Ius Comparatum – Global Studies in Comparative Law

Isabel C. Jaramillo
Laura Carlson *Editors*

Trans Rights and Wrongs

A Comparative Study of Legal Reform Concerning Trans Persons

Springer

Ius Comparatum - Global Studies in Comparative Law

Volume 54

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Editors

Trans Rights and Wrongs

A Comparative Study of Legal Reform Concerning Trans Persons

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ISSN 2214-6881 ISSN 2214-689X (electronic)
Ius Comparatum - Global Studies in Comparative Law
ISBN 978-3-030-68493-8 ISBN 978-3-030-68494-5 (eBook)
https://doi.org/10.1007/978-3-030-68494-5

This Springer imprint is published by the registered company Springer Nature Switzerland AG.
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Contents

Part I Introduction

The Stakes in Sex: Obstacles and Opportunities in Legal Reform for Trans Persons 3
Isabel C. Jaramillo

'X' Why? Gender Markers and Non-binary Transgender People 33
Florence Ashley

Part II The Strong Medicalization Model

Gender Identity and the LGBT Movement in Brazil 51
Ana Carla Harmatiuk Matos

The Legal Status of Trans Persons in the Republic of Croatia 71
Nenad Hlača

The Civil Status of Trans Persons in the Czech Republic 77
Zdeňka Králíčková

Gender Modification in Poland: A Case Law Phenomenon in a Civil Law Country 97
Michal Wojewoda

The Civil Status of Trans Persons Under the Romanian Legal System 119
Daniela-Anca Deteşeanu and Cristina-Mihaela Nicolescu

Gender Identity, National Identity and the Right to Self-Determination: The Peculiar Case of Taiwan 133
Yi-Chien Chen

Civil Status and Trans Persons in Turkey 149
Yalçın Tosun and Candan Yasan Tepetaş

Part III The Soft Medicalization Model

Civil Status and Trans Persons in Austria 181
Bea Verschraegen

Trans Persons in Belgium 207
Nicole Gallus and Gerd Verschelden

The Civil Status of Trans Persons in England 257
Peter Dunne

Trans Rights in Germany 279
Theresa Anna Richarz and Anne Sanders

The Protection of Trans Rights in Israel 305
Ido Katri

Part IV Self- determination in the Registration of Sex

Argentina, Trans Persons and the Development of a Human Rights Discourse 335
Laura Saldivia Menajovsky

La reconnaissance des droits des personnes trans au Canada 365
Michelle Giroux et Louise Langevin

Gender Identity, Human Dignity and Self-Determination in Chile 399
Fabiola Lathrop

The Story of the Recognition of Sexual Identity as a Source of Harm in Colombian Constitutional Law 437
Isabel C. Jaramillo

The Civil Status of Trans Persons in Denmark 451
Ditlev Tamm and Ingrid Lund-Andersen

The Civil Status of Trans Persons in Greece 463
Anna-Maria Konsta

The Law Concerning Trans Persons in Ireland 491
Peter Dunne

The Civil Status of Trans Persons in Norwegian Law 513
Andrea Vige Grønningsæter and Lars Arnesen

The Paradox of Trans Law in Sweden 541
Laura Carlson

Part I
Introduction

The Stakes in Sex: Obstacles and Opportunities in Legal Reform for Trans Persons

Isabel C. Jaramillo

Abstract This book comprises chapters from 23 different countries addressing the legal treatment of trans persons specifically with respect to recognition of gender identity through the laws governing civil status. The different chapters clearly demarcate the legal stages the issue of recognition has undergone: denial, suppression, oppression in the form of sterilization requirements and non-recognition, partial recognition and, now, in some countries, almost complete recognition. The chapters also address the different ways forward that can be contemplated by lawmakers everywhere.

For the past two centuries, feminists have struggled to convince us that sex is a marker for discrimination, exclusion and violence. The unapologetic fierceness that the modern state would deploy in policing the boundaries of sex however was impossible to predict. The high costs of the fragile promise contained in belonging to the "right" side of the male/female binary were difficult to anticipate even for trans persons themselves. This book maps national legal responses to gender mobility, including sex and name registration, access to gender modification interventions and anti-discrimination regulations. The chapters here underline the importance of history, culture and legal rules for understanding the operations of the law with respect to discrimination, exclusion, and violence, as well as the stickiness of nature as reason to introduce biology in the legal regulations of human relations and to justify pain and suffering. The scholarship here also reveals how different authorities and civil society became involved in either facilitating or impeding the welfare of trans persons, from judges and legislators, to medical commissions and law students, and from parents to children.

This book is the result of the work of a large number of scholars scattered around the globe. It was not produced with a particular theory or framework in mind. It was initially geared towards "reporting" the civil status of trans persons to the community

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I. C. Jaramillo, L. Carlson (eds.), *Trans Rights and Wrongs*, Ius Comparatum - Global Studies in Comparative Law 54,
https://doi.org/10.1007/978-3-030-68494-5_1

of comparative lawyers within the International Academy of Comparative Law in the XX Congress that took place in 2018.[1] As a report, it quite successfully traced national tendencies towards legal self-determination in sex classification and a generous guarantee of rights for individuals expressing diverse gender identities.[2] It revealed the dissemination of a model of protection of rights that not only focuses on formal equality, but addresses the administrative obstacles that trans persons face in their daily lives.[3] It also evidenced the importance of Courts in advancing or obstructing individual rights. As a reporting exercise, however, it was limited in its geographic scope, in the lack of trans personas as authors, and in terms of its timeliness. As to geographic scope, the reports fell short in being globally representative as most reports correspond to countries in the European region and the Americas. Another significant limitation with respect to our group of authors is that only one self- identifies as a trans person. Trans persons have been rightly adamant in their claim for inclusion using the "nothing about us without us" slogan. I personally have been accused of failing to understand the limitations that trans persons face in producing legal scholarship and therefore the privilege they should enjoy in academic settings in speaking about certain topics. As hard as these accusations are to hear for a cisgender woman from the south, that is, accusations about exclusion and privilege uttered by white trans men from the north, for example, this discussion underscores that the academic enterprise is never "neutral" and that each author's trans or cisgender interests drive our interpretations. Our authors are empathetic and concerned as to equality and non-discrimination protections for trans persons and rely heavily on reports and materials elaborated by trans organizations as to understanding this context. In some ways, our authors act more like spokespersons for trans persons: taking no part in defining the "problem" and following instructions in thinking about "solutions". But isn't this distance specifically "part of the problem"? Aren't we exoticizing trans persons and setting them up for exclusion when we fail to think of how we are also limited in our human possibilities when we do not take sex mobility seriously? May we at the same time recognize our cisgender privilege and find the abolition of this privilege to be in the interest for all? I hear myself suspiciously speaking as a man.

