex marriage', [Felles ekteskapslov] (2008)

Original marriage law (2009) reformed to allow two people of the same legal gender to marry.

'Discrimination Law on Sexual Orientation', [Diskrimineringsloven om seksuell orientering] (2013)

Full name: Law prohibiting discrimination on the grounds of sexual orientation, gender identity and gender expression, [Lov om forbud mot diskriminering på grunn av seksuell orientering, kjønnsidentitet og kjønnsuttrykk]

Expands previous protection from discrimination to include gender identity and gender expression, not just sexual orientation (which had been the sole focus of the previous Sexual Orientation Anti-Discrimination Act). Does not include personal relationships and family life. This was subsumed in 2017 under a new act (see next).

'Equality and Anti-discrimination Act', [Lov om likestilling og forbud mot diskriminering (likestillings- og diskrimineringsloven)] (2017)

Combines all anti-discrimination acts, including the 2014 act above, and extends its reach to include all facets of life, including personal relationships and family.

'Prop. 74 L (2015–2016)' (2015)

Full name: Bill 74 L (2015- 2016), Proposed legislation to the Parliament (suggestion for a law) – Law on the change of legal gender, [Prop. 74 L (2015–2016), Proposisjon til Stortinget (forslag til lovvedtak) – Lov om endring av juridisk kjønn]

The Ministry of Health and Care Services issued the Prop. 74 L proposal for the law on legal gender change to the Parliament in 2015. It includes a summary of the expert group’s report (‘The right to the right gender’, above), the recommendation of the Council of Europe Committee of Ministers on LGBT rights (CoE CM Rec 2010/5), justification for its recommendation on the basis of human rights, suggested stipulations and allowances, among other things.

‘Law on legal gender change’, [Lov om endring av juridisk kjønn] (2016)

Put into effect on 1 July 2016. Full text available in Appendix B. Can be accessed online at <https://lovdata.no/dokument/NL/lov/2016-06-17-46>

Appendix B: Law on gender change

English translation¹⁴⁷

Legislative Decision 71 (2015-2016)

(Initial handling of the legislative decision)

In the parliament's meeting on the 30th of May, the decision occurred on the law for change of legal [juridical] gender

§ 1 Definition

Legal gender refers to the gender a person is registered with in the population register.

§ 2 Right to change legal gender

People who are residents of Norway and who experience that they belong to the other gender than the one the individual is registered with in the population register have the right to change their legal gender.

§ 3 Change of legal gender for persons under legal guardianship

A person who is under guardianship as designated by the guardianship law can themselves seek to change their legal gender.

§ 4 Change of legal gender for children.

Children over 16 years of age can themselves file for the change of legal gender. Children between 6 and 16 years must seek the change of legal gender together with the person or persons who have parental responsibility for that child. Children who are able to formulate their own views on the case it applies to shall be informed and given the opportunity to express themselves before the application is considered. When a child is born with an indeterminate somatic gender development, it is a condition for the change. The applicant must provide documentation of the condition from healthcare personnel.

§ 5 The processing of applications for the change of legal gender

Applications for a change of legal gender are handled by the tax office (the population register authority). The tax office's decision on the case for the change of legal gender can be disputed to the county governor in Oslo and Akershus. Applications from children between 6 and 16 years who are as described in § 4, second paragraph, second point, should be

¹⁴⁷ Many thanks to by fellow trans studies scholar, Elian Eve Jentoft, who translated this from Norwegian.

submitted together with at least one of the parents who has parental responsibility, and is handled by the county governor in Oslo and Akershus. The county governor's decision can be appealed to the National Appeals Body for the Healthcare System.

§ 6 Legal consequences of having changed legal gender

The legal gender shall be the basis for application of other laws and regulations. The birth gender shall however be the basis if there is a need to establish paternity and parental responsibility under the Children's Law. A person who changes their legal gender maintains the rights and responsibilities that come with fatherhood, motherhood, or shared motherhood. Rules that apply about or for a woman who births a child apply in the same way for a person who births a child after having changed their legal gender.

§7 Regulations

The department can give regulations on the completion and implementations of the decisions in the law.

§ 8 Entry into force

The law is in effect from the time the King decides upon. The king can enter into force the individual decisions at different times.

§ 9 Changes to other laws

From the time the law is out into force, the following changes to the law on the 7th of June, 2002 nr. 19 on the personal name: § 10, second paragraph, first point, shall read: People over 16 years cannot take, change or annul the first name or last name more than one time every tenth year. § 12 shall read: § 12 Notification on the name for children. Notification on taking, changing or annulling the name of someone who is not yet 16 shall be put forth by the one or those who have parental responsibility, or these must have consented to the notification.

When it comes to the notification for children over 12 years of age, the child must also have consented. Even if consent isn't present as in the first or second point, the notification can be approved if there are special grounds for the decision.

