

<h2>The Third Sex</h2>		<p style="text-align: center;">Law (transgenderism)</p> <p>Keywords: gender, third sex, intersex, transgender, sexual transition.</p>
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Abstract

For centuries, although inaudibly, there has been some talking about an intermediate sex, about people who were neither male nor female. The term of the third gender or sex delineates people who are not characterized neither as men nor as women, a social category present in those societies who cognize three or more sexes. In divers cultures or individuals, the third sex or gender may represent an intermediate state between men and women; a state of being together (the soul of a man in a woman's body), and a state of being neutral (neutrophil - neither man nor woman), the ability to change or cross gender, a category totally independent from men and women. Thousands of social schemes are implemented by governments, but they only refer to men and women and the third sex or gender is not part of them. This condition is a requirement for various state governments as well as an overview of the level of democracy and the recognition of human rights in these countries. Given the complex network of people and a significant number of eunuchs in the world, it is not possible to close our eyes and ignore their existence. It is necessarily required government's intervention through legislative reforms in recognition of eunuchs as equal citizens of the world. Gender studies comprehend a field of interdisciplinary research dealing with gender and the way how society, in time and in space, has interpreted and fed the differences between masculine and feminine genders, legitimizing not only inequality between men and women, but denying the right of gays, transgenders, intersexes' citizenship et cetera. There are bisexual, or transgender, multi-sexual organisms where their dubious gender identity is essential for their survival. To utter such behaviors as unnatural ones, it means to ignore the reality of things, choosing to be against nature purposely, etc.

An overview at history

Themes on transgender have been present in society and Greek Religion in different forms: intersexuality, travestism, transsexualism, etc.

Third gender or sex has often been the subject of legends, literary stories or theatrical acts in ancient Greece. The Greeks did not practise castration (castration is the removal of sex glands responsible for the process of reproduction in humans or animals) considering it a major crime but they appreciated eunuch³⁹ slaves who came from the East being regarded as "luxury products" that were imported from abroad.

Some characters of Greek mythology have features of both sexes, as in the case of hermaphrodites with both masculine and feminine attributes. These creatures were often portrayed with chest, male genitalia and a desirable body⁴⁰.

In Plato's work, "Symposium"⁴¹, Aristophanes explains devotion to love by a significant myth. According to him, in the genesis, human beings were different from us, formed by the union of two human beings this very day and were three sexes: male, female and androgens (male and female altogether). The people's shape was circular: four arms, four legs, two faces on a single head, four ears, two genitals, *et cetera*. This dual nature was divided in the middle by Zeus in order to weaken them and to not require the power of the gods (because if he eliminated them completely, this would lead to the disappearance of the only form of life from which the gods had descended).

Due to this division it generates in people the desire to recreate the primitive unity, so that "parts" do not do anything but tighten so much with each other until they starve because they do not want to be separated. Then Zeus, in order to avoid extermination of people in the world, sends Eros until, through fictitious physical reunification they can build the missing utinity so they may experience pleasure, reproduce and be dedicated to other tasks that lie ahead. This is why our early nature was such and we were complete, love is given to the

³⁹ By the term *eunuch* we speak about men who in puberty and before puberty, they underwent surgery about the mutilation of genital apparatus which caused infertility or impotence.

⁴⁰ Some small-scale hermaphroditic statues have been found which shows that they were used as decorations.

⁴¹ Plato's work is written as a dialogue amongst the cream of Athens where they discuss about Eros.

desire and the intention at all. It is to be noted that this myth justifies homosexuality since some of the earliest creatures were not androgynous, but solely men or solely women and to be rebuilt they need the union of two men or two women.

Greeks considered bodily malformations and defects as ominous signs and curses and therefore, they did not allow intersexuals to live but they performed infanticide (killing the newborn) or abandoned and let them die. This did not happen in India which since antiquity it has acknowledged the existence of a third sex or gender of the Hijra sex. Hijra is one of the terms used most in the South Asian culture, especially in India, referring to people who are considered as transgender or transsexual.

Some information regarding to transsexualism (not to be confused with hermafroditizmin)

Transsexualism is the condition of the individual permanently identified with a different sex to that of biological sex and pursuing the objective of changing sex, even through medical-surgical objectives. Transition begins when the need to be itself can not be postponed anymore, it becomes imperative. It makes its own way along which the body is modified and harmonized through hormone treatments and surgery. Even the external aspect, including garment, fits with the perception that the individual maintains for him/herself.

