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# Reflexiones en torno a la Trans-dis-capacidad[*]

## *Reflections around Trans – Disability*

## *Reflexões sobre a Trans-dis-capacidade*

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## Resumen

El tema bajo análisis plantea sin duda debates éticos, sociales y jurídicos, que no parecen concluir en consensos y que requieren profundizar análisis y propuestas. Este documento pretende ofrecer unas primeras reflexiones sobre la transdiscapacidad a la luz del modelo social de discapacidad, y de un enfoque de derechos humanos. Para ello, en una primera parte se repasan las implicaciones teóricas y prácticas de un abordaje o encuadre con perspectiva de discapacidad y enfoque de derechos humanos. En un segundo apartado se indaga en la triada: condición- situación y posición en la transdiscapacidad, identificando las dimensiones que la conforman. Seguidamente, en el apartado tercero se indaga en la posibilidad –o no- de considerar a la transdiscapacidad como condición mental. En el apartado cuarto se reflexiona sobre las tensiones de la ideología capacitista que rige nuestra cultura y sociedad, y el modo en que ello impregna en nuestra mirada. El apartado quinto ahonda en las relaciones entre la transexualidad y la transdiscapacidad, desde la posibilidad de considerar la existencia de similitudes que puedan ayudar a pensar respuestas y propuestas ya transitadas por otro grupo humano. El apartado sexto desarrolla reflexiones sobre la transdiscapacidad como rasgo de identidad, ahondando en asignaturas pendientes que desde el mismo modelo social se quedaron en el camino, y que podrían hoy en día aportar algunas luces en este contexto. El apartado octavo presenta muy brevemente la posibilidad de considerar a la transdiscapacidad como artilugio oportunista, resolviendo bajo principios general del Derecho aplicables en esta y otras materias. El apartado nueve pretende ofrecer un ejercicio práctico, consistente en pensar algunos principios generales frente a casos de transdiscapacidad o autpercepción de discapacidad en el acceso a la justicia, Finalmente, el apartado último indaga en unas conclusiones, que solo aspiran a ser una primera aproximación a un tema que requiere un debate social y jurídico en el cual sus protagonistas –personas transdiscapacidad y personas con discapacidad- deben tener voz propia.

**Palabras claves:** transdicapacidad, perspectiva de discapacidad, enfoque de derechos humanos.

## Abstract

*The topic under analysis undoubtedly raises ethical, social, and legal debates, which do not seem to reach a consensus and need to deepen analyses and proposals. This document aims to offer initial reflections on transdisability in light of the social model of disability and a human rights focus. To this end, in the first part, the theoretical and practical implications of an approach or framework with a disability perspective and a focus on human rights are reviewed. In a second section, the triad is investigated: condition-situation and position in trans-disability, identifying the dimensions that shape it. Then, in the third section, the possibility – or not – of considering trans-disability as a mental condition is questioned. The fourth section reflects on the tensions of the ableist ideology that governs our culture and society and how this permeates our vision. The fifth section delves into the relationships between transsexuality and trans-disability, from the possibility of considering the existence of similarities that can help to think about responses and proposals already worked on by another human group. The sixth section develops reflections on trans-disability with identity traits, delving into outstanding disciplines that have fallen by the wayside since the same social model and which could nowadays indicate some ideas in this context. The eighth section quite briefly presents the possibility of considering trans-disability as an opportunistic device, resolving under general principles*

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*of law applicable in this and other matters. The ninth section intends to offer a practical exercise, consisting of thinking about some general principles when faced with trans-disability cases or self-perceived disability in access to justice. Finally, the last section draws on some conclusions, which aim to be a first approach to a topic that requires a social and legal debate in which its protagonists – trans-disabled people and people with disabilities – must have their voices.*

