

## บทความวิชาการ (Academic Article)

# ประชาธิรัฐไทย: เมื่อความเสมอภาคทางเพศสภาพถูกกำหนดโดยบรรทัดฐานคนตรงเพศชายเป็นใหญ่ – บทเรียนจากคำพิพากษาศาลฎีกาสหราชอาณาจักร (ค.ส. 2025) และคำวินิจฉัยศาลรัฐธรรมนูญไทยที่ 20/2564

Patriocratic Democracy: When Gender Equality Is Conditioned Upon Masculine and Cis-Heteronormative Conformity – Lessons from the UK Supreme Court (2025) and Thailand's Constitutional Court (Decision No. 20/2564)

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## บทคัดย่อ

บทความนี้นำเสนอแนวคิด “ประชาธิรัฐปัตติ” เพื่ออธิบายปรากฏการณ์ที่ระบบกฎหมายในระบบประชาธิรัฐ แม้จะให้คำมั่นเรื่องความเท่าเทียม แต่กลับผลิตและสถาปนาลำดับชั้นทางเพศ โดยการกำหนดว่า “ความเป็นบุคคลทางการเมืองเต็มรูปแบบ” ต้องอิงอยู่กับบรรทัดฐานบุคคลตรงเพศ อาทิการรับทฤษฎีกฎหมายสายสตรีนิยม ทฤษฎีเคิร์ร์ทางกฎหมาย และการวิพากษ์ของ Carole Pateman และ Bell Hooks บทความชี้ว่า การยอมรับทางกฎหมายจำนวนมากกลایยเป็นการยอมรับ แต่เพียงผิวเผินเท่านั้น หรือเป็นเพียงการรับรองในนาม เมื่อวิธีการตีความของศาล การใช้กฎหมาย และการปฏิบัติของฝ่ายบริหาร ร่วมกันยั่งหลักการเพศทางชีวิทยาที่แบ่งบุคคลออกเป็นสองเพศสตรีและพุทธมหั้งค์ เนื่องจากความชัดเจน ทางการบริหารมาใช้เป็นข้ออ้างในการจำกัดสิทธิทางการเมืองและการเข้าถึงบริการสาธารณะ

การวิเคราะห์เชิงเปรียบเทียบกรณีศึกษาสำคัญในสหราชอาณาจักรและไทย รวมถึงคำพิพากษาศาลสูงสุดแห่งสหราชอาณาจักรในคดี *For Women Scotland* (2025) และคำวินิจฉัยของศาลรัฐธรรมนูญไทย เพย์ให้เห็นว่าระบบประชาธิรัฐสามารถย้ำอานาจปิตาธิปไตยผ่านรูปแบบทางกฎหมายได้อย่างไร แนวคิดประชาธิรัฐปัตติจึงเป็นกรอบเพื่อทำความเข้าใจว่ากฎหมายและศาลยังคงสถาปนาความชอบธรรมแบบชายเป็นใหญ่ โดยทำให้ความเสมอภาคขึ้นอยู่กับการ “เหมือน” กับบรรทัดฐานเพศตรงเพศ บทความจบด้วยข้อเสนอเชิงกฎหมายและนโยบายที่มุ่งเน้นการรับรองกับการมีส่วนร่วมอย่างแท้จริง ได้แก่ การประสานกฎหมายที่เกี่ยวข้อง ระบบการรับรองยัตถอกษัณฑ์ทางเพศสภาพและคุณลักษณะทางเพศที่ชัดเจน และกลไกถ่วงดุลเพื่อป้องกันการถอยหลังทางสิทธิ การถอยหลัง เช่นนี้ขัดต่อหลักการกฎหมายสิทธิมนุษยชน สถาบัน โดยเฉพาะหลัก “การรับรองสิทธิให้ก้าวหน้า” ตามเกตติการะห่วงประเทศว่าด้วยสิทธิทางเศรษฐกิจ สังคม และวัฒนธรรม (ICESCR) ซึ่งห้ามมิให้รัฐดำเนินมาตรการที่ลดทอนสิทธิ เว้นแต่จะมีเหตุผลที่หนักหน่วง และสมควรอย่างยิ่ง

**คำสำคัญ:** ประชาธิรัฐปัตติ; ทฤษฎีกฎหมายสายสตรีนิยม; การรับรองอัตถอกษัณฑ์ทางเพศสภาพ; คุณลักษณะทางเพศ; บรรทัดฐานบุคคลตรงเพศ

## Abstract

This article introduces the concept of “patriocratic democracy” to explain how democratic legal systems, while promising equality, continue to reproduce gender hierarchies by conditioning full political personhood on conformity to cisnormative standards. Building on feminist jurisprudence, queer legal theory, and the critiques of Carole Pateman and bell hooks, the article argues that legal recognition often becomes recognition in name only—a formal gesture that masks exclusion in practice. Judicial reasoning, statutory interpretation, and administrative implementation together reinforce biological essentialism by dividing people into two rigid sex categories, while invoking administrative clarity as a rationale for restricting political rights and access to public services.

Through a comparative doctrinal analysis of recent jurisprudence in the United Kingdom and Thailand—including the UK Supreme Court decision in *For Women Scotland* (2025) and rulings of the Thai Constitutional Court—the article illustrates how democratic institutions embed patriarchal authority through legal form. The concept of patriocratic democracy provides a framework to understand how law and courts sustain masculine legitimacy by making equality conditional on sameness to cisgender norms. The article concludes by proposing legal and policy reforms that align recognition with substantive participation: statutory harmonisation, explicit legal gender-recognition and sex characteristics frameworks, and accountability mechanisms to prevent retrogression. Such retrogressive measures would contradict the principle of progressive realisation under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which obliges States to advance rights and prohibits regression unless justified by the most compelling reasons.

**Keywords:** Patriocratic Democracy; Patriocratic Democracy; Legal Gender Recognition; Sex Characteristics; Cisnormativity

## 1. Introduction

This article seeks to interrogate how democratic legal systems reproduce gendered hierarchies through case law and statutory interpretation, with a particular focus on the United Kingdom and Thailand. The article introduces ‘patriocratic democracy’ as a critical framework that combines feminist jurisprudence and queer legal theory. The objectives are twofold: first, to conceptualise this framework; and second, to demonstrate how court judgments and administrative practices condition gender equality upon conformity to cisnormative standards. Methodologically, the paper adopts a doctrinal comparative legal analysis, supplemented by theoretical insights from Carole Pateman and bell hooks, to examine how judicial reasoning and legal frameworks construct and constrain the boundaries of political personhood.

This article is structured as follows: Section 2 outlines the theoretical framework, drawing from feminist jurisprudence, queer theory, and the works of Carole Pateman and bell hooks to situate the concept of patriocratic democracy. Sections 3 and 4 examine key judgments from the United Kingdom and Thailand, respectively, analysing how courts employ biological essentialism and administrative clarity to limit rights. Section 5 provides a comparative discussion that highlights the structural similarities and divergences between the two jurisdictions. The article concludes with policy and legal recommendations, linking the findings to international human rights obligations, particularly the principle of progressive realisation under the ICESCR.

