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The Scottish Unicorn: trans inclusion backlash, anti-gender ideology and unlikely alliances

A qualitative inquiry into framing and problematisation

Dissertation submitted by

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Abstract

Epistemological choices are at the heart of public policy, especially around matters of identity. While numerous countries have taken steps to integrate human rights-based policies for transgender inclusion, this has not been without backlash. The Scottish debate around the Gender Recognition Act reform has mobilised an unlikely alliance of opponents, namely women's rights groups and Christian organisations. While the GRA reform arguably only represents a relatively incremental change for transgender inclusion in society, backlash has been strong since 2017. The reform prioritises self-identification, in practice demedicalising and depathologising transgender identities. Using a qualitative framing and problematisation analysis of organisations submissions to the public open consultation, this thesis has identified the following. Opponents have framed the reform as a zero-sum game between women's rights and transgender rights, putting vulnerable women at the risk of facing more violence. The protection and integrity of single-sex spaces is depicted as being under threat. Backlash to the reform fits within wider transnational trends of anti-gender ideology. The Scottish case of anti-ideology mobilisation remains singular, resisting political labels as the coalition from opponents are from both left-leaning and right-leaning policy entrepreneurs. This mandates further research, especially in understanding if this coalition of populistic non-aligned anti-gender ideology can sustain overtime beyond the GRA reform.

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Acronym	
EA	Equality Act
GRA	Gender Recognition Act
GRC	Gender Recognition Certificate
LGBT	Lesbian, Gay, Bisexual and Transgender
NHS	National Health Service
SNP	Scottish Nationalist Party
'TERF'	Trans-exclusionary feminist
WPR	What is the problem represented to be?

Figure 1: table of acronyms used in this thesis

Chapter 1: Introduction

Who decides where womanhood starts and ends? Philosophical and epistemological questions are at the heart of policymaking, and may represent tricky dilemmas for politicians and bureaucrats. Scotland's current debate on the Gender Recognition Act (2004) reform demonstrates how seemingly progressive feminist narratives can aggravate discussions around transgender inclusion (Erikainen et al, 2020). Since 2016, an unlikely coalition of policy entrepreneurs has actively framed the reform as a zero-sum game between women's rights and transgender rights. Deciding who is vulnerable and in need of support or protection entails recognising the existence of a social or political issue that needs to be addressed, separating the deserving from the undeserving. Minority rights can be controversial even in progressive contexts, where human rights discourses have been increasingly co-opted by improbable coalitions across the political spectrum. This contemporary riddle has been studied in relation to LGBTQ and women's rights instrumentalisation in justifying nationalist, assimilationist and anti-immigration policies (Farris, 2019; Puar, 2017). This is developing alongside unlikely coalitions across the political spectrum, as neoliberal governments, the far right, left- and right-wing intelligentsia collude in the use of

metanarratives securitising immigration. Black and brown male migrants are here framed as threats to vulnerable populations (including LGBTQ+ individuals, Black and Brown women and women in general). In the context of transgender rights, transness (albeit especially transgender women) can be framed as an ideological threat to women's hard-earned rights and spaces - as it has been the case in Scotland. These trends in instrumentalising women's rights narratives against a monolithic Other (transgender people, Black and brown male migrants) expose an important challenge for feminist praxis. Universalist feminist metanarratives can easily fit within securitisation narratives of oppression and liberation, ignoring the intersectional nature of power.

A core issue this debate crystallises around is the reform of the Gender Recognition Act (2004; GRA), which introduces self-identification as its new key feature. Partly abandoned in England and Wales, Scotland has continued since 2018 to design, consult and debate the GRA reform. If passed, transgender people would not need to have a two year reflection period before being able to amend their birth certificate, but would be able to self-refer - eliminating the preexisting medical and administrative requirements (Scottish Parliament, 2022a). The reform has sparked high-intensity discussions across the political spectrum on social media, news outlets, parliamentary debates and academic publications (Erikainen et al, 2020). The polarisation of the debate has left little space to examine and contextualise the metanarratives fostering high levels of antagonism (Erikainen et al, 2020; Sharpe, 2020). This leaves a gap for further reflective academic research - to which this thesis hopes to contribute to. Both sides of the debate have called each other out for failing to protect vulnerable people, failing to agree on who counts as vulnerable. Two interrelated points of discussion are at stake: the first on the difference between sex and gender and the second on single-sex spaces and their inclusion or exclusion of transgender people. Understanding how stakeholders and/or policy entrepreneurs problematise an issue helps to illuminate what hidden assumptions and commonsensical ideas are perpetuated, and who they aim to advantage or protect (Bacchi and Goodwin, 2016; Cairney, 2011). Deciding who is a woman, who is a vulnerable woman and who is a threat does not simply reflect material or scientific concerns, but is deeply entrenched in historical and cultural perspectives (Armitage, 2020; Engebretsen, 2022). In the case of the GRA reform, the two rounds of open public consultations held by the Scottish Government have given a platform for individuals and organisations to respond to the proposed changes. In sum, the GRA reform backlash features three characteristics of particular academic interest:

1. A policy 'overreaction', as the reform introduces an administrative change which would directly affect only 0.4% of the Scottish population, but has faced major backlash and dragged on for over four years.[1]

2. An unlikely implicit alliance between women's rights activists, progressive left-leaning political organisations and religious groups in opposing the reform.

3. An apparent emerging framing of trans rights' advancement at the expense of women's rights as a new metanarrative.[2]

These three key features are all linked to the ways stakeholders have reacted and framed the policy reform. This research project will hence address the question "how do stakeholders of the GRA reform frame the policy issue, and what impact can/does it have?". In the context of the field of public policy, I am taking an analytical and emancipatory stance to policy research. Having identified that there is a lack of interaction between academic and practical/managerial-oriented stakeholder analysis, this research project will map out and analyse the ideological and epistemological frames used by stakeholders in the second consultation process of the GRA reform. The following aims to present a clear analysis of the frames used in the policy context. I will then cluster stakeholders according to their common problematisation and issue-framing of the debate. I will examine how gender, sex and single-sex spaces are framed differently according to positioning on the debate. Since the debate has often been described as 'toxic', this analytical 'step back' hopes to analyse the GRA reform and inform feminist praxis and policy-making by deconstructing 'trans rights v. women's rights' narratives. In meshing policy analysis with critical poststructural academic analysis, this research project takes its strongest inspiration from Bacchi (2009) and Surjadjaja and Mayhew (2011). A poststructural stance refers to the examination of hierarchies of knowledge existing in discursive practices, to examine how they reveal unequal power relationships (Bacchi, 2009). Using an interpretive critical public policy framework, I will conduct qualitative discourse analysis of the stakeholder submissions. Data will be derived from the second round of public consultations held by the Scottish Government from December 2019 to March 2020. To clarify: the subject and context of this

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[1] Although according to opponents of the policy, the reform is an example of policy 'underreaction' as it would disproportionately affect women's rights and women-only spaces.

[2] New, although distinctively emerging in the context of anti-gender ideology (Engebretsen, 2022; Kuhar and Paternotte, 2017).

thesis is the second round of the GRA consultation. My research method is stakeholder analysis, which aims to figure out how the GRA reform is framed by its opponents and proponents, how the frames can be situated historically and culturally, and how trans inclusion is depicted vis-à-vis women's rights.

Chapter 2 will pay closer attention to the agents and organisation involved in the stakeholder consultation, while detailing the core concepts behind frame analysis and problematisation. Chapter 3 will unveil a short historical and cultural account of feminist differentiation and tensions between gender and sex, and how this has manifested in conceptualising transness. This is done to further give the stakeholders' narrative and frames historical contextuality, as much of the response to the reform proposal echoes decades-long intra-feminist clashes (Zanghellini, 2020). Chapter 4 will examine the policy context in which the reform is taking place. Stakeholders are social actors, and mapping out their institutional environment is a key requirement to stakeholder analysis (Aligica, 2006). I will introduce the two most cited pieces of legislation in the consultation results: the original Gender Recognition Act (2004) and the Equality Act (2010). Both texts are key to understanding the particularities of single-sex space, anti-discrimination protection and the complexities surrounding legislation on sex and gender. Chapter 5 will introduce the methodology and methods of the research project: a stakeholder analysis with a poststructural feminist paradigm. The methodology focuses on problematisation and framing through a critical poststructural lens, as introduced by Bacchi (2009). Stakeholders' submissions to the second round of consultation will be analysed through qualitative data analysis. Chapter 6 will introduce the key mappings and clusters revealed by the data analysis, having identified stakeholders' ideological underpinnings and positioning on the reform. Chapter 7 will examine findings using Bacchi's (2009) problematisation analysis. Finally, Chapter 8 will discuss the key findings revealed by this case study, especially examining the links to anti-gender backlash and how the Scottish context, while fitting certain aspects of anti-gender backlash documented in a variety of countries - including Norway, France or the US - resists clear ties to right-wing or left-wing political discourses. This could be studied more in depth by examining the populist affective-discursive elements in Scottish anti-GRA discourses.

