

## **The challenge of same-sex provision: How many girls does a girls' school need?**

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### **Abstract**

Can a girls' school include a boy and remain a single-sex school? Is there something intrinsic to being a girls' school that exists separately to pure demographic issues? Does single-sex education, and specifically female single-sex education, have an inherent value that is different to that of mixed sex education? To address these questions, this paper draws on some initial findings from a wider research project on the Future of Legal Gender. Specifically, this paper will consider the implications for single-sex services if legal gender status were to be reformed. Especially, what would the consequences be for reform options which (re)allocate authority to organisations or individuals to determine gender criteria and individual status in terms of eligibility to receive or access services? The article uses the example of single sex schools to consider two key questions regarding potential reforms in this area. Firstly, what aims is gender differentiation currently trying to achieve? And secondly, how do service providers, including secondary education providers, currently engage with challenges to their differentiation criteria?

### **Introduction**

In 2018 Channel 4 premiered the show "Derry Girls" set in 1990s Northern Ireland and centered around a group of students attending a Catholic girls' secondary school. The show starts with the arrival of James, a cousin of one of the girls, who is about to become a new addition to their community (von Cohen, 2019). Although a boy, he joins the girls at their all-girls' school, supposedly because the local boys' school would not be safe for him as an English person during the Troubles. During the first few episodes

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James is frequently treated as a girl or presumed to be one, although maybe an “odd” looking one. At the same time this is never read as a serious issue for a girls’ school, which does not have male student bathrooms, and in fact the school makes no accommodations for this new student. Although James repeatedly protests that he is not in fact a girl, generally for comedic effect, the second series concludes with him triumphantly declaring that he is in fact a “Derry Girl”.<sup>1</sup> This moment is portrayed to the audience as a happy and even serious and triumphant ending. This is clearly not perceived as a reconceptualisation of James’ literal gender but rather as him embracing a specific ethos, primarily of a “found” family conceived around care for each other in opposition to a hostile outside environment. Of course the show is primarily intended as a comedic examination of coming of age in a specific time period and in the context of wider social unrest, rather than a serious examination of gender norms in secondary schools. Nevertheless it raises a number of interesting points. Does single-sex education, and specifically female single-sex education, have an inherent value that is different to that of mixed sex education? Can a girls’ school include boys and remain a single-sex school? Is there something intrinsic to being a girls’ school that exists separately to pure demographic issues?

To address the above questions, in this paper I will draw on some initial findings from the wider ESRC funded research project The Future of Legal Gender (FLaG). As addressed in the introduction to this special issue, FLaG is a prefigurative law reform project that asks whether legal gender status still matters, in what circumstances, and for whom. By asking a law reform question that is not yet on the table, namely, what value does the current status quo have (if any), this project seeks to explore the consequences and impact of more fundamental changes to legal gender status. FLaG critically considers

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<sup>1</sup> Which does in fact match real-life practices in at least one existing girls’ school (Blake, 2014).

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what would happen if gender were to be decertified, in the sense that sex would no longer be certified by the state at birth, while at the same time gender-based inequality remains subject to state attention and intervention through, for instance, anti-discrimination law or affirmative action.<sup>2</sup> Specifically, this part of the project considers what the implications for single-sex services are, if legal gender status were to be reformed. In particular, what would the consequences be for reform options that (re)allocate authority to organisations or individuals to determine gender criteria and individual status in terms of eligibility to receive or access services (for a more detailed discussion of this see Cooper and Renz, 2016)? The materials drawn on in this paper have emerged from documentary material as well as semi-structured interviews conducted between 2018-2020 with three education policy experts and seven current members of school leadership teams from secondary schools across England. Although this is a relatively small sample size, it offers valuable qualitative data around these issues and seems to reflect wider public debate happening in this area.

For the purposes of this paper, I will use the example of single-sex schools<sup>3</sup> to consider two key questions regarding potential reforms in this area. Firstly, what aims is gender<sup>4</sup> differentiation currently trying to achieve? And secondly, how do service providers, including secondary education providers, currently engage with challenges to their differentiation criteria? The focus of this research is on the effects a potential change to the existing legal framework for assigning and recognising legal gender would have on everyone in England and Wales, not just trans and non-binary people and not

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<sup>2</sup> For a full discussion of our approach to decertification see Cooper and Emerton (this issue).

<sup>3</sup> Although most schools could more accurately be described as “single-gender”, in the sense that they often prioritise students’ gender identity over their legal sex as registered on their birth certificate, I am using the term “single-sex” as this is the terminology primarily used by educators and policy experts in this area, although school policies tend to refer to “gender”.

<sup>4</sup> Terminology around “sex” and “gender” is currently somewhat contested. Gender, here, is used to refer to a process that is socially manifested and which often includes “sex”, especially as the legal terminology around this uses both “sex” and “gender” inconsistently and at times interchangeably.

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just trans<sup>5</sup> or non-binary students. However, it should be noted that considering the ways single-sex services and more specifically schools have handled trans inclusion can provide some insight regarding the potential flashpoints and tensions that may emerge in this area,<sup>6</sup> if wider changes were to be made. Indeed over the last two years there has been a notable increase in news stories about the ways schools have made efforts to include trans or non-binary pupils (see, e.g. Ross, 2017; Ferguson, 2017). Although the increased media attention may be a fairly recent development, as will be discussed further below, such efforts at inclusion have proliferated for a number of years since the introduction of the *Equality Act 2010*, but are only now receiving wider public attention.