A final limitation with respect to our scholarship is its timeliness, restricting its utility in the long term, as legislation and doctrine are changing fast in this field. A notable example of this is the United States Supreme Court's landmark decision exactly 1 month before this manuscript was sent to the publishers, *Bostock v. Clayton County, Georgia*, in which the Court held that an employer who fires an individual merely for being gay or transgender violates Title VII of the Civil Rights Act

[1]For more information on the International Academy of Comparative Law see: https://aidc-iacl.org/. Accessed 2 July 2020. General reports for the Congress have been published as: https://www.springer.com/gp/book/9783030486747.

[2]The general report was published in the book: https://www.springer.com/gp/book/9783030486747.

[3]Spade (2015) (originally published by South End in 2009).

of 1964.[4] A seminal forerunner to this work is Professor Jen Scherpe's 2015 book, *The Legal Status of Transsexual and Transgender Persons,* which he generously shared with us very early on in the process of thinking about this question.[5] When our national authors where initially approached in 2016, massive changes in the legal landscape of trans persons were already in place, including those countries Scherpe initially covered. Other actors have had greater incentives and resources to keep track of these legal reforms, such as the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) which has been tracking legal reform affecting trans persons quite extensively since 2015, including 111 countries and 13 territories in their 2017 global report.[6]

The original national reports were consequently rewritten into these chapters addressing the local and transnational debates about legal reform concerning the rights of trans persons. The chapters below reveal the enormous diversity of institutional designs and legal responses to what appears to be a shared diagnosis of the needs and interests of trans persons. For purposes of structure, the difference in approaches to the civil status of trans persons is emphasized, as this was the point of departure for the initial reporting project, and it has been at the heart of the administrative turn in legal reform concerning trans persons.[7] Consequently, we have divided the chapters according to the model adopted by each country with regards to sex changes in the civil registry or official documentation.

Following Scherpe's taxonomy, we use three categories to classify countries in this aspect of their legislation: (1) self-determination; (2) soft medicalization; and (3) strong medicalization.[8] The first group includes countries in which individuals do not need to provide any evidence or support for their claim to change the sex marker in the registry or relevant documents. The following two categories rely on the medical community to establish the sex of the individual throughout her life. The first includes cases in which all that is required is support for the idea that the individual has consulted a professional, either a doctor or counsellor, on the issue of gender transformation, and shows willingness and abilities to undergo the process of becoming an individual of another gender or sex. The second refers to jurisdictions where it is still mandatory to undergo quite invasive surgeries for doctors to certify sex changes that an individual wishes to see formalized in documents. None of the chapters address the criminalization of sexual identity and national legislation prohibiting sexual mobility, though some chapters include accounts of how the issues of sexual and gender transitions were treated prior in their own jurisdictions and reveal quite stringent conditions for trans persons.

[4]See Bostock v. Clayton County, Georgia, -U.S-, Slip Opinion No. 17-1618. For a presentation of the legal treatment of trans persons in the United States, see for example, Schroth et al. (2018), pp. 91–126.

[5]Scherpe (2015).

[6]See https://ilga.org/trans-legal-mapping-report. Accessed 2 July 2020.

[7]Spade, *op.cit.*

[8]Scherpe, *op.cit.*

While there is a certain consensus about the advantages of the self-determination model over the other two, and of the soft medicalization model over the strong medicalization model, there is quite a bit of variation regarding the other guarantees, and no exact overlap as to the status model and how the system is perceived as a whole with regards to its ability to protect trans persons. For example, both Argentina and Colombia have embraced self-determination for sex markers in registration. But the amount of violence endured by trans persons in Colombia is much higher than in Argentina. Argentineans also have greater access to health services. The status model does not follow either the federal or centralist configuration of the countries studied, nor the importance of different authorities in furthering changes. Thus, even if the status model is quite relevant and seems to signal the political relevance of trans persons as minorities, it does not provide an understanding of the effects of legal reform or the contextual elements that might support or distract it.

In the following sections of this introductory chapter we: (1) present a review of the literature on the rights of trans persons; (2) explain the main features of each model for the registration of sex and names; (3) present the challenges and paradoxes faced by trans persons in accessing gender modification services; (4) address the reforms of antidiscrimination statutes to include sex identity as a source of discrimination, exclusion, and violence; and, (5) conclude by pointing to the importance of the subversions and displacements motivated by the recognition of trans rights in the realm of family law, and the questions they ignite as to the possibilities of feminist reform based on sex. Before moving ahead, a short note on terminology and authorship is provided, as this definitely has occupied a large part of the conversation about identity and distribution.

1 A Note on Terminology

Feminists have invested a lot of energy in the struggle over representation, the written word being one, but not the only, battlefield.[9] Normalizing the use of "gender" to refer to the characteristics which are socially assigned to individuals on the basis of their "sex" has probably been one of feminism's most important achievements. As noted by Joan Scott in her famous article "Gender as a useful category for historical analysis", "gender" was key to protect research units from accusations of bias. While this move could have had as a consequence the de-politicization of research, it also delegitimized arguments based on "nature" and prevented the construction of males and men as correlates of females and women.[10] In this fight, however, sex became stable, uncontested, and uninteresting as "nature", while gender was carefully scrutinized in its binary operation hoping to

[9] Jaramillo (2007), pp. 16–23. On the role of language in producing the world, I find MacKinnon's and Butler's work most appealing. MacKinnon (1993) and Butler (1990).

[10] Scott (1986), pp. 1053–1075.

unmask the injustices it produced and to discover ways to redress or transform them.[11] The binary nature of sex and gender was regularized in working through the oppression of women; no oppression may be described if the "sides" cannot somehow be fixed.[12]

The irruption of the trans question was certainly an irritation for feminists, who initially expressed little sympathy for the efforts of trans women to "belong" to feminism. In Latin America, feminists still remember the expulsion of trans women from the Latin American and Caribbean Feminist Encounter that took place in Brazil in 2001 as a crucial moment for feminism and the region.[13] Jack Halberstam tells a somewhat similar story for the United States.[14] We have learned a lot from trans persons and trans studies since then.[15] First, that sex, more than a fact, more than "nature", is a legal category: it produces effects through the decisions of doctors that

[11]Moving away from sex, as Scott explains, was essential to stop having to answer every claim about brain size, influence of hormones on behavior, and social behavior observed in animals. Many resisted this move within feminism. MacKinnon, for example, argued that sex was as socially constructed as gender and actually that legal categories flowed from male interest and investment in the system. She also emphasized that legal categories had to do with penetrability and therefore with sex as a practice of gratification. In this sense, sex as a practice of gratification would produce sex as a legal category and gender as a way of making sex intelligible socially. Mackinnon (1982), pp. 515–544. French feminists also have resisted the sex/gender difference arguing that all descriptions are socially constructed and therefore embracing such difference is in essence embracing a euphemism. They argue for the expression "social relations of the sexes" to emphasize that it is about power and not asceptic knowledge of reality. Daune-Richard and Devreux (1992), pp. 7–30. Delphy, C. 1970. L'ennemi principal. In *Partisans, n° spécial Libération des Femmes*, n°54-55, juillet – octobre, article reproduit dans Delphy (1998), p. 180; Devreux (1985), pp. 13–23.

