

# BIOETHICS, EDUCATION AND RESPECT FOR SEX-GENDER DIVERSITY

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— *Abstract*—

The condition of being transgender is a state of human diversity that manifests itself in a multitude of ways of living, thinking, acting and interacting with others in a democratic society where plurality, tolerance and respect for human diversity are the foundations of the social inclusion of minorities.

Mexico City's legal recognition of gender identity is one of the most important episodes in the struggle to preserve the rights of equality, identity, diversity, and difference. However, its effects would be negligible without the transformation of the conservative cultural ideology traditionally based on a dominant heterosexual model into an alternative way of thinking that prioritizes respect for gender-diversity in the formation of an individual's identity.

In this project, through an interdisciplinary reflection that is respectful of dignity and human rights, the diversity of the human condition are examined as a prerequisite for the design of any educational model founded on the study of sex-gender diversity, which should in turn promote recognition of the rights of LGBTTT people in a more sensitive society.

**Keywords**

*Bioethics; gender identity; sexual diversity; transgender; human rights.*

**T**rans condition is a way of living the sexual and gender diversity of many people in any latitude of the planet. This way of understanding the human condition is unfortunately repudiated by many people, due to a cultural ideology of stereotyped and in some cases prejudiced beliefs, based on the dichotomy of the predominant heterosexist cultural model in Eastern and Western societies.

Studies of sex and gender lead us to the construction of two closely related stereotypes: sex and gender. Sex is the biological status of a person to classify a woman or a man. On the contrary, the gender has its origin in the historical evolution of the cultures of east and west, arbitrarily imposing roles of behavior and attitudes to the feminine and the masculine (Camps-Merlo, 2007, p.104), those who do not fit in these cultural stereotypes are considered intersex or neutral states, which should also be recognized by the rules of social and legal conduct.

Culture, understood as the set of beliefs, values, habits and customs dominant in a population and geographic space, has allowed the generational reproduction of this sexist model as the only alternative to assume the sexual and gender identity of people through construction of laws, institutions and binary court discourses, where there are only two sex-gender identities: masculine and feminine.

The struggle to reclaim the human rights of the so-called LGBTTT collective, where lesbians, homosexuals, bisexuals, transsexuals, transvestites and transgenders meet, began to bear fruit on the international political agenda since the 1990s, after which the homosexual condition was eliminated from the list of mental illnesses of the World Health Organization (WHO) in 1990, and as a consequence, legislative measures were issued to decriminalize this human behavior, gradually recognizing greater rights to diversities sex, even if only to a fraction of it: that of the "gays".<sup>1</sup>

In this way, while the subject of sex-gender diversity touches several edges relevant to bioethics, such as: the dignified treatment of all human beings and the respect, recognition and protection of human rights, the presence

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1 Leaving aside other sexual orientations such as lesbianism or bisexuality, and other sex-gender identities such as: transsexuality, transvestism, transgenderism and intersexuality, although the latter is not really a true sex-gender identity.

of a plurality of moral structures in complex societies, the medication of the *trans* condition as a determining or deceptive factor to obtain the recognition of the gender identity in a plural society, and the vindication of the person's freedom of will, all of them affect in the interest to study this topic from a plural bioethical perspective.

Bioethics offers a deliberative space where dialogue allows us to address the complex challenges posed by modern (or post-modern) societies, understanding that globalization implies the presence of diverse moral structures that demand a plural bias and, at the same time, the possibility of carrying out different reflections on dilemmas resulting from the application of novel medical or biomedical practices, due to the meeting of medicine, biology and biotechnology (Hottois, 2011, p.)

Thus Bioethics, seen as a "rational and practical discipline", can allow us to draw, in the first place, guidelines, rules or principles to guide human behavior in general, enabling the decision making of doctors, psychologists or lawyers in vital matters of the new biomedical applications in the particular (García-Manrique, 2015, p.66), and in a second moment, because they promote the posing of important issues in the construction of educational models that allow, among other things, the inclusion of sex-gender diversity in its many facets.

The main objective of this work is to identify essential characteristics in the process of constructing an inclusive cultural model that respects the sex-gender diversity that starts from the recognition and protection of the human rights of this minority of people to build an educational model from basic education which enables the potential of the person through the problematizing method of bioethics among higher level students, direct instigators of necessary reforms that allow the design of educational models respectful of plurality and diversity.

## II. RIGHT TO IDENTITY

The birth of a natural person is a legal fact that marks the emergence of a series of consequences of law relevant to the State and the individual that is born. In the first place, because from it, the recognition of the legal personality of that subject by the State takes place, giving off a set of qualities inherent to its origin, also called personality rights, among which is the right to a legal identity of its own and, secondly, because the birth of this new person means an important event for the law, insofar as this being, a living being belonging to the human species, is worthy of the recognition and

protection of its dignity and uniqueness through the guarantee of human rights provided for in the international and domestic legal order.

The right to own a legal identity is one of the most essential of every person, since it contains a set of objective characteristics given by nature which cannot be chosen by the person, among them are: the name, the nationality, the genetic code, race, family, cultural environment and sex, and a subjective component that is the result of the experiences acquired by the person throughout his life, in the interaction with others, of the biography which makes each human life unique and different (Romeo-Casabona, 2011, p.538).