Chapter 2: Theoretical framework, issue framing and problematisation

Introducing critical public policy analysis

Interpretive public policy analysis broadens the field of possibilities available to policy analysts and researchers. While more traditional neopositivist approaches of policy analysis remain the norm, interpretive policy analysis has gained momentum in the past 15 years (Bacchi, 2009; Durnová, 2022; Yanow, 2007). The field of public policy distinguishes itself in its ability to describe, analyse and advise policymakers as well as foster academic knowledge and debates. By definition, the field remains hybrid through its practical outcomes (recommending policy changes or reforms) and its conceptual analysis of the ideological frames of reference used in the policymaking (Sabatier, 1999). From the 1970s onwards, the academic field of public policy has moved to understanding policymaking as a rational, objective and neutral process to embracing the diversity of actors and political nature of the process (Sabatier, 1999; Weible, Sabatier and McQueen, 2009). Policymaking is now increasingly understood as the result of incremental changes, feedback loops and iterative cycles rather than a linear causal process (Surjadjaja and Mayhew, 2011; Walt et al, 2008).

To understand why the GRA reform has stagnated and caused antagonistic debates, an interpretive policy analysis illuminates the importance of social and cultural 'webs of meaning' in the policymaking process. The policy lag created appears to be fostered by strongly polarised narratives around gender, sex and single-sex spaces (Hines, 2020). An interpretive critical policy framework pays special attention to the importance of narratives and language in the hegemonic framings of policies, which often remain invisible to the wider public. Language has a dual role as both "a mirror for and a vehicle for policy change" (Durnová, 2022: 45), remaining a communication tool and an instrument to sediment knowledge and power structures (Foucault, 1980). Here, a postpositivist positioning recognises that universal, absolute truths do not exist (Bacchi, 2009). By revealing power structures, interpretive public policy has an explicit emancipatory (and postpositivist) aim to encourage innovation outside of processes contributing to the systematic perpetuation of inequalities. This is especially relevant in the context of the GRA, where feminist praxis (traditionally with an emancipatory teleological aim) has been divided on the subject of

transgender inclusion, while the debate has been accused to contribute to a climate of transphobia and queerphobia (Cowan et al, 2020).

I will pay particular attention to understanding and analysing how stakeholders dealing with a polarising policy issue frame and problematise change, and what the consequences might be for emancipatory change and policymaking. I will focus extensively on how ideology and epistemology matters in the policy process, while aiming to do what policy studies does best: bridging contemporary cases and academic debate to inform both policymakers and academics. There has been incomprehension (and at times frustration) at the academic and policy maker level in explaining the backlash against the reform.[3] Traditional rationalist or neopositivist public policy analyses would not help to understand *why* the policy debate has become antagonistic. A critical public policy focus is needed to uncover how policy reforms and issue capture are interlinked with cultural and discursive signifiers (Bacchi, 2009; Bacchi and Goodwin, 2016). Traditionally, public policy as an epistemic community has aimed to inform stakeholders and academics in making informed policy choices. Here, I am staying faithful to this commitment of making policy and the policymaking process clearer and more understandable to broader audiences. The innovative feature lies in the interpretive paradigm's ability to reveal underlying power relationships, which seem key to understanding why the GRA reform has caused such controversy, and what the implications are for inclusive policymaking.

Stakeholder consultation and analysis

To determine the effects of a policy, stakeholder consultations have become increasingly institutionalised in the design and decision-making process (Varvasovszky and Brugha, 2000b). Stakeholders can be broadly defined as "*persons or groups whose interests and activities strongly affect and are affected by the issues concerned, who have a stake in a change, who control relevant information and resources and whose support is needed in order to implement the change*" (Aligica, 2006: 8). Here, stakeholder consultation refers to the formal process during which data is collected by the Scottish Government on the issue of the GRA. Acknowledging the importance of stakeholders in the policy process is synonymous with adopting a pluralistic definition of political power, where power is distributed through multiple groups in society (Varvasovszky and Brugha, 2000b). Including stakeholders in the policy process is

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[3] Although opponents of the GRA reform argue that the amendment would affect women and especially vulnerable women negatively, which then frames the reform as a policy 'underreaction'.

also part of a wider discursive and institutional shift to 'evidence-based policymaking,' borrowing from the business and managerial sectors (Walker et al, 2008). New Public Managerialism and its emphasis on neoliberal market-friendly approaches to policymaking has encouraged stakeholder inclusion for both instrumental and ideological reasons - as signalled by Blair's 'Third Way' politics (de Bussy and Kelly, 2010). Following a consultation, stakeholder analysis points out the roles, influence and interests of agents involved in the decision-making process (Varvasovszky and Brugha, 2000b). Paradoxically, the GRA consultations have contributed to crystallising animosity against the reform, encouraging wider outcries against the Scottish National Party and First Minister Nicola Sturgeon (McCall, 2021). Coalition-building rests on common interests and shared understandings of what should be done about specific issues; however, analysis about the underpinning framings of issues and their solutions is often lacking in public policy analysis (Bacchi, 2009; Miller and Riechert, 2001; Sabatier, 1999). In the context of stakeholder consultation, a neoliberal commonsensical paradigm tends to conflate "evidence-based policymaking" and objectivity, failing to examine stakeholder's ideological positionings when analysing consultation results. This gap is further exacerbated by the scarcity of dialogue between policy analysis and critical academic research - even if consultation results provide a goldmine of data ready to be harvested (Bacchi, 2009; Fraussen et al, 2020).

When used as a research method, a stakeholder analysis helps to reveal and understand differing stances, ideological assumptions and differences (Fraussen et al, 2020). Ontological clarity is key when performing a stakeholder analysis, as it enables to uncover the frames and assumptions underlying a policy debate.[4] Ideological underpinnings of a policy issue can help to understand why some issues are considered 'hot topics' and why some other issues are encountered with more universal approval or consensus (Walker et al, 2008). In the case of the GRA reform, reactions to the proposed changes have been intense, and this has been reflected abundantly since 2018 in news outlets, on social media, and in Parliamentary debates (Erikainen et al, 2020). The stakeholder analysis accomplished in this research project will aim to fulfil a retrospective analysis of the results published, to illuminate new knowledge about the policymaking process. More particularly the stakeholder

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[4] Stakeholder analysis in a practical context refers to the techniques and processes used to identify stakeholders' needs and interests on a policy issue. In this thesis, we use stakeholder analysis in a more academically-oriented fashion, as I examine stakeholders' interests by looking at their issue-framing and epistemological stances (Walker et al, 2008).

analysis will reveal how the framing of societal issues can result in antagonistic and emotion-driven debates (Maor, 2016; Varvasovszky and Brugha, 2000a).

Framing and problematisation

A frame describes a schema of interpretation to allocate meaning to objective facts (Goffman, 1974). Naming and framing causes of societal issues shapes policy answers addressing the issue, as framing entails the systematic selection of what is considered a problem (Engle, 2009). Framing is the "ongoing process by which ideological interpretive mechanisms are derived from competing stakeholder positions" (Reese et al, 2001; p.108:2). Terms and references are specifically selected by stakeholders to provide the context in which issues are understood and debated. Problematisation is a tool of inquiry used in critical public policy analysis which involves the examination and analysis of the power relationships underlying processes of naming and framing. An issue becomes an issue because agents (in this case, policy stakeholders) frame a matter as being worthy of intervention as a result of the harm created from inaction.

Framing often depends on take-for-granted ideological and epistemological assumptions (Engle, 2009). These assumptions in turn can help stakeholders problematise policy issues. This postpositivist positioning improves our ability to illuminate meaning making and aggregate metanarratives (Bacchi, 2009; Bacchi and Goodwin, 2016). Metanarratives here describe the result of storytelling processes which shape people's meaning and interpretations of experiences and events. In the context of policymaking, metanarratives can refer to agglomeration of discursive frameworks which help to justify why certain frames and problematisations are coherent and appealing (Bacchi, 2009). This often refers to their ability to explain events and experiences in reference to common historical and cultural signifiers (Armitage, 2020; Hines, 2020).[5] Deriving narratives from the stakeholder consultations therefore helps to understand why the GRA reform has been controversial. In the case of the GRA reform, a dominant narrative opposing the reform has framed the underlying debate as being first and foremost a woman's rights issue, while proponents tend to frame it either as a transgender rights issue or an administrative procedure devout of high

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[5] While narrative analysis is often employed to identify narratives, I will be using discursive analysis, as the heavier focus of the thesis is on problematisation and framing. While both are interlinked with narratives, I am most interested in linking framings to particular policy outcomes - which is better done by using problematisation.

stakes (Cowan et al, 2020). In the policy process, there tends to be a correlation between stakeholders' framing and their opinion on a policy issue (Surjadjaja and Mayhew, 2011). In the case of this research process, we can therefore expect that stakeholders with similar opinions on the GRA reform will use similar frames.