[12]Halley (2008). Halley proposes here a definition of feminism that takes seriously this notion and therefore holds feminism to three propositions: (1) there are women and men in the world; (2) men are winners in the social distribution of resources; and (3) being a feminist is to be for women.

[13]On the events surrounding the expulsion of trans women from the Latin American and Caribbean Feminist Encounter see Restrepo, Alejandro and Bustamante, Ximena. 2009. *Encuentros Feministas Latinoamericanos y del Caribe (1981–2005): Apuntes para una Historia del Movimiento* (manuscript on hold with the author). The debate on trans women continued at least until 2010. In the 2009 Encuentro that took place in Mexico, trans women were invited but there still was a lot of dissatisfaction with their presence. On this matter Eli Bartra argues that trans gender women were perceived as "men disguised as women" (p. 200, translation mine) and more importantly that these trans women were included in the encounter just because of their gender identity, without consideration of whether they were feminist or not. For Bartra, as long as the trans women who participated were not feminists, they should have not participated. Bartra (2010), pp. 197–201. Bustamante, on her part, explains that the presence of trans gender women in the XI encounter was considered as an unwanted influence of international organizations in the encounter's priorities (p. 179). She also describes how rejection of trans gender women was grounded on biological conceptions of what being a "woman" means (p. 180). Bustamante (2010), pp. 165–189. On the question of entering the Encounters see Jaramillo Sierra, Isabel C. 2012. *Repolitizando las diferencias: una Intervención Crítica para la Memoria* (manuscript on hold with the author).

[14]Halberstam (2018).

[15]The field of transgender studies has been acknowledged by at least one commentator as the newest of academic fields. See Raskolnikov (2010), pp. 157–164. In the introduction to her book, Elliot (2010), Patricia Elliot foregrounds the existence of the field in the 1990s.

then become embodied in legal documents. Second, that doctors quite often have difficulties making these decisions, as variation among humans exceeds the criteria usually agreed upon as definitive: shape of genitals, genetic configuration, hormonal balances, self-image, among others. Third, that notwithstanding the societal efforts to uphold sexual differentiation through a binary, people can live quite ordinary and fulfilling lives without having to settle for one of the extremes. It is not clear to me that we have been able to transform feminist theory enough to account for these conceptual turns, but at least some of us are working on it.

In this work, the term **sex** refers to the legal category that builds on facts related to an individual's external characteristics, in particular the outlook of an individual's genitals, genetic configuration and hormonal production. **Sex mobility**, consequently, is used to refer to the possibility individuals may have under certain legal regimes to "move" from an assigned sex to another sex. In contrast, **gender** is used to refer to the multiple attributes that we consider as related to sex. **Gender mobility** refers then to the intention individuals may have of changing what they perceive is the baseline given by their sex; we use the expression **gender modification interventions** to refer to surgeries commonly referred to as gender reassignment or gender confirmation surgeries, in the understanding that individuals may choose and indeed do choose to change some parts of their bodies and not others, and that some surgeries or substantial body modifications can be considered as crucial by some individuals who are not interested in gender reassignment. We use the expression trans persons rather than transsexuals or transgender persons both because most issues concern them both, and because perpetuating the rift between them only helps to minoritize a claim that, as I will point out later, could become a universal claim about the role sex and gender play in shaping our lives and the pain they produce both for those who fit in too well, men and women, and for those who do not fit in, transsexuals and transgender persons.[16]

2 The Rights of Trans Persons in the Comparative Law Literature

Our search for a conversation has revealed that the topic of the legal recognition of trans persons from a comparative law perspective has been the subject of two major studies and fourteen articles published in academic journals. Here we will briefly summarize their most important findings and emphasize the contribution that this study makes to this corpus.

A ground-breaking first major study on the legal recognition of trans persons was *The Legal Status of Transsexual and Transgender Persons*, edited by Jens M. Scherpe and published by Intersentia in 2015. As explained by the editor, the book is the result of a project and conference led by the Center for Medical Ethics

[16]On the construction of minority claims and universal claims around sex see Sedgwick (1990).

and Law from the University of Hong Kong. The contributors in the book are twenty-six, and as the editors clarify, each country was selected because it either represented a region or a model of approaching legal recognition of gender identity. The book includes chapters concerning Italy, Spain, Japan, Hong Kong, Singapore, Australia, Norway, Austria, Brazil, Chile, Greece, Israel, Serbia, Czech Republic, Rumania, and Colombia. It lacks, just us in our case, chapters from any African jurisdiction. The questionnaire used to construct the chapters is similar in many ways to the one used here, but ours also included an emphasis on political actors and mobilization. The only contributor that participated in both projects is Professor Peter Dunne. In the very short introduction to the volume, the editor points out that the purpose of the study was to make visible the most recent developments away from medicalization and towards self-determination in sex, aiming at helping the law to develop without having to repeat mistakes already known. The book concludes with a set of recommendations for policymakers regarding the importance of adopting a self-determination model for sex mobility and providing access to health treatments for all trans persons.

The second study was led by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and first published in 2016 by the organization itself, with a second version released in November 2017.[17] The *Trans Legal Mapping Report* was authored by Zhan Chiam, Sandra Duffy and Matilda Gil González and it "covers the legal situations" of 111 countries and 13 territories. The report contains basic country information about sex and name change through a schematic chart that summarizes for each country whether name and sex changes are possible or not, which norm regulates each issue, and what are the requirements. Information about judicial and administrative decisions is included when available. The 2017 report includes an introduction to international law and the Interamerican System and to the situation of each region in the world with regards to the topics. Interviews of certain activists on the law "in action" or "on the ground" are also to be found. The preface by Zhan Chiam points out that the compilation is intended to circulate information among activists interested in changing the law and therefore, and above all, is an advocacy tool. The preface also celebrates national "advancements" and makes some politically-charged assertions: (1) the document materialized the notion that all studies about trans persons should include them or consult them as experts; and (2) there is no north/south divide that is relevant, as trans persons in all countries endure barriers to legal recognition.

The articles found on different databases concerning the legal treatment of trans persons numbered fourteen published between 2005 and 2016, with more than half published after 2010. Only the three articles from 2005 that use the United States as one of their main, or only, case studies, engage with the problem of conceptualization and criticize the effects of identity in the law.[18] Lloyd and Ohle show how legal discourse produces trans persons as monsters or, alternatively, as sick in order to

[17]Available for free online at: www.ilga.org. Accessed 2 July 2020.

[18]Lloyd (2005), p. 150; Ohle (2005), pp. 237–280; Cowan (2005), pp. 67–96.

deny them basic rights. These authors stress the role of judicial decisions and judicial language in sustaining these images. For Cowan, the comparison between the United States, Canada and the United Kingdom serves to illuminate the usefulness of abandoning the gender/sex difference and the impact of reforms regarding the recognition of trans persons on women.