Of all the objective characteristics that revolve around the identity of a person, sex is one of the most symbolic for the Law, because from it the sexual identity of the individual, product of the genetic contribution of their parents, is outlined, particularly of the male, since it is he who contributes the X or Y chromosome, determinants of chromosomal sex. That biological reality, determines the sex of a physical person in his record before the Civil Registry Officer, a server invested with the state public faith in the facts and acts of the civil state.

Today this condition is controversial because of the *trans* phenomenon, in which the identity of a person is not always associated with sex acquired from birth, but through the appropriate sexual behavior by the subject on his or her body in everyday life, adjusting to the roles of behavior commonly attributed to the female sex, although the biological sex of the subject is male or, conversely, that is, appropriating roles of male behavior although the biological sex of the person is female. Here, freedom plays a crucial role in resizing gender roles: artificial social constructions assigned to each sex in the present societies.

For this reason, the Argentine jurist Pedro Federico Hoft says that at present it is no longer possible to ensure the existence of only two ways of manifesting the sexuality of the human being. That is the daily experience of two sexual behaviors and consequently of only two social constructions of gender transmitted from generation to generation from an education based on the sex/gender dichotomy. And this is possible, because today there is a diversity of ways of expressing sexuality and gender roles that are different from the predominant hetero-sexist one, that attend to internal and external factors of the sex with which one is born. Thus, they cross the threshold of invisibility, different sex-gender behaviors that have been gathered in the minority LGBTTT contingent (Hoft, 2005, p.126).

The first identity document and perhaps the most important of all because the others are constructed from it, is the birth certificate. And it is because from this document, first of all, the birth of a new subject of rights with a unique identity where his sex will also be settled, and secondly, because of the sex settled on the birth certificate, the individual will be educated and trained according to certain sex-gender behavior roles dictated to each gender by the canons of hetero-sexist culture, giving rise to the recognition of a set of rights and the acquisition of obligations that respond to that dialectic.

For legal discipline, the right to identity is a personal right inherent to the human being. It is the possibility of building an own, unique, diverse and unrepeatably biography. To be, to do, to act, to interact, to stop doing, to give, to share, to respect the individuality of each subject based on the recognition and protection of their individuality (Fernández-Sessarego, 1992, pp. 114- 115). For this reason, the Universal Declaration of Human Rights of 1948 and other important international documents on human rights recognize the right of every person to an identity of its own in its normative content and this right also encompasses that of sex-generic identity.

Every person, regardless of the sex with which they are born, has the right to freely decide the sex-gender identity that they have chosen to assume. It is a very personal right, which is part of the right to have an identity of its own. Of which any individual is worthy.

If the human condition of a person, leads him to feel liking, emotional or physical affection for people of different sex, deciding to be heterosexual will not have any problem with the data that appear on their identity documents. However, when the sex-gender identity assumed by a person is not concordant with the sex that appears on their birth certificate, the situation acquires a different nuance, since this fact affects the individual in the multitude of interpersonal relationships that he sustains, whether at work, in the family circle, or at school.

Now there is a paradigm shift in the way of understanding the right to identity. Not as a definitive fact, but as a permanent process which also includes the right to sex-gender identity, to decide a genuine gender identity and that this condition is also recognized in the domestic and international regulatory framework (Fernández-Sessarego, 1992, p.114).

### III. ORIGIN OF SEX-GENDER DIVERSITIES

Sex-gender diversity implies a set of cultural, social, moral and historical factors that reveal a variety of ways of manifesting sexuality and behaviors, attitudes and affections of each gender by people from any region of the world, but, at the same time is also traced by oneself, the subjective of the being, the experience of each person, the specific experiences (Ojeda-Sánchez, 2010, p.54), the sum of these factors makes each one of us who we are and we decide to be.

The panacea of the study of sex-generic diversities starts with the appearance of the term "transsexualism" that serves to refer to people who want to change sex due to the presence of gender dysphoria, coined by Magnus Hirschfeld in 1923. Later the american psychiatrist David O. Cauldwell, would be responsible for clarifying the meaning of the word "transsexual" in 1949 as it is done today and a couple of years later the doctor Harry Benjamin would divulge its meaning to the public and the international community (Lamas, 2014, p.136).

A decisive factor in the dissemination of ideas about the acceptance of *trans* condition was undoubtedly the emblematic case of George Jorgensen, a former us military officer who underwent a genital reassignment surgery in 1952 would be presented in 1953 with his new gender identity before the world with a different name: Christine Jorgensen (Frignet, 2000, p.19). This fact would mark the beginning of the medical interest for the treatment of gender dysphoria, deviation or identity disorder; pathological behavior of the transsexual that should be treated by endocrinologists through sex-gender reassignment surgeries, ignoring other important specialties, such as psychology, psychiatry or sexology.