The term patriocratic democracy was coined by the author to capture the dissonance between formal equality and lived exclusion. Derived from the Thai neologism “ประชาธิรัฐ”, the phrase reframes pracha-thipatai (rule of the people) into pracha-pita-thipatai: the rule of the people through patriarchal norms. The concept underscores how democracy, while claiming universality, often legitimises cis-masculine authority and conditions full citizenship on gender conformity. While the term may initially appear unfamiliar, its purpose is to provide conceptual clarity, condensing a complex critique into a single analytical vocabulary that acknowledges its Thai origins and speaks directly to international feminist and queer legal scholarship. The decision to retain this term follows the reviewers’ advice to preserve originality, while also taking seriously the concern for accessibility by clarifying its meaning from the outset.

History teaches us that political voice has never been a given—especially for women and gender-diverse people. In the United Kingdom, the early 20th-century suffragette movement marked a turning point, as women demanded not only the right to vote but the right to be recognised as political beings.<sup>1</sup> In Thailand, the petition of Amdaeng Muean, an enslaved woman during King Mongkut's reign, illustrated an early claim of bodily autonomy, later influencing the abolition of slavery under King Chulalongkorn.<sup>2</sup> Yet in today's legal systems, echoes of those denials persist, sometimes disguised as reasoned judicial logic. In its ruling on marriage equality, the Thai Constitutional Court reiterated a gendered ideology rooted in heteronormativity and cisnormativity. Women were described in biologically reductive terms—“those who menstruate in order to bear children”—positioning reproduction as the defining feature of womanhood.<sup>3</sup> What these examples reveal is that legal recognition is never neutral; it enforces conformity under the guise of equality and protects the “majority's morality” at the expense of marginalised communities.

## 2. Theoretical Framework: Why Democracy can be Patriocratic

Although democracy is often idealised as a universal system of inclusion, critical scholars have long shown that its foundations are far from neutral.<sup>4</sup> Feminist and queer theorists in particular argue that the very structures of law and governance are built upon—and continue to reproduce—gendered hierarchies.<sup>5</sup> To situate the concept of “patriocratic

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<sup>1</sup> S. Holton, **Feminism and Democracy: Women's Suffrage and Reform Politics in Britain**, (Cambridge: Cambridge University Press, 1986), pp. 1900–1918.

<sup>2</sup> ไชยพัฒน์ ธรรมชาตินันท์, พัฒนาการของกฎหมายลักษณะครอบครัวในไทย, วารสารนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, ปีที่ 51 ฉบับที่ 2 (มิถุนายน 2565), หน้า 470.

<sup>3</sup> Constitutional Court of Thailand, **Decision No. 20/2564** (2021), unofficial English translation by Chalermrat Chandranee, Justice in Translation 5/2021 (December 2021), University of Wisconsin–Madison, Center for Southeast Asian Studies

<sup>4</sup> Bell Hooks, **Feminism is for Everybody: Passionate Politics**, (Brooklyn: South End Press, 2000) pp. 1–10; Carole Pateman, **The Sexual Contract**, (Stanford: Stanford University Press, 1988), pp. 3–7.

<sup>5</sup> Judith Butler, **Gender Trouble: Feminism and the Subversion of Identity**, (London: Routledge, 1990), pp. 1–34; Dean Spade, **Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law**, (Durham: Duke University Press, 2015), pp. 1–18.

democracy” within this tradition, this section outlines how democratic systems, both historically and in practice, are structured through patriarchal norms.

Carole Pateman’s seminal work, **The Sexual Contract** (1988), revealed that the very foundations of modern democracy are not gender-neutral but deeply patriarchal. What is commonly celebrated as the “social contract”—a pact among equals—is, in fact, a contract among men that institutionalises women’s subordination. The promise of political voice and equality was, from the outset, conditioned on male authority, excluding women from full citizenship and political personhood. Pateman’s analysis therefore demonstrates that democracy, far from being a universal project of inclusion, was born already gendered.<sup>6</sup> This theoretical insight provides a critical entry point into the concept of “patriocratic democracy,” showing how democratic systems can reproduce and legitimise male dominance under the guise of equality.

Queer legal theory further sharpens this critique by exposing how law enforces binary gender categories under the guise of neutrality. Judith Butler’s concept of gender performativity demonstrates that gender is not a natural fact but an ongoing repetition of norms, sustained through law, discourse, and institutional power.<sup>7</sup> The insistence on binary categories—male and female—allows democratic legal systems to present themselves as objective while, in practice, policing conformity. Dean Spade advances this critique by showing how recognition-based rights frameworks, such as those granting limited inclusion to LGBTIQ+ people, ultimately reinforce administrative systems that sort, regulate, and discipline populations.<sup>8</sup> For Spade, the law’s promise of recognition often demands assimilation into pre-existing norms, rather than dismantling the hierarchies that marginalise. Together, Butler and Spade underscore that legal recognition is not neutral but a technology of governance—deepening the very exclusions it claims to remedy.

Taken together, these strands of feminist and queer legal theory provide the conceptual foundation for the term “patriocratic democracy.” The concept, coined by the author, highlights how democratic governance—though claiming universality—has historically and structurally operated as a regime that privileges cis-hetero-masculine norms. It is a

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<sup>6</sup> Carole Pateman, **The Sexual Contract**, pp. 3–7.

<sup>7</sup> Judith Butler, **Gender Trouble: Feminism and the Subversion of Identity**, pp. 25–34.

<sup>8</sup> Dean Spade, **Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law**, pp. 3–11.

framework that draws on Pateman's critique of the sexual contract, hooks's analysis of interlocking systems of domination, and Butler and Spade's insights into the regulatory force of law. "Patriocratic democracy" therefore names the paradox of democratic systems that invoke the language of equality while conditioning full citizenship upon gender conformity. This framework guides the following case analyses of the United Kingdom and Thailand, illustrating how courts and legal institutions continue to naturalise patriarchal authority under the guise of democratic legitimacy.

### **3. From Progressive Instrument to Patriarchal Containment: The UK Trajectory of Law and Sex Essentialism**

The struggle for legal gender recognition in the United Kingdom has been neither linear nor uncontested. Long before *Christine Goodwin v United Kingdom* (2002), trans women had petitioned the European Court of Human Rights for recognition of their lived gender. In *Rees v United Kingdom* (1986) and *Cossey v United Kingdom* (1990), the Court rejected such claims, upholding the state's "margin of appreciation" and affirming that gender identity was not, at that time, integral to personal autonomy or human dignity.<sup>9</sup> These rulings revealed how democratic legal systems—while committed to rights in principle—could nonetheless exclude trans people under the guise of judicial restraint. It was not until *Goodwin v United Kingdom* (2002) that the tide shifted. The Court explicitly recognised that denying legal gender recognition violated Article 8 of the European Convention on Human Rights. Importantly, it held

"The very essence of the Convention is respect for human dignity and human freedom" (*Goodwin v United Kingdom*, 2002, para. 90).

The Court also stressed the evolving nature of human rights:

"The Convention is a living instrument which must be interpreted in the light of present-day conditions" (*Goodwin v United Kingdom*, 2002, para. 75).<sup>10</sup>

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<sup>9</sup> *Rees v United Kingdom*, App. No. 9532/81 (ECtHR, 17 October 1986); *Cossey v United Kingdom*, App. No. 10843/84 (ECtHR, 27 September 1990).

<sup>10</sup> *Christine Goodwin v United Kingdom*, App. No. 28957/95 (ECtHR, 11 July 2002) paras 75, 90.

