Trans* Politics: Current Challenges and Contestations

Editors

Mieke Verloo and Anna van der Vleuten

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Editorial

Trans* Politics: Current Challenges and Contestations Regarding Bodies, Recognition, and Trans* Organising

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Abstract
This thematic issue analyses trans* politics, and the problems and policies articulated by societal, political and legal actors in national and international contexts in Europe and Latin America. Trans* issues are at the heart of politics concerning sex and gender, because the sex binary ordering is producing the categories, identities, and related social relationships around which gender inequalities are constructed. Scholarship on trans* politics promises to bring more fundamental knowledge about how the gender binary organisation of our societies is (dis)functional, and is therefore relevant and beneficial for all gender and politics scholarship. Contestations around trans* issues continue developing, between state and non-state actors, transgender people and medical professionals, and also among and between social movements. This thematic issue is our contribution to dimensions of trans* politics that revolve around the issue of sexed and gendered bodies (the making and unmaking of "deviant" bodies, non-binary language about bodies, and voice given in bodily re/assignments), the limits of recognition (undermining of trans* agency, persistent binary thinking, and disconnect with material dimensions of gender justice), and the potential of trans* movements (processes and practices through which political claims are generated in the movement, a more forward looking and pro-active perspective on the possibility of alliances between the feminist and the trans* projects, and between the trans* project and the disability project, and alliances of movement actors with institutional power holders such as international courts).

1. Introduction

There are many reasons why trans* issues are at the heart of politics concerning sex and gender. A first and major one is that sex binary ordering is producing the categories, identities, and related social relationships around which gender inequalities are constructed (Tilly, 1998). Trans* issues challenge the binary sex categories and the social and political allocation of people to these categories. They do so socially and politically. Through the unveiling of their individual troubles in the social world with the classic binary sex identities, trans people

ple unavoidably contest these identities as two stable categories, "man" and "woman." This binary ordering is deeply engrained in society and constantly reproduced by law, architecture, education, daily practices and formal and informal institutions. Through the demands of the movements on trans* rights to transform these categories, wider societal changes are set in motion, accompanied by renewed social and political debates. Together, these processes make visible and tangible what it means when we say that sex categories are socially and politically constructed, and unveil that—on top of resulting in highly problematic gender inequalities—this causes

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harm and suffering for trans people that could be undone by nothing less than reorganising society.

A second reason why trans* issues are at the heart of politics concerning sex and gender is that trans* issues move them into unknown territory: What could and should be done to reorganise society is in no way evident, and is still in the process of being imagined both in terms of what needs to be done and how it can be done without causing yet more harm, suffering or inequality. More attention to trans* issues hence promises to bring more fundamental knowledge about how the gender binary organisation of our societies is (dis)functional, and is therefore relevant and beneficial for all gender and politics scholarship. This thematic issue is our contribution to charting unknown territory.

With this thematic issue we aim to address current challenges and contestations regarding trans* politics in Europe and Latin America. Over the last decades, strong transnational advocacy networks of trans* people have developed, articulating their concerns. These concerns have reached national and international political agendas in a relatively rapid pace (Kollman & Waites, 2009). In November 2006, an international group of human rights experts gathered in Indonesia and drafted the Yogyakarta Principles, a document that outlines the fundamental human rights of sexual and gender minorities (O'Flaherty & Fisher, 2008). In the same year, the Declaration of Montreal was presented at the International Conference on LGBT Human Rights in Montreal, Canada. The Declaration, written primarily by activist and former Dutch politician Joke Swiebel, proposed to create a UN Convention on elimination of all forms of sexual orientation and gender identity discrimination, but the initiative was not successful (Kollman & Waites, 2009). "Yogyakarta" was picked up in different parts of the world. In 2008, for instance, the General Assembly of the Organization of American States adopted unanimously the Brazil-sponsored resolution condemning human rights violations based on sexual orientation and gender identity. During the General Assembly, government representatives met with activists from Latin American LGBT organisations who pointed to how harassment and violence against the LGBT community continue throughout the Americas, and they underscored their concern about impunity and inaction by authorities (Human Rights Watch, 2008). The European Union and the Council of Europe took up the issue of discrimination on the base of gender identity as well, resulting in recommendations, reports, resolutions and a directive (Dunne, 2020).

Progress at the global level, however, has turned out to be difficult, because of staunch opposition from an "unholy alliance" of the Vatican, the United States, member states of the Organization of Islamic Cooperation and several African and Latin American states (Chappell, 2006; Kabeer, 2015). Despite the stated commitment of the UN 'to leave no one behind,' and despite relentless pressure by activists, the final version of the Sustainable Development Goals does not acknowledge the existence of LGBT people nor their social exclusion (Vaast & Mills, 2018, p. 57). Yet, thanks to pressure by activists, international organisations and many states have developed policies addressing trans* issues in highly diverse domains such as gender recognition, anti-discrimination, marriage and family rights, access to primary and gender affirming medical care, combatting of gender-based violence and hate crimes (Ayoub, 2016). Finally, discrimination of trans* people and violation of their rights have been the subject of decisions, sometimes bold, sometimes disappointing, by international courts (de Waele & van der Vleuten, 2011; Helfer & Voeten, 2014).

However, in spite of considerable progress and support, the rights and concerns of trans* people continue to be challenged in different ways. While in 2019 the Dutch parliament adopted legislation tackling discrimination of transgender and intersex people, the Hungarian parliament decided to abolish legal gender recognition (Transgender Europe, 2020). While Malta became the first European state to add gender identity to its Constitution as a protected category (Dalli, 2014), the Bulgarian government decided not to ratify the Istanbul Convention of the Council of Europe to combat gender-based violence, because ratification was argued to increase the likelihood of young people identifying as transgender (Hervey, 2018).

Recurring processes of political contestation make clear how transgender concerns touch upon issues that are at the heart of how our societies are organised, socially and politically. In particular, transgender concerns upset medical thinking and practices in different ways, because transgender people defy conventional standards by asking for sometimes irreversible medical interventions in bodies which are considered healthy. Furthermore, these interventions may result in bodies which defy simple categorisation as male or female, thereby provoking contestations from medical professionals (Soto-Lafontaine, 2020), international judges (van der Vleuten, 2020) and society alike.

Contestations around trans* issues continue developing, between state and non-state actors, between transgender people and medical professionals, but also among and between social movements. Mobilisation around trans* issues has created unexpected alliances, for instance with disability activists (Elpes, 2020). It also has fuelled tensions within feminist and LGBTI movements, and has given rise to strong contestations, revolving around questions such as "who is a woman," and "who is entitled to speak on behalf of women" (see Hines, 2019; Jeffreys, 1997; Pearce, Erikainen, & Vincent, 2020; see also Saeidzadeh & Strid, 2020).

This thematic issue aims to shed light on these dimensions of trans* politics, analysing the problems and policies articulated by societal, political and legal actors in national and international contexts. This editorial situates the thematic issue within existing scholarship on transgender contestations. We theorise

the central concepts—transgender, binary, trans*—and highlight how the different contributions advance our understanding of contestations of trans* interests and identities.

2. Concepts

Language is performative. Words create identities, and each identity-creating term by definition includes some people and excludes others. It is privilege not to experience exclusion, and transgender people never enjoyed such privilege. In different times and places, they have been called different names, and have themselves adopted different names. Since the 1990s, "transgender" is the word most commonly used in academic literature and public debate to refer to transgender men (transmen), transgender women (transwomen) and non-binary persons (Bettcher, 2016). Transgender also includes cross-dressers or transvestites, who dress in clothes only associated with the opposite sex. The term "transsexual" is considered to be more specific than transgender, referring to a person who was assigned male (or female) at birth, identifies as woman (or man), and underwent medical treatment such as gender confirmation surgery and/or hormonal therapy with the aim to obtain congruence between gender identity and sex/body. Many transgender and transsexual people define themselves in binary terms. Yet, increasingly, people identify as transgender without seeking bodily transformation, without experiencing gender dysphoria and without identifying themselves in binary terms.

"Binary" refers to thinking in terms of two sexes, male and female, as mutually exclusive categories. "Non-binary'' is used both for self-identification and as an umbrella term referring to all people who experience gender identities that are both male and female (bi-gender), neither male nor female (agender, genderless), genderfluid (having a fluctuating gender identity), genderqueer (a gender identity or expression which is transgressive and non-normative), queer (non-cisgender and/or not heterosexual), and others (Meier & Motmans, 2020). While these concepts are being used since the 1990s, several concepts used in non-Western contexts are centuries old already, such as *bissu* (one of five genders among Bugis people in Indonesia), *fa'afafine* and *fa'atane* (Samoa), *hijra* (in Pakistan, India and Nepal; see Aboim, 2020), and *māhū* (in Hawaiian and Tahitian cultures; Babits, 2018).

In the titles of the thematic issue and this editorial, we have not opted for transgender but for trans* (pronounced as "trans asterisk" or "trans star"). Trans* explicitly includes non-binary identities, while transgender may be considered, fairly or unfairly, as referring only to binary non-cisgender people. Trans* has become increasingly common since the 2000s, as it is perceived as explicitly inclusive of all binary and non-binary non-cis people. Gender studies scholar Susan Stryker explains how trans* is 'a way of pointing to a somewhat related class of phenomena without having to articulate exactly what that is, or get into fine-grain distinctions' (Stryker, as cited in Steinmetz, 2018).

This thematic issue aims to use inclusionary language. Yet, we are aware that, as every concept, also "trans*" is contested, by people who feel that the asterisk is redundant, and by sexual and gender minorities in non-Western cultures who feel that the concept does not do justice to how they experience gender. The articles in this thematic issue take this into account when referring to non-Western contexts (Aboim, 2020; Sosa, 2020) and also problematise terms used for (self-)identification. As editors we have refrained from imposing a single conceptualisation or terminology on all authors, and we have respected their choices.

3. Contestations and Challenges: Contributions in this Thematic Issue

A first set of articles addresses issues related to the trans* body, bringing new contributions that highlight how bodies have been talked about in trans* politics, address trans* politics of pleasure and sexuality, and carefully unpack how politics, laws and policies deal with trans violence.

A second set addresses issues related to the development of legal norms on the recognition of trans identities. Articles discuss the strengths, biases and limitations of legal codification and its unintended effects.

A third set, finally, explores the question how mobilisation based on gender identity leads to the development of successful alliances as well as tensions with other social movements. Such tensions are related to fundamental questions about sex and gender, identities and social status.

3.1. Bodies and Embodiment

Bodies and embodiment are at the heart of trans* politics. Given the deeply entrenched binary nature of the way our societies are organised and function, bodies are seen as primarily male or female, and people hence come as either men or women. Three questions then become crucial to conceptualise how the way bodies and embodiment are socially organised produces harm or inequality for trans* people, and gives rise to political dynamics that aim to address this. The first asks when bodies are normal, and when they are deviant or pathological. Here, trans* history shows that, given the primacy of the medical profession to deal with ailing bodies, medical professionals have been among the first to pioneer solutions for the suffering of trans* people, all the while creating a strong power base for themselves in trans* politics and occupying the space where the voice of trans people was then excluded. This history also shows that the conceptualisation of the body is always not just gendered but also sexualised, as a change of gender immediately clashes with heteronormatively organised societies.

Even if there was agreement that a change of gender identity was needed, the hurdle of having to face non-heterosexual couples and families proved too much in almost all places. The pathologisation resulted in a joint gender and sexuality nexus of normality.

The second question asks how to develop a social and political language that enables articulating what happens to non-hegemonic bodies. This is visible in the surge of new concepts developed by opponents of trans* rights: autogynephilia (defined as the erotic interest in the thought of oneself as a woman), detransition (halting transition), and rapid-onset gender dysphoria (referring to an alleged epidemic of youth coming out as transgender due to social contagion and mental illness; see the special issue edited by Pearce et al. [2020] on the TERF—trans exclusionary radical feminist—wars). Also, legal language is still inarticulate when physical reproduction meets trans* rights and parenthood is not conventionally gendered (van der Vleuten, 2020).

The third question asks who gets a voice in bodily interventions, in social and political debates and decisions about bodies. Bodily interventions used to be done under the authority of anyone but the person concerned. While the medical professions were having the most powerful voice for a long time, currently there is a shift to more politicised voices, including the voices of trans people and trans movements. Change is ongoing, and in the hopefully not so far away future, dignity, bodily integrity and empowerment should be the only reasonable base to make decisions about bodily interventions, especially when suffering is present.

While all articles in this issue address these topics, the history of trans body politics in the Netherlands shows these three dimensions most clearly. Melisa Soto-Lafontaine (2020) investigates the different ways trans issues have been framed in the Netherlands. Across time, she shows how there was an early shift from seeing trans* people as suffering from mental illness, to a frame that saw their bodies as posing a problem for them, before a later understanding added that also society presents a problem because the hegemonic cis-heteronormativity hinders alternative understandings of bodies. Her analysis offers a fascinating tale of how trans bodies came to be seen as deviant and the crucial importance of advocacy and voice of trans people to change dominant perception and language.

3.2. Limits of Recognition

Alongside medical and sexuality research, much scholarship regarding transgender issues focuses on trans human rights and legal gender recognition (for an overview, see Quinan, Molitor, van den Brink, & Zimenkova, 2020). This should not come as a surprise, because legal recognition has been a core and recurrent theme in transgender political mobilisation and individual litigation, as it makes enjoyment of other rights, such as citizenship and democratic participation, possible (Sosa, 2020).

In the 1950s, soon after they obtained access to medical treatments, transgender people started asking for having their legal documents changed accordingly. Soto-Lafontaine (2020) shows how in the Netherlands in the 1970s, a change of gender marker was obtained by arguing in court that at birth a mistake had been made. The issue arose in other countries as well and resulted in cases in national and international courts. Litigation continues today regarding the conditions set to qualify for legal gender recognition, such as sterilisation, the obligation to undergo genital surgery, or the requirement to divorce (van der Vleuten, 2020).

Yet, recognition and litigation recognising trans* identity present inherent limits and biases. In this thematic issue we identify several of them: undermining of trans agency, persistent binary thinking, and disconnect with material dimensions of gender justice. Regarding agency, litigation about gender recognition tends to transfer the power to decide from transgender people to medical experts and judges (van der Vleuten, 2020). Platero (2020) notes how Spanish regional transgender laws often fall short regarding autonomy (de-pathologisation and self-determination) and authority (participation in policymaking processes) of transgender people. However, in some countries trans activists are reconquering autonomy. Soto-Lafontaine (2020) shows how Dutch transgender activists have been partially successful in having transgender people recognised as experts, care providers and political actors, although before the court legal and medical expertise continues to be valued higher. Even the revised Belgian transgender law (2017) has dropped all medical conditions and based the application procedure on self-determination (Meier & Motmans, 2020). However, litigation continues because Belgian law continues to be plagued by another limitation which is common to most systems of gender registration: persisting binary linear thinking.

States and courts perpetuate linear binary thinking, allowing at most for female/male identity change or vice versa, and assigning citizenship rights to transmen and transwomen, but not to non-binary persons (Monro & van der Ros, 2018). Sex registration is by definition linear unless it allows for easily repeatedly changing it, and it excludes non-binary people unless it adds a third marker. A growing number of states has over the past years adopted non-binary markers such as "X," "Other," and "Unspecified." Sofia Aboim (2020) zooms in on the state-controlled multiplication of official gender markers. She shows the paradox at work where the individual moral entitlement to difference has to be reconciled with a common political identity, leading to reified group identities. That said, adding a third option in a binary structured society might even exacerbate instead of eliminate stigma, discrimination and marginalisation (Meier & Motmans, 2020).

States and courts are poorly equipped for dealing with non-binary and fluid gender identities, especially regarding parenthood. In a recent British case, for instance,

a transgender man who had given birth wanted to be registered as the child's father. Yet, the court decided that 'motherhood is defined as being pregnant and giving birth regardless of whether the person who does so was considered a man or a woman in law' (Booth, 2020). The case shows how self-identification is rejected and how the court constructs motherhood: Pregnancy and giving birth simply are physical capacities, but the court states that the body which possesses these capacities by definition cannot belong to a father but constitutes motherhood. This illustrates once again the performative power of language.

Individual litigation by itself cannot change social structures of inequality, and Lucas Platero (2020) therefore argues that more attention should be paid to the material dimension. Trans* people need access to resources in order to enjoy their rights. Platero deplores how the recognition of trans* individuals as new political subjects has been separated from claims for economic justice. Without redistribution, recognition risks to confer merely symbolic rights, hence aggravating instead of remedying marginalisation and inequality. Court decisions aligned with trans* demands can contribute to norm change beyond the individual case when supported by political mobilisation, but they remain within the boundaries of legal systems. In the end, any categorisation inevitably entails misrecognition of some identities. This awareness has led to a more general contestation of categorisation and a call for 'abolishment of sex and gender registration altogether' (Quinan et al., 2020, p. 3; see also Baars, 2019; *The New York Times*, 2014). This strategy to break the boundaries of legal systems was also suggested, interestingly, by the highest Belgian court (Meier & Motmans, 2020). Yet, for erasing its exclusionary nature, the abolishment of registration would need to go hand in hand with the abolishment of all binary institutionalisation, from toilets and hospitals to prisons, not to mention all routinely—and often arbitrarily—binary gendered practices in daily life. In sum, the articles in this thematic issue show in different ways how recognition by state and courts enables and constrains the construction of trans* identities, and has real, positive and negative, impacts on trans* lives.

3.3. The Potential and Challenges of Organising and Mobilisation

As stated in the introduction, trans* movements and political claim making on trans issues are crucial for trans* politics because they are the breeding ground for imagining a trans* inclusive society and charting new perspectives, as first steps in realizing such imagined better worlds. Imagining and claims-making are causing ongoing, essential social and political debates on the trouble with a sex binary way of organising society, and how to move beyond this. Scholarship on the role of trans mobilisation and organising is still rare. Some of the scholarship has a strong focus on transnational (European)

organising, and incorporates attention for trans* mobilizing within a focus on gay and lesbian or queer politics (Ayoub & Paternotte, 2014; Balzer & Hutta, 2014; Bilić, 2016; van der Vleuten, 2014). Recently, clashes between trans organisations and feminist ones have been addressed explicitly (Pearce et al., 2020).

The articles presented here make three main contributions to our knowledge on trans* organising and mobilisation, both in terms of ideas generated, actors involved, alliances created or avoided, strategies developed and deployed, and potential success and failure of particular strategies. One, they investigate processes and practices through which political claims are generated in the movement; two, they present a more forward-looking and pro-active perspective on the possibility of alliances (between the feminist and the trans* project, and between the trans and the disability projects); and three, they present studies that look into alliances of movement actors with institutional power holders such as courts.

Concerning the generation of ideas, and zooming in on the history of trans* politics in the Netherlands, Soto-Lafontaine (2020) offers a strong illustration that actors and ideas cannot be disentangled easily: medical professionals propose solutions that sit firmly within their expertise, legal specialists follow suit, while activists bring in a focus on support and mobilisation. And actors that have brought success in the past with solutions that bear their mark, hinder further progress that requires them to make space for other perspectives, other goals and other actors. This analysis shows the specific role that medical professionals of various backgrounds have in body politics (see Engeli, 2012, for a parallel on reproductive rights).

This history also shows an increasing role for trans* people themselves, who had little room for agency at first. Ludovico Virtù (2020) studies the trans* movement from within, in a social and political context that is remarkably open to it. His main focus is on how diagnostic and prognostic ideas are generated in a process of trans-organising in an informal collectivity. In his empirical analysis of micro-organisational processes, he analyses how, by putting trans* people centre stage and creating a space where they can celebrate 'the "chaos" of gender identities and experiences,' a small DIY sex toy workshop created new knowledge on sex, sexualities and bodies in ways that displace the binary, help create counter-discourses and avoid commodification of sex, sexualities and bodies (Virtù, 2020, p. 322). His analysis uncovers the main strategies used to achieve this: dis/organising language, embodiment and knowledge, and using formativeness and personal vulnerability as methods. Most importantly, he underlines the importance of movements to create space for what could be called "performative imagination": the emergence of ideas while a practice is performed.

Recent scholarship on tensions between the feminist and the trans* projects has analysed a specific format

that these tensions have acquired in mostly Anglophone settings: the so-called "TERF wars" (Pearce et al., 2020). This scholarship has a strong focus on opposition to trans* rights, and related to that also a strong re-active component, "debunking" concepts that are central to opposition to trans* rights, such as autogynephilia (Serano, 2020), rapid-onset gender dysphoria (Ashley, 2020) and detransition (Hildebrand-Chupp, 2020). In contrast, our thematic issue presents a more forward-looking perspective on the possibility of alliances between the trans project and other social justice projects such as the feminist project and the disability justice project. There are two main contributions. Zara Saeidzadeh and Sofia Strid's (2020) reflection on tensions, hostility and collaborations between the trans* and feminist projects, analyses the roots of this hostility and presents ideas that could generate a way out. Their analysis draws not only on the current tensions between feminist and trans* movements, but also on a (older) shared history of collaboration. They locate the roots of later but ongoing conflicts in diverging positions within law, activism and academia. In these divergences, they argue that identity-based politics as well as biological determinism are at the root of the antagonism. They argue that both feminist and trans* politics need to abandon an identity-based politics of recognition for alliances to be possible and productive. Abandoning a focus on specific categories of people (trans* people, or cis-feminists) in favour of a joint (and intersectional) struggle against sexism would also deconstruct 'the dichotomy of exclusionary anti-trans* feminism and inclusionary trans*-affirming feminism' (Saeidzadeh & Strid, p. 316). Three elements are crucial: understanding recognition as status-based instead of identity-based, understanding interests as based on shared oppressions, and valuing political and coalitional strategies within and between social justice projects. Also Gustavo Santos Elpes zooms in on potential coalitions on trans* politics and sees a high potential for trans* politics to 'expand the political subject of feminism and our understanding of identity politics and embodied action' (Elpes, 2020). His reflections centre on the role of embodiment (see above), and also include attention for resonances and coalitions between trans* politics and the disability movement in Madrid, in which notions of self-care and caregiving are central. Instead of simplistic identity politics, and much in line with the call from Saeidzadeh and Strid (2020), he calls for a politics in which:

> Trans* (binary and non-binary) people and disability activists approach social vulnerability in conjunction with the oppression experienced by non-normative bodies and identities, assuming a confrontational position in the face of an (instrumental) feminist agenda that resists adding some subjects as actors of feminist struggles (such as trans people or sex workers). (Elpes, 2020, p. 309)

Lastly, to make progress on trans* rights, not only alliances between social movements are needed, but also with actors in powerful institutions such as courts. Lorena Sosa (2020) analyses very carefully how legal concepts are strongly linked to certain actors, how they can hinder or facilitate such alliances and can have a strong impact on outcomes. She also shows the importance of informal collaborations within institutional settings, such as the ad hoc commission composed of family members, trans* activists and other allies with the prosecution office after the murder of trans* activist Diana Sacayán.

4. Conclusion and Discussion

Trans* issues are at the heart of trans* politics and at the heart of studies on sex and gender, but not (yet) at the heart of political science in Europe and Latin America. There might be several causes for this: a general understanding of sexed and gendered bodies as natural and, hence, by definition not political; a false equation of politics with "what politicians do" obscuring absences in political debate; a stronger attention for the powerful than for the subordinated or subaltern in political science; or a hesitation of academics to be too close to the fire of current contestations.

A first difficulty might be related to a fundamentally essentialist way of looking at bodies, as if they are so ultimately and exclusively materially natural that it does not matter how we understand them. Yet, history learns otherwise. Whether it is about the history of sex and gender relations, the history of sexuality and the various ways it has been normalised and restricted, or the history of identities that defy a binary understanding of sex or that question an understanding of sex as always more true than gender: All these histories unmask such an essentialist understanding of sex and gender, and their concomitant social institutionalisation as incongruent with people's actual live experiences and their potential to lead a fulfilling and productive social life.

The difficult acceptance and late emergence of queer issues and queer theorizing within the discipline of political science have already been documented (Paternotte, 2018). Accepting the social nature of bodies is necessary for a more sophisticated and realistic study of political claims-making related to bodies and sexualities, and of actual and potential change in the way our world is organised.

The articles presented here position themselves firmly within political science. For the ongoing debates on normative political theory, and the respective value of recognition, redistribution and representation for imagining a future with less inequalities, the political dynamics on trans* rights have much to offer. In contrast to more common understandings that locate trans* rights within political discourses of recognition, Platero (2020), Saeidzadeh and Strid (2020) and Elpes (2020) show the limits of such an understanding and a way out. The story of trans* rights in the Netherlands in particular highlights

once more how political dynamics are not just about dynamics between political actors or between discourses that are explicitly and conventionally political. Precisely because medical knowledge is situated beyond the political realm, medical professionals wield political power. As their expertise is centred on the body, this means that any analysis of issues that are related to bodies needs to investigate the political role of these actors. So far, this has mainly been done for reproductive rights or so-called "morality policies" (Engeli, 2012), but the relevance for political science is wider.

The contributions to this thematic issue come from a highly diverse set of scholars, gendered in feminine, masculine or non-binary ways; junior and senior researchers, trans* and cis, "Western" and "non-Western," homo- and heterosexual, and coming from different disciplines. This issue thereby reflects the interdisciplinary and diverse character of the field of trans* studies (Stryker, 2013). We hope that the readers will multiply the questions that are raised here, and that the articles in this thematic issue will provide a fertile ground for further scholarship and academic and political debate.

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Conflict of Interests

The authors declare no conflict of interests.

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Beyond Recognition

Article

Gender in a Box? The Paradoxes of Recognition beyond the Gender Binary

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Abstract
The growing visibility of trans and gender-nonconforming individuals paved the way for a novel politics of transgender recognition in the legal sphere and state-governed public policies. Considering that the possibilities for registering multiple genders beyond male or female are taking effect in several countries, this article examines recent developments and claims that recognition is complicit with misrecognition for two main reasons. Firstly, because models of recognition tend to equalize all the interactions and all the fields of social life. Drawing on Axel Honneth's notion of spheres of recognition, I argue that inasmuch as different forms of recognition (legal, moral, affective) are governed by different norms and gender regimes, the dynamics of recognition produce misrecognition. Secondly, because legal and institutional recognition tends to reify individual identity. Drawing on Nancy Fraser's critique of the identity model of recognition, I contend that the identity recognition model tends to impose a norm rather than recognizing diversity. Therefore, gender identity categories can—through a process of reification—block the entitlement to affirm one's self-determined gender identity. The paradoxical dynamics of recognition are empirically illustrated through an analysis of third-gender markers and their effects upon the lives and narratives of trans and gender-nonconforming individuals. By examining the case of Nepal in comparative perspective with other developments in Asia and South America, it is demonstrated that the identity model of recognition is complicit with feelings and practices of misrecognition.

1. Introduction

In recent years, gender identity gained centre-stage as a growing number of individuals claimed the right to a gender identity outside the binary model that opposes male and female. However, while the emergent visibility of trans, gender-nonconforming, gender non-binary or intersex people paved the way for reframing gender citizenship afar from the medicalized model of transsexuality first established by endocrinologist Harry Benjamin in the 1950s (Baisely, 2016; Dunne, 2017), the political inroad to transgender recognition remains filled with controversy (Powell, Shapiro, & Stein, 2016; Sky, 2018). Reconciling freedom for self-determining one's own gender with state-sponsored governance of official gender identities beyond masculine or feminine has

been an arduous struggle. If the state often fails to recognize gender diversity and renders people's lives 'administratively impossible' (borrowing Dean Spade's expression [Spade, 2015, p. 12]), within the transgender and non-binary activist movements, the consensus remains absent. Trans activism is fractured (Halberstam, 2018, p. 12). For some, gender should be simply abolished and legal categories rendered unnecessary (Davis, 2017). For others, 'transgendering recognition' is a central goal of transgender and gender-nonconforming claims for rights (Juang, 2013). Ideally, as Judith Butler argued (Butler & Williams, 2014, p. 1), "one should be free to determine the course of one's gendered life," even if as, as Butler also notes, while "some want to be gender-free…others want to be free really to be a gender that is crucial to who they are." However, while transforming

gender classification systems is key, legal and administrative strategies to move beyond binary categories of gender and regulating gender difference are multifarious (Clarke, 2019).

The recent wave of legalization of third-gender or no-gender markers by some states across the globe generated upheaval. Whereas ideals of a postgendered or genderless society encountered contestation (Sky, 2018), the state-controlled multiplication of official gender markers designed to accommodate diverse gender identifications gained pace. Indeed, the legal recognition of non-binary gender markers by the state (whether X in Australia or Denmark, Diverse in Germany, Others in India or Nepal) is often interpreted as a victory for the trans rights movement (Young, 2016). Notwithstanding, critical scholarship has, since long, criticized state categorizations and the ways official markers serve to govern difference in ways that perpetuate unjustness (e.g., Foucault, 1988). After all, although representing a revolutionary advance, the gender neutrality of a X marker can be more apparent than real. After all, neutral gender markers lend themselves to categorical interpretations that 'third-gender' and 'third-sex' (Dembroff & Wodak, 2018, p. 386) trans and gender non-binary individuals as pertaining to the supplementary category of a ternary gender system of classification.

Problems with the articulation of gender identity laws, gender-neutral classifications and, specifically, legal third-gender markers have been particularly highlighted (Bochenek & Knight, 2012; Knight, Flores, & Nezhad, 2015). After all, present-day legal forms of recognition might also foster reification and marginalization (Markard, 2018). However, although current state responses are most often frowned upon and third-gender markers deemed complicit with binary norms of gender (e.g., Nisar, 2018), legal restrictions enforced by binary categorization schemes continue to be denounced as harmful (Davis, 2017; Monro, 2005; Salamon, 2010; Spade, 2008).

If current strategies for transgender recognition generate misrecognition and perpetuate discrimination (Fine, Torrea, Frost, & Cabana, 2018), the lack of recognition denies the social existence of the person and compromises any positive effects of increased visibility (Juang, 2013). Therefore, state-endorsed recognition of gender diversity is still limited and potentially misleading. While solutions for recognizing gender-nonconforming individuals remain under heated debate, reconciling categorization (through the addition of third or seemingly neutral gender markers) with the entitlement to publicly display and affirm one's own self-defined gender identity is a difficult endeavour. Hence, even if we admit that legal categories are not suited to accommodate people's subjective identification, the rift between claims for recognition and pleas for the abolition of gender markers suggests that we need to further reflect on the concept of recognition. While recognition is simultaneously a normative regulative ideal and a descriptive

tool (McNay, 2008, p. 2), my focus remains mainly descriptive as I seek to understand the paradoxes of recognition brought about by the recent legal officialization of third-gender markers.

Although there is an evident 'recognition gap' (Lamont, 2018) caused by the inability of institutions to provide sufficient recognition of gender identity, the gap argument is not sufficient to understand why misrecognition is systematically perpetuated, even when increased dynamics of institutional recognition are taking place (Aboim, 2020). My central argument asserts that the politics of recognition is complicit with misrecognition for two main reasons. Firstly, because models of recognition tend to equalize all the interactions and all the fields of social life. Drawing on Axel Honneth's notion of spheres of recognition, I argue that inasmuch as different forms of recognition (legal, moral, affective) are governed by different normative principles and belong to different gender regimes, the dynamics of recognition work in ways that produce misrecognition. Secondly, because legal and institutional recognition tends to reify individual identity. In conversation with Nancy Fraser's critique of the identity model of recognition, I contend that the identification of gender minorities through a specific gender marker is shown to generate misrecognition. The problem is that the identity recognition model tends to impose a norm rather than recognizing diversity, thereby compromising the politics of respectful difference initially sought after. Therefore, paradoxically, gender identity categories can—through a process of reification—block the entitlement to affirm one's self-determined gender identity.

Recent debates and legal solutions for the officialization and institutionalization of third-gender markers illustrate the paradoxical dynamics of recognition. If state regulation of gender difference garnered critical debate, less attention has been given to the value, whether instrumental or symbolic, of third-gender categories for gender-nonconforming individuals, especially outside Europe and North America. Aiming to narrow this gap, my argument is empirically illustrated by a qualitative study that combined document analysis of legal and institutional developments with in-depth interviews with trans and gender-nonconforming individuals. By examining the case of Nepal and the narratives of Nepali trans migrants in Europe, I seek to demonstrate that the identity model of recognition produces practices of misrecognition. Although the Nepali case is singled out, findings are interpreted in comparison with developments in Asia and South America and carry important lessons to the European context.

2. Paradoxes of Recognition

In the current battles for transgender recognition, heated arguments have fuelled the divide between supporters of state-endorsed third-gender markers and the abolition of public interference on the private experience

of gender. The debate brought the problem of recognition to the forefront of the discussion, with some arguing in favour and others against political and institutional recognition (Halberstam, 2018). Therefore, although the critical analysis of recognition is not new, a more productive approach implies addressing the paradoxical character of recognition. In order to understand how misrecognition is implicated in every act of recognition, I advance two central arguments for explaining the paradoxes of recognition. Firstly, each sphere of recognition is different and works according to its own particular norms and gender regimes. Secondly, the identity model underpinning present-day recognition politics forcefully categorizes people in ways that constrain their freedom and produce reification (Fraser, 2000).

2.1. The Spheres of Recognition: Moral and Legal Disjunctions

Current formulations of minority political agendas are greatly indebted to Charles Taylor's theorization of recognition. In a nutshell, Taylor demonstrated that the universal entitlement to equality is reconcilable with the right to difference and that the specific importance of recognition lies in its relationship to identity, which he defined as "a person's understanding of who they are, of their fundamental characteristics as a human being" (Taylor & Gutmann, 1994, p. 25). The politics of transgender recognition has not been an exception and also sought inspiration in Taylor's formulation (Juang, 2013; Taylor, 1992). After all, the struggle to freely self-determine one's own gender identity is anchored in a politics of difference in which the uniqueness of each individual must be recognized (Hines, 2013).

Approaches to recognition awarded little attention to Axel Honneth's landmark contribution (Honneth, 1995, 2008), when, in fact, Honneth's multidimensional theorization of different spheres of recognition is extremely helpful to understand the shortcomings of recognition politics (Aboim, 2020). More than a recognition gap that institutions would be able to fulfil, with the right amount of investment, the failures of recognition might not be so easily fixed and the reasons behind it signal one central problem: The fact that the dynamics of recognition tend to equalize very different forms of recognition. However, given that each social sphere is governed by a different principle of recognition and belongs to a different regime of power (gender regime in the case), this equalization is problematic. For this reason, Honneth's theorization helps us understand the problem.

In a recent interview, Honneth claimed that "the focus on an analysis of society has turned the three [love, rights and solidarity] original forms of recognition into five" (Willig & Honneth, 2012, p. 148). In the aftermath of the theoretical dialogue with Nancy Fraser, Honneth (2014) distinguished between legal and moral recognition, and three institutional spheres of practice: personal relationships, mutual satisfaction of needs, and communicative will-formation. For my current purpose, I will hold on to the distinction between legal and moral social spheres of recognition, which Honneth respectively equates with the state-of-law and institutionalized individualism, that is, organized self-realization.

Moral recognition implicates the right to self-determination and self-esteem achieved through intersubjective mutual recognition. For Honneth (2014), subjects are constituted by acts of recognition from which they derive self-worth and the very possibility of existence. Hence, the primary form of recognition is necessarily moral. Any act of non-recognition or misrecognition generates, at the very least, vulnerability, if not the deprivation of agency. As Honneth explains, "human beings are vulnerable in the specific manner we call 'moral' because they owe their identity to the construction of a practical self-relation that is, from the beginning, dependent upon the help and affirmation of other human beings" (Honneth, 1995, p. 51). However, moral recognition (ultimately, self-determination) is not independent of the self-respect achieved through rights within the legal sphere. The possibility of identity realization depends on both moral and legal principles, which can only be achieved intersubjectively. Moral recognition would ultimately depend on being granted respect by the state-of-law. Equal legal standing would imply rights and, more importantly, the moral value of difference and respect. The problem is that moral entitlement to identity and difference and legal recognition enforced by the state-of-law are often strange bedfellows. In the case of trans recognition, recent research (e.g., Scherpe, 2017) proved that, in most cases, there is an evident incongruity between the moral and the legal or, in other words, the subjective dimension of the self and the regulatory dimension where institutional practices of mutual recognition take effect (e.g., Fraser, 2000).

Indisputably, as Nancy Fraser (2000, p. 280) contended: "Misrecognition is an institutional social relation not a psychological state." Indeed, institutional regulations often collide with personal feelings of gender authenticity. Furthermore, the fact that each sphere of recognition belongs to different regimes within the gender order—what Connell defines as "the current state of play in the macro-politics of gender" (Connell, 1987, p. 20)—reinforces the disjunction between the different social spheres. For Connell, a gender regime refers to the state of play of gender relations in a given institution. For example, state regulation, and symbolic relations constitute different regimes within a system of hierarchically formed positions (Connell, 1987).

By suggesting that (1) moral entitlement to difference does not always accord with group forged identity claims, and that (2) norms and institutional regulations governing different spheres of recognition are often irreconcilable, I content that recognition is paradoxical. Such paradoxes necessarily weight upon political strategies of recognition.

2.2. Identity Recognition and the Limits of Categories

Conceptualizing recognition as necessarily fragmented and subjugated to the often-irreconcilable norms and dynamics of different spheres of social life helps us to make sense of a second argument. That is the problem of identity. As Nancy Fraser already argued, "by equating the politics of recognition with identity politics, it encourages both the reification of group identities and the displacement of redistribution" (Fraser, 2000, p. 110). Similarly, McNay contends that any quest for the authenticity of the self produces essentialist accounts of identity (McNay, 2008, pp. 64–66), that is, the struggle for being recognized as one's own self tends to produce reification. Taylor had responded to the critique of unintended identitarianism by defending a politics of difference premised upon what he saw as "a universal respect for the human capacity to form one's identity" (Taylor & Gutmann, 1994, p. 42). The reification of identity categories and the ensuing dismissal of difference in the strategies of identity politics remained problematic.

Indeed, the emphasis on recognition, as the result of an intersubjective experience transferred from the moral to the legal sphere, has been the cornerstone of identity politics. However, although identity politics is often paralleled with a 'politics of difference' (Massoumi, 2015), the moral right to difference has barely been mirrored in legal developments. As many advert (see Juang, 2013), most frequently, one particular identity that belongs to just a few might become predominant and is extended to the whole group. Diversity is then swept under the rug. Even if for long identitarian sameness has been harshly criticized (Young, 1990, p. 159), the tension between a common political identity and the respect for difference seems irresolvable. Ideally, the identity of a person ought to be the basis of politics and justice. Nevertheless, this is barely the reality. This paradoxical dynamic occurs whether misrecognition results from the absence of appreciation by others of one's identity (Taylor & Gutmann, 1994, p. 25) or, as Honneth adverts, from humiliation and disrespect enacted by others, institutions and the state (Fraser & Honneth, 2003, p. 134).

In a perfect model of recognition, individuals would be given the capacity to decide who they are and act accordingly to realize their identity in and across different social spheres. However, a category of identity tends to generate a norm that includes certain traits and excludes others. If this category intends to recognize a specific identity, then it might block individuals' subjective understandings of who they are or want to become, while forcing people to articulate an exterior identity that might be forced upon them. That is to say, an exterior categorical identity that serves the interest of the state and enables renewed forms of classification to emerge. This peril has been a cornerstone in the poststructuralist deconstructionist critical contribution. As Butler alerted, following Foucault's insights, identity categories "are never merely descriptive, but always normative, and as such, exclu-

sionary" (Butler, 1997, p. 16). In this sense, gender markers are more than words or semantic propositions. Like any other categories, they enable and disable, creating challenges to be considered in the struggle for trans recognition that must necessarily be measured against the empirical reality of practice.

Largely, the problem rests with the dubious character of gender categories, which seem both reductionist and indispensable, not only for reasons of intelligibility but also for the pursuit of justice through the politics of identity. But whenever one deconstructs, the most probable outcome is the multiplication of the categorical inroads to diversity. From the start, the process of breaking falsely constructed homogeneities is tense and unfinished. Already a long time ago, Ken Plummer had resumed this difficulty quite neatly (1981, p. 29):

> The root issue is to grasp the way in which the world is simultaneously necessarily contingent upon orderly categories through which we may grasp it and how simultaneously such categories inevitably restrict our experiences and serve material forces of domination and control. We cannot live without them but living with them is a horror! Categorization is paradoxical: It aids and destroys.

Categorization, even in the form of a gender marker, might be necessary, but it is also dangerous. One major risk would be obliterating some identities and claims by imposing a hierarchy of legitimacy, which normatively separates the insiders from the outsiders. Then, instead of a form of tactical strategic essentialism, to borrow Spivak's (1985) landmark concept, the likelihood of imposing a particular, and necessarily narrow, discourse on the right form of trans identity would be considerable. One important consequence of any narrow interpretation of trans identities would be the erasure or distortion of some forms of gender expression. For instance, as Viviane Namaste (2005) pointed out, the category transsexual is being gradually erased from public arenas. As Dietz (2018) points out, the 'wrong body' narrative still shapes legal provisions and limits the effect of identity self-declaration for many trans and gender-nonconforming individuals. Conversely, the visibility of transgender individuals in and from non-Western societies feeds the imaginaries of exotic third-gender groups (Towle & Morgan, 2006), thereby reproducing the divide between the 'west and the rest'. Furthermore, the complicity between third-gender laws and the protection of patriarchy often reproduces patterns of marginalization that set gender-nonconforming individuals apart as non-normative and pathological, as demonstrated by Nisar (2018) for the case of Pakistan. For that reason, adopting the legal third-gender can contribute to social marginalization, reinforcement of stereotypes and worse economic conditions. All erasures and distortions promote then the de-ontologization of subjects, sacrificing the entitlement to difference for the sake of a collective

identity, which too often only very partially produces a positive recognition of difference.

Revising recognition, and, above all, for comprehending the paradoxes of the model of identity recognition, is thus vital for rethinking the possibilities of realization of a gender identity politics. The fact is that institutionalized (neo-liberal) individualism is difficult to reconcile with identity claims. On the one hand, neoliberal forms of governance promote the value of individualism against collective organization (or resistance). On the other hand, however, the normalization of identities to fit the patterns of mainstream culture is also encouraged (e.g., Richardson, 2017). Recognition comes with an effective price, considering that increased visibility might not correspond to increased respect for difference (Gossett, Stanley, & Burton, 2017).

Although gender identity is vital for many individuals (e.g., Butler & Williams, 2014), political models of identity recognition remain problematic. The multiple subjectivities, expressions and performances of gender difference do not necessarily form a common identity in the strong sense of the term. Agreeing with Nancy Fraser (2001), the common element would be the fact that trans and gender-nonconforming individuals share the same status of subalternity. The main difficulty is that the identity model of recognition tends to produce misrecognition, a disjunction between different social spheres and the reification of normative identities.

In the section that follows, I briefly contextualize the expansion of third-gender markers and how activist claims have been reinterpreted in legal developments and institutional policies.