Certainly, when developing endocrinology, *trans* phenomenon was described as a pathology that had to be treated by hormones and even genital reassignment surgery by the doctor Harry Benjamin<sup>2</sup>, then John Money, a psychologist specializing in sexology who worked for many years in the Hospital Johns Hopkins of Baltimore was interested in the presence of hermaphroditism in children and adolescents, recognizing

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2 This trend is clearly seen with the creation of the Harry Benjamin International Gender Dysphoria Association (HBIGDA), later replaced by the World Professional Association for Transgender Health (WPATH), more in line with the non-pathological trend.

the existence of gender dysphoria, although it did not share the necessary ablation of the genitals and its subsequent modification in the operating room, since the constant interaction between the innate (the biological) and the acquired (the social) are determining factors in the construction of the biography of each person (Mercader, 1997, p.54), issues to which Money itself gathers in the term dimorphism<sup>3</sup>. Money does not defend the idea of surgically intervening transsexual subjects, however, neither does he manifest nor says anything to confront these ideas within their works.

In fact, it was Robert Stoller, a psychoanalyst doctor and American psychiatrist, who opposed the ideas expressed by Harry Benjamin when studying the inter-sexed states of certain people due to the presence of atypical biological conditions, finding that in the process of developing the infant, certain gender habits are constructed from the influence of the family and cultural environment and not only individual; exposed ideas, in his book *Sex and Gender. On the Development of Masculinity and Femininity* in 1968 (Lamas, 2014, 137).

In the end, Benjamin and Stoller's lines of thought inaugurated the two most important currents to explain the origin of *trans* phenomenon: the pathological version and the non-pathological one. Both, considered by Judges and legislators in the resolution of matters of this nature, as well as in the elaboration of regulations in some countries where gender identity is recognized and protected, also embraced by the civil legislation of Mexico City at different times.<sup>4</sup>

In the international arena, reference is made to the collective LGBTTTT people to allude to the meeting of lesbians, gays, bisexuals, transvestites, transsexuals, transgender<sup>5</sup>, who despite their deep differences and even disagreements, form an apparent unity in the formal discourse of recent years (Gracia Ibañez, 2014, p.108). This dialectic, serves two fundamental reasons:

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- 3 Term used by Money, as a reference to "the interaction of the innate and the acquired, of the biological and the social" that generates different human conditions, by allowing the differentiation of being, without completely separating the categories of the feminine and the masculine (Mercader, 1997, p.54).
  - 4 The pathological, through a reform to the city civil code published in the official gazette of the government of Mexico City on October 10, 2008, and the non-pathological, through a reform by which the first criterion was replaced in the aforementioned ordination, published on February 05, 2015 of the Gazette itself.
  - 5 Some authors also add intersex people (I), as well as so-called queer identities (Q) or resistance groups against the dominant ideas of the masculine order.



- 1º The need to have signs of shared language between the interlocutors of a communication process (Goldman, 2015, pp. 25), and
- 2º The need to grant greater legal guarantees for this group of vulnerable people, invisible in different areas of their lives (social, educational, health and work).

Sex-gender differences are manifested in two ways: that of people who live a sexual orientation different from heterosexual, and that of people who build a sex-generic identity beyond the sex with which they are born. Next, we describe each one of them.

**A) Sexual orientation.** Sexual orientation is defined in the introduction of the Yogyakarta Principles as: "the ability of each person to feel a deep emotional, affective and sexual attraction for people of a gender different from their own, or of their own gender, or more than one gender, as well as the ability (sic) to maintain intimate and sexual relationships with these people (Principles of Yogyakarta, 2006, p.6)" Here, the following possibilities of choosing sexual orientation concur:

1. Lesbianism, or practice where a woman establishes a relationship with other women in the emotional, social or sexual sphere;
2. Homosexuality, or practice where a man establishes a bond in the emotional, social or sexual order with another male, and
3. Bisexuality, defined as the practice where a person belonging to the female or male sex maintains affective and/or sexual relationships with people of the same or different sex.

**B) Gender identity.** On the contrary, gender identity, in terms of the aforementioned document, consists of:

The internal and individual experience of the gender as each person feels deeply, which may or may not correspond to the sex assigned at the time of birth, including the personal experience of the body (which could involve the modification of appearance or bodily function through medical, surgical or other means, provided that it is freely chosen) and other gender expressions, including dress, way of speaking and manners (Yogyakarta Principles).

Among the identities gathered in this other condition, they appear:

1. Transsexuality, conceived as the human condition where a person lives a constant conflict between the sex with which they are born and their genuine gender identity;
2. Transgender, or that human condition that is characterized because the person denies its gender assuming roles of the opposite gender<sup>6</sup>, and
3. Transvestism or that state of behavior where the person, without denying their biological sex, feels pleasure in wearing clothes of the opposite gender.

As can be seen, *trans* condition has different nuances and involves a greater complexity than it is intended to give it, since its study goes beyond the idea of a single femininity or masculinity. The theme of sex-gender diversity has been a source of remarks due to the inescapable presence of extremely homophobic moral structures among present societies, where the possibility of a man carrying out conducts of the female gender or vice versa is disqualified (Ojeda- Sánchez, 2010, p.68).

