

\*\*\*Please note: This is a translation of the paper delivered at the conference in June. The original version in Spanish has undergone subsequent revisions that are not reflected in this translation.\*\*\*

## **Reexamining the Binary Construction of Sexuality**

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### **1. Introduction**

From the moment we are born, we are designated a sex and gender. Just as cattle are branded, the color pink is chosen to clothe little girls while sky-blue is given to baby boys; dolls are given to girls, toy trucks and planes to boys. At school we are taught to form two lines, one of boys and the other for girls. We are also taught which gender/sex plays which sports and which public restroom each is to use. If, when we are born, our sex is ambiguous or doesn't fit well into the standards typically used to differentiate men and women, then surgery or some other medical method is employed so that we do.

How did we know what line to stand in at school when told to form two lines? How do we know which public restroom to use when we go to the cinema, to the club, to the theatre, to our law school or office? What sex and gender are we? How did we become so? How do we know what sex and gender we are? It is possible that many of the participants of this conference have never asked themselves these questions, or that having asked them the answers appeared so obvious as to render the question absurd. As we will see further on, however, for an important segment of the world's population, these questions—and their answers, of course—are essential to the formation of their personal identity.

The greatest challenge for the construction of sexual identity upon the basis of the binary difference man/woman is provided by people who are either transgender<sup>1</sup> or intersex—a

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<sup>1</sup> Since the 1990s the term transgender has been used to refer to those persons whose identities, practices, or beliefs concerning sex/gender are not adequately served by society's traditional expectations regarding the sex of a person determined or assigned at birth. Transsexual persons as well as any others who "move" or "transit" between the two

materiality manifested with particular intensity in the atypical bodies of intersex children; people whose sexuality is not easily or even forcefully fit into the binary tradition. Their criticism is principally directed to distinct sectors of society that diligently work, on a daily basis whether consciously or not, to preserve the binary division described. Fathers and mothers, scientists, doctors, teachers, professors, and employers are but a few of such segments.

The bodies and minds of transgender and intersex persons (who here will also be referred to as persons of variant sex) force us to expand the limits of the dual division of human sexuality towards a model that includes and comprehends the infinite nuances and forms that are integrated in said sexuality. The sexual non-conformity of transgender and intersex persons offers a means of revealing the power structure underlying the heterosexual binary order of the sexes/genders<sup>2</sup> and demands revising and formulating anew the existing structures and arrangements based on this order that tend to hide and subjugate them.

In face of the fiction of the two sexes/genders, in this work I propose using a perspective that conceives of human sexuality as a ‘continuum’ of distinct sex/gender variants; that is, as a

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socially accepted sex/genders comprise this group. In general, here what is questioned is not the dual division of sex but rather “transit” between both sex/genders. As with any label, the term transgender does not, in some cases, represent people who do not identify with any of the socially available sex/genders, as is the case with many intersexuals. However, the employment of the term transgender in an inclusive and broad sense has served as a strategy of the transgender human rights movement, given that it is used to describe the common experience of oppression and exclusion suffered by people left out of the binary conception of sex/gender. See Currah, Paisley, “Gender Pluralisms under the Transgender Umbrella,” in Currah, Juang, Price Minter (eds.), *Transgender Rights*, University of Minnesota Press, 2006, pp. 3 – 7. It is in this broad and political sense that the term transgender is used interchangeably with that of variant gender/sex, a term which encompasses intersex persons as well as transgender persons.

<sup>2</sup> In general sex is understood in strictly anatomical terms while gender refers to a category of social and self-identification grouping the ways society holds girls and boys, men and women, should behave and should be treated. Given that we still live in a society that uses the biological sex as the basis for defining a person’s gender, in this paper I will refer to them together (sex/gender). This should not be taken to mean both terms are synonymous, or that one is more valid than the other, or even that one comes before the other. As I hope will be made clear in this work is that, beyond the concrete materiality of one’s biological sex, both terms rest on a construction and understanding that is cultural. This does not take away from or otherwise diminish the fact that for transsexual and intersex persons the distinction between sex and gender holds much strategic importance for their claims to rights and recognition.

constant spectrum of the available sex/gender alternatives that someone can identify with and inhabit.

To do this, I will analyze the current discussion of whether the ideal of binary sex/gender is a social or natural construction. Although there currently exists no definitive scientific method to determine whether a person is a man or a woman, scientific research underway seems to show that biology establishes a kind of limit within which, by means of social interaction, gender roles are shaped. This implies that there is indeed maneuvering room for the social configuration of gender.

Put this way, however, the discussion of the opposition between natural and social conceptualizations of human sexuality as resting on the belief that the natural is a given fact, therefore inarguably, whereas what is social must be constructed, does not take into account that what is held to be natural, in this case the physical sex, and the way science studies it, are questions that are influenced by subjective nuances and understandings. The concrete materiality of the sex itself is conformed by gender, that is, it is 'gendered' by means of subjective interaction, by the subjective understanding of those who read and study it. This is why gender is much more than the mere social realization of sex, more than a natural, given fact; rather it possesses a constitutive and regulatory dimension.

One problem that arises when writing about these topics is what name to use for someone who as it happens rejects the traditional binary sexual construction. The feminine or masculine references and articles of words do not account for the complex reality of human sexuality and furthermore, they eventually result in propagating the stereotype that people of variant sex/gender are challenging. In consequence, I have chosen to use 'neutral' terms in this paper

whenever possible.<sup>3</sup> When it is impossible to ‘neutralize’ the reference to the sex/gender of some of the words used, [translator’s note: this will only affect the Spanish original] from this point on I will leave off the endings in –a/-o, or –as/-os in the case of plurals, leaving it to the reader to complete them as they prefer—or to not complete them at all.<sup>4</sup>

## 2. Binary Sexuality: Natural or Social?

Medical professionals instruct us that there are many factors in existence that determine or contribute to the determination of sex for an individual: 1) the genetic or chromosome sex—XX or XY; 2) the gonadic sex (referring to the glands of sexual reproduction)—testicles and ovaries; 3) the internal morphological sex (determined after three months of gestations)—seminal vesicles/prostate or vagina/uterus/Fallopian tubes; the external morphological sex (genitals)—penis/scrotum or clitoris/labia; 5) the hormonal sex—androgens and estrogens; 6) the phenotype sex (secondary sexual characteristics)—facial or chest hair or breasts; 7) the assigned sex and the gender of the infant; and 8) the sexual identity.<sup>5</sup>

An intersex person presents a variety of congenital conditions that determine the lack of a standard male or female anatomy stemming from the absence of a correlation between the factors

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<sup>3</sup> Neutral in the sense that they enable me to refer to and include in the enunciation the infinite range of variations of sex/gender that may exist. This is why I prefer the word child to that of boys or girls; instead of ‘individual,’ I use ‘person.’