When it comes to the notification that a person has changed their legal gender under the law for the change of legal gender, § 4, second paragraph, second point, consent from one of those who has parental responsibility is sufficient.

Olemic Thommessen, president

Original Norwegian version

Lovvedtak 71 (2015–2016)

(Første gangs behandling av lovvedtak)

315 L (2015–2016), jf. Prop. 74 L (2015–2016)

I Stortingets møte 30. mai 2016 ble det gjort slikt vedtak til lov om endring av juridisk kjønn

§ 1 Definisjon

Med juridisk kjønn menes det kjønn en person er registrert med i folkeregisteret.

§ 2 Rett til å endre juridisk kjønn

Personer som er bosatt i Norge og som opplever å tilhøre det andre kjønn enn det vedkommende er registrert med i folkeregisteret, har rett til å få endret sitt juridiske kjønn.

Departementet kan gi forskrift om at loven skal gjelde for norske statsborgere bosatt i utlandet.

§ 3 Endring av juridisk kjønn for personer som er satt under vergemål

En person som er satt under vergemål etter vergemålsloven, søker selv om endring av juridisk kjønn.

§ 4 Endring av juridisk kjønn for barn

Barn som har fylt 16 år kan selv søke om endring av juridisk kjønn. Barn mellom 6 og 16 år må søke om endring av juridisk kjønn sammen med den eller de som har foreldreansvar for barnet. Dersom foreldre har felles foreldreansvar, men søknaden fremmes sammen med bare en av dem, kan det juridiske kjønn likevel endres dersom dette er til barnets beste. Søknad om endring av juridisk kjønn for barn under 6 år fremmes av den eller de som har foreldreansvar for barnet. Barn som er i stand til å danne seg egne synspunkter om det saken gjelder, skal informeres og gis mulighet til å uttale seg før søknaden fremmes. Det er et vilkår for endring at barnet har en medfødt usikker somatisk kjønnsutvikling. Søker må legge frem dokumentasjon på tilstanden fra helsepersonell.

§ 5 Behandlingen av søknader om å endre juridisk kjønn

Søknader om å endre juridisk kjønn behandles av skattekontoret (folkeregistermyndigheten).

Skattekontorets vedtak i sak om endring av juridisk kjønn kan påklages til Fylkesmannen i Oslo og Akershus. Søknader fra barn mellom 6 og 16 år som etter § 4 andre ledd andre punktum fremmes sammen med bare en av dem som har foreldreansvar, behandles av

Fylkesmannen i Oslo og Akershus. Fylkesmannens vedtak kan påklages til Nasjonalt klageorgan for helsetjenesten.

§ 6 Rettslige konsekvenser av å endre juridisk kjønn

Det juridiske kjønn skal legges til grunn ved anvendelsen av andre lover og forskrifter. Fødselskjønnet skal likevel legges til grunn dersom det er nødvendig for å etablere foreldreskap og foreldreansvar etter barneloven. En person som endrer sitt juridiske kjønn, beholder rettigheter og plikter som følge av farskap, morskap eller medmorskap. Regler som gjelder om eller for en kvinne som føder barn, gjelder på samme måte for en person som føder barn etter å ha endret juridisk kjønn.

§ 7 Forskrifter

Departementet kan gi forskrift om utfylling og gjennomføring av bestemmelsene i loven.

§ 8 Ikrafttredelse

Loven gjelder fra den tid Kongen bestemmer. Kongen kan sette i kraft de enkelte bestemmelsene til forskjellig tid.

§ 9 Endringer i andre lover

Fra det tidspunktet loven trer i kraft, gjøres følgende endringer i lov 7. juni 2002 nr. 19 om personnavn: § 10 andre ledd første punktum skal lyde: Personer over 16 år kan ikke ta, endre eller sløyfe fornavn eller etternavn mer enn en gang hvert tiende år. § 12 skal lyde: § 12 Melding om navn for barn Melding om å ta, endre eller sløyfe navn for noen som ikke har fylt 16 år, skal fremsettes av den eller de som har foreldreansvaret, eller disse må ha samtykket i meldingen. Gjelder meldingen et barn over 12 år, må også barnet selv ha samtykket. Selv om det ikke foreligger samtykke etter første eller annet punktum, kan meldingen godtas dersom det foreligger særlig grunn.

Gjelder meldingen en person som har endret juridisk kjønn etter lov om endring av juridisk kjønn § 4 andre ledd andre punktum, er det tilstrekkelig med samtykke fra en av dem som har foreldreansvaret.