#### IV. THE RIGHT TO GENDER IDENTITY IN THE INTERNATIONAL CONTEXT

In the international context, the evolution experienced in the field of the recognition of the human rights of people due to their sex-generic identity is notorious. This is how they appear, in the order of the United Nations (UN):

- The Declaration on the decriminalization of homosexuality, sexual orientation and gender identity of December 18, 2008, signed so far by the governments of 68 states around the world including Mexico, and the joint declaration to stop acts of violence, and human rights violations directed against people due to their sexual orientation and gender identity on March 22, 2011, also signed by the Mexican government, through which the governments of various states have stopped criminalizing homosexuality, criminalizing any conduct that is intended to discriminate against a person because of his or her sexual orientation;

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6 It is pertinent to clarify that the difference between the transsexual subject and the transgender is that while for the former the state of anguish for being trapped in a body that does not correspond to their genuine gender identity produces in the individual the need to submit to a genital reassignment surgery. The transgender person only seeks legal and social recognition of their genuine gender identity in their official identity documents in order to have their psycho-social identity accepted.

- Resolution A/HRC/RES/17/19 of the UN Human Rights Council of June 2011 on human rights, sexual orientation and gender identity, and
- Principles on the application of international human rights law in relation to sexual orientation and gender identity, also known in the international sphere as "Yogyakarta Principles", prepared by a group of experts from different areas in the year 2006. The latter consists of an introduction, a preamble, 29 illustrative principles and 16 additional recommendations. Undoubtedly, one of the most important references of *soft law*<sup>7</sup> in the international sphere that can be the beginning of the process of elaboration of a conventional document to ensure the rights of this group of people (Gracia-Ibáñez, 2014, p.122) .

In order of the Organization of American States (OAS):

- The adoption of six resolutions on human rights, sexual orientation and gender identity from 2008 to date, aimed at establishing the commitment of States to enact measures in this particular matter, ranging from legislative, administrative and educational (Pérez Contreras, 2015, p.12);
- The approval by the General Assembly of the Organization of American States of the Inter-American Conventions against all forms of discrimination and intolerance, and against racism, racial discrimination and related intolerance in 2013, and
- The resolution of the Inter-American Court of Human Rights on the case of Atala Rifo and Girls vs Chile, pronounced on February 24, 2012, which, by the way, is the first case presented before this supranational body where they are ventilated relevant aspects of the sexual orientation of a married woman who, upon divorce, obtained the custody of her minor daughters before the judge of first instance in Chile, however when the ex-husband learned that his ex-spouse was having a relationship with another woman filed an appeal with the jurisdictional authorities of his country to recover the custody of the minors, resolving in his favor. In the end, the woman exhausted all the means in her country to recover custody of her minor daughters without obtaining a favorable resolution,

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7 This type of international documents are characterized by the lack of binding force from the outset, however, as pointed out by González Martín and Rodríguez Jiménez, their value as functional principles in the integrating work of the national legal order must not be lost sight of (González Martín , 2010, p.84).

going then, initially to the Inter-American Commission on Human Rights and, later, before the Inter-American Court of Human Rights, recovering the legal custody of her minor daughters, since, according to the IACHR, the resolutions adopted by the jurisdictional authorities of Chile supported their approach in homophobic and heterosexist reasoning.

In European Union field stand out:

- The recommendation of the Council of Europe on measures to combat discrimination on the grounds of sexual orientation or gender identity of March 31, 2010, and the various resolutions issued by the European Court of Human Rights regarding the recognition and protection of human rights of people because of their sexual orientation or gender identity, which have laid the foundations of a European jurisprudential system in this matter, such as:
  - The cases of David Norris vs. the State of Ireland resolved in 1988, and that of Modinos vs. the State of Cyprus in 1993, both initiated by homosexual activists with the aim of eliminating the criminalization of consented homosexual acts;
  - The cases of Perkins and R. vs. the United Kingdom and that of Beck, Copp and Bazeley vs the United Kingdom for the unjustified dismissal of the armed forces on account of their sexual orientation;
  - The case of the Portuguese Salgueiro Da Silva Mouta vs Portugal in 2000, who lost custody over his youngest daughter after having a relationship with another person of the same sex;
  - The cases of Christine Goodwin vs. the United Kingdom in 2002 and Grant vs. the United Kingdom in 2006, to obtain the granting of new identity documents;
  - The cases of Fretté vs France in 2002 and that of E.B. vs France in 2008, both for the refusal to adopt because of their sexual orientation, and
  - The case of Schalk and Kopf vs. Austria for denying them the right to marry civilly.

As can be noted, there is a progressive tendency in the recognition of the right to the free development of the personality assuming the genuine identity of psycho-social, to form a family through civil marriage, to non-discrimination based on sexual orientation or gender identity,

equality, and dignified treatment regardless of the sexual orientation or gender identity that is possessed.

## V. RIGHTS TO GENDER IDENTITY IN THE NATIONAL CONTEXT

Mexico, like other countries in the world, has dictated a series of measures in the legislative, judicial and administrative orders around the recognition of LGBTTT collective rights. The intention is to ensure greater conditions of formal and material equality among the population, seeking to put forward more inclusive, plural and respectful societies of the diverse nature of the human condition, among the most relevant measures include:

- 1.- **In the federal order.** The amendment to Article 1 of the Constitution in 2001<sup>8</sup>, by means of which the rights to equality and non-discrimination were added through the "open clause", with any other form of inequality or discrimination not included in the aforementioned provision. With this, it is intended to prevent the impairment of people's rights, particularly those who live in a situation of vulnerability, demanding respectful treatment not only from the organs of public power throughout the country but also from individuals.