Most of the articles focused on the functional work that is dominant in the field of comparative law: they use their case studies either to ask others to emulate a good example or to criticize the perversity of the solution adopted. Five articles describe certain cases as examples to follow. In his study of the cases of the United States, Hong Kong and South Korea, Holning describes the decisions by the courts in Hong Kong and South Korea to show possible reasons to change the law on same sex marriage and sex change in the United States.[19] The article by Boyce and Coyle on the 2007 decision of the Supreme Court of Nepal that granted recognition to trans persons and demanded the introduction of a third sex in official documents, similarly, aims at providing activists in other countries with arguments to eventually change their laws in the way suggested by the ruling.[20] The articles by Jiang and Fynes are particularly geared at changing the law in Hong Kong and Ireland, respectively. Jiang uses the cases of Singapore, Japan and the United Kingdom to show the possibility of producing an argument to allow for a sex change for purposes of marriage in the law of Hong Kong.[21] Fynes uses the case of the United Kingdom to argue for change in Ireland. Nonetheless, much in the same vein as Scherpe's work, it recommends that Ireland learn from the mistakes of the United Kingdom and jumps ahead in the recognition of trans persons.[22] Finally, Mrsevic, in his 2016 revision of the legislation in 14 countries around the world, aspires to deliver evidence of the existence of a tendency to accept sex mobility without a diagnosis in order to inspire legal change.[23]

Five more articles reflect on cases which they see as positive but still limited versions of recognition of trans persons. Three of these articles concern the case of India and two the case of the European Union. The articles concerning the case of India stress the importance of pre-European notions of gender and specially the favorable legal and cultural treatment granted to hijras.[24] The most recent ones engage the Supreme Court ruling of 2014, which commanded the introduction of a third sex and the possibility of a sex change.[25] Both articles are interested in the fact that the same Court has refused to decriminalize same sex copulation, while

[19]Holning (2008), p. 67.

[20]Boyce and Coyle (2013), pp. 1–32. It is important to note that the authors do not embrace fully the reasoning used by the Court, as they believe that it relied too heavily on ideas of nature and the natural.

[21]Jiang (2013), pp. 31–73.

[22]Fynes (2014), pp. 31–58.

[23]Mršević (2016), pp. 115–132.

[24]Patel (2010), pp. 835–863.

[25]Swain (2016), pp. 1–6. Kodiyath, S.P. 2015. Deciphering the Dichotomy: Supreme Court of India's Contrasting Jurisprudence on Transgender Rights and Homosexuality. In *N.A.Palkhivala Academy for Advanced Legal Studies and Research*.

admitting the existence of a third sex. The remaining two articles explain the conceptual and historical road traversed in the European Union to recognize the harm in not allowing for a sex change, while at the same time being critical of the distance that has yet to be travelled.[26]

In conclusion, the last few years reveal a particular interest in understanding the legal recognition of trans persons and advocating for a model of self-determination. Comparative law, in these works, helps to reveal frequent mistakes, tendencies and models to follow. Political and theoretical debates are more often treated using individual case studies. In this sense, the present book synthetizes these two tendencies in the literature without being terribly innovative: it is both animated by a functional approach to comparisons and wishes to make some theoretical interventions. More importantly, this work includes chapters on cases mostly unknown to the English and French speaking public and details about the way in which administrative and political apparatuses work to limit possibilities of change. It also reveals gaps in our understanding of the regulatory failures, as neither normalization nor exceptionalization seem to significantly reduce the violence endured by trans persons.

3 Models to Deal with Sex Mobility

We have so far found that countries use two mechanisms to create sex: birth certificates, either produced by the civil registry office or by some other office for the control of population, and identification cards, driving licenses and passports being the most frequently used. Birth certificates have primacy over other documents, as the truth they are expected to contain is generally reproduced in other documents without any need of further proof. For this same reason, the first mechanisms have been harder to change and negotiate than driving licenses and passports, prioritizing the need for certainty in identification over granting rights on the basis of sex.

I propose here the existence of four models to deal with sex mobility.[27] We call the first model the model of "non recognition". The second model we refer to as a model of "strong medicalization" because it demands medical proof of *sex affirming surgery,* including procedures involving sterilization, to make any annotation with regards to change in sex.[28] The third model is a model of "soft medicalization" because it involves doctors in the process of authorizing and accounting changes in sex, but it leaves it to the medical community to decide the criteria it will use. The fourth model, including one-third of the countries covered here, is a model of "self-determination", where individuals are entitled to make the decision about the sex they wish to see reported to others. Each model is described below, including the

[26]Bell (2012), pp. 127–146; Theilen (2016).

[27]Scherpe also has four categories or stages that closely resembles the ones I use here. See Scherpe, *op.cit.*

[28]For a definition of Sex Affirming Surgery see: https://hr.cornell.edu/sites/default/files/trans%20terms.pdf. Accessed 2 July 2020.

justifications used to keep it in place or produce the change the model represents; the focus of legal strategies intending to change the model or that led to the adoption of the present model; and remarks on the operation of the model as available.

The issue of names is also taken up here, identifying three ways of approaching the relationship of names to sex. The first, adopted early on by Germany as a "solution" for the trans persons "problem", supposes that names are gendered and therefore a matter for sex mobility, but that there might be greater flexibility in the regime of names than in the regime of sex. About half the countries in this book adopted first a regime of name flexibilization and later a model of self- determination for sex mobility. The second way does not recognize a relationship between names and sex and therefore allows for name changes through custom or habit and only sets limits on changes for reasons of fraud or criminal intent. The third way deems the relationship between names and sex so strong that it only allows name changes after changes in sex.

Finally, this part reflects on the differences in regulation concerning children's ability to engage in sex mobility and treatment of intersexual conditions as demonstrated by the different national solutions presented in the chapters. As seen from the country chapters included here, the legislation of some countries recognizes that forcing public officials to classify an individual as male or female upon birth may create serious problems for many persons. Some of these countries allow public officials to leave the sex box blank, others allow for sex changes as early as 6 years of age. Most countries, however, neither allow for a third sex nor for sex changes before the age of sixteen.

4 Ground Zero: Non-recognition of Sex Mobility

According to the work of Schroth and others, only four states in the United States still have legislation that prevents individuals from changing the sex they were assigned at the moment of birth: Idaho, Kansas, Ohio and Tennessee.[29] In these states, as infamously used to be the case in England, birth certificates cannot be changed during an individual's life. In England, as Professor Dunne explains, this model was maintained through more than 30 years of litigation in domestic and European Courts. Indeed, as early as 1971, in the Corbett v. Corbett case, the Court decided that a trans woman could not marry a man, even though she had undergone complete sex reassignment surgery, because she could not be considered a woman for marriage. The Court explained that not even gender confirmation surgeries could change the "natural" sex a person is born with. This position was endorsed also in R v. Tan, 1983, where the Court found that a trans woman could be convicted as a pimp, even though this was a male-only crime in British legislation at that time. This position was sanctioned by the European Court of Human Rights in the Rees v. United Kingdom case, in which the Court acknowledged the possible violation

[29]Schroth et al. (2018), pp. 91–126.

of article 8 of the Convention, but found that the conduct of the United Kingdom fell within its margin of appreciation. The limits of this decision were clarified by the Court in its 1992 decision on B v. France, where it found that France violated article 8 of the Convention when refusing to register sex changes while allowing to make many other amendments in the birth certificate of its citizens and registered different sexes for the same person in different documents. Accordingly, the situation of the United Kingdom was exceptionalized as one in which that which was being protected was the accuracy of a document intended to establish circumstances at birth and not to register changes suffered by individuals through life. Not surprisingly, litigation on this topic concerning the United Kingdom is abundant, with more than four cases decided by the Court without any change in the doctrine of the margin of appreciation coloring the regulation of changes in birth certificates.