3. Legal Thirdness: Officialising Gender beyond the Binary

In recent years, international law gradually increased the regulation of gender diversity (Plummer, 2015). Pressure from trans rights activists and organizations has undoubtedly triggered the change produced by state agencies in gender classification systems (Waites, 2009). Back in 2007, the Yogyakarta Principles had already established that recognition before the law of each person's self-defined gender identity was a fundamental human right. A decade later, Principle 31 of The Yogyakarta Principles Plus 10 (2017) recommended that sex and gender markers should only be legally registered for a legitimate purpose. More: Sex and gender markers should accommodate multiple options through legal provisions and institutional mechanisms that "recognise and affirm each person's self-defined gender identity" (The Yogyakarta Principles Plus 10, 2017, p. 9). Ideally, however, Principle 31 established that the right to legal recognition should not require any reference to or disclosure of "sex, gender, sexual orientation, gender identity, gender expression or sex characteristics." In 2018, Transgender Europe endorsed Principle 31, "calling for the full abolition of gender markers on official iden-

tity documents." Activists' commitment to transgender recognition is not entirely opposed to gender abolitionist claims. After all, multiple gender marker options must eventually be eliminated from identification documents and bureaucratic procedures. The groundswell of trans rights refuelled the hopes of reconstructing gender classification schemes afresh (McQueen, 2015).

However, rather than moving towards the full or, at least, extensive legal elimination of gender markers, lawmakers responded by expanding the binary classification through the addition of a third-gender category (even if concomitantly eliminating sex or gender from some documents and procedures). Until now, a small but growing number of countries followed this route.

Although gender identity laws are today in place in more than forty countries, third-gender markers (Holzer, 2018) are available in a smaller number of countries and regions. Whether more or less neutral, third-gender markers are being applied in different ways, even if always within a ternary system of classification (M and F plus X, Diverse, Other, etc.). The new gender marker might cover only intersex people, like in the case of Germany. The changes recently implemented in Germany motivated reactions of disappointment (Transgender Europe, 2019), inasmuch as the majority of non-binary people remain excluded from third-gender markers. In fact, following the decision of the Federal Constitutional Court of Germany in 2017, the German parliament committed to either abolishing the requirement to register gender at birth or creating additional gender options. However, the third-gender option (divers) announced in August 2018 and made official in January 2019 is available only to people with intersex variance.

Conversely, a second model might include all people who identify with a non-binary gender, but normally with restrictions. In Australia, which pioneered the expansion of the gender binary classification system in 2002, the application of the legal right to a non-binary identity is limited insofar as the majority of government services continues to offer only M and F gender marker options and a medical certificate is required (Australian Government, 2015). Systemic discrimination explains, therefore, the low uptake for gender 'X' passports, which amounts to just 110, since they became available in 2002 (Pollock, 2018). Similarly, in Malta, only one gender 'X' passport was issued since September 2017, when the third-gender marker 'X' was legally introduced. In some cases, like New York among many other examples, territorial gaps in legislation are problematic. Since 2019, X gender markers are available in New York City, whereas the State of New York does not allow for non-binary classifications. In some cases, the expansion of gender markers might be exceptional and prospective. Countries, like France, Ireland or The Netherlands, have already issued gender-neutral passports even if legal provisions are yet under debate.

In countries with indigenous traditions of a third-gender category (that is, gender identities that do not fall

exclusively in man/male or woman/female categories; for an overview, see Darwin, 2017; Nanda, 2000), like India (2009), Pakistan, (2009) or Nepal (2007), official recognition of those who are neither man nor woman might foster the mainstreaming of an institutionalized 'disability' (Hossain, 2017, p. 9). In effect, activists' contestation of third-gender laws in places as different as Australia or Germany and India or Nepal—which have been frequently mediatized as progressive (e.g., Young, 2016)—emphasized that 'third classifications' (whether explicitly Other or even coded X or Indeterminate) might contribute to strengthening the gender binary (Council of Europe Commissioner for Human Rights, 2015). In truth, the third-gender recognition model might confer legal protection and enable affirmative action while concurrently sanctioning a limited recognition of gender diversity that faces the perils of stereotypization. One exemplary case is Nepal.

In 2007, the Supreme Court of Nepal delivered a breakthrough pronouncement (Bochenek & Knight, 2012, p. 2). Ruling out all medical requirements, the court's rule responded to claims of the Blue Diamond Society, a Nepali LGBTI rights organization led by Sunil Babu Pant and established a third-gender category (Other) "under which female third-gender, male third-gender and intersexual are grouped, as per the concerned person's self-feeling" (*Sunil Babu Pant and Others v. Nepal Government and Others*, 2008, p. 281). Alongside the conflation of sex, gender identity and sexual orientation in a single 'O' category, de facto recognition is extremely problematic. As Chhetri (2017, p. 108) notes, "in Nepal, third-gender persons are visible in human right documents, given equal rights in legal spheres but at the same time they are ignored and neglected in implementations of those rights." A 2013 survey (Knight et al., 2015) showed that very few individuals had access to the official third-gender marker. Only five respondents had successfully changed their citizenship documents.

In this battlefield, distrust from any form of state-endorsed regulation is reasonable, with the solution residing for many activists and scholars in the undoing of all gender classifications (Stryker, 2019), as the only way to disassemble a society in which hospitals, prisons or toilettes and bureaucratic forms are gender-segregated (Davis, 2017). Notwithstanding, the absence of third-gender official regulations might increase the harmful effect of non-recognition and misrecognition. As a double-edged sword, increased visibility has led to an escalating of violence against trans and gender non-conforming people (Gossett et al., 2017). According to the Trans Murder Monitoring project (Transgender Europe & Balzer, 2020), between January 2008 and September 2019, 3,314 trans and gender-diverse were reported worldwide to have been killed.

In yet another group of countries, the governance of gender-nonconforming populations has not escaped state power and forms of unofficial or semi-official regulation were established. One such example is Brazil.

While violence against gender-nonconforming individuals is endemic (in Brazil alone, 1,368 trans people were murdered since 2008), *travestis* are separated from other inmates in Brazilian prisons (Ferreira, 2015). Thailand is another exemplary case. Although political efforts to recognize a third-gender category are already visible, transgender people (*kathoeys*) are normally exempted from army duty or allocated separated dorms or toilettes (United Nations Development Programme, 2018). In sum, whether states opt for the official creation of gender categories beyond the binary or semi-official protection strategies, the governance of gender-nonconforming individuals implicates the state and forms of institutional management. Whether further legal recognition framed under a human rights paradigm will be able to award individuals truly inclusive gender citizenship remains a problem (Baisely, 2016).

Most often, regulation comes with a price, as Halberstam (2018, p. 47) alerted. A model of the official trans person, most often ignoring all forms of intersectional disadvantage, materializes swiftly to the detriment of plural claims and identities (Spade, 2013). Furthermore, as argued by McQueen (2015), recognition, and legal recognition in particular, can produce both enabling and disabling effects. While even the most encompassing models of gender identity suffer from a recognition gap that institutional policies are unable to close up, misrecognition is a more structural and profound consequence. Recognition tends to produce misrecognition.

The analysis of the effects of third-gender categories for gender-nonconforming people might help us shed further light on the dilemmas of trans politics. In the coming section, we will learn more about the production of misrecognition in legal and social practice.

4. Third-Gender Markers: Misrecognition in Practice

The production of a given gender category, as in any other identity formation, often results from and leads to processes of simplification and reification. Third-gender markers are particularly relevant to my analysis. For that reason, in this section, I will focus on the potential effects of third-gender legal solutions for gender-nonconforming individuals by examining how normative prescriptions block individuals' realization of their gender identity. Two difficulties become evident. Firstly, how legal and institutional categories of gender become embedded in social life and affect practices of mutual recognition in other spheres, and, secondly, how certain formulations of identity crystallize and become reified.

My analysis draws on a qualitative study that combined the examination of legal and institutional documents and in-depth interviews with trans and gender-nonconforming people in five European countries over the course of the past three years: Portugal, France, the United Kingdom, The Netherlands and Sweden. In total, 160 in-depth interviews were carried out with individuals with different gender identifications and var-

ious national origins. More than 40 percent of participants (69) self-defined beyond the gender binary, whether as non-binary, genderqueer, bigender, agender, genderfluid or as crossdresser, *travesti*, two-spirit, *kathoey*, third-gender, among other identifications. One-third (53) of the participants are migrants, the majority of which from South America (21) and Asia (14). Of these, 15 individuals came from Brazil, 7 from Nepal and 4 from Thailand. In all the remaining cases, only one individual came from each country.

Nepal, Brazil and Thailand share what Nanda (2000) called an indigenous tradition of the third-gender and all are stage to trans and gender-nonconforming activist movements. However, while both Brazil and Thailand implemented institutional policies to govern gender difference in specific settings (such as prisons or dorms, as aforementioned), only Nepal put into effect a legal third-gender solution. Therefore, the case of Nepal— examined from a comparative perspective—enabled me to further explore the contradictions of third-gender legal solutions. Aside from the opportunity of interviewing Nepali trans-migrants in Portugal and the United Kingdom, which offered precious insights into individuals' views on third-gender legal options, two reasons underpinned this option. Firstly, alongside a number of South Asian countries, Nepal was a legal frontrunner in matters of third-gender legislation, and while we often centre our attention in western developments many pioneering changes are taking place in other parts of the globe. Secondly, although Nepal represents a very specific model of legal recognition, where all trans and gender-nonconforming individuals must fit the Other gender marker option, the more detailed analysis of how Nepali participants were (or not) affected by the law highlights vital problems of official gender categories. The narratives of Brazilian and Thai participants will serve as a benchmark.

In both the United Kingdom and Portugal (where the interviews took place), trans and gender-nonconforming British and Portuguese nationals are divided between solutions that fully, or at least partially, abolish gender markers and solutions that enforce a ternary classification system, with a neutral form of gender added to the F and M boxes. The findings closely follow those of other studies (e.g. Rodrigues, 2019; Valentine, 2016). Among the Nepali interviewees, only one participant identified as third-gender. All others preferred terms such as trans, transgender or transsexual. None had changed their legal gender. In comparison, nine Brazilian and two Thai participants identified as neither man nor woman, whether as *travesti*, *kathoey* or non-binary. Participants were recruited by various means (personal contacts, participation in events, networks associated with trans rights organizations) and a snow-ball method was used. All participants were provided with detailed information about the aims and procedures of the study and were cognizant that their participation was voluntary and could be withdrawn at any moment. The terms of confidentiality and use of the information gathered in the interview were outlined. It was made clear that results would be reported in such a way that no individual would be identifiable.

Let us examine the limitations of legal recognition to illustrate how the disjunction between moral and legal spheres and the reification of identity.

The Nepali one-suit-all third-gender category might represent a move towards progress in matters of state recognition, but the ternary system of gender classification is not able to include everyone. Firstly, because the gender marker Others, while representing a historical and cultural notion of the existing third-gender, might, as a result, conflate too many sub-categories. The 2013 survey demonstrated that respondents identified with multiple identity terms related to both their gender identity and sexual orientation. While 43.9 percent of the respondents self-identified as third-gender (using terms such as 'Meti,' 'Kothi,' 'Hijara,' 'Third-gender,' 'Transgender'), more than half preferred other terms, from gay and lesbian to men and women to trans and transgender. The legal Other category, though interpreted as enunciating the third-gender, does not translate the multiplicity and complexity of self-identification. Rather, it produces a sort of a legal umbrella category that might distort individuals' sense of who they are and what their gender is.

Indeed, for some, the third-gender option might not be a solution. These are the cases of Alisha (35, transgender woman) and Devna (29, transgender woman). Both women migrated from Nepal and live in Lisbon at present. As Alisha explains:

I feel that I don't exist whether at home or here in Europe. I don't want to be the hijara but I'm no woman either, they don't let me. So who am I supposed to be? I look mostly female, and I feel female, but my passport is male, so it's a nightmare. I cannot change my legal sex to be a woman and I don't' want that other thing. I'm not Other! I'm just tired of being so persecuted. There should be an alternative for people like me….Like not having one face and a different passport, why we need those documents? I don't want anyone to see my identification until I can change that. But I'm meant to be a woman, I'm not like others. It's fine, but it's not me.

If freedom to check the M or F gender boxes is restricted, producing what Namaste (2005) termed as the erasure of the transsexual, for those who identify neither as a man nor as a woman, being just Other can be felt like a form of misrecognition. Maaya (26, third-gender/non-binary, living in England) explained this feeling quite well:

I never thought I was a woman, I don't think I'm a woman. I never felt like a man either….For many years, I was just a gay boy, a meti, then I thought I might be a third-gender, but never told anyone really. I was afraid of what my family, my boss, my friends would do, it

was difficult, and so I hide it. I'm still very afraid, but here I went to a support group....They told me it's ok, that I'm non-binary, but I don't know yet. I could be third-gender, after all I'm not a true woman, I don't feel like a man, so I'm in the middle.

Interviewer: Would you like to change your gender in legal documents in your home country?

Maybe, but not now. I don't like that system, what's being other? I know we are just others, not at all respected, not at all considered like who we are. I don't want my documents to say other or third-gender, that's bad. Maybe someday, we will have many genders and respect, and perhaps there is a better name for us. For now, no, not in my country, and not here too. I don't think people understand us, especially when you are a migrant they think the worst.

The excerpt of the conversation with Maaya is revealing of how an identity category can distort one's own sense of gender authenticity. In fact, umbrella gender categories, whether legal or not, might create and feed identities that are unfitting and reifying. Whether specific third-gender markers are on the table or non-binary recognition is under debate, the systems of gender categorization might produce relevant forms of misrecognition.

While none of the seven Nepali participants had legally changed their gender at the time of the interview, the legal provision transformed the ways they felt others perceived them in their home country. Sabita (33, transgender woman, living in England for a year), who has always felt she was a woman even if she lived as a man for many years, recalls that she felt constrained to conform to a third-gender normativity that was expected of her. Despite the enormous difficulties in accessing the rights granted by the law, trans people like Sabita felt the pressure to become Other in everyday life and institutional settings. As Sabita sombrely narrates:

It's difficult to have a job, a house, just a normal life like everyone else when no one sees who you are, no one cares about who you are. They think they know, and just tell you can't be this or that, they just put you down. I had no job, no nothing. I had to leave my country to become myself.

Interviewer: Did you feel at some point that the legal changes in Nepal were changing things for the better?

Not really, not for me, or many people that I know. Sometimes it was like if you had to fit a role and never aspire to more, like studying to have a degree and becoming someone. I always wanted to be a teacher, but it was impossible. I had to fit and play my part, but never as someone who wants to be successful and happy. Today, I'm a post-op trans woman but no one helped me. Maybe things will change one day.

Similar narratives of institutional misrecognition are common to the vast majority of participants from either Brazil and Thailand or the United Kingdom and Portugal. Many advert that despite activist pressure there is still little space for gender difference. For Nepali migrants, a case which I analysed in greater depth, it became evident that the legal third-gender model limits individuals' moral entitlement to affirm their gender and be publicly recognized for who they are. The official gender classification system produces a fundamental disjunction between the moral and the legal sphere of recognition, which is reinforced the more a particular third-gender category artificially unifies a diverse group of individuals who feel deprived of their own gender identity. Although the Nepali case is exemplary, similar processes of reification (even if differently manifested) are extensive to other geographies across the globe.

The analysis of the Nepali case through the voices of trans and gender-nonconforming Nepali individuals living in Portugal and the United Kingdom permitted us to further understand the workings of third-gender categories in practice (Schilt, 2018). More importantly, it showed how gender classification systems tend to generate misrecognition. Firstly, the Others (or X, Diverse, Indeterminate, for that matter) gender marker seems complicit with the social divide between 'us' and 'them,' that is, between those who fit the norm (the 'gender normals' as pointed out by Garfinkel, 1967) and those who break conventions of gender (the outcasts that need being controlled). As research already demonstrated (Nisar, 2018), third-gender categories do not necessarily challenge the patriarchal gender order. Reservations against third-gender solutions are, therefore, understandable given the limitations posed by this model to the expression of gender diversity.

Secondly, the conflation of a wide range of gender subjectivities and experiences beneath a category that only partially translates historical and cultural notions of gender multiplicity tends to erase gender variance. While a process of reification of the third-gender is in place, the distinction between non-binary western people and non-western third-gender individuals is reinforced (Towle & Morgan, 2006). In other words, the divide between the 'west and the rest' regains power enough to increase misrecognition at the global level.

5. Conclusion

By examining the Nepali case against the backdrop of multiple legal and institutional developments aimed at recognizing the right to gender difference, I showed that misrecognition is an accomplice of every act of recognition. Firstly, because recognition takes different forms in different spheres, which renders moral and legal recognition inequivalent. In moral terms, individuals are entitled to gender self-determination, which means being recognized for who they are and being able to self-elect their own gender identity. In legal terms, although third-

gender categories entail the possibility of moving beyond binary schemes and being awarded rights as a gender nonbinary or nonconforming person, they also impose limits to the definition of gender. Secondly, following Nancy Fraser, because institutional gender markers tend to reify individual identity. In line with my initial arguments, unable to do justice to moral entitlements, the politics of legal recognition is, in this way, shown to have both enabling and disabling effects. Hence, if transgendering recognition is paramount, a critical approach to the concept, as well as the practices and effects it produces, is fundamental.

While putting gender in a box remains (and will perhaps be) a paradoxical (even if necessarily unavoidable) endeavour, imagining a politics without gender categories seems difficult in current times. Despite all critical insight, reinventing recognition beyond the categorical classification scheme of the identity model remains a humongous political challenge. Nonetheless, when applied to the legal sphere of rights, the identity recognition model inevitably generates misrecognition. From this angle, recognition appears to be intrinsically paradoxical, which creates a difficult challenge. For instance, if gender were officially abolished, gender nonconforming individuals would lack legal existence and state protection against discrimination. If gender were multiplied, individuals would feel their identity distorted and narrowed down. If gender were partially eliminated and partially multiplied, the balance would be difficult. In all the above solutions, to some degree, the right to difference might clash with the model of identity recognition implemented. As such, although recognition is vital and necessary, the acknowledgement of its limitations is fundamental. How can we then move towards a more effective recognition beyond the gender binary?

If the battle between a no-gender utopia and the multiplication of gender categories seems almost unsolvable, one potential way out would imply redressing recognition and shifting from the identity model of recognition to practice. In this way, recognizing shared conditions of subalternity (as in Fraser's status model) could be more promising. The prioritization of shared conditions of oppression could eventually ensure that political umbrella-terms were malleable enough to embrace different identities and claims. In any case, even if 'things are done with words,' to paraphrase the landmark expression of J. L. Austin (1962), emphasizing practice is important. While this solution follows Nancy Fraser's status model very closely, it is important emphasizing that such a practice-based perspective (remembering the prioritization of the ontoformativity of practice for transsexual women by Connell, 2012) does not elude recognition. Rather, it implies considering the dense web of intersecting inequalities: not only between trans subjects and cisgender normativity but also between different trans and gender-nonconforming people across the globe.

Conflict of Interests

The author declares no conflict of interests.

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Article

Trans Laws and Constitutional Rulings in Belgium: The Ambiguous Relations between Sex and Gender

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Abstract
In this article we reflect upon the evolution from the Belgian trans law of 2007 to those of 2017 and beyond, giving adult citizens the possibility to have their self-determined gender legally recognised. The 2019 ruling of the Belgian Constitutional Court, condemning the Belgian State for being discriminatory against gender fluid and gender non-binary persons regarding their legal gender recognition, requires the Belgian government to either add a third legal option or to abolish gender registration altogether. We analyse the definitions of sex and gender that underlie the two trans laws of 2007 and 2017 and the Constitutional Court ruling of 2019 and then confront them with the experiences of trans people based on a national transgender survey (Motmans, Wyverkens, & Defreyne, 2017). The confrontation between legal texts and lived experiences clearly shows the promises and pitfalls states face when striving for gender recognition procedures.

Issue
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1. Introduction

In 2007, after ample discussion, Belgium adopted its first trans law, thus joining the growing list of European countries recognizing trans persons (Motmans, 2011). After the regulation of important issues for lesbian, gay, and bisexual persons some years before, such as same-sex marriage, reproduction and adoption rights, inheritance rights, and anti-discrimination provisions (Eeckhout & Paternotte, 2011; Meier, 2009), it was now the turn for trans people to see their needs and interests taken into account. A decade later, in 2017, a new trans law was voted in, as the first one had been criticised for approaching trans people in a very paternalistic, medicalised, and gender binary way (Motmans, de Biolley, & Debunne, 2010; Senaeve & Uytterhoeven, 2008). The trans law of 2017 dropped the medically binary construct

of persons, further disentangled gender and sex, and based the application procedure on self-determination. Notwithstanding this new approach, the LGBTIQ+ organizations Çavaria, Genres Pluriels, and RainbowHouse filed a complaint at the Belgian Constitutional Court for the exclusion of any provision for non-binary or gender fluid people (Cannoot, 2019a). In 2019, the Belgian Constitutional Court ruled that the trans law of 2017 was indeed discriminatory for gender fluid and gender non-binary people, and the corresponding paragraphs need to be deleted (Cannoot, 2019b).

Different states are more and more confronted with the obligation to recognize the "emergence of a right to gender identity…which gives every individual the right to recognition of their gender identity and the right to be treated and identified according to this identity" (Parliamentary Assembly, 2015). The European Court of

Human Rights (ECHR) has held that national legislation must render the rights under the ECHR "practical and effective, not theoretical and illusory" (*Christine Goodwin v. the United Kingdom*, 2002). In this article, we examine how the Belgian state is struggling with the registration of sex whilst acknowledging the existence of multiple genders and highlight the inherent tension states face when recognizing gender diversity whilst also clinging to sex registration systems. We first describe the evolution of the legal—and thus institutional(ized)—thinking regarding who is to be considered a trans person, and what ideological frames of sex and gender underlie this thinking, by exploring the two trans laws of 2007 and 2017 and the Constitutional Court ruling of 2019. We then explore the experiences of trans people based on a national transgender survey (Motmans et al., 2017), analysing their personal positions in the sex/gender realm, and the impact thereof on legal gender provisions. In the conclusion, we combine the sex/gender discourses within the legal framework with the lived experiences of trans people and extrapolate what the Belgian case teaches states striving for gender recognition procedures.

Since language has performative power and thus impact (Arcelus & Bouman, 2017; Bouman et al., 2017) and since appropriate language is important, we use 'trans' as an umbrella term to refer to a broad spectrum of possible gender identities which may include: people living with or without gender dysphoria; those not searching for a social and/or medical transition; those making a social transition only, without medical needs; and/or gender-nonconforming people (Defreyne, Motmans, & T'Sjoen, 2017). We will, however, use 'transsexuals' or 'transgender persons' or 'gender non-binary persons' when citing legal texts to illustrate the changes in wordings, or when respondents chose that identity label for themselves. It is also important to notice that in both Dutch and French, sex and gender are two distinct words, and legal texts most often use 'sex' to refer to the sex assigned at birth, which, in Belgium, is limited to male or female options only.

2. Sex, Gender and the Belgian Laws on Gender Registration

2.1. Sex and Gender Diversity

The disentanglement of, or difference between, the sex assigned at birth which is legally recorded, and the gender identity of a person has been a topic of debate both academically and politically for decades. Gender identity is nowadays defined as the psychological identification of oneself, or an internal sense of being, in relation to gender (Arcelus & Bouman, 2017). Currently, it is understood that some people have a gender which is neither male nor female and may identify as both male and female at the same time, as different genders at different times, as no gender at all, or dispute the very idea of there only being two genders (Motmans, Nieder, & Bouman, 2019).

More recently, quantitative surveys have started to capture the inherent diversity of gender experiences, acknowledging gender diversity besides (legal/medical) binary sex systems. Recent research shows that in Flanders, the Dutch-speaking part of Belgium, around 0.7% of people registered as male at birth and 0.6% of people registered as female at birth identify more with the 'opposite' sex than their birth sex (Van Caenegem et al., 2015). In addition, around 2.2% of people registered as male at birth and 1.9% of people registered as female at birth identify as much or as little with the 'opposite' sex. Extrapolated to Belgium, around 134,000 people could be categorized as transgender or gender non-binary in a population of about 11 million. In a recent overview of measurements for gender identity used by state registers and population surveys, Motmans, Burgwal, and Dierckx (2020) found in Dutch and Belgian non-trans specific surveys that the proportion of people identifying outside the expected gender, as registered at birth, varies between 1.6% when categorical questions (closed list of identity options) are used, and up to 6.7% when 5 point-Likert scales are used. In a recent review focusing on higher-quality data, Zhang et al. (2020) analysed recent studies (published 2009–2019) assessing the proportion of trans and gender diverse (TGD) people in the general population, and found that the proportions of individuals with a TGD-relevant diagnosis or other recorded evidence ranged between 17 and 33 per 100,000 enrolees. The authors also found that, when the surveys specifically inquired about 'transgender' identity, the estimates ranged from 0.3% to 0.5% among adults, and from 1.2% to 2.7% among children and adolescents. When the definition was expanded to include broader manifestations of 'gender diversity,' the corresponding proportions increased to 0.5–4.5% among adults and 2.5–8.4% among children and adolescents (Zhang et al., 2020).

Many scholars and activists have highlighted how the confrontation with (binary) legal sex registration systems worldwide has led to many trans-identified citizens not being able to be recognized in their gender (Cannoot, 2019c; Hines, 2009; Parliamentary Assembly, 2015). In the following paragraphs, we analyse in detail what the Belgian state has put in place in this field.

2.2. The Belgian Registration Systems and Laws

2.2.1. The 2007 Trans Law

Prior to 2007, trans people could only get their first name changed through a Ministerial Decree and by having the sex marker on their birth certificates changed by a court. There were also regional differences in implementation: Dutch-speaking actors mainly held that an application for a change of status needed to be filed, whereas French-speaking colleagues defended an application to amend the civil status documents. The procedure and legal consequences of both positions differ, as does the line of thought underlying them. The first position emphasized

observable morphological criteria; the second, personal appreciation (Motmans et al., 2010). The trans law of 10 May 2007 (Belgian Official Journal, 2007) was meant to guarantee trans people a number of the same rights across the country (see Motmans et al., 2010, for an analysis of this process).

This trans law offered trans people the right to officially change the registration of first name(s) and sex in accordance with recommendation 1117 of the Council of Europe (Parliamentary Assembly, 1989). The title of the law—*Law Concerning Transsexuals*—well described the target group: individuals whose gender identity was the opposite of their assigned sex, and who would undergo gender reassignment surgery. The existing administrative procedure was upheld and extended to transsexuals at one-tenth of the usual cost. Individuals could file an application which needed to be accompanied by a statement by their psychiatrist and endocrinologist. The latter had to declare that:

> i) The individual showcased a constant and irreversible inner conviction of belonging to the sex other than the one stated on their birth certificate; ii) the individual was undergoing or had undergone hormone replacement therapy to induce the physical gender characteristics of the sex to which the individual in question believed to belong to; and iii) the change of first name was an essential feature of the change of gender role. (Belgian Official Journal, 2007)

The court procedure to change the registration of birth sex was replaced by an administrative procedure at the civil registry (Senaeve & Uytterhoeven, 2008) and was subject to several cumulative conditions. A person wanting to change the sex marker on their birth certificate and identity card, legally needed to demonstrate this to the registrar by presenting a statement from the psychiatrist and surgeon declaring, next to point i) mentioned in the previous quote, that:

> ii) The individual had undergone sex reassignment so as to make her/him correspond with the other sex to which the individual in question was convinced to belong to; and iii) the individual was no longer capable of producing children in accordance with her/his original assigned birth sex. (Belgian Official Journal, 2007)

To be recognised as male, one needed to undergo the removal of the ovaries, to be recognised as female, one needed to undergo the removal of testes (Belgian Official Journal, 2017b). Genital reconstruction surgery was not compulsory although the trans law was often read that way (Motmans, 2011). The registrar was to check the legal conditions regarding the application but would not conduct any discretionary physical checks relating to the sex reassignment. As civil marriage and adoption had been opened to same-sex couples in 2003 and 2006, respectively, married trans people no longer needed to di-

vorce before being able to change their birth certificate. Family members were no longer given one month to object the application (Motmans, 2011). After the trans law came into force, a slight increase in the number of applications for legal gender recognition was noted (Van Hove, 2019).

2.2.2. The 2017 Trans Law

The 2017 trans law (Belgian Official Journal, 2017a) changed the established rules in three ways (Verschelden, 2020): An adaptation of the registration of one's sex on the birth certificate no longer required medical intervention such as gonadectomy (removal of the gonads, testes or ovaries) or hormonal replacement therapy; the application is now based on a simple declaration filed by the applicant; and minors only need the approval of both parents alongside a statement from a youth psychiatrist declaring that they are capable of making such a decision. In the absence of parental approval, the applicant can apply for a guardian ad hoc through a civil court (Verschelden, 2020). In case of no negative advice by the public prosecutor, the procedure is continued.

A second new rule concerns the loosening up of the conditions to change one's first name. Again, all medical conditions were dropped, and self-determination was put centre stage (Verschelden, 2020). Declaring that the sex mentioned on the birth certificate does not correspond to an individual's inner gender identity suffices for them to benefit from the preferential tariff for trans people to change their first name. Also, the legal age for applying for first name changes was dropped to 12 years, but minors need parental consent of both parents unless the parental authority has been issued to only one of them. Subsequent changes of first name are possible but fall under the regular law of 15 May 1987 regarding names and the full tariff applies. An exception is again made for minors, to allow for the ongoing evolution of their gender identity.

Finally, a third new rule targets parental linkages. In some cases, adoption of the biological child was the only venue available to a trans woman to establish parenthood bonds, similar to what lesbian couples did (Verschelden, 2020) prior to the 2014 law on co-mothers (Belgian Official Journal, 2014). Trans men with a female partner who had given birth to a child could recognize their child by simple declaration, as all fathers of children born outside a legal marriage, but could not be recognised as male and then give birth, due to the requirement of infertility. According to the new rules, parentage bonds with children born before the registration of a change of sex marker do not alter. For children born after the registration of a change of sex marker, the rules stipulate that trans fathers giving birth to a child are legally recognized as being the mother, and trans women conceiving a child (with their or donor sperm) are recognized as being the father but are mentioned on the birth certifi-

cate of that child as co-mother. Parenthood linkages are adapted in case of the re-registration of the sex marker to the original sex (Cannoot, 2019b; Verschelden, 2020).

2.2.3. The 2019 Constitutional Court Ruling

The trans law of 2017 dropped the medically founded binary construct of persons, further disentangled gender and sex, and based the application procedure on self-determination. It was followed by a huge increase in applications for changing gender registration. Data from the federal Institute for the Equality of Women and Men on the number of people who registered a change in gender registration show how the new trans law gave rise to as many changes during the previous two years (2018–2019) as over the previous 25 (Van Hove, 2019). Notwithstanding these accomplishments, soon after the trans law was published in the Belgian Official Journal, three major LGBTIQ+ organizations, Çavaria, Genres Pluriels, and RainbowHouse, issued a partial annihilation request to the Belgian Constitutional Court. They argued that the inherent non-fluid character of the trans law and the lack of a third gender option discriminate against gender non-binary and gender fluid people (Junes, 2018; Verschelden, 2018). In 2019, the Belgian Constitutional Court ruled that the trans law of 2017 is indeed discriminatory for gender fluid and gender non-binary people and that the corresponding paragraphs needed to be deleted (Belgian Official Journal, 2020; Cannoot, 2019b). The Constitutional Court ruled that applicants should be able to change their gender registration more than once using the same simple administrative procedure, hinting at a recognition of gender fluidity. Second, it ruled that the government has to find a way to legally recognize gender non-binary persons, either by adding a third legal gender besides 'male' and 'female,' or by abolishing the system of gender registration altogether (Belgian Official Journal, 2020).

A proposal addressing the first part of the ruling, and deleting the corresponding paragraphs, has been submitted in parliament early 2020 and is expected to pass without much debate. The second part of the ruling, dealing with how to accommodate gender non-binary persons, is more challenging and might take several rounds of parliamentary debate. The Constitutional Court ruling as such leaves how to handle the issue up to the government.

2.3. The Relation between Sex and Gender in the Belgian Registration Systems and Laws

Whereas the stipulations of the 2007 trans law reflected a rather conservative stance on trans—actually gender—issues, the 2017 trans law reflects an important paradigmatic shift in how birth sex and gender identity relate to each other, thereby opening the path for a non-binary definition. The 2019 Constitutional Court ruling was interesting as it sets a non-binary and gender fluid definition in stone.

The strict medical criteria put forward in the 2007 trans law, both for a change of registration of sex marker and for a change of first name, reflect a strict binary understanding of sex and its full conflation with the concept of gender. The legal criteria inherent in the 2007 trans law were defined in such a way that one could be either man *or* woman, whereby inward and outward physical features had to meet the traditional definition of sex, and one had to be "medically reassigned" to the extent possible. Physical features then had to correspond to a stable and fixed male or female gender identity, and its assumed associated expression, asking the applicant "to take on the associated gender role." The most clear-cut illustration of this line of thought is the condition of an irreversible form of infertility so as to ensure that either sex would not be able to contribute to a form of reproduction contrary to what had been defined as biologically natural, whereby men conceive and women give birth (Motmans, 2011). Being a trans person in Belgium, in the period 2007–2017, meant that one belonged to the other sex than that assigned at birth. It was an issue of a transition from one side of the spectrum to the other, whereby sex and gender were—in legal terms—seen as congruent. Although other gender identities and gender fluidity were possible, these could not be expressed in any legal terms or be subject to any formal recognition or protection. The 2007 trans law thus left out a large group of trans people whose sex and gender did not neatly align, and/or who did not wish, or were unable for personal, social, financial, medical, or any other reason, to go through all the stages of the treatment process to move from one side of the binary construct to the other. Furthermore, the 2007 trans law was gender blind, in the sense that is was influenced by the rather simple medical pathway of trans women only, leaving out the medically more complicated pathway of trans men, and ignoring the existence of gender fluid and non-binary people.

In comparison to the 2007 trans law, its 2017 successor makes an opening for the disentanglement of sex and gender. Whereas the 2007 trans law is based on sex and ignores gender, its 2017 successor allows for people's gender identity to be recognised but registers it as if it is their sex. By dropping the medical conditions and the statements on behalf of a psychiatrist, endocrinologist, or surgeon in order to change first name and registration of sex on the birth certificate, the 2017 trans law allows for a variety of combinations of sex markers, gender identities, and bodily features. First, we notice a more nuanced approach to an understanding of gender identity. Applicants no longer have to state they have the "permanent and irreversible conviction of belonging to another sex than the one stated on their birth certificate," and "had taken on the corresponding gender role," (Belgian Official Journal, 2017a) but simply that their inner feelings of gender identity do not correspond to the official sex marker on their birth certificate, and that they wish to change this marker. In doing so, it acknowledges that the inner feeling of gender identity is

authentic, personal, and valid, and cannot be fully captured in female/male understandings. However, the legal sex markers are still restricted to either female or male. As such, one can read that what the state registers as a sex marker is in fact more a proxy of the lived gender identity. The 2017 trans law has mainly been praised for the degree of self-determination when it comes to defining gender, which opens the door to a more disentangled approach to sex and gender. Being a trans person no longer by definition involves a (medical) transition from one side of the binary spectrum to the other, but any possible combination of sex and gender. Secondly, the 2017 trans law shows that policymakers accepted the fact that bodily characteristics do not equal gender identity, and that modifying bodily characteristics is not an option for nor a wish of many of those who identify as trans. Insights from studies such as the national transgender survey (Motmans et al., 2017) informed politicians about the proportion of self-identified trans people who do not wish to or cannot access medical provisions, and thus are unable to fulfil the medical criteria in the law. Being deprived of access to legal recognition was understood as an extra unnecessary burden to be removed. Whereas the first trans law was largely inspired by experiences of trans women who at that time were more visible and vocal and who chose to a larger extend to remove their gonads (Motmans, 2011), the more recent trans law was inspired by the expertise of a variety of stakeholders.

Nonetheless, the trans law of 2017 still contains a dual notion of sex, a linear understanding of a gender transition from one gender to another, and the idea of transitioning as a once-in-a-lifetime change. First, the 2017 trans law opens the possibility for a non-binary definition of gender identity, but only at the level of one's personal discretion, as there is no legal option for a third sex/gender or for not choosing any sex/gender. Second, the trans law expects trans people to want to adopt the first name early on, and later the sex marker, and requires that the new name fits the assumed gender. The age differences (12 for a change of first name, 16 for the change of gender marker) were largely inspired by a medical understanding of gender awareness (arising around the age of 12), and the age of the start of gender-affirming hormonal treatment (at the age of 16). Starting gender-affirming hormonal treatment (testosterone for trans men, oestrogens for trans women) is clearly understood as an indication of 'knowing for sure,' and as an indication that there will be 'no way back,' so it is 'safe' to grant these youngsters the legal possibility of changing their sex marker. The additional requirement of attestation by a youth psychiatrist for those aged 16 or 17 added even more guarantees for those who might oppose the law. The need for the involvement of youth psychiatrists was argued against by the youth psychiatrists of the Belgian youth gender team during the parliamentary hearing in 2016 (Belgian Chamber of Representatives, 2016), as it violates the 2015 statement of the World Professional Association for Transgender Health on Identity Recognition (2015). However, this was not considered. Third, a change of sex marker on the birth certificate and of first name is in principle meant to take place just once. Minors can 'make a mistake,' by giving them a second chance to change their name back again before they turn 18. Requests by adults to annul a change in registration of sex or first name need to be taken to the family court; such a request is only possible under exceptional circumstances. So far, only one case is known where such a change was asked for and granted.

In short, while the 2017 trans law allows for a multitude of combinations of sex and gender identities, and thus gender fluidity in that respect, it does not leave room for a legally recognized gender fluidity whereby individuals could shift, even constantly shift, their gender identity and make use of more than two options. In that sense, gender identity is not understood as fluid but as a linear development: as being fixed at a certain given age. In this light, the legal provisions can be read as if the façade still must fit a traditional logic, no matter what gender identity/ies a person experiences and what physical features he/she/they carry. It is here that the relevance of the 2019 Constitutional Court ruling comes in. This ruling breaches the gender binary categorization and acknowledges the need to legally recognise gender non-binary as well as gender fluidity. This need was already voiced by the LGBTIQ+ organisations during the parliament hearing in 2016 (Belgian Chamber of Representatives, 2016) but the addition of a third gender category had been a political bridge too far in 2017, let alone the idea of an annulation of the system of birth sex registration altogether (Verschelden, 2018). However, a first glance into the Eurobarometer on Discrimination (European Commission, 2019, p. 4) shows that, on average, in Belgium 54% of the population agrees that public documents, such as passports and birth certificates, should contain a third option like X or O (other) for those who do not identify as female or male.

3. Experiences of Gender Non-Binary People

When the trans law of 2017 was adopted, an online anonymous survey which assessed everyday life experiences of trans people in Belgium was set up by the authors, in extensive cooperation with a variety of trans organisations. Commissioned by the Federal Institute for the Equality of Women and Men (Motmans et al., 2017), ethical approval was requested and obtained from Ghent University Hospital Ethics Committee (EC 2017/0599). The survey covered a broad range of issues such as health status, experiences in school, at work, with public administration, and legal recognition (Motmans et al., 2017). Respondents who self-identified as trans (including a broad range of possible gender identities) could take part in a Dutch, French, or English version of the survey. The data were collected before the 2017 trans law took force (January 2018), but after its adoption by

the government and subsequent media coverage. In total, 534 self-identified trans respondents aged 16 years or older and living in Belgium took part, the largest trans sample ever collected in Belgium.

For the purpose of this contribution, we will focus on the data regarding gender identity preferences, experiences, and views on the topic of legal gender recognition, so as to understand what the options suggested by the Belgian Constitutional Court's ruling (adding a third legal option or abolishing gender registration altogether) would solve for trans people.

3.1. Gender Identities and Their Relation to Registered Sex at Birth

All respondents were first offered a list of possible identity labels to choose from (multiple answers were possible). Second, we asked them to choose one option out of a closed list of possible answers ('trans men,' 'trans woman,' 'gender non-binary person,' 'crossdresser,' or 'I don't know/I don't have a preference'). This empowered respondent to decide in which group they would be categorised for the analysis of the data.

22% (n = 117) of the respondents chose the gender non-binary option, 26% (n = 141) chose 'trans men,' 48% (n = 256) 'trans women,' and 4% (n = 20) 'cross-dresser' (see Table 1). These numbers already show the potential amount of trans people (namely 26%) who do not fit neatly into legal categories of male or female and indicate how gender identity is broader than these two categories. In addition, we noted that 250 respondents (46.8% of the total sample) chose more than one option. Furthermore, when looking in detail at the combination of the binary (trans men, trans woman, or cross-dresser) versus non-binary groups with the list of identity labels they could choose from, we see that 13% of all 'binary' respondents also chose a non-binary identity option (genderqueer, non-binary, polygender, genderfluid). And 46.2% in the non-binary group also identify with a 'binary' identity label (man, woman, trans man, man with

Table 1. Gender identity labels by binary and non-binary respondents.

		Binary	Non-binary	Total
Man	N	80	10	90
	%	19.2%	8.5%	
Woman	N	147	15	162
	%	35.3%	12.8%	
Man with a transgender past	N	27	2	29
	%	6.5%	1.7%	
Woman with a transgender past	n	47	0	47
	%	11.3%	0.0%	
A cross-dressing man	n	22	6	28
	%	5.3%	5.1%	
A cross-dressing woman	n	1	1	2
	%	0.2%	0.9%	
A trans man: a person who was assigned female at birth but has a male gender identity	n	114	7	121
	%	27.3%	6.0%	
A trans woman: a person who was assigned male at birth but has a female gender identity	n	172	13	185
	%	41.2%	11.1%	
Genderqueer	n	13	43	56
	%	3.1%	36.8%	
Non-binary	n	28	74	102
	%	6.7%	63.2%	
Polygender	n	1	12	13
	%	0.2%	10.3%	
Genderfluid	n	14	49	63
	%	3.4%	41.9%	
Other	n	18	23	41
	%	4.3%	19.7%	
Total	N	417	117	534

a transgender past, trans woman, woman with a transgender past, crossdresser).

3.2. Focus on Gender Non-Binary Respondents: Legal Options and Motivations to (not) Take Them

A remarkably large group had not yet undertaken *any* official steps to change their name or official sex marker. Of all participants, 34.8% changed their first name and 20.2% their official sex marker. Only a small minority of the gender non-binary respondents did undertake legal steps: 10 out of 117 changed their first name (8.5%) and 6 their sex registration (5.1%). The survey asked those who had not undertaken these steps their reasons for not doing so. When looking at the answers from the gender non-binary group (see Table 2), we see that the most chosen answer was that they did not fulfil the requirements of the law, did not agree with the provisions of the law, and/or did not think such a step to be necessary.

Respondents choosing the option 'other reason' could give an open answer. Many of the latter referred to the lack of a 'gender fluid' or 'other' option in the legal system, and the lack of any need to register the birth sex marker on identity cards. As one respondent stated: "I wish that the mentioning of gender/sex would disappear for everybody. I am gender fluid and do not want any label." Another respondent had the same issues regarding the change of first name: "I do not wish this at the moment, since I do not live continuously according to my gender identity. Because I am non-binary, only a gender-neutral name would fit." These answers illustrate the impossibility of thinking about sex/gender on a linear spectrum or even a circle (in an attempt to avoid 'clear cut' extremes), rather it should be considered as a field of options in which (the lived experience of) male and female can intersect in many different ways, or be of no importance.