On the other hand, there was a change of constitutional paradigm in 2011 when the nomenclature of "individual guarantees" was changed to that of "human rights" and the *ex officio* control of conventionality<sup>9</sup> and the principles for its application<sup>10</sup> in the text of the Federal Constitution were incorporated, replacing the term "preferences" with "sexual preferences" as a possible motive for discrimination with the firm intention of eliminating the rejection of people based on sexual orientation different from heterosexual (Lara Espinoza, 2015, p 18).

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8 Through a reform decree published in the Diario Oficial de la Federación on August 14, 2001, modifying the content of paragraph 2 and the addition of a third party.

9 Which implies that the jurisdictional authorities of first instance, are also obliged to dictate their resolutions according to the block of constitutionality conformed by the norms of constitutional law, the international treaties signed and ratified by Mexico and the criteria of the Jurisprudence of the supranational jurisdictional bodies.

10 Here, I refer to the principles *pro persona*, universality, interdependence, indivisibility and progressivity referred to in Article 1 of the Mexican federal constitution.

This is despite the fact that previously (June 11, 2003) the Federal Law to Prevent and Eliminate Discrimination had already been published in the Diario Oficial de la Federación, with the primary objective that the Mexican State ensure conditions of equality and freedom to all persons in the exercise of their civil, political, social, cultural and economic rights, favoring a respectful treatment of the human rights of people and social minorities in a vulnerable condition.

To achieve this, the Consejo Nacional para Prevenir la Discriminación (CONAPRED) was also created, a body in charge of formulating, promoting and coordinating actions in the federal sphere aimed at preventing and eradicating discrimination; sample of the work of this important organism, are the two National Surveys on Discrimination raised in Mexico. The first in 2005 and the second in 2011, which give figures of the degree of violence and vulnerability in which the collective of LGBTTT people lives in our country in order to implement actions aimed at reducing them.

Within the judicial measures, the National Supreme Court of Justice has been in charge of charting the way in the vindication of the fundamental rights of the vulnerable minorities through the effective tutelage of the excluded or disadvantaged people's rights (Silva-Meza *et al.*, 2011, XI). This social commitment is reflected in the different criteria dictated by the Court regarding same-sex marriage, homoparental adoption, sex-generic reassignment, and in general those that refer to respect for the rights to equality and non-discrimination in Mexico, among which are:

**A. Equal marriage.-** Jurisprudence number 1a./J. 46/2015, whose heading states "Marriage between people of the same sex. There is no reason of a constitutional nature to not recognize it", in its content, the inadmissibility of same-sex marriage is rejected due to social prejudices or stereotypes, since the Federal Constitution allows the drafting of article 4, the possibility for any person to found a family, including a civil marriage celebration, and the number P./J. 12/2011, with the heading "Marriage between people of the same sex in the Distrito Federal. It is valid in other federal entities according to article 121 of the General Constitution of the Republic (article 146 of the Distrito Federal civil code, amended by decree published in the Gaceta Oficial of the entity on December 29, 2009). Here, the federated pact is ratified in relation to the civil status of the people and the principle of the personality of the law consigned in constitutional article 121, according to which the acts of the civil status acquired under the law of the domicile of the person, follow the individual to any other State or country, and

Theses number P.XXVI/ 2011, whose heading is "Marriage. It is not an immutable concept", in the understanding that the legal institution of marriage cannot, nor should it have an immutable conception regarding its notion and ends, which, moreover, are not limited to the perpetuation of the species, but rather to the solidarity and reciprocal support among its members, as well as number 1a. CII/2013, with the heading "Same-sex marriages. Article 143 of the civil code for the State of Oaxaca violates the principles of equality and non-discrimination", by not admitting that same-sex couples can found a family through civil marriage, despite the fact that the federal Constitution recognizes this right to any person regardless of their sexual orientation.

**B. Homoparental Adoption.-** Jurisprudence number P./J. 14/2011, whose heading says "Marriage between people of the same sex. The legal possibility that they can adopt should not be considered as an automatic and indiscriminate authorization (article 391 of the civil code for the Distrito Federal), and the P./J. 13/2011, whose rubric establishes "Superior interest of the child in the case of adoption by marriages between persons of the same sex". Here it is important to specify that while adoption is a legal institution that aims to ensure the best interests of abandoned or foundling children, the authorities responsible for granting it cannot do so automatically, but always in order to guarantee this fundamental principle in the relationships of family law.

**C. Sex-generic reassignment.-** In this line, theses number P.LXXI/2009 appear, whose heading says "Sexual reassignment. The pre-eminence of psychosocial versus morphological sex to fully respect the sexual and gender identity rights of a transsexual person ", privileging the recognition and protection of genuine identity above, including biological sex, as a determining factor of people's gender identity; the number P.LXIX/2009, whose heading indicates "Sexual reassignment. It is a decision that is part of the rights to the free development of the personality", that is, the faculty so that a person, without mediating pressure of any kind, can freely decide the life project he wants to make, and the number P. LXXIV/2009, whose rubric establishes "Sexual reassignment. There is no reason to limit the fundamental rights of a transsexual person, preventing them from adapting their identity documents, under the pretext of preserving the rights of third parties or of public order"; the latter, a determining factor for a person who has obtained a favorable resolution of a special procedure of reassignment of the sex-generic agreement, can obtain identity documents that prevent a discriminant treatment of the person in the social scene.