<sup>4</sup> There exist other strategies for replacing ‘gendered’ word endings. Leslie Feinberg, for example, a transgender activist and author, has chosen to use ‘hir’ in the place of the English pronouns ‘his’ and ‘her.’ See Leslie Feinberg, *Stone Butch Blues: A Novel*, Firebrand Publishers, 1993. This option, however, would appear to suggest a third sex instead of an infinite variety of sexualities. Another strategy employed to “elude the binary imperative of gender in language” consists of using an asterisk to “name persons of carnality, corporality, identity, and/or gender expression without reducing them with supposed certainty into a generic norm of otherness,” Mauro Cabral and Ariel Rojman, “La Muerte de un Extraño,” in *Revista de Filosofía*, 2005, no. 19, p. 236. For her part, Mónica Wittig seeks to modify/destroy gender in language throughout her work. See her books *Les Guerillères*, University of Illinois Press, 2007 (originally 1969) and *The opoponax*, The Woman’s Press, 1979 (originally 1964).

<sup>5</sup> These factors are mentioned by Anne Fausto-Sterling in *Sexing the Body*, Basic Book, 2000, Suzanne J. Kessler, *Lessons from the Intersexed*, Rutgers University Press, 1990, and Alice Dumarat Dreger, *Hermaphrodites and the Medical Invention of Sex*, Harvard University Press, 2003.

just listed.<sup>6</sup> The condition referred to as hermaphrodite is a variant of intersexuality where a person has male and female attributes; that is, the person possesses a body that exhibits in juxtaposition parts that are essentially masculine and feminine.<sup>7</sup> At least three dozen well-documented sexual variations comprise the basis for what is known as intersexuality.<sup>8</sup>

Regarding the case of transsexual persons, it may so happen that there is congruence between the seven factors already listed determining sex, but lacking is identification with the gender associated with these factors. Here the medical nomenclature suggests the person has a disorder/dysphoria with their gender identity.

There are not any reliable statistics regarding the quantity of intersex and transsexual people in the global population. Some figures esteem that 1.7% of babies born are intersexual.<sup>9</sup> Approximately one out of every two thousand people are born with an anatomical configuration with respect to the norm for men or women so uncommon as to generate confusion and

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<sup>6</sup> According to a new medical nomenclature adopted in 2006, diagnostic labels such as intersexual, hermaphrodite, and pseudo-hermaphrodite based on gender will be replaced by clinical descriptive terms (e.g., androgenous insensitivity syndrome) covering persons with DSD, or Disorders of Sexual Development. These disorders have been defined as, “congenital conditions in which the development of sex, be it chromosome, gonadic, or anatomical, is atypical.” See P.A. Lee, C.P. Houk, S.F. Ahmed, I.A. Hughes, “Consensus Statement on Management of Intersex Disorders: International Consensus Conference on Intersex,” *Pediatrics* 118:2 (Aug. 2006), pp. 488 – 500. Given the lack of agreement in the intersexual community over the adoption of the new nomenclature, I will use the term intersexual in this article.

<sup>7</sup> Alice DUMARAT DREGER, *Hermaphrodites and the Medical Invention of Sex*, cit. ut. supra, p. 31.

<sup>8</sup> The most common forms are: Hiperplasia Suprarrenal Congénita o pseudohermafroditismo femenino (afecta a infantes con cromosomas XX); el Síndrome de insensibilidad androgénica o pseudohermafroditismo masculino (afecta a infantes con cromosomas XY); la Disgenesia Gonadal (afecta predominantemente a infantes con cromosomas XX); las Hipospadias (afectan a infantes con cromosomas XX); el Síndrome de Turner (que afecta a infantes con cromosomas XO y provoca la falta de algunas características femeninas tales como el crecimiento del busto y la menstruación); el Síndrome de Klinefelter (afecta a infantes con cromosomas XXY y provoca la falta de algunas características masculinas externas). This last form of intersexuality occurs in on of 500 births and in more tan 3% of births when the male has undergone treatment for infertility. See Anne FAUSTO-STERLING, *Sexing the Body*, cit. ut. supra, ps. 52-53.

<sup>9</sup> According to the statistics assembled by Anne FAUSTO-STERLING, *Sexing the Body*, cit. ut. supra, ps. 51-53. Este número es un promedio de una amplia variedad de poblaciones; el número no es uniforme en el mundo. Para una discusión sobre la función social de la clasificación y de cómo la ideología social produce formas particulares de clasificación, See also Alice DUMARAT DREGER, *Hermaphrodites and the Medical Invention of Sex*, cit. ut. supra, ps. 40-43.

disagreement as to whether the child should be considered a man, woman, or something else.<sup>10</sup> Every day in the United States, five infants undergo reconstructive sexual surgery that in the majority of cases leave indelible physical and emotional scars.<sup>11</sup> Regarding transsexuals, the calculations indicate that 1 of every 30,000 men and 1 of every 100,000 women seek surgery to change their sex.<sup>12</sup>

The existence of people who are not comfortable with either of the two options for sex/gender that are accepted by society gives rise to a discussion of how gender identity is constructed that is extensive, rich, and interminable in different scientific and humanist disciplines.<sup>13</sup> What is the relevance of biological sex in this construction? How much influence is exerted by the surrounding social environment? Do the child and social context or the biological sex prevail in the construction of gender identity? What is certain is that in the debate over biological determinism, gender or its social construction has been framed within epistemological limits of the distinction between nature and culture.

Over the last century, policies governing the assignment of feminine or masculine sex/gender to intersexual children, particularly to those with ambiguous genitalia, have been influenced/determined by the frame of this debate. Up to the 1950s the assignment of gender was based on the 'predominant/true sex,' which was first defined in terms of the appearance of the

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<sup>10</sup> Alice DUMARAT DREGER, *Hermaphrodites and the Medical Invention of Sex*, cit. ut. supra, p. 42.

<sup>11</sup> Kate HAAS, "Who Will Make Room for the Intersexed?", *American Journal of Law and Medicine*, 2004.

<sup>12</sup> Conforme el "Diagnostic and Statistical Manual" de la Asociación Norteamericana de Psiquiatría, 2000.

<sup>13</sup> Alice Dumarat Dreger expresa que, 'When we look at hermaphrodites, we are forced to realize how variable even "normal" sexual traits are. Indeed, we start to wonder how and why we label some traits and some people male, female, or hermaphroditic. We see the boundaries are Dracn for many reasons, and could be – and have been- Dracn in many different ways, and that those boundaries have as many complex effects as they do causes". Alice DUMARAT DREGER, *Hermaphrodites and the Medical Invention of Sex*, cit. ut. supra, p. 5. Suzanne Kessler por su parte sostiene que "el futuro de los intersexuales es en algún sentido el futuro del género", en su libro *Lessons from the Intersexed*, cit. ut. supra, p. 131.

external genitals, subsequently in terms of the gonadic sex and its histology, and eventually in terms of chromosome sex. In each of these stages there was a firm conviction that the infant was assigned its ‘true sex.’ Starting in the 1950s a new understanding pioneered by the psychiatrist and sexologist John Money replaced that of the ‘true sex.’