By grounding its reasoning in dignity and the “living instrument” doctrine, the Court affirmed that trans people are entitled to legal recognition not as a concession, but as a right stemming from their inherent personhood. This landmark judgment created direct impetus for the enactment of the Gender Recognition Act 2004 (GRA), which was celebrated internationally as proof of the UK’s progressive stance on trans rights.

Yet the UK’s trajectory reveals a deeper paradox. While statutory law advanced recognition through the GRA and later the Equality Act 2010, judicial interpretation increasingly reinstated biological essentialism. Rather than building upon *Goodwin*, courts began to hollow out its legacy—most visibly in the 2025 UK Supreme Court ruling<sup>11</sup>, which re-entrenched “biological sex” as the operative category under the Equality Act. This section traces that trajectory, showing how the UK’s case law exposes the fragility of recognition when democracy itself is structured through patriarchal and cisnormativity.

### 3.1 The Gender Recognition Act 2004 and the Equality Act 2010

The Gender Recognition Act 2004 (GRA) was hailed as a milestone in recognising gender identity as a matter of self-determination rather than medical intervention. For the first time, individuals could obtain a Gender Recognition Certificate (GRC) without being required to undergo surgical procedures—a legislative acknowledgment that gender is not reducible to anatomy.<sup>12</sup> Similarly, the Equality Act 2010 (EA) consolidated protections against discrimination, explicitly recognising “gender reassignment” as a protected characteristic.<sup>13</sup> These statutory advances positioned the UK as a global leader in trans rights, promising dignity and autonomy for gender-diverse individuals.

Yet the 2025 decision of the UK Supreme Court in *For Women Scotland Ltd v The Lord Advocate and Scottish Ministers* (UKSC 16) marked a decisive retreat. The claim was initially rejected in both the Outer House and Inner House of the Court of Session before reaching the UKSC, and in each instance the voices of trans women invoking their rights under the GRA were excluded from serious consideration. The exclusion of trans voices was not incidental. Reports note that applications for intervention by transgender legal experts were rejected at both the Scottish Court of Session and later before the UK Supreme Court, leaving no trans parties formally represented in the proceedings. This silence is significant: the case

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<sup>11</sup> *For Women Scotland Ltd v The Lord Advocate and Scottish Ministers* [2025] UKSC 16.

<sup>12</sup> Gender Recognition Act 2004, c. 7, s. 9.

<sup>13</sup> Equality Act 2010, c. 15, s. 7.

that determined the meaning of “woman” in equality law was adjudicated without the participation of those most affected. Legal commentary further emphasised that the definition of “woman” under the Equality Act 2010 was interpreted to mean biological sex, explicitly excluding trans women even when holding a GRC.<sup>14</sup>

The Court framed the dispute not as a question of lived identity but as one of statutory interpretation, stating:

“The claimant’s certificated sex under the GRA 2004 must be respected ‘for all purposes.’ However, this Court concludes that the Equality Act operates on the basis of biological sex, and thus the two statutes serve distinct functions”<sup>15</sup>

This reasoning effectively severed the link between legal recognition and substantive equality. By isolating the GRA from the EA, the Court reinstated a rigid binary understanding of sex, hollowing out the protections that earlier cases such as *P v S and Cornwall County Council* (1996) had affirmed. Recognition was thus reframed not as empowerment but as containment: trans women could be acknowledged on paper yet excluded from full participation in democratic and political life.<sup>16</sup>

The judgment also justified its approach by invoking the need to protect women’s political representation. In doing so, the Court equated “woman” exclusively with biological sex, refusing to interpret the term in a way that includes trans women—even those holding a GRC. What appears on the surface to be statutory balancing is, in reality, a categorical denial of trans women’s political legitimacy.

The democratic paradox is stark. The GRA promised recognition “for all purposes,” but the UKSC’s restrictive interpretation reduces this to bureaucratic legibility, stripped of political participation. The exclusion of trans women’s voices at every judicial stage demonstrates how

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<sup>14</sup> Owen Bowcott, **Legal Definition of Woman is Based on Biological Sex**, UK Supreme Court Rules [Online]. Source: <https://www.theguardian.com/society/2025/apr/16/critics-of-trans-rights-win-uk-supreme-court-case-over-definition-of-woman>; Catherine Baksi, **Clarifying Definition of “Woman” in the Equality Act’ Law Gazette** [Online]. Source: <https://www.lawgazette.co.uk/commentary-and-opinion/clarifying-definition-of-woman-in-the-equality-act/5123032.article>

<sup>15</sup> *For Women Scotland Ltd v The Lord Advocate and Scottish Ministers* [2025] UKSC 16, para. 56.

<sup>16</sup> *P v S and Cornwall County Council* [1996] ECR I-2143.

recognition can be legally hollowed out by interpretive manoeuvres, transforming what should have been substantive equality into patriarchal containment. This re-entrenchment of sex essentialism illustrates *patriocratic democracy* in practice: a democracy that conditions inclusion on conformity to cis-masculine norms.

### 3.2 P v S and Cornwall County Council: Equality in Employment

A foundational case in European equality law is *P v S and Cornwall County Council* (1996), where the European Court of Justice (ECJ) held that dismissal of an employee on the grounds of gender reassignment constituted unlawful sex discrimination under Council Directive 76/207/EEC. The Court reasoned that discrimination against a trans person undermined the dignity and freedom protected by European equality law:

“To tolerate such discrimination would be tantamount to a failure to respect the dignity and freedom to which he or she is entitled, and which the Court has a duty to safeguard”<sup>17</sup>

This case was groundbreaking because it established that the principle of equality applied to trans people, even before the widespread adoption of gender recognition legislation. Its reasoning directly influenced the development of the Equality Act 2010 in the UK, where “gender reassignment” was codified as a protected characteristic.<sup>18</sup>

Placed chronologically, *P v S* predated *Goodwin v United Kingdom* (2002) by six years, showing how EU equality law was quicker to acknowledge trans dignity in the workplace than the ECHR framework was in recognising it as a matter of personal autonomy. This demonstrates that protection of trans rights was not accidental but legally enforceable, underscoring that dignity can and must be safeguarded in practice rather than remaining a symbolic promise.

The recognition of trans dignity in employment was further consolidated in *De Souza E Souza v Primark Stores Ltd* (2017), a landmark Employment Tribunal case.<sup>19</sup> The claimant, a trans retail worker, endured persistent harassment: colleagues sprayed male perfume on her against her will, and security staff mocked her as being “possessed by Satan.” The Tribunal

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<sup>17</sup> *P v S and Cornwall County Council* [1996] ECR I-2143, para. 22.

<sup>18</sup> Equality Act 2010, c. 15, s. 7.

<sup>19</sup> *De Souza E Souza v Primark Stores Ltd*, Employment Tribunal, Case No. 2206068/2016 (18 January 2017).

held that this treatment constituted unlawful harassment and direct discrimination under the Equality Act 2010. Crucially, the court awarded damages of approximately £47,000—£25,000 for injury to feelings (at the top of the Vento scale) and £22,000 in aggravated damages and loss of earnings.<sup>20</sup> This was one of the highest awards of its kind in UK trans employment litigation, signalling that the protection of dignity was a matter of enforceable right, not mere rhetoric.