Transition ends when sex-change operation is performed. In this case the individual who differs from male to female (MTF) will be female by all effects and vice versa, the individual who differs from female to male (FTM) will become male by all effects. The journey, including hormonal dosage varies from an individual to another and for this reason it is important to be followed up by a team of specialists.

Generally, transgenderism is referred to the state of the individual who denies the sexual binary logic (male / female) and perceives him/herself across both genders (male / female) not being permanently identified with any of them.

Transgender – the wide spectrum of individuals who are temporarily or permanently identified with a gender different from their birth gender.

Transsexual - An individual who wants to go, or has undergone a social transition from male to female or vice versa, which, in many cases but not all of them, may include a somatic change through hormone treatment and genital surgery ("sex reassignment surgery").

Gender dysphoria is referred to anxiety that can accompany the discrepancy between someone experienced or expressed gender and assigned gender one. Although not all individuals will experience anxiety as a result of such discrepancies, many are worried whether the desired physical interventions by hormones and / or surgery may not be available.

The current term used by DSM-V is more descriptive than the term *gender identity disorder* used by the previous DSM-IV and focuses on dysphoria as a clinical problem, not as of the identity itself.

To be born intersex

Some people still call beautiful girls, with a female body and male genetic code or persons with male and female genitalia altogether, hermaphrodite, and it is mainly already used the term intersex. Today, myriad organizations struggle against early surgical intervention and affirm the identity "intersex". The risk for a

potential konuzion between intersex individuals and transgender ones has swayed on so that the scientific community speaks for "disorders of sexual differentiation or sexual development" (DSD - disorders of sex differentiation or sex development).

In Italy (but it is believed that this is a trendy in all Europe), in every 5 thousand births a child is born being affected by disorders of sexual differentiation, but there is no record of DSD⁴².

It is thought of a weight of about 2% worldwide. Until a decade, it was about a physical abnormality that should be concealed and it was determined the final sex in hospitals according to rough parameters, such as the length of the penis, *etc.* Today there are organizations throughout the world which asseverate intersex identity against sporadically hasty decisions medicine. After the operations, individuals, often since puberty, follow hormonal treatments and in many cases, surgical intervention may lead to loss of sexual satisfaction.

Biologist and gender researcher, Anne Fausto Sterling, among the 90s, published an article that echoed and following this article, some evidence of early effects of surgery surfaced. As a result, the movement arose which proposes to change the medical protocol and termination of non-consensual surgery up to the present time.

In Albania people do not yet talk about the third sex or gender and, generally, it has been said very little about transsexual people (and this has been discussed only through the forums because nothing has been done legally. We do not have a law which recognizes and sanctions the procedure of sex change or acknowledge the sex change made abroad and adjust the consequences. Unfortunately, we are still far from recognizing a third sex, this possibility is not even taken into consideration and it is not revealed how many intersex persons are counted here.

Even in the world it is not discusses as much as necessary about the psychosocial and legal situation of intersex persons. In Italy, merely in September 2013 intersex activists first arouse in the protests. In late 2013 Germany recognized legally third sex at birth to children who are not exclusively feminine or masculine genitalia.

The Committee against Torture of the United Nations in 2011 has made a statement in which recommends avoiding unnecessary surgical interventions to atypical genitals. In the same veinm it has been also the National Bioethics Committee in Italy (2010) which requires that the surgeries should be procrastinated in time. Organizations who protect the rights of intersex people continue to say no damage to the genitals.

On one side there are the activists who demand to wait until the interested reaches his/her adulthood to get consent for the surgery and on the other side, some of medical specialists (such as Giacinto Marrocco, one of the best experts of DSD in Italy) make adjustment to the external genital with child's prevailing anatomy. With the development of medical science, there are available genetic research and when possible they await the child's development. Doctors "are protected" by the fact that early intervention when there are all the elements to determine the forthcoming sex of the child and it particularly serves to avoid ambiguous situations that would cause great psychological stress. Thus, according to doctors, only in some cases they should wait for the child's development before getting surgery. Do these doctors guarantee that the sex of the child they appoint, will comply with his gender identity? In case it does not, this person will ask the court to change sex during his life and will do two surgeries for the same reason.