***Keywords:*** *Trans-disability; Disability perspective; Focus on human rights.*

## Resumo

*O tema em análise suscita, sem dúvida, debates éticos, sociais e jurídicos, que não parecem concluir em consenso e que requerem análises e propostas mais aprofundadas. Este documento pretende oferecer algumas primeiras reflexões sobre a transdeficiência à luz do modelo social da deficiência e de uma abordagem de direitos humanos. Para tal, na primeira parte são revistas as implicações teóricas e práticas de uma abordagem ou enquadramento com uma perspectiva de deficiência e uma abordagem de direitos humanos. Numa segunda seção, investiga-se a tríade: condição, situação e posição na transdeficiência, identificando as dimensões que a compõem. A seguir, a terceira seção investiga-se a possibilidade – ou não – de considerar a transdeficiência como uma condição mental. A quarta seção apresenta uma reflexão sobre as tensões da ideologia capacitista que rege a nossa cultura e sociedade, e a forma como esta permeia a nossa perspectiva. A quinta seção aprofunda as relações entre transexualidade e transdeficiência, a partir da possibilidade de considerar a existência de semelhanças que possam ajudar a pensar respostas e propostas já utilizadas por outro grupo humano. A sexta seção desenvolve reflexões sobre a transdeficiência como traço identitário, aprofundando-se em questões pendentes que ficaram à margem do próprio modelo social e que hoje poderiam lançar alguma luz neste contexto. A sétima seção apresenta, muito brevemente, a possibilidade de considerar a transdeficiência como um dispositivo oportunista, resolvendo-se sob princípios gerais de direito aplicáveis nesta e em outras matérias. A oitava seção pretende oferecer um exercício prático, que consiste em pensar alguns princípios gerais relativos aos casos de transdeficiência ou autopercepção de deficiência no acesso à justiça. Por fim, a última seção investiga algumas conclusões, que apenas pretendem ser uma primeira aproximação a uma questão que exige um debate social e jurídico em que os seus protagonistas – pessoas transdeficientes e pessoas com deficiência – devem ter voz própria.*

***Palavras-chave:*** *Transdeficiência; Perspectiva da deficiência; Direitos humanos.*

## 1 Introduction

> "It's been really hard to ask the question of whether it's acceptable to acquire a disability because it's forced myself, a woman with a disability, to ask myself why anyone would want an identity and a body that often causes both social and physical pain. Even with the years that I have been with this subject, I have not yet resolved this tension..." Bethany Stevens

If we ask people about the origin of their disability, most of them will answer that they were born with it, that it arose at a certain time in their lives, or that they acquired it from a specific event, such as an accident – in most cases, involuntarily. However, there are also people who acquire the condition, or perceive themselves as a person with a disability of their own volition. Transdisability defines the need for a person to modify their body to acquire a disability, through mutilation, or causing accidents, either to lose their sight, an arm, legs or other organs or functions. This definition also includes people who perceive themselves as having a disability, but who do not live with a physical, mental, intellectual or sensory condition; which are usually distinctive features of the group's identity. A case that has had a media impact has been that of Jørund Viktoria Alme, in Oslo, Norway, who perceives herself as a person with a disability and uses wheelchair, without having any physical diversity[1].

Language and the choice of words are important since they reflect perspectives and ideologies that guide the social gaze, treatment and response. In this document, the term "transdisability" will be used, following – with respect to disability – the terminology assumed by the United Nations International Convention on the Rights of Persons with Disabilities (hereinafter, CRPD). However, it is considered important to highlight the proposal of the term "transcapacity" in order to emphasize the need to continue investigating the terminology that points, on the one hand, to a parameter subject to "capacity", and on the other to a "dis". The first term denotes an ableist philosophy, strongly rooted in our societies, and the second refers to a "difficulty or anomaly" in relation to this parameter[2]. The term "Transabled" was first coined by transabled activist Sean O'Connor. It has been stated that in Foucauldian terms, the use of "transcapacity" can lead to the desubjugation of previously delegitimized discourses and to the justification of the claims of a community whose needs must be heard and respected rather than perceived as perverse or irrational[3].