This case illustrates how, before the retreat represented by *For Women Scotland* (2025), UK tribunals had recognised the lived realities of trans workers and were prepared to punish employers that failed to protect them. By affirming that harassment based on gender identity strikes at the core of human dignity, the Tribunal demonstrated that equality law could operate as a genuine safeguard against patriarchal containment in everyday life.

### 3.3 AB v Secretary of State for Justice: Dignity, Carcerality, and Legal Enforcement

The case of *AB v Secretary of State for Justice* (2009) illustrates how legal gender recognition is not symbolic but binding. The claimant, a trans woman who held a valid Gender Recognition Certificate (GRC), was incarcerated in a male prison facility. The High Court ruled that this constituted a violation of her rights under Article 8 of the European Convention on Human Rights (ECHR), which guarantees respect for private and family life.

“The claimant’s right to live in accordance with her affirmed gender was fundamental. Her GRC is not symbolic—it is legal and binding. Detaining her in a male facility constituted an unlawful interference with that right”<sup>21</sup>

The judgment underscored the enforceability of the GRC as more than mere bureaucratic recognition. It affirmed that legal recognition of gender identity must translate into material conditions of dignity, including where the state exercises coercive powers such

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<sup>20</sup> The “Vento bands” set guideline levels of compensation for injury to feelings in discrimination cases: Band 1 (less serious cases, up to approx. £9,100); Band 2 (serious cases, £9,100—£27,400); Band 3 (the most serious cases, £27,400—£45,600, with exceptional cases exceeding this). In the present case, the Tribunal awarded £25,000 for injury to feelings (Band 3) and £22,000 in aggravated damages and loss of earnings. See also Equality Act 2010, Part 5 (Work) and UK Employment Tribunal Presidential Guidance on Injury to Feelings (2022 update).

<sup>21</sup> *AB v Secretary of State for Justice* [2009] EWHC 2220 (Admin), para. 47.

as imprisonment. By treating the GRC as binding “for all purposes,” the High Court demonstrated that the right to recognition extended into the most restrictive domains of state authority.<sup>22</sup> This reasoning drew directly on Article 8 of the European Convention on Human Rights, not as a foreign source but as incorporated into UK domestic law through the Human Rights Act 1998. Under the UK’s dualist system, international treaties have no direct effect unless enacted in domestic legislation; once incorporated, however, courts may invoke them with full binding authority.

At the same time, the case highlighted the fragility of these protections. While AB succeeded in her claim, the state’s initial decision to house her in a male prison facility exposed the persistent reliance on cisnormativity logics of “institutional risk” and “safety concerns.” These rationales, often framed as neutral, function to re-inscribe patriarchal control over trans bodies. The case therefore stands as both a vindication of dignity and a reminder of the conditional nature of recognition under democratic legal systems.

### 3.4 UKSC 2025, Institutional Responses, and the Labour Paradox

The 2025 judgment of the UK Supreme Court in *For Women Scotland Ltd v The Lord Advocate and Scottish Ministers* (UKSC 16) crystallised this retreat from progressive recognition. The Court held that while a Gender Recognition Certificate (GRC) under the GRA 2004 must be respected “for all purposes,” this principle did not extend to statutory interpretation under the Equality Act 2010, which the Court declared operates solely on the basis of biological sex.<sup>23</sup> By framing the dispute as one of statutory construction rather than lived identity, the Court effectively hollowed out the promise of the GRA: recognition became bureaucratic rather than substantive.

The exclusion of trans voices throughout the litigation only reinforced this outcome. Reports note that applications for intervention by transgender legal experts were rejected both at the Scottish Court of Session and later before the UKSC, leaving no trans parties formally represented in the proceedings. This silence was not incidental—it was constitutive. The very case that determined the meaning of “woman” in equality law proceeded without the participation of those most affected, an omission that underscored how patriarchal democracy silences marginalised groups while claiming neutrality.

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<sup>22</sup> European Convention on Human Rights, art. 8; Human Rights Act 1998.

<sup>23</sup> *For Women Scotland Ltd v The Lord Advocate and Scottish Ministers* [2025] UKSC 16, para. 56.

Institutional responses deepened this retreat. The Equality and Human Rights Commission (EHRC), the UK's national equality body, immediately embraced the UKSC's restrictive interpretation. By affirming that the definition of "woman" under the Equality Act referred to biological sex, the EHRC legitimised a legal landscape in which trans women—even those with GRCs—were categorically excluded from political representation and participation. This alignment between judiciary and quasi-judicial regulator illustrates how patriarchal democracy consolidates power across institutions, producing consistency not in equality but in exclusion.

The paradox is sharpened by political context. The ruling occurred under a Labour government historically associated with advancing LGBTIQ+ equality. Yet the Court's reasoning—and the EHRC's endorsement—illustrated how even progressive administrations can preside over retrenchment when patriarchal norms are institutionalised. In this sense, patriarchal democracy does not depend on conservative ideology alone; it thrives when liberal institutions reproduce cisnormativity under the banner of protecting fairness and balance.<sup>24</sup>

Even the Equality and Human Rights Commission (EHRC), whose mandate is to uphold international human rights standards, responded to the UKSC ruling in ways that reinforced exclusion. Rather than reaffirming the principle—recognised in international human rights law—that trans women are women and thus entitled to protection from discrimination under instruments such as CESCR General Comment No. 20 (2009) and the Yogyakarta Principles (2007)<sup>25</sup>, the EHRC quickly issued statements and began drafting guidance that effectively sanctioned the restriction of trans women from women's spaces, including public restrooms.<sup>26</sup> This institutional alignment not only legitimised the Court's biologically determinist reasoning but also set in motion policies that risk entrenching exclusion across everyday life. The irony

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<sup>24</sup> Equality and Human Rights Commission (EHRC), **EHRC statement on the Supreme Court Judgment in For Women Scotland**, (17 January 2025).

<sup>25</sup> Committee on Economic, Social and Cultural Rights (CESCR), **General Comment No. 20: Non-discrimination in economic, social and cultural rights** (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights) (2009); **The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity** (2007).

<sup>26</sup> Equality and Human Rights Commission (EHRC), **EHRC statement on the Supreme Court Judgment in For Women Scotland**, (17 January 2025).

is stark: an equality body charged with protecting vulnerable groups became an agent in narrowing their access to full citizenship.

Perhaps most strikingly, the chilling effect extended beyond the courtroom, manifesting in a climate of tension within the Palace of Westminster itself. In the same year, reports confirmed that security protocols for gendered spaces were under review following multiple complaints, while a transgender Member of Parliament spoke out about the 'climate of hostility' and scrutiny they faced when using facilities.<sup>27</sup> That such an incident could occur within the very seat of democratic governance underscores the breadth of the rollback: once "woman" is policed through biology and conformity, not only trans women but also cisgender women who do not fit normative expectations of femininity become suspect. The patriarchal gaze thus expands its reach, placing all who deviate from the cis-hetero-masculine ideal under surveillance.

Together, these developments mark not merely legal backsliding but the active institutionalisation of patriarchal democracy. Recognition is reframed as containment; equality is rendered conditional upon conformity. What was once hailed as a global model of progressive trans rights now exemplifies the fragility of democratic promises when filtered through patriarchal norms.