Chapter 3: Contextualising the GRA (2004) reform: insights from feminist academia

Who gets a say and who gets to answer

Initial academic research on the GRA reform has situated the policy within a culture-driven debate, rather than being solely dictated by data, rights or administrative streamlining - going beyond conventional views of 'evidence-based' policymaking. The cultural anchoring of the debate's framing can be seen through the referral to common myths and heroes, especially in the use of Sufragettes imagery by feminist activists opposing the reform (McMall, 2021). The recognition of who counts as a stakeholder has also been particularly controversial. Opponents to the reform have claimed that women's perspectives, and by extension women's rights, had been excluded from the policy process surrounding the reform. This is then discursively linked to the taken-for-granted political salience of gender above sex, of individual choice before material reality. The 2020 *Sociological Review* dedicated a whole issue to the 'TERF wars,' pointing out a dilemma for trans-inclusive academics and activists (Erikainen et al, 2020). On the one hand, the resistance to the GRA reform can be situated in a long-going feminist dispute on the inclusion and epistemological positioning of transgender individuals (and more particularly, transwomen). On the other hand, Erikainen et al (2020) explicitly state their apprehension in addressing the backlash against the GRA reform. Not only because publicly positioning oneself can entail retaliation on social media, but also because indulging in the debate would contribute to 'feed the trolls' or give into the 'whataboutism' of the narrative fostered by the opponents to the reform: what about the children, what about women's shelters and rape crisis centres, what about women's rights… Hence, there has been scholarly hesitation in allocating excessive space for analysis of the GRA reform, especially since Higher Education institutions have also become platforms for trans-inclusion debates (Hunter Blackburn and Mackenzie, 2019; Hunter Blackburn et al, 2020; Lowrey, 2021). Similar features appear in the discussions surrounding the GRA debate, as anti-reformists have condemned their inability to articulate their views

without being personally attacked. At the Scottish level, academic debates on the matter are well represented by Cowan et al (2020) responding to Hunter Blackburn and Murray (2019) via *Scottish Affairs*. By delving into the narratives and underpinning frames of the debates, while aiming to recontextualise the issue towards the rise of unlikely coalition and human rights cooption, I hope to bring valuable insights in understanding how an essentially administrative procedure has snowballed into pitting trans rights against women's rights.

Sex, gender and epistemologies

Framing violence against women: insights from second wave feminism and radical feminism

Feminist theories and praxis, while sharing a common goal (combat systematic gendered inequalities), have significantly different interpretations of the causes and remedies to gender inequalities (Tickener, 2001). The theoretical differentiation between sex and gender is entrenched in the GRA reform debate, especially in epistemological accounts of where gendered violence originates (Zanghellini, 2020).[6] This goes back to decades of feminist discussions and debates, and can be understood as a historical and epistemic progression. Understanding how feminist theories frame the origins of gendered violence is tightly linked to how transness is conceptualised and framed (Hines, 2020). For analytical purposes, the history of contemporary feminism can be divided into waves (Finalyson, 2016).[7] Our interest is with second and third wave feminism. Second wave feminism, situated roughly in the 1960s and 1970s has three important characteristics. First, collective action to end gender subordination is justified through 'standpoint feminism,' with an epistemological assumption that all women share common experiences of oppression by virtue of being women (Stanley and Wise, 2013). This then justifies collective resistance, since all women would benefit from resisting against these common experiences of oppression (Engle, 2009). Second, while epistemologically the category 'woman' is not necessarily reduced to biological characteristics, womanhood remains a stable category. Second wave feminism identifies gender as the social roles and constructions attached to sex and perpetuated through primary and secondary socialisation (Zanghellini, 2020). While gender and sex remain separated

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[6] In this section, I will be oversimplifying the differences of second and third wave feminist conceptions of sex and gender.

[7] As a historical concept, feminist waves especially concerns Western and Anglo-Saxon feminist praxis. Radical feminism is not the only feminist branch emerging out of second wave feminism, but it remains the most important one in the GRA reform analysis.

concepts, the lived experience of a woman is tightly linked to her sex. Hence, second wave feminism emphasises structural interpretations of oppression through a neopositivist and thin constructivist standpoint (Hines, 2020). Second wave feminism praxis has focused on violence against women as a manifestation of patriarchal oppression. In the UK and the US, radical feminist framing of patriarchy as causing systematic subordination of women, depicting men-as-oppressors and women-as-victims actively contributed to the acceptance and institutionalisation of violence against women as a concept at a legal and political leve (Erikainen et al, 2020)l. Single-sex spaces become the only type of spaces where women can find temporary shelter from direct and indirect gendered violence and grassroot haven such as women's shelters and rape crisis centres gradually become state-funded. These specific single-sex spaces become the symbol of what feminist activism can achieve (Engle, 2009; Zanghellini, 2020).

Framing gender-based violence: insights from third wave feminism, poststructural feminism and queer theory

Third wave feminism shakes up this grounded epistemological stance by examining the multiple power relationships shaping individual experiences of oppression, and questions the existence of objective or universal truths (Ahmed, 2016; Finlayson, 2016). Oppression, rather than being framed as strictly asymmetrical (men systematically oppressing women), is explored through hegemonic masculinities and femininities (Connell and Messerschmidt, 2005). For instance, while radical feminism has a discursive tendency to essentialise and conflate gender with sex, postmodern feminist theory understands those concepts as ultimately fluid, interactional and intersectional (Deshong, 2017; Crenshaw, 1991). Radical feminism rests on stable identities, as envisioned by a model of activism and policy informed by identity politics (Engle, 2009). Tightly entangled with postmodern feminism, queer theory has also examined gendered dynamics of power. Queer theory turns our attention to the importance of social positioning in understanding how violence is perpetrated in society (Ahmed, 2016). Social positioning is determined by the different tenets of an individual's identity (gender, age, race, dis/ability, class...). Social positioning is situated within a particular context and relative to others. It defines what strategies individuals can accomplish, and how they can negotiate structural balances of power (Farr, 2019). A person will have different choices to exert control, and these choices will be impacted by structural imbalances of power, such as patriarchal structures (Messinger, 2017). Hence, queer theory understands

negotiations and abuses of power under more fluid constructions of masculinity/feminity (Barnes and Donovan, 2020; Cannon et al, 2015). The gendered nature of structural violence is still acknowledged, as there is a strong hierarchy between performing masculinity or femininity (Messinger, 2017). This fits within the framework defined by hegemonic masculinities, which reward abuser-like qualities, like being emotionally closed-off or aggressive. Perpetrators, regardless of their gender, perform certain actions of power and coercion for the social rewards allocated to being in charge/calling the shots in a relationship (Barnes and Donovan, 2020; Morrison, 2003; Rollè et al, 2018).

Bringing it together: transness and epistemological stances

Trans inclusion, or even the acknowlegdement of transgender identites as intellegible and coherent is hence strongly correlated to the problematisation of gendered violence and violence againt women. Strands of second wave feminism (and especially radical feminism) emphasise material reality and gender subordination enforced through socialisation (Firestone, 1970). This can make it more difficult to understand transness and transgender individuals as an epistemological reality, as womanhood and manhood, while not being strictly associated with biological sex, are tightly linked to the gender roles experienced from birth onwards. Radical feminist theory (at times also radical lesbian theory) and its strong focus on male-as-oppressor has resulted in the negation of transness as lived reality, denouncing transgender women as being delusional men attempting to possess the bodies of women by becoming women themselves (Worthen, 2022). Being the perpetrators of violence, any person born and raised as a man cannot experience womanhood and represents a threat to women's safety (Raymond, 1979). Poststructural feminist theory and queer theory frame transness differently. Gender is the result of iterations of performances, and masculinities and femininities are neither absolute nor fixed (Ahmed, 2016; Butler, 2006). Transness is therefore regarded as an umbrella term referring to the experiences, lifes and processes of individuals who have different lived genders than the one they were attributed at birth (Serano, 2007). In the context of the GRA reform, we can expect that the feminist groups that have aligned against the reform embrace a conception of womanhood close to the epistemological stance taken by second wave feminism (Erikainen et al, 2020; Zanghellini, 2020).

Chapter 4: Legal, political and policy context of the Gender Recognition Act (2004) Reform

Scottish Political Landscape

Scotland is a devolved nation within the United Kingdom, alongside England, Wales and Northern Ireland. Scotland has a parliamentary system with a first minister, where the Scottish Parliament scrutinises the work of the Scottish government and considers proposed legal and policy changes (Caramani, 2017). Devolution grants the Scottish Parliament statutory power to legislate and act in certain areas including education, taxation, health, equal opportunities and justice. This exists within the wider framework of UK legislation. In this instance, the Gender Recognition Reform (Scotland) represents a clash between the Scottish National Party-led (SNP) government in power, and vocal opposition in Parliament and in the wider public (Erikainen et al, 2020). The Scottish Parliament is unicameral, currently featuring the Green/SNP coalition (Scottish Government, 2021). Scottish law and policymaking has a reputation for being more progressive than its English counterpart (Caramani, 2017). Its consultative process has enabled feminist activists and interest groups to have considerable impact on law making, as reflected by the country's forwardthinking domestic abuse legislation (Engle, 2009; Scottish Women's Aid, 2018). The GRA reform was first introduced by first minister Sturgeon in 2016. A first open consultation ran from November 2017 to March 2018, specifically focusing on whether and how the GRA should be amended (Fairbairn, Pyper and Balogun, 2022). A second round of consultations took place from December 2019 to March 2020, this time to seek views on the drafted GRA reform bill (Scottish Parliament, 2022). COVID-19 put a halt on the policy reform (Cairns, 2020). Both Scottish Greens and SNP manifestos included the promise of moving forward with the GRA reform (Scottish Greens, 2021; SNP, 2021). At the time of writing, the draft bill is being examined by the Equality, Human Rights and Civil Justice Committee before being debated in Scottish Parliament some time in 2022 (Scottish Parliament, 2022).