Another important issue to introduce is related to prevalence. Determining the number of transdisabled people is difficult for several reasons. Firstly, because relevant research on the subject is recent and incipient. Secondly, because stigma and marginalisation lead many transdisabled people to remain silent about their identity or condition. Likewise, framing this issue as a mental condition leads to its concealment or medicalization[4]. However, tradability exists, although it does not have legal status in most countries. Applications from transdisabled people are often considered irrational and denied. Despite significant psychological suffering (anxiety, obsessions, depression, suicide attempts), transdisabled people are often left to fend for themselves, even leading to a significant number attempting the desired transformations on their own[5].

The subject under analysis undoubtedly raises ethical, social and legal debates, which do not seem to conclude in consensus and that require in-depth analysis and proposals. This document aims to offer some initial reflections in the light of the social model of disability,

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[1] FOOLS some, cheeks others. Trans world. Fluid sex on wheels... and with a motor: a Norwegian man identifies as a disabled woman and, of course, needs a wheelchair. **Hispanity**, [*s. l.*], 04 Nov. 2022. Available in: https://www.hispanidad.com/sociedad/mundo-trans-sexo-fluido-sobre-ruedas-con-motor-hombre-noruego-se-identifica-como-mujer-discapacitada-y-claro-necesita-silla-ruedas_12038054_102.html. Accessed on: 21 May 2024.

[2] Cf. Royal Spanish Academy: "dis-2From Gr. δυσ- *Dys-*.**1.** Pref. It means 'difficulty' or 'anomaly'," https://dle.rae.es/dis-

[3] O'CONNOR, Sean. My life with BIID. *In*: STIRN, Aglaja; THIEL, Aylin; ODDO, Silvia (ed.). Body Integrity Identity Disorder: psychological, neurobiological, ethical and legal aspects. Germany: Pabst Science Publications, 2009. p. 88-93.

[4] BARIL, Alexandre. Needing to Acquire a Physical Impairment / Disability : ( Re ) Thinking the Connections between Trans and Disability Studies through Transability. Hypatia, [*s. l.*], v. 30, n. 1, p. 30-48, 2015. Available at: https://doi.org/10.1111/hypa.12113 Accessed on: 21 May 2023.

[5] FIRST, Michael. Desire for amputation of a limb: paraphilia, psychosis, or a new type of identity disorder. **Psychological Medicine**, [*s. l.*], v. 35, n. 6, p. 919-928, jun. 2005. DOI: 10.1017/s0033291704003320

and a human rights approach. To this end, the first part reviews the theoretical and practical implications of an approach or framing with a disability perspective and a human rights approach. In a second section, the triad is investigated: condition-situation and position in transdisability, identifying the dimensions that make it up. Next, in the third section, the possibility – or not – of considering transdisability as a mental condition is investigated. In the fourth section, we reflect on the tensions of the ableist ideology that governs our culture and society, and the way in which this permeates our gaze. The fifth section delves into the relationships between transsexuality and transdisability, from the possibility of considering the existence of similarities that can help to think about responses and proposals already experienced by another human group. The sixth section develops reflections on transdisability as a trait of identity, delving into pending issues that from the same social model were left by the wayside, and that could today provide some light in this context. The eighth paragraph very briefly presents the possibility of considering transdisability as an opportunistic device, resolving under general principles of law applicable in this and other matters. Section nine aims to offer a practical exercise, consisting of thinking about some general principles in cases of transdisability or self-perception of disability in access to justice. Finally, the last section investigates some conclusions, which only aspire to be a first approach to a topic that requires a social and legal debate in which its protagonists – transdisabled people and people with disabilities – must have their own voice.

## 2 Transdisability, disability perspective and human rights approach

The topic at hand may seem to be a mere theoretical exercise, both because of the lack of information regarding the prevalence and because of the apparent lack of practical consequences in daily life and in public policy. For this reason, it can generate reflections such as: why think about this when so few people are transicapable?, or what is the importance of the origin of a disability? What is the difference between having a disability condition and identifying with this human group without having this condition?