### 3.5 Conclusion of UK Analysis

The trajectory of UK jurisprudence reveals a paradox at the heart of democratic governance. Early advances, from *P v S* and Cornwall County Council to *Christine Goodwin v United Kingdom*, established dignity and self-determination as core principles of gender recognition, culminating in the Gender Recognition Act 2004 and the Equality Act 2010. These statutes positioned the UK as a global leader in protecting gender-diverse communities.

Yet subsequent developments demonstrate how fragile such gains remain. The High Court's affirmation of the binding force of a Gender Recognition Certificate offered hope that

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<sup>27</sup> Haroon Siddique, 'Westminster security protocols for gendered spaces under review after complaints' *The Guardian* (22 September 2025) [Online], accessed 25 September 2025, Source: <https://www.theguardian.com/uk-news/2025/sep/22/westminster-security-protocols-gendered-spaces-under-review>; Ben Morgan, 'A climate of hostility': Trans MP speaks out on Westminster workplace culture' *The Independent* (28 September 2025) [Online], accessed 5 October 2025, Source: <https://www.independent.co.uk/news/uk/politics/trans-mp-westminster-workplace-culture-b2421519.html>.

recognition extended even into restrictive state domains. But the 2025 Supreme Court ruling in *For Women Scotland* marked a decisive reversal, redefining “woman” exclusively in biological terms and excluding trans women—even those with legal recognition—from equality protections. Institutional responses, including the EHRC’s endorsement of the ruling, reinforced this narrowing of rights, while political incidents such as the Westminster restroom exclusion revealed how quickly the logic of exclusion can extend beyond trans women to cisgender women who do not conform to feminine norms.

Taken together, these cases illustrate that recognition without participation is not recognition at all. The UK experience demonstrates how patriarchal democracy operates through law: granting rights in name while withdrawing them in substance, conditioning equality on conformity to cis-masculine norms. This insight provides a vital comparative lens for the next section, which turns to Thailand—where constitutional adjudication similarly invokes biological essentialism to regulate the boundaries of political personhood.

#### 4. Case Law and the Endurance of Binary Norms in Thailand

Historical Roots of the exclusion of gender-diverse persons from legal subjecthood in Thailand has deep historical roots. The *Three Seals Code* (กฎหมายตราสามดวง), compiled in the early Rattanakosin period, explicitly prohibited certain groups from serving as witnesses in court proceedings. The provision in the section on evidence law (พระไอยการลักษณพยาน) declared: “หญิง บัณฑეาก์ ทาส กุลี คนบ้า เด็ก อันมิได้รู้เห็นการทั้งปวง อย่าเอามาเป็นพยาน”.<sup>28</sup> By listing women, *bundok* (a premodern category denoting gender-variant persons), slaves, and others as inherently unreliable, the Code institutionalised a hierarchy of credibility that directly linked gender and legal incapacity.

This codified exclusion did more than deny participation in trials; it enshrined the presumption that gender variance equated to legal inferiority. As Sheera Thongkachai has shown, the category of *bundok* was not merely descriptive but stigmatising, operating to erase gender nonconforming people from recognition as legitimate legal actors (ชีรา ทองกรະจาย,

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<sup>28</sup> กฎหมายตราสามดวง เล่ม 1: พระไอยการลักษณพยาน, (กรุงเทพมหานคร: สำนักพิมพ์ครุสภा, 2541), หน้า 173 [The Three Seals Law Code Volume 1: Phra-aya-karn Lakson Phayarn (Law of Evidence), (Bangkok: Kurusapha Press, 1998), p. 173].

2561).<sup>29</sup> In this sense, the foundations of Thai jurisprudence were marked by a binary epistemology: to be legally credible was to be male, cisgender, and aligned with social order. The endurance of this logic can be traced through subsequent case law, where courts consistently relied on biological essentialism to police the boundaries of legal personhood.

This historically entrenched binary conception of credibility and personhood laid the groundwork for later jurisprudence, such as the Supreme Court decision No. 157/2524, where The Court continued to define womanhood through biological capacity ('one who can give birth'). It is to these modern manifestations of patriarchal legal reasoning that the next section now turns.

#### 4.1 Supreme Court Decision No. 157/2524: Anchoring the Binary

The exclusion of gender-diverse persons from legal recognition in Thailand is not accidental but follows a long historical continuity. Early legal texts such as the *Three Seals Code* explicitly marked women and gender-variant persons as unreliable witnesses, linking credibility to normative sex and social status. In the modern era, this continuity was crystallised by Supreme Court Decision No. 157/2524. Faced with a claim for recognition of a trans woman's status, the Court turned to the Royal Institute Dictionary and treated womanhood as equivalent to the capacity to give birth. By locating legal womanhood in reproductive function rather than lived identity, the ruling established a judicial premise of *reproductive essentialism*: sex recorded at birth became the decisive marker of legal personhood.<sup>30</sup>

That premise carried concrete, system-wide effects. The Court's interpretive move shaped how civil status is understood and administered under Thai law—most notably in relation to birth registration and the civil registry system tied to Section 15 of the Civil and Commercial Code—making the sex marker effectively immutable for many administrative purposes. In practice this foreclosure means that trans, intersex, and non-binary people are

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<sup>29</sup> ชีรา ทองกระจาย, จาก “กะเตย” สู่ “ผู้หญิงข้ามเพศ”: การเปลี่ยนแปลงเชิงวารกรรมว่าด้วยอัตลักษณ์ทางเพศในสังคมไทย, วารสารมนุษยวิทยา, ปีที่ 6 ฉบับที่ 1 (มกราคม-มิถุนายน 2566), หน้า 145-180 [Cheera Thongkrajai, *From “Kathoey” to “Phuying-kham-phet”*: Discursive Transformation of Gender Identity in Thailand, Journal of Anthropology, Volume 6 Issue 1 (January-June 2023), pp. 145-180].

<sup>30</sup> คำพิพากษาศาลฎีกา เลขที่ 157/2524 (1981) [Supreme Court of Thailand, Decision No. 157/2524 (1981)]; ราชบัณฑิตยสถาน, พจนานุกรมฉบับราชบัณฑิตยสถาน (ฉบับที่ศาลฎีกาอ้างอิง) [Royal Institute of Thailand, Royal Institute Dictionary (edition cited by the Supreme Court in Decision No. 157/2524)].

routinely misrecognised across education, healthcare, employment and welfare systems, lack of legal gender recognition thus cascades into tangible denials of rights and services.<sup>31</sup>

International and policy analyses have been stark on these consequences. UNDP's review of legal gender recognition in Thailand documents how Decision 157/2524 created a jurisprudential barrier that institutionalised binary sex assignment and obstructed pathways to administrative recognition, producing persistent obstacles to basic civic participation and access to services.<sup>32</sup> In short, the judgment did more than resolve one dispute: it anchored a biological-first approach to personhood in the institutional fabric of Thai administration, converting a contested social reality into a narrow legal rule with widespread, deleterious effects.