3.3. Social Gender Discriminations and Their Relationship to Legal Gender

Motivations for not changing legal sex markers were for some gender non-binary respondents also based on fear of discrimination, or for safety issues, as one gender non-binary respondent stated:

> There is only the possibility of M or F, and both aren't fully applicable to me. Maybe in the future (when I start hormonal therapy), I will change my sex registration because of safety issues, but not because I'm convinced that that's truly my gender.

Another gender non-binary respondent stated their fear of being discriminated against in all the administrative steps they had to take. Practical reasons were also mentioned for not changing the official sex marker. One respondent hints at work or sport contexts as a reason to change their gender marker:

> If I go ahead and make these changes in the future, I will largely depend on my work situation and new pros and cons. Since I do not wish any gender reassignment surgery, and want to participate in individual sport competitions, the mention of F on my identity card would at least involve that I'll need to explain every time that I am biologically speaking an M, so as not to commit any competition forgery.

Respondents often felt left in an administrative muddle when administrative systems are based on the state registry number of the person, which indicates being assigned male or female at birth by using even or uneven numbers. Many communication templates use forms of address according to this registered sex.

Table 2. Reasons for not changing the registration of gender for gender non-binary respondents (multiple answers possible).

	Amount	Percentage	Percentage of respondents
I don't want to	19	8.6%	17.1%
I don't think it's necessary	30	13.6%	27.0%
I do not agree with the provisions of the law	30	13.6%	27.0%
I do not fulfil the requirements of the law	32	14.5%	28.8%
I would like to do so in the future	28	12.7%	25.2%
I don't know if I can	13	5.9%	11.7%
I find the procedure too difficult	10	4.5%	9.0%
I find the procedure too expensive	9	4.1%	8.1%
Not applicable	13	5.9%	11.7%
My application was rejected	1	0.5%	0.9%
Other	36	16.3%	32.4%
Total	221	100%	199.1%

For gender non-binary respondents, finding their position in the gender identity field was a difficult road to travel. As one respondent explained, not having markers in society to identify with and the lack of options other than being male or female, causes serious internal stress: "Before I found myself as a non-binary trans woman, I often thought I was mad. That I was a 'crook' who was confused and had convinced themselves she was someone she was not for real." Thoughts like these and experiences with discrimination lead to high levels of emotional stress and suicidal ideation. Many reported avoidance behaviour, with 46.7% avoiding expressing their gender through physical appearance and clothing and 43% avoiding certain places or locations, both for fear of being assaulted, threatened, or harassed because of their gender identity or expression (Motmans et al., 2017, p. 72).

All in all, the voices from gender non-binary respondents were either asking for a third gender option, or for the abolishment of gender registration altogether. Some feared that introducing a third option would even lead to more stigma as long as institutions such as schools and workplaces are binary structured—and thinking—environments. The need for awareness-raising was underscored by many respondents.

3.4. Lessons to Draw from the Experiences of Gender Non-Binary Respondents

The multitude in gender experiences and gender labelling as presented by the trans respondents in this survey are indicative of the inherent impossibility of neatly covering gender diversity in clear cut categories, especially if they are but few. We also noticed the small number of people who had changed their first name and legal gender marker. These findings raise the question of whether satisfactory systems can ever be put in place to register such a complex understanding of gender. It is not always an easy task for researchers to capture gender diverse experiences and analyse them, let alone for governments to register them. Also, as the ruling by the Constitutional Court implies, the state will allow citizens to change their gender marker repetitively through a simple administrative procedure based on self-declaration. While this procedure allows for the capturing of gender fluidity, it also shows the difficulty of capturing fluidity in a rather static register.

4. Conclusions

Belgium is just one of many states confronted with the obligation to put into practice the right to have one's gender identity recognised and to be identified and treated in accordance with it. In this article, we examined how the Belgian state is struggling with the recognition of gender diversity whilst clinging to an existing sex registration system. We explained how the 2017 trans law, replacing its 2007 predecessor, shows a decrease of the inherent

cisgender heteronormativity and stereotypical conceptualisations of sex and gender. We underscored how the 2007 trans law was merely based on sex and ignored gender, and the 2017 trans law asks for gender as a proxy to register sex. Indeed, it is no longer the physical traits and their adherence to a specific binary standard that define sex. What counts for the definition of the official sex marker on the birth certificate and what sets the door open for a change of first name is what individuals experience as their gender identity. The trans law of 2017 makes it much easier for trans people to adjust their gender registration, without any medical certificates or statements. In this sense, the trans law of 2017 has certainly been a major step forward in accommodating the legal needs of trans people. The data from the state register from 2018–2019 confirm this as they show a large increase of citizens registering a new gender marker, with half the number of changes recorded in one year being equal to the total throughout the 25 previous years.

However, while the 2017 trans law recognizes a larger group of trans persons than its predecessor, it nonetheless confirms that the traditional man/woman divide dominates the public sphere and much of social life. The individual life experiences reported in an anonymous survey amongst trans respondents in Belgium (Motmans et al., 2017) show how a lack of legal provision impacts mental well-being and avoidance behaviour, as well as the preferences of gender non-binary respondents. Indeed, at least one out of four respondents within the trans group do not identify with male or female labels. Despite the trans law of 2017, these gender non-binary respondents are still stuck in a situation in which it is impossible for them to register their gender identity. The gender non-binary respondents also report different motivations such as safety issues and the fear of discrimination for not registering with a third option, should it be available. This ties in with research by Nisar (2018) who found that a third option has limitations in a patriarchal socio-legal order where important benefits associated with the masculine identity are forfeited by registering. Nisar (2018) cautioned against overemphasizing the symbolic value of legal recognition for gender-nonconforming groups. In that sense, just adding a third legal option to an existing system without changing the dualistic structures of regulations and other institutions would be nothing more than lip service to the trans community.

Whereas gender fluidity will be accommodated for, in that citizens will be able to repeatedly change from male to female to male (or vice versa) using a simple administrative procedure, this so far remains within the male/female divide. At the same time, the procedure does not allow one to only change their first name and not their sex marker, or vice versa. Although these are two separate procedures and one is not a prerequisite for the other, civil servants tend to assume applicants will fulfil both procedures. This leads to situations where one may be refused a name 'that belongs to the other

gender' if one is transparent about plans to not change the gender marker.

The respondents in our survey acknowledge that no system could provide an exhaustive list of types of gender identities. Some, therefore, hint at abolishing the registration of sex altogether. The ruling of the Constitutional Court makes this option available to the government. As abolishing sex registration presents a major shift in the sex/gender paradigm underlying the Belgian state and society, adding a third option might be the easiest route. The limited public opinion data available (European Commission, 2019) seem to support this option, but decent public opinion data on abolishing sex registration is absent and warrants further research. Abolishing sex registration would certainly stir debate, not the least between those eager to highlight gender discrimination relying on official data, and those arguing for alternative ways of measuring. A possible pitfall of such debate is who counts as which gender, and which measures should be applied in surveys and censuses (Brown, Herman, & Park, 2017; Motmans et al., 2020). These issues for discussion are similar to the case of ethnicity where standard measures are needed which aim for stability and present the respondent with relatively crude fixed categories (see for instance Burton, Nandi, & Platt, 2010). Alternative models in which sex is registered at a later age by the individual themselves, and/or in which a disconnection is installed between registering sex on the one hand and registering gender identity on the other (as discussed in Cannoot, 2019c) could provide a typical Belgian compromise, although these will require further reflection.

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Conflict of Interests

The authors declare no conflict of interests.

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Article

Redistribution and Recognition in Spanish Transgender Laws

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Abstract
Since 2012, 16 laws granting rights to trans individuals have been passed in Spanish regions. How can we assess the quality of these laws? Do they all profoundly and positively transform trans people's well-being? Do they tackle the economic marginalization of trans people? Do they have a symbolic impact? Using multidimensional criteria, I analyze trans-specific and LGBTI+ antidiscrimination policies to define trans-positivity in policymaking. This article uses feminist theory to judge this legislation's value, contrasting that with the insights of activists and policymakers interviewed for this purpose. Benefiting from the discussion between Nancy Fraser (1995) and Judith Butler (1997), the quality of trans legislation can be assessed by looking at both cultural recognition and economic redistribution. In addition, following Andrea Krizsan and Emanuela Lombardo (2013), I also analyze these laws through the lens of empowerment and transformation. Having made the elusive relationship between sexuality and political economy in trans laws in Spain visible, I call for greater imagination to envisage other sorts of political actions for trans people.

Issue
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1. Introduction

During the last decade, the discrimination transgender people have historically experienced in Spain has been acknowledged (Missé, 2018). Once considered sinful, criminal, and sick, they are becoming intelligible political subjects as their rights are starting to be recognized (Platero, 2011). In addition to the 2007 national legislation that allows trans people to change the name and sex on their IDs, eleven Spanish regions have passed trans-specific legislation along with anti-discrimination policies. These policies are the result of the recognition of a new political subject, the transgender individual. The trans movement, along with other social movements, has now entered mainstream policy-making and other agenda-setting processes. Transgender individuals are given more rights, granting them access to a legal, physical, and social transition, and improving their participation in different social realms.

Yet that successful decade-long narrative of sexual-rights achievement in Spain has to be contrasted with the current reality of trans rights, which means looking at both the implementation of specific laws, as well as the ups and downs of shifting political powers. The results of the 2019 national and regional elections revealed new threats, with less bipartisanism and more heterogeneous coalition strategies, in addition to the emergence of a new right-wing party in many regional and local governments. At the time of this writing, the Socialist Party and Podemos are in office in the national government, and the far-right party VOX is in coalition governments in Andalusia, Murcia, and Madrid. With the support of the Conservative Party and Ciudadanos, VOX is visibly working towards dismantling the newly achieved rights for women, migrants, LGBTI+ people, children, people with disabilities, and refugees, among others.

Additionally, the discussion on a new Spanish national law has encountered a fairly new brand of resistance (Platero & Ortega, 2016) that has only become more conspicuous since 2019, as some feminist leaders in the Socialist Party, as well as some academics, are leading a visible campaign against trans rights, presenting the

idea of national legislation for trans people as a backlash on women's rights (Álvarez, 2020). In 2020, political debates have been put on hold as Spain struggles with an unprecedented health crisis due to the COVID-19 pandemic. The coalition government has established an emergency-response plan that restricts some freedoms and increases police surveillance, a plan that especially impacts trans individuals who find themselves at the crossroads of multiple inequalities. This new political scenario and the coming recession will have consequences for trans people, which involves a careful discussion on how policymaking is never neutral.

In this complex context, analyzing current trans regional policies can be relevant to envision a future national legislation led by the Socialist and Podemos Government, which was announced through their mandate.

In this article, I assess the quality of Spanish regional policies that regulate transgender rights using Nancy Fraser's (1995) distinction of recognition and redistribution politics, but also Judith Butler's (1997) insight on the bivalent social justice for despised sexualities. My goal is to contribute to the discussion about the still elusive relationship between sexuality and political economy (Merck, 2004). Furthermore, this regional transgender policy analysis explores how choosing certain approaches in policymaking affects the possibilities of trans people having a livable life (being able to have economic independence and agency over their lives, among others).

The article starts with Fraser and Butler's discussion about recognition and redistribution, which I then apply to transgender politics. The next section details my qualitative methodology, which involves an analysis of 16 policy texts and interviews with twenty-one relevant stakeholders. The part after that analyzes the types of laws, their contents, and their construction under the categories of recognition/distribution. The penultimate section assesses the quality of transgender laws in Spain. My conclusions then highlight the emphasis on recognition politics for trans people, and the relevance of imagination and play when we imagine sexuality in policymaking.

2. Recognition and Redistribution

In Nancy Fraser and Judith Butler's conversation about recognition and redistribution politics towards social justice, published in *New Left Review* (Fraser, 1995) and *Social Text* (Butler, 1997), they also discussed the impact of such radical politics on people with non-normative sexualities. Fraser argued that discrimination against gays and lesbians is always about recognition, rather than economic redress (1995, p. 77). Challenging that argument, Butler asked: "Is it only a matter of 'cultural' recognition when non-normative sexualities are marginalized and debased, or does the possibility of a livelihood come into play?" (1997, p. 273). This inquiry impacts how we conceive of trans discrimination, as it questions whether it

is only a matter of cultural recognition. Butler immediately added: "And is it possible to distinguish, even analytically, between a lack of cultural recognition and material oppression, when the very definition of legal 'personhood' is rigorously circumscribed by cultural norms that are indissociable from their material effects?" (1997, p. 273). For people with non-normative gender and sexualities, recognition and redistribution problems are thus always already paired, 'bivalent.' Accordingly, it can be argued that the mere existence of trans people has been constructed as impossible (Stryker, 2017). After all, the meanings, norms, and values attached to trans lives not only determine their own status as human beings, but also their material access to resources (Spade, 2011; Stryker, 1994).

Going back to the genesis of the debate, Nancy Fraser (1995, p. 72) analyzed the necessary conditions for radical politics, articulating an analytical distinction between a politics of recognition and one of redistribution: Recognition politics seek to establish subordinated groups as "full partners of social life" (Fraser, 2000, p. 113), targeting the cultural injustice through which those social groups have been negatively valued. Therefore, the state must create policies that grant equal status. Fraser also connects the recognition–redistribution distinction to identity; therefore, recognition politics tend to promote a differentiation of social groups that reinforces identity politics (Garcerán, 2016, p. 11), creating a new political subject, such as trans individuals. One prototypical group that embodies recognition struggles are LGBTI+ individuals, and, as I will argue, Spain's trans-specific and LGBTI+-antidiscrimination policies can be understood as a relevant source of recognition.

Redistribution politics, on the other hand, targets economic injustice, which is rooted in one's relation to the market or the means of production (Fraser & Honneth, 2003, p. 14). This politics argues that, since capitalist societies like Spain deprive some groups, the state must offer them some kind of restoration so that they may achieve similar standards of citizenship. The two kinds of politics are intertwined, though, as Fraser explains that people who have a despised sexuality "face injustices of misrecognition requiring remedies of recognition" (Fraser, 1995, p. 78). Recognition and redistribution are deeply intertwined, reinforcing each other dialectically while remaining meaningfully distinct (Fraser, 1995, p. 79).

I argue that social justice for transgender people thus involves recognition of their needs, as well as economic redistribution. Despite the fact a national law (3/2007) now grants transgender people the right to change their sex registration (Spanish Government, 2007), the state still institutionalizes unfair norms by restricting trans individuals to a psychopathological category. This contributes to the existing economic segregation. Redistribution cannot succeed unless joined by struggles for cultural change aimed at reformulating the

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value of trans people' participation in society. Likewise, if recognition claims for trans individuals are not linked to economic redistribution, they become merely symbolic.

While neither Fraser nor Butler specifically mentioned transgender people, the reference to 'despised sexualities' certainly includes them. Notwithstanding, their discussion on sexuality and political economy can be criticized for being sutured to kinship forms typically associated with gay and lesbian politics (Hemmings, 2012, p. 124). Both authors see sexuality through the hetero/homosexual divide, overstating the transgressive or coopted nature of particular sexual subjects (Hemmings, 2012, pp. 123–124). Trans rights, on the other hand, are linked to the right to have a sex and name registration other than the one assigned at birth, as well as access to basic citizenship rights such as health and employment.

Acknowledging these limitations, my goal is to assess the extent of recognition–redistribution actions in Spanish transgender policies and the role imagination plays in securing sexual subjects' relationship to the political economy (Hemmings, 2012, p. 122). For my analysis, I define recognition as instances in which state institutions acknowledge the needs of trans people and articulate public actions to improve the status quo. Usually, this implies the production of a certain transgender identity in different political realms, such as governmental declarations against discrimination, visibility campaigns in public transportation, the establishment of procedures in education and labor markets to allow trans people to transition, permission to change one's name and sex on documents, and access to segregated spaces, among others. Recognition implies the existence of a cultural domination in which some individuals are rendered invisible and lacking respect (Fraser, 1995, p. 71). Recognition politics thus promote a logic of antidiscrimination and aim to create trans-specific policies (such as the regional laws analyzed herein) and services (such as the gender-identity units in certain Spanish hospitals).

Another take on recognition justice is to focus on the barriers trans people face in society; they may not be recognized as 'particular individuals,' yet they nevertheless face 'particular barriers' (Fernández-Garrido, 2017). In terms of participation in the labor market, for example, recognition would imply not only a declaration that discrimination is wrong, but an analysis of the obstacles trans people face. It would examine how trans people are constructed as troublesome, unfit, and devoid of skills, thereby making companies skeptical about their capability of performing standard business practices.

The entanglement of recognition and redistribution becomes visible in public health services, since acknowledging transphobic obstacles must lead not only to their removal, but also to compensation. Such barriers include the lack of acknowledgement that all health technologies and treatments for trans people were designed for, and are also accessible to, cis people. Instead, rather than aiming for specific bodies, the self-determination approach to trans health promotes assistance in the

form of general services. Compensation can include the use of counter-geographies, spaces in which often-excluded voices can become experts, and identifying the intersectional obstacles in place (Fernández-Garrido, 2017, p. 15).

When it comes to redistribution justice for trans people, state actions compensate for structural situations of discrimination, such as the historical prosecution of non-normative sexualities under the Francoist dictatorship (1939–1975) or the material difficulties of having a livable life. This compensation becomes a positive action that aims to economically restore trans individuals in certain circumstances. As socioeconomic injustice for trans people generally implies what Fraser calls economic marginalization (poorly paid or lacking jobs) and deprivation of an adequate material standard of living (1995, p. 70), the most common example of redistribution is the 'trans quota': protected employment, direct contracts, or improving transgender people's training to enter the labor force. In Buenos Aires, Argentina, such a trans quota reserves 1% of public employment for trans people (Government of Argentina, 2015). This type of quota has been imitated in Spanish regions like Aragón. In Uruguay, the government is currently paying a compensation to trans people who were prosecuted and born before 1975 (Government of Uruguay, 2018). Another example is the 'transition period,' a paid work leave similar to those for pregnancy, illness, mourning, or birth. This measure has not yet been applied but can be restorative for the bodily processes involved in transitioning.

3. Methodology

My qualitative research is based on the analysis of regional policies targeting trans people in Spain (ten antidiscrimination and six trans-specific), along with twenty-one semi-structured interviews with relevant policymakers (civil servants and politicians) and activists, conducted in December 2019. My basic research question is: What makes a 'good' regional trans policy? Drawing on the analytical concepts of recognition and redistribution, I conducted a theoretically informed analysis of the policies, guiding the interviews with stakeholders. Combining both types of data helped me to understand the quality of the policy by identifying criteria, including the laws' design, current status, and degree of implementation, and the problems and challenges trans people still face.

My criteria to assess the quality of trans legislation were informed by the theoretical discussions above. Firstly, quality involves a balance between recognition and redistribution actions, which contributes to reducing the disenfranchisement of trans individuals. Following Butler's insight that trans problems are bivalent and Fraser's view on recognition and redistribution's intertwinement in real life, I use the recognition–redistribution balance as a way to assess these laws' usefulness and transformative impact.

Secondly, this analysis has been also inspired by Andrea Krizsan and Emanuela Lombardo (2013, p. 78) discursive approach to assessing the quality of gender-equality policies. Accordingly, my assessment analyzes both the laws' content and the issues linked to their policy and implementation processes (here making use of Krizsan and Lombardo's understandings of 'empowerment' and 'transformation'; 2013, pp. 78–79). Empowerment has two dimensions: autonomy (freedom to make life choices, such as self-determining one's transition process) and authority (participation in decision-making; Krizsan & Lombardo, 2013, p. 79). Transformation, in Kriszan and Lombardo's sense, captures the incremental progress in a given context, so should not be mistaken for an absolute criterion (Krizsan & Lombardo, 2013, pp. 86–87).

Thirdly, I ensured that interviewees also described their own criteria, which I then incorporated. After all, in addition to highlighting the problems and resistances that emerge, my goal is to map trans regional policies in terms of their quality, so my assessment is multidimensional, but also context-dependent. It is a political process under construction, rather than just an outcome.

I connected my analysis of the discursive representations in the regional laws concerning LGBTI+ and trans rights (see Table 2) to a critical frame analysis, as proposed by Lombardo, Meier, and Verloo (2009). This analysis reveals the dominant representations of trans rights, producing a certain understanding of what trans means, what problems they face, and thus what solutions the state is proposing (Bacchi, 2009). This analysis does not include an in-depth description of the regional context,

nor the process by which these regional laws are promoted under certain logics and representations in a given political time.

The interviewees were selected based on their relationship to the respective law's creation process or subsequent application in each region. For some regions, I used the snow-ball technique to identify interviewees using the stakeholders' network (Charmaz, 2006). Because the 21 selected stakeholders gained privileged insights into the problems of trans people in Spain through their work, activism, and/or personal experiences, their accounts contribute to an understanding of the current challenges regarding policymaking for trans individuals (Table 1). The interview questions were organized into three areas: 1) involvement in the regional transgender policymaking process; 2) perspectives on the implementation of the transgender policies; and 3) the current challenges of transgender individuals in their region. The interviews each lasted approximately 45 minutes. They have been transcribed, analyzed, and compared (Bogner, Littig, & Menz, 2009). Interestingly, despite being well-known people, often appointed politicians, some of the interviewees preferred to remain anonymous, and accordingly only their region will be used to identify them.

4. Legislating Trans Rights in Spain

During Pedro Sanchez's administration (2018–2019), two national policy drafts were passed regarding LGBTI+ antidiscrimination and transgender rights, but neither draft ever became law. During his inauguration speech in

Table 1. Spanish regional LGBTI+ antidiscrimination and trans-specific legislation analyzed per region, type of law, and interviews conducted.

Region	Type of law and year	Interviews	
		Activists	Civil servants and politicians
Andalusia	Antidiscrimination (2017) and Trans-specific (2014)	1	1
Aragon	Antidiscrimination (2018) and Trans-specific (2018)	2	1
Balearic Islands	Antidiscrimination (2016)		1
Basque Country	Trans-specific (2019), modifies the 2012 law	2	
Canary Islands	Trans-specific (2014). Draft law currently in process to replace the current law	1	1
Catalonia	Antidiscrimination 2014	1	1
Extremadura	Antidiscrimination 2014	2	
Galicia	Equal Treatment (2014), first LGBTI+ policy passed	2	1
Madrid	Antidiscrimination (2016) and Trans-specific (2016)	1	
Murcia	Antidiscrimination (2016)	1	
Navarre	Antidiscrimination (2017)	1	
Valencia	Trans-specific (2017) and Antidiscrimination (2018)	1	

January 2020, Sánchez announced the intention to pass a new trans law, but it is still unclear how the coalition government of Podemos and the Socialist Party will reform the 2007 law regulating the modification of people's sex in the national registry (Spanish Government, 2007).

In the meantime, I will focus on Spanish regional policies approved within the last decade that concern the discrimination of LGBTI+ or transgender people specifically, first tackling the types of laws and their contents, then the recognition/distribution actions, along with the terms used.

4.1. Type of Law and Content

Most regions have legislation specifically concerning transgender people (see Table 1), promoted after the narrow scope and limitations of the national legislation that grants transgender people the right to change their name and sex on all documents. Some regions have both types of laws (Andalusia, Aragon, Madrid, and Valencia), while other regions have either a single anti-discrimination law for LGBTI+ people (the Balearic Islands, Catalonia, Extremadura, Galicia, Murcia, and Navarre) or a trans-specific law (the Canary Islands and the Basque Country). Still other regions have had political debates that produced draft bills which ultimately never materialized into laws (Asturias, Cantabria, Castilla-Leon, and La Rioja).

It should be noted here that the specific laws currently on the books are a result of the struggles of LGBTI+ and trans organizations, as a Catalonian stakeholder highlighted: "None of the laws is a result of the political parties' initiative; they were conceived by the movement. Politicians did not have clear LGBTI+ politics."

But having the type of law is not always decisive in terms of the extent to which trans rights are granted. Extremadura, for example, only has an antidiscrimination law, yet according to the activists interviewed, "the trans actions and protocols are fully implemented, similarly to regions with a trans-specific law." Similarly, a region having more laws is not always an indication of more rights being granted. Catalonia, for instance, has only one policy on antidiscrimination, but it grants an important number of rights and is widely implemented. Andalusia has two laws that are also widely implemented, while in other regions the implementation is ongoing and slow. Therefore, both the laws' content and implementation must be analyzed in order to assess their quality.

Catalonia and Andalusia have set an example of promoting rights within the areas of health-care provision and prosecution of discrimination, among others. Catalonia introduced LGBTI+ rights regulation throughout the entire administration as a sort of mainstreaming, and Andalusia was the first to claim trans self-determination of identity, following the 2011 Argentinian law. These examples paved the road. As the Valencian activist interviewed said: "We looked into other regions, looking for examples." Of course, they also faced resis-

tance: "Some politicians underestimated [the number of] trans people, saying we wanted a law for 'only three people,'" an Extremaduran interviewee remarked.

Other regions, however, grant fewer rights. As a civil servant stated, in Galicia "it was the first [such] law in the country; no one knew how to make one," adding, "the existence of the antidiscrimination law is used to stop further law developments. It was never meant to be fully applied." In the Canary Islands, the Socialist government announced a new law substituting the current one, which both activists and policymakers deem insufficient. In the Basque Country, the law was recently amended to include a brief statement on the depathologization and self-determination of trans people.

The laws analyzed here have been passed by governments of different colors, including conservatives, nationalists, socialists, and left-wing parties. Political will is decisive for the design and implementation of trans-positive laws, giving meaning to what equal treatment, depathologization, and self-determination mean. But most relevantly, they are time-specific: Earlier laws were framed in tune with the national legislation (which inscribed transsexuality as a disorder called 'gender dysphoria'), while later ones (Catalonia, Basque Country, Extremadura) aiming for depathologization, and even more recent ones (Andalusia, Aragon, Balearic Islands, Madrid, Murcia, Navarra, and Valencia) aim for the self-determination of transgender people.

These laws include actions on non-discrimination (within the administration, education, health, employment, culture, sports, support for organizations, and international cooperation, among others) and trans-specific actions (health, employment, social participation, historical memory, communication, etc.). Lastly, some also include punishing discrimination against LGBTI+ individuals, the creation of institutions and plans, social services, etc. Practically, according to the Andalusian stakeholders interviewed, "some policy areas make a difference, such as health, employment, and youth's rights," whereas for the Catalonian stakeholder, "it is their capacity to punish that was radically new."

Next to the laws passed, most regions, including the ones without a trans or LGBTI+ law, have education and health protocols for trans individuals, aiming to ensure protection against bullying, the possibility of transitioning, and access to medical treatments. These protocols further develop regional legislation, and sometimes "may amplify and improve what was stated in the law," as an activist said about the Canary Islands.

4.2. Recognition and Redistribution

Table 2 summarizes the laws' main actions concerning recognition and redistribution (with some examples), along with the main term used in the policy text to describe its narrative (self-determination, depathologization, recognition of rights, non-discrimination, social equality), the health model (offering specific gender-

Table 2. Spanish regional LGBTI+ antidiscrimination and trans-specific laws (2009–2020).

Region	Recognition	Redistribution	Terms used	Healthcare model	Capacity to penalize discrimination	Party in office
Andalusia (2014, 2017)	Recognition of gender self-determination as legal status	Positive actions in employment, such as tax exemption when employing trans people	Self-determination (first region to use it)	Proximity health-care services and hospital unit	Yes	Socialist Party
Aragon (2018)	Services for LGBTI+ and trans people. Funding for organizations. Including a non-binary gender category on documents. Assistance for homeless trans adults and youth, asylum seekers, and migrants. Development cooperation.	Public employment (1% of protected employment) and grants to hire trans people.	Self-determination	Proximity health care and hospital unit, with implementation problems	Yes	Socialist Party and CHA
Balearic Islands (2016)	24h Help Line. Pilot program for the use of the non-binary choice in bureaucratic arrangements.	Direct funding of vaginoplasty surgery for trans women, in order to reduce the 21-person-long waiting list of eight years	Self-determination	New health protocol, developed with trans organizations.	Yes	Socialist Party, Podemos, Més x Mallorca y Més per Menorc
Basque Country (2019)	Amplifies the national legislation of 2007		Depathologization	Hospital unit	No	PNV and Socialist Party
Canary Islands (2014)	Trans women victims of violence are granted the same rights as cis women, and are not required to have their ID changed.		Non-discrimination	Health assistance with specific units at hospitals using the national law's logic of diagnosis and pathologization	No	Coalición Canaria and Socialist Party
Catalonia (2014)	Public servants must act against discrimination. Depathologization of trans identities and service provision. Widespread action by the Catalonian administration against LGBTI+ phobia.	Employment actions for trans people. Access to assisted reproductive treatment for lesbians and single women.	Depathologization (which is not defined)	Innovative proximity health service, TRANSIT, which becomes an example.	Yes (first one)	Iniciativa Per Catalunya, Socialist Party and Esquerra republicana.

Table 2. (Cont.) Spanish regional LGBTI+ antidiscrimination and trans-specific laws (2009–2020).

Region	Recognition	Redistribution	Terms used	Healthcare model	Capacity to penalize discrimination	Party in office
Extremadura (2014)	Civil servants must act against discrimination. Transversalisation of LGBTI+ rights in all institutions, including rural areas, with a positive impact on trans youth. Services for trans people.	Access to assisted reproductive treatment for lesbians and single women.	Depatho-ligization.	Proximity services along with a gender unit that is decentralised in all provinces. Problems of implementa-tion	Yes, but it has not been imple-mented.	PP
Galicia (2014)	First law, and in a conservative region, that establishes equal treatment with some symbolic actions.		Equal treatment and non-discrimination	Hospital (not specific unit)	No	PP
Madrid (2016)	Laws are innovative and contain new rights (reproductive rights, training for professionals, research, assistance for vulnerable trans people) in accordance with other regional laws, but have not been fully developed. Trans women victims of violence are granted same rights as cis women.	Some employment actions for trans people	Self-determination	Proximity health care services and hospital unit	Yes, but it has not been im-plemented	PP
Murcia (2016)	Trans women victims of violence are granted same rights as cis women.	Employment measures (not implemented). Easier requirements for the Minimum Income Allowance.	Non-discrimination	There is not health protocol, the intervention is pathologizing	Yes, but it has not been im-plemented	PP
Navarre (2017)	Funding for LGBTI+ organizations and events. Action plan and diagnosis of LGBTI+ realities. LGBTI+ Board. Civil Servants must act against discrimination. Development cooperation. High participation in the policy-making process.	Promotion of employment plans.	Social Equality/equal rights	Proximity health care services and hospital unit. Access to health care with a non-pathological perspective, with imple-mentation problems.	Yes, but it has not been im-plemented	Geroabai, EH Bildu, Podemos, IE.

Table 2. (Cont.) Spanish regional LGBTI+ antidiscrimination and trans-specific laws (2009–2020).

Region	Recognition	Redistribution	Terms used	Healthcare model	Capacity to penalize discrimination	Party in office
Valencia (2017, 2018)	Each region has a service to promote LGBTI+ and trans rights. Trans Board. Trans Consultation Board.	Employment actions (tax exemption and promotion of public contracts with companies that have trans employees)	Self-determination	Healthcare assistance has expanded to all provinces, with implementation problems	Yes	Socialist Party —Podemos Compromis— EUPV

identity units at hospitals and/or a form of proximity health-care in the already existing primary health-care centers), the capacity to penalize discrimination, and the party/ies in office when the law was passed.

All the laws analyzed can be interpreted as a kind of social recognition since they establish or continue the entry of sexual and gender issues onto the mainstream agenda trough a concrete language (see first column of Table 2). As they open a space for continuous dialogue with the administration, I consider the creation of LGBTI+ and trans participatory bodies in most regions a form of recognition. Other forms of recognition include laws that promote LGBTI+ and/or trans information and assistance services, LGBTI+ discrimination observatories, and other services run by NGOs.

Yet my interviewees remarked that these new services and institutional bodies generally have low budgets and insufficient staff, "turning their work into a sort of activism," commented a Balearic Islands civil servant. The interviewee added that "the policies are often ambitious, and their budgets are too low," which may result in a rather modest impact. In the Balearic Islands, two public workers oversee the coordination of all LGBTI+ politics. Relevant actions included in the laws—such as sanctioning discrimination with fines (see fifth column), training public servants, and more widely promoting the rights and duties granted by the policies—are often underdeveloped. Laws often are not specific enough on how the proposed actions will be carried out, using the legal formula of the future "further development of a regulation." According to the Catalonian interviewee, however, the local "law was born with a deadly trap, announcing that a sanctioning institution and a non-discrimination law will be created in the future," which then never ends up happening. Again, as several stakeholders mentioned, policies are resulting in a recognition of rights that is not always followed by concrete actions or that is insufficiently funded.

As shown in Table 2's second column, nine regional laws include redistribution actions (Andalusia, Aragon, the Balearic Islands, Catalonia, Extremadura, Madrid, Murcia, Navarra, and Valencia). Some laws also include positive actions in employment, actions that can be non-

specific (e.g., Murcia) or concrete with tax exemption for employers (e.g., Andalusia), promoting public agreement with companies that hire trans workers (Valencia), or promoting protected employment (e.g., Aragon or Catalonia). The laws include some intersectional description of trans lives, and some specific actions are embedded in most of the policies analyzed (mostly regarding age, social class, gender, disability, and homelessness, among others). In general, the implementation of these positive actions in employment is slow, according to the policymakers and activist interviewed: "In some areas, it is just not happening," said the Valencian stakeholder.

Table 2's third column describes the main term used in the laws. Three regions use depathologization (Basque Country, Catalonia, and Extremadura), five use self-determination (Andalusia, Aragon, Balearic Islands, Madrid, and Valencia), and the rest use equal treatment (Galicia), social equality (Navarra), or non-discrimination (Canary Islands). Depathologization was a term coined by trans organizations while advocating internationally on platforms to challenge the framework of transsexuality (Suess, 2018). After 2011, activists also used self-determination. Both terms are associated with concrete demands to make decisions about one's own body, and to access basic citizenship rights. The language and definitions used in the policy texts are relevant: They create new legal realities and allow the emergence of political subjects—such as intersex people, transgender children and their families, or non-binary people—who become the subjects of rights. As interviewees highlighted, depathologization and self-determination are not just words within a law, but rather markers showing that these laws are "claimed as our own" (Valencian stakeholder), "achieved after long-term activism" (Catalonian stakeholder), and "meant to change realities" (Basque stakeholder). By choosing such new framing, some of these laws achieve rights that are radically new in Spain: "Having legislation in Andalusia that establishes a younger age than other regions, 14, at which trans children are granted access to cross-sex hormone therapy is life-changing and was unimaginable before the self-determination turn," said an activist in Andalusia. Interestingly, transgender children's needs are included

in these laws through the activism of organizations of their families (Platero, 2014).

Most laws analyzed introduce a rather heterogeneous glossary of definitions on sexuality and discrimination. These laws face the challenge of an administrative language that is deeply rooted in binarism and heterosexism. Some laws reference the repression under the Francoist dictatorship, while others refer to international and national legislation as a source of legitimation. To this extent, more recent policies benefit from the experience of other regions, being able to choose from different laws; the latest laws have also been introducing a more comprehensive understanding of transgenderism, including, for example, non-binary identities.

This language can be analyzed along the proposed health model (see the next column in Table 2), since that wording also has an impact on how to design policymaking. In the appearance of these policies over time, access to public health services clearly shifts from pathologizing gender units at hospitals towards a model of proximity health provision based on trans individuals' capacity to choose their own transition path (now offered in Andalusia, Balearic Islands, and Catalonia). The use of the term self-determination thus is a political approach that materializes in a previously non-existent health service. The use of this concept is linked to the implementation of proximity health care, whereas other regions use other concepts and health provision based on trans-specific units, which have had pathologizing practices (Basque Country, Canary Islands, Galicia, and Murcia). Despite the introduction of this innovative self-determination model, its implementation has often faced resistance from professionals who continue subjecting people to a process of classification, humiliation, and denial of rights, and a general undervaluation of trans people's needs. Sometimes, it can be the case that a transformative term is used even while pathologizing practices, along with practical barriers to accessing proximity health care, are still present: this is the case in Aragon, Navarra, and Valencia.

5. Assessing Quality in Spanish Trans Policies with Policymakers and Activists

In the discussions with policymakers and activists about what they consider a quality trans law, there is a consensus about "having an impact on trans people's well-being and expansion of their existing rights," as the Valencian activist put it. According to the Catalonian activist, "laws have made an impact, including more rights, sanctioning discrimination, and creating specific bodies for political participation with the public administration." Trans-positivity can be traced in the number and quality of rights granted under the discursive umbrella of self-determination and depathologization, which for our interviewees implies recognition (through proximity health services, children's rights, participatory boards, services for trans and/or LGBTI+ people, among others), but also redistribution

(mostly employment, compensation for elder trans and LGBTI+ people discriminated against under the dictatorship, and direct funding of surgeries). To different degrees, such a bivalent approach that tackles empowerment, transformation, and well-being is present in the laws from Andalusia, Aragon, Balearic Islands, Catalonia, Extremadura, Madrid, Navarra, and Valencia.

Moreover, research participants indicated that quality is also associated with the participation of trans organizations. As I mentioned, Catalonian stakeholders credited "activists for the achievement of trans laws." This kind of participation ('authority' in Krizsan and Lombardo's work) can be measured by such organizations' overall engagement in policymaking and the extent to which participatory boards are created, functioning, and perceived as useful. In Extremadura, an activist sadly stated that "the LGBTI+ Body created was useless, due to the participation rules that allowed for companies and non-NGO groups that have different economic interests."

The policymaking process has resulted in empowerment due to a double literacy: the policymaking literacy of activists who become experts ("not in my wildest dreams did I picture myself being part of policymaking," said an activist from Madrid); and, for politicians, a literacy on non-normative sexualities and trans experiences, according to the interviewees ("we were not aware of the many nuances that affected trans people's lives," said a civil servant in the Balearic Islands). Not all organizations were involved in the policymaking process, often "opting instead to consult with those that already participate in public funding," as the same Madrid activist stated. Furthermore, activists dealt with resistance in the political parties' negotiations, often having to use persuasion techniques and press for certain actions. In addition, the follow-up in implementation is considered a weak area for stakeholders, who are now seeing how, in some regions, the next legislature brings in new political parties or leaders of the same party that are not equally committed to the law.

Likewise, looking at the implementation process, interviewees remarked on the resistance found in all regions, especially concerning how trans rights are materialized in proximity health services, training of public servants, and education programs (which I consider recognition actions), but also in employment programs (the most common redistribution action). Interviewees identified specific barriers in Aragon, Extremadura, Navarra, and Valencia. For instance, in Valencia, "public health centers often do not see trans patients, despite what the law states, arguing that they do not have the training or the will to do so." Other commonly mentioned problems are insufficient funding or resources, lack of precision in the law or future procedures, lack of political will, and governmental changes. In Andalusia, although "the law is 90% implemented, the precise protocols to develop every article are often missing, for instance in regard to supporting trans youth," said a local activist.

Drawing from the discussion about the quality of trans laws with policymakers and activists, but also using Krizsan and Lombardo's insights, laws can be analyzed in terms of the extent to which the current discrimination of trans people is transformed. Transformation, according to Fraser (1995, pp. 82–83), restructures the underlying generative framework, redressing disrespect and transforming the underlying (transphobic) culture. Assessing the degree of transformation these laws reached generates a differentiation of such policies. Stakeholders interviewed rank the highest the policies that focus on the self-determination and depathologization of trans people, and lowest the laws that made inclusion, equal treatment, and social quality their goals.

On the one hand, pursuing inclusion, equal treatment, and non-discrimination seems rational and creates less resistance, but these are short-term goals that individualize transphobia. These policies tend to create an individual logic of merits, so only some transgender people can access these rights. This is the case for the national transgender legislation 3/2007 (Spanish Government, 2007), which set restrictive requirements in order to change one's name and sex on IDs and documents (being Spanish and an adult, not having 'other' disorders, qualifying for 'gender dysphoria disorder,' and undergoing two years of hormone treatment, with exceptions for elderly individuals with a medical condition; Platero, 2011). Therefore, those individuals who do not fit or do not want to fit those requirements are left out. This meritocracy approach can also be traced in the laws passed in the Basque Country, the Canary Islands, Galicia, and Murcia. Transformation, in Fraser's sense, takes place in relation to an existing context and, given that Spain is a country with strong regional inequalities, the heterogeneity of trans and LGBTI+ policies contributes to reinforcing such inequalities.

To some activists, it is important that discriminatory acts be punished by fines, along with qualification as crimes already existing in the penal code (Andalusia, Aragon, Balearic Islands, Catalonia, Extremadura, Madrid, Murcia, Navarra, and Valencia). As the Catalonian activist put it, "the Catalonian law is innovative by punishing discrimination, although its application in practice is difficult with only 14 actual sanctions." Therefore, despite the symbolic relevance of this punitive approach, "in practice, it is not working," according to the same activist.

On the other hand, some policymakers take further steps, introducing the capacity of the trans individual to decide their own transition process (what Krizsan & Lombardo, 2013, call 'autonomy') and emphasizing transphobia rather than the short-term and individual approach. Tackling transphobia requires a social, structural transformation, making this a long-term goal. Such a transformation requires a cultural and social recognition change that makes discrimination reproachable, similar to what has happened with violence against women in Spain. These changes not only concern transgender people's sense of belonging, affiliation, and self, but the entirety of society (Fraser, 1995, p. 83).

Thinking through transformation, the Fraser–Butler discussion on cultural recognition and economic redistribution becomes useful again. The social recognition granted by these policies is important, since it creates the possibility of having a life worth living, something many generations of people with non-normative identities have lacked. As illustrated, Spanish trans policies rank high in terms of social recognition—perhaps no wonder considering the concurrent high global cultural interest in trans realities. But achieving transformation also implies destabilizing group identities and differentiations, instead of only revaluing and affirming devalued group identities (Fraser, 1995, pp. 82–83). It requires the mobilizing a certain social group, trans individuals, that contributes to de-stabilizing the trans/cis dichotomy in the process.

Recognition always has to be understood in relation to redistribution. So far, stakeholders mostly imagined redistribution as employment programs: "Employment is what trans people really need," said an activist in Aragon. However, trans people are not a homogenous collective at risk of social exclusion: instead, due to a combination of factors, some trans people experience more employment problems (Coll-Planas & Missé, 2018, p. 64). Following Spade (2011), LGBTI+ anti-discrimination and trans policies can be criticized for their limited capacity to improve living conditions for trans people in the most vulnerable situations, such as trans people in prison, trans refugees, poor trans people, trans people of color, and trans youth. Spade invokes the capacity for transformation by urging us to think of the structural and intersectional dimensions of policymaking, but also remarks that common administrative procedures generate great violence against trans people. Though one can argue that, as transgender laws make it easier for people to change their name and sex on national and social security IDs and to access hormonal treatments in a self-chosen path, they mitigate the impact of transphobic violence. But then again, these actions rely on the individual being able to navigate the often-transphobic social reality and do not directly tackle their economic marginalization.

Turning back to Fraser (1995, p. 92), we need to "figure out how to finesse the redistribution–recognition dilemma when we situate the problem in this larger field of multiple, intersecting struggles against multiple, intersecting injustices." Although there is some intersectional attention to trans lives, a more precise analysis of the intertwined realities of trans people in Spain needs to be developed in order to begin to imagine redistribution policies. The overemphasis on trans identity politics in Spain diverts attention from the effects of capitalism and wealth inequality (Fraser, Urbieta, & Navarro, 2016), requiring spaces in which to imagine redistribution politics (Hemmings, 2012, p. 122).