In accordance with the theory of ‘optimal gender,’ gender identity is socially constructed. Money observed in his work how gender identity followed to a high degree the gender that the child was assigned and raised as, rather than the chromosome, gonadic, or genital sex. ‘Optimal gender’ theory broke new ground with respect to its predecessor by rejecting the notion that a person naturally identifies with their biological sex, postulating instead that assigning a sex and subsequently raising the child in harmony with the assigned sex is crucial for the development of sexual identity.<sup>14</sup> This is why, when babies possess ‘ambiguous’ genitals, they must be ‘corrected’ using surgery to assign a sex.<sup>15</sup> According to this theory, the assignment of gender should be based on the optimal result expectable in terms of functioning—psychosexual, reproductive, and generally psychological.

According to Money and his followers, assigning sex/gender should be done as early as possible, given that gender identity is ‘correctible’ up until eighteen months of age. Sex assignment surgery should be undertaken when the penis is under 2 centimeters long and corresponding hormonal treatment should also be administered at puberty.<sup>16</sup> This posture also

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<sup>14</sup> Anne FAUSTO-STERLING, *Sexing the Body*, cit. ut. supra, p. 66.

<sup>15</sup> Small penises and large clitorises are removed and artificial vaginas are installed in their place. Given that it is easier to create a vagina than a satisfactory penis, ‘correction’ tends in great majority towards the feminine sex, except in cases when the baby has a sufficiently large penis to be assigned the masculine gender. Milton DIAMOND y Keith SIGMUNDS, “Sex Reassignment at Birth: a Long Term Review and Clinical Implications”, *Archives of Pediatric & Adolescence Medicine*, March 1997 (vol. 151, pp. 298-304).

<sup>16</sup> Kenneth KIPNIS y Milton DIAMOND, “Pediatric Ethics and the Surgical Assignment of Sex”, en Alice DUMARAT DREGER, *Intersex in the Age of Ethics*, Hagerstown, MD: University Publishing Group, 1999, cit. ut. supra, ps. 176-177.

holds that it is very important that these children be raised as girls or boys without there being any evidence left over of the abnormality or ambiguity of the genitals as, it is maintained, gender identity follows perceived anatomy.<sup>17</sup> In order for the social construction of gender to be successful, then, the parents must not communicate any doubt over whether the child is male or female and the children must be given explanations of the situation that are appropriate for their age.<sup>18</sup> Underlying this view is the belief that children are psychosexually neutral, that consciously as much as unconsciously they sense the presence or absence of the penis, that they observe the social distinctions between men and women and that their behavior characteristically follows the existing gender standards of the place where they are raised. This is why they must be assigned a sex as soon as possible whenever there is any doubt regarding it. It is also worth noting that this current of thought does not challenge the dominant bipolar model of sex/gender; indeed that model is the foundational normative premise of its study.

To a large degree, Money based his theory on the famous case of John/Joan.<sup>19</sup> Following the advice of Money, the parents of a 'normal' baby (John) who at seven months suffered ablation of his penis in a botched circumcision acquiesced to submitting him within the year to an operation to create a vagina in order to facilitate his feminization and he was raised as a girl. In order to reinforce the treatment, every year Money and his team examined Joan in the Johns Hopkins Hospital in Baltimore. Their observations resulted in the conclusion that the treatment

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<sup>17</sup> En la teoría psicoanalítica clásica, se creía que la conciencia de los propios genitales jugaba un rol fundamental en la conformación de la identidad de género, pero esta creencia se vio erosionada por la observación de que en infantes con agenesia penéan 46 XY criados hombres puede formarse una identidad masculina en ausencia del pene. Heino F. L. MEYER-BAHLBURG, Dr. "Gender Identity Outcome in Female-Raised 46, XY Persons with Penile Agenesis, Cloacal Exstrophy of the Bladder, or Penile Ablation", *Archives of Sexual Behavior*, Vol. 34, August 2005, p. 434.

<sup>18</sup> See Suzanne J. KESSLER, *Lessons from the Intersexed*, cit. ut. supra, p. 15.

<sup>19</sup> See John COLAPINTO, *As Nature Made Him*, Harper Collins Publishers, 2001. See also DIAMOND y SIGMUNDS, "Sex Reassignment at Birth: a Long Term Review and Clinical Implications", cit. ut. supra y Anne FAUSTO-STERLING, *Sexing the Body*, cit. ut. supra, p. 66-70.



was a success and that John had accepted his life as Joan. Unlike the other cases that Money had taken on until then, this case did not involve an intersex child, since John's sex was not at all ambiguous at birth.<sup>20</sup> The success of the treatment in this case permitted Money and his followers to affirm without equivocation the absolute priority of socialization over any mandate that nature seemed to impose on the sexed body, thus proving that sexual identity is socially constructed.

Many years after the report that detailed the success of the treatment in the case of John/Joan, Drs. Milton Diamond and Keith Sigmunds revisited the case and in their analysis discovered that John had actually never accepted the gender in which he had been raised and that he had gone to living as a man when he was fifteen years old. Following the discovery of the failure of the treatment which had been in large part the basis for Money and his team's theory concerning the social construction of sex/gender, the theory itself was subjected to strong criticism that led to a revision of the medical protocol followed in cases of 'ambiguous' genitals.

The critics held that nature establishes certain limits regarding gender identity and that within those limits social forces interact to formulate gender roles. Moreover, they maintain that there is no evidence of veracity for the relative postulates that people are psychosexually neutral at birth or that a healthy psychosexual development depends on the appearance of the genitals, but rather on the contrary that there exists an innate psychosexual predisposition in a person's sexuality.<sup>21</sup> The greatest challenges to the paradigm holding that gender identity wholly depends

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<sup>20</sup> John also had a twin brother, which made the case more interesting. Además John tenía un hermano gemelo, circunstancia que hacía al caso más interesante ya que si John adoptaba definitivamente la identidad femenina a pesar de convivir con la identidad opuesta de su hermano gemelo, se demostraba sin lugar a dudas la construcción social del género.

<sup>21</sup> See Milton DIAMOND y Keith SIGMUNDS, "Sex Reassignment at Birth: a Long Term Review and Clinical Implications", cit. ut. supra.

on social environment come from the field of neuroscience.<sup>22</sup> In the case of John/Joan, for example, Diamond and Sigmunds concluded that the prenatal androgen to which the unborn twins were exposed had more influence than socialization in the construction of gender<sup>23</sup>, thus proving that it is impossible to socially transform—not even by means of surgery and hormonal treatment—a girl into a boy or vice versa.