The influence of Decision No. 157/2524 extended beyond the judiciary. Following the ruling, the Department of Provincial Administration incorporated the Court's binary reasoning into administrative practice, instructing registrars to treat the sex marker recorded at birth as final and non-alterable. As documented in the Intersex Thailand Report on Legal Gender Recognition (2018), this jurisprudential stance translated into administrative regulations that explicitly barred changes in the civil registry, even for individuals who had undergone gender-affirming surgery. The case thus illustrates how a single judicial interpretation cascaded into executive policy, ensuring that reproductive essentialism was not only judicially endorsed but also bureaucratically enforced across the apparatus of state governance.<sup>33</sup>

#### 4.2 Constitutional Court Decision No. 20/2564: Reproductive Essentialism

The Constitutional Court's 2021 ruling on Section 1448 of the Civil and Commercial Code, which defines marriage as exclusively between a man and a woman, entrenched reproductive essentialism within Thai constitutional jurisprudence. In its reasoning, the Court declared that "the purpose of marriage is for a man and a woman to cohabit as husband and

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<sup>31</sup> ประมวลกฎหมายแพ่งและพาณิชย์ (ป.พ.พ.), มาตรา 15; พระราชบัญญัติการทะเบียนราษฎร พ.ศ. 2534 และที่แก้ไขเพิ่มเติม [Civil and Commercial Code (Thailand), s. 15; Civil Registration Act B.E. 2534 (1991) and amendments].

<sup>32</sup> United Nations Development Programme (UNDP), *Legal Gender Recognition in Thailand: A Legal and Policy Review*, (Bangkok: UNDP Thailand, 2018).

<sup>33</sup> Nada Chaiyajit, *Intersex Justice in Thailand: A Country Report on the Situation of Intersex Rights in Thailand*, (Taiwan: Intersex Asia, 2024).

wife to form a family institution, to have children and maintain the race according to nature”.<sup>34</sup> The judgment thus framed procreation not as one possible aspect of marriage but as its defining purpose, rendering same-sex unions inherently invalid.

The Court further justified this interpretation by invoking “the state of nature and long-standing custom”, holding that Section 1448 was “in accordance with the state of nature and long-standing custom”.<sup>35</sup> By grounding constitutional interpretation in “nature” and “tradition,” the Court foreclosed any possibility of reading marriage in a gender-neutral or equality-oriented manner.

Perhaps most revealing was the Court’s reliance on gendered biological functions. Citing the provision requiring widows to wait 310 days before remarrying, the Court reasoned that such rules exist to prevent confusion of lineage, presuming that women must menstruate and potentially bear children. This reliance on reproductive biology as a constitutional rationale exemplifies the persistence of pseudo-scientific logic: womanhood equals reproductive capacity.<sup>36</sup>

These constitutional premises did not remain confined to abstract reasoning. As later analysis has shown, even after Thailand enacted marriage equality, statutory language continued to entrench patriarchal norms by preserving the categories of บิดา (bida, father) and แมร์ดา (marnda, mother) as the only legitimate parental statuses.<sup>37</sup> Thus, while same-sex couples gained access to marriage, their family rights remained mediated through heteronormative framings of parenthood. This demonstrates how patriarchal democracy adapts: conceding recognition in one domain while reinscribing exclusionary categories in another.

Taken together, the Constitutional Court’s ruling and subsequent legislative practice illustrate how Thai constitutional law operationalises reproductive essentialism not only to deny recognition, but also to shape the terms of participation within newly opened

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<sup>34</sup> Constitutional Court of Thailand, **Decision No. 20/2564 (2021)**, unofficial English translation by Chalermrat Chandranee, Justice in Translation 5/2021 (December 2021), University of Wisconsin–Madison, Center for Southeast Asian Studies, para 4.

<sup>35</sup> Ibid., para 15.

<sup>36</sup> Ibid., para 17.

<sup>37</sup> Nada Chaiyajit, **Analyzing Thailand’s Amendments to the Civil and Commercial Code on Marriage Equality: Progress, Shortcomings, and the Struggle for LGBTIQAN+ Rights to Family Establishment**, Thai Legal Studies, Volume 4 Issue 1 (July 2024), pp. 60–71.

institutions. What appears as progress—marriage equality—remains tethered to patriarchal structures that condition belonging on conformity to cis-hetero-masculine norms.

#### 4.3 Quasi-Judicial Bodies and Administrative Practices

While high-level judicial rulings supply the legal grammar for reproductive essentialism, the administration and quasi-judicial bodies are the engines that convert that grammar into lived exclusion. This section demonstrates how non-legislative actors—(1) equality and anti-discrimination committees, (2) administrative agencies and public institutions, and (3) administrative and quasi-judicial tribunals—have both reproduced and, at times, disrupted patriarchal and sex-essentialist norms. Together they reveal how patriarchal democracy is institutionalised not only in doctrine but also in the daily governance of bodies.

Equality and quasi-judicial mechanisms. The Committee on Consideration of Unfair Gender Discrimination (วกลพ.) under the Gender Equality Act has produced some landmark findings. One pivotal case concerned Teacher Golf (Pannaphat Sawatphat), a transgender teacher denied the right to wear gender-congruent attire in official photographs and state-issued ID cards. The Committee held this to be unfair gender discrimination and ordered recognition of her gender identity. Yet the Office of the Prime Minister subsequently resisted implementation, issuing directives that maintained binary uniform rules for civil servants, thereby forcing continued litigation.<sup>38</sup>

Similarly, Teacher Bua (Punyapat Kingkaew), a Bangkok civil servant, was forced by her school principal to wear a male wig and perform male-coded behaviours despite having undergone gender-affirming surgery. This case, covered widely in national media, epitomised how school-level administrators weaponised state regulations to enforce conformity with biological sex essentialism.<sup>39</sup> At the university level, Chomping, a transgender student at Chulalongkorn University, was threatened with expulsion from class by senior faculty for refusing to wear male attire. The University formally denied her petition to graduate in gender-

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<sup>38</sup> Committee on Consideration of Unfair Gender Discrimination (วกลพ.), **Decision No. 05/2564**, 28 June 2021; Office of the Prime Minister, **Letter No. นร 0106/861**, “แจ้งผลการพิจารณาการทำบัตรประจำตัวเจ้าหน้าที่ของรัฐ”, 10 June 2015; Office of the Basic Education Commission, **Letter No. ศธ 04009/4153**, 25 June 2015.

<sup>39</sup> Thai PBS, **เครือข่ายครุภากหลายทางเพศ ร้องเรียน กสม.: ที่นี่ Thai PBS (22 July 2019)** [ออนไลน์] เข้าถึงข้อมูลเมื่อ 23 กันยายน 2568. แหล่งที่มา: <https://www.youtube.com/watch?v=201sB3CLm20>

congruent dress, citing its student-uniform regulations. The Gender Equality Committee later found in her favour, underscoring the unlawfulness of such exclusionary rules.<sup>40</sup>

Judicial and administrative litigation. The most dramatic breakthrough came in Sirapat Putthivorrapaseth v. Suan Dusit University, culminating in the Supreme Administrative Court's Decision No. อ.10/2568 (2025). After nearly nine years of litigation, the Court ordered that she must be allowed to graduate in female academic dress, reversing both the university's decision and earlier administrative court rulings. The Court explicitly grounded its reasoning in the Gender Equality Act and constitutional guarantees of human dignity, holding that the denial of gender-congruent graduation attire amounted to unfair gender discrimination. For Sirapat, however, this victory came too late to celebrate with her classmates—most of whom had long since graduated. Her case illustrates both the possibility of redress and the immense personal cost of seeking justice in a patriarchal democracy.<sup>41</sup>