Gender Recognition Act Reform (Scotland)

The Gender Recognition Act (2004) is implemented at the UK level, although gender recognition falls under devolved competences. This qualifies Scotland to reform the GRA as needed. The Gender Recognition Act (2004) regulates changes of legal status on transgender

people's birth certificate. This is conditional, and individuals must comply with the following conditions:

- be at least 18 years old
- identify within the gender binary (as a man or a woman)
- pay a £140 processing fee[8]
- prove that they have lived for 2 years as their preferred gender, although this does not require surgical intervention or hormonal therapy
- commit to live as their preferred gender for the rest of their lives
- have a formal diagnosis of gender dysphoria by medical professionals (recognised on a pre-approved list of clinicians), and submit proof of their need to live as their preferred gender

Applications are reviewed by a panel composed of medical experts. After a successful claim, a Gender Recognition Certificate (GRC) is issued and the birth certificate can be altered. The latter is needed for marriages and death certificates especially. Other documents, including National Health Service (NHS) records or passports can be amended without changing one's birth certificate. Trans advocates have also emphasised the importance of the certificate to have their identity confirmed and represented consistently across their personal documents, and also to lessen the chances of being outed, which can often have dangerous consequences for transgender people.

As part of the Fairer Scotland Action Plan (2016), the SNP-led Scottish government committed to reform the GRA to lessen the burden and the cost of the procedure for transgender people. The most important reform formalised in the draft bill is the right to self-identification, which would lessen the lengthy, bureaucratic and medicalised procedures implemented by the original 2004 act (Scottish Government, 2019). Individuals would self-refer, and have a 3 months reflection period before their legal sex is amended on their birth certificate. Before self-referring, applicants are expected to have lived at least 3 months in their "acquired gender". Application age would also be reduced from 18 to 16 years old. As the process was delayed due to the Corona crisis, debates on the GRA have continued

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[8] The processing fee was reduced by the UK government to £5 in 2021, while also abandoning any additional efforts of reform at a UK and England-wide level (Government Equalities Office, 2021; Weaver, 2021).

informally, notably by the proxy of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act and the Scottish Census (National Records of Scotland, 2021). The topic of contention remains the differentiation of gender and sex and its policy implications.

Equality Act (2010): gender reassignment and single-sex spaces

The Equality Act (EA) 2010 ensures the protection of social and political rights of vulnerable groups against discrimination, including gender reassignment. According to a list of protected characteristics, public bodies and organisations have a positive obligation to advance equal rights and a negative obligation to abstain from harm. The EA aims to eliminate direct and indirect discrimination of protected characteristics. Sex and gender reassignment are protected characteristics under the Act. Gender reassignment is defined as "a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex" (Equality Act, c.1). Transgender people that have or are planning to undergo a social and/or medical transition are protected under the EA. Medical treatments such as gender confirmation surgery are not a prerequisite to gender reassignment. Sex is referred to in terms of man and woman, as a "male of any age" and a "female of any age" (Equality Act, c.212). Transgender people, designated in the act as transsexuals, are also protected under the sex section, either because of a change in their legal status or because they are perceived and discriminated against as a man or a woman. Trans people have a right to access single-sex spaces, although this is in theory conditional. If it is deemed "appropriate" or "legitimate," transgender people can be excluded from those spaces or sectors, even if they possess a Gender Recognition Certificate as acquired through the procedure set out by the GRA. The exclusion of transgender people in single-sex spaces is lawful when "(a) a joint service for persons of both sexes would be less effective, and (b) the limited provision is a proportionate means of achieving a legitimate aim" (Equality Act, c.15). Opponents to the GRA reform fear that the conditional entry of transgender people in single-sex spaces would be revoked, or that ill-intentioned men would enter women-only spaces by maliciously using the streamlined processes introduced by the GRA reform.

Chapter 5: Methodology

Research paradigm

I have chosen a feminist postructural methodology, which is compatible with the underpinning interpretivist public policy paradigm. While stakeholder analysis has remained traditionally a practical tool rather than an academic inquiry, there have been calls to bridge this gap (Fraussen et al, 2020). As the policy issue touches upon questions of personhood, gender and vulnerability, there is a need to better understand what knowledges prevail in framing the policy debate. A poststructural analysis is compatible with uncovering hierarchies and constructions of knowledge through discursive means. Ultimately, this approach aims to better understand societal relationships of power, their positionality and their context. This suits my goal of understanding the role of stakeholders in framing the GRA reform. The core assumption underlining the project is that there is no 'natural' or intuitive definition of womanhood, gender or sex. This allows me to problematise the different statements and arguments made by stakeholders. In the context of the GRA, a poststructural approach justifies a deep contextualising of the debate (looking at the policy and institutional actors detailed below). Problem definition is a political process to identify and address the social worlds, resulting in a diversity of epistemologies and ontologies expressed through specific frames (Bacchi, 2009; Bacchi and Goodwin, 2016). The underlining feminist sensitivity of the methodology reflects the importance of feminist themes and input in the debate so far. It is also important to note that a poststructural lens and its postpositivist epistemology is met with animosity by women's groups and activists opposing the GRA reform, as is often the case between poststructural and radical-leaning feminists (Armitage, 2020; Erikainen et al, 2020; Hines, 2020; Zanghellini, 2020). This poses the question of reflexivity and positionality: as an academic, a feminist and a supporter of the reform, I approach this project with personal and ideological biases. Steps to recognise them and their impact during the research project have been taken and are detailed below.

Methods

Qualitative methods were chosen as they avoid premature exclusion of topics and points of contention within policy analysis (Varvasovszky and Brugha, 2000a). The data collection is executed by accessing the consultation documents submitted by organisations. Organisations were clustered according to their organisational and functional characteristics inspired by the

categorisation in the Scottish Government's analytical report of the consultation results (Scottish Government, 2021b). The analysis was iterative, as the analysis is revised and deepened as new themes and frames emerge (Varvasovszky and Brugha, 2000a). Organisational submissions were extracted from the Scottish Government website in June 2022. Out of the 215 submissions, 185 were available online. In total, I drew on 179 of these. A small number of submissions have been censored in part by the Scottish Government, often removing the name of private or professional individuals cited. This has not affected the quality of the data. The qualitative data analysis software Nvivo 12 was used to facilitate coding and discourse analysis. I coded inductively, reviewing one document of each cluster to establish a code book. After classifying codes into themes, I analysed them using Bacchi's (2009) set of guiding questions in her 'What is the Problem Represented to be?' (WPR) approach to framing and problematisation. Questions were as follows:

1. What's the 'problem' represented to be in a specific policy?
2. What presuppositions or assumptions underlie this representation of the 'problem'?
3. How has this representation of the 'problem' come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?
5. What effects are produced by this representation of the 'problem'?
6. How/ where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

To answer these questions, special attention was dedicated to discourse as a conceptual framework which uncovers the broader power relationships existing from the context where a particular topic is embedded (Durnová, 2022; Foucault, 1980). Qualitative discourse analysis enables us to examine how individual meanings and collective representations are complementary, and how meaning is transmitted across audiences to 'make' politics (Durnová, 2022).

Limitations

The open stakeholder consultation has two main limitations: it can both include or exclude a number of irrelevant or passive stakeholders (Varvasovszky and Brugha, 2000a). To strengthen the stakeholder analysis, further research can be conducted on stakeholders'

influence and reach in the policy-making process - by examining the presence of stakeholders' metanarratives in news outlets and social media (Bacchi, 2009). When examining cultural and ideological biases, an important component is reflexivity - mapping out one's own biases and assumptions as the research process progresses (Varvasovszky and Brugha, 2000a). A team of analysts is usually preferred in this type of framing research project to avoid confirmation bias or the risk of making invisible assumptions when analysing the data. To lessen the risk, I have kept a research diary, and I have followed the WPR steps for my own introspection (Bacchi, 2009). Single analysts supported by a supervisor and presenting interim steps of the research help identify unjustified assumptions, as well as ensuring a higher degree of internally valid data (Varvasovszky and Brugha, 2000a).

Chapter 6: Findings emerging from the data

The following findings were derived from an inductive analysis focused on patterns and themes emerging from the data. First, the two coalitions formed by proponents and opponents will be examined. Second, the concept of trans temporality will map out how stakeholders conceptualise the existence of trans people. The third section will detail stakeholders' reactions to self-identification through the concepts of trans agency and gatekeeping. These findings and their implications for issue-framing in the policymaking process will be analysed in chapter 7.