Ever since learning of the failure in the case of John/Joan, many doctors have criticized the use of sex assignment surgery on infants. Dr. William Reiner, for example, who previously carried out this type of surgery, began noticing that children who had been assigned one of the two sexes soon after birth began a few years later to identify with the opposite sex/gender to which they had been assigned. In his final research project covering ninety-four intersex children he observed that more than half of the genetically male children transitioned to a male gender despite having been raised as women and having had female sex assignment surgery.<sup>24</sup> According to this doctor, there is sufficient evidence to suggest that masking intersex births by transforming their ‘ambiguity’ has meant denying intersex persons a broad and rich range of possibilities for personal realization. Beyond the physical and psychological torture that intersex persons suffer in order to make them fit into the traditional gender categories, the people analyzed report that one of the irremediable consequences of the surgery is suppression of the

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<sup>22</sup> See studies listed below for references to sex differentiation in the brain. Entre otros, algunos de dichos estudios se refieren a la diferenciación del sexo en el cerebro, a los efectos neuroendocrinológicos sobre conductas, rasgos y preferencias de género atípicas. También hay otros estudios referidos al resultado a largo plazo que tuvo la asignación de sexo/género original en individuos intersexuales. Anne FAUSTO-STERLING, *Sexing the Body*, cit. ut. supra. También véanse las investigaciones que apuntan a la Environmental Endocrine Hipótesis de Christine Johnson comentada en el último capítulo de Deborah RUDACILLE, *The riddle of gender: science, activism, and transgender rights*, Pantheon Books, New York, 2005.

<sup>23</sup> This conclusion is contested. Conclusión que a su vez muchos investigadores ponen en duda ya que todavía no ha sido probada la influencia que la exposición prenatal a andrógenos tiene en la conformación del género.

<sup>24</sup> En CBSNews.com, “Mommy, Am I a Boy or a Girl?”, 20/3/2005.

ability to experience sexual pleasure and to have orgasms. This occurs by virtue of the fact that in many cases what is performed is none other than clitorrectomy.

For Money and his followers, intersexuality essentially results from abnormal processes, which is why, they hold, medical treatment is necessary—if only for sex assignment by means of an operation and/or hormonal treatment—to resolve the ‘ambiguity’ and include them in one of the male/female categories. Intersexuality is seen as an illness, as an abnormality that must be remedied by fencing it into one of the two ‘normal’ and ‘natural’ sex/gender categories that are accepted and authorized by the social parameters in place for normality of sex and gender.

Mauro Cabral challenges this, affirming that “intersexuality is not an illness, but rather a condition of physical non-conformity with the culturally defined criteria for normal bodies, criteria that establish a minimum length for a penis to be culturally admissible and a maximum length for a clitoris to be culturally acceptable.”<sup>25</sup> This understanding of intersexuality seeks to demonstrate and publicize that the contemporary approach to intersexuality (that is, the medical treatment of intersex infants, the medical protocols for carrying out sex assignment surgery, the manner by which the parents and child must be provided information, and the criteria for evaluating the informed consent of intersex children and adolescents and that of their parents) is based on cultural beliefs and prejudices held by doctors as well as parents that ultimately lead to permanent scars and both the body and the psyche of intersex persons.<sup>26</sup>

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<sup>25</sup> This does not preclude the existence of other specific failings affecting intersex persons that can affect their long-term well-being that are medically treatable. Ello no obsta a que existan algunas falencias específicas que afectan a las personas intersexuales que pueden tener consecuencias comprobables en su bienestar físico que son tratables y mejorables por la medicina. Mauro CABRAL, “Pensar la intersexualidad, hoy”, p. 121, en Diana MAFFIA (compiladora), *Sexualidades Migrantes. Género y Transgénero*, Feminaria Editora, 2003.

<sup>26</sup> En igual sentido See el trabajo realizado por la Sociedad Intersexual de Norteamérica (Intersex Society of North America, ISNA) en [www.isna.org](http://www.isna.org)

Such prejudices and beliefs require that genital ‘ambiguity’ be remedied so to conform to the ‘natural’ standards; that is, to the undiscussed sexual binarity. Consequently, the cases of intersexuality in which doctors carry out sex assignment surgery are handled such that ‘normality’ is preserved by means of assigning the child one of the two sex/gender categories that are socially accepted.<sup>27</sup> Here gender is not only a social construction in theoretical terms, but can also be literally constructed by human intervention.<sup>28</sup> To assure gender divisions, it follows, bodies that might potentially disrupt the order by blurring the boundaries must be controlled.<sup>29</sup> Given that intersex persons either completely or partially span/contain—or seen from a different

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<sup>27</sup> These days doctors still employ the following protocol: “Genetic females should always be raised as females, preserving reproductive potential regardless of how severely the patients are virilized. In the genetic male, however, the gender of assignment is based on the infant’s anatomy, predominantly the size of the phallus”. Conforme Anne FAUSTO-STERLING, *Sexing the Body*, cit. ut. supra, p. 57. Este protocolo médico denota a las claras las creencias culturales del sexo basadas en la procreación y en la centralidad del falo. Debe tenerse en cuenta que hace menos de tres años un grupo de trabajo de 50 expertos internacionales miembros de la Lawson Wilkins Pediatric Endocrine Society (LWPES) y de la European Society for Pediatric Endocrinology (ESPE) formularon una “Declaración de Consenso” sobre el manejo de desórdenes intersexuales que, aunque con un alcance limitado, cuestiona el protocolo médico anterior y propone uno nuevo referido al manejo clínico óptimo de individuos con DSD que evita la asignación de género en recién nacidos antes de una evaluación experta conformada por un equipo multidisciplinario compuesto por subespecialidades pediátricas en endocrinología, cirugía, urología, psicología o psiquiatría, ginecología, genética y neonatología. Este equipo debe comunicarse abiertamente con los pacientes y su familia, permitiéndoles participar de la decisión y respetando y respondiendo en confianza las preocupaciones del paciente y de la familia. Las recomendaciones de asignación de género deben reflejar el diagnóstico, la apariencia genital, las opciones quirúrgicas, la necesidad de una terapia de reemplazo de por vida, la potencialidad de fertilidad y las creencias familiares y antecedentes culturales. La homosexualidad no debe considerarse como una indicación de una asignación de género incorrecta y debe tenerse en cuenta la potencialidad para la fertilidad —originalmente enfatizada sólo para la asignación de género femenina— también debe ser una consideración de importancia para la asignación de género masculino. Respecto de la cirugía, y reconociendo que hay muy poca información sistemática sobre el resultado de realizar cirugía genital, que la capacidad orgásmica puede verse dañada por dicha cirugía, que no hay suficiente evidencia que apoye la contención de que la cirugía realizada por razones cosméticas en el primer año de vida alivie la angustia de los padres y mejore la relación entre los padres y el infante, la misma sólo debe considerarse en casos de extrema virilización y debe darse preponderancia al resultado funcional más que a la apariencia cosmética.

Cabe aclarar que este consenso no es obligatorio y que queda a criterio de cada profesional o institución médica seguirlo. See “Declaración de Consenso sobre el Manejo de Desórdenes Intersexuales”, cit. ut. supra.

<sup>28</sup> Fausto Sterling señala que el conocimiento desarrollado por las disciplinas médicas le da el poder a los médicos de mantener una mitología de lo normal al modificar el cuerpo intersexual de modo tal que quepa dentro de alguno de los dos cubículos aceptados. En *Sexing the Body*, cit. ut. supra, p. 8.