Intersections with carceral administration. These struggles extend into prisons, where intersex and transgender inmates are categorised strictly according to male/female biology, often facing harassment, solitary confinement, or denial of healthcare. A widely reported case documented by BBC Thai revealed how prison authorities insisted on classifying intersex detainees within binary facilities, exposing them to heightened risks of violence and degrading treatment. Such practices underscore how state institutions reproduce essentialist control even beyond education and civil service, penetrating the most intimate aspects of bodily autonomy.<sup>42</sup>

Across these cases, a recurring pattern emerges: equality bodies may articulate anti-discrimination norms, but entrenched administrative practices and institutional risk-aversion blunt their force. Administrative resistance and protracted litigation not only delay justice but

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<sup>40</sup> Chulalongkorn University, Faculty of Education, **Letter No. 0512/01544**, 18 February 2019; Chulalongkorn University, **Announcement on Student Uniform Regulations**, 2019; Thai PBS, **Trans Student Barred from Class over Attire** [Online], เข้าถึงข้อมูลเมื่อ 23 กันยายน 2568. Source: <https://www.thaipbs.or.th/news/content/286016>

<sup>41</sup> *Sirapat Putthivorrapaseth v. Suan Dusit University*, Supreme Administrative Court, **Decision No. อ.10/2568** (2025); Bangkok Post, **No Reason for Pride as Wide Gender Discrimination Persists** [Online], เข้าถึงข้อมูลเมื่อ 23 กันยายน 2568. Source: <https://www.bangkokpost.com/thailand/special-reports/2135151/no-reason-for-pride-as-wide-gender-discrimination-persists>

<sup>42</sup> BBC Thai, **ผู้ต้องขังข้ามเพศ-อินเตอร์เซ็กส์ในเรือนจำไทย** [ออนไลน์], เข้าถึงข้อมูลเมื่อ 23 กันยายน 2568. แหล่งที่มา: <https://www.bbc.com/thai/53203163>

reassert the state's authority to decide whose gender is “real.” In this way, patriarchal democracy is enacted less in grand constitutional pronouncements than in the mundane but deeply consequential governance of uniforms, documents, and daily embodiment.

#### 4.4 Synthesis: Patriocratic Democracy in Thai Jurisprudence

The trajectory of Thai jurisprudence on gender recognition reveals a striking consistency across judicial, constitutional, and administrative domains. From the Supreme Court's 1981 decision (157/2524) that reduced womanhood to reproductive capacity<sup>43</sup>, through the Constitutional Court's 2021 ruling (20/2564) that constitutionalised “nature” and “tradition” as markers of family and marriage<sup>44</sup>, to the mixed record of quasi-judicial and administrative bodies, the law has persistently anchored personhood in biological determinism. What changes is not the underlying logic but the institutional register: dictionary definitions in the Supreme Court, pseudo-scientific appeals to menstruation and procreation in the Constitutional Court, and bureaucratic procedures in the administrative state.

Taken together, these institutions form a layered architecture of patriarchal democracy. The promise of equality is enshrined in statutes such as the Gender Equality Act 2015 and echoed in committee findings<sup>45</sup>, yet consistently curtailed by the civil registration regime, by court rulings that elevate reproductive essentialism, and by state practices that police attire, documentation, and bodily comportment. The result is a paradoxical legal order: gender-diverse persons are formally acknowledged as rights-holders but are substantively excluded from the full spectrum of citizenship and political participation.

In this sense, Thai law does not merely reflect societal patriarchy; it reproduces and amplifies it through legal doctrine and administrative enforcement. The endurance of sex-binary essentialism across forums demonstrates how democracy itself is conditioned by patriarchal terms, confining recognition within cis-hetero-masculine norms. This synthesis underscores why the notion of ประชาธิรัฐปัตไท—patriocratic democracy—is not a rhetorical flourish but an analytic necessity for grasping how law structures exclusion in Thailand.

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<sup>43</sup> Supreme Court of Thailand, **Decision No. 157/2524** (1981).

<sup>44</sup> Constitutional Court of Thailand, **Decision No. 20/2564 (2021)**, unofficial English translation by Chalermrat Chandranee, Justice in Translation 5/2021 (December 2021), University of Wisconsin–Madison, Center for Southeast Asian Studies.

<sup>45</sup> Gender Equality Act B.E. 2558 (2015).

## 5. Comparative Discussion – United Kingdom and Thailand through the Lens of Patriocratic Democracy

This chapter moves from doctrinal exposition to theoretical interpretation. Having traced the jurisprudential trajectories of the United Kingdom (Chapter 3) and Thailand (Chapter 4), the task here is to analyse these developments through the conceptual frameworks introduced in Chapter 2. Drawing on bell hooks' critique of patriarchy as a system that transcends ideology, Judith Butler's insights on performativity and the instability of gender categories, queer legal theory's scepticism of neutrality, and social-contract theory's delineation of who counts as a rights-bearing subject, this comparative discussion interprets the patterns of recognition and exclusion revealed in both jurisdictions.

The aim is not to repeat case law already examined but to demonstrate how distinct legal orders—one grounded in common law, the other in civil-law traditions—converge in reproducing sex essentialism and patriarchal epistemologies. By situating rollback in the UK and persistence in Thailand within the shared grammar of patriocratic democracy, the chapter shows how formal guarantees of equality can be both proclaimed and undermined. In doing so, it clarifies the theoretical stakes: whether recognition operates as inclusion on patriarchal terms, or exclusion masked as neutrality, the outcome is structurally similar.

### 5.1 The United Kingdom: Recognition and Retrenchment (Rollback)

The trajectory of legal gender recognition in the United Kingdom illustrates how recognition, once granted, can be progressively curtailed. The early 2000s were framed as a breakthrough: following *Rees v. United Kingdom* (1986), *Cossey v. United Kingdom* (1990), and ultimately *Christine Goodwin v. United Kingdom* (2002), the European Court of Human Rights held that gender identity falls within the scope of Article 8 of the European Convention on Human Rights. This jurisprudence compelled the UK to enact the Gender Recognition Act 2004 (GRA), which provided for legal recognition of gender identity through a certification regime. At the time, the GRA was celebrated as progressive, positioning the UK as a European leader in trans rights.

Yet fragility was embedded in the legislation itself. The GRA relied on medicalised criteria and a gatekeeping panel, signalling that recognition was conditional rather than an ordinary incident of citizenship. Subsequent case law revealed how precarious this recognition would become. In *For Women Scotland Ltd v. Lord Advocate* (2022) and *For Women Scotland Ltd v. Scottish Ministers* (2025), the UK Supreme Court held that “sex” in the Equality Act 2010

refers to biological sex, effectively limiting the reach of Gender Recognition Certificates in relation to single-sex services, political representation, and equality claims. Trans women holding GRCs were therefore excluded from key protections, with their voices excluded even from intervening in the litigation.

This jurisprudential shift represents more than statutory interpretation: it reinstates reproductive essentialism as a judicial norm. Through the lens of queer legal theory, particularly Butler's concept of gender performativity, the Court's reasoning illustrates how law reifies gender categories by presenting them as natural and immutable. What appears as neutral interpretation in fact functions as a regulatory act that sustains binary norms. bell hooks' critique of institutional patriarchy further helps explain why even progressive bodies—such as the UKSC or the EHRC—become vehicles of exclusion when institutional commitments to “fairness” are mediated through biologically determinist categories.