### **Justifying separate education for girls**

While single-sex schools may be the most notable example of separate educational provision, they are not the only instance in which educational institutions limit access based on a specific characteristic. In fact in the context of the US, higher education institutions have long offered separate provision based on sex/gender, as well as ethnicity. Unsurprisingly, many women's colleges in the US are currently also grappling with the question of whether, and how, trans students should or should not be included (Kraschel, 2012). While these debates most frequently focus on the inclusion of trans women, the inclusion of trans men within these female spaces is generally less contested despite seeming more at odds with the idea of a "women's" college. Overall within these spaces there seem to be moves towards self-identification being seen as a sufficient requirement for entry. This has raised particular challenges for institutions that were set

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<sup>5</sup> I am using "trans" rather than "transgender" or "transsexual" to accommodate a variety of identity categories that may not necessarily align with a binary understanding of sex and gender, encompassing identities such as genderqueer and agender more readily than the medically defined "transsexual".

<sup>6</sup> Peel and Newman (this issue) set out some of these flashpoints regarding public attitudes to single-sex provision.

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up explicitly to address the exclusion of women from higher education, with some arguing that this will make it harder to address the legacies of sustained and systemic inequality in the context of education (Brymer, 2011). Similar tensions between a move towards greater inclusion on the one hand and a need to address systemic inequalities affecting specific groups on the other hand are also played out in the context of contemporary debates about the need to maintain single-sex spaces in secondary education in Britain (Paechter, 2020).

Historically the proliferation of girls' secondary schools in England and Wales dates back to the early to mid-19<sup>th</sup> century and the *Education Act 1902*. Generally contemporary single-sex schools justify their exclusion of either boys or girls, by referring to what they perceive as the benefits of single-sex or single-gender education.<sup>7</sup> Particularly in the context of girls' schools this is often framed around an explicit or implicit narrative about the oppression and discrimination women and girls face in education and the wider society. As such girls' schools often advocate a specific type of feminism focused around academic achievement (Leonard, 1995: 25).<sup>8</sup> In this sense girls' schools can be read as a social or educational, rather than a primarily law-based, attempt to compensate for or alleviate gender based harm and oppression (cf. Cooper and Emerton, this issue).

Indeed, existing research suggests that even when students are rated the same in terms of their abilities, female students are given less attention and instructions than male

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<sup>7</sup> The *Equality Act* specifically addresses the issue of single-sex schools in Schedule 11, para. 1 and states that single-sex schools are not in breach of the Act's prohibition on sex discrimination.

<sup>8</sup> While this is less common now, this emphasis on academic achievement has often been at odds with the implicit aim of many girls' schools to also instill traditional values around both gender and class-based behaviour, which becomes particularly explicit around uniforms and codes of conduct for students (Heyward, 1995; Delamont, 1989; Okely, 1987).

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students in classroom settings (see, e.g. Leroux and Ho, 1993).<sup>9</sup> One key argument then for explicitly “female” spaces within education is that it allows girls some limited escape from an education system still based around patriarchal values and male domination (Gonick et al., 2006; Connell, 1985). As such girls’ schools are often seen as providing a positive educational space as they encourage girls to take more stereotypically ‘male’ subjects, particularly STEM subjects, as well as encouraging specific types of personality development, such as confidence, assertiveness and independence, which are seen as being more difficult to achieve for girls within mixed educational environments. Therefore it is perhaps unsurprising that the falling numbers of girls’ schools in present-day Britain have led to concerns that this will negatively affect the educational experiences of girls who will increasingly be attending mixed-sex schools (Burgess, 1990; Shaw, 1980).

Beyond empirical arguments about students’ achievement in single-sex educational environments, a wider argument for the existence of girls’ schools seems to be focused on the kind of space they provide for prioritising different types of experiences and ways of being. Notably, this in many instances focuses more an overarching ethos than the actual gender(s) of the people involved. For instance, Gonick et al. (2006: 144) note that within their collective’s attempt to create a “girl-defined” space within a secondary education setting, they did not actually prevent boys from being part of the space, but rather sought to centre female experiences and agency. Meem (1991: 23) similarly suggests that rather than focusing on rules of exclusion/inclusion a feminist approach to teaching, and particularly to teaching within single-sex spaces, should prioritise a specific ethos, what she defines as “feminist values”, including a more

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<sup>9</sup> This type of differential treatment has been observed in almost all aspects of the education system and generally seems to act to the detriment of girls, or those perceived as such (Lindroos, 1995; Tsolidis and Dobson, 2006).