Mapping opposition and support: two coalitions

Organisations were divided into 10 clusters according to their organisational purpose. Each of the clusters had a clear consensus on their support or criticism of the reform (see Figure 2 p.26). Despite the 36 missing submissions, results on the opinions of stakeholders remain similar to those published by the Scottish Government (Scottish Parliament, 2022b). At large, proponents of the reform included Children or Young People's groups; Local Authorities, Healthcare and NHS institutions; Public Bodies; Third Sector Support Organisations; Trans groups and LGBT groups. Across organisations, submissions from organisations representing young people were more likely to be in support of the GRA reform. The overwhelming majority of proponents of the reform agreed on the following:

- The original Gender Recognition Act (2004) is unfit for trans people, and causes them stress while allocating a disproportionate amount of importance to medical definitions of transness;
- Self-identification is a suitable ethos to streamline GRC procedures and increase trans people's agency;
- The 3 months reflection period, while being a notable improvement from 2 years, is contrary to the philosophy of self-identification and should not be included in the GRA reform;
- 16-year-olds should be able to obtain a GRC, which is coherent with 16-year-old's right to work, to have sexual relations and to join the army;
- Non-binary identities should be included in the reform proposal. Non-binary people are a significant section of the trans population (if not the majority of the trans population for young people) and should also benefit from legal protection and recognition.

12 organisations also demanded that the Gender Recognition Certificate be extended to trans individuals with asylum status.

Opponents of the reform included Religious or Belief Bodies; Women's Groups and sub-clusters within Unions or Political Parties (SNP and Labour submissions). Notable outliers in the LGBT cluster include the only two lesbian-centered submissions (Lesbian Rights Alliance and Lesbian Strength Scotland), which bear strong resemblance to arguments mentioned by the women's groups cluster. The majority of submissions against the GRA reform agreed on the following:

- The original Gender Recognition Act (2004) is not completely unfit for trans people. Rather than being reformed, the GRA should be amended to treat trans people with more compassion;
- Medical gatekeeping should remain to prevent abuses, while self-identification undermines the integrity of Gender Recognition Certificate allocation;
- The 2-year period should remain to be sure that individuals seeking a GRC are serious and committed;

- 16-year-olds should not be able to obtain a GRC, as it represents a decision with lifelong consequences. The age should remain 18, or be increased to a higher threshold.

Supporters and critics of the reform shared some similar concerns. Both opponents and proponents of the reform questioned the draft's 'arbitrary' decision of imposing three months as a reflection period, pointing out the lack of experience- or research-based evidence. Supporters and critics were also unsatisfied with the lack of precision surrounding the condition of "living as [one's] acquired gender," pointing out the vagueness of the term and the potential threat of sexist and essentialist interpretations. Both also questioned the proposal to discourage a second application to a GRC by creating a new offence specifically for the GRC procedure. Applicants wishing to go back to the initial sex stated on their birth certificate would risk to be punished. This would be implemented in addition to false statutory declarations already being a criminal offence under the Criminal Law (Consolidation) (Scotland) Act 1995. While the Government's reasoning is to discourage frivolous applications, both supporters and opponents recognise that people are entitled to change their minds. The following subsections will describe the specific themes which emerged from the data, aggregating views from reform proponents (Children or Young People's groups; Local Authorities, Healthcare and NHS institutions; Public Bodies; Third Sector Support Organisations; Trans groups and LGBT groups) and reform opponents (Religious or Belief Bodies, Women's Groups and sub-clusters within Unions or Political Parties).

Cluster	Supports the Reform	Opposes the Reform
Children or Young People's Groups (n=5)	5	0
Local Authority, Health and Social Care Partnerships or NHS (n=8)	8	0
LGBT Groups (n=28)	26	2
Other[9] (n=28)	18	10
Public Bodies (n=4)	4	0
Religious or Belief Bodies[10] (n=28)	1	27
Third Sector Support Organisations (n=14)	10	4
Trans Groups (n=16)	16	0
Union or Political Party (n=21)	13	8
Women's Groups (n=27)	4	23
Total (N=179)	105	74

Figure 2: Clusters and their stance on the GRA reform

Trans temporality

All submissions encompassed concepts of trans temporality, that is to say ideas and social patterns around the progress of past, present and future events in a trans person's life (Amin, 2014; Pearce, 2018). The majority of submissions featured the same key events, including mentions of feeling different, the impact of transness on social relationships and undergoing social and/or medical transitioning. However, organisations differed in their understanding of *when* a particular event happened in a trans person's life. A submission's mapping of trans temporality was strongly linked to the organisation's position on the reform.

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[9] Includes single-issue grassroot opposition groups, law-focused organisations, higher education institutions, French, Belgian and Irish submissions.
[10] Includes 27 Christian groups opposing the reform, and one humanist group supporting the policy change.

Organisations supporting the reform tended to adopt the following narrative: transgender people are happier living in a gender different from the gender they were attributed at birth. A trans person's journey encompasses deep self-reflection on their gender identity, at times discrimination experienced at their school, job, family and wider environment because of their transness (see figure 3). For instance, Edinburgh Frontrunners stated

> "People take years (often decades) of thought to get to the point of making major changes such as coming out or changing names/pronouns/presentation etc. [...] Most trans people will have been living in their acquired gender for years and a GRC application is often the last piece of documentation to be aligned."

Hence, initiatives to transition medically and/or socially precede administrative processes such as getting a Gender Recognition Certificate. The reform would then result in trans people living safer and happier lives without the risk of being discriminated against upon being outed by a discrepancy between their lived gender and the sex featured on their birth certificates. Self-identification would grant trans people a greater sense of agency over their own lives. The reform would also have a positive snowball effect, as the state's efforts to recognise trans people's dignity and right to privacy through the principle of self-identification would ultimately signal to the wider Scottish society that trans people exist and share the same human rights as their fellow citizens. This would ultimately foster a more inclusive society.
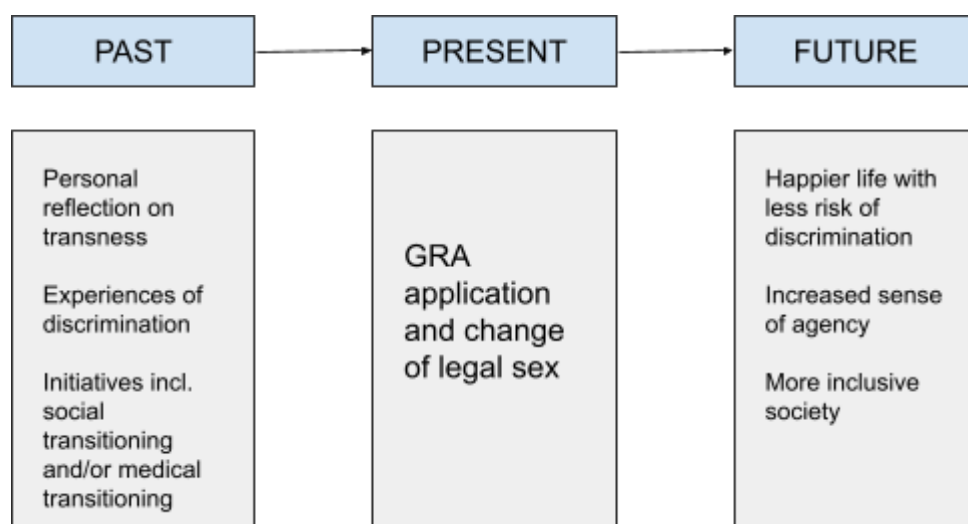
Figure 3: Trans temporality, as narrated by proponents of the reform

Organisations opposing the reform followed a different narrative, emphasising the importance of maintaining strong checks and balances to changes in legal sex (see Figure 4 below). Opponents focused on elements of transitioning (especially medical transition through hormone therapy or gender confirming surgeries). The reform is seen as increasing temptation for vulnerable individuals like people with disabilities, mental health issues, on the autistic spectrum, or teenagers to undergo lifelong medical procedures. The most common narrative focuses on young people with mental health issues who feel pressured to conform to gender stereotypes. These young people are then vulnerable to any 'ideology' which would provide a quick fix to their distress, often depicted on social media as transitioning to another gender. This results in

> *"regrets about medical treatment, many of them young women who have come to realise they are lesbians, often after irreversible hormone treatment and breast removal."* (For Women Scotland)