6. Conclusions

Since 2012, trans and LGBTQI+ organizations have struggled to pass 16 regional laws in alliance with different political parties, all the while lacking a consensus on what trans rights mean in policymaking. During this short time, activists and policymakers had to conceptualize what the use of these laws would be, what rights they could grant, and how they could be made. Accordingly, they tried to find inspiration in other international laws and previous Spanish regional laws, directly contacting other policymakers and activists.

It is not a surprise that the inclusion of a new political subject, one who is trying to move away from being defined as a person with a disorder, results in identity politics. Yet the transformation that the trans activists I interviewed demanded can only be achieved once we "sustain a field of multiple, debinarized, fluid and ever-shifting differences" (Fraser, 1995, p. 83).

The assessment of the quality of these laws is linked to the balance of recognition–redistribution actions, including feminist criteria such as empowerment, transformation, well-being, and—to a certain extent—punishing discrimination. Trans policies in Spain benefit social recognition in policymaking but only promote redistribution for (some) trans individuals in vulnerable situations to a lesser extent, not always achieving a balance. Empowerment, with its double emphasis on autonomy (a shift to a de-pathologization and self-determination models) and authority (participation in the policymaking process) has been a crucial criterion in assessing the quality of trans laws. In this regard, according to the stakeholders interviewed, better-quality trans legislation is linked to self-determination, participatory processes in policymaking, wide implementation, the creation of public bodies and specific services, proximity health services, rights for children, the capacity to penalize discrimination, and further positive actions. Better-quality legislation combines recognition and redistribution in areas that have been identified as transformative by trans organizations (protected employment and funding for surgeries, for instance). Other redistribution policies are yet to be imagined.

So far, when discussing positive actions, the policymakers interviewed only imagine employment actions, leaving out other types of political measures, such as compensation for the discrimination that occurred under Franco's dictatorship, or compensation for long-term disenfranchised trans individuals. Inspired by José Muñoz's acknowledgement that "here and now are not enough," a transformative future for trans people in Spain requires both a queer political imagination (Muñoz, 2009, p. 1) that engages with the political economy and going beyond mere affirmation of trans identities to pursue the deconstruction of the trans–cis dichotomy.

Lastly, the differences found in the regional laws analyzed here produce an asymmetry with regard to the exercise of trans rights that can only be resolved with a national trans law. It remains to be seen whether the current coalition government, amidst its national response to the current COVID-19 pandemic and the campaign of some socialist feminists and academics against trans rights, will be able to achieve the necessary alliances to approve a trans rights law that includes both recognition and redistribution.

Conflict of Interests

The author declares no conflict of interests.

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Article

Now You See Me? The Visibility of Trans and Travesti Experiences in Criminal Procedures

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Abstract

In 2012, after decades of trans and travesti activism in Argentina, the law on gender identity was finally adopted. Travesti activists Diana Sacayán and Lohana Berkins were at the forefront of these efforts. The same year, after the long struggle of the feminist movement, 'femicide,' understood as the murder of women by men in the context of gender-based violence, was incorporated into the Criminal Code as aggravated murder. This legal amendment also criminalized hate crime based on the sexual orientation or gender identity of the victim. Mobilized by Sacayán's murder in 2015, the trans and travesti collective sought to make the experiences of exclusion and marginalization of the travesti collective visible by coining the notion of 'travesticide,' and demanded it to be used in the ensuing criminal trial that followed her death. Constrained by the legal notions of femicide, gender-based violence, and hate crimes, the Tribunal introduced 'travesticide' in their decision, yet questions on how to properly operationalize this notion in criminal law remain. Each notion offers opportunities and poses difficulties in making the murder of travestis politically visible and accounted for. By a detailed analysis of the final judgment, this article reflects on the implications of the notions used in the trial and the possible lessons for future interactions with the criminal justice system.

Keywords

Argentina; criminal procedures; femicide; gender identity; hate crime; transgender; travesti; travesticide

1. Introduction

Trans persons and travestis in the Americas have articulated numerous social collectives to fight against the persistent subordination and injustices they face. Likewise, in Argentina, travestis successfully organized and advocated for their rights. In doing so, assuming the 'travesti identity' was a first step to making their demands visible, triggering a powerful dynamic of self-naming, recognition and mobilization. Yet what does 'travesti' entail and how is it different from 'transgender'?

As Santana (2019, p. 212) points out, "*travesti* does not correspond to the English *travesty* [transvestite], which is related somewhat to a performance in drag." Identifying as travesti entails "the refusal to be woman, the refusal to be intelligible," but also "the refusal to be

trans" (Machuca Rose, 2019, p. 243), since the travesti identity goes beyond gender. Unlike the English 'transgender,' 'travesti' articulates aspects of race, class, ability, and other forms of difference (Rizki, 2019, p. 148). Thus, as Santana (2019, p. 213) explains, being travesti "is not a total negation of themselves as women but a negation of an imposed dominant expectation of womanhood." The travesti identity seeks to elude the identity categories constructed by a state system of social oppression (Berkins, 2003, p. 136). In fact, travesti politics evoke the historical marginalization of the collective, one with clear racial, able-bodiedness, and elitist undertones. Diana Sacayán's self-identification as 'trava sudaca originaria' helps underscore the different dimensions of her travesti identity. By focusing on Diana's murder trial, this article pays particular attention to the

travesti identity, yet, in line with Rizki (2019), it also recognizes that trans and travesti identifications are constantly shifting and thus, it does not immediately assume they are mutually exclusive (Rizki, 2019, p. 149), but separate.

The visibilization of travesti realities has triggered a considerable number of reforms across different legal and policy realms. Among them, criminal law constitutes a crucial battlefield for such change given the historical criminalization of trans/travestis under repressive police codes (Berkins, 2007; Fernández Valle, 2018). In fact, the first travesti association, the Association of Argentine Travestis (in Spanish, ATA), was formed in 1991 to fight police brutality and abuse, gradually leading to the abolition of the most repressive norms. Nevertheless, the trans/travesti collective continues to be disproportionately affected by new forms of persecution, such as the criminalization of the promotion of sex work (Fernández Valle, 2018, p. 50; Sosa & Ferrero, 2018) or drug trafficking (Malacalza, 2018).

However, (trans) feminisms in Latin America, and also in Argentina, have often been ambivalent regarding the use of the punitive system to address issues that reveal structural inequality and disadvantage, since it cannot solve these issues and in fact, because it is rooted in a patriarchal structure, it often sustains the criminalization of the most affected sectors of society (Zaffaroni, 2000). At the same time, there has been a tendency towards increased criminalization, particularly in relation to severe forms of violence against women and feminine subjectivities (Acosta Vargas, 1999; Costa, 2014).

Aware of these tensions regarding punitivism, making trans/travestis' experiences visible in the criminal fora and translating them into demands could challenge their persistent profiling as suspects of crime and reconfigure them as subjects of protection, transforming both criminal and criminological discourse. The trial for the murder of trans activist Diana Sacayán offered a perfect scenario to do this. This article explores how the main (historical) demands of the trans and travesti community in Argentina, explored in Section 2, were reconfigured and introduced in the criminal proceedings. Section 3 discusses the final judgment in detail by examining the position of each of the parties to the trial in relation to the key aspects described in Section 2, and how these were interpreted by the judges in relation to the elements of the crimes. Section 4 reflects on the findings and highlights the positive aspects for similar strategic litigations, and draws attention to some problematic areas.

2. Historical Claims of the Trans/Travesti Community and Institutional Responses

There have been three main historical claims of the travesti and trans community in Argentina: the legal recognition of their preferred gender; the possibility to decide on their bodies; and the accountability for their murder.

2.1. Legal Gender Identity

The campaign for the legal recognition of the self-perceived gender identity in Argentina articulated demands about social positioning, participation, and the fight against the violations of rights. Until recent times, Argentinian media regularly portrayed travestis as a dangerous threat to 'moral society.' Assuming the travesti identity became an act of resistance, followed by mobilization and alliance making as a main political strategy (Berkins, 2003). This led to the creation of several associations, such as the already mentioned ATA, the Association for the Fight for Travesti Transsexual Identity (led by Lohana Berkins) and the Organization of Travestis and Transsexuals of Argentina. In this process, the term 'travesti' achieved a new and empowering meaning, cleared from the negative connotation given by the police (Berkins, 2007).

Gender identity demands sought to consolidate this process and ensure the enjoyment of human rights. The lack of legal recognition of gender identity signified the starting point of a continuum of violence and systematic violations of basic rights, such as the expulsion from the home, the education, the health system, and the labour market, leading travestis to sex work and exposing them to health risks, criminalization, social stigma, and police abuse (Radi & Pecheny, 2018). The legal recognition of gender identity, thus, makes the enjoyment of other rights possible, giving citizenship and democratic participation a new meaning (Berkins & Fernandez, 2005; Cabral Grinspan & Viturro, 2006; Pecheny & De la Dehesa, 2011; Radi & Pecheny, 2018; Rapisardi, 2003).

The demands for the legal recognition of gender identity began to take shape in the first decades of 2000, with the formation of the Anti-Discrimination Liberation Movement (MAL, led by Diana Sacayán), the Argentinian LGBT Federation (FALGBT), and the National Front for the Gender Identity Law. The National Front for the Gender Identity Law and FALGBT prepared a draft law on Gender Identity, which was finally adopted in 2012 as Law 26.743. The law entitles a person to change their sex and name in an administrative proceeding, without requiring medical or psychological advice or body intervention, and recognizes the person's right to undergo therapy, treatments or surgeries, provided by the State. The implications of the law on bodies are discussed in Section 2.2.

The law was celebrated by trans activists and allies, but it was also critiqued by travesti activists because it upholds the binary construction of the sexes as men/women, "cancelling out the travesti or trans identity" (Wayar, 2012). Nevertheless, as de Mauro Rucovsky and Russell (2019, p. 224) point out, the law has become "a political toolbox rather than a mere legal instrument," which has impacted the interpretation of other laws, including criminal law as we shall see, and it has also helped to disrupt the binary construction of gender identities by, for instance, allowing registries and courts to grant identity documents without gender indi-

cation. These challenges to binary sex were also present in the most recent annual feminist meeting—'Encuentro Nacional de Mujeres' (gathering thousands of women every year)—calling for a new name that explicitly includes trans/travesti subjectivities and realities. They have also been institutionally supported by the creation of the national ministry for 'Women, Genders and Diversities.'

To some extent, Law 26.743 also contributed to the realization of basic substantial rights, such as the right to education, health, housing, and work. This has been particularly the case for younger generations (Saldivia Menajovsky, 2018), yet the adult trans/travesti community has not experienced substantial changes and have limited access to basic human rights due to insufficient implementation (Korol, 2018; Viturro, 2014).

2.2. Body Sovereignty

According to Fernández (2003), the visibilization gained during the 1990s provided an opportunity to question the sex/gender binary and the social construction of bodies and sexes. 'Travesti bodies' are seen as cultural, social, and political objects (Fernández, 2003, p. 147) that confront the oppressive western construct 'man/woman' (Berkins, 2007). Laws have controlled and disciplined their bodies in different ways. Social rejection and institutional harassment, particularly by the police, are ways of disciplining travesti bodies that do not comply with dominant appearances, either because the lack of resources prevents them from accessing the technologies to change their bodies or because they are comfortable with their own embodiment.

Restricting the possibility to change one's gender attributed at birth is another way of policing bodies. Before the adoption of Law 26.743, the 'real' gender of an adult person was determined by judges with the advice of different medical disciplines, regardless of the person's will. The law stripped judges and doctors from such power and gave it back to the individual. Since then, the person is free to determine their gender identity in a simple administrative procedure free of charge.

Moreover, the approach of Law 26.743 towards body intervention is one of rights rather than requirements. Article 11 substantiates the right to a "free personal development" (Ministerio de Justicia y Derechos Humanos, 2012a) ensuring that every person older than 18 can access surgery or hormonal treatments to adapt their bodies to their perceived gender identity, without any judicial or administrative authorization. This approach discourages binary and hegemonic depictions of bodies and, importantly, it entails the legal recognition of the person's 'sovereignty' on their own bodies, a longstanding demand of the trans/travesti community. The institutional cultures, however, show difficulties in accommodating the new law since the medical and judicial practices of requiring physical and psychological examinations are deeply rooted, and so are hegemonic and binary views of bodies.

2.3. Murder Accountability

Trans/travesti and feminist activists in Argentina have also demanded accountability for gender-based murders for decades. Different conceptualizations have emerged in that process, each carrying different symbolic and legal implications. This section discusses the conceptualizations (femicide, travesticide, and hate crime) that are relevant to fully understand the final judgment on Diana Sacayán's murder, their theoretical and symbolic meaning, and their legal implications.

2.3.1. Femicide and Travesticide

The visibilization of femicide relates to a historical and social process of recognition of the human rights of women and their right to a life free from violence. The theoretical concept of 'femicide' made the systematic murder of women visible. It was defined by Radford and Russell (1994) as the killing of women perpetrated by men and elaborated further by Lagarde (2006) to underline the gendered nature of the killings and the social constructs behind them. The notion was introduced in shadow reports, *amicus curiae* briefs, and individual petitions before the Inter-American Human Rights System (IAHRS). In 2008, the Committee of Experts monitoring the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women adopted the Declaration on Femicide (Mechanism to Follow Up Convention of Belém do Pará Committee of Experts on Violence, 2008), and the Inter-American Court on Human Rights (IACtHR) recognized it in *González et al. v. Mexico* ('Cotton Field'). In Argentina, Casa del Encuentro, a feminist association, published the first report on femicides the same year.

These demands resulted in the adoption of Law 26.485 in 2009 on the integral protection of women from violence and the amendment of the Criminal Code by Law 26.791 in 2012 on gender-based crimes. The amendment to the Criminal Code consisted of introducing new aggravations to murder in Article 80, capturing the gender-based nature of the crimes. It explicitly criminalized the murder of "a woman, committed by a man in a situation of gender-based violence" (Ministerio de Justicia y Derechos Humanos, 2012b, Article 80.11), commonly referred to as 'femicide' in all prosecutorial guidelines, protocols, doctrine, and the media. The introduction of these aggravations follows the regional tendency, encouraged by the IAHRS, to adopt gender specific definitions of crimes as an attempt to making visible the structural power imbalances that underlie such crimes. Gendered definitions of crimes send a strong message that such violence is unacceptable, challenging gender stereotypes that view violence as natural and belonging to the private sphere. Yet, the question arises whether, beyond such symbolic meaning, gender specific crimes help in preventing impunity and improve access to justice. In principle, they contribute to collect disaggregated

criminal statistics, revealing the prevalence of such violence and adopting more effective policy measures.

Adopting a gendered definition of femicide, however, did not per se yield significant changes in practice. In fact, in 2015, the impunity of violence against women and girls in Argentina reached unprecedented levels, triggering social uproar. This year would become a milestone for several reasons. On June 3rd, 2015, a massive nation-wide demonstration against the murder of women took place, setting in motion an organized movement that expanded to other countries in the Americas—the *#NiUnaMenos* movement—actively supported by Diana Sacayán and Lohana Berkins.

These demonstrations resulted in two institutional changes. The first was the creation in 2015 of the Prosecution Unit for Violence Against Women (UFEM), which dictates prosecution protocols and publishes annual reports on the murders of women in the city of Buenos Aires. The second development was the decision of the Supreme Court of Justice (SCJ) to formally record femicides and issue a nationwide annual report on such cases. These recording initiatives ensure the visibility of the murder of women.

Yet, the murder of trans women and travestis seem to call for a conceptual twist of the theoretical notion of femicide and its current criminal 'translation' for two reasons. Firstly, the official reports on femicide and protocols suggest that the inclusion of trans and travesti victims as 'women' has not always been consistent, showing the limitations of the Gender Identity Law and bringing to question whether the current notion of femicide truly increases access to justice and fights impunity. For instance, the UFEM reports interpret 'women' in line with the Gender Identity Law and include all female subjectivities regardless of their gender assigned at birth, the formal registration of their gender identity, or how they were identified in the criminal process. However, the criminal framing of their murder has shifted through the years, sometimes referring to them as homophobic and transphobic femicide, sometimes as hate crimes (UFEM, 2015) and, more recently, as travesticide (UFEM, 2018). The SCJ annual reports on femicide include trans and travesti victims only since 2018 (Corte Suprema de Justicia de la Nacion, 2018). The current gender-specific crime of femicide, thus, even if read in line with the Gender Identity Law, does not fully ensure the visibility of trans and travesti.

Secondly, despite existing protocols, national jurisprudence suggests that the requirement that the crime was committed 'in a situation of gender-based violence' is often (mis)interpreted as calling for the perpetrator to be the intimate partner (intimate femicide) and the victim in a subordinated position in relation to the perpetrator. Such understanding of 'gender-based violence' does not meet the demands of Radi and Sardá (2016), who argue that a definition of trans-femicide/travesticide must reflect that murder is the most visible and final expression in a long chain of structural violence encouraged by a cultural, social, political, and economic system, structured around the gender binary. The murder of trans/travestis constitutes, in fact, the end of a continuum of violations they face. To achieve any symbolic impact, the criminal definition must capture the specificity of these experiences.

2.3.2. Hate Crime

The 2012 amendment that incorporated femicide to the Argentinian Criminal Code also incorporated sexual orientation and gender identity (SOGI) to the list of grounds aggravating murder based on 'hate' (Ministerio de Justicia y Derechos Humanos, 2012b, Article 80.4). The recognition of hate crimes, however, shows a very different trajectory at the national level than that of femicide or gender identity. Although such incorporation is in line with the recommendation of the Inter-American Commission of Human Rights (IACHR, 2015, p. 270) to "enact hate crimes legislation to identify, prosecute, and punish prejudice-based violence against persons due to perceived or actual sexual orientation and gender identity," debates on hate crimes based on SOGI have not been prominent in Argentina. In fact, although LGBT movements in other countries have promoted hate crime as a political and legal tool for addressing violence against the collective, the trans/travesti movement in Argentina did not follow that line. Nevertheless, the Homosexual Community of Argentina started issuing annual reports on hate crimes in 2011, dedicating their 2015 Report to Diana Sacayán. In 2016, the Office of the Public Defence of Buenos Aires, the National Office of Public Defence, and the LGBT Federation formed a National Observatory for LGBTI Hate Crimes.

Despite the incorporation of hate crimes based on SOGI to the Code, there have been very few judicial cases, particularly on transphobic hate crimes, and there is consequently scarce national doctrine elaborating on their defining characteristics. An overview of their key aspects, however, is needed to assess the potential of the hate crimes for making trans murders visible and challenge impunity.

Regarding the visibility of the trans/travesti community, a relevant aspect of hate crimes is that perpetrators target the victims' (perceived) belonging to a given group, not their individual traits (Craig, 2002; Gerstenfeld, 2004; Mcphail, 2012; Perry, 2012). In fact, Perry and Alvi (2011) argue that hate crimes are symbolic acts performed for specific audiences, where the perpetrator sends a message to the group that they are unwelcome and that any group member could be the next victim. Most definitions of hate crime, thus, revolve around the group affiliation of the victim, yet only a few of them emphasize the disadvantaged social positioning and marginalization of victims and groups (Copeland & Wolfe, 1991; Perry, 2012; Sheffield, 1995). Nevertheless, group-based definitions often "tend to oversimplify victim groups and do not take into account the diverse

experiences of victims and the nuances of the harms they suffer" and prevent an intersectional understanding of their identities (Mason-Bish, 2014, p. 42). In relation to trans persons, in particular, Meyer (2014, p. 122) holds that mainstream hate crime discourse "aligns the victim's identity with normative conceptions of homosexuality," therefore representing victims in a gendered and racialised manner, implicitly assuming that victims of hate crimes are white middle-class gay men, hiding other aspects and victims. The potential of hate crime for making violence against trans/travestis visible will thus largely depend on how group belonging is framed and how victims are perceived.

Aspects connected to the subjective element of the crimes may, in practice, jeopardize the prosecution and punishment of the violence. Firstly, most definitions of hate crime focus on the perpetrator's bias ('hate') against the victim (Zaffaroni, 2007). This means that, in addition to the intent to commit the crime, hate crimes require a specific motivation behind their commission (Figari, 2018; Hall, 2013; Jacobs & Potter, 1998; Juárez, n.d.; Zaffaroni, 2007), which puts an additional burden on prosecutors and the police that need to prove it (Hall, 2013). There is also much dissent among scholars on what the motivation is. Hall (2013, p. 9) argues that it is 'prejudice' and not hate that we refer to when we talk about hate crime. The IACHR (2015, p. 44) specifies this further, suggesting that hate crimes consist of "prejudice motivated by the perception towards non-normative sexualities and identities." Jamel (2018), however, suggests that transphobic hate crimes convey the offender's 'fear' of trans people based solely on their physical appearance. Argentinian scholars like Buompadre (2013) and Figari (2018) argue that hate crimes are characterized by an 'extreme aversion' of the perpetrator against the victim's group belonging. Each of these understandings of 'hate' suggests a different intensity of the bias and have evidence-related implications. For instance, Figari (2018, p. 16) suggests that 'aversion' is so strong that it calls for a psychological assessment to rule out any potential exclusion of culpability due to mental and emotional conditions.

Secondly, the way the causal link between prejudice and the commission of the crime is defined by law will also determine the number of cases prosecuted. If norms require hate crimes to be only motivated by prejudice to the exclusion of all other factors, fewer offences will be recorded. According to Figari (2018, p. 9), Argentinian law requires this connection. Conversely, if the causal link is less strict and allows for other additional factors, e.g., economic interest, more offences will fall under the category (Jacobs & Potter, 1998, p. 33).

Some aspects connected to the material elements of hate crimes may prolong the impunity of some forms of violence against trans/travestis. Hate crimes often show high levels of cruelty that exceed the instrumental purpose of submitting the victim, particularly those against LGBT persons (IACHR, 2015). For some authors,

this 'overkill' constitutes an objective element of the crime (Hall, 2013; Jamel, 2018) that must be backed by evidence, which means that crimes lacking such brutality will not be prosecuted as hate crime. Moreover, hate crime is usually associated with severe offences only, excluding minor forms of violence (Meyer, 2014). In Argentina, transphobic hate only aggravates murder or severe bodily injuries, which means that other forms of violence committed against trans/travestis, including sexual violence and property crimes, will receive a 'regular' punishment with no indication of the motivation behind them.

Despite the limitations of the crime of femicide and hate crimes based on gender identity to make travesti experiences visible described in these sections, the new draft Criminal Code submitted to Congress in May 2019 keeps the wording of Article 80 ("murder of a woman by a man" and "hate based on gender identity"; Ministerio de Justicia y Derechos Humanos, 2012b) intact.

The next section explores the potential of the current framework to address these three historical trans/travesti claims in the criminal justice context.

3. The Diana Sacayán Case

3.1. Introduction to the Case

Diana Sacayán's body was found gagged and with bound hands and feet in her apartment in Buenos Aires on July 13th, 2015. Her body had multiple cuts and bruises, and knives were found on the scene. The perpetrators forced the front door from the inside to escape. A man with whom she had an intimate relationship was charged with her murder.

As mentioned, Diana Sacayán was a prominent activist, trans human rights defender, representative of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, and founder of the MAL. She also worked at the National Anti-discrimination Institute (INADI). Diana was the first person to change her gender identity after the adoption of the Gender Identity Law and successfully advocated for the adoption of trans quotas in the public sector and a protocol for trans-specific public health care in Buenos Aires. She had an established media presence. Her death severely affected the LGBT community in Argentina. Diana's family and civil society organizations mobilized after her death and formed a commission called 'Justice for Diana Sacayán/End travesticide' ('the Justice Commission'). The Commission actively engaged with the media, raising awareness and seeking social support. There was regular media reporting on the case, with the collaboration of experts and activists.

There were four main acting parties in this case: the defence, the main prosecutor, and two auxiliary prosecutors, one on behalf of the INADI and another on behalf of Diana's brother. In addition, the UFEM (supported by the Justice Commission) acted as advisor to the main prosecutor. The unusual number of persons involved in

the trial reflects the public interest it evoked. Prior to the final judgment, the head of the UFEM described in an interview the role of the Justice Commission in relation to the prosecutorial strategy in the case: "The construction was a collective one, with the family and the organizations. They [the Commission] asked for things that forced us [the prosecutors] to reconsider some notions. They voiced their concerns, we responded" (Revista Institucional de la Defensa Pública, 2018, p. 337).

3.2. Main Arguments of the Parties

The parties based their arguments on a combination of theoretical conceptualizations and legal notions, some in unison and some diverging.

3.2.1. 'Travesticide' as a Theoretical Notion and Means of Visibility and Recognition

This trial introduced the term travesticide in a judicial procedure for the first time and brought it to the attention of the media. The Commission emphasised two aspects. Firstly, although gender-based violence is common to femicides and the murder of travestis, 'travesticide' aimed at capturing the specificities of such murders. Second, it attempts to make visible the structural vulnerability, marginality, and systematic violence affecting the majority of trans/travestis. These two aspects lie at the core of the notion, and in a way, comprises all claims described in the previous section.

All prosecutorial parties agreed that the notion of 'travesticide' fleshes out the historical and structural discrimination against trans/travestis and their exposure to violence throughout their lives (Poder Judicial de la Nación, 2018, p. 174). Yet, how to frame in criminal law a murder theoretically conceptualized as travesticide? Article 80 of the Criminal Code (Ministerio de Justicia y Derechos Humanos, 2012b) offers the chance to criminalize the murder as a hate crime based on the sexual orientation or gender identity (Section 4 of Article 80), and/or as 'femicide,' the murder of a woman by a man in a context of gender-based violence (Section 11 of Article 80).

3.2.2. Travesticide as a Hate Crime

All parties considered that travesticide fell under the aggravation of hate crime based on gender identity and that this judgment was an opportunity to fill the doctrinal gap on such crimes in Argentina. In their oral pleadings, the prosecutorial parties followed the guidelines of the 2015 Report on violence against LGBTI persons by the Inter-American Commission—the IAC Report—to assess the scope and evidentiary requirements for hate crimes.

The prosecutorial parties highlighted the structural and discriminatory nature of the violence against trans/travestis (Poder Judicial de la Nación, 2018, pp. 29, 32, 37), in line with Perry's (2012) socio-structural approach to hate crime and the IAC report. They introduced official reports and experts' testimonies as evidence, and more importantly, the testimonies of the trans community regarding their life experiences. They also provided long and detailed accounts of Sacayan's life, paralleling those of the trans community, a strategy also used by the IACtHR in its judgments on femicide (Celorio, 2010; Sosa, 2017). The UFEM emphasized the relevance of the structural context and its legal implications, particularly in relation to reparations.

Regarding the type of motivation that falls under 'hate,' the INADI and the main prosecutor considered it refers to the "aversion" against a person or group of persons (Poder Judicial de la Nación, 2018, pp. 32, 54), suggesting a threshold higher than that for "prejudice." The prosecutor argued that such aversion was triggered by the victim's characteristics (Poder Judicial de la Nación, 2018, p. 54), while the INADI considered it resulted from the "contradiction between desire and rejection of the travesti body" (Poder Judicial de la Nación, 2018, p. 25). However, they did not explain the connection between the aversion of the abuser and the context of discrimination and exclusion, thus contributing to the idea that such murders are incidental and the product of one individual.

The INADI and the defence lawyer agreed that although the "aversion" belongs to the internal process of the abusers, it shows in their actions and other explicit or symbolic manifestations (Poder Judicial de la Nación, 2018, p. 33). The derogative comments by the mother or acquaintances of the accused about trans persons could constitute an indication of the aversion, the prosecutor argued. The defence lawyer refused, however, arguing that only the personal manifestations of the accused could prove his aversion against travestis and, thus, additional evidence was needed (Poder Judicial de la Nación, 2018, p. 120).

3.2.3. The Relevance of Bodies in Travesticide

The INADI emphasised that the abuser could either "leave a message on the walls or on the victim's body" (Poder Judicial de la Nación, 2018, p. 33). For all parties, the victims' bodies can indicate the special aversion of the abuser, the intention to humiliate the victim, and the rejection of her identity, proving the subjective element of hate crimes (Poder Judicial de la Nación, 2018, pp. 22, 35, 44). Diana's body thus became the main evidence of 'hate.' The three prosecutorial parties agreed that the wounds on her breasts, buttocks, and face could prove the aversion of the abuser (Poder Judicial de la Nación, 2018, pp. 22, 52, 55).

The connection between the definition of the crimes and the overkill (high levels of brutality) determines the level of violence travesti bodies are expected to have suffered. For instance, the INADI considered that the overkill was an inherent element of hate crimes, manifested in victims' bodies (Poder Judicial de la Nación,

2018, p. 38). This implies that, in his view, these crimes require excessive violence, even if the result is murder. The defence lawyer agreed with him and added that the IACHR illustrated 'overkill' with examples of extreme (sexual) violence, such as decapitation, multiple ejaculations on bodies, etc. (Poder Judicial de la Nación, 2018, p. 114). He then argued that the level of violence displayed by Diana's body did not meet the required level of severity, and that her wounds corresponded to weapons used (knives) and her defensive behaviour (Poder Judicial de la Nación, 2018, p. 115).

Conversely, the victim's representative disagreed with the inherent character of the overkill, arguing that such excessive violence would in fact constitute an additional aggravation of the crime, falling under Article 80.2 (Poder Judicial de la Nación, 2018, p. 22). Under this approach, murders which are not exceedingly brutal could still constitute hate crimes, and the instrumental role of travesti bodies could be circumvented, along with the severe scrutiny they are subjected to.

3.2.4. (Trans)femicide

Both auxiliary prosecutors understood that the murder of Sacayán also fell under the aggravation of femicide (Article 80.11; Ministerio de Justicia y Derechos Humanos, 2012b) since according to the Gender Identity Law she was a woman, and the crime was committed in a context of gender-based violence. In fact, all prosecutorial parties considered that Diana's gender identity was enough justification to frame the crime as femicide, without elaborating on the objective element—the situation of gender-based violence. The prosecutor suggested the subordinate position was evident "between a man and a woman" (Poder Judicial de la Nación, 2018, p. 39). Such a position, however, does not underscore the structural context of violence against trans/travestis. Particularly since the defence lawyer challenged the classification of the crime as femicide because, he argued, Diana was not in a subordinated position. "She appears as a political referent of LGBTI organizations, speaking in International fora, with a large network. [The suspect] is a shy boy, who keeps silent in meetings, lives with his mother, has never been heard uttering a gender-violence type of expression, and has no previous record in that sense" (Poder Judicial de la Nación, 2018, p. 130). Elaborating on how gender-based violence transcends inter-personal relationships, thus 'intimate femicide,' and how this can be proved in court helps to capture the structural violence and discrimination that trans/travestis face.

In addition, the main prosecutor considered that the aggravation of femicide applied only subsidiarily if hate crime is ruled out (Poder Judicial de la Nación, 2018, pp. 58, 61). This raises the question of whether victims' identities can be considered from an intersectional perspective if their deaths can only be framed either as a hate crime or femicide.

3.3. The Final Judgment: Between Travesti Demands and the Letter of Criminal Law

The tribunal, comprised of three judges, sentenced the accused to life imprisonment for the murder of Diana Sacayán, aggravated by Article 80.4 (hate based on gender identity) and Article 80.11 (femicide; Ministerio de Justicia y Derechos Humanos, 2012b). The 414 page-long decision features the reasoning of Judge Calvete (chair), Judge Baez, and the dissenting opinion of Judge Bloch. Their combined argumentations clarify important legal aspects of the violent murder of trans/travestis raised by the parties, notably, the possibilities to capture the socio-structural nature of such violence in criminal law and evidence-related aspects of transphobic hate crimes.

3.3.1. Criminal Law and Socio-Structural Perspectives on Violence

Perhaps the most notable aspect of the judgment is the judges' recognition of the structural nature of the discrimination and violence against trans/travesti, with clear references to the continuum of violence they suffer (Poder Judicial de la Nación, 2018, p. 381). The statistics, reports, and testimonies helped in shaping this new dimension. The judges' depiction of Diana throughout the judgment, informed by the vivid testimonies, went beyond the typical victim profiling and emphasized the parallel with the lived realities of travestis. This acknowledgment includes the institutional dimension of the violence. Judge Bloch admitted that violence is often committed by public institutions, particularly by the police (Poder Judicial de la Nación, 2018, p. 314). She also underscored that the lack of an investigation and prosecution leads to the invisibility of the violence and explains the lack of jurisprudence on transphobic hate crime despite the high prevalence of transphobic violence (Poder Judicial de la Nación, 2018, p. 379).

All judges recognized that the conceptual use of 'travesticide' reveals the complex structural dimension of the violence affecting trans women. Bloch suggested that it should be possible to introduce "as many names as there are types of hatred and subjectivities," if it helps in making an existing problem more visible (Poder Judicial de la Nación, 2018, p. 387). Calvete saw "no obstacle to its forensic usage" if it helps clarify the case at hand (Poder Judicial de la Nación, 2018, p. 174). That said, Bloch pointed out that there are alternatives for legally framing travesticide—as hate crime (Article 80.4), but also as femicide (Article 80.11) when the victim is a trans woman ('transfemicide'; Poder Judicial de la Nación, 2018, p. 388). However, Calvete and Báez, like the prosecutors, seemed to consider that 'hate crime' was the only possible framing, which in practice may lead to overlooking the socio-structural nature of the violence against travestis (Poder Judicial de la Nación, 2018, pp. 175, 214).

Judge Bloch reveals the first challenge that hate crimes pose to structural understandings of violence

by highlighting that the legal definition of hate crimes does not seek to protect groups facing structural discrimination, as the prosecutor argued (Poder Judicial de la Nación, 2018, p. 372). The judges agreed that hate crimes are defined by the motivation of the abuser, rather than the characteristics or group belonging of the victim. It constitutes a hate crime when the abuser murdered because of his aversion based on the gender identity of the victim, regardless of whether the victim was really trans/travesti (Poder Judicial de la Nación, 2018, pp. 173, 307, 325, 365). Hate crimes, Bloch argued, are more severely sanctioned because they infringe on the autonomy of the victim and other members of the 'protected' group in addition to the primary violation (against life, physical integrity, sexual autonomy, property, etc.). That "individual liberty," she argues, is precious to all democratic systems (Poder Judicial de la Nación, 2018, pp. 316, 317). The second challenge arises precisely from the legal conceptualization of 'hate' as 'aversion.' In line with Figari (2018), Calvete explains that aversion points to an individual motivation of a psychological nature, in opposition to that in 'femicide,' which is "cultural or sociological" (Poder Judicial de la Nación, 2018, p. 171). Could hate crime ever capture the socio-structural understanding of travesticide, even when all judges have acknowledged it?

The judges' discussion regarding femicide and the meaning of 'gender-based violence' also raises questions regarding its usefulness to capture socio-structural perspectives. All judges agreed that trans women and travestis constitute 'women' in the meaning of the law. They agreed to a large extent about the nature of gender-based violence. Judge Baez critiqued the legislative technique that establishes that only a man can be the perpetrator of femicide and a woman the victim (Poder Judicial de la Nación, 2018, pp. 272–274), yet he recognised that, in line with the human rights documents ratified by Argentina and the parliamentary debates on femicide, gender-based violence is the expression of a system of domination that perpetuates inequality between men and women, based on an unequal power relation. Femicide, thus, recognizes a situation of subordination based on an unequal relation of power. For Judge Bloch, however, such power relations cannot be taken for granted in every relationship and must be supported by evidence (Bloch, 2014; Poder Judicial de la Nación, 2018, pp. 396–397).

3.3.2. Proving 'Hate'

Another challenging aspect of hate crime is the difficulty to prove the subjective element, which all parties linked to the body of the victim. In line with travesti claims, Judge Báez elaborated on the social construction of trans/travesti bodies, arguing that bodies are social, cultural, and political entities affected by the norms, expectations, and stereotypes of the patriarchal society to which they must conform (Poder Judicial de la Nación,

2018, p. 200). The asymmetry of power is, in fact, reproduced on bodies, adopting multiple forms and varying from one culture to another. Yet this type of violence "often becomes invisible and naturalized through socialization, disguised as beliefs, legalized by laws, customs, publicity and by stereotypes of masculinity and femininity" (Poder Judicial de la Nación, 2018, p. 201). These dynamics led to "the objectification of the feminine or transsexual body" and thus "women are denied as subjects, subdued, alienated and manipulated. Women or transsexuals lose their individual agency and are subject to men's desire" (Poder Judicial de la Nación, 2018, p. 202). Unfortunately, the judge did not explain how such social policing on travesti bodies could be proved in practice.

Only Judge Bloch focused on the evidence aspect of hate. She provided an inventory of applicable evidentiary means based on the FBI guidelines and the IAC Report, and then analysed the criteria mentioned by the parties and judges. Among the elements indicative of hate crime was the brutality of the crime and signs aiming to erase the victim's identity, (based on the location of the wounds). Judge Bloch confirmed the relevance of the IAC Report as a guiding document and agreed that these criteria should guide the investigation and prosecution of hate crimes (Poder Judicial de la Nación, 2018, p. 342). However, she disagreed that these criteria were met in the specific case, particularly regarding the level of brutality and the placing of the wounds. She considered that the level of violence was not comparable to the examples used in the IAC Report. She did not consider that the wounds on the victim's face, breasts, and buttocks were an attempt to 'erase' her travesti identity either, but were consistent with self-defence signs (Poder Judicial de la Nación, 2018, p. 345). Arguably, the long and detailed discussion on bodies by Judge Baez could have challenged this view if it had focused on the case at hand, making a crucial contribution.

4. Final Reflections

Diana Sacayan's trial constituted a means to seek justice for her murder and a unique opportunity to consolidate the right to gender identity and re-voice longstanding demands about the integrity of travesti bodies, access to human rights, and the right to a life without violence. These demands were introduced to the trial through the combination of procedural mechanisms and an overarching conceptual notion. The first procedural measure used was the informal interaction of an ad hoc Commission, composed by family members, trans activists and other allies, and the prosecution office. The second measure was the intervention of Diana's brother and the INADI as auxiliary prosecutors. The third was the incorporation of testimonies of gender/trans experts, activists, and witnesses. Finally, media management during and after the trial, prompted by the Justice Commission, triggered the debate on the murder of travestis, and to a lesser extent, their living conditions. While this article has focused

on the conceptual aspects of the trial, the procedural aspects would certainly merit further analysis.

The overarching conceptual notion of 'travesticide' was employed to name the murder of travestis and make visible the continuum of violence they face. The idea of a 'continuum' helps to recognize not only the murder but also the violence leading to it, such as the rejection of trans/travesti identities and bodies and the exclusion and denial of their human rights. The structural and institutional nature of such violence becomes clear. The prosecutors introduced the notion and the tribunal unanimously accepted it. The judges disagreed about the possible criminal framing of travesticide, suggesting that different prosecutorial strategies can be devised.

The prosecutorial parties and two judges favoured framing travesticide as hate crime based on gender identity (Article 80.4; Ministerio de Justicia y Derechos Humanos, 2012b). However, such framing raises three issues that claimants should carefully consider. Firstly, the structural nature of the violence is not properly captured by the crime because it focuses on the motive of the accused, that is, their 'aversion' against travestis. Murders appear as incidental, the result of a mad man, despite the prevalence and structural nature of the violence. Secondly, hate crime establishes a high threshold to prove guilt. While the IAC Report can guide in such an attempt, victims' bodies will inevitably become the main piece of evidence. Thus, travesti bodies get scrutinized once again in their death, submitted to a normative examination to find indications of the perpetrator's aversion. Finally, it is unclear if hate crime can capture the intersectional nature of the discrimination against the victims, since, despite all testimonies about the richness of Diana's identity ('trava sudaca originaria' and activist), all discussions ended up focusing on only one aspect: her gender identity.

Judge Bloch argued the notion of 'travesticide' can be criminally framed as gender-based violence against women (Article 80.11 'femicide'; Ministerio de Justicia y Derechos Humanos, 2012b) when the victim is a trans woman or travesti. The tribunal confirmed that trans/travesti women are protected under Article 80.11 since the adoption of the Gender Identity Law. Article 80.11 seems more in line with the structural element of travesticide because it connects it with 'gender-based violence.' That said, their subordinated position requires proof. Moreover, given the legislator's decision to adopt a gender-specific approach ("male perpetrators and female victims"; Ministerio de Justicia y Derechos Humanos, 2012b) the specificity of travesticide is replaced by 'women,' imposing a binary view of the travesti identity. The question remains whether both the feminist and travesti collective would agree to adopt a definition of gender-based violence that focuses on 'genders,' without naming specific gender subjectivities. In any case, the tribunal held that hate crimes and femicide can concur, allowing a more intersectional view of travesti identities.

In sum, Diana Sacayán's trial was a collective achievement that employed effective strategies to unveil trans/travesti experiences, nearing social and institutional recognition and accountability. The complexity of travesticide, however, cannot be properly captured by the current structure of neither hate crimes nor femicide, rendering the criminal response insufficient. These reflections can improve future criminal strategies, and perhaps inform debates prior to the adoption of the new draft of the Criminal Code.

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Conflict of Interests

The author declares no conflict of interests.

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Article

Contestations of Transgender Rights and/in the Strasbourg Court

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Abstract
Transgender rights are a highly contested issue, upsetting the 'normal' ordering of society. In Europe, transgender persons continue to suffer discrimination and harassment, and their rights are contested time and again. Eventually they can turn to the European Court of Human Rights (the Court) in Strasbourg. In such politically sensitive matters, how do judges in Strasbourg decide? Do they set European norms bolstering transgender rights, or do they refrain from interference in state affairs? Testing expectations based on rational and sociological institutionalism, this article analyses all 33 Court cases on transgender issues since 1980. As a judge's low score on trans rights in their home country does not mean that they vote against trans rights, and as judges do no defend their home country but vote with the 'pro-state' or 'pro-trans' majority, rationalist expectations were not confirmed. Sociological institutionalist processes of widening and narrowing tell us more about the hesitant and uneven strengthening of transgender rights, if within the limits of binary thinking as regards the transgender body, marriage and family.

Issue
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1. Introduction

Time and again, transgender rights are contested. Carried by a wave of radical right populism, conservative nationalism and religious fundamentalism, hate speech against, and discrimination of, transgender people are perceived to once again be on the increase in Europe (ILGA-Europe, 2020, p. 7). When they are slighted by a state, transgender people can turn to Strasbourg's European Court of Human Rights (hereafter the Court), which enforces the human rights codified in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter the Convention). All 47 of the current member states of the Council of Europe have adopted the Convention. Although it does not mention transgender rights specifically, some articles clearly are relevant, such as respect for private and family life (Article 8). Since its inception in 1959, the Court has delivered over 21,600 judgments, and

in 84 percent it found at least one violation of the Convention (European Court of Human Rights, 2019, p. 3). While this high percentage of judgments criticising state behaviour sounds hopeful for people whose rights have been violated, the balance is far less favourable in transgender cases. In 33 judgments, the Court found violations in only 39 percent (calculation based on HUDOC, n.d.; see Tables 1 and 2 for details).