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group rather than individualistic approach to learning and working, as well as “respect for women, female strength and power” to enable both individual success but also success as a group. Hayward (1995) further suggests that girls’ schools can help to shift the way in which characteristics that are viewed as more “male”, such as authority, assertiveness, and physical achievement, are valued higher than those perceived as more “female”, such as caring, empathy and cooperation.<sup>10</sup> However, it should be noted that while it would of course be difficult to empirically prove this, it seems plausible that in order for a single-sex educational space to function in such a way, there needs to be a clear intent on behalf of educators to facilitate this.<sup>11</sup>

Somewhat playfully, Burgess (1990) argues that single-sex spaces within education actually offer students the “freedom not to behave as a woman”. While Burgess’ statement is aimed primarily at the potential for single-sex spaces to allow inhabitants to escape gender-stereotypes, it may also be important to consider to what extent single-sex spaces allow simultaneously for both particularly intense instances of gender policing<sup>12</sup> as well as radical challenges to sex/gender paradigms. This is not to say that single-sex educational spaces inherently challenge gender norms or boundaries, in many instances they may actually re-enforce them.<sup>13</sup> More broadly, others have argued that single-sex schools can normalise gender stereotypes (Heyward, 1995) and an outdated understanding of sex and gender as “natural” and purely binary concepts

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<sup>10</sup> While gendered behaviours and values have been analysed and discussed in some detail, “femininity” or “female” as an ethos or intrinsic value in and of itself, particularly as distinct from a feminist ethos, seems less thoroughly theorised and therefore more slippery to pin down (see, e.g. Paechter, 2018).

<sup>11</sup> See, for instance, the discussion by Kruse (1992) of an experimental approach to single-sex education within the otherwise co-educational Danish school system and by Warrington and Younger (2003) of a similar initiative in English comprehensive schools.

<sup>12</sup> With the women’s bathroom being perhaps the most easily identifiable instance of such gender policing (Rasmussen, 2009; Browne, 2004; Halberstam, 1998).

<sup>13</sup> See, for instance, Allan (2009) for a discussion of how female gender norms are played out and entrenched in a single-sex primary school.

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(Jackson, 2010).<sup>14</sup> There is clearly a risk that “femininity”, particularly in single-sex spaces, becomes primarily defined as an other to or abnegation of “masculinity” (Paechter, 2006) or in comparison to other ways of being female centred less around academic or professional achievement. At the same time there is also the potential within the context of single-sex schools for both concepts to be reconceptualised and delinked from a notion of biological essentialism or potentially to become irrelevant entirely if single-sex spaces are understood as encouraging a specific way of being in the world, rather than specific individual identities or signifiers.

Girls’ school frequently present themselves as a “safe space” or even as having a “cloistered ethos” (Goodman, 2005),<sup>15</sup> which primarily means that girls do not have to compete against boys, are presumed not to be subject to harmful gender stereotypes and are therefore empowered to be confident and assertive about their academic abilities. For instance, one interviewee who had experience of working in both mixed-sex and single-sex schools explicitly highlighted this perceived advantage: “You do get a disproportionate number of girls, compared to co-ed schools, who study physics and maths, who want to go on and read engineering. And by the time they leave us and get into those environments, they are self-assured.” Prevailing arguments about the benefits of single-sex education are supported by at least some of the available education research, which indicates that girls in general benefit from single-sex education, although this effect may be less significant than is sometimes claimed (see, e.g. Malacova, 2007; Tsolidis and Dobson, 2006). Interestingly the *Equality Act* already makes it explicit that a

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<sup>14</sup> Beyond ‘merely’ instilling pupils with a sense of appropriately gendered behavior, such implicit teaching of gender norms may also serve to further entrench a sense of being a *gendered* consumer within a neoliberal, capitalist society (Davies and Saltmarsh, 2007), as contemporary understandings of what it means to be ‘male’ or ‘female’ are often closely linked to specific consumerist behavior.

<sup>15</sup> Although many girls’ schools no longer subscribe to a religious ethos, they nevertheless provide an important resource for those whose religious beliefs mandate an element of gender-based segregation in everyday life (Halstead, 1991).

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school's single-sex status should not be affected by admitting a small number of pupils of the opposite sex.<sup>16</sup> This is likely primarily aimed at single-sex schools that admit pupils of the “opposite” sex during the final years of secondary education or that cooperate with other schools in order to offer a wider range of course choices (Burgess, 1990).

Nevertheless, it clearly suggests that from the outset “single-sex” is not a term that implies complete coherence or correspondence in terms of students’ gender.

### **The state of the law**

To shed light on recent debates around challenges to gender-based rules, it is worth considering the prevailing legal requirements and duties on the basis of which these decisions are being made. The existence of single-sex schools, while of course de facto discrimination against one sex, is expressly permitted under the *Equality Act*.<sup>17</sup> In contrast, mixed-sex schools that segregate pupils by sex entirely, rather than only for specific activities like P.E.,<sup>18</sup> are in violation of the *Equality Act*'s prohibition against sex discrimination.<sup>19</sup> Overall, the *Equality Act* does not prevent single-sex schools from making accommodations for the inclusion of trans and non-binary pupils, regardless of whether their sex at birth aligns with a school's single-sex status. Specifically, s.7 of the *Equality Act* protects people from discrimination if they have the protected characteristic of “gender reassignment”, and therefore it effectively prohibits discrimination against trans people and arguably also non-binary people.<sup>20</sup> Section 7 is framed significantly wider than the *Gender Recognition Act 2004* (GRA), which allows for a formal change of a

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<sup>16</sup> See Schedule 11 and s.1(3) *Equality Act 2010*.

<sup>17</sup> See Schedule 11 para. 1 *Equality Act 2010*.

<sup>18</sup> See s.195 *Equality Act 2010*.

<sup>19</sup> See *HM Chief Inspector of Education, Children's Services and Skills v The Interim Executive Board of Al-Hijrah School* [2017] EWCA Civ 1426.