Olemic Thommessen, president

Appendix C: Interview participation documents

Interview information

For potential participants of doctoral research project

Conducted by: france rose hartline, PhD Candidate, NTNU

Doctoral research project title:

- “Assessing the impact of Prop.74L (2015-2016) on trans* and gender-nonconforming people who change their juridical sex in Norway”

Project description:

- The project is a research study conducted by doctoral (*doktorgrad*) candidate, france rose hartline, from the Gender Studies Institute at the Norwegian University of Science and Technology (NTNU).
- The purpose of the study is to determine the effects of the law change in Norway (Prop.74L [20152016]) which allows for one to change their juridical sex (male to female, or vice versa) without the previously required sterilisation.
- The research will aim to ascertain the effects the law change has had on those who identify as trans*gender and have changed or are planning to soon their legal sex (before the end of 2016), regardless of whether they have had related medical interventions or not.
- Subjects will be asked (but not required) to personally document their experiences as they wish, to be shared with the researcher. Methods of documentation can include emails, messages, phone calls, videos, notes, voice recordings, etc. These are for the sole purpose of reference, and will be treated confidentially.
- The results of this study will be included in the doctoral thesis (*doktorgrads avhandling*) of the researcher, France Rose Hartline.

Participants:

- Trans* or gendernonconforming residents in Norway who have changed their legal sex or are planning to do so soon (before the end of 2016).

Interviews:

- This series of interviews consists of two interviews in total, spaced about 8 months apart. The first one is in October 2016, and the second one is in May or June 2017.
- This series of interviews is voluntary. You have the right not to answer any question, and to stop the interview at any time or for any reason. I expect that the interview will take about 1

hour.

- All materials collected or documented by the subjects and submitted to the researcher shall remain in the sole and secure care of the researcher.
- You will not be compensated for these interviews.
- All names and any identifying information will be anonymised. Additionally, I will not quote you without permission.
- I would like to record this interview so that I can use it for reference while proceeding with this study. I will not record this interview without your permission. If you do grant permission for this conversation to be recorded, you have the right to revoke recording permission and/or end the interview at any time.
- This project is scheduled to be completed by May 2019. All interview recordings will be stored in a secure work space until approximately one year after that date. The recordings, notes, and any other identifying material will then be destroyed.

Contact: france rose hartline || france.rose.hartline@ntnu.com || +47 45181902

[Interview participation consent form](#)

CONSENT TO PARTICIPATE IN INTERVIEW

**Below is the consent form you will be asked to read and sign at the beginning of the first interview. I will bring a copy to the interview. After reading, please contact me via email or Facebook messenger with questions and/or to confirm whether or not you would like to participate. **

Doctoral research project title:

Assessing the impact of Prop. 74L (20152016) on trans or gender-nonconforming people who change their juridical sex in Norway*

You have been asked to participate in a research study conducted by France Rose Hartline from the Gender Studies Institute at the Norwegian University of Science and Technology (NTNU). The purpose of the study is to determine the effects of the law change in Norway (Prop. 74L [20152016]) which allows for one to change their juridical sex without the previously required sterilisation. The research will aim to ascertain the effects the law change has had on those who identify as trans*gender or gendernonconforming and have changed or are planning to soon change their legal sex (before end of 2016). The results of this study will be included in the doctoral thesis (*doktorgrads avhandling*) of the researcher, France Rose

Hartline. You are being considered as a possible participant in this study because you fit the profile of those whom are being researched. You should read the information below, and ask questions about anything you do not understand, before deciding whether or not to participate.

- This series of interviews consists of two interviews in total, spaced 8 months apart. The first one is in October 2016, and the second one is in May or June 2017.
- This series of interviews is voluntary. You have the right not to answer any question, and to stop the interview at any time or for any reason. I expect that the interviews will each take about 1 hour.
- All materials collected or documented by the subjects and submitted to the researcher shall remain in the care
- You will not be compensated for these interviews.
- All names and any identifying information will be anonymised. Additionally, I will not quote you without permission.
- I would like to record this interview so that I can use it for reference while proceeding with this study. I will not record this interview without your permission. If you do grant permission for this conversation to be recorded, you have the right to revoke recording permission and/or end the interview at any time.
- This project will be completed by May 2019. All interview recordings will be stored in a secure work space until approximately 1 year after that date. The recordings, notes, and any other identifying material will then be destroyed.

(Read and sign below if you agree with the following)

I understand the procedures described above. My questions have been answered to my satisfaction, and I agree to participate in this study. I have been given a copy of this form for my personal records.

(Please check all that apply)

I give permission for this interview to be recorded.

I give permission for quotes to be included in publications resulting from this study:

Name of Subject: Signature of Subject:

_____ Date _____

Signature of Investigator:

_____ Date _____

Please contact France Rose Hartline with any questions or concerns.
france.rose.hartline@ntnu.no || +47 735 91 728 (man-fre, 9:00-17:00)

If you feel you have been treated unfairly, or you have questions regarding your rights as a research subject, you may contact the NSD (Norsk Senter for Forskningsdata):

Harald Hårfagres gate 29, 5007 Bergen

Telefon (personvernombudet): 55 58 81 80

Telefontid: 10.00-14.00

Epost: personvernombudet@nsd.no www.nsd.uib.no