Given continuing contestations of trans rights, do the Court's judges set European norms bolstering transgender rights, or do they defend state sovereignty in such politically sensitive matters? This question is the focus of this article. Former president of the Court Wildhaber warned that: "If we are perceived as catering too much to the government, scholars and practitioners will criticise us" (as cited in Bruinsma & Parmentier, 2003, p. 186). High-ranked politicians in several countries, including The Netherlands, Poland, Russia, Turkey and the UK, have complained that the Court promotes 'alien' European

norms without due consideration for national specificities (Amos, 2017; Mälksoo, 2016; Oomen, 2016; Swirc, 2017). Yet former judge Tulkens is quoted deploring that: "The raison d'état is more present here than I would have thought possible" (Bruinsma, 2006, p. 41). Contestations hence pit national sovereignty and judicial autonomy against each other. In legal terms, this question regards the balance between judicial restraint (inter alia, judges confirming a government's margin of appreciation) and judicial activism (judges widening interpretations to bolster political and societal change; de Waele & van der Vleuten, 2011).

As a political scientist, I frame the question as a puzzle involving rational and sociological institutionalism: To what extent do judges defend national norms and, indirectly, state interests, and to what extent do they act as European norm setters? Scholars disagree (see Amos, 2017). Some argue that opinions converge to a European norm in the Court (Arold, 2007a, 2007b), confirming sociological institutionalist expectations (Checkel, 2005). Others expect judges to cast their votes strategically, depending on perceived state interests (Garrett, Keleman, & Schulz, 1998). Clearing up this argument is the academic contribution this article aims to make. In addition, it presents the first analysis of all transgender cases decided by the Court between 1980 and 2020 from a political science perspective. The following section elaborates the institutionalist approaches. Next, I present the methodology. The empirical part presents the data concerning the judgments and judges involved.

2. Theoretical Framework

The Court has been praised as 'the crown jewel' of the international system for the protection of civil and political liberties (Helfer, 2008, p. 159). It has been studied by political scientists, who have focussed inter alia on the politics of judicial appointments (Voeten, 2008) and patterns of (non-)compliance by member states (Panke, 2020). Building on their work, this article explores to what extent judges bolster political and societal progress concerning transgender rights. I use two institutionalist approaches which explain outcomes as constrained and enabled by formal and informal institution: rationalist and sociological institutionalism.

Rationalist institutionalism assumes that actors, whether judges or governments, will act based on an assessment of their interests (Garrett et al., 1998). Their behaviour can hence be understood as guided by strategic calculations, in the sense of an assessment of what would strengthen or weaken their position materially and ideationally (see van der Vleuten, 2005). In that light, judicial behaviour can be explained based on judges' strategic interest. As 'agents' simultaneously embedded in a domestic and a European context, they will aim to avoid tensions with their 'principal,' i.e., the government that nominated them. Governments will prefer the status quo on transgender rights over costly changes to their legislation, unless societal mobilisation is such that the status quo becomes too costly and thus unattractive (van der Vleuten, 2005). Transgender norms are salient enough to engender high political and societal 'costs,' because they touch upon core state issues as marriage, family and the basic ordering of society into two stable categories of man and woman. In the rationalist view, judges will take into account their government's preferences and grant it a large margin of appreciation, because the Court's legitimacy depends on the member states accepting its decisions. In sum, rational institutionalism expects that: 1) Judges from countries where transgender rights are relatively poorly developed will support a narrow interpretation of European human rights, even more so when their home country is concerned; and 2) judges from countries where transgender rights are relatively well-developed will support a broad interpretation of European human rights.

Sociological institutionalism takes a different approach, not based on an individualist logic of consequences but on a logic of appropriateness. This logic departs from the understanding that individuals base their behaviour on an interpretation of their environment, and its written and unwritten rules. Sociological institutionalism sees European institutions as sites of socialisation, "insulated settings where social pressure [by the 'principal'] is absent or deflected" (Checkel, 2005, p. 806). This would enable actors to learn new, European norms that differ from the ones 'at home.'

Checkel (2005) identifies different mechanisms that induce agents to adopt new norms: "The key is the agents knowing what is socially accepted in a given setting or community" (p. 804). Agents will then behave accordingly because of so-called social sanctioning, a certain coercion to conform to the group in order to avoid being shamed. Some scholars argue that this peer pressure results in a trend "of unanimity and thereby homogeneity, which then proposes a claim towards European convergence" (Arold, 2007a, p. 320). In this view, judges do not want to be lone dissenters in the Court's 'splendid isolation' in Strasbourg (Voeten, 2008). In a perfect depiction of a social-sanctioning mechanism, Judge Rozakis describes his own experience as follows:

> Judges feel themselves assessed by their colleagues, they create their self-image in the eyes of their colleagues, and they run the risk of losing their respectability in their immediate environment if they pay too much attention to the interests of their home country. (As cited in Bruinsma, 2008, p. 38)

Another mechanism is social learning (Checkel, 2005, p. 812), when agents actively accept community norms as 'the right thing to do' and are willing to reshape their interests based on new arguments learned through deliberations and persuasion. When concepts and rights contained in the European Convention are reinterpreted in these deliberations in order to cover new issues,

such as the position of transgender persons, this can amount to 'widening' interpretations. The Court prides itself on its 'living instrument approach' (Amos, 2017, p. 21), which expresses the principle that the Convention is interpreted in the light of present-day conditions, and that it evolves through the interpretations of the Court. Sociological institutionalism hence expects that induced by social sanctioning and/or social learning, judges will articulate a broad interpretation of European trans rights.

Before turning to the methodological section, I will briefly present the institutional setting of the Court. The Court evaluates complaints by individuals against their government they deem in violation of the 1950 Convention or one of its protocols. Since 1998, all citizens of Council of Europe member states can appeal directly to the Court when they have no domestic legal remedies left. Cases are taken by a Chamber of three to seven judges, including the judge from the country involved in the case. Used in controversial or important cases, the Grand Chamber numbers 17 judges or more, including the national judge. The other judges are appointed by lot (European Court of Human Rights, 2020, Chapter V).

The principle of national representation is enshrined in the rules of the Court in different ways (European Court of Human Rights, 2020). Every member state of the Council of Europe is entitled to have one judge. It proposes three candidates, and the Parliamentary Assembly of the Council of Europe elects the judge from this list. Judges serve nine years. Procedurally, the 'national judge' plays a specific role because they act as gatekeeper for cases that concern their country. As rapporteur they make a recommendation on the admissibility of this case to a committee of three judges. If the rapporteur suggests dismissing the case and the other judges on the committee support the rapporteur, the case is dismissed without a decision on its merits. In the second stage, the 'national judge' is always included in the Chamber which decides the case.

3. Methodology

A search of the Court's database, HUDOC, resulted in 44 cases concerning transgender rights, of which 11 are still pending (last checked July 18, 2020). This leaves 33 cases for analysis. Transgender cases predominantly concern alleged violations of a small number of articles from the Convention, particularly Article 8 on the right to respect for private and family life, Article 12 on the right to marry, and Article 14 on the prohibition of discrimination.

Rationalist expectations were checked by assessing the situation for transgender persons in all member states over time. For the period between 2011 and 2020, I used information from the annual Rainbow Europe Country Index compiled by ILGA Europe, a non-governmental organisation which promotes equality and human rights for LGBTI people (ILGA-Europe,

2011–2020). The Rainbow index' country scores could not be used, however, as they have been calculated differently over the years, the indicators are weighed based on changing and perhaps political considerations, and they cover lesbian, gay and intersex rights as well. I have therefore selected 14 indicators from the index which refer to legal standards regarding transgender people: is persecution because of gender identity recognised in asylum law; are hate speech and violence against transgender people recognised in criminal law; does discrimination law address gender identity; can transgender people legally marry a person of the other gender; is there a procedure for legal gender recognition, and which conditions apply (divorce, medical mental diagnosis, surgery, sterilisation). For each indicator, I scored 0 (legislation absent at national level) or 1 (legislation present at national level), resulting in annual scores per country between 0 and 14.

Of course, legislation does not fully capture daily life in a country, but it does offer a relatively straightforward yardstick. Rational institutionalism would expect judges from low-scoring countries to deliver narrow, status-quo judgements, while judges from high-scoring countries would deliver pro-transgender judgements. Unfortunately, a similar calculation is not possible for years before 2011. The pioneering report by Whittle, Turner, Combs, and Rhodes (2008) has too many 'unknowns' and does not cover all countries involved. Other excellent overviews (Hammarberg, 2009; Van den Brink & Dunne, 2018) discuss the legal situation in countries at a given point in time. For the early years, therefore, I can only offer some examples.

Sociological institutionalist expectations were tested by analysing the separate opinions attached to Court decisions. Separate opinions present the arguments of judges who, in a concurring opinion, give an additional explanation on their vote, while in a dissenting opinion they explain why they disagree with the majority. All opinions were checked for instances of persuasion, widening and narrowing.

4. Transgender Cases before the Court

In 1976, Belgian lawyer Daniel van Oosterwijck, called Danielle at birth, lodged the first transgender case with the Court. He wanted to change the gender status in his birth certificate, but Belgian law had no provision to do so. The Court declared his request inadmissible, because he had not exhausted domestic remedies (*Van Oosterwijck v. Belgium*, 1976, p. 14). Nine years later, Mark Rees (Brenda at birth) submitted a similar request. The Court found no violation of his right to respect for private life (Article 8 of the Convention). Although Rees lost his case, his action in Strasbourg resulted in ample media attention and the birth of a trans rights advocacy group, Press for Change. *Rees v. the UK* (1986) also sparked a political campaign by UK Member of Parliament Alex Carlile, which would eventually result in

the UK's Gender Recognition Act in 2004 (Rees, 2009). Only in 2002 would the Court stop defending the British government's position (*Goodwin v. UK*, 2002).

Over the years, there are some recurring themes in the cases brought before the Court (see Tables 1 and 2), the most prominent one being legal gender recognition. Initially—as in Rees' case—cases concerned the sheer possibility to have one's birth certificate modified. Later cases concern the conditions set to qualify for gender recognition, most notably the obligations to divorce, to undergo genital surgery and to be permanently sterilised. Other cases regard marriage and parental rights. A last theme is sexual harassment and degrading treatment suffered by transgender sex workers. In 13 cases, transgender applicants won their case, while in 14 cases they lost it. No clear trend is shown over time, as won and lost cases alternate. The next section first examines whether annual country scores correlate with judges' voting behaviour in the Court, then studying how the "national judge" votes and tracing socialisation processes in the Court.

4.1. Conservative Countries, Conservative Judges?

National legislation and societal attitudes regarding transgender people continue to vary strongly between member states (Transgender Europe, 2019). The judges' voting behaviour might reflect these differences. Table 1 shows all 17 transgender cases until 2010 plus the votes cast (listed according to the judges' nationality instead of using their names). A vote aligned with transgender contestation is noted as 'trans,' a vote aligned with state policies is noted as 'state.' As noted above, I have no data to score the state of transgender rights in a country before 2011. Anecdotal evidence, however, suggests that there might be no correlation between national transgender rights and the voting behaviour of judges. In *Rees v. UK* (1986), for instance, the three judges voting in favour of legal gender recognition against the majority came from a forerunner (Denmark) and two laggards (Italy and Switzerland). In *XYZ v. the UK* (1997), minority votes arguing that trans rights were being violated came not only from forerunner Denmark but also from laggards Andorra, Bulgaria and Poland. And although Germany introduced legal gender recognition in 1980, German judges voted against a violation of trans rights in many cases.

For later years, the data allows for calculating the yearly scores of individual countries as regards the situation of transgender rights (see Section 3). Table 2 presents all cases between 2011–2020, with country scores.

For these cases, we found a slightly higher average country score (5.43) for judges who voted in favour of transgender rights than for judges who voted in defence of the state (5.03; Table 2), which is in line with rational-institutionalist expectations. Also, in all cases with minority votes, the average country score for 'pro-trans' voters is higher than for 'pro-state' voters, for instance in

Hämäläinen v. Finland (2014) and *X v. FYROM* (2019). That said, the number of cases is very limited. Even more troubling for any firm conclusion are the highly diverging scores at the individual level, where judges from high-scoring countries (Estonia, France, Portugal) vote 'no violation,' and judges from low-scoring countries (Armenia, Macedonia, San Marino) vote in defence of trans rights. I conclude that judges seem to vote independently, as their national situation regarding transgender rights cannot explain their voting behaviour.

4.2. My Government, My Vote?

How do judges behave when their own government is under scrutiny? In his quantitative analysis of 7,319 Court cases, Erik Voeten found that "national bias does matter and appears to be greater on politically sensitive issues" (2008, p. 418). When a ruling favours the applicant's country, the judge from that country more often votes with the majority than other judges; and when a ruling goes against 'their' country, they dissent more often (Voeten, 2008, p. 425). Voeten found that career incentives play a role, but also that "judges are subject to increased pressure on controversial cases that directly deal with the security of a country" (2008, p. 428).

For transgender cases, my findings are different. Tables 1 and 2 show how national judges voted, summarised by Table 3. In 14 cases of 27, national judges voted in defence of their home government with the majority in a state-supporting outcome. Sometimes they did so while hesitating. In *Sheffield and Horsham v. UK* (1998) for instance, a pro-state case with a narrow majority of 11–9, national judge Freeland admitted that he cast his vote defending the British state "after much hesitation and even with some reluctance," because "continued inaction on the part of the respondent State, taken together with further developments elsewhere, could well tilt the balance in the other direction" (*Sheffield and Horsham v. UK*, 1998, p. 25). In another case, national judge Ganshof van der Meersch voted with the majority defending the Belgian state, but his 'partially concurring opinion' reveals his doubts; he disagrees with the argument of the majority that the applicant should have appealed in cassation first, as the appeal clearly would be 'doomed to fail' (*Van Oosterwijck v. Belgium*, 1976, p. 19). In a single case, *B v. France* (1992), the national judge staunchly defended his government against the decision of a large "pro-trans" majority.

In the 12 other cases, the national judge voted with the majority in a transgender-rights supporting outcome against their government (Table 3). This was also the case in two recent cases, when national judges voted with the majority in favour of legal gender recognition (*YT v. Bulgaria*, 2020) and legal gender recognition of migrants (*Rana v. Hungary*, 2020). This is all the more striking because of the political situation in these countries. The Bulgarian government has decided against ratifying the Istanbul Convention of the Council of Europe

Table 1. Cases concerning transgender issues including voting behaviour, 1980–2010.

Case	Topic	Case #, Year decision	Vote and result	Nationality of judges voting aligned with state policies	Nationality of judges voting aligned with trans contestation
Van Oosterwijck v. Belgium	Legal recognition	7654/76, 1980	13–4 inadm. state	Be*-Cy-F-Ice-Ire-It-Mlt-NL-No-Port-Sp-Swe-UK	Au-Gr-Lux-Tk
Rees v. UK	Legal recognition	9532/81, 1986	12–3 state	Au, Fr, Ger, Ice, Ire, Lux, NL, No, Port, Swe, Tur, UK*	Dk, It, Swi
Cossey v. UK	Marriage	10843/84, 1990	10–8 state	Au, Fr, Ger, Ice, Ire, Mlt, No, Sp, Tur, UK*	Dk, Fin, It, Lcht, Lux, NL, Swe, Swi
B v. France	Marriage	13343/87, 1992	15–6 trans	Au, Cy, Fr*, Gr, Port, Sp	Fin, Ger, Hu, Ice, Ire, It, Lcht, Lux, Mlt, NL, San M, Swe, Swi, Tur, UK
XYZ v. UK	Family	21830/93, 1997	14–6 state	Au, Bel, Cz, Est, Fr, Ger, Gr, Hu, Lat, Lit, Lux, No, Port, UK*	And, Bul, Dk, Ice, It, Po
Sheffield and Horsham v. UK	Legal recognition	22985/93, 1998	11–9 state	Au, Bel, Cy, Cz, Gr, Lit, Mol, Port, Sp, Ukr, UK*	And, Ger, Ice, Lux, NL, Po, Ro, Swe, Swi
Goodwin v. UK	Legal recognition	28957/95, 2002	17–0 trans		Alb, Bel, Cro, Cz, Fr, Geo, Hu, Ire, Lcht, Lux, No, San M, Swe, Swi, Tur, Ukr, UK*
I v. UK	Legal recognition	25680/94, 2002	17–0 trans		[same as Goodwin]
Van Kück v. Germany	Surgery	35968/97, 2003	4–3 trans	Ire, No, Port	Ger*, Slove, Swi, Tur
Grant v. UK	Legal recognition	32570/03, 2006	7–0 trans		Alb, And, B&H, Fin, Mlt, Slovk, UK*
Parry v. UK	Marriage	42971/05, 2006	7–0 state	And, B&H, Fin, Mold, Po, Slovk, UK*	
R and F v. UK	Marriage	35748/05, 2006	7–0 state	Alb, And, B&H, Mlt, Mold, Po, UK*	
L v. Lithuania	Surgery	27527/03, 2007	6–1 trans	Swe	Fr, Geor, Hu, Lit*, Serb, Tur
Guerrero Castillo v. Italy	Legal recognition	39432/06, 2007	7–0 inadm. state	Be-Geo-Hu-It*-Port-SanM-Tur	
Nunez v. France	Legal recognition	18367/06, 2008	7–0 inadm. state	Cz-Dk-Fr*-Ger-Mac-Mo-Ukr	
Schlumpf v. Switzerland	Medical costs	29002/06, 2009	5–2 trans	Cro, No	Azer, Cy, Gr, Lux, Swi*
P.V. v. Spain	Family	35159/09, 2010	7–0 state	And, Arm, NL, Ro, Slove, Sp*, Swe	

Notes: * National judges.

to combat violence against women, inter alia because it believes that would increase the likelihood of young people identifying as transgender (Hervey, 2018). As regards Hungary, Orbán's anti-migration stance is well-known, and just two months before the Court's ruling, the Hungarian Parliament voted in favour of a bill that outlaws Legal Gender Recognition for transgender people (Transgender Europe, 2020).

Table 2. Votes in cases concerning transgender issues, 2011–2020.

Case	Topic	Case #, Year	Vote and result	Country scores of judges voting aligned with state policies	Average	Country scores of judges voting aligned w/trans contestation	Average
P v. Portugal	Legal recognition	56027/09, 2011	Strike-out (domestic law had changed in the meantime)				
Halat v. Turkey	Ill-treatment	23607/08, 2011	5-2 state	Ser, Tur* 4; Ice, Swi 5; Port 9	5.40	It 4; Bel 7	5.50
Cassar v. Malta	Marriage	36982/11, 2013	Strike-out (domestic law had changed in the meantime)				
Hämäläinen v. Finland	Marriage	37359/09, 2014	14-3 state	And, B&H, Mon 0; Lcht, Lit 1; Azer 2; It, Lat 4; Fin*, Lux 5; Fr, Gr, Mold 6; No 8	3.43	Swi 5; Hu 8; Bel 10	7.66
YY v. Turkey	Sterilisation	14793/08, 2015	7-0 trans			Lit 2; It, Tur* 3; Swi 4; Mont 6; Ice 9; Bel 10	5.29
X v. Turkey	Medical errors	24727/12, 2017	Inadmissible (domestic remedies not exhausted)				
D.Ç. v. Turkey	Surgery	10684/13, 2017	Inadmissible (domestic remedies not exhausted)				
A.P., Garcon & Nicot v. France	Sterilising treatment	79885/12, 2017	6-1 trans	Lcht 1	1.00	Azer 2; Bul 3; B&H, Lat 5; Ger 10, Fr* 11	6.0
S.V. v. Italy	Legal recog.	55216/08, 2018	7-0 trans			SanM 0; Arm 1; Cz 4; It* 6; Cro 9; Fin 10; Gr 12	6.0
X v. FYROM	Legal recog.	29683/16, 2019	5-2 trans	Cz 4; Po 5	4.50	SMar 0; Mac* 1; UK 8; Fin 10; Gr 12	6.2
PO v. Russia	Legal recog.	52516/13, 2019	Strike-out (Court has received no response to its letter)				
P v. Ukraine	Legal recog.	40296/16, 2019	Inadm. state	Geor, Lat 4; Ukr* 6; Au, Ire 9; Ger 10; Fr 13	7.86		
Solmaz v. Turkey	Ill-treatment	49373/17, 2019	Inadm. state	Mont 5; Est 8; No 11	8.00		
RL v. Russia	Legal recog.	36253/13, 2020	Strike-out (Court has received no response to its letter)				
YT v. Bulgaria	Legal recog.	41701/16, 2020	7-0 trans			Azer, Bulg* 0; Lat 3; Geo 4; Ukr 5; Ire 9; Ger 10	4.43
Rana v. Hungary	Legal recog. migrant	40888/17, 2020	3-0 trans			Lcht 1; Hu* 2; Ser 4	2.33
				Average	5.03		5.43

Notes: * National judges.

Table 3. Voting behaviour of national judges.

	Decision national judge aligned with state policies	Decision national judge aligned with trans contestation
Decision court aligned with state policies	14	0
Decision court aligned with trans contestation	1	12

In sum, the dominant pattern is not one of judges defending their government, but of national judges joining the majority. This pattern confirms Voeten's finding that 'judges have a strong and significant preference for not being lone dissenters' (2008, p. 428) and seems to hint at the strong impact of socialisation processes.

4.3. Processes of Persuasion

Looking at Table 1, the Court's decision in *Goodwin v. UK* (2002) on legal gender recognition clearly constituted a breakthrough. In previous cases, the Court had supported the British government, but in *Goodwin v. UK* (2002) it decided that transgender human rights were being violated. One could argue that Nicolas Bratza, the British judge, had finally been persuaded by his colleagues and voted accordingly. Yet, one could also argue that judge Bratza brought his profile as human rights lawyer to Strasbourg, as opposed to his predecessor Freeland, who spent decades in British diplomatic service. In some other cases, the judges' professional or political background also better explains their vote than their home country's score (see also Arold, 2007b; Voeten, 2008, p. 431). Judge De Meyer, for instance, also acted as adviser to the Belgian Christian-Democrats, which seems in line with his distinctly conservative views (*Sheffield and Horsham v. UK*, 1998, p. 23; *XYZ v. UK*, 1997, p. 19).

In many cases, separate opinions reflect the frustrations of judges who were unable to convince the majority. These do not describe much in the way of persuasion, even literally: In *Cossey v. UK* (1990), the judges who had previously dissented in *Rees v. UK* (1986) declared themselves "no more persuaded now than we were then" (*Cossey v. UK*, 1990, p. 16). In a lengthy dissenting opinion in *Cossey v. UK* (1990), Judge Martens tried to persuade his colleagues that the court had been wrong in *Rees v. UK* (1986) and should review its decision. In the next trans case, *B v. France* (1992), Martens was pleased to note that "several of my colleagues now share that opinion" (p. 47). Six judges indeed had changed their views from pro-state to pro-trans, but three of them would vote pro-state again in the subsequent case, so it cannot be confirmed that they really shared his opinion.

Zooming in on arguments instead of judges, we can see how discourses are in the end dominated by wide interpretations rather than narrow ones. The focus is on four recurring issues: the margin of appreciation, the knowledgeable individual, transgender bodies, and transgender relations.

4.4. The Margin of Appreciation

The legal argument of a 'margin of appreciation' awarded to governments, especially in politicised issues, plays a key role in all cases. If judges behave as European norm setters, they should strongly dispute claims supporting a wide margin of appreciation. In *Cossey v. UK* (1990), Macdonald and Spielman protest that "although the principle of the States' wide margin of appreciation was at a pinch acceptable in the *Rees v. UK* (1986) case, this is no longer true today" (p. 17). Eight years later, the dissent was even more outspoken. In vain, judges protested that British law was out of sync with societal developments, and that states' margin of appreciation could not justify "policies which lead inevitably to embarrassing and hurtful intrusions into the private lives of such [transgender] persons" (*Sheffield and Horsham v. UK*, 1998, p. 29). Other judges vehemently opposed any widening in transgender cases, arguing that: "Situations which depart from the normal and natural order of things must not give rise to aberrations in the field of fundamental rights" (judges De Meyer, Valticos and Morenilla in *Sheffield and Horsham v. UK*, 1998, p. 23). In *Goodwin v. UK* (2002), four years later, the Court stated unanimously that:

> In the twenty-first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society could no longer be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. (p. 26)

Clearly, the Strasbourg legal community had lost its patience with the British government and finally defined a European standard, which laggards had to comply with too.

Opinions diverged as to the meaning of the margin of appreciation itself. While (pro-state) judge Morenilla already defined a positive obligation as a form of widening, (pro-trans) judge Martens wanted to narrow the margin of appreciation to the states' decision of how to implement a Court ruling instead of the Court's decision on the matter at hand (*Cossey v. UK,* 1990, p. 23). And while judge Pinheiro Farinha argued that the Court does not have the right to grant new rights to individuals (*B v. France*, 1992, p. 30), judge Martens defended the opposite position and argued that the Court should develop new common standards precisely because:

In such a larger, diversified community the development of common standards may well prove the best, if not the only way of achieving the Court's professed aim of ensuring that the Convention remains a living instrument to be interpreted so as to reflect societal changes and to remain in line with present-day conditions. (*Cossey v. UK*, 1990, p. 24)

The question continues to resurface. Most recently, in 2019, judges Pejchal and Wojtyczek protested that "the letter of the Convention is the impassable frontier" and that it "is incompatible with the mandate of a judicial body to trigger or amplify societal changes by way of an 'evolutive interpretation' of the Convention" (*X v. FYROM*, 2019, p. 19). Interestingly, this narrow view has become the minority view (2–5 votes). Over time, the living-instrument approach seems to have side-lined the margin of appreciation in transgender cases on legal recognition.

4.5. The Knowledgeable Individual

While the European Convention aims to protect the individual against the state, the individual tends to be narrowly defined as the knowledgeable, responsible individual, and for a long time the Court excluded transgender persons from that category. They were deemed incapable of assessing the consequences of their actions, undergoing irreversible surgical interventions without due reflection. Judge Matscher contended that the initiative to have an operation outside France was taken "lightly, as it seems" (*B v. France*, 1992, p. 29), and judge Pinheiro Farinha feared "the trivialisation of irreversible surgical operations" (*B v. France*, 1992, p. 30). The Court treated them with compassion as a "small and tragic group of fellow-men" (Martens, as cited in *Cossey v. UK*, 1990, p. 19), "deserving as they are of the Court's sympathy" (Freeland, as cited in *Sheffield and Horsham v. UK*, 1998, p. 25).

In contrast, the judges' language suggests they know exactly what transgender people should do: Judge Pettiti warns that 'many cases of true or false transsexual applicants correspond to psychiatric states which should be treated by psychiatry only, so as not to risk disaster' (*B v. France*, 1992, p. 34). Judges also seem to know best how a trans person should feel: "Like any other human being, a transsexual must come to terms with his past. He has no need to be ashamed of having wanted to change sex" (De Meyer, Valticos, & Morenilla, as cited in *Sheffield and Horsham v. UK*, 1998, p. 24); "[applicant should have waited before undergoing surgery] The suffering and feelings of frustration caused by a further delay of six months cannot therefore be regarded as unbearable" (Vajić and Jebens, as cited in *Schlumpf v. Switzerland*, 2009, p. 31); "It is not shown that her family life within the meaning of Article 8 would be somehow affected by her change of gender (Ziemele, as cited in *Hämäläinen v. Finland*, 2014, p. 29).

The transgender individual is, hence, an individual in need of the protection of someone who knows what is better for them. To convince their colleagues, 'pro-trans' judges also resort to medical arguments, stating that trans people suffer from gender dysphoria as a recognised medical condition. They also refer to the autonomy of a transgender person in almost standardised wording in several cases (e.g., *Schlumpf v. Switzerland*, 2009, §100; *Van Kück v. Germany*, 2003, §69; *YY v. Turkey*, 2015, §58), but without daring to argue for self-determination in the sense that a person defines their gender identity themselves. Only this step would undo the narrowing of the transgender individual as unknowledgeable and irresponsible.

4.6. Transgender Bodies

The European Convention does not refer to men or women, but to 'everyone' or 'anyone,' with the exception of Article 12 on marriage. 'Everyone' should be protected against sex discrimination, but the Convention ignores that 'everyone' and 'anyone' are gendered beings. Every transgender case thus requires widening the Convention's provisions, as the Convention 'does not guarantee the right to change sex' (Pinheiro Farinha, as cited in *B v. France*, 1992, p. 30). Yet, there is more to it than widening. Judges struggle to come to terms with the transgender body and their notion of what is a woman/man:

> Biologically she is considered not to be a woman. But neither is she a man, after the medical treatment and surgery. She falls somewhere between the sexes. (Palm, as cited in *Cossey v. UK*, 1990, p. 5)

> A sex change does not result in the acquisition of all the biological characteristics of the other sex. While it removes the organs and functions specific to the 'former sex,' it creates, at most, only the appearance of the 'new sex.' (De Meyer, Valticos, & Morenilla, as cited in *Sheffield and Horsham v. UK*, 1998, p. 24)

> Surgical operations do not change the individual's real [sic] sex, but only the outward signs and morphology of sex. (Pinheiro Farinha, as cited in *B v. France*, 1992, p. 30)

Judge Pinheiro Farinha bluntly states: "I do not know the concept of social sex and I do not recognise the right of a person to change sex at will" (*B v. France*, 1992, p. 30). And judges De Meyer, Valticos, and Morenilla maintain the opinion that any legal recognition of sex change is a falsification and amounts to "permitting a husband who has gone to live with another woman to demand that his wife's name on his marriage certificate be replaced by that of his new partner" (*Sheffield and Horsham v. UK*, 1998, p. 23). The Court sticks to biological determinism instead of considering sex a legal category, such as 'fam-

ily' or 'property,' which it can give an autonomous legal meaning (Gonzalez-Salzberg, 2014, p. 807): "The applicant whom I will not refer to in the feminine, [because] even after the hormone treatment and surgical operation which he underwent, [he] continued to show the characteristics of a person of male sex" (Pinheiro Farinha, as cited in *B v. France*, 1992, p. 30).

The Court only defends the right to legal gender recognition (after *Goodwin v. UK*, 2002) for individuals who have completed gender reassignment, including genital surgery. Pre-operative transgender persons are referred to "as being in an 'intermediate' position" (Gonzalez-Salzberg, 2014, p. 825). Some judges even openly display discomfort with non-binary bodies: "One cannot accept dubious hermaphrodites and ambiguous situations….And is there thus not a risk…of seeing as a consequence half-feminised men claiming the right to marry normally constituted men, and then where would the line to be drawn?" (Valticos & Loizou, as cited in *B v. France*, 1992, p. 37).

The requirement of permanent sterilisation for transgender persons as a prior condition for legal gender recognition remains highly contested and is still enforced in 20 member states (Transgender Europe, 2019). In Turkey, permanent sterilisation is even required before getting access to gender reassignment surgery. Dissenting judges in *YY v. Turkey* (2015) question whether states have "a legitimate interest capable of justifying the requirement of permanent infertility"; they make a comparison with the Court's earlier condemnation of the forced sterilisation of women of Roma origin, and would have preferred the Court to widen the application of Article 8 and decide whether the requirement of permanent sterilisation as such is a violation (*YY v. Turkey*, 2015, pp. 24–26). In 2017, in *A.P., Garcon, & Nicot v. France* (2017), the Court finally condemned sterilisation as a required prior condition. However, it still failed to answer the question of which legitimate interest states could have to impose sterilisation on transgender bodies, leaving some judges dissatisfied (*A.P, Garcon, & Nicot v. France*, 2017, pp. 52–59). In sum, the Court has not come up with a purely legal definition of the trans body, preferring to hide behind the medical profession's opinion. This also implies that non-binary bodies fail to be protected by Court reasoning.

4.7. Marriage and Family

According to Article 12, 'Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right' (European Court of Human Rights, 2013, p. 13). It logically follows from the refusal to recognise sex change that trans persons are not allowed to marry, since the Convention's definition of marriage implies the union of a man and a woman (*Cossey v. UK*, 1990, p. 7). Added to that, many states require married trans persons to divorce first if they want to have their gender reassign-

ment legally recognised. The Court continues to adhere to its heteronormative views (Johnson, 2018).

Already in 1990, dissenting judges asked in vain to widen the concept of marriage, arguing that the draftsmen of the European Convention had traditional marriage in mind, but not the intention to deny transsexuals the right to marry (*Cossey v. UK*, 1990, pp. 27–28). However, the Court does not question the historical and geographic specificity of the concept of marriage (see Kollman & Waites, 2009). Marriage is defended as "an area of life in which the biological sex of a person is of supreme vital importance" and is "universally accepted throughout human history" (*B v. France*, 1992, p. 44). In two cases in 2006, the Court referred approvingly to a British court decision which stipulated that "marriage could only be between a woman and a man, determined on genital, gonadal and chromosomal factors, and should not take into account the party's psychological beliefs" (*Parry v. UK*, 2006, p. 5; *R&F v. UK*, 2006, p. 5). The Court admits that this requirement clearly puts F. 'in a quandary—she must, invidiously, sacrifice her gender or her marriage' (*R&F v. UK*, 2006, p. 12; same sentence in *Parry v. UK*, 2006, p. 10) but considered this proportionate. Eight years later, in *Hämäläinen v. Finland* (2014), dissenting judges asked in vain to widen the meaning of Article 12 to the right 'to remain married'; they argue that 'it is an oversimplification' to treat the relationship between a trans woman and her wife as a homosexual relationship (p. 38). The Court, however, sticks to the opinion that states have a legitimate interest in protecting traditional marriage. Today, 26 of the 47 member states still require a transgender person to divorce in order to obtain legal gender recognition (ILGA-Europe, 2020).

Similarly to marriage, the concept of family in Article 8 on the respect for private and family life is not elaborated in the Convention, but judges systematically narrow it to a constellation of woman as mother, man as father, and their biological children. As judge Walsh stated: "It would be the height of absurdity to describe a father as having become his own child's mother or aunt as it would be to describe a mother as having become her own child's father or uncle" (*B v. France*, 1992, p. 44).

Judge De Meyer claimed that "it is self-evident that a person who is manifestly not the father of a child has no right to be recognised as her father," and there "is only 'the appearances' of 'family ties' between trans man X and child Z" (*XYZ v. UK*, 1997, p. 19). Judge Petitti even claimed that "not all transsexuals have the same aptitude for family life as a non-transsexual" (*XYZ v. UK*, 1997, p. 17), and to substantiate the claim, he refers to a popular-scientific publication written by himself (Pettiti, 1992). In vain, judges Gotchev and Makarczyk argued that this is family life and should be recognised as such (*XYZ v. UK*, 1997, p. 26). Another dissenter asked to widen the concept using the analogy of the father as "the partner of a mother who gives birth to a child as a result of AID [artificial insemination by donor]" (Thór Vilhjámsson, as cited in *XYZ v. UK*, 1997, p. 23). In trans-

gender cases, judges have narrowed, not widened the concept of family.

5. Conclusions

Transgender rights remain a highly contested issue, upsetting the 'normal,' binary ordering of society. Transphobia and hate speech are on the rise in Europe. To find out to what extent the Court in Strasbourg acts as a guardian of trans human rights and bolsters progressive European norms, and to what extent it refrains from criticising governments who do not respect trans rights, I formulated expectations based on rational institutionalism regarding the extent to which judges will vote according to the state of trans rights in their home country; and based on sociological institutionalism regarding widening norms in the socialising environment of the Court.

Analysing all trans cases (1980–2020), I did not find a correlation between judges' votes and the situation of trans rights in their country. For 10 cases since 2011, Court Chambers giving a pro-trans ruling had a slightly higher average country score than Chambers giving a pro-state ruling. That said, at the individual level this correlation did not hold, as judges from low-scoring countries, including (South-)Eastern European ones, sometimes support trans rights, while judges from high-scoring countries, including Western European ones, sometimes defend the state. With one exception, 'national' judges never defended their home country against the view of a majority. They joined the majority, whether pro-state or pro-trans. In sum, rationalist expectations were not confirmed.

An analysis of the separate opinions showed that, over time, widening and narrowing processes have taken place regarding several aspects of transgender cases. Importantly, the margin of appreciation was narrowed over time, reducing the space for conservative governments to deal with transgender issues the way they see fit. However, the Court continues to struggle to acknowledge the transgender individual as being autonomous, knowledgeable and responsible, and still has not acknowledged their right to self-determination. Norms concerning the transgender body have been widened over time, but remain within the limits of binary, medical thinking. An exception to patterns of gradual widening is the Court's persistently narrow definition of marriage and family. Given the very piecemeal, incomplete and hesitant widening processes, sociological institutionalist expectations have been met to the extent that the Court indeed seems a site of socialisation, albeit one unable overcome the strong convictions judges bring to Strasbourg.

What do these findings imply for pending cases involving countries such as Georgia, Romania, Russia and Turkey, where trans people are very vulnerable and governments seem receptive to transphobic beliefs? As judges have not given in to a backlash in their home and other countries, and as widening has resulted in a stable body of pro-trans judgments, my findings point at some European norm setting, which might be good news for the transgender community. On the dark side, for populist and conservative supporters of state sovereignty, the margin of appreciation's side-lining in transgender cases confirms their criticisms of the Court, which might endanger its legitimacy and, hence, its long-term effectiveness.

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Conflict of Interests

The author declares no conflict of interests.

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Bodies, Organizing and Mobilization

Article

From Medical to Human-Rights Norms: Examining the Evolution of Trans Norms in the Netherlands

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Abstract
Examining the dynamics underpinning the evolution of trans norms in the Netherlands, from their emergence there in 1952 up until 2019, this article traces their development through four historical phases, each marked by notable milestones and supported by different sets of frames, actors, and norm-change mechanisms. My analysis shows that the normative profile of trans issues in the Netherlands has long been ruled by medical frames, but the last decades have also witnessed the emergence and establishment of a new set of frames rooted in human-rights discourses. By tracing the trajectory of trans norms in the Netherlands and examining the mechanisms underlying the emergence and changes of frames, this article contributes to the theoretical body of studies on norm diffusion by introducing the role of hybrid entrepreneurs, the dynamic co-assembling of medical and legal domains and the self-lead trans emancipation as a social entrepreneurial strategy.

Issue
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1. Introduction

The dynamics in the diffusion of trans norms have only recently started to be examined as an exclusive object, separate from the collective LGBT domain (Balzer & Hutta, 2014). Although trans issues might intersect with some LGB issues, there are specific differences between them. One example is the role of medical institutions and their discursive as well as material effects on trans people's realities. In the Netherlands, transnational medical frames have historically been present from the beginning. This article investigates the normative profile of trans issues, the role of these medical norms in the debates regarding trans policies, and the emergence and establishment of a new set of frames rooted in human-rights discourses.

The Netherlands has not only been a pioneer in gay rights but also a hegemon in transnational LGBT advo-

cacy networks (Kollman, 2016; Osterburg & Kiel, 2017). The country took the lead in providing medical care for trans people and became an authority in international knowledge production regarding trans health issues. In 2011, the Dutch state even launched a plan to increase the country's visibility as an international promotor of LGBT rights (van Bijsterveldt-Vliegenthart, 2011). Notwithstanding its reputation as international LGBT rights forerunner, however, the Dutch state was recently critiqued for its backwardness concerning the rights and protection of trans people (Human Rights Watch, 2013). In 2014, after Human Rights Watch's recriminations, the government amended the civil code to erase a legal stipulation that conditioned legal gender recognition to compulsory sex reassignment surgery and sterilization. These recent developments indicate a shift, as the Netherlands is no longer only engaged as a sender

of trans medical norms but has also become a receiver of trans human-rights norms.

The purpose of this article is twofold: to trace the normative trajectory of trans issues in the Netherlands, and to examine the emergence and changes of these norms as a contribution to the theoretical body of norm diffusion. Departing from a constructivist approach (Benford & Snow, 2000; van der Vleuten, van Eerdewijk, & Roggeband, 2014), I here consider norms as discursive collective considerations of appropriate, correct, or desirable actions to 'solve' issues. They are the intended or unintended results of a series of dynamics involving multiple actors (individuals, collectives, institutions, states) that are mediated by multiple governing structures as well as historical and material contexts. The actors' engagement in this process can be understood as based on contestation. Through discursive frames they introduce ideas which aim to shape or influence social action. Studying the evolution of norms helps expose the interactions and mechanisms underlying social change. As it has been a pioneer in LGBT rights and networks, the focus of my study is on the Netherlands. Trans norms might seem relatively novel, but they have had an extensive trajectory in the Netherlands, spanning about seven decades and undergoing various changes implicating domestic and transnational political dynamics in the medical and legal domains. This makes Dutch trans norms a useful case to study the complex interplay of different processes underpinning norm change over time.

This article examines the political dynamics underlying the evolution of Dutch trans norms from their emergence in 1952 until 2019, and asks: How did trans norms emerge and change in the Netherlands? How are these normative changes related to changes in the actors involved? Which frames were used for contesting trans norms and what are the implications of these? And which mechanisms facilitated change and the prevalence of certain norms over others? I will answer these questions by describing the historical development of trans issues in the Netherlands, giving special attention to the actors as well as the frames and mechanisms that have shaped their normative character. My narrative is based on secondary sources on the history of trans care in the Netherlands. I also include primary sources, such as archival material, medical journals, as well as newsletters, reports, and statements from trans organizations. Finally, to supplement this historical account, I include data from two in-depth interviews held with key trans activists and advocates who played essential roles in Dutch trans activism during the late 1990s and 2000s. Their names have been anonymized in this article.

1.1. Understanding Dutch Trans Norms Through Critical Frame Analysis and Norm-Diffusion Theories

In order to understand the changes in Dutch trans norms, this article studies the evolution of the actions and normative principles of key actors aiming to 'solve' trans issues. Actors such as medical experts, legal experts, advocates, and activists disagree or concur in their understanding of trans rights problems, and they also engage in strategic actions to promote their solutions. Since 'trans norms' constitutes an empty signifier that is constantly changing because it "takes as many meanings as the variety of visions and debates on the issue allows it to take" (Verloo & Lombardo, 2007, p. 22), I instead critically analyze the frames that actors have upheld and contested in the assemblages of trans rights norms in the Netherlands. Here, 'frames' are defined as arguments articulating the problems that trans rights, policies, and science ought to solve, and what sort of actions must be taken in order to effect these solutions (Verloo & Lombardo, 2007).

Scholars in international relations have provided multiple theories to explain norm diffusion and state behaviors but only few seem to apply to the Dutch trans norms case. Rational approaches assume that states, following a cost-benefit logic, will only accept low-cost norms as they prefer norms that facilitate access to economic benefits (Kaufman & Pape, 1999). Trans policies, however, can be costly for the state, and they do not grant access to economic opportunities. Early social constructivist approaches argue that states adopt new norms when they are spread by international institutions in the form of binding agreements that successfully stimulate the internationalization of new values and transform state actors' interests (Checkel, 1997). Yet in the Netherlands trans norms emerged before LGBT norms were developed at any international institution. In recent years, trans norms have been formulated in such documents as the Yogyakarta Principles, as well as in resolutions and issue articles by the Council of Europe and the UN, but they have not been codified in binding international agreements or treaties (Commissioner for Human Rights, 2009; Council of Europe, 2015; The Yogyakarta Principles, 2017; UN, 2011). Conventional international relations causal models that focus on states' interests and coercion from international organizations thus do not help to explain the timing and development of Dutch trans norms and policies. International relations constructivist theories (Finnemore, 1996; Partzsch, 2015; van der Vleuten, 2005) exploring the emergence of new norms, the actors shaping them, and the mechanism underlying further normative changes promise for a better explanation of the evolution of (Dutch) trans norms.