The difference the European Court of Human Rights was highlighting was a difference emphasized in early comparative law debates that built on the notions of legal families.[30] "Civil status" was a category introduced by the Napoleonic Code to account for individual characteristics that would have "weight" in assigning rights. The proof of civil status was assigned to the office of civil registry, and certificates emanating from the registry were deemed definitive proof. Civil registration, as conjured by the French, nonetheless, incorporated procedures to introduce changes when confronting a mistake or a new fact. Most notable among the new facts demanding changes in the registry were those relating to paternity and marriage. With regards to paternity, changes in the civil registry reflected both cases in which an individual ceased to be the father of someone else, or an individual became a father. These types of changes appear exclusively in the birth registry of the child. In relation to marriage, dissolution of a marriage by death, annulment or divorce, merits inscription in the marriage registry to signal the change from the married status to the status as single person. Changes deriving from "new facts" have been tied up to procedures as simple as a declaration before a notary public of the acknowledgement of an individual as one's own son or daughter, and as complicated as a contentious judicial procedure in which the truth of paternity or marital fault are determined. As noted by those authors in civil law systems, civil registration around the world still follows these basic intuitions.

This civil law approach to the issue of civil status is foreign to those jurisdictions were control of birth information lies with municipal or fiscal authorities and birth certificates are considered only to describe a fact occurring in one moment in time: the birth of a child. From what those authors explain, these systems do not foresee the possibility of facts relating to birth changing, and therefore, have been slow to develop answers to requests in this regard. The most notable case of "conceptual" freeze, as stated above, was the United Kingdom. The UK repeatedly argued that birth certificates in so far as they are only declarative of a fact that could not change, "birth", could not be amended to facilitate the exercise of rights by individuals who had in effect had changed since the moment of birth in relation to one of the

[30]See David and Brierley (1968).

characteristics relevant to the exercise of rights. Denmark, Norway and Sweden, on their part, were presented as having population registrations by fiscal authorities and marking sex in the social security number of individuals. This latter system has proven to be the easiest to change, probably because of its little conceptual baggage: Sweden introduced a law to deal with sex changes as early as 1972, and Norway was recently recognized as the "second best" in protecting the rights of trans persons.

5 Gender Affirmation Surgeries As a Requirement for Changes in Birth Certificates

Ten of the chapters below describe their countries as currently requiring "sex reassignment" surgery as a requisite to obtaining changes in the sex reported in the birth certificate of an individual: Brazil, Chile,[31] Croatia, Czech Republic, Rumania, Serbia, Poland, Taiwan, Turkey and some states in the United States (including the state of Alabama).[32] In all of these countries, sex needs to be registered at birth and this fact may only change if the individual successfully completes sex reassignment surgery, which is the last step in a long path that individuals may take to go from one sex to the other. This way includes different stages of hormonal therapy, openly living as the other "sex" for a period of time, and finally undergoing castration or mastectomy, and reconstruction of sex organs associated to the new sex. During the stage in which the individual lives as the other "sex", he or she may use an assortment of treatments to appear more clearly as "other": definitive depilation of face, legs and arms, voice training, hair implants, prosthetic implants, among others. Though not all stages are mandatory to obtain the sex reassignment surgery, it is crucial to note the amount of "work" that is demanded legally from the individual before allowing annotation of any change.

It is also important to highlight variations existing among these countries with regards to access to sex reassignment surgeries and the indeterminacy attributed to the rule. Thus, in Poland and Rumania, surgeries required to prove sex changes need to be authorized by a judge as they are considered to affect a "personal good" protected by the Constitution. In Poland, the requirement was introduced through a decision by the Supreme Court in 1991. In Rumania, the author explains that the requirement was introduced in a 1996 law that in 2008 was declared constitutional by the Constitutional Court. In Rumania to obtain a change of sex, individuals must first approach an authorized doctor, then must initiate a judicial procedure in order to receive sex reassignment surgery, then need to start a judicial procedure to get a

[31] As explained by Fabiola Lathrop in her chapter here, Chile recently adopted a law that introduced the self-determination model.

[32] Schroth et al. (2018), pp. 91–126.

change in the birth certificate after the surgery has been completed, finally they need to ask for a change in name and ID number.

The authors covering Brazil and Chile, on their part, explain that judges occasionally interpret that changes in sex do not demand gender affirmation surgery. Professor Lathrop from Chile, for example, points out to the importance of strategic litigation led by Professor Lorena Lorca in changing precedent in 24 cases. Lathrop notes that although the requirement is included in Law 4808, the Chilean Constitutional Court interpreted gender identity to be protected implicitly by the Chilean Constitution and explicitly by international law binding on the Chilean State (Judgement 834 by the Chilean Constitutional Court). In Brazil, both changing name and sex in the registry demand a judicial decision, according to Professor Mattos. Judges, in turn, have understood that the only appropriate evidence for them to acknowledge and authorize a name change and sex is evidence of the realization of a sex reassignment surgery. Mattos also explains, however, that some judges have allowed name and sex changes without verifying sex reassignment surgeries. To the contrary, in the case of Turkey, judges over interpret the Turkish Civil Code to mean that the only way to prove there is a just ground for name change, which precedes a sex change, is proving having undergone sex reassignment surgery. Though it is not an explicit requirement for a name change, regulated in 2002, the authors note that judges hardly accept any other evidence to prove that there is a just ground for a name change. The authors also note that notwithstanding the existence of a 2015 case by the European Court finding that the sterilization requirement is in violation of article 8 in the Convention, the *Cour de Cassation* upheld the sterilization requirement in a decision subsequent to the one adopted by the European Court.

In Croatia and the Czech Republic, sex reassignment surgery was introduced as a requirement for a sex change through legislation in 2013 and 2008, respectively. In the case of Croatia, the law demands a certificate from an authorized doctor. The author notes that there are very few of these doctors, and that there are no specialists or clinics that perform these surgeries in the country, making access to sex changes very difficult. The Taiwanese 2008 Directive governing the matter of a sex change is probably the one that most clearly determines the requirement: for cases of male to female transitions, the applicant must prove they have had both penis and testicles removed; for cases of female to male transition, the applicant must prove the removal of breasts and the uterus.