<sup>29</sup> Suzanne J. KESSLER, *Lessons from the Intersexed*, cit. ut. supra, p. 31. Esta autora sostiene que en realidad “las operaciones de asignación de sexo en bebés no se realizan porque la ambigüedad genital sea una amenaza para el bebé, sino porque lo es para la cultura del bebé”, p. 32.

angle, reject/exclude—both sexes, they represent an enormous threat which ultimately weakens the arguments in favor of sex/gender difference.<sup>30</sup>

### 3. Something missing from the Feminist Agenda

In the 1960s and 70s, Money's theory attracted the attention of feminists drawn by the opportunity it offered to free women of the limitations imposed on them by biology and social norms, thus creating a new space for social change.<sup>31</sup> The premise relative to the possibility of differentiating between the cultural and biological domains on which the sex/gender distinction was based established a new field of study for feminist research in terms of the cultural and historical variability of gender. In this way, feminism challenged the accepted biological determinism as a dogmatic representation of a sexist science.

Different vectors of feminist theories have directed their criticism against the masculine and feminine gender stereotypes that follow the 'natural' division of sex into the woman/man duality.<sup>32</sup> The principal focus of their attention is denaturing these stereotypes as the feminine/masculine gender categories were established by the heterosexual hegemony with its taboo of homosexuality and/or because it conforms to a system of social hierarchy and unequal

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<sup>30</sup> La preocupación que existe entre algunas feministas por la apropiación de la diferencia sexual por parte de los intereses del movimiento transgénero e intersexual (que entre otras cosas, tratan de procurarse, el derecho a acceder a las tecnologías que facilitan la reasignación de sexo), lleva implícita la creencia de que el género puede y debe derivarse inequívocamente de una anatomía que se presume natural. Butler en su obra alerta contra esta concepción al afirmar que la anatomía y el sexo no existen sin un marco cultural. Por el contrario, según esta autora el género debe entenderse como una forma cultural de configurar el cuerpo, razón por la cual está abierto a su continua reforma. Judith BUTLER, *Undoing Gender*, Routledge, 2004, introducción.

<sup>31</sup> Deborah RUDACILLE, *The riddle of gender: science, activism, and transgender rights*, p. 139.

<sup>32</sup> Por ejemplo Judith BUTLER, *Gender Trouble*, Routledge Classics, Primera Edición 1990 (2007), Monique WITTIG, *The Straight Mind and Other Essays*, Harvester Wheatsheaf, 1992 y, Catharine MACINNON, *Feminism Unmodified: Discourses on Life and Law*, Harvard University Press, 1988.

Aquí sigo la taxonomía de teorías feministas del derecho desarrollada por Nicola LACEY, "Feminist Legal Theory and the Rights of Women", en Karen KNOP (ed.), *Gender and Human Rights*, Oxford University Press, 2004. Está excluido de esta generalización el pensamiento de la "New Gender Politics", una combinación de movimientos que engloban el transgénero, la transexualidad, la intersexualidad y a sus complejas relaciones con las teorías feministas y queer.

power imposition which places women as inferior to men. This all occurs, however, without throwing into doubt the “naturalness” of the fore-mentioned separation.<sup>33</sup>

Only those who have theorized on the challenges to sexual dualism posed by transgender and intersex person have interrogated the naturalness/essentialness of the separation between man and woman.<sup>34</sup> This must be why there is little attention paid to the absence in feminist agendas of topics that are so fundamental in the lives of the people whose existence forces a reexamination of the difference in sex/gender. In this sense, the disgraceful medicalization / ‘normalization’ of the lives of variant sex persons – implying sexual mutilation in many cases<sup>35</sup> – together with the absence of measures to promote an honest identification/ adaptation/ change/ reassignment of gender for gender variant persons are some of the items missing from most of the various feminist agendas. Among other questions (some more specific to intersex persons and others to transgender persons), for example, the development and unification of a medical protocol respectful of the rights of intersex and transgender patients, the guarantee of free medical coverage for sex assignment and sex change surgery and for hormone treatment, and the legalization of changing identity in identification documents stand out.

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<sup>33</sup> “No se discute la realidad de las diferencias sexuales, sino la legitimidad de los estereotipos contruidos por la sociedad sobre esas diferencias, como si el sexo constituyera una materialidad inapelable”, Diana Maffia y Mauro Cabral, “Los sexos ¿son o se hacen?”, p. 86, en Diana Maffía (compiladora), *Sexualidades Migrantes. Género y Transgénero*, cit. ut. supra.

<sup>34</sup> For instance, Judith Butler en el prefacio a la edición del año 1999 de *Gender Trouble*, dice que “If I were to rewrite this book under present circumstances, I would include a discussion of transgender and intersexuality, the way that ideal gender dimorphism works in both sorts of discourses, the different relations to surgical intervention that these related concerns sustain”, cit. ut. supra, edición del año 2007, p. xxvii. Many years later she wrote about these topics in her book *Undoing Gender*, cit. ut. supra, en particular en su introducción y capítulos 3 y 4.

<sup>35</sup> Mauro Cabral y Ariel Rojman, denuncian que la economía sociomédica de normalización corporal hace del silencio el centro punzante de su estrategia mutiladora. “Se silencia la diferencia, la anomalía, la malformación; el chirrido de la ambigüedad, de la indefinición, del más allá de la norma; se silencia lo que aparece como genéricamente inarticulable para que su articulación sea posible, para que sea posible en el Género y los (dos) géneros masculino o femenino.” Mauro CABRAL y Ariel ROJMAN, “La Muerte de un Extraño”, cit. ut. supra.

One way to incorporate the topics related to the sexual identity of variant sex persons into the feminist agenda consists in starting with the assumption that sex is not a preexisting condition to the cultural conformity of gender, but rather that it is a cultural product just as gender is. In other words, according to this approach sex can never be anterior to gender since gender is the norm through which sex is perceived. The biological/anatomical sex itself, hence, with its presumed binarity, is the result of an ideological reading of the body. Inasmuch, it does not make sense to define gender as a cultural interpretation of sex if sex itself is a category already gendered. As Judith Butler notes, the body is a system that is simultaneously a producer of and produced by social meaning, a result of combined and simultaneous actions both natural and social.<sup>36</sup>

For Butler, treating the materiality of sex as a given fact presupposes and consolidates the normative conditions leading to its creation. This is why she is interested in researching the regulatory norms through which sex is rendered material. Butler suggest that “the concept of sex itself is problematic as it was produced by a line of questioning seeking to determine the decisive criterion for distinguishing between the two sexes; the concept of sex has a history which is dominated by the situation of the place or surface of inscription. Seen as one place or surface rather than another, however, what is natural is conceived of as that which does not have value either; even further, it takes on its value at the same time as it takes on its social character, that is, at the same time as what is natural surrenders/gives up its status as natural.”<sup>37</sup>

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<sup>36</sup> Judith BUTLER, *Bodies that Matter*, Routledge, 1993. Siguiendo a esta autora, el sexo no sólo funciona como una norma, sino que también es parte de una práctica regulatoria que produce los cuerpos que gobierna, esto es, cuya fuerza regulatoria se muestra claramente como un tipo de poder productivo con capacidad de demarcar, circular, diferenciar, los cuerpos que controla.