In the Netherlands, trans norms did not originate from the state, civil society, or activists. Rather, these processes were initiated by individual private health professionals who might not have powerful positions in the government but were involved in a transnational network of sexology experts. The norms were further developed by other individuals such as lawyers, physicians, and managers of institutions sharing humanitarian moral principles and social commitment. The literature has typically regarded non-state political actors as individuals from social movements aiming to push forward

norms by actively persuading governments (Finnemore, 1996; Finnemore & Sikkink, 1998), usually labeling them 'norm entrepreneurs.' More recent publications have also noted 'social entrepreneurs,' a novel type of non-state actor that, instead of focusing on governmental institutions, opts to implement innovative actions affecting society directly (Partzsch, 2015). These two types of 'entrepreneurs' have been crucial throughout the development of Dutch trans norms. In fact, their emergence and evolution introduce a new breed of actors who are yet to be considered in the theory around norm entrepreneurs. Professionals involved in the emergence of trans norms played roles that resemble a hybrid of these two types of entrepreneurs.

Through the history of Dutch trans norms, we can also observe how certain domestic and transnational actions taking place within the medical professions were crucial in ensuring the persistence of the trans medical regime. By building scientific credibility and prestige through the development of specialized knowledge, medical professionals succeeded in sustaining the state's commitment to support trans care rights, but at the same time they also strengthened the trans medical regime and preserved the binary sex-gender regime in Dutch law. This co-assembling dynamic between the medical and the legal domains can certainly contribute to theories of norm-diffusion mechanisms.

Theories of 'state identities' are also useful to understand the mechanisms contributing to more recent Dutch trans-norm changes. Anna van der Vleuten's 'pincers and prestige' theory explains how states are more willing to accept new norms when their prestige is at risk and when the state is simultaneously put under pressure by national and supranational actors (van der Vleuten, 2005). In the next section I will consider whether the amendment of the Dutch Civil Code in 2014 that eliminated the requirement of sterilization for legal gender change can be explained as an outcome of such a political mechanism.

2. Four Historical Milestones in Dutch Trans Norms

When it comes to Dutch trans issues, this article distinguishes four historical phases marked by developmental milestones. The first phase, 1952–1959, is marked by the emergence of the first normative debates surrounding the introduction of sex-reassignment surgeries in the country. The second, 1960–1979, is characterized by the actions of a network of social and norm entrepreneurs that succeeded in establishing the first institution tackling trans-norm change; their efforts materialized in the first trans legislation. The third, 1980–1999, is typified by the implementation of a trans law through the development of scientific knowledge and the standardization of clinical procedures. The fourth and last phase, 2000–2019, is distinguished by the intensification of domestic and transnational trans advocacy actions linked to the emergence of a trans human-rights regime.
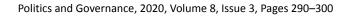
2.1. 1952–1959: First Surgeries and Contestations

Alex Bakker's account of the history of transgender issues in the Netherlands proposes that medical attention to trans issues was first triggered by Christine Jorgensen's emergence as an international media phenomenon (Bakker, 2018, p. 17). Jorgensen, a US citizen, successfully underwent hormonal treatment and gender-affirming surgeries in Denmark in 1952. When her case's international attention prompted a high number of consolation requests from people around the world, Jorgensen's Danish doctor, Christian Hamburger, reached out to various sexologists abroad, such as Hans Guise in Hamburg, Harry Benjamin in New York, and Coen van Emde Boas in Amsterdam, asking them to join him (van Emde Boas, 1974, pp. 17–19).

In the Netherlands, psychiatrist and sexologist van Emde Boas had acquired a reputation of being a progressive practitioner interested in dealing with sexuality issues (Bakker, 2018). In fact, he coined the term '*transseksist*,' which served as an inspiration for Benjamin's terms 'transsexual' and 'transsexualism' (Benjamin, 1966). After joining forces with Hamburger, van Emde Boas reported treating about 40 patients between 1954 and 1956, all US citizens sent by Benjamin to continue gender transition in the Netherlands (van Emde Boas, 1974, p. 475).

The fact that van Emde Boas was allowed to perform such interventions in collaboration with other physicians did not mean that there were no normative debates in the Dutch medical field. In the scientific journal *Nederlands Tijdschrift voor Geneeskunde* (Dutch Journal of Medicine, author's translation), practitioners from different fields engaged in debates concerning sex-reassignment surgeries. While supporters employed compassionate arguments to justify gender-affirming care interventions (Plate, 1954), detractors argued for a psychopathological approach and framed gender non-conforming expressions as delusional disorders, and advised psychological help for self-acceptance (Carp, 1954).

The psychopathological framework was backed by the international medical regime of the World Health Organization (WHO) and the American Psychiatric Association (APA). In 1948, the WHO included 'homosexuality' in the sixth version of its International Classification of Diseases and Related Health Problems (ICD-6; Cochran et al., 2014). Gender identity and sexual orientation were conflated in this document, and its diagnosis of, and approach to, homosexuality were applied to gender variance as well. Likewise, in 1952, the APA added 'homosexuality' and 'transvestism' in the first edition of its Diagnostic and Statistical Manual of Mental Disorders (DSM), classifying both as sociopathic personality disturbances (APA, 1952). In the same period, Benjamin, who was already famous due to his involvement in Jorgensen's case, defied that international psychiatric regime, and introduced the rubric 'transsexu-

alism' and the clinical use of gender-affirming surgeries (Benjamin, 1954).

In the Netherlands, gender-affirming practices came under attack after the first publicly known 'female-to-male' sex reassignment surgery took place at Arnhem's Municipal Hospital in 1959. The German client, who had first undergone a series of interventions in Germany and South Africa, came to van Emde Boas to complete his transition (Haeseke & Nicolai, 2007). Plastic surgeon Siebren Woudstra presented his case to a group of colleagues who, after intense deliberation, approved the removal of the client's uterus on the grounds of compassionate Christian ethics (van Emde Boas, 1974). Despite this approval, hardly anyone at the Municipal Hospital wanted to be involved in the process. The Dutch medical community was even outraged at the idea of having surgeons treating psychiatric illnesses and found the intervention violated medical ethical principles of protecting a patient's physical integrity (Steenwinkel, 1960). The case caused great commotion, and gender-affirming surgeries became rare as hospital managers started forbidding them (Haeseke & Nicolai, 2007).

In this first phase, the Dutch framing of trans issues emerged along with a sudden international demand for gender-affirming surgeries. People with trans experiences were seeking help across the world, and in the Netherlands a very small group of medical experts already engaged in an international sexology network expanded this innovative medical practice. The normative debate surrounding this new practice was constrained to the medical community. Practitioners favoring the application of new techniques to modify the bodies of gender-variance clients called for medical virtues such as empathy and compassion. Opponents employed a psychiatric epistemic frame that followed the international medical paradigm and condemned medical doctors willing to perform gender-affirming surgeries for crossing their specialization's boundaries and harming the individuals' bodily integrity. They called for the protection of the profession's integrity and defended conversion therapy as the preferable (if not only) solution.

2.2. 1960–1979: Disobedient Entrepreneurs, Institutionalization, and Norm Change

In 1965, the debate surrounding the Arnhem case provoked the Ministry of Social Affairs' intervention, requesting the Health Council's opinion on the validity of gender-affirming surgery for treating a psychiatric condition. Following Verschoor (1983), with this the Ministry intended to advocate for the criminalization of sex reassignment surgeries. An evaluation committee was established to consult medical professionals and university professors, but trans individuals were not included in the formal discussion (Everaerd, 2014). The committee, which was comprised of 'conservative' medical professionals with no experience with trans people, decided that gender variance was a manifestation of a mental dis-

order (de Vaal & Lamaker, 1982). The committee recommended conversion therapy and, as operations were not considered a medical necessity, the Ministry of Justice banned gender-affirming surgery—though they notably did not criminalize it (Verschoor, 1983). Consequently, trans people were sent to psychiatrists, and their experiences were labelled as psychotic expressions of unresolved sexual anxieties (Verschoor, 1983), in line with the Health Council's definition and the transnational medical regime. Conversion therapy in the form of long-term psychoanalysis became the main medical advice, and some individuals underwent electroshock therapy (Meulmeester, Bos, Spaas, & Eisfeld, 2005). While doctors could still help without confronting juridical penalties, gender-affirming surgeries were not carried out for several years (Verschoor, 1983).

At the same time in Amsterdam, a network of progressive care professionals was developing into a political force, paving the way for the institutionalization of gender-affirming care and norm change. Endocrinologist Otto de Vaal is credited as the architect of this network and the founding father of Dutch trans care (van Garrel, 1992). In his book *Man of Vrouw? Dilemma van de Transseksuele Mens* (*Man or woman? The Dilemma of Transsexual People*, author's translation), de Vaal (1971) actively criticized the validity of the dominant psychiatric approach in the Netherlands, and in other publications he deemed the psychiatric frame "reactionary," "non-scientific," "creationist," and "theological" (de Vaal & Lamaker, 1982, p. 715). He also used the concept of 'being trapped in the wrong body'—which was still incipient in the international debate—to describe the emotional suffering of trans people, and explored various genetical, chromosomal, and hormonal hypotheses, marking the introduction of a biology paradigm in the Dutch debate (Bakker, 2018). Despite the Ministry of Justice's ban and the dominant taboo regarding sex-reassignment surgeries within the medical community, de Vaal and his spouse Liselotte Demmers opened their home in Amsterdam to a group of trans people, many of them sex workers. They also distributed second-hand women's clothes, prescribed hormones, offered general medical care, coordinated surgeries, and helped with legal assistance when trans people tangled with the police. Aware of their clients' precarious living conditions, they did not charge for their services and even arranged a solidarity fund to cover special care costs (Bakker, 2018; van Garrel, 1992).

In 1972, the director of sanatorium Beatrixoord in Amsterdam, Geertruida Wijsmuller-Meijer (also known as 'Aunt Truus' for saving the lives of non-Aryan children during WWII), together with de Vaal, Demmers, and surgeon Philip Lamaker created the country's first organization offering a clinic for trans people in Amsterdam: *Genderstichting* (Gender Foundation, author's translation). Their progressive vision of care also addressed social issues such as work and housing (Bakker, 2018). The other founders of the *Genderstichting* were also re-

spected professionals with affiliations to important institutions: Koos van de Werff was a professor of endocrinology at Leiden University; Arie de Froe was the rector of University of Amsterdam; and Jan Allema was chairman of the health insurance fund council (Meulmeester et al., 2005). Their interest in trans issues varied substantially, but they seemed unified by shared humanistic values. For instance, though de Froe did not know much about trans issues, he endorsed the clinic out of respect and loyalty to fellow veterans involved in its conception (Bakker, 2018). The organization maintained such a good reputation that they managed to arrange cost coverage for hormonal treatment and surgeries through the national health service (van Garrel, 1992).

The *Genderstichting* was also essential in their provision of legal support. Already since 1971 lawyers Ida Neumann and Frans van der Reijt began to strategically appeal to Article 21 of the civil code, which allowed correcting errors in Dutch birth certificates, to enable their trans clients to change their legal gender markers (de Vaal & Lamaker, 1982). For this, they used the precedent of two 1963 cases. In the first case, a trans person who underwent sex-reassignment surgeries in Casablanca, Morocco, and was granted permission for changing their name in the Netherlands, managed to convince the court that changing the birth certificate's gender marker was also needed for enabling the opportunity to lead "a normal life" (de Vaal & Lamaker, 1982, p. 693). The second case involved an intersex person who was allowed to change their birth certificate after their solicitor used medical declarations explaining how the appearance of his client's genitals changed from female to male after puberty. In the new petition, Neumann and van der Reijt also presented medical declarations, some of them including photos of their clients' naked bodies (Bakker, 2018). Their strategy, which mimicked that of the intersex case, worked well, as lower courts assumed that after hormonal treatment and sex-reassignment surgery the clients would be deemed as part of opposite gender "on the basis of their essential characteristics" (de Vaal & Lamaker, 1982, p. 693). For three years, dozens of cases ruled in favor of the *Genderstichting* and its clients until 1974, when the Dutch supreme court overruled over a number of cases under the guise of "protecting the integrity of the law" (de Vaal & Lamaker, 1982, p. 693).

After the medical battle, the legal battle now gained momentum. Bothered by the negative juridical turn, de Vaal managed to pull some strings and set a meeting with the minister of justice (de Vaal & Lamaker, 1982). Afterwards, that minister ordered the establishment of a judicial commission and the constitution of a new health council's expert committee in which eight of the nine members had actual practical experiences with trans patients (Orobio de Castro, 1993). The commission concluded that "somatic adjustments were an essential part of a treatment plan that could offer the greatest chance for reducing the existential suffering" of trans people (Verschoor, 1983, p. 26), adding a novel psycho-social component to the framing of Dutch trans norms.

Van der Reijt joined a second sub-commission tasked to develop a legal proposal for changes to birth certificates. The sub-commission invited the first Dutch trans organization *Travestie & Transseksualiteit* (TenT, Transvestite and Transsexuality, author's translation) to provide feedback, for the first time opening the conversation to trans community representatives (Bakker, 2018). TenT had an emancipation agenda focused on community support, social inclusion, and self-acceptance issues (Meulmeester et al., 2005). The sub-commission proposed that changes to the birth certificate could be made on the following conditions: 1) A statement from an expert; 2) a 'real life test' of one year minimum; 3) sex-reassignment surgery and sterilization; and 4) unmarried status at the moment of requesting the legal change. TenT and van der Reijt voiced their opposition against all of these except the marriage condition, since after legal gender reassignment married applicants would have had transformed their marriages into a same-sex format, which was not yet sustained by the Dutch marriage law. The trans collective criticized the mistrust implicit in the 'real life test' and questioned how someone could be considered more expert than trans people themselves (Bakker, 2018, p. 131). Van der Reijt added that, since the legislation was based on the notion of gender identity, self-diagnosis was the only way to truly determine if someone was 'transsexual.' He also expressed perplexity at the sterilization requirement, warning that the requirement was an unjustifiable violation of trans people's physical integrity and calling the argument that sterilization would protect the welfare of future children 'unrealistic.' He asked: "What is the difference between having a parent who later decides to change their gender or being born from a parent who had already their gender changed?" (van der Reijt, 1982, p. 117). Despite his concerns, van der Reijt still implored the legislation be quickly approved, as it would guarantee the "human rights" of trans persons (van der Reijt, 1982, p. 118). The four requirements were included in the first Dutch law on gender changes in legal documents, which was finally implemented on 1 August, 1985.

The first Dutch trans legislation thus resulted from the humanitarian commitment and action of a network of diverse, respectable actors. Instead of investing their energies in lobbying strategies, they opted for disobeying the Ministry of Justice's ban. They engaged in solidarity action to improve the social reality of trans people. Dignity, justice, solidarity, and human rights were the key principles underlying their actions. As actors they were social entrepreneurs committed to fostering social change by building change from the bottom. They created a foundation and employed a strategy to softly rupture the jurisprudence and institutional psychiatric regime, moving towards new legal recognition and citizenship structures for gender-variant individuals. After confronting the court's limitations, however, their role

changed to that of norm entrepreneurs seeking actual norm change in government regulation. Their work resulted in the first legislation explicitly addressing trans issues. The law attributed the trans 'problem' to the individuals' bodies, and postulated it ought to be solved by medical science. The frame of being trapped in the wrong body that highlights the biological aspects of gender variance, was successfully integrated in the law that sought to alleviate the existential suffering through physical adjustments instead of psychoanalysis, conversion therapy, and other psychiatric interventions.

Although the norm change that took place between 1960 and 1979 in the Netherlands was not underpinned by a formal transnational network of actors, the international diffusion of new scientific ideas that challenged the hegemonic power of psychopathology was having a strong effect in the domestic debate. The advanced ideas that de Vaal, van der Reijt, and their colleagues promoted corresponded with the fundamental normative shifts also taking place in the international scientific arena (de Vaal & Lamaker, 1982): In the US, Robert Stoller introduced the distinction between sex and gender (Stoller, 1968) and both Harry Benjamin as well as Richard Green and John Money published the first guidelines for gender transitioning care (Benjamin, 1954; Green & Money, 1969); in the UK, Norman Frisk coined the term 'gender dysphoria syndrome' to conceptualize the distress that 'transsexual' people experienced (Frisk, 1974); and in 1973 'homosexuality' was removed from the APA's DSM after intense political activism denunciating the fact that the psychiatric approach contributed to social stigma (Drescher, 2015).

2.3. 1980–1999: Formalization, Credibility, and Strengthening the New Norm

1979 saw a change of leadership at the *Genderstichting* that instigated a new approach and framework. Due to internal disagreements, the initial group dissolved the original foundation and re-founded it headed by van der Reijt in partnership with clinical psychologist Anton Verschoor from the Free University Hospital in Amsterdam (VUmc; de Vaal & Lamaker, 1982). Verschoor was already known for his leadership in sexual-reform activism and his commitment to gender-variant people. Together with endocrinologist Louis Gooren, Verschoor invested in standardizing their care practice, and at the VUmc they soon built the first trans polyclinic and research center in the world, known today as the Center of Expertise on Gender Dysphoria. Developing research and knowledge were central to their agenda for concretizing and solidifying this practice in defense against public criticism and skepticism from the medical community (Willems, 2013). They used the biological and psychological sciences both to increase social acceptance and to justify getting their costs covered. Using knowledge from these fields to develop a diagnosis, was, according to Gooren, vital for obtaining the health insurance companies' commitment to covering the costs of gender-affirming care (Bakker, 2018, pp. 154–155). The standardization process included developing a new diagnostic and trajectory guideline that integrated the law's requirement for a real-life test and allocated a gatekeeper role to medical doctors.

During the 1980s, trans care in the Netherlands had become robust. Everything related to gender transitioning could be arranged. Hospitals in Rotterdam, Arnhem, and Groningen helped deal with the growing demand, but under the VUmc team's watch (Bakker, 2018). The academic hospital in Groningen was the only hospital that developed an independent team of experts. In line with the advice of the Health Council's expert committee to tackle the lack of studies on treatment efficacy and the longitudinal effects of gender-affirming interventions, the number of Dutch researches increased exponentially (Everaerd, 2014).

These rapid structural and scientific developments coincided with the 1980 inclusion of Benjamin's term 'transsexualism' and the 'gender identity disorder' classification in the DSM III (Pauly, 1993). This was a pivotal development in international trans medical norms, and Dutch medical experts contributed significantly. In the international scientific world, the Netherlands' reputation in the field grew towards greater internationalization and prestige. In 1987, Amsterdam hosted the tenth symposium of Harry Benjamin's International Gender Dysphoria Association (later named World Professional Association for Transgender Health [WPATH], 2019), where Dutch clinical care practices and knowledge were diffused. The VUmc's Center of Expertise hosted specialists from all over world (Bakker, 2018), joined in international research collaborations, and their work was increasingly cited in global medical studies. In their approach, cognitive and developmental psychology triumphed over the psychiatric frame. Dutch endocrinology played an essential role in the development of trans care guidelines internationally. Studies focused on the body as the root cause of problems with gender identity were also abundant. During the second half of 1990s, clinical psychologist Peggy Cohen-Kettenis began a clinical approach that facilitated gender-affirming care trajectories to adolescents, making the Netherlands the first to offer pediatric transitioning care in Europe (Cohen-Kettenis, 2013). Internationally known as 'the Dutch protocol' today, this program has been diffused around the world and incorporated in the WPATH's Standard of Care and the Endocrinology Society's clinical guidelines (Cohen-Kettenis, 2013).

Meantime, between 1983 and 1999, 20 new trans organizations were founded in the Netherlands. The collectives ranged from Christian groups and transmen-exclusive organizations, to trans homosexual collectives and trans self-representation in trade unions (Meulmeester et al., 2005). Amongst this growing number of collectives, there was little focus on political actions such as advocacy and activism. The majority were limited to a self-help group format focused on issues of

social acceptance, community building, and knowledge exchange (Meulmeester et al., 2005). The trans activists I interviewed for this study explained that at that time an activist "social acceptance" aimed to "humanize trans people, beyond the helpless sick psychiatric" stereotype (personal communication, September 7, 2017) through facilitating guidance for "becoming respectable members of the society" (personal communication, May 23, 2018).

This third phase in the development of Dutch trans norms also included additional practices and frameworks that affected norm changes. The process was essential for standardizing the implementation of the 1985 trans law, as well as for increasing norm acceptance in the medical spheres and general society, and for ensuring the public cost coverage of trans medical care. Rather than guaranteeing special rights to trans people, the medical standardizations and the law primarily and strongly operated as shields safeguarding the perpetuation of the binary sex-gender regime. This can also provide a clue as to its success, and the process underscores the important collaboration between medicine and law in the assemblage of a trans medical norm which resonated strongly with the cis-heteropatriarchal normative order and therefore was more likely to be internalized in society.

2.4. 2000–2019: Transnational Trans Activism, the Establishment of the Trans Human Rights Norm, and the Self-Led Trans Emancipation

At the start of the new millennium, the number of trans collectives was still rising, displaying more sophisticated political outlooks on further developing significant normative changes. In 2004, T^3 (T with a third exponent referring to transsexual, transgender, and transvestite), the first Dutch national conference for trans organizations, took place in Amsterdam. The event aimed to tackle the lack of trans self-representation in policymaking and envisioned consolidating all collectives into a unifying political power. After the event, the organizers published a booklet that listed at least 32 Dutch trans groups (Meulmeester et al., 2005).

As an outcome of the conference, Transgender Network Nederland (TNN) emerged in 2006, a national umbrella organization that soon was formalized into the first Dutch trans advocacy group financed by the Ministry of Education, Culture, and Sciences. In the TNN agenda, the social-acceptance frame evolved into a frame of 'social transformation.' Instead of locating the problem in trans individuals, they pointed to the 'social structures' at the root of the inequalities that trans people suffered in Dutch society (personal communication, September 7, 2017). Advocacy in the form of education for civil-society organizations was their first step towards normative change, and they incorporated the amendment of trans legislation as a priority issue. As of 2019, TNN had successfully expanded trans visibility

in Dutch society, and through establishing important alliances domestically and transnationally they opened the space for trans self-representation in essential decision-making processes tackling issues of health, social inequality, and discrimination.

At the international level, the adoption of the Yogyakarta Principles in 2006, which stipulates that gender identity, body self-determination, and reproductive autonomy are inalienable elements of human dignity, marked the human-rights turn of transgender politics globally. These principles have been embraced in the international trans depathologization agenda that continues today. Advocates argue that erasing gender variance from the international classification of diseases (such as the APA's DSM and the WHO's ICD) is essential to tackle the discrimination and social inequalities harming the wellbeing and integrity of trans people worldwide. Moreover, the principles have also been used to frame the transnational trans agenda that targets changes in domestic legislation and policies, particularly equal rights, protection against discrimination, adequate healthcare, and legal recognition of one's gender identity without conditions of coercive body modifications and sterilization.

In 2009, the Council of Europe's Human Rights Commissioner (2009) issued an article detailing EU member states' inadequate institutional handling of gender identity issues. The Council later developed recommendations for combating discrimination on the grounds of gender identity in 2010 (Council of Europe, 2010). In 2011, these rights were included in the first UN resolution addressing sexual orientation and gender-identity rights (UN, 2011).

This transnational trans human-rights momentum had a ripple effect on Dutch trans rights issues, accelerating significant normative changes. In 2008, citing the Yogyakarta Principles, TNN requested the abolition of the sterilization requirement, with no resulting action from the Ministry of Justice. In 2011, however, the Dutch house of representatives announced the preparation of a draft bill entitled *Transsexualiteit* (transsexuality), which explicitly included the Council of Europe's recommendation to abolish the sterilization requirement (van Bijsterveldt-Vliegenthart, 2011). In the same year, TNN, together with the large Dutch LGBT federation *Cultuur en Ontspanning Centrum* (Center for Culture and Leisure, author's translation) and the international LGBT organization ILGA-Europe, submitted a review of LGBT rights in the Netherlands to the UN, requesting the abolition of the Dutch sterilization requirement. Human Rights Watch published a report that also condemned the sex-reassignment surgery and sterilization requirement in the Netherlands. The report "Controlling Bodies, Denying Identities: Human Rights Violations against Trans People in the Netherlands" (Human Rights Watch, 2011) touched the core of the Dutch state's identity, as it affected its precious "role model position in international LGBT rights" (van Bijsterveldt-Vliegenthart, 2011, p. 3) The fact that in 2008 the state did not act on

TNN's demands in 2008 points out that the pressure of a domestic trans network alone was not enough to achieve the normative change. Only transnational shaming, in combination with domestic and transnational pressure, built up a substantial enough risk burden to the state's international image as an LGBT role model that the norm was changed. This confirms van der Vleuten's (2005) theory of a 'pincers and prestige' mechanism that states adapt when they are facing local activists' demands as well as international pressure regarding the state's identity and ego.

Moreover, the human-rights norms of personal autonomy and self-determination were also employed to frame abolishing the requirement of an 'expert opinion' when changing the gender markers on birth certificates as well as in the demands towards decentralizing the national Dutch trans healthcare; in other words, the de-specialization of trans care by care services beyond expert teams such as the VUmc and the academic hospital in Groningen. With this agenda, local activists used innovative strategies to pave the way towards more transformative structural reforms. In 2016, during WPATH's 24th biannual conference in Amsterdam, a group of trans activists held a parallel symposium event titled *Free PATHH: Practicing Actual Trans Health and Human Rights* to promote their demands for personal autonomy and the right to self-determination in trans care on the grounds of trans human-rights principles. Furthermore, in 2018, the Trans United collective for trans people of color together with the Dutch sex-workers union, started the first trans-led Dutch clinic, where people can continue or start gender-affirming care trajectories without the requirement of psychological evaluations, exercising full autonomy in their transitioning processes. The clinic started as a solution to the lack of healthcare access and legal support for the most marginalized trans people, such as undocumented migrants, asylum seekers, and sex workers. Their services have now extended to address the whole trans community. The trans collectives Principle 17 and Trans United have worked with trans individuals to investigate and make visible the negative experiences of trans people within the official Dutch trans healthcare system and its conflicts with human rights standards (Lima, Manichard, & Reyes, 2017; Principle 17, 2016).

These examples highlight a new wave of Dutch trans politics, in which trans people are no longer seen as mere objects of medicine and research; instead, they occupy the roles of experts, care providers, and political actors. In their self-lead trans emancipation agenda they act also as social entrepreneurs seeking, through direct social action, structural social changes to improve their own lives. In summary, the trans human-rights frame is not only applied in contesting the medical regime within the depathologization agenda, but also in a more proactive framing of the broader Dutch trans emancipation agenda. Although the medical frame still plays an essential role in the Netherlands, it no longer occupies a hegemonic position. Instead, contemporary Dutch trans politics and policies are completely in line with the human-rights norm and tools such as the Yogyakarta Principles.

3. Conclusions

This article described the evolution of Dutch trans norms from their domestic emergence in 1952 up until their developments in 2019. It began by asking: How did trans norms emerge and change in the Netherlands? How are these normative changes related to changes in the actors involved? And what mechanisms facilitated change and the prevalence of certain norms over others? The article addressed these questions by describing the historical development of trans issues in the Netherlands, giving special attention to the actors as well as their normative frames and the mechanism that shaped these. In so doing, it describes eight distinctive frames contesting trans norms.

The advent of sex-reassignment surgery in the Netherlands marked the emergence of trans norms contestation. This medical technological innovation introduced a new care paradigm centered on Christian medical virtues. It called medical professionals to act upon a *compassionate care approach* (1) and challenged the well-established transnational *psychopathology paradigm* (2) that located the problem in individuals' mental health. This psychopathology norm did not change until the involvement of a network of non-governmental actors that assumed a hybrid entrepreneurial role and drove social change by combining direct action with advocacy. Their *being trapped in the wrong body* (3) frame located the origin of the problem in trans individuals' bodies. This frame designated integrity in gender identities and proposed body modifications as a solution to the 'existential suffering' trans people experienced. Contesting the frame *clinical diagnosis, real-life tests, and expert declaration* (4), which was introduced in the first Dutch legislation and later enacted by medical standardization, they suggested *self-diagnosis* (5). This emphasized individuals' sovereignty over their own identity; in other words, they argued that nobody commands another person's gender identity. However, worrying to miss the opportunity for establishing the first set of trans rights, they refrained from promoting this frame more extensively. This self-diagnosis frame resonated strongly with the *trans human-rights frame* (6), which stipulates that gender identity, bodily self-determination, and autonomy are fundamental elements of human dignity. Trans activists operated with two different emancipation frames. Emancipation through *social acceptance* (7) intended to 'humanize trans people' by making them 'respectable members of society.' It located the problem in individuals' attitudes instead of society and its structures. Then came the *self-led trans emancipation* (8) agenda, which incorporated the human-rights normative principles of personal autonomy and self-determination, and located the problem in the social structures perpetuating cis-heteronormativity, such as medical institutions. As a

solution, it proposes that trans people should occupy crucial roles in the provision of care, in decision making, as well as in the production of knowledge. This has been unfolded in the form of social entrepreneurship. Instead of exclusively focusing on advocacy work for attaining better policies, domestic trans activists engage in a series of self-lead trans emancipation action seeking to improve their own realities directly.

The case of Dutch trans norms also proves useful for understanding how a norm can gain strength and social validity through the production of scientific knowledge that is embedded in international medical regimes, mainly when it guarantees the safeguarding of long-established normative order. In the Dutch trans norm case, such a norm-strengthening dynamic was highlighted by the assembling processes that took place during the first trans law's implementation. The state granted trans people legal recognition with specific restrictions to protect the law against the undermining of the binary sex-gender regime. Medical standardization, as well as care guidelines, were used to guarantee its preservation and perpetuation. The final amendment of the trans law, however, demonstrated that even the hegemonic position of the most solidly established norms could be defeated. Emerging norms are more likely to prevail when their framings include principles with strong international resonance (such as the human-rights and the Yogyakarta Principles) and are encouraged through a transnational strategy that puts pressure on the state's ego by actions in both domestic and supranational arenas (van der Vleuten, 2005).

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Conflict of Interests

The author declares no conflict of interests.

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Article

Trans* Identities and Politics: Repertoires of Action, Political Cleavages, and Emerging Coalitions

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Abstract
The current political landscape provides collective actors with new strategies to articulate individual interests, hardships, identities, critiques, and solutions, engage with social mobilisation's conflictual demands, and move towards sustainable practices of collective actions. This article will focus on theoretical challenges surrounding the political action and organization of feminist and trans* identities in order to provide situated knowledge about the dynamics of the transfeminist activism in the Madrilenian geopolitical context. Throughout LGBT*Q+ activists' integrated forms of doing politics along different axes of oppression (e.g., class, migration, racialisation, disability, ethnicity, gender diversity), new visibility regimes are trying to expand the repertoires of action by nurturing emerging coalitions and agencies among a variety of hybrid political subjects. This article thus argues that trans* politics, through nonbinary activism and a new intersectional feminist praxis, may expand the political subject of feminism and our understanding of identity politics and embodied action.

Keywords
activism; disability; intersectionality; social mobilisation; Spain; transfeminism

1. Introduction

Women's and gender studies acknowledge that the range of social hierarchies and power differentials renders into multiple forms of discrimation, both in the realm of gender and throughout different axes of personal identity. For much of the history of feminist thought about the nature of the self, the personal and intimate concerns of women's lives have been brought to the public stage in order to demonstrate the sex and gender bias in discriminatory practices. Critical feminism has promised to rethink many recent key topics, such as, for example, the relevance of gender to questioning the relationship between the natural and the social, or about the nature of the self.

The understanding of human diversity through the systematic representation of bodily differences interpenetrates different domains of feminist theory. The thorny issue of essentialism (the 'female body') present in dominant feminist epistemology plays a structural role in identitarian mobilization, which relates body politics to the body's framing in unequal societies. Feminist theorists have engaged in the social and political discussion of the body. Interrogating understandings of the biological and the social body, and the body's role in social and political thought, they brought to light a more intelligible notion of embodiment. In this sense, the lived experience of the body contributes both to the reasoning of subjective experiences of embodiment and the creation of new horizons for resistance, recognizing the constituting entanglement between social attitudes and representational practices in the particularities of embodiment, and the systematics of "injustice and discrimination in the materiality of the world" (Garland-Thomson, 2011, p. 593). Feminist perspectives and other contemporary social-justice movements question varieties of bodily experiences, and their varying visibility. The continuum of bodily experiences, visibility, and awareness results in a continuum of visibility regimes.

The feminist contributions to the theoretical analysis of the body go beyond the dialectic reflection of

models of gendered positionality: They embrace the greater range of possibilities through which different forms of recognition can be placed inside the realm of 'doing politics.' Positionality and belonging are strategically pointed out as means to raise awareness of vulnerabilities, strengthening language against marginalization. As Barad (2011) notes: "Feminist and poststructuralist theorists have emphasized that matters of politics, ethics, and social justice are also at stake in understanding the nature of constitutive exclusions" (p. 2). There are many differences within this continuum of 'feminist perspectives,' but some of them retain the concern with the social constructions inhabiting body utterances into the idea of 'extraordinary bodies,' that is, bodies that are not settled in a prescriptive norm and that are usually socially subjected to discrimination and oppression.

This article emerges from the interpersonal and subjective experiences of feminist, trans*, and/or non-binary people with or without a disability, and intends to improve our understanding of how strategic self-representation can nurture politically oriented action through the progressive inclusion of different subjects into potential agency. The article results from my analysis of the lived-experience narratives of the above-mentioned subjects based on in-depth interviews. The core of my analysis is to offer a framework that embraces individuals' sense of self as a creative basis for facilitating widespread new forms of doing politics. To do so, I locate the particular political context of (trans*)feminist situated knowledge within the territories of collective struggles along with the dynamics of belonging and exclusion/inclusion brought in a Madrilenian case study. I thus aim to catch possible paths for integrating trans* and queer activism and the feminist agenda, and thus strengthen prefigurative forms of identity by showing how dissent about bodily identity can not only provide multiple and relational possibilities for embodied agency, but also mobilise intersubjective solidarity among marginalised communities and/or individuals.

2. Feminist Politics and Repertoires for Action

Large-scale political feminist movements, fostered by claims of oppressed social groups, use identity to highlight the politics of power at play in a gendered population, reclaiming the sense of self and community through the collective struggle against vulnerability, marginalization, and stigmatization. When it comes to queer and non-binary feminist coalitions, the identity politics that generated a place for contestation within the feminist agenda are forced to scrutinize not only what identity means but also the prospects of feminist practices and the discretionary locus of these new political subjects of feminism. In other words, for the political world of feminist ideals, queer and non-binary politics state the performative illocutionary acts which may provide collective literacy and territory for the new political subjects.

The sheer range of political actors that recognize themselves as potential agents of feminist struggles (and thus also claim the authoritative agency to construct a 'feminist agenda') already indicates how challenging this is, especially when we consider the intersecting gendered social movements that rely upon actors who may understand themselves very differently (from the essentialist and biological conflation of gender identities, to the denial of situated, fixed gender binaries). Through new 'de-genderization' strategies for social-justice claims in these social movements, new political subjects in the feminist arena are trying to find a balance between eroding of gender categories and binaries and the feminist concerns about the injustices and discrimination that affect particular—and gendered—social groups.

What seems to be in place is a hermeneutics searching for consensus between (a) the historical and germinal statements of identity-focused (and biased regarding gender-binaries) social movements and politics, (b) the new forms of doing politics along with the queer enactment of gender, and (c) the promises of social struggles and coalition building for a non-binary and non-essentialist worldview (which would induce potential alliances against shared social injustices).

We may argue that such a hermeneutics is still based on political identity and established conjectures of the self. Yet these highly diversified subjects organized under the political umbrella of feminism are redefining the matrix through which one can see oneself simultaneously as a political adherent to the 'feminist agenda' and a potential subject for new alliances under the rubric of 'feminist agency.' This re-scripting of feminist agency embraces a new set of conditions for a more inclusive feminism, avoiding undesirable occlusions within social movements or among collective actors who wish to act and be recognized as an active member of 'feminist community.'

A feminist agency that is as inclusive as possible (a matrix in which something new grows or develops) is rooted in both the philosophical history of feminism and current transgender and queer theories and epistemologies, both the bodily existence and the social constructs of sexed differences. This dramatic re-scripting of the feminist agenda and agency has highlighted the central, epistemic relationship between corporeality, subjectivity, and identity markers in the understanding of social injustices, inequalities and discrimination—including inside the arena of activism.

This relationship has been conceptualized in an active conversation between feminist theorists and activists at the intersections of different bodies of knowledge (e.g., critical race theorists, gender diversity and transgender theories, disability activism, crip theory) to pair the evocative politics and theory of gender oppression with practices of resistance. The result has been a powerful relational debate about embodiment and the narratives of lived experience as sources to construct feminist practices that are as multiple as the di-

verse bodies inhabiting society. It is clear that the social and the subjective experience of embodiment constitute different models to acknowledge the sense of our body and the prominence of the body as a living source of vulnerability.

3. The Multidimensional Feminist Project in the Madrilenian Context

The Madrilenian context provides a potential scenario to think about the many challenges of committing feminist movements to an intersectional approach which requires new structures for the feminist project. From the vicinity associations (*asociaciones vecinales*) of the 1970s, the city's rise in squatters since the early 1980s, to the remarkable occupy culture (*okupación*) of the 1990s, Mardid's counter-cultures carried out political, cultural, and social activities (*centros sociales okupados y autogestionados*, squatted and self-managed social centers) that represent embryonic versions of the political praxis which flourished in 2011's intense spread of participatory democracy in the public sphere. The 2011 Spanish occupy movement (called 15-M) aimed to practise a prefigurative politics, which led to the creation of thematic assemblies (and also an assembly methodology), not only in public space (as the emblematic *Puerta del Sol square*), but also squatted buildings, public buildings, or municipal properties run by a neighbourhood association.

The Madrilenian occupation of squares involved a horizontal organization and was an experimental form of protest, criticizing the functioning of representative democracy and calling for a diverse form of citizen participation in formulating social and economic policies. The movement's discourse on democracy resonated "with (more traditional) participatory visions, but also with new deliberative conceptions that underline the importance of creating multiple public spaces, egalitarian but plural" (Della Porta, 2012, p. 37), calling for a new collective solidarity and conversation among emerging identities.

The interaction between different notions around the body and sexualities were put forward in different directions along with the diversity of social mobilization. For example, in 2011's 15-M movement, disability politics met with a kind reception, bringing to the stage new understandings of disability-related issues. The committees of functional diversity (*comisiones de diversidad funcional*) created in 15-M encampments (*las acampadas*) on the square also emphasized the centrality of notions such as precarity, the uses of bodies as political instruments towards consensus among activists and participants, and the conviction that vulnerability is universal and transversal (Arenas & Pié Balaguer, 2014). Another example of how different social struggles can interact can be found "by looking at specific, situated feminist practices, such as the marches and events held for the International Women's Day on March 8th and the

International Day of Action for Trans Depathologization, known as 'Trans October'" (Platero & Ortega-Arjonilla, 2016, p. 59). The authors also pay attention to the fact that:

> Spanish transfeminism is not simply about feminism learning more about transgenderism. Nor is it only a matter of concern for trans women, so that they incorporate feminism in their personal and political practices. It has more to do with a paradigm shift, so that feminism can go beyond "attending the demands of those affected by the gender system [which would be a direct allusion to women and sexual and gender minorities] to address itself to combating the binary gender system itself," as Cristina Garaizabal stated. (p. 60)

Additionally, austerity politics and the asymmetrical effects of the economic crisis shaped new forms of activism and new solidarities. 'Minorities' activism' and their intersectional coalition and mobilization meanwhile provided new interpretations of a range of issues, from the crisis of representation and the effects of austerity measures to the acknowledgement of how different subjects are differently deprived of social and political existence. Bodies afflicted by precarity, subjected to deprivation and debilitation, and considered without agency, can now claim their existence at the forefront of politics (Butler, 2015).

By following this path, activists are working on an intersectional coalition in the fight against multiplying oppressions, drawing attention to some not-yet-fully visible intersectional struggles in the face of economic and ontological crisis. In coalition building, the variety of personal identities and conflicts involved confers additional complexity to a project that tries to address theoretical and normative concerns within feminist epistemologies (and by consequence, deconstructing the subject of feminism, the gender dichotomy and binaries, and the category of women itself). To instigate intersectional features and synergy in new structures for feminist social movements requires the ethical dimensioning of a broader (and relational) political community on the grounds of plurality and intersectionality.

This is not a simple task, since the theorisation of feminism has long held differences as central to the cause's political project (Lépinard, 2020, p. 27). In addition, the challenges of embedding feminist movements across intersectional synergies require facing the lineages, boundaries, and limits of emancipatory identity and post-identity movements, as they depict social struggles through the dynamics of political beliefs and exclusion/inclusion. We need to acknowledge that social movements committed to fight for equality and against oppression may ignore intersectionality, deny the dynamics among inequalities, and reinforce separatist attitudes based on exclusive identities (Cruells López & García, 2014) or disguised under umbrella identitarian loci. My primary objective in focusing on this debate is to

grasp how some self-identified trans and non-binary feminist activists are developing—amidst a restructuring process of collective mobilisation and amidst the multitude of representation claims—actual claims to more closely represent their constituency and better match the intersections between different political subjectivations and their moral and ethical dispositions.

It is here worth noting the delicate relationship between the feminist and the transgender-rights movement in Spain. The history of these movements—and the concrete circumstances that have connected trans women to feminist activists—has roots in different channels of knowledge production among community-based activists. The many comprehensive discourses operating trans and feminist alliances (or their co-existence) indicate their historically conflictive relationship in Spain. Pérez Navarro (2019) calls attention to way that spatial or territorial politics based on different identitarian frames (p. 160) can produce border conflicts within coalition building, leading to separatism (Navarro, 2019, p. 164). Significant Spanish events, such as national conferences or local marches, and specific collectives and feminist networks (whether by autonomous agents or organised feminist groups) were thus not only loci for the emergence of activist leadership but also the territory for alliance contestation beneath the banner (the agenda) of feminism. The recent history of the relationship between trans activism and feminist thought in Spain can be traced not exclusively but significantly through the impact that feminist fora had on the discussion of trans* rights and the inclusion of trans* identity-related issues in the public arena (especially through the presence of lesbian feminists within the movement; Platero & Ortega-Arjonilla, 2016). And one of the most prominent legacies of this is that there is not only "an active presence of trans* women and trans* issues in Spanish feminism, but there is also a widespread presence of 'transfeminism,' which needs to be explained in terms of its vernacular nuances, processes, and alliances" (Platero & Ortega-Arjonilla, 2016, p. 47).

As for the recent history of lesbians, gays, and transgender struggles that emerged from the long Francoist dictatorship, the participation of gender non-conforming people was not untroubled. Lesbian, gays, and trans* activists' first steps during the transition towards democracy, from clandestine subjectivities to visible bodies occupying the public space of the streets, were marked by the gay movement's reluctance to accept transgender people as a constituency of the 'sexual-minorities visibility' narratives for recognition. As Platero (2011) reminds us, the participation of transvestites in the first rally for sexual liberation in Barcelona (1977) was criticized both "by organizers, who saw in them a threat to their struggle for normalization" (p. 597) and "by a society that almost unanimously favoured the punishment of homosexuality" (p. 598). To face their challenges within the movement—and to establish new strategies to get their demands and needs recognized in the public

arena—transvestites, transgender people, and organizations worked to create public discourses and a collective identity that could project not only more inventive and pluralistic imagery about trans people in society, but also a comprehensive staging of their demands regarding justice, equality, and visibility in the political debate.