The case of Serbia is interesting because there is no law or regulation explicitly governing changes of sex. The author notes that in Belgrade and Novi, municipal authorities treat a sex change as a correction in the individual's birth certificate if sex reassignment surgery has been completed. The Constitutional Court supported this interpretation in 2012, though it also stated the importance of having a specific law regulating this matter. Professor Jancic explains that the two attempts to legislate on this topic were unsuccessful (2012, 2013).

6 Power to Doctors: The Soft Medicalization Model

Five countries were noted as allowing for a sex change without having to prove the completion of sex reassignment surgery but still requiring a statement by a medical doctor concerning the "condition" of the individual: New Zealand (1995), England (2004), Germany (2011), Austria (2013), Israel (2014), the Netherlands (2014), and Belgium (2017). Again, there are relevant variations amongst these countries: while England requires individuals to prove that they have a gender dysphoria diagnosis, have had at least 2 years of "real life experience" and have the consent of their spouse (2004 Gender Recognition Act), Belgium only brings in a psychiatrist to attest to the time the individual has been struggling with his/her transition when he/she is a minor. In Germany, Austria, Israel and the Netherlands, doctors are in charge of certifying significant changes in sex and prevented from restricting this diagnosis to cases in which sex reassignment surgery has been completed.

Authors of the chapters for Austria and Israel, nonetheless, express their concern that doctors make it very difficult for individuals to obtain certifications of sex changes. Professor Bea Verschraegen, from Austria, explains that according to the 2013 law on this topic, a change in the sex initially registered demands evidence of medical changes adopted by the individual and an expert opinion that the person's sex will not change again. Though the law requires public officials to keep anonymized statistics on sex changes, Verschraegen has not been successful in locating them, and estimates that not more than ten changes have occurred per year after the enactment of the law. She mentions that there is a perceived lack of consensus among the medical community regarding sex changes. The authors for Israel note that although the 2014 directive by the Ministry of the Interior regarding a sex change establishes that a sex change does not need certification of sex reassignment, the Surgery Committee in charge of giving the required certification is very "conservative and pathologizing" and usually demands more than 2 years of real life experience. The attempt by the Ministry of Health to authorize any medical doctor to certify relevant sex changes for purposes of changes in the registry has been blocked by officials arguing that this was a misunderstanding of the High Court's ruling in the 2014 case that led the Ministry of Interior to issue the directive regarding a sex change.

The chapter on The Netherlands is careful in explaining the costs associated with a sex changes, mainly derived from the need to submit an expert report to have sex changed in the civil registry. These costs are not covered by the health system or private insurance and span from 60 to 300 euros, and only a few doctors are authorized as experts. Interestingly, though, these are some of the "lightest" reports as they need only certify that the person is convinced and that he/she understands the consequences of the procedure.

7 Self-determination As a Legitimate Source of Sex

Eight of the countries covered in this volume allow for self-determination in establishing sex in the civil registry or population logs: Argentina (2012), Sweden (2013), Denmark (2014), Colombia and Ireland (2015), Norway (2016), Belgium and Greece (2017). The state of Oregon in the United States and Ontario and Alberta in Canada also allow for self-determination. In most cases, reform was introduced by a legislative body. The exceptions are Colombia and Canada, where judges have led the way by introducing rules regarding a sex change and precedent still is the main source of law.

There are also important variations as to the level of protection the model offers to trans persons. Argentina, while being the first legislation to endorse self-determination in sex, or auto identification, still has the legislation most concerned with facilitating self-determination of trans persons and protecting them from police brutality and persecution. Law 26743 of 2012, indeed, establishes a right to gender identity, the duty of registration officials of marking the sex indicated by the person without questions about convictions or proof of such convictions, and the right to obtain treatment to modify gender characteristics. Law 26791 of 2012 establishes the maximum penalty—life imprisonment—for individuals found guilty of killing a person because of her gender identity. Professor Saldivia, the author for Argentina, explains that these views about gender identity and the importance of protecting trans persons from aggression are related to the campaigns against police brutality that followed the transition to democracy in the early 1980's, the relevance of "true" identity in the memory campaigns led by the Plaza de Mayo grandmothers, and advocacy for a depathologization of mental health patients in general.

In every other country, some requirement in addition to free will remains in place. In Sweden and Greece, individuals wishing to change their sex have to show that they are unmarried. In Greece this requirement is related to the non-recognition of same sex marriages. Change of sex produced in this way, nonetheless, is only acknowledged by administrative authorities. Only judicial decisions certifying sex changes are considered binding on all authorities. In Denmark, there is a waiting period of 6 months and a duty to appear in person before the public official twice. This is also the case in Belgium. The 2017 law on gender identity determined that to change sex in official documents, individuals should appear twice before competent authorities, wait 3–6 months, and prove being fully informed about the consequences of the procedure. The Public Prosecutor's office also needs to be notified in case it wishes to raise an objection. In Belgium individuals may request the sex change to be reverted to avoid transphobia or because they felt happier before the change. In Norway, individuals need to contact the Directorate of Taxes for pertinent information, and send back a signed slip confirming they have received proper information. The procedure is only available for Norwegian citizens. In Ireland, similarly, individuals need to declare that they are acting out of their own free will and know the consequences of their decision. In Colombia, individuals need to

approach a public notary and have a public deed produced for the registrar to make the change.

8 Name Changes: Not Always a Small Solution

The expression "small solution" in the context of trans persons was introduced in the German doctrinal debate referring to the possibility of introducing flexibility in the regime of naming to allow trans persons to use their identified sex rather than their legal sex in social contexts. As in many of the countries included here, German law restricts naming practices to accomplish two objectives: to reflect the person's sex and to prevent humiliation and ridicule in the case of children. In 1980, a law regarding the change of names and declaration of affiliation to a sex was introduced to allow trans persons to build a social identity somehow separated from their legal identity. The law uses the expression "transsexual imprint" to refer to the cases it addresses and allows individuals to petition district courts to obtain a change in their name to reflect their sex affiliation. For this change to be ordered, the individual needs to present opinions about their case by two experts in transsexualism. Professor Sanders explains that until 1993, individuals had to be more than 25 years old to request a change of name, and until 1996, individuals could be referred to by their legal sex rather than their identified sex. Doctrine strongly advocated that change of sex demanded full sex reassignment. Only since 2011, through a decision of the German Constitutional Court, requirements for a sex change became the same established in the 1980 law for name change.

Belgium, as Germany, adopted this solution for trans persons quite early on already in 1987. Following this law, individuals who felt they wanted to change their forename because their sex did not match the sex in the birth certificate, had to submit a declaration of honor with their request and have declarations from medical experts regarding the individual's experience of sex mobility. Nowadays, though, trans persons who have had their sex changed in the certificate have a right to change their forenames at a reduced rate of 49 euros. As professors Gallus and Verschelden note, other persons interested in changing their forenames can do so if allowed by the Federal Public Service and need to pay 490 euros.