**2.- In the local order.** Within the local sphere, some federal entities of the Mexican Republic have also enacted legislative measures in this area, first, recognizing the right to found a family through specific figures, such as the civil pacts of solidarity in Coahuila<sup>11</sup> or the societies of coexistence in Mexico City<sup>12</sup>, then, allowing the celebration of civil marriage and same-sex adoption in Mexico City (2009)<sup>13</sup>, and later, in Coahuila (2014)<sup>14</sup>, Nayarit (2015)<sup>15</sup>, Michoacán (2016)<sup>16</sup>, Morelos (2016)<sup>17</sup> and Quintana Roo (2011).

In addition, 21 federal entities of the 32 that make up the Mexican Federation, have issued legal ordinances on prevention and elimination of discrimination; while 15 of the 32 entities of the federation classify discrimination based on sexual orientation in their punitive laws (Pérez-Contreras, 2015, pp. 25-26).

Mexico City has been avant-garde in terms of recognition of people's rights based on sexual orientation or gender identity, being 1980, when the first case of this nature would be presented in Mexico City. Later, in 2004, section II of article 135 of the civil code was reformed in order to allow the amendment of relevant elements of the birth certificate, such as the name or sex that appears in the act of the promoter (Bonifaz-Alfonzo and Guevara-Olvera, 2009, pages 75 and 77).

In 2008, the special procedure of reassignment of the sex-generic agreement was added in the civil codes and civil procedures, both for the Distrito Federal, which would later be replaced by an administrative procedure processed before the capital's Dirección General del Registro Civil, through the publication of a decree of reform published in the Gaceta Oficial del Gobierno de la Ciudad de México on February 5, 2015.

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- 11 On January 12, 2007, it was published in the Periódico Oficial del Estado de Coahuila, among other things, the addition of Title One Bis to the First Book of the civil code of the entity regarding the regulation of the "civil pact of solidarity"; figure exported from the legal institutions of French civil law, which consists of 16 articles.
  - 12 Through the publication of the Law of Societies of Coexistence on November 16, 2006 in the Gaceta Oficial del Gobierno del Distrito Federal, which consists of 25 articles.
  - 13 Through the reform of article 146 of its civil code published on December 28, 2009.
  - 14 Through the reform of article 253 of its civil code published on September 16, 2014.
  - 15 Through the reform of article 135 of its civil code published on December 22, 2015.
  - 16 Through the reform of article 127 of its family code published on June 22, 2016.
  - 17 Through the reform of article 68 of its family code published on July 4, 2016.



With this, the law went from assuming a pathological criterion of the *trans* condition, according to which the promoter had to check the hormonal medicalization and a psychological therapy, to the non-pathological criterion where no hormonal treatment or psychological therapy should be accredited to obtain State recognition of gender identity<sup>18</sup>. That is, this last procedure is more respectful of the dignity and human rights of the transgender person by preserving their rights to the free development of personality, non-discrimination and equality to decide and responsibly assume the direction of their sex-generic identity, also modifying the legal nature of the formal request, going from a jurisdictional contest subject to the dictation of a Judge of the familiar to an administrative proceeding before the Civil Registry, much more agile and less agonizing for those who promote it.

Within the common jurisdiction, just before 2014 in Mexico City, about 187 sex-generic reassignment trials had been initiated (Belmont: 2014), due to the high cost involved in initiating a jurisdictional proceeding of this nature, however, this trend should change in the next few years after the modification of the procedural nature to achieve legal recognition of gender identity, coinciding with the criterion assumed by the Spanish Supreme Court in 1987 where, for the first time, the psycho-social criterion is assumed to protect the gender identity of the transsexual person and beyond the biological criterion assumed by the English courts in 1963 in the Corbett vs Corbett case<sup>19</sup> (Camps-Merlo, 2007, pp. 329 and 412).

In addition, within the measures dictated by the capital executive, include the annual reports on cases of discrimination of 2013 and 2014 made by the Consejo para Prevenir y Eliminar la Discriminación of the Distrito Federal (COPRED), the Declaration of Mexico City friendly to the diversity of the LGBTTT collective, the support of COPRED in the administrative procedures to obtain new birth certificate where gender identity is recognized, and the free care of hormonal therapies, timely detection of HIV and other sexually transmitted diseases to transgender people; services provided by the Clínica Especializada de la Condesa in Mexico City.

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18 This procedure is performed before the Juzgado Central del Registro Civil of Mexico City in accordance with the provisions of the Reglamento y Manual de Procedimientos del Registro Civil ciudadano.

19 Replaced later with the approval of the *Gender Recognition Act* on July 1, 2004 by the English Parliament, normative document that assumed the psycho-social criterion.