<sup>20</sup> A recent employment tribunal case found that non-binary and gender-fluid people are also covered by the protected characteristic of gender reassignment in the *Equality Act* (Bowcott, 2020) although this is not a binding decision.

person's legal gender status.<sup>21</sup> This is because s.7 covers all trans people regardless of their legal status (whereas the GRA at present requires a medical diagnosis), particularly when read in combination with the official explanatory notes to the *Equality Act*. This means that in principle students who want to use a new name, wear differently gendered clothes or ask for a new pronoun to be used are protected from discrimination under the *Equality Act*, regardless of whether they have, or want to have, any medical treatment or legal change to their gender. This does not mean that single-sex schools have to automatically include trans or non-binary pupils. Schedule 3 para. 28 expressly allows the exclusion of people who have undergone, are undergoing or want to undergo gender reassignment from single-sex services and accommodation. Any single-sex school seeking to rely on this provision would have to show that this is a proportionate means of achieving a legitimate aim, which may be difficult, yet possible, in practice. Further, state schools must also take account of individuals with the characteristic of "gender reassignment" when considering their responsibilities under the Public Sector Equality Duty contained in s.149 of the *Equality Act*. This duty asks schools to "have due regard to" equality by thinking about their practice and possibly changing it in relation to the characteristics protected by the *Equality Act* (Fredman, 2011).

Although the legal position of trans and non-binary pupils in single-sex schools is not entirely clear cut and has been subject to some contestation, given the increasing prevalence of students identifying as trans or non-binary at an early age it should perhaps not be surprising that schools are increasingly making efforts to better include trans, non-binary and gender non-conforming pupils (Paechter, 2020; Powys Maurice, 2019).

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<sup>21</sup> The *Gender Recognition Act* only has very limited relevance in the context of secondary education as only those over 18 can change their legal sex as recorded on their birth certificate. This is further complicated by the medical evidence required for an application under the *Gender Recognition Act* (Renz, 2017), which in practice will make it near impossible for anyone to legally change their sex while still in secondary education.

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Part of the challenge of a prefigurative law reform project is that its objective is not to carry out a socio-legal analysis of what *is* happening right now with regard to specific legal provisions; rather, it is to discuss what might be the case *if* the law were to change in a way that removes individuals' legal gender status. Based on current legal, policy and social developments one might assume that any future changes to legal gender status would make little difference to current moves toward a more diverse understanding of what it means to be a single-sex school through the inclusion of trans and non-binary pupils. However, these current developments raise important questions regarding the role of values and principles in making changes to school rules and policies. Namely, what kinds of educational, moral and normative principles come to the fore when school leaders have to decide whether and how to accommodate trans and non-binary students, for instance are decisions made on the basis of ensuring consistency or an ideal of inclusivity? On what basis are changes made or rejected? What are the effects of such changes on the character or role of single-sex schools?

In concrete terms, attempts to include trans and non-binary pupils, generally initiated by headteachers or students, often focus on practical changes. For instance, a number of schools have changed their uniform policies, which often serve to most visibly police students' gender expression (Carlile, 2018), to allow students to wear traditionally gendered items like skirts or trousers regardless of their legal gender status. Similarly, many schools allow students to go by their preferred name and pronouns, which may or may not match their legal documentation. In fact both these changes are now formally recommended by the National Education Union (2019).<sup>22</sup> Beyond this, schools also increasingly allow students to access changing rooms and bathrooms in line

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<sup>22</sup> The National Education Union is the largest union for secondary and further education teachers in the UK.

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with their gender even when this does not correspond to their sex as registered on their birth certificate. As one interviewee noted, it was possible for girls' schools to accommodate pupils who do not identify as female:

“But it's to do with what provision can be made. Our toilets are all cubicles, so I wouldn't actually see that as an issue. But obviously we have also got male toilets. In fact, we are creating more [male toilets], because of the partnership work that we are doing. From a facility point of view, that is not an issue.”

However, other types of administrative changes, like changing a student's name on official documentation, especially for exam results, are often more complex and slower to be implemented, if they are possible at all. In fact one interviewee expressed significant regret at their inability to change a student's name and title on final exam results, which they perceived as having had a significant negative impact on the student when they moved on to a higher education setting. This difficulty is at least partially due to the centralised nature of many school exams, with schools having limited discretion on how to handle such issues. Schools also have limited capacity to help students navigate more formal changes. As the interviewee mentioned, “if there are things that we have to do to support individuals, and individuals are moving their identity in a way that was legally [recognised] or related to legal official documents, that would be very difficult to manage, I think”. As such, while some schools may seek to be inclusive of students with different gender identities, external legal and policy frameworks may limit these efforts, not least when students transition out of the school environment.

It should also be noted that there might overall still be a greater tendency to introduce changes that tend towards male as a “default” option or define gender neutrality in male terms. For instance, there seems to be a more frequent emphasis on treating trousers as a gender-neutral clothing option than skirts. Some emerging

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reporting suggests that, even if changes are made to allow the wearing of a diverse range of gendered clothing, the uptake for feminine clothing tends to be low (see, e.g. Ferguson, 2017). As such, gender-neutral uniform policies may be subject to similar critiques as other formal equality type policies more broadly (see, e.g. Conaghan, 2013: 77-80), in that they may mask rather than alleviate systemic inequality. This raises the question of whether such changes actually challenge wider gender norms or whether they simply reify wider power structures (for a more detailed discussion of this concern see Cooper, this issue). Further, the introduction of such changes is generally aimed solely or primarily at accommodating trans pupils rather than benefiting all students, effectively limiting the potential of such changes for a more radical transformation of school-based gender rules and norms.