In Colombia, individuals may change their name for free and at will since 1988 without having to state any reason or give justification. Although there are no restrictions in the law regarding the name that an individual may choose, in 1993 the Constitutional Court decided a case in which a public official had denied a request of name change because the individual was choosing a female name while being identified as a man in the birth certificate. In decision T-594 of 1993, the Court affirmed that names were deeply connected to the right to an identity and therefore public officials could not place any restrictions on an individual's choice of name when requesting a name change. This rule covered not only trans persons but also persons wishing to adopt ridiculous or humiliating names. In decision T-168 of 2005, the Court asserted the right of an individual to bear the name of his preferred

soccer team over the public official concern as to trademarks and authenticity in the desire to be called in such a ridiculous way. In 2008, the Court explained that individuals that had changed their name once, could change it a second time if the aim was to have their name correspond to their sexual identity. In its most recent decision on the law of name changes, C-114 of 2017, the Court clarified the general right of individuals to change their name more than once but the duty, according to the Civil Procedure Code, of obtaining judicial authorization for the change. One reason for a second name change, as the Court consistently recognized since 2008, could be a change in sex, but the Court recognized in this decision that there could be other circumstances justifying the name change that could be pondered by judges and lead to exceptional authorizations.

In Denmark, a name change was also made accessible to trans persons before adopting a model of self-determination for sex mobility. According to the Act on Names, individual names have to belong to a list of approved names for each sex. Nonetheless, since 2005, the Ministry of the Interior allows changes for people who have been declared "transsexuals" by the Sexology Clinic in Stockholm. After 2009, a report by the Sexology Clinic was deemed unnecessary for a name change. In Sweden, similarly, change of name has been possible in order to reflect an individual's choice of sex since 2009. For this country, however, the change in the very strict regulation of names was introduced by a decision by the Supreme Administrative Court that determined that choice of name could not be restricted by public officials.

England had a flexibility in naming practices that somehow did not bear a relation to the rigidity of the legal system with regards to sex changes in official documents. As covered by Professor Dunne, no formalities are needed to use different names in different life situations: "Under the English Common Law, persons have the right to change their name without undertaking formal legal procedure (provided there is no fraudulent or criminal intent)". But to have a name change acknowledged by government officials a deed poll needs to be executed. These deed polls require either a declaration signed by two witnesses that attest to the fact that the individual is known by the new name rather than by the "official" one; or a request by an organization with which an individual is interacting. Having executed a name change is considered evidence of the real-life experience demanded to obtain a gender recognition certificate after 2004. The USA, according to those authors, has a similar system for name change: individuals may request a change of name by state level courts and in general all they need to do is appear in court. In this case, nonetheless, the authors identify higher risks for trans persons given the power judges have in the common law to impede a name change to "prevent fraud". They also explain that certain states do not allow people in prison or on parole to change names and this significantly affects trans persons who have much higher probabilities of being in these situations.

The same flexibility in naming is attributed to Israel by the authors of that chapter. They state that individuals may freely request changes in their names every 7 years. The term limits may be set aside where special circumstances arise. Israel, on the other hand, retains a soft medicalization model with little access to sex mobility as

pointed out above. Taiwan is another example where names can easily be changed. Professor Yi-Chien Chen explains that people change names for a variety of reasons in Taiwan, including following recommendations from fortune tellers regarding bad luck.

The idea that names can be expressive of individual choices is completely absent in some countries where names are so strictly tied to gender and strongly regulated by the state that individuals may only change their names after undergoing a sex change and then only after completing sex reassignment surgery. This is true for Poland, Rumania, Serbia, Turkey and the Czech Republic. In all of these countries, changes in name require a judicial or administrative authorization after corroboration of a "justifiable reason". Those authors point out that judges and other public officials routinely interpret that the only justifiable reason for a man to use a woman's name and vice versa is to have changed her sex. In these countries, a change of sex is only authorized after sex reassignment surgery and this surgery needs judicial authorization. In Brazil and Chile, most judges also interpret that changes in name can only follow a change in sex. In Brazil, a name change to reflect sexual identity was only recently authorized in 2017. As pointed out above, in general these countries also demand sex reassignment surgery before allowing a sex change but judges may decide otherwise, and have done so. Norway is the only country that ties change of sex to change of name and has adopted the self-determination model for sexual identification. In this country, individuals may change their name every 10 years and individuals choosing sex mobility may choose gender neutral names before definitively changing to a name from the other sex.

9 Family Law Effects

Sex plays a crucial role in the regulation of marriage and parenting in most countries. With regards to marriage, the initially question was whether an individual who had undergone gender reassignment surgery could marry according to her new sex. This was the issue in Goodwin v. United Kingdom that in 2002 led the European Court of Human Rights to require England to allow legal recognition of changes of sex in birth certificates. As sex changes started to be legally recognized, the question of the dissolution of marriage by a sex change became crucial, with most jurisdictions establishing an *ipso facto* dissolution of any marriage involving a person who had undergone gender reassignment surgery. As same sex marriage became sanctioned in most jurisdictions represented here, rules demanding the celibacy of trans persons, establishing the dissolution of their marriages or converting their marriages into civil partnerships, were explicitly or implicitly repealed. Only Poland, Greece and Turkey still demand celibacy for a sex change among the countries included here. In England, individuals who are married need to show they have spousal consent to have their gender recognition certificate issued.

Most jurisdictions represented here, on the other hand, determine that sex changes do not affect the birth certificates of any children of trans persons. This rule is criticized for not representing the "truth" of the situation and potentially leading to confusion, especially as erasing traces of sex and name changes becomes a standard way of protecting trans persons from transphobia. There is consensus, nonetheless, that once the parenting relationship is established, changing the name or sex cannot affect the legal bond between the parent and child. Much more difficult to tackle has been those situations of trans men who give birth. The chapter on Israel explains that in one case, sex was legally changed five times to accommodate the fact that according to Israeli law, only women could be mothers and children could not be registered as motherless. Several chapters explain that as sex changes without sterilization become normal, the need to address parenting rules will become more urgent. In the case of a woman who gives birth while married to a trans woman, the co-maternity arrangement adopted by Norway and a few other countries for the case of same sex couples seems to work well enough. Still, it reveals the extent to which legal solutions for lesbians and gays may not be enough for trans persons: "nature" is put to the test in quite different ways.

10 Non-binary Sex Reporting: Dealing with Early Sex Ambiguity and Mobility

As seen above, the experiences of others than trans persons have also reached courts and legislatures. Individuals born with sexual ambiguity and experiences of sex mobility at very early ages have also influenced the regulation of sex. A few countries included here have regulations for such situations. In Argentina, Law 26743 of 2012 establishes that minors may request a sex change with parental support and following rules of progressive autonomy introduced by the Convention on the Rights of the Child. In effect, a famous Argentinean case involved a 6-year-old that was allowed to change her sex. The Norwegian reform of 2016 also allows changing the sex of individuals from zero to 6 years of age. For this age range, however, it demands proving a medical condition. For individuals between 6 and 16 years of age, a sex change is allowed with parental consent and guidance.