Well, without a doubt, the issue exceeds the theoretical framework, since it requires responses that involve public policies and access to rights. Among others, recognition as a person with a disability grants a series of rights and social benefits that bind the State and society. For example, access to positive action measures, anti-discrimination policies, requirements in terms of accessibility, support and reasonable accommodations, benefits such as personal assistance, exemption from certain taxes, pensions, etc. On the other hand, technological advances also lead us to questions such as: Is it morally acceptable to promote or generate a disability? And in connection with the latter, is there an ethical obligation to prevent disability, taking advantage of the technological advances that allow it?[6]

The answers and reflections in the face of all these questions require a frame. If the issue involved women's rights, the framing would undoubtedly require a gender perspective. In this case, by involving people with disabilities, this forces us to apply an approach based on a "disability perspective and a rights-based approach" to the case.

### *2.1 On the disability perspective*

The disability perspective can be conceived as a conceptual and procedural tool that understands and aims to make visible that the situation of structural inequality in which people with disabilities are immersed is the consequence of physical, communicational, attitudinal and even legal barriers, which prevent the exercise of rights in conditions of equality. It is undoubtedly a necessary and obligatory instrument when it comes to the design and implementation of public policy, which incorporates the transformations that have taken place in recent decades in the field of disability, and which also promotes inclusive and transformative equality[7].

Having a disability perspective implies looking at and being able to see the person with a disability integrating three dimensions (condition, situation and position). That is, making visible that the person has been facing social barriers, which in certain cases translates into chains that they drag throughout their lives in all the areas they intend to inhabit. A situation of inequality and structural discrimination that it is no longer possible to ignore, and to which there is no room for neutral responses, given that this fallacious neutrality is precisely what reproduces this inequality. Wanting and being able to see this forces us to deconstruct ourselves, to modify mechanisms, norms, practices and values that reproduce structural inequality, because otherwise we will be part of its origin. The need to incorporate a disability perspective in all areas of life in society encompasses both material or content issues, as well as formal and/or procedural aspects.

In relation to the contents (material aspects), the disability perspective requires the perspective that drives the social model, the approach to disability as a human rights issue, the perspective of intersectionality, the need to overcome ableism and universal design (that is, to think of a society taking into account a real universe of people and situations, in view of which it is necessary to deepen the guarantee of accessibility conditions that guarantee the exercise of rights without discrimination on the basis of disability). In relation to procedures

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[6] BARIFFI, Francisco. **When Disability is a Choice**: Exploring the Challenges of Transdisability and Genetic Engineering. Document 07 Nov. 2023.

[7] In accordance with the new model of equality presented in General Comment No. 6 of the Committee on the Rights of Persons with Disabilities Disability, CRDP/C/G/C/6

(formal aspects), it requires guaranteeing conditions of accessibility, adoption of adjustments, support systems; to promote and enable the participation of persons with disabilities, to strengthen a transversality that can incorporate the disability perspective in an intersectoral manner, in all areas of life that are covered by public policy[8].

In terms of access to any procedure (health, education, justice, etc.), having a disability perspective entails the obligation to ensure the participation of people with disabilities in all instances and/or procedures, for which it is imperative to guarantee the accessibility of these instances and/or procedures through accessibility conditions, procedural adjustments and support systems. The absence of a disability perspective can result in the process reproducing a stereotyped application not only of the law, but also when evaluating evidence, behaviors, needs, potentialities of the people involved, as well as the consideration made of the context[9].

As will be seen in the ninth section, applying a disability perspective has consequences of great importance for the analysis of transdisability, which begin with being aware of ableism prevailing in a society of which we are a part, and which entails uncomfortable questions for which we do not there are unequivocal answers.