While most of the existing inclusion efforts have been made on an individual school basis, more recently there has been an emergence of wider policy-level changes at national level. As of summer 2020 the EHRC is in the process of preparing new guidance for schools that focuses specifically on trans inclusion. The currently available draft guidance only covers Scotland, but is likely to be followed in due course by matching guidance for England and Wales (Equality and Human Rights Commission, 2019). The guidance notes that making accommodations for trans pupils can help to combat “gender stereotypes” while also characterising gender primarily as a matter of one’s “sense of self” (Equality and Human Rights Commission, 2019: 4), rather than, for instance, as a set of social norms, something that has a relational dimension or part of an uneven distribution of power and resources within society.<sup>23</sup> On a practical level the guidance highlights that trans pupils should be treated according to their self-identified gender rather than their sex assigned at birth, including in contexts such as school sports

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<sup>23</sup> For a discussion of sex and gender in other policy contexts see also Cooper (this issue).

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(Equality and Human Rights Commission, 2019: 10). Regarding single-sex schools the guidance specifically notes that under the *Equality Act* trans pupils who are applying to a new school cannot be prevented from attending a single-sex school that does not align with their sex assigned at birth due to their transition, while at the same time single-sex schools cannot exclude a student who transitions after being admitted on the basis of their transition (Equality and Human Rights Commission, 2019: 32). This would suggest that the exemption under the *Equality Act* that allows single-sex services to exclude people with the protected characteristic of “gender reassignment” under this guidance is not envisaged to cover single-sex schools and therefore a trans girl should not be prevented from attending a girls’ school on the basis that she is trans, although of course other types of admissions criteria, such as grades or religious affiliation, are still permissible. Consequently a number of lobby groups (Women and Girls in Scotland, 2019; Transgender Trend, 2019) have expressed strong opposition to the draft EHRC guidance, particularly in the context of single-sex schools and single-sex spaces within mixed schools. They have also lobbied against the use of other types of trans-inclusion programmes that have been funded by the Department for Education, including Educate & Celebrate (2019) and Stonewall resources for LGBT inclusion in schools (2019). This opposition is framed primarily around the concept of “safeguarding” girls (a term that here seems to exclude young trans people) who are perceived to be at risk due to trans inclusion efforts (see, e.g. Transgender Trend, 2019: 10-11).<sup>24</sup>

At their core some of these disputes about trans inclusion within schools are about differing and often conflicting understandings of gender as a concept. While some policies, including the new EHRC guidance, portray gender primarily as a form of self-

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<sup>24</sup> Clashes around this particular issue are by no means limited to the UK, but rather seem to be playing out in a number of countries along similar lines of division (Herriot et al., 2018; Cumming-Potvin and Martino, 2018).

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expression that should be accommodated and protected where possible, others see gender primarily as a set of oppressive norms targeting women in particular (Cooper, 2019). While overall there seems to be a trend towards the inclusion of trans and non-binary pupils, it seems likely that existing disputes are not going to be resolved any time soon and may even intensify should gender no longer be legally certified. How then do schools negotiate and justify inclusion efforts while navigating this contested terrain?

### **Community values**

In tackling questions of how to accommodate pupils who may identify as trans or non-binary some common values and decision making processes come to the fore in relation to how schools create or change their policies in this area. Firstly, what becomes apparent in speaking to people in charge of setting school policies around gender or those involved in reform efforts is the crucial role the concept of a school “community” plays in setting these policies. As one current headteacher highlighted:

“My values are to work pastorally with everybody who becomes a part of my community, to secure the best for them as an individual. And once they have come in through my door, the rest doesn't matter, really, it's all part of community behaviours and it's all part of about how we can support you and what we can do for you. It isn't really anything to do with ... I don't know ... it's certainly very open and inclusive.”

As the quote above illustrates, it certainly is not straightforward for those involved in decision-making processes to always articulate precisely what they have in mind when centring the idea of a “community”. Discussions around “community” often focused on the idea of prioritising the need to create a cohesive, but also diverse, community or a community that could provide a positive environment for students to be in. While there

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is potential for “community” as a concept to be exclusionary as it can reify homogeneity and prioritise dominant norms (Westheimer and Kahne, 1993), for some schools at least “community” seems to frequently link to an ethos of inclusivity.<sup>25</sup>

Although interviewees emphasised the importance of maintaining a cohesive community with ideally minimal conflict between students, this was not equated to allowing the existing community to determine rules of inclusion/exclusion. For instance one interviewee recounted how she had dealt with a student transitioning:

“The most powerful thing ... because I was working very closely with the head of the other school at the time ... was to say, ‘this is something that we can't pretend this doesn't happen. We can't pretend that this is something that ... you know, we can't just ignore it, because actually, in terms of mental health and wellbeing of individuals, if we profess to be a welcoming, diverse, supportive community, we can't just pretend that this isn't part of it’. So that is how we dealt with that. And we did have kick-back from some families. I did have a couple of representations from families who were very unhappy about the fact that they had not been communicated with about this individual.”