Young lesbian women are assumed to be especially at risk: rather than acknowledging their lesbian identity, they find it easier to conform to sexist and heteronormative conceptions of womanhood and hence wish to be (straight) men. Upon changing their birth certificate, these young people (rarely acknowledged as 'trans') then proceed to undergo harmful and irreversible surgeries without being properly informed of the long term effects and

consequences on their health. As mental issues persist, the number of young people who have medically transitioned and regret ('detranstioners') increases.
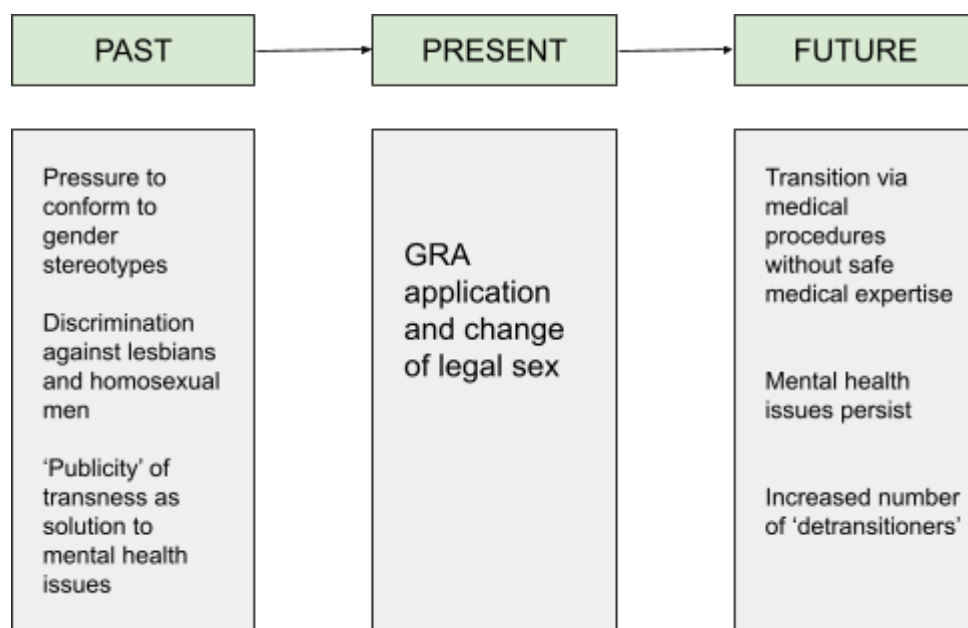
Figure 4: Trans temporality, as narrated by opponents of the reform

Agency and gatekeeping

Trans agency and identity

Supporters of the reform emphasised the importance of trans agency, and of expertise derived from trans people's everyday experiences. Proponents favoured sources stemming from groups representing the voices and interests of trans and LGBT people (such as Stonewall or the Equality Network). Numerous LGBT and trans groups organised discussions and focus groups to gather trans people's views on the proposed reform, and used a series of anonymised quotes to illustrate their findings. As synthesised in Figure 2, trans people would live in the gender they identified with for an extended period before thinking about a GRC. Trans agency was justified because of the specific experiences, feelings and hurdles faced by transgender people in their everyday lives. This results in the construction of a trans identity, which cannot be governed by top-down processes but must be formally accepted and recognised by the state. Discursively, proponents refer to transness as a stable feature, giving trans people the right "*to be recognised as who they are*" (YMCA The Young Women's

Movement). Limits to accessing the GRC, such as the reflection period or the necessity to prove that one has been living in their 'acquired' gender for three months should be removed: "*trans people are the experts on their gender identity, we know best if, and when, a GRC is needed*" (Beyond Gender); "*periods of reflection are not required for similarly significant documentary changes, so requiring one here would imply trans people are less competent to know their own identities than other people*" (Edinburgh Frontrunners). Trans agency through self-identification is seen to trump medicalised and paternalising processes imposed by the original 2004 GRA. While proponents recognised that medical procedures and gender dysphoria could be part of a trans person's life, trans people should be able to navigate this part of their lives without being accountable to the state. Proponents argued that the GRA's emphasis on medical diagnosis

> "pathologises trans identities and allows a panel to scrutinise individuals before granting them legal gender recognition. Built into the current process is the notion that trans people's identities are up for debate, and that their privacy and dignity is secondary to the knowledge and expertise of other professionals" (Equality Network and Scottish Trans Alliance)

Proponents argue that obtaining a GRC is a legal and administrative process which should be differentiated from the social and medical components of a transgender person's life. Trans agency was also a key feature in reducing the GRC access to 16-year-olds, in line with the fact that they are experts of their own lives and the existence of other legal rights which grant 16-year-olds decision making powers, having the right to "*marry, gain employment, vote and be held legally responsible for their actions*" (Scottish Youth Parliament).

Medical Gatekeeping

Opponents of the GRA reform value medical gatekeeping and state bordering of trans identities as a way to prevent abuses. Abuses would result from a laxist or laissez-faire approach to self-identification. Opponents are wary of two potential consequences if the GRA reform eliminates medical gatekeeping. First, a number of applicants risk being misinformed and vulnerable individuals, who, upon receiving a GRC, would feel encouraged to medically transition without thorough medical and psychological support (as synthesised in Figure 3). Second, a number of ill-intentioned predatory men would use the GRC as a way

to gain access to vulnerable women. Transness therefore needs to be objectively controlled through medical means, to ensure that candidates for a GRC are serious, committed, and will not be a threat to their surroundings or vulnerable women. Opponents of the GRA understood transness as a medical condition defined by a gender dysphoria diagnosis, and concerning a small minority of individuals - therefore not an identity, but a condition.[11] Discursively, this was strongly reflected by the terminology used by critics of the reform, using for instance 'transsexuals' or refraining from using the term 'trans'. Transgender Trend argues that

> "The GRA provided protection for transsexuals with a diagnosable condition of gender dysphoria. This Bill gives protection to people who claim a subjective and unverifiable inner 'identity' and as such it is not a Bill for 'trans people' but a new legal right for anyone who chooses it for whatever reason."

To prevent abuses, opponents argue that the state had the responsibility to protect vulnerable individuals (including trans people themselves) by maintaining a stable top-down framework controlling GRC procedures, therefore advocating against self-identification and the lowering of the application age from 18 to 16.

Sex, gender and single-sex spaces

As identified in Chapter 3, the conceptual differentiations between sex and gender were debated in the submissions to the GRA reform. Proponents of the reform did not focus on the differences between sex and gender but rather argued that trans people should be recognised because of their *"true", "affirmed" or "lived"* gender identity (Mermaids; Equality Network and Scottish Trans Alliance; Consortium's Trans Organisation Network). Proponents also include non-binary identities as part of the trans umbrella and by extension the need for the GRA reform to include non-binary individuals. Sex was mentioned in the context of single-sex spaces: a notable pattern included the insertion of a final paragraph detailing that the GRA reform would not affect the inclusion of trans people in single-sex spaces, who are de facto already included in those spaces. Several service-providers underlined that

> "access to single-sex spaces and facilities, such as toilets, changing rooms, and

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[11] Although this was disputed among Religious and Beliefs groups.

women-only services will not be impacted. Nobody is required to show a birth certificate to prove their eligibility for these spaces or services now, and this will not change" (Leap Sports Scotland).

Opponents of the reform strongly focused on the differences between sex and gender, depicting sex as a scientific and objective reality. Gender was understood as the social roles attached to being a woman or a man. Both Christian and women's groups agreed on the prevalence of sex in determining an individual's experience of gender, and the impossibility or difficulty in decoupling 'natal' sex from 'lived' gender experiences. Hence, both groups discursively opposed 'feelings v. facts', and the fact that wanting to be a woman, or feeling like a woman, did not qualify as *being* a woman. For instance,

> "the Government should properly address the implications and consequences of changing the legal definition of 'woman' and 'man' from one informed by rational and scientifically valid biological science, to one based on unprovable feelings or claims" (Men Supporting Women's Rights).

Women's groups tended to point out that trans individuals had been socialised as the gender they were attributed at birth, and therefore trans women lacked the experience of growing up and living through gender oppression. Being born as male in a male-dominated world is synonymous with being potentially more aggressive, physically stronger and more sexually dominant than people being born as female. This discourse was especially relevant in the discussion surrounding women's spaces, where 'natal' men (also referred to as "*male-bodied*" individuals) risk making (cisgendered) women feel at risk. Coupled with the specific trans temporality depicted in Figure 3, the removal of medical gatekeeping would mean that male-bodied individuals would have prime access to single-sex spaces, without the ability of being excluded because of their lawful GRC. This fear is also shared by Christian groups, although they tend to express a more explicit commitment to being compassionate towards individuals struggling with gender dysphoria, while again, not addressing them as trans people because gender dysphoria constitutes a medical diagnosis rather than an identity component:

> "we will continue to offer pastoral support services to those in our member churches and organisations who are suffering from gender dysphoria" (Evangelical Alliance).

Chapter 7: Problematisation analysis

This section will analyse the frames and underlying assumptions behind the two metanarratives detailed in the previous sections. It will refer to Bacchi's (2009) 'What is the Problem Represented to be?' guiding questions. First, I will examine representations of the GRA reform and underlying assumptions. I will then move on to the historical and cultural processes to understand how the two positionings fit within historical materialities. Finally, I will analyse the solutions presented by opponents and proponents, and to what extent they can be disrupted. Synthesised results are available on figure 5 at the end of this section.

Representation and underlying assumptions

1. What is the 'problem' represented to be in a specific policy?
2. What presuppositions or assumptions underlie this representation of the 'problem'?