In short, the UK's path exemplifies rollback. Recognition was constitutionally compelled and legally enacted, only to be re-anchored in biology when challenged. Equality remains rhetorically affirmed, yet it is practically hollowed out. The result is conditional inclusion: trans persons may be recognised on paper, but that recognition is continually vulnerable to retraction when it collides with entrenched patriarchal logics.

## 5.2 Thailand: Persistence of Non-Recognition

In contrast to the United Kingdom's trajectory of recognition and retrenchment, Thailand demonstrates the persistence of non-recognition. From the outset, Thai jurisprudence has anchored legal personhood in reproductive capacity rather than identity. The decisive turning point came in Supreme Court Decision No. 157/2524 (1981), which relied on the Royal Institute Dictionary to define a woman as “one who can give birth.” By constitutionalising reproduction as the essence of womanhood, the Court effectively foreclosed the possibility of recognising trans and intersex persons within the civil-registration framework.

This precedent resonated through the Civil and Commercial Code, Section 15, and the Civil Registration Act, under which sex markers assigned at birth became immutable. Four decades later, the Constitutional Court reinforced the same logic in Decision No. 20/2564 (2021), ruling that marriage under Section 1448 must remain between a man and a woman because its purpose is to “have children and maintain the race according to nature.” The

Court went further, invoking menstruation and pregnancy as defining traits of women, thus elevating reproductive essentialism into constitutional doctrine.

Administrative and quasi-judicial bodies have occasionally offered spaces for contestation, particularly under the Gender Equality Act 2015. The Gender Equality Committee (กสพ.) has issued rulings recognising the rights of trans persons—for example, the case of Teacher Golf, where the Committee affirmed her right to wear a uniform consistent with her gender identity. Yet these victories are precarious: state agencies, including the Prime Minister's Office, have challenged such rulings before the Administrative Court, demonstrating how bureaucratic resistance dilutes gains. Similarly, the Sirapat case at the Supreme Administrative Court, which finally allowed a trans graduate to receive her degree in female academic dress after nine years of litigation, illustrates both breakthrough and cost.

Even beyond the courts, other cases—such as Teacher Bua's coerced compliance with male attire, or the expulsion of Chomping from a Chulalongkorn classroom—highlight how patriarchal norms remain embedded in everyday governance. Intersex persons, too, face systemic erasure, exemplified by detention practices that categorise bodies strictly as male or female regardless of self-identification.

Through the lens of queer legal theory, Thailand exemplifies how recognition is not merely denied but structurally foreclosed. Whereas Butler emphasises that gender is performative and socially constituted, Thai law translates gender into biology and fixes it in the registry. bell hooks' critique of institutional patriarchy helps explain why even equality bodies struggle: they may articulate inclusive norms, but without structural reform, their findings are undermined by patriarchal state logic.

Thailand therefore represents persistence: non-recognition is not an absence but a norm, continuously reinforced by judicial doctrine, administrative practice, and bureaucratic discretion. Unlike the UK, where recognition was won and then rolled back, Thailand shows how recognition was never permitted to emerge, illustrating patriarchal democracy in its most entrenched form.

### **5.3 Comparative Synthesis – Patriocratic Democracy across the UK and Thailand**

Placed side by side, the United Kingdom and Thailand exemplify two distinct trajectories of the same phenomenon: patriarchal democracy. Both jurisdictions reveal how law mobilises sex essentialism as a grammar of governance, but they differ in historical path.

In the UK, the arc has been one of recognition followed by rollback. Early victories—from Goodwin v. United Kingdom (2002) to the Gender Recognition Act 2004—appeared to entrench recognition in line with European human-rights jurisprudence. Yet more recent rulings, such as For Women Scotland Ltd v. Lord Advocate (2022) and For Women Scotland Ltd v. Scottish Ministers (2025), have re-anchored “sex” in biology. The law affirms equality rhetorically while reasserting biological determinism as a limit.

Thailand presents the opposite trajectory: persistence of non-recognition. From Supreme Court Decision No. 157/2524 to Constitutional Court Decision No. 20/2564, courts have constitutionalised reproductive essentialism, reducing gender to biological function. Administrative and quasi-judicial bodies occasionally offered openings—such as the Sirapat graduation case or the วลพ. rulings—but these were fragile, slow, and heavily contested. Here, non-recognition is not rollback but institutional norm.

The comparative picture highlights both divergence and convergence. Divergence lies in sequence: the UK demonstrates contraction after progress, while Thailand entrenches essentialism without transition. Convergence lies in effect: both systems preserve cis-hetero-masculine order under the guise of neutrality, using binary categories as legal infrastructure. The two jurisdictions illustrate variations on a single theme: democracy and rights discourse remain procedurally open but substantively closed, because the epistemic foundations of law continue to be shaped by patriarchal logic. This is the essence of patriarchal democracy: recognition is conditional, exclusion is systemic, and legal equality remains always already compromised.

## 6. Policy Recommendations – From Patriocratic Democracy to Inclusive Democracy

The preceding analysis demonstrates how both the United Kingdom and Thailand entrench patriarchal democracy: a legal order where rights are proclaimed yet curtailed through sex essentialism and binary logic. Moving beyond critique requires normative proposals that can reconfigure law to serve democratic inclusion rather than patriarchal reproduction. Four pathways emerge.

### 6.1 Constitutional Reform and Explicit SOGIESC Protections

Thailand’s imminent constitutional reform presents a critical opportunity. Drafting a new charter must not only reaffirm abstract equality but explicitly incorporate protections on the basis of sexual orientation, gender identity, gender expression, and sex characteristics

(SOGIESC). Embedding these principles would transform democracy from one centred on sex-gender binaries into one that affirms all persons as rights-bearing citizens.

### **6.2 Legislative Change – Gender Recognition and Family Law**

Passing comprehensive gender recognition legislation is urgent. Current reliance on birth-assigned sex under civil and family codes perpetuates exclusion, even in the wake of marriage equality. A statute recognising self-determined gender identity, together with reforms to parental and family-status provisions, would dismantle the reproductive essentialism that underpins exclusionary jurisprudence.

### **6.3 Institutional Practices and Administrative Guidelines**

Laws alone are insufficient if administrative bodies and quasi-judicial committees continue to reproduce exclusion. Clear, enforceable regulations are needed across state institutions: from civil registration to education, employment, healthcare, and correctional facilities. Equality committees must be empowered with binding authority rather than advisory status, and state agencies must be held accountable for implementing their rulings.

### **6.4 Beyond Quotas: Towards a Transformative Democratic Culture**

Policy must also move beyond representation quotas. While quotas can symbolise inclusion, they do not dismantle the deeper epistemic structures that equate citizenship with cis-hetero-masculine norms. True transformation requires re-educating legal and political institutions to recognise difference as constitutive of democracy, not as deviation from it.

## **7. Conclusion**

Policy recommendations cannot remain cosmetic. To move from patriarchal democracy to inclusive democracy, reform must operate simultaneously at constitutional, legislative, and administrative levels. Crucially, this transformation does not erase the rights or identities of cisgender or heterosexual persons; rather, it ensures that their experiences are no longer treated as the sole blueprint through which law and politics are imagined. In this way, the three pillars of state power—executive, legislative, and judicial—can be reclaimed for all citizens, no longer captured by the epistemic order of patriarchal democracy.

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