<sup>37</sup> Ibidem, p. 5

In this respect it should not be ignored that medical practices, standards, experiments, and research takes place within a social system possessing certain beliefs regarding sex and gender.<sup>38</sup> Donna Haraway observes that the bio-social sciences have not only been used as sexist mirrors reflecting our social world, but that they have also been tools in the production of that world, offering legitimating ideologies and increasing its material power. This author also emphasizes the crucial role that scientific networks have in determining who it is that decides what science and what good science is, showing how deep cultural beliefs run in the supposedly value-neutral field of medical research. The depth of their influence is evident in the case of current medical protocol which calls for surgery to ‘reconstruct’ distinct, but healthy, bodies of children in order to make them ‘normal.’<sup>39</sup>

Depending on cultural understandings, the beliefs and criteria used for defining the sex of a person have undergone modification over time.<sup>40</sup> Alice Dumarat Dreger affirms that the answer to the question of what is *really* the key to being male, female, or other “[...] necessarily changes with time, with place, with technology, and with the many serious implications – theoretical and practical, scientific and political – of any given answer. The answer is, in a critical sense,

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<sup>38</sup> See a Donna J. HARAWAY, *Simians, Cyborgs, and Women. The Reinvention of Nature*, Routledge NY, 1991. Este libro trata sobre la invención y reinención de lo natural.

<sup>39</sup> Según Suzanne Kessler, “los procesos y directrices a partir de las cuales se adoptan decisiones sobre la (re)construcción del género revelan en gran parte el modelo para la construcción social del género”. Suzanne J. KESSLER, *Lessons from the Intersexed*, cit. ut. supra, p. 12.

<sup>40</sup> Para un análisis histórico exhaustivo de la construcción de la sexualidad humana véanse las obras de Michel FOULCAULT, *Historia de la Sexualidad*, Siglo Veintiuno Editores, Buenos Aires, 2006, Alice DUMARAT DREGER, *Hermaphrodites and the Medical Invention of Sex*, Harvard University Press, 1998 y Thomas LAQUEUR, *Making Sex. Body and Gender from the Greeks to Freud*, Harvard University Press, 1992. Este último autor, por ejemplo, rastreó a través de la historia de la humanidad dos modelos de construcción histórica del sexo/género. Por un lado, en la postura de ‘un sexo’, la mujer es una versión imperfecta del hombre y su anatomía y fisiología se construyen de acuerdo a esta mirada. La vagina se considera un pene interior, el útero un escroto y los ovarios los testículos. De esta manera, el cuerpo es una representación, no la base fundacional del género social. Por su parte, la segunda construcción histórica relativa al modelo de ‘dos sexos’ estipula que el cuerpo establece las diferencias de género, que la mujer es lo opuesto al hombre con órganos, funciones y sentimientos completamente distintos. Este segundo modelo tiende a dominar el pensamiento post iluminismo, mientras que el modelo de un sexo pertenece al conocimiento clásico. Por momentos ambos modelos se han superpuesto.



historical - specific to time and place.”<sup>41</sup> Consequently, the different interpretations of what is ‘natural,’ ‘normal,’ or ‘ambiguous’ necessarily depend on the dominant conception of sex and gender at the time in the place where the interpretations exist.<sup>42</sup>

It is time to ask ourselves if the sex/gender paradigm still dominant in the medical sciences and many feminist theories, can be maintained in the face of a significant percentage of the global population that for different reasons do not fit into any of its categories.

#### 4. For a ‘Continuum’ of Sexuality

As we have seen up to this point, if there is anything that can be scientifically known it is that the simple criterion of biology is inadequate for the determination of someone’s sex/gender. For instance, it is not true that every person legally defined as a woman possess the XX pairing, or that all men also defined as such have the XY pairing, since hundreds of thousands of people are born with distinct chromosome variations, including XXY and X, among others.<sup>43</sup>

Recognizing the existence of variant gender persons implies an obligation to transform the traditional conceptions of gender and sex and creates the need to redefine human sexuality in

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<sup>41</sup> Alice DUMARAT DREGER, *Hermaphrodites and the Medical Invention of Sex*, cit. ut. supra, p. 9. Esto se observa en el caso de las políticas clínicas de asignación de sexo en recién nacidos con genitalia ‘ambigua’. Heino F. L. Meyer-Bahlburg indica que las mismas dependen de: 1) las presuposiciones teóricas de los clínicos relativas a los determinantes del género, 2) la importancia otorgada a resultados tales como la disforia de género/cambio de género, fertilidad, funcionamiento sexual, orientación sexual y calidad de vida en general, y 3) las opciones de tratamiento médico disponibles en cierto momento (e.g., tratamiento hormonal sexual, y técnicas específicas de cirugía genital). En una extensión de la política de género óptimo de Money, muchos autores recomendaron la asignación de género femenino de anomalías genitales no hormonales severas por la imposibilidad de crear un pene funcional en su momento. Heino F. L. MEYER-BAHLBURG, Dr. “Gender Identity Outcome in Female-Raised 46, XY Persons with Penile Agenesis, Cloacal Exstrophy of the Bladder, or Penile Ablation”, *Archives of Sexual Behavior*, Vol. 34, August 2005, p. 423.

<sup>42</sup> Para Judith Butler la construcción del sexo no es ni un sólo acto, ni un proceso causal iniciado por un sujeto que culmina en un conjunto de efectos fijos. Para esta autora, “la construcción no sólo tiene lugar en el tiempo, sino que es en sí mismo un proceso temporal que opera por medio de la reiteración de normas; el sexo es producido tanto como desestabilizado en el curso de esta reiteración. Como un efecto sedimentado de una práctica reiterativa o ritual, el sexo adquiere su efecto naturalizado (...)”, Judith BUTLER, *Bodies that Matter*, cit. ut. supra, p. 10.

<sup>43</sup> Para una explicación detallada sobre este punto, See Anne FAUSTO-STERLING, *Sexing the Body*, cit. ut. supra.

accordance with a model more open and inclusive of sexual differences. As was forwarded in the preceding paragraphs, this model is one that considers human sexuality as a continuum of forms, options, and combinations of sex/gender. According to this vision human sexuality is comprised of a ‘continuous’ coexistence and mixture of sexual identities that goes far beyond the simplistic binary categorization man/woman.<sup>44</sup> Additionally, this perspective rejects the idea that there is an essential link between the biological sex a person has at birth and the gender representation of that person throughout their life. ‘Continuous’ sexuality does not locate the categories of man and woman at the extremes of a spectrum representing the sexual continuum, but rather holds that there are not determinate limits by those dual categories of gender.