⁴² <http://www.linkiesta.it/article/2016/01/23/sulla-via-per-il-terzo-sesso/29009/>

We do not deal with atypical genitalia in all cases. There are girls with external female genitalia but have testicles inside and there are guys with external male genitalia but they do not have the testicles inside but ovaries. Rare cases are then referred to cases of hermaphroditic. Hermaphroditic individuals have got external feminine or masculine organs whereas they have got female glands as well as male ones.

Given that people speak very little of this issue, since this issue is considered and to some extent it is still considered, a taboo and intersex individuals are regarded as sick ones by the society or in some places even as demons, another problem has arisen with the frantic development of medicine. When through amniocentesis there is noted a sexual disorder of the fetus, the practice in Italy has shown that parent decides not to terminate her pregnancy and not in some cases, but in 88% of cases.

Diagnosis is not always detected at birth, but in adolescence⁴³ or later. This has prompted activists to make awareness campaigns to parents in order not to rush into decisions, but to give them some time to grow up and decide for themselves.

There are often ethnic factors affecting hasty decisions. Pediatrician surgeon, Marrocco Giacinto, claims that there were times when he made interventions which in normal circumstances he would not ever do. In a Muslim family, a girl born with penis is something unbearable and unacceptable. Parents of children would reject her.

Causes

Some experts estimate about 1% of total births as hermaphroditic in total or reduced⁴⁴. The most common cause is Klinefelter⁴⁵ syndrome. Currently, it is thought that the average is very high, 1 in 1,000 newborn males, but intersex individuals have diverse causes, which makes the statistics vary on the basis of what is included in the calculation. In fact, only mammals (which make up less than 1/10 of all existing species on the planet) are divided in a more rigid way into men and women whereas all other species are hermaphroditic itself. When other species do have a sex gender, they can change it after conception, during embryonic phase or even in adulthood, such as fishes or amphibian (presumably based on environmental conditions but not being able to discuss about this on psychological terms).

The cause of depression and the increasing number of suicides in adults depends on the use of chronic sexual hormones unnaturally from birth but also on the difference in terms of sexual orientation and gender identity in relation to the expectations of parents set from birth.

Cases of depression and suicide may grow to teens and DULTA, especially when there is incongruity between the sex chosen arbitrarily by doctors and parents and sexual orientation.

Recognizing such fatal cases, doctors and parents do not give up on early surgical intervention to determine the sex of the child. The state's duty is to protect its citizens from anyone, even from themselves. It is the duty of every state to protect the life and the physical, mental and moral integrity of each citizen. Considering these cases, in some Western countries there are instructions not to act on surgical reassignment during infantine phase, but to let the subject autonomously decide when he/she is a teen or adult to leave the

⁴³ In adolescence, girls do not have their periods and thus it is found out they do not have ovaries but testicles. This is called Morris's Syndrome, in other words the syndrome of pretty girls which it happens at a frequency of 1 in 500 or 600 births. These girls can not bear children.

⁴⁴ [Converti, M. L'intersessualità ovvero l'ermafroditismo, èèè.medicitalia.it](http://www.medicitalia.it/minforma/psichiatria/1570-intersessualita-ovvero-ermafroditismo.html)

<http://www.medicitalia.it/minforma/psichiatria/1570-intersessualita-ovvero-ermafroditismo.html>

⁴⁵ Klinefelter Syndrome is a genetic disorder which results with an extra sexual X chromosome (XXXY) in men and is labelled upon the American doctor Hary Klinefelter.

genitals as they are or to modify them according to one or the other sex following the way predicted for transgender persons.

There are cases when the subject perceives that s/he is intersexual when the designed sex at birth does not match his/her gender identity under the law 164/82⁴⁶ which operates in Italy thinking that s/he is transsexual. During the necessary medical tests, the subjects perceives that s/he is transsexual, or even worse when this has been hidden from their family discovering a surgery in infancy for arbitrary determination of sex. In these cases, the psychological shock the subject suffered is immense.

Intersex adult subject whose sex gender is not arbitrarily modified in infancy can freely use surgical or hormonal treatments of transgender people in case s/he wants to determine the sex, or more importantly to modify it on the basis of reproductive needs (there are cases possible to the subjects when they were not modified at birth).