This is clear evidence of the ongoing battle that 'disenfranchised citizens' (Platero & Ortega-Arjonilla, 2016) have faced when it comes to building coalitions with other collectives, or when other sexual minorities (such as non-binary subjects) look for support in the collectives they believe to be allies in the struggle against discrimination.

The convergence between the feminist agenda and the Madrilenian agenda of the trans movement in the 1970s and 1980s, when its organization and institutionalization began, is still referenced today by trans*feminist activists in debates on the regulation, legalization, and unionization of sex work—which shows how the genealogy of trans movements has been closely related to the feminist agenda of sexual rights. In this alliance between different actors advocating for sexual rights, activists have found new coalition strategies (for example, between trans*feminist activists, sex-worker activists, and disabled activists).

Prefigurative forms of identity relate to the forms of political subjectivity—the social or interpersonal relationship which "will make possible the passage from the subject to the actor" (Wieviorka, 2012, p. 6)—in the realm of cultural and social mobilisations and alliances. Moreover, in the context of our discussion, prefiguration defines an advocacy effort to surpass the collective imaginaries that encompass inequality and injustice through regimes of normalcy. An example of such a strategy is replacing the term 'disabled' with 'functionally diverse' people employed by independent-living activists in Spain and beyond.

Independent-living and disability-rights activists in Spain stress the visibility of disabled people as sexual and autonomous subjects, politicizing functional diversity through the sexualisation of the people with disabilities. In other words, people with a disability are now claiming what Siebers (2012) calls "a sexual culture based on different conceptions of the erotic body, new sexual temporalities, and a variety of gender and sexed identities" (p. 47). By displaying notions such as oppression and social justice around the body, the sexualities and the many possible links between the discourses about 'minority populations' and 'sexual minorities,' conversation may flow in different directions: From the institutional disability-rights agenda—e.g., accessibility and welfare inclusiveness—to one where intimacy and sexual rights become part of a non-normative culture of resistance beyond the heterosexual matrix (García-Santesmases Fernández, Vergés Bosch, & Samaranch, 2017) along with the politicization of narratives of deviance (Edwards, 2015; Love, 2015).

This transformative politics regarding people with disabilities in Spain is rooted in feminist cultures which re-

sisted sexual repression and the legal and institutional apparatus constraining intimacy and sexual rights. The LGBTTIQA+ struggles likewise underline the significance of this politics to contemporary intersectional feminist cultures. Feminist critiques of the social control of sexual subjectivities are thus highly relevant to activists attempting alliances between different forms of political agency. Consolidating and co-developing a network with a continued and active engagement of people who live embodied situations of discrimination and violence (due to their gender, class, or race, for instance) nurtures the emotional and material negotiation between different subjects living in different social and spatial reaches of society. Feminist researchers in the field of disability studies, for example, are aware of epistemic and restrictive systems of power and privileges that enforce hierarchies of bodies and identities (Garland-Thomson, 2002; Hall, 2011; Wendell, 1989, 1996). They are equally conscious of the power systems that normalise specific bodies as having the 'privileges of normality' (Baril & Trevenen, 2016; Masson, 2013) and 'others' the bodies outside this system of privileges through a regime of oppression and precariousness.

4. Body Politics, Political Subjectivation, and the Feminist Project

When studied with an intersectional lens, themes central to the study of social movements, particularly the functioning of power through structural disadvantages in the political sphere (Arenas & Pié Balaguer, 2014; Della Porta, 2012) can help redefine our understanding of the representation of conflicting constituencies and interests within a collective identity (Platero, 2011). It is also important to stress the "power differentials in order to maintain a working alliance" (Cole, 2008, p. 444), including the awareness that heterogeneous coalitions bring together heterogeneous constituencies (Saunders, Roth, & Olcese, 2015), prospects of bodily differences, and different power relations in the framing of political agendas and coalitions.

Along with historical feminist views that project gender and sex onto the mind and body dualism, recent political efforts by feminist actors are endorsing the view that incorporating intersectional feminist epistemologies into a project of undoing ontological narratives of self is also meaningful to body-related issues important to the movement. The separatist attitudes of particular feminist constituencies can (and should) be critiqued for more than their attacks on gender fluidity or transitivity, or their narratives that sustain biologically essentialist notions of sex and gender. Following Hines (2017), we can see how the separatist rhetoric and attitudes of trans-exclusionary radical feminism towards other constituencies of feminist struggles that are interpreted as a threat to 'women's causes' can have ignoble and despicable effects on the struggle against marginalization, oppression and violence.

It should also be said that transfeminism does not mean merely accommodating trans people in feminism, nor is it only a political gesture towards trans bodies and identities (trans* practices of the self). The integration of the terms 'trans' and 'feminism' is a political effort to incorporate intersectional feminist epistemologies into a project of undoing ontological narratives of the self. Trans-inclusive feminist social movements are imagining the political project of a contemporary feminist praxis that embraces and acknowledges a myriad of situated discourses on minorities that is irreducible to 'embodied nonnormativity' or gender identification, but instead crossed with the interlocking inequalities that shape (shared forms of) discrimination. No less important, bodies in dissent point to rethinking normativity "not in relation to a compulsory, uniform standard, but through an expansive relationality among and within individuals, across and within groups" (Wiegman & Wilson as cited in Edwards, 2015, p. 141). Normativity also points to the reframing of the politicisation of narratives of deviance. As Love (2015) notes:

> The concept of deviance thrived, but rather than being a descriptive term, it became prescriptive. Queer critics embraced deviance not as an inevitable counterpart to conforming behaviour and an integral aspect of the social world, but rather as a challenge to the stability and coherence of that world. The shift from a descriptive to a prescriptive view of the world might be understood—and indeed has been understood by queer scholars—as a process of politicization. (p. 77)

When we scrutinize feminism as a collective movement, it is important to acknowledge that many actors who are disputing the meaning of 'feminism' and its spheres of action believe intersectionality to be a path to address sexism, sexual oppression, and the perpetuating (and intersecting) practices of exploitation and oppression over the body. In these terms, the future of feminism would depend on (and is a tributary of) its intersectional strands—in other words, on recognizing identity-based belongings within the complex accounts of anti-identitarian politics.

The ontological basis that has characterized identity politics from the 1980s to the present day is disquieting. And the divisions and oblivions identitarian mobilisations strategically perform internally have at least two visible effects. First, they prioritize different spheres of social relationships (focusing on and reinforcing one differentiation marker—or certain interacting markers—to the detriment of others) to enhance the public visibilisation of social inequalities and discrimination that target specific subjects. Second, because of this inclusion-exclusion processes, they enable autonomy claims and demands within included and excluded subjects in terms of their social (in)visibility.

The issue is whether subjects' autonomy (the ways through which they may or may not perceive the re-

production of discrimination and inequalities) can intervene into the logic that produces inclusion and exclusion zones within identitarian politics (the subjects recognized as legitimate constituencies of a cultural and political struggle), and thus offer opportunities for recognition and visibility within, whether in the margins or outside of the identity markers and identitarian mobilisations. Legitimacy is also constituted by the ways oppressed subjects strategically use their marginalised subjectivities towards action in the realm of transformative identity politics.

Given that the construction of political identities (the clusters of identification) can help explore transformative politics or push for policies that reduce inequalities, the ideas of 'difference' and 'identity' creatively interact with one another in the everyday politics of resistance (Brah, 2007; Viveros Vigoya, 2008). This is because those terms do not necessarily respond to homogeneous internalized identity markers among constituencies presumed to be homogeneous. To think intersectionally means assuming that 'difference' and 'identity' are the axes that structure social identities as both (a) a political investment in the face of powerful systems of identity construction and (b) an emotional resource that more or less consciously envisages the subjective lives' experience in a solidary political praxis.

Transfeminist mobilisation often encompasses LGBT*Q+ people from different contexts of vulnerability and violence, all calling for greater representation within the feminist social movements. This is even more evident amongst trans* and non-binary people. Trans people manifest their claims within the arena of women's and gender studies, since transgender subjectivities, their gender identities, and/or their gender expressions were subjected to the enforcing and hierarchical violence of a binary normative gender system. And envisioning trans people as subject to gender discrimination meant acknowledging trans people within the binary model explaining gender inequalities and gaps. Trans people joined women's and gender studies by the back door, however since they were placed in a troubled relationship with some subjects who also were acting in the name of feminism. As Enke (2012) reminds us: "Gender and women's studies is one place where transgender studies have managed to make an institutional home…but it is as yet an ambivalent home" (p. 2). Instead, Enke calls for the integration of feminist and transgender theory and practices in a way that "trans might be central, not marginal, to gender and women's studies" (Enke, 2012, p. 2).

Studying the Madrilenian relationship between the trans movement and the feminist agenda of sexual rights in the 1980s and 1990s, especially their debates on prostitution and the support of transgender women sex workers' struggles against the violence perpetrated by society and the state, is enlightening here. Their convergence then is still reflected in today's debates on people's experiences of sexual repression, sexual autonomy, or the legal and institutional apparatus that constrains intimacy and sexual rights. In both disability and LGBT*Q+ struggles, it also left its mark on the debate on desire, sex, and the political struggles about people's bodily and sexual agency. As transgender organizations were having trouble publicizing their concerns, some feminist organizations supported their struggle—as the trans movement's genealogy had been so closely related to the feminist agenda of sexual rights in debates like those on prostitution and support for transgender women sex workers' struggles "to defend themselves from police harassment" (Platero, 2011, p. 598). The relevance of feminist political commitments to trans activism is fundamental to understanding the current horizon for trans activism.

We should thus return to the debate about 'embodied nonnormativity' that frames the politicisation of narratives of deviance. Given that the study of sexuality uses 'normal' and 'deviant' categories to explain social life and individual existences (in other words, both categories persist as metaphors of the social order), the political and the methodological antinormativity of queer theory and critical disability studies (and disciplinary affiliations and methods such as 'crip theory') in turn addressed gendered debates on the grounds of sexuality's complex imbrication with other aspects of social and psychological life (e.g., sexual practices, desires, relationships, intimacy, friendships, affect). Antinormative research thus entered an epistemological battle against the standardization and commodification of concepts in social theory, arguing that knowledge should instead be extracted from the situated and lived experiences of 'marginal subjects.' Sexuality should account for the identification of social marginality and the effects of one's life being located inside the 'margin.' This is partly why feminist and queer movements are modifying their political projects to respond to their subject's commitment to intersectionality.

Feminist, trans*, and/or non-binary people find ways to turn discursive representations of their identities into political statements about the nature of their political action. The politicization of minority discourses and the intersectional understanding of identities claims and demands have experienced gradual changes in Spain as the existing rules of gender and sex binaries were strategically displaced and put in dialogue with the Spanish "legacy of progressive inclusion of peripheral subjects" (Platero, 2011, p. 610).

Through nonbinary activism and a new intersectional feminist praxis, trans* politics thus helped to expand the political subject of feminism and our understanding of identity politics, sexual politics, and erotic justice. If we think about this discussion in the current terms of disability activism, we can also suggest that an ableist society—framed in its own set of binary distinctions (including gender)—usually obliterates non-binary and/or disabled people as subjects (bearers) of eroticism and desirability. In this sense, strengthening a shared (trans*feminist) culture of resistance could be ground-

breaking in maintaining a working alliance among sex workers' and sexual-assistance activists' embodied political agendas. It is through such distinctive rebellious politics of emancipation that many subjects may (re)signify their non-normative bodies and self-expression (including the realms of eroticism, and sexual desires and expressions). Here, a situated intersectional praxis that struggles for new politics of visibility can expand the repertoires of action and nurture emerging coalitions and agencies stemming from a variety of hybrid political subjects.

5. Political Subjectivation and Cleavages: What Does Disability Politics Have to Do with Critical Feminism?

By questioning the system of compulsory able-bodiedness, disability activists reflected on the intersections that are constitutive of disabled people's bodies and embodiment in an able-bodied society. To ask about these intersections is to inquire about possible solidarities and mutual recognition between all people (whether disabled or not) who experience suffering because their bodies and/or identities do not fit the hegemonic norm. Following Shakespeare and Watson's (2002) statement:

> An embodied ontology would argue instead that there is no qualitative difference between disabled people and non-disabled people because we are all impaired. Impairment is not the core component of disability (as the medical model might suggest), it is the inherent nature of humanity. (p. 25)

Overlapping notions like exclusion, disadvantage, and oppression are key to understanding the relation between gender studies and disability studies. Regarding the many possible analytical interfaces, Sherry (2004) reminds us that:

> Feminism's strategy of separating sex from gender—biology from social reactions to biology—was a model for the emerging field of disability studies twenty years ago….Disabled people separated impairment—physical or cognitive difference—from disability—the social reactions to that difference. Queer Theory's social constructionist approach towards sexual orientation is also deeply indebted to feminism. (p. 776)

Strategies that seek to align the terms of resistance to those of dissidence make it viable to think of organizational forms of resistance that integrate struggles in the fields of corporeal and identity dissent. Assuming this point of view, incorporating the queer/'cuir' and feminist repertoire of political action into the logic of mobilization (Trujillo, 2016) is fundamental to understanding how dissidence can help create alliances among autonomous collectives. In this context, the queer critique of identitarian politics provided by transfeminism and non-binary activism (particularly with regards to the inclusionary

and exclusionary effects of representation) goes beyond the simple abjection of an ontology of the self and the naturalisation of binary identities. Instead, these spaces mobilize the notion of identity as a form of resistance and as a political strategy questioning whether identity categories are stable, homogenous, natural (Trujillo, 2016), considering our bodies and lives are interlocked in regimes of oppression instead of predicated on stable oppositions.

The challenges of integrative politics go in multiple directions (Highleyman, 2002). The relationship between trans movements and the feminist agenda of sexual rights helped to shape a new public platform for the disability-rights agenda, innovating activists' alliances along transversal struggles. Disability-politics narratives and practices also reach prefigurative forms of identity that are not necessarily (or not always) associated with debilitating conditions. Thus strengthening the notion of embodiment in its "potential, intentional, intersubjective, active and relational dimension" (Esteban, 2004, p. 21) enables disability and transgender studies to forge an association by bringing together embodiment with the idea of bodily dissidence. This is because both are powerfully constructed around bodily-identity dissent. This strategic (im)balance between the body and the mind is key to the struggle for the rights of both trans and disabled people. Thinking about the body in terms of its absence/presence and invisibility/visibility—i.e., from identity to the nonidentity problem through the conflictual emergence of plural (co)existences and new forms of social agency—will significantly contribute to thinking about human embodiment, and to recognizing the body as "integral to human agency" (Shiling, 2012, p. 13; see also Damasio, 1994; Turner, 2008) in such a way that it becomes "impossible to have an adequate theory of human agency without taking into account the reflexive, thoughtful and practical potentialities facilitated by our embodiment" (Shiling, 2012, p. 13).

Attempting to access this kind of transformative 'social drama' that combines and reconciles queer, trans*, and disability politics—grappling with the agency of both queer radical mobilization (Shepard, 2010) and the disabled people's rights movement—social agency may finally rely on bodies afflicted by different forms of precarity. Subjected to deprivation, debilitation, and oblivion, these previously considered disposable bodies are now claiming new modes of political struggles and plural (co)existence. Accordingly, new forms of visibility and new narratives around disabling experiences emerged, particularly through new synergies of anti-ableist activists in the field (Clare, 2001; McRuer, 2002, 2006). These new voices were unified in the acknowledgement that hegemonic identities are constructed through a continuous process of 'othering' people excluded from the social spectrum of 'normality.'

Since the new priority of the 'disability agenda' was to redefine the terms and the key themes of inequality and injustice, cultural understandings of disability

were directed toward the social phenomenon of excluding and oppressing disabled people, enforcing a normative understanding of the body based on individual biological and bodily aspects (Union of the Physically Impaired against Segregation, 1976). In disability studies, this meant a critique of normativity based on deconstructionist and performative theoretical models relying upon identity politics and minority discourses (Davis, 2002). This brings us to what Kafer (2013) calls the relational/political model of disability, "one that builds on social and minority model frameworks but reads them through feminist and queer critiques of identity" (p. 4). In this sense, disabled people and disability literature (Barnes & Mercer, 2003; Clare, 2001) have both been calling for people's responses to the experiences of marginalization and oppression, and thus developed an innovative form of disability politics.

6. Bodily Identity Dissent and the Sources for Collective Mobilisation

Through the experiences of being trans* and non-binary, or living with a disability, people enter their transgressive bodies in social spaces (Hines, 2010; McRuer, 2002; Oliver, 2009; Shakespeare & Watson, 2002; Wendell, 1996), demanding a cognitive presence in the public consciousness and in the collective imaginary that recognizes and makes visible the many forms of oppression experienced in their daily lives (Barnes, 2016; Sherry, 2004). That is the reason why some authors (Cole, 2008; Kafer, 2013) call for the importance of integrating ableism—that is disability-based oppression—into our understanding of oppression and, through the myriad of lived bodily differences (Clare, 2001), highlighting experiences of multiple oppressions (Butler, 2015; Laperrière & Lépinard, 2016) by spanning the distance between disability politics and trans experience (Clare, 2001).

Self-determination has confronted the imagery of normalcy, strategically asserting insurrectional positionings for people's subjectivities and lived vulnerabilities. Following the efforts of political actors, 'crip theory' (McRuer, 2002, 2006) emerged intersectionally, stemming from disability studies and allied with feminist and queer scholarship and activism (Ahmed, 2006; Garland-Thomson, 2002; McBean, 2016). It thus calls for an intersectional identity membership where the 'dysfunctional' becomes a self-reflected form of resistance against normativity (Davis, 1995) and the regulation of bodies and subjectivities.

Trans*feminist activism's intersections with disability-rights agendas in Madrid have resulted in enriching outcomes. LGBT*Q+ people with and without a disability, especially trans* (binary and non-binary) and genderqueer activists, are experiencing suffering and translating it into a strategic intersectional subjectivity that gathers trans*, queer, and disabled peoples' experiences through the strategic use of concepts such as 'marginalization,' 'normalcy,' and 'oppression' as assets

for political activities. This is because contemplating the imageries that encompass one's relation to normalcy enables new horizons for the collective struggle against social oppression.

Trans*feminist autonomous collectives engage in new forms of politics by affirming their particular needs, interests, and identities, framing their struggles for recognition, difference, and identity in potentials for emancipation.

The challenge here is in how the exploratory and normative roles of associative movements (the core of political mobilisation) have engaged with new constituencies. Additionally, we need to ask whether and how these multiple encounters play a role in building common grounds within the myriad of personal differences at the heart of collective encounters.

The main challenge faced by individual subjects gathered together for collective action is that positioning a group as a collective actor needs to result from the aggregation of subjects who may be misrecognized as being unreliable social actors in the sense that they do not share the group's identity-markers.

Political mobilization happens in a social location where political subjects can dispute moral dispositions in a planned and long-lasting effort to achieve a productive way to critically address questions of identity and difference. In the process, one can become intelligible to their counterparts, yet approval to become a member of the community depends on one's effective capability to not only regulate one's ideas or moral efforts, but also one's behaviour, gestures, and not so mutable nature of self. Once that individual recognition faces a desire for an immutable nature of the self, the individual is an object of others' self-conception, and this carries consequences for a political mobilisation that aims to build alliances intersecting with other autonomous subjects (selves) aiming for mutual recognition through the very notion of 'difference.'

7. Conclusions: The Intimate Labour of Political Solidarity

Ideas, representations, identities, emotions: everything is negotiated in the public sphere, and all affects are experienced through the body—a contextual body that is always inscribed with multiple identities; a body that encounters resistance employing its embodied registers. If we understand social movements as critical spaces and pedagogic forms of collective action in defence of common interests (Della Porta, 2012), we need to redefine the semantic territories for action (spatial, symbolic, affective, material) into an inclusive activism, a politics of coalitions, and the articulation of bodies and (multiple) identities.

Following this track, we can analyze how personal feelings (emotion and subjectivity) not only underpin identity changes but also contemporary socio-political mobilizations. The notions of self-care and caregiving in

activist environments and communities are subsidiary to this debate. On the one side, feminist, trans, and queer knowledge about dependency and solidarity stressed a more systematic connection between care work, ethics, and marginalized communities (Marvin, 2019). On the other side, disability activists have called attention to caring networks and assistance clusters (marked by inequalities in incomes and resources) in a spatialized and discriminatory society.

Additionally, acknowledging the relationship between subjectivation and social mobilisation may contribute to the understanding of how and whether the logic of cultural and social mobilisations changes the nature of political alliances in the course of reinventing and transforming social life.

After this discussion, new questions arise: What can socio-psychological attributes do to socio-political transformation? How do psychological outcomes (e.g., anxiety, fear, loneliness, rejection) impact identity change or orient people toward more (or less) inclusive networks? Moreover, in what ways does suffering help shape new forms of individual self-recognition that drive collective solidarities? And most importantly, how all this shape the lives of people as intersectional beings?

While recognizing the advances of identity-based politics in raising awareness of the issues and concerns of marginalized groups, Highleyman (2002) urges a necessary "move beyond identity politics to advance on a broad-based progressive social justice agenda" (p. 119), affirming a 'queer sensibility' in the struggles for justice and putting forward the praxis of a prefigurative politics. In such a politics, trans* (binary and non-binary) people and disability activists approach social vulnerability in conjunction with the oppression experienced by non-normative bodies and identities, assuming a confrontational position in the face of a (instrumental) feminist agenda that resists adding some subjects as actors of feminist struggles (such as trans people or sex workers).

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Conflict of Interests

The author declares no conflict of interests.

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Article

Trans* Politics and the Feminist Project: Revisiting the Politics of Recognition to Resolve Impasses

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Abstract

The debates on, in, and between feminist and trans* movements have been politically intense at best and aggressively hostile at worst. The key contestations have revolved around three issues: First, the question of who constitutes a woman; second, what constitute feminist interests; and third, how trans* politics intersects with feminist politics. Despite decades of debates and scholarship, these impasses remain unbroken. In this article, our aim is to work out a way through these impasses. We argue that all three types of contestations are deeply invested in notions of identity, and therefore dealt with in an identitarian way. This has not been constructive in resolving the antagonistic relationship between the trans* movement and feminism. We aim to disentangle the antagonism within anti-trans* feminist politics on the one hand, and trans* politics' responses to that antagonism on the other. In so doing, we argue for a politics of status-based recognition (drawing on Fraser, 2000a, 2000b) instead of identity-based recognition, highlighting individuals' specific needs in society rather than women's common interests (drawing on Jónasdóttir, 1991), and conceptualising the intersections of the trans* movement and feminism as mutually shaping rather than as trans* as additive to the feminist project (drawing on Walby, 2007, and Walby, Armstrong, and Strid, 2012). We do this by analysing the main contemporary scholarly debates on the relationship between the trans* movement and feminism within feminist and trans* politics. Unafraid of a polemic approach, our selection of material is strategic and illuminates the specific arguments put forward in the article.

Keywords

antagonism; coalitional intersectionality; feminist politics; identity; misrecognition; status; trans* politics

1. Introduction

The debates on the antagonism against trans* issues within the feminist movements have been politically intense at best and aggressively hostile at worst. Key contestations have revolved around what it means to be a woman, what feminist interests really are, and how trans* politics intersects with feminist politics. These debates are not new, but have recently received renewed attention. The past decades of debates and scholarship have proposed ways forward and different solutions to

these impasses. These have been met with various degrees of antagonism, in particular from the realm of right-wing and conservative politics, but also from women's movements within the larger feminist project. This hostility within the feminist project in contemporary debates concerning trans* issues is to some extent unsurprising: When marginalised groups break their silence and demand inclusion in established politics or social movements, they are rarely embraced by the majority. Instead, they often meet opposition and accusations of fragmenting the wider movement, focusing on details and trivial

issues, and polarising the cause—whatever that cause might be. Some semi-contemporary examples include the demands and voices of women in the workers' rights movement, of Black and ethnic-minority feminists in the white feminist movement, and of trans* women in feminism. When previously silenced groups speak (out), the majority group is challenged to rethink its basis, ideology, inclusion, privilege, and politics of representation, a process that may be both challenging and agonising (Lépinard & Evans, 2019).

Debates and practices among radical feminists and other scholars and activists continue to challenge whether trans* women are women, thus attempting to exclude trans women from feminist alliances and the overall feminist project. Trans Exclusionary Radical Feminists (so-called TERFS) and some gender-critical feminists within radical feminism have actively opposed trans* politics. Trans* activists and scholars criticise such 'transphobic' feminists for misusing their privilege to monopolise the category of women. An example is Sheila Jeffreys's book *Gender Hurts: A feminist Analysis of the Politics of Transgenderism*, where she writes trans* people are an assault on feminism, women, and children. Jeffreys is an established Australian feminist scholar, well-known for her critiques of queer theory, sex work, and pornography.

We use the term trans* with asterisk to denote that trans* indicates a special relation and trans* embodiments in order to avoid an identarian conceptualization of trans* (Rees, 2016, p. 230). We do not understand trans* as only in relation to gender categories assigned to men and women (Stryker, Currah, & Moore, 2008, p. 12). Therefore, we apply the asterisk to trans* to give conceptual bearings on specification and speciation; trans* is "more than and equal to one" (Hayward & Weinstein, 2015, p. 196).

In this article, we investigate the anti-trans* movement within the feminist project. The aim is to explore the roots and basis of this antagonism in order to examine if and how an alternative understanding may contribute to overcoming an antagonism that we think is rooted in identity-based (mis)recognition. Instead, we explore and suggest recognition based on the status and needs shared by both trans* politics and the feminist project. We use the concept 'feminist project,' inspired by the work of Walby (2011; see also Verloo, 2018), to include all activities, practices, programs within groups, and organisations that share feminist goals. With this definition, Walby (2011) widens the concept of a social movement by including a wider set of ideas, actors, and practices as long as they have the general objective of societal change, and as long as its actors and activities are attempting to achieve that change. Such movements are inherently dynamic but they are united by their general direction: For the feminist project, that direction is against gender inequality and toward improving the position of women, but for the elements within that project their specific focus, content, and strategy can and does differ and change across time and space.

In our analysis of the shared history of trans* politics and feminism in civil society, we see them both as constitutive parts of the feminist project. We identify a critical turning point in the structure of global movements coinciding with a shift away from activism around rights and interests, and towards identity. But neither the split nor the hostility has always existed. It is a recent antagonism based on specific notions and analyses of who constitutes a woman and who has the right to make claims as a woman within the feminist project (Hines, 2017; Moghadam, 1994). This raises epistemological questions of who can write on what: Can only women write about the experiences of women? And if so, which women? Can only trans* people write about trans* people, and can only lesbian people write about lesbian people? Writing from a perspective that you do not embody but embrace constitutes situated, not embodied knowledge, and must be done carefully—but it can be done. Taking this position means carefully acknowledging one's situatedness and politics of location (Haraway, 1988).

By tracing the pre identity-based history of the role of trans* politics within the feminist project and their coalitions and alliances, we argue that the issue of who constitutes a woman as the key contestation is based on false, or at least unfortunate, premises, drawing on the investments of both anti-trans* feminist and trans* theories and practices of identity-based recognition. Putting the spotlight on the contemporary and particularly hostile debates makes the underlying problems relatively easy to identify. But the solution does not lie in group politics with a broader base, or a politics of (organised) interests (see e.g., Jónasdóttir, 1991; Jones & Jónasdóttir, 1988), but rather in embracing a politics of (mis)recognition based on status and needs (Fraser, 2000a, 2001; see also interview with Fraser in Dahl, Stoltz, & Willig, 2004). We perceive identity-based politics of recognition versus status-based that is the Hegelian understanding of recognition that emphasises on identity and that identity is constituted in relation to recognition by others. Therefore, misrecognition means devalued identity by the dominant culture which places recognition in individual subjectivity (Honneth, 1995). However, status-based recognition, according to Nancy Fraser (2000a, pp. 24–27) is to treat recognition as a social status which does not mean devaluing group identity; it means social subordination in a sense that prevents people from parity participation in social life. That is why status-based recognition focuses on the needs of people to be able to participate in social life. Moreover, as Fraser (2000a, p. 27) explains, perceiving recognition as status "places the wrong in institutionalized social relations, not in individual or interpersonal psychology."

2. Shared History

Trans* activists have always worked in alliance and coalition with other social movements, including the feminist project. In this section, we shed light on this shared

history of the feminist project and trans* politics, drawing on literature in English. We conceptualise this shared history as a status-and-needs-based alliance between trans* and feminism; the section notes how trans* activists worked in alliance and coalition with other social movements, including feminist ones, around shared oppressions, e.g., gender-based legal, political, medical, and social oppression (Stryker, 2017, p. 96). There have been joint struggles, including surveillance and police harassment, exclusion from social services, discrimination in housing and employment opportunities, and the lack of legal status. Even though there are narratives of long-held tensions between sections of the feminist project and trans* activism, there are concurrent histories of solidarity and alliance. Many of the early radical feminist movements were not hostile towards trans* women (Hines, 2017; Stryker, 2004, 2008, 2017; Williams, 2014).

Trans* activism is intertwined with the history of early 20th century gay emancipation in Europe and the US. In Europe, it dates back to as early as 1910, when German physician and sexologist Magnus Hirschfeld advocated for homosexual rights and later transsexual rights. These alliances were ongoing until the 1930s, when the rise of fascism and the rule of Nazism in Europe did not allow for much activism. In fact, in 1933, the Hitler regime burnt down Hirschfeld's Institute for Sexual Science in Berlin.

Drawing on coalitions and the shared history of feminist and trans* activism, Stryker (2008, 2017), Professor of Gender and Women's Studies and founder of the Transgender Studies Initiative at the University of Arizona, emphasises the historical existence of the US' trans* liberation movement, starting around the 1850s, and joining the feminist and gay-liberation movements from the 1950s until the early 1970s. Early on, trans* activism in the US was formed through individual actions. Stryker (2017) maps out the events in cafes and restaurants in different cities (e.g., the unrests at LA's Cooper D-Nut in 1959, Philadelphia's Dewy in in 1969, San Francisco's Compton cafeteria in 1966, and New York City's Stonewall Inn in 1969) that paved the way for the contemporary trans* movement for social change, yet are usually misunderstood as stemming from the gay-liberation movement alone.

The touchstone of intersectional feminist movements that addressed trans* issues, according to Stryker (2017), was Black feminists' 1973 founding of the National Black Feminist Organisation (including activists from the civil-rights movement, the Black Panthers, and the Black Lesbian Caucus of the Gay Liberation Front) which was an important early site for feminist politics in coalition with trans* activists. Thus, inspired by their activism, the Combahee River Collective criticised all biological determinism a year later, calling it "a dangerous and reactionary basis upon which to build a politic" (Stryker, 2017, p. 124). Trans* politics and feminism may share different theoretical stands, but their history and activism are weaved together (Scott-Dixon,

2006). The relationship between feminist theory/politics and trans* theory/politics has been interactive as well as intersectional, but historically and politically distinct (Bettcher, 2017). Feminist intersectional analyses accounted for trans* people's experience in the early 1980s that is argued to have laid the foundation for trans* feminism (Stryker & Bettcher, 2016).

In the US, the early 1970s marked a turning point in the shared history of trans* politics, gay liberation, and the feminist project (Stryker, 2017). Key here was a fissure in the coalitional structure between feminist and trans* politics. Three separate underpinning issues and events relating to law, activism, and academia can be identified as causes of this watershed moment, leading to legal, activist, and academic divergence between feminist and trans* politics. We argue that the legal divergence between the trans* community on the one hand and feminist and gay communities on the other happened because of some feminist lesbian and gay activists' opposition against the medical and legal systems which clashed with trans* people negotiating their medical transition with the state. Another reason was the de-pathologisation of homosexuality in the Diagnostic and Statistical Manual of Mental Disorder (DSM) in 1973 and the pathologisation of trans* identification as a psychological disorder in the 1980s. The activist divergence, meanwhile, occurred in the late 1990s, when feminists excluded trans* women from the Michigan Womyn's Music Festival on the basis of so-called 'womyn-born-womyn' politics, which caused a huge breakdown between trans* women and feminist activists. It created a hallmark division in women, queer, and trans* political discussions and led to the creation of a parallel festival called Camp Trans. The academic divergence took place around scholarly debates on the 'gender authenticity' of women focusing on women's bodies and their experience of womanhood, particularly in the writings of some UK and US based feminist academics (cf. Daly, 1978; Jeffreys, 1997, 2014; Raymond, 1979). Based on biologically deterministic politics, they argued that transsexuality [sic] involved those primarily unhappy with strict gender roles; transsexuals [sic] were labelled "gender conservatives" with "false consciousness" about their assigned genders (Elliot, 2010, p. 56).

In response to the hostility of some feminists towards trans* people and activism, trans*-sympathetic scholars have developed theories and practices to ensure trans* politics are part of feminist politics in the Western world. The early, central text in this regard is Stone's (1987/1992) *The Empire Strikes Back: Posttranssexual Manifesto*, a response to Raymond's (1979) highly contested and widely criticised book, *The Transsexual Empire: The making of She-Male*. As a result, a flux of publications in English (i.e., Devor, 1997; Ekins & King, 2001; Prosser, 1998; Stone, 1987/1992) have argued the case for trans* knowledge and experience since the late 1980s.

3. Investigating the Debates: Problems and Solutions

There is a growing line of literature addressing the vexed relationship between anti-trans* feminists and trans* politics, identifying different causes and proposing different solutions to end the standoffs. We note that the English-language literature on this topic tackles: 1) the debates about the struggle for justice through identity-based recognition; 2) the debates on identity-based group interests, which focus on either women's or trans* interests; and 3) the debates on a particular intersectionality concentrated on either including or excluding trans* people and issues from feminist politics. In this section, we discuss how these three key debates are shaped around issues of who is a woman, whose interests are at stake, and who is included or excluded in feminist politics (and why).

Scholars (cf. Bettcher, 2017; Elliot, 2004; Hines, 2017) have addressed that the main site of the contestation raised by anti-trans* feminist politics is about the question of who constitutes a woman: Are trans* women women? This question is based on the idea that only specific time-bound bodily experiences qualify certain bodies as women's bodies. This, we conceptualise as an identity problem. The literature that address this contestation suggest different ways to resolve the antagonism between anti-trans* feminists and trans* politics. Elliot (2004), for example, suggests that, since social and political lives cannot be addressed without knowing the identity of the person, feminism should battle all oppression and problematise identity instead of politicising it. For Elliot (2004), dismissing cultural meanings of transgender identities is not helpful to a feminist project combating oppression, both because trans* activists raise questions regarding sex, gender, and embodiment that are important to non-trans* feminists, and because resisting feminists who promote public awareness about trans* issues might undermine their work of awareness raising and opposition to transphobia. Hines (2017) criticises the focus on identity, and frames the question of who constitutes a woman as an issue centred on a woman's body, not her identity. Hines (2014, p. 85) suggests valuing "subjectively located bodies" instead of women's experiences of their female body. Taking the argument further, Bettcher (2017, pp. 4–5) suggests there should be multiple meanings of 'woman' instead of one narrow category; oppression is "the invalidation of trans* identities that arises from organised gender practices" in society. Further, Bettcher (2017) argues that feminist philosophers' narrow focus on the question of trans* women overlooks the reality of trans* people, which involves more issues than gender identity. Since these debates all revolve around identity, arguing either for or against, it becomes tricky to resolve the contestations without first resolving the question of identity.

Another main site of antagonism revolves around who is the concern of the feminist project. In other words, are trans* women's interests feminist interests?

We can see how identity-based interests, such as those of trans* women, have led to discussions on including some people and excluding others from the feminist project. To solve this problem, Serano (2013) suggests feminism should pay more attention to sexism and the marginalisation of trans* people instead of engaging in Oppression Olympics. Oppression Olympics, coined by feminist activist Elizabeth Martínez in 1998, is the characterisation of exclusion or marginalisation as a competition between individuals or groups, often based on gender, race, ethnicity, socioeconomic status, sexuality, or other inequality grounds (Martínez, 1998). Whoever is the most excluded or marginalised—worst off—'wins' these Olympics. Whoever is more authentic, more oppressed, is more 'correct' (Dhamoon, 2011; Shannon, Rogue, Daring, & Volcano, 2013). Serano (2013) problematises the notions that cisgender women are more oppressed than trans* women and that trans* women have a history of male privilege. For her, it is reductive to ask whether trans* women's interests are the interests of the feminist project. Instead, she suggests that fighting any form of sexism and marginalisation is in the interests of feminism, and that, since trans* people are affected by institutionalised cissexism and trans-misogyny, their interest is at stake in the feminist project. Feminist scholars such as Yuval-Davis (2010) and Hancock (2011) have both suggested various forms of intersectionality theory as a route out of the antagonist debate between anti-trans* feminist and trans* politics.

Since the 1970s, trans* activists and scholars in English language literature have argued for including trans* issues into feminist politics and against trans*-exclusionary feminism. However, the inclusion of trans* issues into the feminist project is faced with limitations (Johnson, 2015). Let us give two examples from two non-English speaking contexts: Québec and Iran. In Francophone Canada, the feminist fixation around women's interests and lack of theorising and discussing trans* issues, according to Baril (2016), is explained by how 1970s Francophone feminism did not consider trans* issues worth a political battle for social change. Some recent developments have simply added trans* issues to policies, theories, and practices—as if addition is inclusion. Though, it remains necessary to investigate deeply the theory behind the silence and the dichotomy of inclusion and exclusion in order for the Francophone voices of trans* feminism to emerge in Canada. The second example comes from the Iranian context, where feminist groups do not include trans* issues into their agendas (Peyghambarzadeh, 2019) because the dominant feminist discourse in Iran is based on cisgender and heterosexuality, both of which exclude perceptions of other genders or sexualities. Moreover, the feminist project in Iran self-censors its activism because of the social and political strains it is under. For example, feminist politics in Iran maintain a rationale of not being able to afford to advocate for the rights of gay people (Peyghambarzadeh, 2019). Iranian feminists outside Iran

even condemn or abstain from discussing trans* politics, claiming it does not fit their political interests and like the 1970s US and UK based anti-trans* feminists, they argue that body modification through surgery for the purpose of changing one's sex is a patriarchal force and a harmful cultural practice (cf. Amin, 2016; Rahbari, 2016). Simply adding trans* into feminist politics would not resolve the antagonism among anti-trans* feminists and trans*politics. The idea of 'merely adding', to which Namaste (2009, p. 20) draws our attention, has been resisted by feminist theory for a long time on the question of who is a woman "by resisting mere insertion to existing theories, feminists have been writing against 'add women and stir' approach."

In English language literature, a new scholarship has developed within trans* studies to explicitly address the intersection of trans* and feminist politics. US trans* activist Emi Komoya popularized transfeminism [sic] through her *Transfeminist Manifesto* published on her website in 2001 and based it on individual rights to body and expression of identity. Trans* feminism emerged as a result of trans* politics' endeavour for 'inclusion' of trans* issues in feminist politics in the West. Such a trans* feminist perspective is a way to bring transgender people from the margin to the centre of women's and gender studies (Enke, 2012; Serano, 2013).

As of the mid-1990s, scholarly journals devoted special issues to the feminist and trans* politics, for example *Trans* Sister: A journal of Transsexual Feminism* (1993–1995), *Rites of Passage* (1991–1992), *GLQ: A Journal of Lesbian and Gay Studies*, *Sexualities* (1998) and *Velvet Light-Trap* (1998) in the US, *Gender Trash* (1992–1995) in Montreal, *Journal of Gender Studies*' special issue (1998) in the UK (Stryker & Bettcher, 2016). *Hypatia: A Journal of Feminist Philosophy* published a special issue on *Transgender Studies and Feminism: Theory, Politics and Gendered Realities* (2009, Vol. 24, Issue 3) that focused on the intersection of trans* issues and feminism. In their introduction, Bettcher and Garry (2009) wrote that the dialogue between trans* politics and feminism is dangerous; both emphasise gender too much and risk marginalising other forms of oppression. Instead, Bettcher and Garry (2009) suggested a broader dialogue that includes more aspects of racism, sexism, and colonialism. Enke (2012) defines trans* politics as trifold, acknowledging that: 1) binary gender norms and gender hierarchies are maintained through violence against those who deviate; 2) there are people who do not conform to conventional gender roles; and 3) gender variation is essential for creation of a well-functioning society. All three, we argue, undergird the idea of gender transgression in trans* politics, which limits the politics of recognition to merely gender identity and the transgression of gender norms. In such a politics, a trans* woman who is subjected to violence because of her job as a sex worker or her socio-economic position, rather than her trans* identity, would not be protected (cf. Namaste, 2000, 2005).

In all these proposed ways out of antagonism, we argue, the struggles are seen as part of a politics of recognition based on identity. This leads us to question an identity-based politics of recognition as it is practiced in both anti-trans* feminist and trans* politics. Hines (2013) adopts the same position, explaining that identity has operated as an excluding mechanism, but she calls for a politics of difference. We, however, believe that a politics of difference is not enough to address inequality and misdistribution (Lovell, 2007). According to status-based recognition, social and political injustices do not merely rest on different patterns of cultural representation, and focusing on identity alone tends to ignore the social, political, and economic structures undergirding injustice. Halberstam (2018, p. 127) also criticises contemporary trans* theory for being invested in identitarian conflicts that turns on small difference and individual hurts and instead suggests trans* and feminist activists should work together to oppose the violent imposition of "economic disparity and white supremacy in the United States." Explaining that the conflict between some second-wave feminists [sic] and trans* women has blocked coalition building in the US, Halberstam (2018, p. 128) calls for a "global trans*feminism," that is not only for trans* women but all women.

Furthermore, we would like to problematise both trans* politics and anti-trans* feminist politics that focus only on the interests of certain categories of people, which we think does not serve the purpose of either feminist or trans* politics. Moreover, recognition based on group interests pushes trans* people to the margin and forces them to identify under certain categories. We believe the dichotomy of exclusionary anti-trans* feminism and inclusionary trans*-affirming feminism limits the scope of the feminist project into limited identitarian categories and thus fails to understand the intersectional nature of trans* and feminist politics, not to mention the fact that feminism and feminist interests are not universal. The long historical account of coalitions and collaboration between trans* and feminist politics shows that the inequality grounds for both were mutually shaped, and that feminist politics clearly intersects with trans* politics.

Problematising the gender knowledge based on women's bodies and experiences, we think it is necessary that trans* people are recognised as equal members of society. Moreover, problematising the binary between trans*-inclusionary and -exclusionary feminism, we think it is important to acknowledge the historical intersectionality of the two, as one of many steps to reconcile feminist and trans* politics. To borrow a concept from intersectionality politics, we conceptualise the two as mutually shaping and constitutive forms of politics (Walby, Armstrong, & Strid, 2012).

4. Alternative Politics

In this section, we propose an alternative politics to break out of the impasses between anti-trans* feminists

and trans* politics outlined above. This would work by: 1) revisiting a politics of recognition based on status; 2) understanding interests as a matter of individual and group-based needs in society; and 3) using the concepts of political and coalitional intersectionality as mutually shaping inequalities, instead of including trans* issues to the feminist project.