This conception of sexuality is not completely new. As far back as 1920, Magnus Hirschfeld stated, for the first time that we know, that there were more than two sex/genders. This medical doctor concluded that the various forms of gender variation in existence – he called them ‘sexual intermediates’ – were the result of endocrine anomalies and inasmuch were biologically based. Hirschfeld believed that homosexuals, transvestites, and other forms of variant gender was an important, widespread, and natural phenomenon and that the law and social customs should rationally adjust to the natural diversity of the types of human beings. He did not hold them to be perversions or pathological. In the post-war period the theory of sexual intermediates was abandoned at a time when the predominance of psychoanalytical theories reinforced the distinctions between the sex/genders.<sup>45</sup>

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<sup>44</sup> See Chapter 2, “Through Science to Justice” de Deborah RUDACILLE, *The riddle of gender: science, activism, and transgender rights*, cit. ut. supra, p. 30.

<sup>45</sup> Fausto-Sterling maintains: ‘[...] male and female stand on the extreme ends of a biological continuum [...]’, in *Sexing the Body*, cit. ut. supra nota 1, p. 31. The idea of sexual ‘continuum’ also appears in Martine ROTHBLATT, *The Apartheid of Sex: a Manifesto on the Freedom of Gender*, Crown Publishers, 1995.

The idea of a ‘continuum’ of sexuality forces us to reconsider the phenomena of reality of the logic based on the dichotomy of order or disorder, real or true, man or woman, normal or abnormal/ambiguous. Instead, it forces us to study the “complexity that is founded in the processes, where ‘processes’ is understood as a series of actions that give rise to another series of actions, and so on. It is as if there were no beginning, no end, only a continuum.”<sup>46</sup> From this viewpoint, the objective consists of developing the ability to think outside the reductionist simplicity generated by binary logic.

The idea of ‘continuous’ sexuality should not be confused with the category of a third gender that has existed in many cultures. A few examples are the Berdache, or indigenous North Americans of two spirits, the Hijras in India, the SambianKwolu-aatmwaol in New Guinea, or the case of certain Peoples in the Dominican Republic.<sup>47</sup> In these cultures, the binary distinction between sex and gender is blurry since the morphological aspect of sex is less important to the understanding and categorization of gender. Still, the idea of a third gender does not manage to totally capture the idea of human sexual multiplicity that I am interested in exploring here. This multiplicity implies that there are so many kinds of sexuality as there are people disposed to

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<sup>46</sup> Amalia Fischer Pfaeffle, se refiere a la teoría física conocida como ‘lógica difusa’ (*fuzzy logic*) que aplicada al análisis de la dicotomía del sexo/género sirve para describir lo que aquí se entiende por ‘continuado’. Así, para la lógica difusa “explicar fenómenos complejos según el esquema de lo verdadero y falso, no es posible. Para tratar de explicárnoslo, es necesario salir de la lógica excluyente y entrar en otra lógica, que no deje afuera la posibilidad de la multiplicidad o del multivalor, lo que implica entrar en el mundo del pensamiento complejo donde sistemas, subsistemas o cuerpos están permanentemente en orden-desorden-auto-organización. Estos sistemas lejos de estar en un equilibrio, en un orden, están más bien en desequilibrio, en un desorden que contiene su propio orden. Dentro de un sistema, cuando un factor extraño entra en él, produce un desorden que modifica las condiciones iniciales en las que se encontraba”. Amalia FISCHER PFAEFFLE, “Devenires, cuerpos sin órganos, lógica difusa e intersexuales”, Diana MAFFIA (compiladora), *Sexualidades Migrantes. Género y Transgénero*, cit. ut. supra, p. 10-11.

<sup>47</sup> These examples are found in a good part of the sources listed in the bibliography and also in: Alison SHAW and Shirley ARDENER (eds.), *Changing Sex and Bending Gender*, Berghahn Books, 2005 (el capítulo 6 trata sobre los tomboi en el sur de Filipinas y el capítulo 5 sobre el tercer sexo o las ‘vírgenes prometidas’ -sworn virgins- en Albania) y Gilbert HERDT, *Third Sex, Third Gender: Beyond Sexual Dimorphism in Culture and History*, Zone Book, 1996. Both books question the role of sexual dimorphism in culture and history.

imagine and live them. Unless, that is, this third category is understood as one that encompasses all variations of sex/gender that do not fit into the other two.

The use of a dualistic sex/gender paradigm to hide the infinite interdependencies between the pairings of man/masculine and woman/feminine denies the possibility of a ‘continuous’ composition of alternative sexualities that would allow human beings to create different gender cultures to identify their sexual statuses within an ample spectrum of possibilities. This personal identification would not have to be static; it could be redefined as often as the person wishes during their life. Furthermore, a wide range of gender representations must be available to everyone in order to better enable them to live according to the model that suits them.

### **(A BRIEF PARANTHESIS)**

We have seen that the mere existence of people whose biological sex does not fit in the traditional sexual order destabilizes the binary order. Other people whose psychological identity rebels against what in principal appear to be bodies congruent with one or the other sex/gender categories also upsets this order. It is worth noting that the lack of harmony that variant gender persons experience between their bodies and/or their minds and the referenced sexual order does not necessarily imply that they all wish to break with bipolar sexual conformity. To the contrary, many of these people want/need to fit in with the two socially accepted compartments for there to be a correlation between their gender identity and their genitals.<sup>48</sup> This becomes apparent from

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<sup>48</sup> Patricia Soley-Beltran indica que, “datos empíricos revelan que los transexuales tratan de explicar su deseo de cambiar de sexo como un intento de encajar en los roles normativos de comportamiento sexual y de orientación sexual”. En Patricia SOLEY-BELTRAN, “¿Citaciones perversas? De la distinción sexo-género y sus apropiaciones”, ps. 75-76, en Diana MAFFIA (compiladora), *Sexualidades Migrantes. Género y Transgénero*, cit. ut. supra nota 23. En sentido similar, Sandy Stone, considera que las personas transexuales apoyan el modelo de identidad sexual binario y de oposición ya que “pasan a ser hombres sin ambigüedades (...) a ser mujeres carentes de ambigüedades”. En Sandy STONE, “El Imperio Contraataca. Un manifiesto posttransexual”, cit. ut. supra, p. 7 de la versión en español.

the infinite testimonies of people who have directly switched/transitioned from one pole of sexual experience to the ‘opposite,’ adopting gender stereotypes characteristic of the ‘new’ gender without accounting for an ‘intermediate’ or facilitative phase.<sup>49</sup>

Here, persons of variant sex appear to be victims – like everyone else – of the restrictive patriarchal norms of masculinity and femininity that in the end encourage and push them to make a total and definitive change from one category to the other. These same norms permeate the beliefs and knowledge of the medical sciences.<sup>50</sup> With respect to transsexual persons, on the other hand, keeping in mind that at the time of the first sex change operations, medical science required that transsexuals be heterosexual in their new ‘sex,’ it should come as no surprise that similar homophobic medical definitions have informed the discourse and aspirations of transsexual persons seeking escape from the label of ‘homosexual.’<sup>51</sup>