Legal recognition of the third sex

Knowledge of the third sex is yet a discussion theoretically and doctrinally, and very little to the field. The first European country to officially recognize the third sex Germany. For the first time, we have a law which allows that in the birth of a child it can be marked a different sex from "male" or "female". Since November 1, 2013, in Germany children who from birth do exhibit no genital organ exclusively feminine or masculine, can be enrolled in the registry as "neutral". So, parents have the option not to determine the sex of the child in the birth certificate. Thus, intersexual individuals can choose when they grow up one of the sexes but can remain neutral as well.

"It is the first time that the law recognizes the existence of human beings who are neither male nor female and do not enter into the traditional categories of law" says Konstanze Plett, professor of law at the University of Bremen.

This change will help the parents of intersex children to cope with calm and without pressure on the issue of sexual identity to their children (considering that there are often very solid bureaucratic practices which force parents to make hasty decisions such as performing surgery on their children for sex determination). In Germany transgender people were recognized by law, whereas intersexual ones were not.

It was an approach of illogical German legislator for transsexuals decide, choose to change the sex (of course that is not a caprice, but rather a necessity to live life to normal), while intersexual people born as such and there is no need of psychologists or psychiatrists to ascertain the condition of their sexual non-differentiation. So, by 2013 the German legislator has been reluctant to recognize what is clearly visible.

Another country which has made the big step to the recognition of intersex is Australia. In early 2013 (before Germany), Australia passed a law that allows registration of children as intersexual and the introduction of data on gender in the category of data that must be kept reserved. This makes you realize that they are under law for the protection of personal data.

Australian Supreme Court ruled that a person may be legally recognized in the neutral gender and may be registered in documents with an undetermined sex. Australian law provides for the possibility that a man is not neither a female nor a male, thus allowing the registration of sex as neutral.

⁴⁶ The law 164/82, authorizes the intervention to change the sex and anagraphic rectification.

This issue started by a person called Norrie, who did not self-identify as a man or as a woman⁴⁷. Australian High Court recognized his right to have a sex neutral. We should recall that Australia is the first country in the world in 2003 that issued passports where in determining the sex sector had the opportunity to read X, neither female nor male.

The issue of Norrie is rather delicate because we are not in terms of recognition of a third sex when the child is born with an undetermined sex, but in the case of a person born with a specified sex, he has the means of adjusting the gender with his/her biological sex if he/she does not feel that he/she belongs to what was born with, but who wants to self-determine to the neutral sex. Australian State goes further in recognizing and guaranteeing human rights. It recognizes and guarantees the individual's right to self-determination of sex. So, even if you are born with a definite sex, you have the right to redefine that adapting to your gender. Besides impersonal sex, in this case, we have also got undetermined gender, gender neutral.

New Zealand is another country that recognizes the third sex or better said, the third gender. Since July 2015, the statistical office of New Zealand (Statistics New Zealand) began classifying the population taking gender as a criterion. Each New Zealander was given a chance of freely gender identification. They are the only people in the world that can be recorded with undetermined gender, neither male nor female (other than line items female / male, forms also included the item "different genus"). Distribution is not mandatory but is recommended and is the first one in the world to bring information on gender identity.

This step makes the population "of different genres" more visible, obliges all public and private institutions to consider it, gives voice to this category and the possibility of realizing the fullness of human rights and fundamental freedoms. President of the Commission on Human Rights⁴⁸ has requested that when the census is conducted, the forms should contain questions related to gender identity by creating a complete data base.

In India there are over 3 million transgenders (there are scholars who think that this number varies up to 5-6 million⁴⁹) and most of them are forced into prostitution or begging to survive. This is the most disfavoured and marginalized category starting within the family circles where they are evicted from home.

The Supreme Court in India officially recognized transgenders⁵⁰ (court's ruling of April 2014), giving the opportunity to be identified as a third gender in all official documents. The Court notes that it is the right of every individual to choose their gender and this decision complies with the spirit of the Indian Constitution⁵¹ under which all citizens, regardless of gender, are guaranteed equal opportunities to develop their capacities. With this decision, India becomes one of the few countries in the world that provides a third gender. Nepal, Bangladesh and Pakistan⁵², where is the bulk of the community "hijra", have followed the same path in the past. This decision gives the impression that India is very advanced in the recognition and guarantee of human rights. But in fact, in India, homosexuality is still a crime and is punished criminally. The Supreme Court in 2013 took a decision contrary to that of the aforementioned refusing recourse to not reintegrate homosexuality as a criminal offense, despite the protests of Indian and international LGBT community.