The considerations concerning sex interventions at early ages were carefully discussed by the Colombian Constitutional Court in 1999 (decision SU-337 of 1999). The Court confronted the case of a 7-year-old whose mother, under the advice of a medical team, considered it beneficial to subject her to a medical intervention to establish her sex more clearly. The medical team had denied the child surgery based on a 1995 decision (decision T-495 of 1995) by this same Court that argued that surgical interventions on intersexual persons should not be performed until the individual reached the point of being able to give consent. The 1999 Court, in a plenary decision, determined that sex assignment surgeries are not urgent but are indeed very invasive and therefore require the consent of the

individual affected, parental consent being important as support and guidance but not enough to proceed with a surgery. The Court took into consideration multiple studies and testimonies to the effect that hormonal and surgical interventions at an early age seem to work more to satisfy societal demands of sexual determination than to help individuals live happier lives. The Court carefully considered the pain and suffering reported by individuals forced to submit to many medical interventions over their first years of age who later on found either that the medical team made a mistake when assigning the sex and working to confirm it, or that in adolescence new facts arose that made initial decisions seem less adequate. Though the Court found that it could not force intersexual persons to lead societal change about sex, it also found that it could force registrars to accept leaving the sex box blank.

The Colombian solution is similar to the one adopted by the 2017 directive of the Ministry of Health in Israel, which establishes that surgeries should always be consented to by the individuals affected unless there is proof of risk to life. Sweden introduced in 2013 a restriction on medical interventions for trans persons at 12 years of age. The only other chapter mentioning this issue was the one on England. Professor Dunne explains that the Committee on the Rights of the Child has advised England to introduce regulations concerning surgeries on intersex babies. The author covering Chile found at least one case in which a 5-year-old was allowed to change her name and sex in legal documents (it is not clear that she was an intersexual person). Most chapters corroborate that the age for engaging a sex change, especially if surgery is involved, is 18 years. Some countries allow 15 years-old to start the process, with additional requirements. Interestingly, however, there is no mention of the practice regarding intersex babies. Most countries do force registrars, and doctors, to choose M or F when issuing birth certificates. Only Germany, Austria, the province of Ontario, and the Netherlands, besides Colombia, are seen as allowing for a blank, an x, or stating that sex is indeterminate in the birth certificate. Denmark allows for an x in passports.

The debate before the Colombian Constitutional Court illustrates the rift between individuals who feel that sex determination is integral to living good lives, and therefore support a sexual binary and emphasize sex mobility, and individuals who believe that sex is/should be ambiguous, and therefore should not matter for society or for legislation. As we will show in the conclusions, most countries allowing for a sex change have not transformed sexually-segregated facilities and educational spaces, sexually-segregated armies, differences in social security regulations, special protections for women, among other relevant consequences of sex. This approach supports the first position; sex should matter but individuals should be able to choose according to their inner experience of how sex matters. The second position is closer to a feminist understanding of how the world should change.

11 Conclusions: The Ideal Model for Sex Mobility

The author writing on Argentina, Professor Saldivia, correctly notes that in these times of biometric identification, the emphasis on security as the value safeguarded by rules on sex identification seems misplaced. Argentinian legislation allowing for choice of sex in birth certificates and other official documents, the model we have called here of self-determination, appears to adequately protect the right of individuals to decide on their belonging to one sex or the other without recourse to doctors, psychiatrists or other experts. This model also diminishes possibilities of humiliation and offense by public officials. It alleviates making decisions about bodily shape and function without proper information, or just to comply with expectations about sex. that constitute heavy burdens on those individuals who certainly are not adequately classified but who are not certain as to the need to proceed by doing dangerous and costly things to "fit in".

The question of intersexual persons becomes most relevant in the context of accepting that legal sex need not correspond to any "biological" reality. As a matter of fact, as pointed out by several authors, the impulse of "biological" conformity normalized sexual reassignment surgeries for intersexual babies and toddlers in countries were adults were prevented from requesting these procedures and not allowed to act as having a sex different from the one they were initially registered with. Detaching sex from "biology" then should also help in reducing the sense of urgency with which the "problem" of intersexuality has been handled up until now. Stressing self-determination could also lead, as established by the Colombian Constitutional Court, to an understanding of the importance of waiting for individuals to have enough discernment to make decisions regarding their own bodies. The need to create a third box for sex or allow sex to be marked as unknown becomes irrelevant or most important, depending on the position one subscribes to concerning the relevance of sex for social life. Indeed, if sex is a matter of choice and self-determination, intersexual persons should feel at ease in deciding for one or the other knowing that they may later change it if their choice does not correspond to their actual experience. This would agree with the idea that self-determination in sex leads to the deconstruction of sex. For those who believe that the self-determination model is proper not because it makes sex irrelevant but because it alleviates bureaucratic burdens for trans persons, then a third sex becomes important to allow intersexual persons to be correctly represented by legal categories. Interestingly enough, countries that currently have regulations concerning a third sex or allow the sex box to not be marked, also have self-determination models for sex.

12 Gender Modification Interventions and Sex Mobility

An important element in the development of the "issue" of trans persons is the technological progress in bodily interventions and the growth of a cosmetic industry that not only embellishes but also modifies bodily shape and function, mostly feeding on women's anxiety over their appearance and recently also catering to men. In this context, the inner experience of "belonging to another sex" or "being trapped in the wrong body" can be translated into practices of body modification with high costs and, still, associated with high risks. The relevant question becomes then who should bear the costs of these practices of modification. The answer provided by most authors is that national health systems consider gender reassignment surgeries to be included in the mandatory health package. Most authors, nonetheless, point to harsh realities even in this scheme and suggest that health systems should also cover other gender modification costs. Three reasons are implicitly articulated to justify these claims. First, there is the importance of the binary understanding of sex for acceptance into society and the corresponding pain and suffering for not looking the same. Second, there is the poverty endured by most trans persons as a consequence of their difficulties in fitting in. Third, there is the concern that if individuals are not provided with these treatments they may look for the cheapest possibilities available, not always bearing in mind the risks to their health and even their lives.

The Danish chapter nonetheless highlights the contradictions that may derive from adopting a self-determination model for sex and pushing for greater coverage in the health system: once the gender dysphoria diagnostic is abandoned, what would be the justification for massive investments in the individual choices of some individuals? The Danish solution was to leave a diagnostic related to sex mobility in the medial protocols, in the understanding, however, that this is not really a medical condition but rather a life choice. Health systems with greater financial pressures might not be as flexible in this manner. Self-determination models may in fact drive societies to understand choices related to sex mobility as individual choices that should be funded by individuals. This, of course, means not taking any responsibility as a society for the desire to look the same that is at the root of the desperate search for interventions in body shape and function. We need to work on a notion of reparations to work out a scheme that would help complete the transition from strong medicalization models to self-determination models in sex. The limitations identified by our authors in the access of trans persons to gender modification interventions follow. Overcoming these limitations is partially connected to the transformation of the regulations on sex mobility, but other factors also influence access enough to warrant their independent consideration.