## 5. Avoiding Labels

The aptitude and necessity human beings have for categorization are shaped by what are known as taboos, that is, by a mechanism that reduces social and intellectual disorder, thereby protecting the way society is organized. They serve the function of containing any behavior that

<sup>49</sup> Among others, see the testimonies collected in: Jonathan AMES (ed), *Sexual Metamorphosis. An Anthology of Transsexual Memoirs*, Vintage Books, 2005; Sandy STONE, “El Imperio Contraataca. Un manifiesto posttranssexual”, 1991 disponible en <http://www.ucm.es/info/rqtr/biblioteca/Transexualidad/EL%20IMPERIO%20CONTRAATACA%20Un%20manifiesto%20posttranssexual.pdf>, en inglés “The Empire Strikes Back: A Posttranssexual Manifesto”, publicado en Kristina Straub y Julia Epstein, eds., *Body Guards: The Cultural Politics of Sexual Ambiguity*, New York, Routledge, 1996; Sharon E. Preves, *Intersex and Identity: The Contested Self*, Rutgers University Press, 2003; Alice Domurat Dreger, *Intersex in the Age of Ethics*, cit. ut. supra. Según Sandy Stone, lo que está en juego en el caso de los transexuales es “la habilidad de representar con autenticidad las complejidades y ambigüedades de la experiencia vivida (...). En su lugar la experiencia auténtica se sustituye por un tipo particular de historia, una que sirve de apoyo a las antiguas posturas”, p. 16.

<sup>50</sup> “Si hay algún espacio intermedio en el continuo de la sexualidad, es invisible”. Sandy STONE, “El Imperio Contraataca. Un manifiesto posttranssexual”, cit. ut. supra, p. 10 de la versión en español.

<sup>51</sup> Regarding some persons of determinant intersexual conditions raised as women, it has been suggested that if they discover sexual sentiments for someone of the same sex, that they decide whether it would be better to adopt the masculine sex, in virtue of an internalized homophobia, in Kenneth J. Zucker, “Intersexuality and gender identity differentiation”, *Annual Review of Sex Research*, 10, 1999, ps. 1-69.

might challenge whatever category in which the universe happens to be organized. Mary Douglas observes that “Taboo is a spontaneous coding practice which set up a vocabulary of spatial limits and physical and verbal signals to hedge around vulnerable relations. It threatens specific dangers if the code is not respected.”<sup>52</sup> They depend on broad complicity in the community. The ideal order of society is protected by the dangers with which transgressors are menaced. Douglas believes that the primary function of ideas related to separating, purifying, defining, and punishing transgressions is to impose a system and on an inherently untidy experience.<sup>53</sup> An appearance of order is only possible when the difference is exaggerated between inside and out, above and below, man and woman, and for or against. Taboos do not only organize the social universe but also, regrettably, reduce the complexity of reality.

Furthermore, even though categorizing is a fundamental part of human behavior, this does not imply that the classifications that are made are adequate or even that the act of categorizing and labeling is desirable or correct since when a decision is made to call something a certain way, said denomination necessarily excludes anything not contemplated in the formation of the category. The criterion used by people to construct stereotypes, to categorize, or to decide, for example, what is dirty or clean, normal or abnormal, should be guided by forms that are more amicable and inclusive. The exclusive and oppositional forms that, according to Douglas’ description, people use for categorizing, do not necessarily have to be that way. Human beings not only have the ability to categorize but are also able to learn and restructure their minds in imaginative and creative ways. It is thus within human capacity to compartmentalize

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<sup>52</sup> Mary DOUGLAS, *Purity and Danger*, Routledge Classic, 2002, p. xiii (“Feared contagion extends the danger of a broken taboo to the whole community”).

<sup>53</sup> Ibidem, p. 5.

actions, attitudes, and relationships in a manner that is non-discriminatory and inclusive to the different sex/genders. This is what a conception of sexuality as ‘continuum’ calls for.

## **6. A Few Reflections**

The social mandate demanding we conform to binary difference prevents and sanctions with social ostracism any deviation from masculine and feminine stereotypes. This mandate not only orders people to behave according to the standards corresponding to one of the two sex/genders, but also, moreover and perhaps even more seriously, ordains the use of surgery and a host of other treatments invasive of an individual’s privacy, autonomy, and physical integrity, to re/condition their sex to one of the accepted sexual categories, with reprehensible consequences for their psychological, physical, and sexual health. With this in mind, the point can be made that the limitation on the formation of an individual’s identity imposed by sexual binarity amounts to a violation of rights that constitutionally and internationally recognized (the right to human dignity, the right to life, the right to personal safety, the right to freedom of expression, the right to personal autonomy, etc).<sup>54</sup>

Of course it follows from this point that a theory of rights should be elaborated treating human beings as subjects beyond their binary sex/gender – or on the contrary, that takes into account the vast amount of gender identities, not only two. Currently this task is made exceedingly difficult by the fact on one side the law is already founded on the man/woman couple and on the other by the fact that much of what is on feminist agendas also rests on sexual binarity in that they propose using the law to fight discrimination and violence against women. Thus, just as a new formulation of a theory of law that takes the infinite permutations of sexes

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<sup>54</sup> See the Yogyakarta Principles elaborated and approved by a group of human rights experts from various regions in Yogyakarta, Indonesia in November 2006.

and genders into account becomes necessary, the same is true for the concept of citizenship, since it too speaks a sexually binary language. It also seems clear that these lines of investigation deserve a degree of development that exceeds the reach of this piece.

Revisiting the validity of sex/gender duality also implies reexamining the practical and moral congruency/consistency of many explicit and implicit/unconscious social accords regarding basic aspects, arrangements, and institutions in our lives and society that range from the color of clothing that is proper to each sex/gender, to which line to stand in at school or the polls, to which public restroom to use, to which sexual orientation I possess if I do not identify with either option – assuming sexual orientation is ‘correctly’ defined in terms of heterosexuality, bisexuality, and homosexuality . . . , to the use of surgery and change of identity for persons of variant sex. Disassembling the man/woman duality has consequences for the constitution and reinvention of the personal identity of human beings, for those whose bodies and minds fit easily within the current categories as much as for those whose bodies and minds do not. To undertake this task, then, social and legal conditions should be created so people are able to identify and develop their sexual status within a continuum of possibilities.

As I remarked in the preceding paragraphs, using biology to identify someone as man or woman leaves great room for error, since the way biology is interpreted is also a product of culture. If the construction of gender had followed nature and had emerge from the evidence it carries, gender would have spoken countless languages, not only two. Instead of insisting on the primacy of nature or culture as the source of gender differences, perhaps it is time to recognize that both play a role and that no explanation of gender difference can be reduced to one or the other of these two variables, but rather that they only make sense if they are integrated.