⁴⁷ Norrie was born a male. Since he did not feel right being a male, he was operated to become a woman, to adapt his gender with the sex. The surgery did not resolve his sexual ambiguity. Thus, Norrie had another surgery in order not to have a definite sex gender. At first, the civil registry office accepted to register Norrie with a neutral sex gender, but then refused to do so. Hence, it started the history of legal battles of Norrie and the historic decision of Australian Supreme Court which acknowledged his right to have a neutral sex gender.

⁴⁸ http://www.leggo.it/nees/esteri/nuova_zelanda_terzo_sesso_uomo_donna-1152921.html

⁴⁹ Sharma, P. *Historical background and legal status of Third gender in indian society*, International Journal of Research in Economics & Social Sciences 64 Volume 2, Issue 12 (December 2012) ISSN: 2249-7382

⁵⁰ http://www.corriere.it/esteri/14_aprile_15/india-riconosce-terzo-sesso-2542db46-c4b3-11e3-9713-8cc973aa686e.shtml

⁵¹ Arts. 15-16, The Constitution of India

⁵² <http://www.lastampa.it/2014/04/15/esteri/lindia-riconosce-il-terzo-sesso-SPyhberbnOifQm8vqrRDK/pagina.html>

In France we have the first attempts to recognize the third sex⁵³. Perhaps, it is the first court in Europe that of Tours which in August 2015 recognized the right of an individual intersex (with neutral genitalia) to write in his marital status "sex neutral".

For the first time, French Justice recognizes the right of a person to egress from the female/male binomial. The decision stated⁵⁴ that "the sex assigned at birth seems a true invention being imposed throughout the subject's existence: This is not a recognition of a third sex, but to understand the inability to determine the relevance of the subject in one of the two sexes. The decision was appealed by the prosecution.

The positive impact of this decision would be great. Families would have more time to decide calmly and, perhaps taking the opinion of the interested person.

Conclusions and Recommendations

The whole life of the people is regulated by a rigid separation between men and women. Toilets in schools are separated by gender; sports activities and various games also divided by gender. The law will surely not change all this, and it will be impossible for intersex children to automatically feel themselves and comfortable in society.

Parents, teachers and doctors should be informed so that they can support intersex children to live a normal life and governments should take all the necessary measures that these children are not discriminated. A mechanism can be created to reassure all parents that this was written over the course of history for creatures with sexual ambiguity and to inform them of the normality of their children's development.

There are some of them who oppose this education as a the wrong way for the future parents. Apparently, zooming out homo-transphobia family and creating a calmer climate for parents of "divergent" children is not in the common interest, or masculinist anxiety prevents us from seeing beyond sudden happiness about the birth of a "healthy" child male?⁵⁵

The relationship parent - child in these cases is delicate when parents are trying to hide the child doing the surgery situation in infancy as well as when the child lives as intersex until s/he grows up.

However, we must not forget the advantage they have if they take some time and when they grow up, they choose their sex gender independently and undisturbed.

Governments should take legal and practical actions, creating the necessary infrastructure for the recognition of intersex persons, ensuring the rights and equal opportunities with all other citizens. Certainly, a law for their recognition does not regulate the whole situation because it is necessary the regulation of the whole background. They should change the criteria for marriage, retirement age, identity papers. So, a new set of norms should be adopted and adjusted to best guarantee the rights of intersex individuals.

"Is it possible to imagine a world where sexually hybrid people can be accepted and be loved without being forced to transform into a version of sex genders on the basis of commensurate par of the course or more socially coherent?" Judith Butler

⁵³ http://www.repubblica.it/esteri/2015/10/14/nae/s/i_giudici_francesi_riconoscono_il_sesso_neutro_-125091657/

⁵⁴ <http://dirittocivilecontemporaneo.com/2015/10/10/la-giurisprudenza-francese-riconosce-il-sesso-neutro-allermafrodito-o-intersexuale/>

⁵⁵ Baratta, L. Sulla via per il terzo sesso. 23 Janar 2016, www.linkiesta.it

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