4.1. Status-Based (Mis)Recognition

Above, we identified several identity-based struggles for recognition within feminist and trans* politics: the anti-trans* feminist activists' biologically deterministic understanding of women and their focus on women as an identity category, and on the other hand trans* activists' focus on individual trans* identity subjectivity.

Inspired by the work of Fraser (2013), who maintains that recognition should be treated as a question of social status, not group-specific identity, we propose that feminists need to rethink the questions of who constitutes a woman, whose interests are at stake, and who would be included in the feminist project if we assumed a politics of recognition based on status rather than identity. Fraser (2000b) explains how identity-based politics encourages separatism and sometimes antagonism, so we propose instead a status-based recognition of trans* people within feminist politics—that is, recognising trans* people and their needs as equal members of society, a necessary move to ensure justice and attain equal distribution and political representation. Fraser (1997, p. 280) states: "Misrecognition is an institutional social relation not a psychological state." Therefore, she proposes, the aim should be to de-institutionalise subordinating social patterns that make some group of people normative and another deficient. Since misrecognition happens when institutionalised values deny people's parity participation in society, to remedy misrecognition, people's social status in society should be recognised, not their marginalised identities.

Fraser (2000a) suggests that institutionalised misrecognition takes the shape of legislation, governmental policies, and professional practices that constitute some categories of people as inferior members of society. For Fraser (2001), social change is difficult to envisage through identity-based recognition, not to say impossible: Viewing misrecognition as damaged identity means emphasising the psychological and individual over social institutions and interactions. Following Fraser (2013), we see the feminist misrecognition of trans* people as the result of institutionalised relations of social subordination towards trans* people, and not the idiosyncratic and identitarian values of a few old-fashioned feminists. We argue, the antagonism must be tackled by deinstitutionalising the subordination of trans* people in society. This requires understanding gender as status, not just identity, focusing on people's needs instead of identity-group interests, and allowing the political representation of trans* and feminist politics to be mutually constituted.

4.2. Needs-Based Interest

The idea that political concerns could be conceptualised in terms of different groups' common interests has been rejected by feminist scholars on at least two different grounds: by rejecting the concept of either interests or groups. In the first case, interest theory as such was seen as inappropriate for women's concerns and political struggles. Diamond and Hartsock (1981, p. 719) rejected the very language of interests as inapt to understand political life since it fails "to assign priorities to human wants, needs, objectives, and purpose, and in so doing implicitly supports the right of the strong to prevail in every contest." The arguments to reject the concept of groups is based on people's diversity (Pringle & Watson, 1992). Judith Butler (1990, p. 1) argues that, since women are so diverse, we can no longer define them as a group, and that the "very subject of women is no longer understood in stable or abiding terms." The post-structuralist argument is that to think of groups, women, or others as having interests in common is essentialist and totalising. Group thinking is felt to impose common concerns on a necessarily heterogeneous divided category of women (Pringle & Watson, 1992). However, far from everyone rejects these two concepts. A basic-level approach includes understanding and analysing interests as empirical generalisations about individual ideas or preferences on specific political issues; that is, interests are conceptualised as subjectively held attitudes (Jónasdóttir, 1991, p. 160). Social and political interests are no more or less than an articulation of individual preferences on specific issues in specific contexts where common interests may exist as empirically verifiable generalisations. Political scientist and gender studies scholar Anna Jónasdóttir (1991) does not abandon the concept of interests and replaces it with a theory of needs, nor does she trace the commonality of women's interests to solely or mainly the reproductive division of labour (Sapiro, 1981). It is rather to "transcend the either/or situation that the Diamond and Hartsock versus Sapiro debate suggests" (Jónasdóttir, 1991, p. 152). Thus re-defined, the concept of interests is useful and "particularly significant in analysis of the society we actually live in" (Jónasdóttir, 1991, p. 152; see also pp. 157–159, 164–170).

By understanding political coalitions or alliances between trans* and feminist politic, as based on needs and common interests rather than identities, we can move towards a politics that requires recognising people's status in society. These common needs and interests can be located in: 1) not being oppressed as a woman or a trans* woman (Jónasdóttir, 1991), but as members of society with shared experiences of oppression; 2) avoiding marginalisation and exclusion as women and trans* women; and 3) understanding feminist and trans* feminist points of political departure as distinct yet with the same goals (Bettcher & Garry, 2009). Thus, a broader approach is necessary rather than just focusing on the intersections of sexism and transphobia.

We disagree with rejecting the concept of interests and argue that needs-based rather than identity-based interests may be useful to talk about common concerns to avoid homogenising (gendered) groups of people. The debate is taken further by arguing for status-based recognition using the notion of needs and interests instead of identity. A shared interest lies in the struggle for formal presence and the right to a controlling presence in decision-making institutions, not merely a presence (Jónasdóttir, 1991). Expressed differently, common group interests exist on the basis of not being oppressed as that group; where people are being oppressed as women in the society in which they live, there is a common interest in ending that oppression.

4.3. Political and Coalitional Intersectionality

Intersectionality in Crenshaw's (1991) definition can be structural or political. Structural intersectionality refers to inequalities and their intersections as directly relevant to people's experiences in society. Political intersectionality, on the other hand, refers to inequalities and their intersections as relevant to political strategies, and can be used to analyse how strategies on one inequality axis are not, or rarely, neutral towards other inequality axes. Strategies on the LGBT-axis may not be 'neutral' towards strategies on the gender axis. In fact, these may even be (perceived to be) in conflict. By simultaneously paying attention to strategies for coalition building between social justice projects and between inequalities within the social justice project, political intersectionality can be useful to analyse both coalitional intersectionality and intersectionality as a repertoire for inclusivity (Lépinard & Evans, 2019), meaning that intersectionality can go beyond identity politics, and be both inclusive and based on coalition of interests. As such, this approach could be useful to analyse antagonism and both the absence and presence of a politics of inclusion and exclusion. Thus, we propose a perception of intersectionality that values the very political and coalitional strategies between trans* and feminist theories and practices that have always existed.

5. Conclusions

We have explained why the 1970s is known as a watershed moment in the history of feminist and trans* activism in the West by showing how the vexed relationship between feminists and trans* politics led to divergences. These include: 1) the divergence between trans*, feminist, and gay and lesbian activism as a result of the legal and medical transitions of trans* people; 2) legal divergence due to the fact that homosexuality was declassified by DSM and trans* identification was not; and 3) the academic divergence between trans* and feminist scholars on gender authenticity or the question of who constitutes a woman.

The antagonistic debates and polarising practices among (some) feminist and (some) trans* activists and scholars have long resulted in a deadlock. By disentangling the current debates, we have identified three underlying problems: identity-based (mis)recognition; universal and specific group interests of feminism and trans* politics; and inclusionary intersectionality.

We have argued for the following alternatives to move beyond these impasses: 1) revisiting a politics of recognition based on status rather than identity; 2) understanding interests as a matter of individual and group-based needs in society; and 3) introducing political and coalitional intersectionality and the concept of mutually shaping inequalities to disentangle the antagonism. Concretely, this means understanding and recognising trans* as a social status rather than just as an individual identity in need of recognition by others. By recognising the social status of trans* people in society, we allow for trans* parity participation in social life, which can lead to an equal distribution of wealth and equal political representation of trans* people in feminist politics.

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Conflict of Interests

The authors declare no conflict of interests.

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Article

Displacing the Gender Binary Through Modes of Dis/Organizing: Sex Toys, Sexuality and Trans Politics

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Abstract
Scholars in sexuality and organization studies have highlighted the centrality of sexuality in organizational power and the ways in which sexuality is in/visibilized, controlled, violently exercised, normativized, and/or resisted in organizations. However, there is still little empirical research focusing on social-movement organizations that promote political change in transgender sexual cultures. With this article, I contribute a qualitative case study of a trans and non-binary do-it-yourself (DIY) sex-toy workshop. Drawing on organization, social-movement, and transgender studies, I develop the notion of 'trans-organizing' as a specific mode of organizing and ask: How does trans-organizing around sexuality displace the gender binary in the context of a DIY sex-toy workshop? My findings hint at three dis/organizing processes: dis/organizing language, embodiment, and knowledge sharing.

Issue
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1. Introduction

The sex-toy industry includes both 'business as usual' and proto-feminist businesses (Comella, 2017; Tyler, 2011), both of which reveal sex toys' complex production, resistance, and co-optation processes in a for-profit context. Studies of the sex-toy business focusing on the experiences of women, specifically at in-home sex parties, have shown the degrees of resistance that these environments enable. For the women interviewed by McCaughey and French (2001), for instance, sex toys are empowering against the societal taboo surrounding marginalized sexualities. At the same time, the authors also recognize that sex, sexuality, and the body are implicated in commodification processes, as our social needs depend more and more on the market for satisfaction (Tyler, 2004). From this perspective, sex toys are commodities whose accessibility primarily depends on businesses and the market. Therefore, any empowerment provided within such a capitalized environment might be

inscribed in an individualistic consumption model, rather than in the collective critique of traditional/normative discourses of sex, sexuality, and gender so cherished by the women in the McCaughey and French's (2001) study.

This article looks at sex-toy production in a not-for-profit context, which sets itself in opposition to capitalist consumption models, to investigate whether this mode of organizing allows for a collective critique of traditional/normative discourses on sex, sexuality and the body. I analyse a workshop on do-it-yourself (DIY) sex toys at a festival on trans and non-binary culture organized by a trans-led activist group in a mid-sized Northern European city. In this context, trans and non-binary are umbrella terms that describe people whose gender identity, expression and/or presentation do not conform with the gender assigned to them at birth (Pearce, Moon, Gupta, & Steinberg, 2019). Trans and non-binary are also collective identities and movements with a political stance (Feinberg, 1998), visibilizing and critiquing the gender binary as one of the main oppressive systems of

power in the organization of our social and sexual lives. Naturalizing the existence of only two genders (men and women), two types of bodies, two genital morphologies (penis and vagina), this binary allocates individuals into one of these two supposedly opposite genders on the basis of the supposed linear connection between sex, body, and gender. This binary norm strongly impacts sexuality, sexual imageries, and sexual encounters, and transgender sexual cultures often critically examine this binary (Bauer, 2018). A DIY sex-toy workshop thus suitably illustrates the potential of the trans and non-binary movements' organizing around sexuality to critique normative discourses of sex, sexuality, and gender.

The trans-led activist group that organized the festival works locally to create greater recognition and visibility for transgender people and culture by organizing, among others, lectures, educational programs, and cultural and social activities. The free festival's aim included workshops, film screenings, debates, and presentations touching upon sexuality and gender, and the variety within, and beyond, these categories and identities. The festival's activists, who identified as transgender, non-binary, and cisgender (people who identify with the gender assigned to them at birth), discussed topics such as sex, kinky practices, relationships, and desires, and celebrated the 'chaos' of gender identities and experiences. The objective of the festival workshop on DIY sex toys was to create a space for discussion on sexuality which would not only include but centre the voices of people with trans, non-binary, and queer experiences.

Since the activists who put together the workshop were organizing within the trans, non-binary and queer social movement, my first expectation is that they would stimulate a counter-discourse on sexuality as a reaction to mainstream society's lack of socio-cultural imagery around sexuality that is produced by and for trans and non-binary people. As an alternative to the cis-hetero-patriarchal discourse, this counter-discourse would allow trans and non-binary people to recognize themselves and to be recognized as desiring and desirable subjects (Salamon, 2010).

Secondly, as this workshop produced sex toys through not-for-profit and DIY principles, I expect that it would also attempt to break the sex toys and sexuality's dependency on the market—or at least that there might be opposition to this dependence, to sex toys as commodities, and by extension to the commodification of sex, sexuality, and the body. This is in line with the ways in which DIY is described in socio-political studies, namely as an ethos typically associated with underground scenes (Pearce & Lohman, 2019), countercultures, and their communities (Hemphill & Leskowitz, 2013).

Scholars in sexuality and organization studies have highlighted the centrality of sexuality in organizational (power) relations, and the ways in which sexuality is in/visibilized, controlled, violently exercised, normativized, and/or resisted in 'non-sexual' workplaces and business environments (Hearn & Parkin, 2001), as well as in the sex industries and sex work (Brewis, Tyler, & Mills, 2014). Scholars such as O'Shea (2018b) and Thanem and Wallenberg (2016) have highlighted the political relevance of embodied transgender experiences and situated trans perspectives in organizations, and in studies of gender, sexuality and organization in the ways in which they question the sex/gender binary as a normative—although often assumed—organizing principle. Nonetheless, empirical research focusing on social-movement organizing to create political change in trans and non-binary sexual cultures remains scant (Aaltio & Mills, 2003). I argue that these modes of organizing, which I call 'trans-organizing,' problematize, resist, (re)produce, and counter-produce sexuality politics, discourses, and practices in an attempt to 'dis/organize' the normative binary sex/gender onto-epistemology that underpins organizational spaces. Since, at present, the literature does not articulate how this dis/organizing happens, I will use this article to ask: How does trans-organizing around sexuality displace the gender binary? In order to answer my research question, I conducted an exploratory qualitative case study in the context of a DIY sex-toy workshop. In so doing, I contribute to the field of sexuality and organization by bringing the concept of 'trans-organizing' into extant understandings of sexuality, organization, and political change, and by showing the (organizational) processes through which a 'dis/organization' of the normative binary materializes in trans-organizing around sexuality. Though the processes that emerge from my case study are not exhaustive, they are illustrative of the forms that trans-organizing might take and the (political) processes that might materialize. And this article wishes to encourage further research on the topic of trans-organizing and political change in organization studies.

After explaining my theoretical framework, I will discuss my methodology and findings, ending with a conclusion. My theoretical framework draws from social-movement, transgender, and organization studies to develop my conceptual lens. My own concept of 'trans-organizing' is key here, as it denotes a specific mode of dis/organization that problematizes the binary sex/gender, dis-orienting and re-orienting organizational discourses and practices around an alternative onto-epistemology. In my methodology section, I discuss my qualitative research approach to fieldwork (sample, data collection, recruitment, and analysis), particularly also the implications of the relationship between activism–research, and my own positionality as a trans activist and researcher in the field (Rooke, 2010). My findings show at least three processes through which trans-organizing around sexuality displaces the gender binary: dis/organizing 1) language; 2) embodiment; and 3) knowledge sharing. I conclude by explaining how trans-organizing (around sexuality) recognizes an alternative onto-epistemology from a trans perspective through an emerging process.

2. Theoretical Framework

Scholars working on trans issues and organization have highlighted the complex and contradictory ways in which transgender experiences often trouble organizations, particularly by visibilizing the sex/gender binary as a pervasive norm (Muhr, Sullivan, & Rich, 2016; O'Shea, 2018b; Thanem & Wallenberg, 2016). However, little is known, on what the effects of a trans perspective on organizing might be. I will draw up my 'trans-organizing' concept out of a multidisciplinary dialogue: 1) I first use the notion of 'problematicity' rooted in social-movement studies, which helps me to capture trans-organizing's political/oppositional dimension in a situated context; 2) next I take up Thanem's (2001) critique regarding the absence of the body in organizational perspectives on dis/organization and reference transgender studies to discuss 'dis-orientation' and 're-orientation' as organizational lenses that help us understand which norms trans-organizing displaces and then redirects, as well as how and in relation to which embodied lives; and 3) in the third section, I then bring the notion of 'formativeness' to understandings of trans-organizing as an emerging alternative onto-epistemology.

2.1. A DIY Sex-Toy Workshop as a Social Movement Organization

I conceptualize the DIY sex-toy workshop as a type of social movement organization (SMO), a complex and dynamic organization that is expressly affiliated with an oppositional movement and tries to implement its objectives (McCarthy & Zald, 1977). Affiliated with the trans and non-binary movement, the workshop implements a critique of the gender binary. The workshop's aim is not to make direct claims to the State (to change institutional structures, for instance), but rather to create a safe, temporary crafting space to develop utopian visions for the future. This form of trans-organizing materializes a sort of 'transgressive contention,' rather than 'prescribed politics.' Since trans-organizing mobilizes efforts towards change that require the conscious, contingent, and continuous mobilization of both people that identify as trans and/or non-binary as well as people who do not, we cannot understand trans-organizing through a conceptual emphasis on organizational structures. Instead, we need to focus on organizing as a process, specifically as a process of dis/organization. Resources are mobilized with the aim of 1) making visible the dominant gender binary as a system of power and oppression, and 2) dis-orienting and re-orienting the ways in which it materializes in favour of an alternative that centres trans and non-binary perspectives. Since this political dis/organization is neither permanent nor long-term, it requires resources to be mobilized continuously.

Trans-organizing is a political grassroots process that facilitates and structures collective action towards change in transgender and non-binary sexuality. Power

might operate in and out of its 'dis/organization,' often unintentionally or unconventionally (Hardy, Phillips, & Clegg, 2001). From the vantage point of trans-organizing, the body-sex-gender binary is an all-pervasive structure that influences our ideas and practices around 'organization.' Scholars such as Hatch (2018) conceptualize an 'organization' as made of spheres such as technological, social, physical, and cultural structures that overlap and influence each other in an environment they simultaneously help to shape. These spheres, and their interactions, are impacted by gendered social processes where power plays a central role. This occurs when 'organizing' involves mobilizing people and resources, (re)constructing organizational actors' purposes and identities, creating alliances, or developing ideologies and cultural frames for collective action. The (overlapping) spheres influence each other and are influenced through trans-organizing. These spheres include, among others, behaviours, bodies, perceptions, communication, imagery, and the onto-epistemological presuppositions that link them. My focus for this reason is not on macro-movements, as typical in SMO analysis, but on micro-organizational processes.

In analysing these micro-organizational processes, I use the notion of 'problematicity' (McCright & Dunlap, 2011), defined as the degree to which something is framed as problematic. It helps us understand what trans-organizing is questioning. Moreover, it sheds light on how trans-organizing limns that problematicity. Since trans-organizing develops in a socio-cultural context where power dynamics invisibilize trans and non-binary experiences of sexuality, deny their attendant sexual imageries, and justify violence and discrimination towards trans and non-binary people through and across sexuality, it aims to create a space that is not only alternative but also 'protected' in opposition to and in counter-production from the dominant environment. This highlights the need to redefine/reconceptualize the interactions between organization and environment, and question their reciprocal influence as traditionally defined in organization studies. In fact, when it comes to 'trans-organizing,' this relationship is one of onto-epistemological problematization.

The notion of trans-organizing helps us reflect on how problematicity is limned and thus challenges notions around the relationships between organizers, organization, and environment. Cooper (1986) defines the relationship between organization and environment as the concomitance of order and disorder, organization and disorganization. He states that traditional ideas of organization do not involve their environment, let alone disorganization. Analysing both organization and dis/organization, order and disorder provides insight into the ways that trans activists carve out boundaries at the DIY sex-toy workshop in relation to the larger environment of the sex toy industry. However, this does not explain to what extent trans-organizing activates processes in which these boundaries are changed. In the

next section, I take seriously Thanem's (2001) critique that most definitions of the relationship between organization and dis/organization do not consider the body and therefore remain disembodied. I will put in dialogue organization and transgender studies to discuss dis/organization in relation to trans embodiment, particularly the 'dis-orientation' and 're-orientation' of the body–sex–gender constellation (Lau, 2018). This will allow me to see trans-organizing around sexuality as a process that, after problematizing the sex/gender binary, activates a dis-orientation and a re-orientation of discourses and practices on the basis of an alternative, trans-embodied onto-epistemology.

2.2. Cis-Normativity, Trans Embodiment, and Dis/Organizing

Trans-organizing is always politically positioned against what scholars in transgender studies call cis-normativity. For example, Preciado (2018) has shown how the construction of *sex* can reaffirm the dominant cis-heterosocial norms through fragmenting the body—a hetero-partition of the body, as Preciado (2018) says, through which certain organs are cut out and transformed into the 'natural' and anatomical centre of sexual and gender difference. These parts are later re-signified in binary terms to constitute a 'natural' subject (man/woman) on the basis of the supposed linear nexus between the body, sex, and gender (Butler, 2011). This also affects discourses and practices around sexuality. As Bauer (2018) notes, sexual encounters are traditionally organized through the concept that bodies have a certain sex (a 'natural' genital morphology—vagina or penis), and that gender and desire are based on the type of sex and body. On the one hand, the trans experience remains subject to this cis-normative nexus. To talk about sexuality in relation to, and in intersection with, trans experiences is in itself a marginalized and rarely empowering operation, stigmatized and stigmatizing (Kondelin, 2014). The dominant narrative depicts trans as a sexual dysfunction or pathology rather than a gender experience (Pignedoli, 2017) and hyper-sexualizes and/or fetishizes trans people, particularly trans women and transfeminine people, which transgender, feminist, and transfeminist scholars flag as a transphobic and trans-misogynistic response (Serrano, 2007).

On the other hand, the trans experience has the potential to expose the binary norm as exercising a dominant socio-cultural control over bodies and practices and as privileging a cisgender perspective. As I argued in one of my conference papers (Virtù, 2017), this nexus influences not just the discourses around sexualized and gendered subjects, but also the organizational processes around sexuality in a capitalist/commercial setting. Describing my experience as a gender-nonconforming trans researcher in the field of business sex-toy fairs, I showed how my body–sex–gender was non-existent in the cis-normative eyes of

the business people at these fairs: my sex was always assumed in a binary way, and I was either offered correspondingly penis-oriented or vagina-oriented sex toys with explicit sexed/gendered marketing.

Scholars in transgender studies have developed several reflections that displace the cis-normative onto-epistemology around the body–sex–gender and propose alternative ways of conceptualizing the body, based primarily on the lived and indeed embodied experiences of trans and gender-variant people: corporeality in relation to self-identification (Salamon, 2010); sexuality, trans materiality, and expanding the boundaries between the body and its 'environment' (Bauer, 2018); self-reflexivity and the question of non-binary im/possibility and violence (O'Shea, 2018a); and dis-orientation and trans experience as de-creation (Lau, 2018). These conceptualizations show the ways we conceive the onto-epistemology of sex and its interaction with gender and sexuality, is what produces trans bodies and identities, constructed at the intersection of multiple discourses and socio-cultural practices, involving control, negotiation, counter-production, and resistance networks (Stryker & Whittle, 2006). Moreover, as shown by the more recent stream in sexuality and organization studies (Brewis et al., 2014), sexuality is highly organized and organizing. This field has produced studies on the dynamics of power and the cis-hetero-patriarchal norms that materialize within organizational spaces and workplaces, among others the exclusion/inclusion/capitalization of lesbian and gay identities in the production of value (Burchiellaro, 2019), the specificities of sex work as work, and gender violence and sexual harassment in the workplace (Brewis & Linstead, 2000). However, little attention has been given to the ways in which onto-epistemologies of sex are (re)produced, resisted, or challenged in organizations that promote a cultural change around sexuality, let alone from a trans perspective. These organizations, often informal collectives and non-profit associations with an activist bent, are rarely taken seriously either theoretically or empirically, perhaps because the organizational processes in these contexts tend to be more volatile compared to more formalized organizational processes.

In this sense, trans-organizing takes seriously dis/organization as a process that blurs the static division between organization and environment, and dis-orients and re-orients these boundaries starting from a self-reflection both around the cis-normative ideas about the body and alternative trans embodiments. I have put dis-organization, 'dis-orienting,' and 're-orienting' in dialogue in order to understand the ways in which trans-organizing develops an alternative onto-epistemology based on a trans embodied perspective, complicating the idea of static boundaries between organizers, organization, and environment by bringing embodiment into this constellation. In the next section, I will consider how trans-organizing's alternative onto-epistemology emerges as knowledge.

Trans-organizing around sexuality (counter-)produces knowledge both through producing new ideas around sexuality/the body–sex–gender constellation and through its own organizational processes. It does this through what Nicolini (2016) calls 'practices.' I specifically want to highlight practices of 'formativeness,' the type of knowledge that is generated as the *object* of the practice is formed. Formativeness, as Gherardi and Perrotta (2013) argue, is the process by which ways of doing are discovered while activities are being performed. This perspective allows us to focus our analysis on how the different elements of a trans-organizing practice are held together, rather than on the specific elements individually. This way, we can name the emerging process through which an alternative onto-epistemology is recognized within the trans-organizing activities.

The theoretical framework delineated above helps me to unpack how trans-organizing, in the specific case of the DIY sex-toy workshop, displaces the gender binary through the organizational processes, or better *dis*/organizing processes, that characterize this mode of organizing (problematizing, dis-orienting and orienting, and formativeness practices).

3. Methodology

My methodological framework is qualitative. I conducted an exploratory case study into trans-organizing around sexuality in its lived, embodied, and contextually (politically) situated setting (Harrison, Birks, Franklin, & Mills, 2017). The trans-led workshop on DIY sex toys is illustrative of trans-organizing around sexuality for three reasons:

1) The workshop is not unique; it is embedded in a genealogy of anti-capitalist, feminist, and queer *ateliers*—including sex-toy workshops—that have centred sex, sexuality, and the body in their political reflection on cis-hetero-patriarchal norms, and reclaimed technologies of sex as a political tool for community building and collective action (Borghi, 2013; Preciado, 2018).

2) The workshop was explicitly organized by trans and non-binary identified people. Due to the lack of trans visibility and the stigma around trans, sex and sexuality, few events, programs, and organizations deal with these topics systematically, and usually they are not trans-led. Ones that are tend to be grass-roots, occasional, and displaced, often involving the intimate and exclusive participation of the trans community.

3) The workshop not only addressed trans and non-binary people, but also centred their experiences and voices in the decision-making process and the relationality within the workshop. This case study thus surfaces more than the personal experience of 'being a trans person' within an organization/in relation to sexuality, but also the processes that emerge from a trans perspective on organizing around sexuality.

The data were collected between September and October 2016 using multiple methods. First, I collected the textual and visual promotional material. These include a flyer, a poster, and the social-media listing. Then, I conducted two semi-structured interviews with the two organizers during the workshop's preparation phase. Finally, I conducted participant observation at the actual workshop, interacting with the other workshop participants as a DIY sex-toy learner/maker. The workshop lasted around 75 minutes and involved twelve participating learners/makers, excluding the two organizers. All the participants knew that I was a researcher and consented to my taking field notes during (and after) the workshop in my research diary. I collected these types of data to investigate the meanings that the lived experience of organizing around sexuality had for the trans and non-binary activists involved: 1) how they described their event to the world (flyer, poster, social-media listing); 2) how they imagined and constructed the workshop beforehand (interviews); and 3) their experiences organizing relationally during the workshop (participant observation).

All respondents' names used in this article are pseudonyms. My access was negotiated thanks to my involvement as a trans activist (Rooke, 2010). At the time I was active in several groups struggling for trans depathologization and promoting trans cultural production in the Netherlands and Italy. One of the festival's organizers, Sky, invited me to talk about my experience of sexuality as a trans-masculine person and told me that he was also organizing a DIY sex-toy workshop together with Hadar, a non-binary activist designing a genderless toy. Immediately interested, I asked if they would be open to me expanding my PhD fieldwork to study the organizational process of the workshop. He enthusiastically agreed and put me in touch with Hadar, who also loved the idea. It was thus not just me as a researcher 'selecting' the field, but also the 'field' approaching me as a trans activist and researcher.

I analysed my data through Critical Discourse Analysis (CDA), which helps to understand the complex narrative that emerges from the data as a socio-political practice (Thurlow, 2016). Moreover, it surfaces this narrative in (counter)dialogue—both in what is and is not said—with normative and non-normative discourses of sexuality and organization. I conducted the interviews separately, in places of their choice, and in English (not our mother-tongue, but the language we used to communicate, also during the workshop). I assured the interviewees I would be the only one with access to the anonymized transcripts. The interviews' guiding topics were: their reason for organizing the workshop, how their personal experiences of sexuality affected their

organization of the workshop, how they imagined its setting, and what knowledge the workshop required. I also gave space to topics that spontaneously emerged. I coded the interviews, promotional materials, and field-notes in a continuous mutual adjustment between the data and the theoretical framework. My sensitizing concepts in the analysis were: 'problematicity,' 'dis-orienting and re-orienting,' and 'formativeness practices' in relation to the sex/gender binary.

4. Findings

In this section I analyse the DIY sex-toy workshop, particularly three of its dis/organizing processes that displace the normative gender binary: 1) dis/organizing language; 2) dis/organizing embodiment; and 3) dis/organizing knowledge sharing.

4.1. Dis/Organizing Language: Complicating Identities and Ungendering Objects

The activists I interviewed are very attentive to language in their organizational processes. They proposed we first reflect on how people are talked about. When the organizers address the potential participants, they do so recognizing the problematicity of binary labels when addressing the topic of sexuality. The flyer promoting the event read: "When we try to put clear labels on people a lot gets lost. Between man and woman, between straight and gay, between sexual and asexual, between all labels there is space, the space of…well, of everything else." This text clearly problematizes 'naturalized' processes of categorizing people, particularly three types of binary categories: gender identity, sexual orientation, and desire. Imposing such fixed categories limits the complexity and variety of possible identities and experiences in relation to, respectively, gender, sexual orientation, and the very same idea of necessarily 'being' either sexual or asexual. However much it is intended to make the world intelligible, labelling people implies a loss: many, whether they feel connected to these binary categories or excluded by/from them, instead experience a range (what has been defined as a 'spectrum') of sexual orientations and desires. The flyer acknowledges this as real and valid, 'as the space of everything else.'

The front of the flyer (not included here so as not risk the participants' anonymity) shows several terms nestled within an open fan-shaped drawing, terms like 'trans,' 'transgender,' 'transsexual,' 'mtf,' 'ftm,' 'intersex,' 'kinky,' and 'questioning.' This signals a spectrum of non-conforming identities and experiences in relation to traditional 'naturalized' sexuality discourses, and therefore explicitly addresses the multiple non-normative (and often political) identities and experiences of potential participants who do not fit the binary gender norm. A dis-orientation of binary categories emerges, also concerning the target audience: the event, although not exclusive, gives priority to trans and non-binary experiences.

In the interview, talking about how he imagines the workshop space, Sky said:

> The workshop is addressed to anyone, anyone who wants to make sex toys, but specifically people of non-binary experience who want to make sex toys, or who can't afford sex toys or who want vegan sex toys. That's our three main audiences, people with non-binary experiences, non-standard bodies, vegans, and people who can't afford sex toys. Obviously, there might be people who don't fit any of these three groups and still want to come to the workshop….Our aim is to address the topics that most organizations are afraid to talk about because it might damage their reputation if they talk too much about kink or about sex or about the nitty-gritty of messy gender identities. Too much of a radical point of view to address.

By broadening the language around what subjects get to be 'named' and prioritizing subjects who are usually invisible in organizations, the organizers dis-orient assumptions around who traditionally fits and who does not, who is assumed to exist in events around sexuality and who is not.

As we read in the flyer, anyone is invited to the event if they wish to "discover the versatility and fluidity of sexuality, gender, desire, fantasy, appearance, personality, body, and identity," to explore "a space beyond labels." The organizers thus do not just address those experiences that are marginalized and silenced, but make it clear that they wish to collectively explore a utopian space beyond categories and categorizations. It is this utopia that Hadar addressed in our interview when they imagine their interaction with workshop participants:

> I keep thinking, is there something that I will ask the cast models? To define themselves? Or is it just…do you need those words or not? It's a very good question, I don't know. I think it is very much up to them if they feel that's a flag they want to put in front of them and say "I am transgender," or "I am this." Specifically the people that I engage with are so special and so unique that they defy—for me at least, that's why I love them—they just defy any simple category, and for me that's what I am interested in….I do like the word queer because it fucking means nothing! It just means "don't put me in a box," at least for me. But on the other hand I know, and this I know more from my political activism, that when you are actually being oppressed—which a lot of this community is, there is no doubt—then flags do help, they unite you, they make you feel strong, and you can sort of present to the other side.

Starting from an ontology of uniqueness and a defiance of the binary's 'simplicity,' Hadar still recognizes the political (collective and individual) importance of

self-definition. The organizers suggest re-orienting the categorization process towards self-reflexivity and self-determination, reflecting on one's own ontology while recognizing other people's reasoning.

This dis/organizing process also emerges in the ways objects are talked about in the production of DIY sex toys. When Sky imagined how he will present the sex toys in the workshop, he said:

A very simple base-line is I am never ever going to go like "this is a toy for trans men" or "this is a toy for trans women," or "this is a toy for women" or "this is a toy for men." But more like "this is this toy and it might work for some bodies and it might not work for others. This might be more effective for people with either a large clitoris or a penis, or whatever, but it might work for you even if you don't have that."

What emerges here is the problematization of categorizing objects in terms of their fit with a binary gender identity. Instead, the object is described in tentative terms that refer to a materiality of bodies that is not based on gendered categories. The organizers propose dis-orienting the ways we tend to connect sex toys to gender identity (conforming and non-conforming) and the materiality of the body towards a practice of 'ungendering.' During the interview, Sky continued:

So I am going to try not to gender sex toys, and I am going to try to address specifically ungendering things that are usually gendered. I don't gender stuff like dildos and penises as male...and anal stuff is totally genderless: We've all got an ass. I am trying to ungender sex and sex toys, there is no need for gender to be in there unless you specifically want to put it in there, unless it's hot for you.

This dis-orienting practice of ungendering concerns the object, but it is also a mediated operation that the organizers use to take for granted neither the participants' identities nor their 'corporealities' (Salamon, 2010). Ungendering objects allows for re-orienting the relationship between gender identity, gender experiences, and the object towards one of self-determination: a formativeness practice that allows people, in particular trans and non-binary people, to live and share the full range of 'corporealities' and 'identifications' through an often changing and contextual re-genderization that is not imposed but that emerges from their own desires.

4.2. Dis/Organizing Embodiment: Unknown Bodies and Formative Pleasures

The activists involved in organizing the DIY sex-toy workshop recognize the lack of attention to trans and non-binary communities in the mainstream production and dissemination of sex toys, as Sky explained:

I was interested in doing a make-your-own-sex-toy workshop because I noticed that transgender people mostly do not have access to sex toys that meet their needs and even the ones that are out there are very narrow, focusing either on non-transitioning transgender people or on one idea of what they think transitioned people are like, when a lot of people have bodies somewhere in-between. I think that [in queer feminist sex-toy shops] there is some awareness of trans people, but they are very often assumed to have certain bodies, they are for instance either assumed to be trans men with no surgery at all...or trans women with no bottom surgery at all. So they are basically adapting a technique that already exists for cis men and cis women to be less gendered in order to fit trans bodies more.

The organizers problematize an imagery based on a cis-normative epistemology that excludes the full variety of trans bodies. A cis-normative epistemology assumes how trans bodies are constituted as sexual according to a cis-gender framework (Bauer, 2018). What emerges is a critique to the limited set of ideas about trans bodies in the dominant sex-toy industry culture, which sets non-transitioning trans and non-binary bodies within a cisgender framework, and maintains stereotypical ideas of how trans and non-binary bodies should be after people have gone through transitioning. Sky continued:

I haven't seen much that really considers cross-surgery trans results and post-hormones trans results, like a trans man with a lot of clitoris growth or a trans woman with a changing penis; toys that address that some trans bodies are different. There is no trans-man sex toy that addresses people with a metoidioplasty, and there's hardly any sex toy that address the specific function and sensitivity of a phalloplasty. And if there are no sex toys [that] appeal to you, that fit your body, you gotta DIY. If you can learn to make sex toys...yourself, you can adapt it to any body you have.

Here, the binary imagery around (trans and non-binary) bodies is dis-oriented by acknowledging the variety of trans materialities and corporealities: in fact, a lot of people have bodies *in-between*. The organizers dis-orient the linear body–sex–gender nexus (Preciado, 2018), clearly showing that the parts/technologies of the body constructed as 'sex' are various and modifiable, just like their attendant desires and pleasures. For instance, Sky notes the technologies of the body that are often (but not always) part of a wished/wanted transitioning process. Often, these processes have a material impact on the body, the morphology, and the pleasures of trans people. Sky openly discussed these stigmatized technologies and unknown (un)pleasures, which are rarely talked about:

When I noticed that sex toys for my body type didn't exist, I looked for weird-shaped sex toys to see if

there was anything that accidentally fit my body. I found one in the shape of a spaceship and…one that was more like a triangle and then some other weird shapes. Anyway, they were not that effective. Right now, I don't really know anything that works perfectly for my body and for my partners' bodies—anyway, I noticed that some were effective accidentally, but they weren't designed for my body.

I don't have solutions for every type of body, I can say some stuff like, "this works on my kind of body," but I don't have all the solutions, I am more thinking that if you have the skills, if you can make your own sex toys, you can adapt it to your own situation, and it's more about getting started on making stuff and realizing that you can do it yourself, and ideally I would also like to work with making your own vibrating toys—still working on that to make that safe and practical in a workshop. And after that you can invent the shape, if you can use silicon you can make any shape you want, if you use rubber and little vibrating instruments you can be creative. And you can see what works for your body…and not say, "well this is my answer to the metaphalloplasty," 'cause it will not fit every person. I don't have all the answers yet but I am trying to teach people how to get creative making sex toys that meet non-standard bodies, even if I am really struggling to do that myself.

He makes specific reference to some trans-masculine embodiments: because of hormones, but also due to surgical processes such as metoidioplasty or phalloplasty, the bodies of trans men and of trans-masculine people who follow this path develop and acquire specific functions and sensitivities. What emerges is a re-orientation towards a situated, embodied reflection on trans materialities, their changing spectrum, and their relationship to pleasure. DIY makes it possible for trans people to examine and address these specificities, and thus recognize the diversity of trans bodies, the spectrum of trans corporealities. DIY sex toys thus become a formativeness practice (Gherardi & Perrotta, 2013), a way to know and to recognize an alternative corporeality at the very same time as the object is negotiated.

Hadar proposed another re-orientation:

There are not many people that I think can identify with my weird sexuality! And this—making your own sex toys in a workshop—is definitely a good way to sort of find them and connect and talk about these things, and I guess to explore a special non-binary imagination. Especially for people that aren't going through hormone therapy and surgeries, imagination is basically a very good tool that you have and it has been very useful for me, sort of realizing that your imagination is boundless, and your brain can sense and feel this imagination.

It is clear that DIY is a process of becoming, an emerging process in which the epistemological linearity of body–sex–gender is problematized, dis-oriented, and re-oriented towards a situated, embodied reflection on the variety of trans materiality and non-binary imagination. It is not about producing objects for bodies (and their attendant needs) that are already given and/or known within cis-normativity; it is a tentative process of knowing of one's own trans embodiment, one's own pleasures, that emerges in and through the very same DIY practice: to make your own sex toys so that your trans body becomes the starting point from which to limn your organizational knowledge (Thanem, 2001), and in fact to re/discover the sensitivities of your body through DIY production.

4.3. Dis/Organizing Knowledge Sharing: Vulnerability as Method, Creating Safer Spaces

As the organizers are very aware that traditional learning patterns are influenced by normative structures of power, DIY becomes a political practice of empowerment, also in the ideation of DIY sex toys. Hadar explained: "[W]e think 'oh wow, things are so hard to make,' but you know?….Seriously, a lot of this is patriarchy." They continued:

You know, as a kid you believe in a lot of this, "I can't do that; I am not stable enough; I am not focused enough; I can't," and then you just learn that that's not true. You might need to practice a few times, destroy a few of your prototypes, but you can learn how to do just about anything.

In the experience of my interviewees, the DIY learning process is key, not only personally but also organizationally. Sky explained:

My intention is mostly to say, "look, I am not perfect, I am no expert, I read some zines about it, I tried a few things, and let's move from the starting point to this workshop, not as much a teacher–student relationship, as a let's-learn-together relationship."

Along with this refusal of traditional hierarchies in the learning process, which often occurs in social-movement organizations (Hemphill & Leskowitz, 2013), it is interesting how these activists are more concerned about being perceived as assuming positions of authority, than about being exposed to any stigmatization due to their non-normative trans and non-binary experiences. As Sky explained:

People are so used to authoritative workshops where one person has all the knowledge, and I love, you know, non-hierarchical workshops based on sharing and learning together.

I am not worried about talking about my sex life. I am slightly worried about being seen as an authority on the topic, even though I am not an expert at all. So I am just going to have to stress at the beginning that I am still learning, everybody is here to learn, and let's try to cooperate. I hope people understand that and do not get disappointed when I don't have all the answers.

The search for, and implementation of, an alternative learning methodology is a work in progress linked to the desire to create an environment that is 'protected' and safe for the people involved, as Sky said:

There's several approaches to achieving [a safe space]. My most common approach is personal vulnerability: If I am very open about my sex life and about my situation, more open than they are used to, that usually creates that space.

This alternative methodology is particularly activated through reference to the trans experience, as became clear in my interview with Sky:

I am pretty comfortable talking about some things that other people experience as really vulnerable, for example transition and coming out as transgender to cis people. They often experience it as an extremely vulnerable thing, so if I come out of the closet and talk about being transgender and talk about transitioning, this helps them in talking about something that they feel vulnerable about, and I kind of learned to use that as a social technique, creating space for shame and vulnerability and insecurity by trying to be the most vulnerable person in the room.

Here, the trans experience becomes the very tool that makes the alternative learning process possible: Personal vulnerability becomes the method.

5. Conclusion

In my introduction I defined trans-organizing as a set of dis/organizing processes that materialize through the contingent and continuous practice of problematizing the gender binary, and dis-orienting and re-orienting organizational discourses and practices around an alternative onto-epistemology. My findings in the context of a trans-led DIY workshop hint at three key trans-organizing processes.

Firstly, dis/organizing language around sexuality means to problematize the 'naturality' of categorizing people and objects according to a binary logic in order to achieve a supposed intelligibility. In trans-organizing, binary categories are dis-oriented through the explicit mentioning of multiple non-normative and political identities, and re-oriented (in a contingent and continuous way) towards self-reflexivity and self-determination. In

the case of the DIY sex toy workshop, trans-organizing means dis-orienting the binary connections between sex objects and 'gender identity' through practices of ungendering, and re-orienting them towards a contingent and continuous re-genderization that emerges from desire.

Secondly, dis/organizing embodiment around sexuality means to problematize the ways in which imageries around the materiality of the body are constructed upon a binary logic, a cis-normative epistemology of embodiment. In trans-organizing the 'naturalized' linearity body-sex-gender is dis-oriented through the acknowledgment of the variety of trans embodied materialities and their entanglement with an alternative imagery, a 'non-binary imagination.' Moreover, trans-organizing suggests a re-orientation towards embodiments and pleasures as practices of formativeness, new knowledge that emerges while the practice is performed.

Thirdly, dis/organizing knowledge sharing around sexuality means to problematize the traditional teaching/learning model as influenced by normative (patriarchal) structures of power. Trans-organizing dis-orients this model through a practice of collective sharing, while re-orientating towards an affective methodology of the margins.

To conclude, trans-organizing (around sexuality) constitutes the process through which an alternative (sex/gender) onto-epistemology is recognized from a trans perspective at the very same time in which the activities of trans-organizing take place, namely in an emerging process. The required safe spaces are not created from a reciprocal influence between the organization and the external environment, but emerge from a political process that shapes this alternative onto-epistemology of sexuality centring the variety and contradictions of situated trans and non-binary voices and experiences.

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Conflict of Interests

The author declares no conflict of interests.

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