Proponents: human rights and efficient policy making

Proponents (especially young people, LGBT and trans groups) have represented the problem to be a rights-based and a policy efficiency issue. The issue of streamlining GRC obtention for trans people is framed through the lens of human rights to privacy or dignity, referring to various legal texts such as the Yogyakarta Principles, European Convention on Human Rights and the United Nations Convention on the Rights of the Child. The right to privacy and dignity is framed through the concept of trans agency detailed earlier, and provides a basis for proponents to argue against spousal veto or the draft reform's proposal to have private individuals place a recourse against malicious or ill-guided GRC applications. Hence, the policy issue is framed through the concept of minority rights, affirming that a minority population has the right to be protected by universal human rights (Irving, 2009; Warner, 1993). Trans people are vulnerable because of their transness, and the state should step in to ensure their protection and equal rights. This protection entails removing medical gatekeeping, which contributes to promoting the idea that transness is inherently linked to being mentally unwell and in need of being shepherded. Self-identification as promoted by the Scottish state would have a positive snowball effect, positioning the state as enabler and protector rather than continuing to impose *"dehumanising"* administrative processes (Mermaids).

Proponents also argue that the problem is a practical, pragmatic and bureaucratic issue, framing the reform as increasingly streamlined, coherent policy processes. This fits in with broader institutional shifts to managerial approaches to policy making, in line with New Public Managerialism (de Bussy and Kelly, 2010). By framing the policy problem as an administrative issue, proponents convey that the issue at stake is not disrupting the status quo disproportionately - but rather improving the normal processes of policy delivery. The reform and the principle of self-identification remain coherent with other administrative changes accessible to citizens (and trans people), which do not require a reflection period or a medical examination. It includes trans people and trans minors being able to *"change their gender marker on all other forms of ID including passports, education and NHS records"* (Consortium's Trans Organisation Network). Both core frames are also extended to the inclusion of non-binary people in the reform and to recognise non-binary identities within legal and administrative procedures.

Opponents: women's rights and undemocratic lobbying

Opponents of the reform have problematised the GRA reform with references to women's rights and democratic principles being infringed. Opponents especially denounced the influence of trans lobbies over Scottish policymaking and the GRA reform. The main issue is the lack of regard for women's rights when trying to advance trans rights.The reform is framed as a zero-sum game between women's rights and trans rights, infringing on vulnerable women's rights to single-sex spaces. Single-sex spaces were implemented to protect vulnerable women from endemic male violence, and the reform would greatly endanger this achievement. The reform is therefore not an issue of human rights or policy efficiency but a political move, well-orchestrated by trans lobbies. Indeed, opponents also focus extensively on the institutional context surrounding the policy, problematising the Scottish government's blind adoption of "*transgender ideology*" and "*gender ideology*" (HEAL; Women Uniting). Both ideologies contribute to reinforcing sexist gender stereotypes:

> "If gender identity is innate, then the cultural norms attached to the female sex, which we call gender, and which have historically served to oppress women, are innate. A philosophy which seeks to ascribe women's oppression globally and historically to something innate within them – whether that is wandering wombs, or phrenology, or evolutionary psychology – has never ended well for women. We should be extremely slow to codify in law such a perspective." (FiLiA)

As pointed out in the findings section, opponents of the reform discursively oppose 'facts v. feelings' and 'objective medical truths v. subjective individual experiences'. Opponents, therefore, are arguing that the rights of a small minority should not infringe on women's rights, and this understanding of rights as gender-based rather than sex-based is a recent construction. The perceived mass adoption of the epistemological stance promoted by proponents of the reform is criticised by opponents of the reform. Opponents frame this as a democratic failure: supporters of the reform are perceived as having direct institutional access to the Scottish Government. Critics of the reform frame themselves as grassroot groups of resistance fighting to keep the sanctity of single-sex spaces and platform women's voices.

Historical materiality and invisibilities

3. How has this representation of the 'problem' come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?

Proponents: universalising trans rights and liberal autonomy

Proponents' use of a human rights framework and emphasis on self-identification follows historical trends in minority, LGBT and trans activism. Prior to the 1990s, trans inclusion in society was framed through the 'stealth' model of integration. As with an assimilationist model of immigrant integration, the stealth model prioritises trans integration through invisibility, fitting in as well as possible into neoliberal and heteronormative societal institutions. This is also linked to how the Gender Recognition Act came about in the UK, where trans activists demanded that heterosexual trans (binary) individuals be able to change their legal sex to validate their heterosexual legal marriage. The stealth model is akin to the minority model framed by queer theory in the context of LGBT rights, where the aim is to show how unthreatening and norm-abiding individuals are in order to be accepted by the wider society (Schilt and Westbrook, 2014; Warner, 1993). The stealth model is surpassed as trans activists and advocates seek visibility through the media, although newspaper media representation has been dominated by non-trans anti-GRA reform perspectives. This is also recognised in the proponents' framing surrounding universal human rights, in sync with wider contemporary trends to frame trans rights as human rights. Poststructural and critical feminist analysis have pointed out that both the universalising models and stealth models tend to inherently create insiders and outsiders within a minority group, ultimately favouring those

who are already most integrated through their class, sexual orientation or race (Schilt and Westbrook, 2014; Warner, 1993). However, there also was a strong emphasis on socioeconomic rights in the proponents' discourse and a notable minority calling to include trans individuals with refugee status in the GRA reform.

The elements emphasising the right to self-identification echo liberal notions centring autonomy and independence, although, as pointed out by proponents, the GRA reform proposal is inherently limited by its perpetuation of the gender binary - refusing to include non-binary individuals. Most of the silences also revolve around the dilemmas involved in trying to participate in the liberal policy process, especially in a context that had tried to accommodate both gender-as-biology and gender-as-identity models (Schilt and Westbrook, 2014). There is a level of hegemonic compromise involved, as proponents can, for instance, not effectively argue for the removal of gender binaries and fluidity of gender identity (Irving, 2009). This tension is also underlined when proponents argue that an individual should not be disproportionately punished if wanting to change their amended birth certificate. Another obvious silence includes the lack of direct discussion on sex and gender, although it remains one of the main points of contention - which proponents of the reform are likely aware of. Not wanting to address this debate directly is also a way to continue framing the policy as administrative rather than cultural or political.

Opponents: gender ideology, transmedicalism and the body

The representation of trans inclusion and self-identification as a threat to women's rights and a cultural slippery slope is entrenched in wider transnational backlashes on gender ideology. As LGBT and other minority rights have become more accepted, criticism has become increasingly apparent. By appealing to common sense and scientific facts, anti-gender policy entrepreneurs create a basis for coalition across the ideological and political spectrum. This is depicted in the stakeholder submissions, as women's rights activists form an unlikely coalition with conservative Christian groups. In a liberal democracy, receiving state support entails deservingness (Fletcher et al, 2020; Irving, 2009). By centring trans support on medical transitioning and medical gatekeeping, opponents to the reform draw a line between deserving and non-deserving transgender people or even between 'real' and 'fake' trans people (Erikainen et al, 2020). Authenticity is therefore linked to submitting one's sense of identity to state and medical borders. The focus on medicalisation of transness is also the result of historical processes dating back to the 19th century, with the progressive recognition

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of gender variant individuals as needing to be treated to conform to the gender binary - ultimately continuing to reproduce the legal and medical apparatus of enforcing a gender binary (Foucault, 1980; Zhang, 2019). Opponents tend to therefore favour transmedicalism, which restricts access to changes in gender status and gender-affirming techniques through a medico-legal apparatus - maintaining to an extent the emphasis on biology, medical procedures and 'scientific evidence' (Zhang, 2019). The experiences of trans people are excluded from this narrative.

It seems that the commonality bringing this unlikely alliance between women's rights and Christian groups is their common aim to protect women's bodies from symbolic and physical violence. Christian activism has proved consistent in its framing of human bodies as designed in God's image, advising its followers to maintain their bodily integrity in a way to thank God for his gift of life. (Biological) sex is therefore God-given, and the gender roles allocated to men and women reflect to an extent God's plan for humanity. Transness and taking gender-as-identity is framed as an attempt to disrupt the divine, natural order, and bodies (especially women's bodies) should be protected from these contemporary threats. Women's rights groups opposing the reform tend to frame womanhood through radical feminist lenses, reinstating how female bodies are subordinated, commodified and objectified in a patriarchal society. Women's bodies must then be protected from male-bodied intrusion in women-only spaces, or from being influenced in thinking that embodying a man or becoming a man would make lesbian's lives better.

Solution framing and disruptions

5. What effects are produced by this representation of the 'problem'?
6. How/ where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

Proponents: incremental changes and compassion

Proponents' framing of the GRA reform as a policy issue concerning human rights and a simple, streamlined administrative procedure is designed to ensure quiet approval. As mentioned in multiple submissions, the status quo will remain, and this represents an incremental change for most of the population - while ensuring that a minority's lived experience is reflected in their personal legal records. It is in effect compatible with the Scottish Government's draft proposal. Proponents further advocate for the draft to not

compromise on the concept of self-identification and remove gatekeeping measures. The reflection period, additional statutory offence and a third party being able to launch a formal complaint to revoke an individual's GRC application on the basis of fraudulent intent should be removed. Proponents' demands to include non-binary people also do not ideologically clash with the draft's proposal, just demanding that the government pursues its intention to facilitate and enable trans agency. Insisting on the inclusion of non-binary people and including them as part of the trans community is a significant move towards visibility, as non-binary identities remain under-represented in the public eye.