### *2.2 On the human rights approach*

Applying a disability perspective implies a human rights approach. In recent years, the emergence of a "human rights model" of disability has been advocated[10]. And it has been expressed in the field of international human rights law, in the context of the work of the United Nations Committee on the Rights of Persons with Disabilities, in several of its Concluding Observations[11]. Also in most of its General Comments to date (with the exception of some that use the term "human rights approach")[12]. Other agencies of the universal protection system

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[8] A further development of these concepts in the context of access to justice can be found in: PALACIOS, Agustina. A path of fertile ground on the long and arduous road towards inclusive equality: a judgment with a disability perspective and a human rights approach. Revista Derecho de Familia y las Personas, [s. l.], v. 4, p. 1-14, dec. 2020. Available in: http://hdl.handle.net/11336/174433. Accessed on: 21 May 2023.

[9] MEXICO. Supreme Court of Justice of Mexico. Protocol for judging with a gender perspective: making the right to equality a reality. Mexico City: Supreme Court of Justice of Mexico, 2013. p. 90

[10] DEGENER, Theresia. A new human rights model of disability. In: FINA, Valentina Della; CELA, Rachere; PALMISANO, Giuseppe (ed.). **The United Nation Convention on the Rights of Person with Disabilities: a commentary**. [*s. l.*]: Springer, 2017. p. 42-59. In the Hispanic sphere, Ignacio Campoy also seems to hold this position. CAMPOY CERVERA, Ignacio. The construction of a model of human rights for children, with and without disabilities. Revista Derechos y Libertades, [s. l.], n. 37, Época II, p. 131-165, jun. 2017. DOI: https://doi.org/10.14679/1050. Accessed on: Dec 12 2023.

[11] Cf. Concluding Observations on Argentina's Initial Report (October 2012), CRPD/C/ARG/CO/1, paras. 7–8; Concluding Observations on China's Initial Report CRPD/C/CHN/CO/1, (October 2012), 2012, para. 9–10, 16, 54.

[12] Cf. General Comment No. 3 on Women and Girls with Disabilities, or the same OG7, mentions on the one hand the "model", but on the other the "approach" of human rights: (...)" 2.La active and informed participation of all people in decisions that affect their lives and rights is in line with the human rights approach to decision-making processes in the public sphere and ensures good governance and social accountability."

have joined this perspective[13].

In particular, we do not share the idea of talking about a "model" of human rights (in the sense of a paradigm)[14]. In addition, the fact that this "model" is presented as surpassing the social model may entail the risk of making the struggle of the movement of persons with disabilities invisible. If the parallel is allowed, the social model means something similar to what feminism implies for the women's movement. The different waves of feminism have allowed for their own revision and deconstruction. Like feminism, the social model is being reviewed by its leading voices (diversity model, critical studies, crip theory, right to madness, etc.). The social model is born from sociology, it is a social paradigm. The independent living movement is a social movement. Both have nourished each other. And they should continue to do so.

Although as a strategy the term human rights carries one of the most universal and least controversial languages, it is worth asking whether we can really conceive of them as a "model". Or if we are alluding to an approach, an approach, values. When the existence of a "new model of human rights" enshrined in the CRPD is affirmed, we are faced with a different plane of analysis The CRPD that enshrines rights has as its antecedent a social demand (independent living movement), which in turn has been accompanied and/or nurtured by a model of approach and treatment of disability (the social model).

Comparing the social model with a supposed human rights model based on the CRPD implies comparing a social science model with a legal instrument. For this reason, it proposes the adoption of a human rights "approach", which takes into account the deep bridges between the social model and the values that sustain human rights, but at the same time differentiates them, and identifies them, thus maintaining their respective identity. In this sense, both the human rights approach and the disability perspective in human rights are indispensable. But it is also essential to make visible, promote and develop the social model and the disability movement. Because the opposite could imply the risk of depersonalizing the struggle and movement of people with disabilities.

The human rights-based approach is a conceptual framework that is normatively based on international human rights standards and operationally oriented towards the promotion and protection of human rights. One of its main purposes is to analyse inequalities and correct discriminatory practices and unfair power-sharing that hinder progress in development[15]. A human rights-based approach identifies "rights-holders and what they are entitled to, and the relevant duty-bearers and their obligations, and seeks to strengthen the

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[13] Such as the United Nations Rapporteur on Disability and the High Commissioner for the United Nations.