Instead of using dissent from parents and caregivers as a reason to reject an application from a trans student who wanted to join the school, those crossing gender boundaries in this instance are perceived as being an inherent part of the community, even as new students, and therefore are accorded the same rights and privileges as other community members. As such the decision is approached from the point of view of the individual who then in turn is part of the wider community. This was echoed by another interviewee who noted that even if a student transitions to a gender that technically does

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<sup>25</sup> What emerged perhaps less clearly from these interviews is the issue highlighted by Quinan (this issue), of whether trans and non-binary students themselves actually felt part of these communities.

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not align with a school's single-sex ethos, they continue to belong to the school community. As such an overall policy or consensus on this issue seems to be somewhat less important than ensuring students felt valued within their school environment/community. This appeal to "community" seems to have some precedent in previous efforts to broaden the pupil base of schools. Russell (1993) notes a similar use of "community" as a reason for inclusion rather than exclusion in the context of schools that changed from single-sex to mixed-sex in the 1990s. However, this seems to be taking place against a background of wider moves towards harsher forms of sanctions, up to and including exclusion from school, that constrain who is seen as a member of a school in ways that may (re-)enforce dominant classist and racist frameworks (see, e.g. Carlile, 2012). Although more research is needed on this (see, Paechter, 2020) it seems likely that the experiences of trans and non-binary pupils in secondary education also intersect in both positive and negative ways with existing structural relations of power that underpin the working of measures intended to shape school discipline and community (Carlile, 2018).

In their decisions around who should form part of a school community, schools are of course bound both by the legal requirements of the *Equality Act*, as well as the policies produced by the Department for Education and by regulatory bodies like Ofsted. Beyond these official frameworks, there seems to be some resistance to creating internal policies that provide a clear statement of how the school defines its single-sex status, e.g. whether this includes only cisgender students or also includes trans or non-binary students, or to providing general guidelines on the inclusion or accommodation (or the decision not to offer either) of trans and non-binary pupils. Schools often create their own equalities policies, however. In contrast to legal documents, these are framed in fairly loose terms and include less boundary setting than one would find in an

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equivalent legal document, where key terms are often defined as precisely as possible. For instance, Camden School for Girls in North London, which was founded in 1871 and is now a girls' comprehensive school, has a detailed Equalities Policy that covers all aspects of school governance both inside and outside the classroom.<sup>26</sup> While this policy addresses both gender equality more broadly and the inclusion of trans staff and students (The Camden School for Girls, 2017: 11), the policy never addresses how its various categories are defined and constructed. The reasoning behind this gap is often that schools would rather make decisions on a case-by-case or informal basis, partly in an effort to align with the importance placed on inclusivity and community. As expressed by one interviewee from a different single-sex school: “[...] rather than a policy, I think policies can be one size fits all and that's dangerous ... so we had ... it was more of a statement of intent”. This in turn allows for a greater degree of creativity and personalisation that is rarely possible within a formal legal or policy framework.

A desire for individual discretion and an avoidance of more formal “law-like” structures may also be related to a wider view of law as something that imposes additional demands and can be overly constraining (Cooper, 1995: 512). However, this also means that it is easy for de facto unwritten policies to exist alongside both official legal requirements and internal school policies. This may of course be beneficial in the sense that it allows for creativity and discretion, but also raises concerns about transparency, accountability and consistency (Maynard-Moody and Musheno, 2000). As Maynard-Moody and Musheno (2000) suggest in their study of street-level decision making, decisions that are made at a lower level tend to be made based on beliefs and norms regarding fairness. Such beliefs and norms are “shadowy, never fully articulated,

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<sup>26</sup> The materials referred to here are publicly available via the school's website and have been chosen for illustrative purposes of a wider trend, rather than to indicate that this school was included in the fieldwork carried out for this project.

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and often inconsistent”. This is not to say that decisions made on such a basis are not “reasonable and defensible” (Maynard-Moody and Musheno, 2000: 333) or indeed that decision making on the basis of a formalised, written policy is inherently more beneficial than one that is based on norms, but rather that in such instances the decision making process becomes harder to trace and account for. However, it may be possible to account for some of these norms by asking about the decisions that were made in practice, rather than the policies on which they are based (Maynard-Moody and Musheno, 2012). On a further level, these decisions are of course still shaped by the baseline equality framework set out in the *Equality Act*, which although not necessarily explicitly referenced, does shape and constrain the scope of individual discretion available in each case, which all interviewees referenced at some point. As a result even the interviewee who argued that specific equalities policies could be “dangerous” due to the limitations they impose acknowledged that their decision-making was at least partially informed by some of the available official guidance, even if this generally functioned as a minimum standard rather than as a standard schools were striving to achieve.

### **Proliferating genders and proliferating modes of recognition**

A key point that directly emerges from the issue of various layers of policy, both written and unwritten and co-existing at the same time, relates to the question to what extent the existence of institutional policies can be read as a form of legal pluralism. While the schools involved in this research project rely on the existing legal framework as they understand it and require certain types of legal documents like birth certificates for admission in the first place, it seems that once a student becomes part of the school community, the schools’ own formal and informal policies are likely to carry greater regulatory value and relevance than external legal rules. In this sense then, schools may