Beyond a 'business as usual' and compatibility with official government narrative, proponents' submissions also produce distinct affect-related responses. Detailing the hardships, discrimination and mental health issues faced by trans people in their everyday lives appeals to feelings of compassion, sympathy and kindness. This is especially prompted by the use of direct quotes of trans people and trans youth, for instance:

> "Okay when i did my statutory declaration for changing my name it was the best day, i felt like a weight had been lifted, why should we have to wait to have our correct legal gender i think thats a simple human right, who gets to tell us what gender we should have. So I dont think there should be a reflection time as i said who gets to decide what gender we are. We know ourselves." [sic] (Argyll and Bute Trans Youth Chat)

Proponents' framing of the GRA reform emphasising gender-as-identity and self-identification has influenced the GRA reform proposal, as these principles were emphasised in the first government consultation and made their way into the draft bill. It is also important to note that the UK and Scottish welfare and policymaking system is characterised by a mixed economy of welfare, meaning that third sector organisations' and advocacy groups' input is valued in the collection of data, drafting of policies and implementation of policies. Key proponents of the GRA are also government-funded bodies (for instance, the Edinburgh Rape Crisis Centre), or organisations which have provided services in the delivery of equality trainings (for instance, Stonewall). This signals that these stakeholders already have a potentially significant level of influence in the policy process, helping to disseminate and defend the proponents' framing of the GRA reform. Their narrative has been disrupted by the gender-as-biology policy entrepreneurs present in the

consultation process, but also in higher education, activist spaces, and notably on social media and newspaper outlets.

Proponents: disrupting 'gender ideology' and fear

Opponents of the reform disrupt the narrative that the reform is an administrative procedural change by essence, but instead question the role of 'gender ideology' in governmental processes. This, in turn, reinforces gender essentialism, as women in women-only spaces are depicted as perpetual potential victims, while "*male-bodied*" individuals are always potential predators or rapists. Mental health and mental distress in general is also emphasised by opponents of the reform in explaining why some individuals might want to 'transition' from one gender to another. Compared to previous findings of transgender exclusion rhetoric, the emphasis is less on the danger of sexually deviant individuals exposing themselves in bathrooms and changing rooms but more on young people being coopted into transgender narratives through no fault of their own. This in effect depicts young people as vulnerable and gullible, and desperate to find a solution to their mental distress - often tied to the inherent difficulties of being a teenager. It also frames trans and LGBT-friendly narratives as wanting to expand their following and consciously recruiting young people through social media platforms. This representation of the problem resembles older narratives surrounding the integration of LGB people and the spread of a 'gay agenda', depicting a minority population's desire to be integrated as a threat to the rest of society. Opponents of the reform also frame themselves as being in the minority, coming from grassroots organisations and representing unheard and marginalised voices of those too afraid to tell the truth. Opponents appeal to different emotions than proponents. For instance, arguing that the rights that "*women, as a group, have fought for*" are endangered or being usurped can provoke feelings of anger or panic (Portobello Against Misogyny). In the same way, focusing on 'male-bodied' individuals in women's spaces, recounting instances of self-castration or instances of in-prison rapes by transwomen, provokes fear and disgust.

	Representation and underlying assumptions (questions 1, 2)	Historical materialities and invisibilities (questions 3, 4)	Solution framing and disruption (questions 5, 6)
Proponents	• Trans rights are human rights • Trans people are citizens/service-users entitled to efficient public service delivery	• From trans 'stealth' assimilation to visibility and claiming rights • Posing gender-as-identity within context of liberal autonomy although hegemonic compromises on gender fluidity	• With the reform: incremental policy changes to achieve equality and improve trans people's lives • High level of institutional access, but narrative disrupted with wider questions on sex and gender
Opponents	★ Women's voices are silenced, women's rights are eroded ★ Democracy is endangered by gender ideology and its lobbyist	★ Protecting women's bodies as a bridging frame for an unlikely coalition ★ Transmedicalism (and the state) to border transness and define trans authenticity	★ Stopping the reform to protect women, children and lesbians ★ Is not the main narrative surrounding the issue, but efficient enough to slow down policy process

Figure 5: Main results from the problematisation analysis, using Bacchi's (2009) guiding questions.

Chapter 8: Concluding reflections

This section will aim to re-contexualise findings of the previous sections, examining transnational trends in anti-gender backlash, the role of emotions in the policymaking process and the populist reach of anti-gender discourse.

Sexual citizenship and transnational backlash

At an international scale, a number of countries have begun to shift their conceptualisation of transgender rights from a medicalised model to a self-identification model (Schilt and Westbrooke, 2014). In 2016, Malta, Norway and Ireland have embraced self-identification reforms (Engebretsen, 2022). Developments in medical sciences and in the legal field have contributed to emphasise the human rights of gender diverse and sexual minorites - this

includes human rights law at a European level and the increasing efforts to implement the Yogakarta Principles at a local level (Sharpe, 2020). Gender diverse and sexual minorites become less defined by their (perceived) sexual deviancy and threat to an established order, but as citizens with claims to universal human rights (Irving, 2009). The state has a responsibility to lessen discrimination faced by these groups, and implement reasonable measures to ensure dignity and privacy. However, these reforms have also ignited intense debates on the meanings of sex and gender, individual and collective identities and the wider importance or role of common values in contemporary social-democratic societies (Engebretsen, 2022). At a transnational level, criticism of 'gender ideology' has sprouted as organised efforts against gender-based rights have multiplied. In Europe, anti-gender ideology activism has exported itself across Slovenia, Norway, France, Italy, Croatia as well as Hungary and Poland, questioning the institutionalisation of a liberal cultural agenda and the concept of sexual citizenship (Kuhar and Paternotte, 2017). The mobilisation of the anti-gender movement creates unlikely alliances, although most activism focuses at the national level - which explains why transnational links did not emerge from the data alone (Engebretsen, 2022; Kuhar and Paternotte, 2017). An interesting feature of Scotland's own anti-gender rhetoric is that it does not seem to be as outwardly right-wing as most anti-gender resistance has been in other European countries, Latin America or the United States. However, the discourse, narratives and causal links drawn by opponents of the GRA reform do share similarities with popularist rhetoric and its affective-discursive characteristics, while not drawing the usual links to nationhood and family values.

If it sounds like populism and looks like populism…

Populism cannot be clearly mapped on a left or right-wing political spectrum. Anti-gender ideology functions as a "symbolic glue" between stakeholders or policy entrepreneurs who will collaborate despite their initial differences (Kuhar and Paternotte, 2017). As mentioned in the problematisation analysis, both Christian and women's groups having contributed to the GRA reform consultation position themselves against gender ideology. Both groups, historically at different ends of the political spectrum, find common ground in their desire to protect women's bodies from symbolic and physical violence.[12] Populism, or the political agenda to appeal to the masses while denouncing an existing and ill-intentioned elite, goes

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[12] Although historically, radical feminist stances against pornography, sex work and at times legal punitive approaches to gender-based violence have collided with Christian conservative interests, as pointed out by Crenshaw (2012).

beyond the political spectrum. Several key features of populist discourses include a strong identification with 'the people' (usually presented homogeneously, united and sharing the same interests) (Breeze, 2019). For the GRA reform anti-reform alliance, this is nuanced, as 'the people' is replaced by 'women', with special attention to vulnerable women (victim-survivors of sexual abuse and violence, young children and teenagers, lesbian and bisexual women). Women's groups and Christian groups also refer to strict categories of inner and outer groups, defined by womanhood anchored in sex-based experiences and biology. This is also done by excluding transgender identity from lesbian, gay and bisexual identities. Populist narratives often attempt to widen the gap between 'the people' and their enemies (Wodak, 2017). The Scottish Government is denounced for its complicity with trans lobbyists, and its failure to question gender ideology and the reach it has gained over policymaking, at the cost of commonsense and women's rights. A narrative of threat and betrayal is perpetuated, aiming to delegitimise the Scottish government who is not listening to grassroot feminist concerns. The sense of crisis and highly emotive discourse is also characteristic to populist affective-discursive characteristics (Moffitt, 2015). This is also found in the highly emotive and alarmist narratives used by opponents to the reform: children forced to be trans, increased numbers of detransitioners, invasion of women's spaces for instance.

Further research: negative emotions

In the Scottish context, the unlikely anti-gender alliance opposing transgender self-identification has been sustained through policy entrepreneurs' common aim to protect women's bodies from symbolic and physical violence. The polarisation of the debate is also linked to the emotional answers triggered by the narratives and frames used by opponents of the debate. Maor (2016) proposes the concept of emotion-driven policy bubbles, A policy bubble can be driven by negative emotions, creating self-sustained emotional loops which reinforce herd behaviours and mobilise pessimism towards a certain issue at a societal level (Maor, 2016; Moisander et al, 2016). The GRA reform could particularly fit two characteristics of emotion-driven policy bubbles, namely negative attitudinal and attentional characteristics. This should be the subject of further research, potentially focusing on populist affective-discursive aspects of the debate.

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