## VI. EDUCATION AS A FACTOR OF RESPECT FOR SEX-GENERIC DIVERSITY

Education is, without a doubt, the most important way to transmit values, ideas, beliefs and ways of thinking and acting among people. Thus, cultural factors in a society are continuously reproduced through models of meaningful learning that also allow their transformation according to different historical, social, moral, political or legal circumstances in a community, which conform to the dictates that the own reality requires the generation of new ways of thinking and acting; this situation also applies to the transformation of sex-generic models (Butler, 2015, p.296).

From the Greek city-states, one could see the Aristotelian influence of the model of a different and separate teaching between men and women. Thus, the raising of women and men reproduced the model of male domination where the role of women was limited to functions in the home, while the role of men was concerned with content such as politics, philosophy, science, culture and the arts. This situation did not change during the transit of the Middle Ages, but until the end of the 19th century when co-education as an educational model where girls and boys receive shared education in the same classroom, is inserted for the first time in a large part of the United States of America and in some regions of Europe, mainly in Denmark, Norway and Finland.

The part waters to establish the proposal of the co-educational model was the creation in 1889 of the Libertarian Teaching Committee in the city of Paris, France, influenced by the liberal ideals of the French Revolution and the new pedagogical school. This scenario, started from four primordial axes: 1st. Encourage comprehensive education, intermingling manual and brain activities; 2º. Promote rational education, cultivating scientific work devoid of any religious dogma; 3º. Encourage liberal education, where respect for freedom of thought and respect for the ideas of each person, occupied a primary role and 4th. Encourage mixed education, allowing anyone without distinction of sex or gender to access the same educational institution on equal terms; ideas exported to Spanish by the Spaniard Francisco Ferrer Guardia, in the next ten years with the construction of the International League for the Rational Education of Children (Álvarez-Gayou, 2014, pp. 23-24).

In Mexico, Enrique C. Rébsamen tried to adopt the co-educational model in the country's Escuelas Normales in the inclusive post-reformist era for both sexes, with the idea of promoting respect and mutual knowledge between

two perspectives seen throughout history as antagonistic, however it would be in 1946 when the co-educational egalitarian model was consolidated in the Mexican legislative framework with the amendment to Article 3 of the Constitución Federal, with the firm intention of avoiding privileges in the educational field, among other things, by difference of sexes (Álvarez Gayou, 2014, pp. 36, 37 and 40).

In addition to existing educational models that separated women from men, there is also little approach to sex education within basic education schools in our country, due to the presence of prejudices often based on fanaticisms of the most varied nature. Thus, the diverse communities and Mexican populations, as reproductive sources of a model of universal sex-generic behavior, are characterized by the predominance of four elements:

1. The socio-cultural ideology of sustaining only sexual coital practices;
2. Sex-coital relationships only have a place among people of different sex, in the understanding that both sexes complement each other;
3. The socio-cultural mandate requires that sex-coital relationships be verified only in conjugal unions, and
4. The primary purpose of these sexual practices must be procreation.

The meeting of all these elements characterizes the heterosexist cultural model, according to which nature determines that sexual relations only have a place in the relationships that exist between women and men (Hernández Curiel, 2010, p.80), making side any possibility of witnessing other ways of living sexuality and gender among human beings. This excludes other forms of living and assuming sexuality and gender identity, contravening the diverse nature of the human condition, fundamental axis in the subjective construction of the identity of each being.

This situation undoubtedly contradicts what is stated in number 3.3 of the World Declaration of the UNESCO Education for All Conference, which postulates the importance of "eliminating all stereotypes about the sexes from education".

With the above, it is not intended to affirm that heterosexuality is in itself good or bad, but to support that stereotypes limit the ability to find in diversity a better expansion of human potentialities, redefining the various femininities and masculinities that can to arrive to concur, beyond the dictation of a single supplying masculinity, strong, powerful, or of the decree of a single sensitive, submissive, obliging femininity that is subordinated to the first. It is about finding true masculine and feminine identities, liberated from sex, sexual

organs and biology in the construction of a genuine identity, and that only is referring to the hetero-sexist model, let alone a recognizing model of sex-generic diversity where there is still much to reflect.

In a study on the perception of masculinity and femininity in Mexico, Álvarez-Gayou Jürgenson describes how stereotypes based on the existence of a single masculinity and a single femininity generate dissatisfaction and suffering for women and men when there is no identity match own or genuine with the rigid model of sexed behavior and gender (2014, pp. 67-74).

In this way, violence, alcoholism, drug addiction or pornography, make their entry into the early years of adolescence, a crucial stage where the individual, feeling displaced in this model of such rigid behavior, seeks a refuge or escape in some of these harmful practices, having an impact on the family and social structure.

In this scenario, as expressed by León Correa, bioethics plays an important pedagogical role but this time at a higher level, which is based on three fundamental aspects:

1. Obtain more accurate answers to complex issues based on interdisciplinary reflection;
2. Positively influence medical decision-making, particularly in the rights and obligations that must prevail in the doctor-patient relationship within the models of health care, and
3. Transmit values to the medical professional in health care systems, and in general to the whole society (León Correa, 2009, p.68), moving from a discursive bioethics to a bioethics of joint actions.