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function as a separate “jurisdiction” in Mariana Valverde’s sense (2009), in that they are sites for potential struggle and conflict over authority and governance. This becomes particularly apparent in instances where there are conflicts over a school’s decision to define its individual character or ethos through admissions criteria. Although there have yet to be legal disputes about a school’s admissions criteria regarding gender, there have been disputes about definitions of other identity characteristics such as religion (see, e.g. the discussion of the JFS case in Cooper and Renz, 2016: 498-499). It may be that if gender becomes more like religion, i.e. a characteristic that is protected by law but not legally “certified” through the granting of a formal legal status to individuals, there will be an emergence of more acute boundary disputes. In principle even if legal gender status were to become decertified this would not seem to affect the operation of the *Equality Act* as it currently stands in the context of single-sex services. This is because while the *Equality Act* uses the term “sex” this is not explicitly linked to one’s formal legal status and no formal legal documentation of this status has ever been required to bring a case under this provision. Therefore it would be possible that if sex were to be decertified the protected characteristic of “sex” under the *Equality Act* would rely solely on self-identification, similar to some other protected characteristics under the *Equality Act* like ethnicity and sexual orientation. As such, decertification may lead to an increase of appeals to the courts to intervene in disputes about sex/gender-based admissions criteria used by organisations like single-sex schools or women’s services. Although there have been relatively few legal challenges based on other self-identified categories under the *Equality Act*, this may be due to the fact that unlike gender, ethnicity and sexuality are less commonly used to govern access to specific resources like schooling.

Currently schools’ institutional policies, both informal and formal, often exceed legal requirements, for instance some girls’ schools already accommodate trans boys,

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trans girls and non-binary students without seeing this as a challenge to their ethos of being a (cis) girls' school. This suggests a far more flexible and situational reading of sex/gender than is currently being accommodated in law. However, it also seems to be important here to be attentive to the foundational role of both class and ethnicity in the English schooling system, and particularly in the context of single-sex education (Goodman, 2005; Ali, 2003), and the ways in which some types of schools, perhaps due to the student body they attract, may be or appear to be more or less encouraging of different types of gender expression or student autonomy in regard to gender rules. As such, schools that see themselves as serving a primarily middle- or upper-class student (and parent) body may be more likely to take up a neoliberal, rights-based understanding of gender as primarily an individual identity that should be recognised and protected (Cooper, 2019), in line with what they perceive as the predominant values of their students. This seems to be supported by at least anecdotal evidence (Powys Maurice, 2019) that suggests that schools with a more affluent student body, which are disproportionately private schools, are increasingly open about their efforts to include trans and non-binary pupils.<sup>27</sup> Such inclusion efforts may in these instances serve as an additional marker of what constitutes a "good" or "elite" school and thereby distinguish them from other schools which implicitly are portrayed as less progressive. In contrast, schools which do not perceive such an approach as being in line with the beliefs of the majority of their students or their parents may be more hesitant to exceed the base-line standards set out by the *Equality Act*.<sup>28</sup> As such, "inclusion" may serve a similar function to the "civilising" discourse of LGBT rights, which is now increasingly used by some

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<sup>27</sup> Although fee-paying schools are not subject to the public sector equality duty, they are nevertheless bound by anti-discrimination provisions in the *Equality Act* in the same way as other schools (Equality and Human Rights Commission, 2012).

<sup>28</sup> The recent controversy about LGBT education at a school in Birmingham (Parveen, 2019) may provide a particularly stark illustration of what happens when there is a mismatch between the values advocated by a school and those of at least a significant proportion of parents.

Western states to distinguish themselves from, and establish superiority over, supposedly less “civilised” others (Duggan, 2003; Puar, 2013; 2007).

Of course this may mean that students will concurrently or at a later date be confronted with other, more law-based regulatory frameworks. In particular, many higher education institutions still highlight the fact that law defines sex as purely binary and have limited capacity for allowing students (and staff) to use different pronouns or names (see, e.g. Storrie and Rohleder, 2018).<sup>29</sup> Although this is generally an issue of individual institutional policies rather than any potential limitations of the existing legal framework,<sup>30</sup> there seems to be a greater willingness on the part of secondary education providers, compared to higher education providers, to go beyond the minimum standards for inclusion as set out by the *Equality Act*. This divergence between approaches to setting gender boundaries could potentially be exacerbated in the future, if, without a legal gender status, institutions are given more freedom to set their own policies. At present, many schools already seem to be operating a more diverse system of gender recognition than the one represented by the prevailing binary legal recognition options (Cooper and Emerton, this issue). In this sense schools may be filling a gap in the law by offering at least limited recognition and protection for those with otherwise not officially recognised gender identities, which are still frequently subject to contestation (Clarke, 2019; Boukli and Renz, 2018). While such an approach is of course to be welcomed, it may also raise further questions about why schools in particular are taking up a more expansive understanding of gender in this context, compared to institutions in other fields. Perhaps this is due to pressure from younger people

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<sup>29</sup> For more information about this, see the research discussed by Fraser (this issue).

<sup>30</sup> The notable exception to this is record keeping related to HMRC data, as in this context a change of gender is only possible through a Gender Recognition Certificate regardless of any other institutional policies: “Tell HMRC about a change to your personal details”, <https://www.gov.uk/tell-hmrc-change-of-details/gender-change>, accessed 8 November 2016.

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themselves, at a time when emerging research is indicating that younger people often have an expansive, fluid understanding of gender (Bragg et al., 2018; Peel and Newman, this issue), but it may also be that some schools at least,<sup>31</sup> due to their emphasis on allowing students to explore and develop their identities, are taking a less ‘rigid’ approach to gender compared to institutions focusing primarily on adults.

