

Presentation

CONFRONTING BINARY FOUNDATIONS: NON-BINARY IDENTITIES AND THE EDGES OF RIGHTS

BLANCA RODRÍGUEZ-RUIZ

University of Sevilla

This Special Issue of *The Age of Human Rights Journal*, entitled *Confronting binary foundations: non-binary identities and the edges of rights*, covers some of the Conferences organised online in 2020 and 2021 within the Research Project (PID2019-107025RB-I00) “Sexed citizenship and non-binary identities: from non-discrimination to citizenship integration” (*Binalsex*). The aim of *Binalsex* is to carry out interdisciplinary comparative research on the challenges non-normative sex-gender identities face and pose in contemporary democracies, in both strictly legal and broader social terms. It is to show how these challenges are rooted in the foundations of modern states, constructed on the basis of a rigidly binary sexed citizenship. It is ultimately to examine the specific shape these challenges take in different contexts and explore ways to respond to them in terms that enhance the vocational inclusivity of democratic citizenship.

Binalsex started functioning in 2020, at a time when the measures adopted to face the Covid pandemic made in-person meetings difficult, if not impossible to hold. Our first meetings, directed to drafting a provisional comparative diagnosis of the situation, had to take place online. As second best, online meetings deprived us of physical contact, face-to-face discussions and more relaxed exchanges at social venues, yet they also proved easier to organise and to be part of, particularly for an international research team. This happened at a time, moreover, when several draft bills addressing non-normative sex-gender identities were being discussed in Spain, and one Draft Bill was finally proposed by the Spanish central Government; all of which stirred up heated social, political and legal debates, particularly among feminists. Members of *Binalsex* took an active part in these debates. Circumstances thus led us to hold several online conferences between December 2020 and May 2021, some of which paid particular attention to the situation in Spain. This Special Issue collects some of the papers presented in them.

The Issue opens with Rafael Vázquez’ inspiring reflections on the deep connections between the democratic principle, feminism and the need to go beyond binary citizenship; the author elaborates on feminism as an essential motor for democracy, one that has historically pushed democracy to remain consistent with itself, beyond the pressures of liberal-capitalist logic; he finds queer theory to be an essential part of this motor looking forward; and he invites us to embark on a queer democratic utopia.

Assumpta Sabuco opens then a series of analyses centred on Spain; her paper takes us on an engaging review of how normative and non-normative sex-gender roles and identities have been portrayed in Spain's popular culture since the 1960s (the latter part of Franco's dictatorship) to date, on the part they have played and continue to play as elements of national definition and/or political transgression. Blanca Rodríguez then critically reflects on the legal and cultural obliteration of non-binary bodies; on how binary citizenship has been built at the cost of biological diversity; on Spain's reticence to open the official gender spectrum beyond binary strictures even on the brink of embracing gender self-determination; on the inherent contradictions and malfunctioning this entails from a democratic perspective. Ruth Mestre delves in turn into the fears that gender self-determination arouses in some feminist ranks in Spain, afraid that without medical control of their identity trans-women might hamper cis-women's physical safety and legal position; in these fears Mestre identifies the features of "moral-panic" dynamics. Laura Flores closes this set of papers with an analysis of Spain's approach to gender identity at a regional level, a journey through the specific laws enacted in 14 of Spain's 17 Autonomous Communities; she highlights the differences among regions, hence the diversity of legal orders in Spain, but also their common features, the main one being that, except for one, all regional laws rely explicitly or implicitly on self-determination, thus paving the way for it to be embraced by national legislation.

A second set of papers take a look at different legal approaches to gender identities and their expressions. Anna Lorenzetti tells us about the medical and legal treatment of intersex children in Italy: about the absence of any legal recognition in a strictly binary sex-gender system, about the prevalence of cosmetic surgeries on new-borns and their damaging consequences, and about possible legal strategies that could ensure the protection of intersex children's rights. Silvia Romboli then introduces us into the standards of protection of trans people's gender identity developed by the European Court of Human Rights, based on the right to private life as linked to the dignity and freedom of individuals; she leads us through the evolution of this Court's caselaw towards higher standards of protection and a narrower margin of appreciation for Member States to decide on the limitation of this right; she finally focuses on how far the Draft Bill proposed by the Spanish Government complies with European Standards. Caroline Hansen also concentrates on the European Court of Human Rights and its caselaw on gender identities and their expressions, albeit from a different angle: her aim is to highlight how heavily this Court relies on gender stereotypes, the extent to which these impregnate its caselaw even in the context of protecting trans people's rights. There follows Sebastián López' insights on how trans identities are being approached in Latin America; his paper offers us an analytical overview of the most relevant legal approaches to be found in this continent, in a comparative analysis that contrasts the positions taken by constitutions, legislators and courts.

A third and last set of papers contemplate non-normative identities and their expressions from different standpoints. Luisa Winter Pereira takes us through the world of intersex activism as represented by two associations (*Brújula Intersexual and Stop Intersex Genital Mutilation*), through their involvement with the United Nations in five of their committees, and the role they have played in shaping the international protection

of the rights of intersex people. Ana Galdámez analyses the protection non-normative sex-gender identities and their expressions require against hate speech; she explores the standards of protection established by the European Court of Human Rights on the matter and reflects on how the balancing act between freedom of expression and hate speech against sex-gender minorities can be expected to operate in the digital era. Finally, Ana Valero reflects on (non-binary) post-porn as a form of expression; after revising feminist debates on pornography, and without ignoring the prevalence of mainstream (heteropatriarchal) pornography and how it can be harmful for women, she highlights the potential that non-conforming pornography, in particular post-porn, can have as a tool for expressing political dissent and instigating social change.