It is useless to create more plural legal systems in terms of social inclusion, if this legislative measure is not accompanied by an educational policy designed to encourage a change in the attitudes and behaviors of health professionals and other important areas of knowledge such as anthropology, sociology, philosophy and law, because within the classroom it is important to carry out a critical exercise of the postulates of science, highlighting the primary and not secondary role of bioethics, based on the analysis of commercial interests that often overlap the purposes of professional practice, not only medicine, but also the rest of the disciplines cited, encouraging an active and not passive attitude among students before ethical dilemmas, preventing the lack of interest in the study of philosophy and particularly of ethics among higher level students (León Correa, 2009, pp. 72-73).

In addition, if bioethics is characterized by its inter-disciplinary methodology, it is obvious that a topic such as sexual diversity requires the participation of different disciplinary voices in order to first understand and then propose, construction, design, dissemination and the implementation of educational models that respond to these and other demands, where the role of the teacher encourages the freedom and human development of each student, enhancing their abilities beyond any gender stereotype. It is, therefore, about respecting, learning and understanding the diverse character of human potentialities. To understand that any new teaching process poses a risk and that this risk should not be motivated or rejected by the mere idea of a prejudice that "offends the substantivity of the human being and radically denies democracy (Freire, 2004, p. 17)".

Regarding the three aspects posed by León Correa, the first one turns out to be the most important around the issue of the teaching of sex-gender diversity as an essential presupposition of the human condition, as a complex phenomenon where the deliberative process starts from nobody it is in a position to be a spokesperson for absolute truth in the discussion of moral issues, but rather, in the need to privilege a space in which the postulation of different arguments on the same subject can be heard and respected, putting reasonableness first, without losing sight of the reasonableness of the arguments of other people before closing the dialogue (Brussino, 2012, p.41).

Bioethics, like any other discipline, has different methodologies to study and analyze complex situations, among which we can mention the model of dilemmas, the case model and the problematizing model. The first, allows to identify two positions on the same subject to determine which is valid and which is not, the second, raises from a specific case the analysis of different edges that revolve around it to be in possibility to suggest a solution to the hypothetical case, and finally, the problematizing educational model, parts from a fundamental premise that there is no single solution to different moral conflicts, because here the process is much more enriching by allowing to listen to the different opinions, theoretical and even empirical postures on a complex moral phenomenon (Brussino, 2012, pp. 46-47). This last process occurs in two phases:

- 1st. Awareness stage of moral conflicts of unknown moral agents. That is, in the argumentative process the speakers must put themselves in the place of those who live the phenomenon, and

2nd. Narrative stage of the case. This pedagogical resource helps to empower the emotionality and imagination of those who study the moral conflict for decision making.

The problematizing model allows students to immerse themselves in the reality of the phenomenon, sensitizing the capacity of the subject to find a solution to a moral conflict. In this way, moral reflection on the subject of sex-generic diversity implies prioritizing among students the need to provide solutions not necessarily shared by all the interlocutors that participate in the deliberative process, but endowed with greater interest in the issues of strange moral agents.

In the end, as suggested by Álvarez Gayou Jurgenson, it will be important to prioritize a new educational concept which he calls " anestereotípica de los géneros " in basic education models, consisting of the tolerance of teachers to detect different ways of assuming gender roles in students, allowing the student to develop their abilities to the fullest, being who they are and not who we want them to be, avoiding repressing or sanctioning the subjective mood of a person's identity when trying to submit them to the stereotypes of both genders (2014 , pp. 103 and 104); using the problematizing model among students of higher education, since tolerance as Edgar Morin requires "supposes a conviction, a faith, an ethical choice and at the same time acceptance of the expression of ideas, convictions, choices contrary to the ours (Morin, 1999, page 56) ".

## VI. FINAL COMMENTS

*Trans* phenomenon has originated the interest of the national and international scientific community and of the public and private spheres since the sixties, after the advances registered in the field of endocrinology, hormonal treatments and reassignment surgeries.

The role of the movements for the vindication of the fundamental rights of the LGBTTT collective began to materialize through different resolutions pronounced by the European Court of Human Rights since the seventies, which later decisively influenced the comparative legislation of different countries of the world, in the same way as in the arguments put forward by judicial bodies at the regional and national levels.

For its part, the national legislative panorama begins to outline a trend of respect and recognition for sexual and gender diversity, particularly in some entities of our country, led by Mexico City. Despite this, there is still much

to be done in other important regions of the Mexican Republic that refuse to recognize and respect the fundamental rights of sex-generic diversities, due to the predominance of a conservative heterosexist cultural model, based on two unique sex-generic identities.

Education is the propitious means to create the transformation of values, beliefs and customs in any society on the planet. Mexico, like other countries of the continent, must design educational models that do not impede the construction of femininity, masculinity or the gender-generic identity that is preferred. It is a glimpse of a plural educational model that is consistent with tolerance and respect for diversity, beyond rigid stereotypes that only generate dissatisfaction and suffering for people.

Here, bioethics, as a space of interdisciplinary reflection, allows the meeting of the different voices and perspectives of the same phenomenon, to understand in a more plausible way the fundamental premise of the diverse characterization of the human condition; fundamental axis in the recognition and protection of the fundamental rights of people, and in particular of the most marginalized and vulnerable sectors of society.



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