Notably it seems that, at least anecdotally, girls’ schools appear to be significantly more accommodating of varied modes of gendered existence, certainly more so than boys’ schools, but also perhaps surprisingly more so than mixed-sex schools. In theory mixed-sex schools would seem to be the more likely space for accommodating students regardless of their gender identity as they are already accommodating at least two genders. Conversely it may be that girls’ schools, which frequently, although not always, follow an ethos of empowering girls, already have a less binary and more critical approach to gender. There is of course also a long, and admittedly often contested, history of women’s spaces accommodating a varied range of gendered identities including trans men (Travers, 2006; Travers and Deri, 2011; Browne, 2011). Therefore, perhaps the more inclusive approach of girls’ schools simply follows this historical trajectory, as spaces that are officially defined as single gender may conversely allow greater freedom from gender binaries without an opposite “other” to serve as an explicit boundary of gender norms. This is not to say that women’s spaces are generally more inclusionary in regards to gender;<sup>32</sup> in fact Michigan Womyn’s Music Festival is often

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<sup>31</sup> This is not to suggest that all schools take such an approach, as many schools, and many educational practices, have contributed to a rigid and binary understanding of sex/gender and continue to do so in the present day (Callahan and Nicholas, 2019).

<sup>32</sup> It also seems important to remember that even if this particular approach produces more inclusionary results in regards to gender, the workings of other characteristics like race, class and disability are not generally considered in such efforts; and due to the fact that single-sex schools make up a fairly small percentage of comprehensive schools but a more significant proportion of selective or grammar schools and private schools (Peck, 2020) - a distribution that was also reflected in the schools represented as part of this research - class in particular is often neglected (Tsolidis and Dobson, 2006).

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used as a key example of exclusionary practices targeting trans women (Halberstam, 2005; Quinan, this issue). While women's separatist spaces are frequently seen as extreme examples of exclusion, they may also hint at a need to think more critically about and beyond the inclusion/exclusion binary. Browne (2009) for instance argues for a more attentive reading of separatist practices and the often shifting and "porous boundaries" they create in seeking to distinguish themselves from a hostile outside world. Along similar lines Douthirt Cohen (2012) traces the transformation of a women-only educational organisation that was initially based on sex assigned at birth to one that prioritises self-identification and includes trans and gender non-conforming students. Douthirt Cohen notes that despite its diverse range of participants, the organisation continues to define itself as women-only, which involves an iterative processes of disagreement, consensus building and searching for shared values as an inherent part of creating and maintaining boundaries for group membership.<sup>33</sup> As such it seems important to focus on not just what rules and policies single-sex schools implement in order to maintain their status, but also how these rules are made, implemented and negotiated in day to day life.

Finally, to return to an earlier point about the "cloistered ethos" of girls' schools, there may also be something specific about the space, both literal and metaphorical, of such schools and the way gender and gendered values, interactions and education are staged (Cooper, this issue) that contributes to the different and often more fluid approaches taken to gender here. If we read space not as a literal location, in which sense girls' schools are often unremarkable and not easily separated from other schools, but rather as something that shapes and permeates both the existence and constitution of

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<sup>33</sup> Research about women-only spaces in other contexts also indicates that the mere exclusion of one gender from a specific space is unlikely to be sufficient to create a space that is perceived as a positive environment (see, e.g. Lewis et al., 2015). Rather, such spaces need to be attentive to the types of values, behaviour and interactions they choose to foster or repress.

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subjects (Keenan, 2014: 150-151) then is there something about the ‘cloistered’ and therefore sheltered space of girls’ schools that enables a more challenging approach to gender? I recently found myself confronted with this question in my own life when it emerged during a panel discussion I was part of that all six of us panellists had in fact attended a girls’ school. Notably, the majority of us did not identify as female, but we were nevertheless eager to compare our experiences of being part of a single-sex space for a significant part of our adolescences. While none of us had a particularly rosy recollection of our school years, there was nevertheless a clear consensus around the fact that we felt that attending a girls’ school had overall been beneficial and helped us develop our sense of confidence and outspokenness even if some of us had never, and others no longer, identified as “girls”. This then raises a related question, as single-sex schools, and particularly girls’ schools increasingly include other genders, whether the schools themselves are aware of this or not, does this then mean that being part of a girls’ school is something that can be taken up by other bodies, including male ones? Further, if we understand spaces as shaping the people within them, it seems that girls’ schools produce girls’ school students regardless of their actual gender. Are “girls” even necessary to being a girls’ school? Is this a question of quantity, where a certain number of girls is required to maintain the character of the school? Or can a school be a “girls’ school” without girls as this label is really a signifier of a particular educational or a type of feminist or even feminine ethos as outlined above? More fundamentally, although a diverse approach to gender in girls’ schools can be read as positive, we may also seek to challenge why this approach seems more prominent in girls’ schools than boys’ schools.<sup>34</sup> If this type of disruption of gender norms or boundaries only takes place within very

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<sup>34</sup> This differential approach between girls’ and boys’ schools to challenging the value of gender norms and gender itself can be traced back to at least the early 1980s (Heyward, 1995; Connell, 1985) and still seems to persist today.

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narrow and specific spaces, then are the same norms and boundaries left unchallenged in other contexts? It seems likely that a more fundamental change to existing legal gender status would also need to engage more broadly with how institutions and public spaces continue to define and set gender boundaries in order to have a truly transformative effect.

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