[14] For reasons of space it is not possible to develop the reasons in depth here, which can be found in: PALACIOS, Agustina, ¿Un modelo of human rights of disability?..., cit.

[15] UNITED NATIONS. Office of the High Commissioner for Human Rights. **Human Rights and Poverty Reduction:** A Framework conceptual. New York: United Nations, 2004. p. 15.

capacity of the of the holders of rights to claim them and of the holders of duties to fulfill their obligations[16]."

The design of public policies with a focus on human rights implies abandoning the simple conception that the State is only imposed obligations and limitations, since the State must also develop policies that contribute to the full realization of rights. In this way, "any strategy that contemplates social equality, positive discrimination, participation and empowerment, as a guide for public policies"[17] will be in accordance with the human rights approach. On the other hand, this type of policy can only be implemented if it takes into account not only the results but also the process that they imply. In other words, the participation of State institutions at the central level, civil society organizations and institutions, and citizens in general is central.

Assuming disability from a human rights perspective requires conceiving people with disabilities as subjects of rights (not as the object of welfare policies). It also requires incorporating certain characteristics (equality, universality, interdependence, indivisibility) and specific principles (pro-person, progressiveness, effectiveness), as well as certain values that underpin human rights (dignity, equality and solidarity). It requires the application of standards of international human rights law, which should serve as a guide when building policies and development strategies, to such an extent that it can be said that in the current stage of human rights there are binding legal obligations to design social policies with a human rights approach[18]All of this requires the implementation of a conceptual and procedural framework that imposes monitoring and accountability mechanisms. From there, a conceptual scaffolding is structured, but at the same

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[16] Idem

[17] GIMÉNEZ MERCADO, Claudia; ADARME, Xavier Valente. The Human Rights Approach to Public Policy: Ideas for a Debate in the Making. **Cuadernos del CENDES,** Caracas, year 27, n. 74, p. 51-79, May/Aug. 2010. Available at: https://www.redalyc.org/articulo.oa?id=40316176004 Accessed on: 12 Dec. 2023.

[18] ROIG, Rafael de Asís. On the social model of disability: criticism and success. **Papeles el Tiempo de los Derechos**, [s. l.], n. 1, p. 1-12, 2011. Available at: https://hdl.handle.net/10016/19304. Accessed on: 21 May 2023. The Professor of Carlos III develops the following characteristics: "Placing people at the center and recognizing that all people have their own voice. • Recognize that all people have the right to the free development of their personality and to the free choice of how to live. • Assuming that the identity of people is the sum of condition and situation, and that the latter cannot be understood without attending to the position. 30 • To start from a truthful, rigorous and precise analysis, which has as its starting point the defense of the person who is in a situation of vulnerability, and which is action-oriented. • Adopt a gender perspective (women are in a differentiated situation in the enjoyment of human rights as a result of historically unequal power relations). • To contemplate intersectionality (axes of discrimination that, in an intertwined and differentiated way, impact people based on various factors). • Abandon the welfare approach conditioned by the development of voluntarist public policies. • To consider that rights are particularly resistant instruments, in the sense that they constitute both a guide and limit to the action of the legislator, as well as tools that are specially protected and enforceable in national and international courts. • Defend the validity of rights in both public and private spaces. • Affirm the existence of an obligation to respect and protect rights which, in the case of public authorities (and some private actors) is also one of promotion, reparation and accountability. • To comply with international human rights law (composed of treaties and their guarantee bodies and international courts), in the interpretation and specification of its scope. • Understand that equal satisfaction of rights and their universality is not at odds with different treatment or attention to diversity. • Reject segregation and promote inclusion, which, beyond integration, involves changing the context rather than changing the person and promoting the participation of all people. • Accept that rights may be limited, but only by other rights or goods of equal value, and after an exercise of weighting and proportionality. This implies, for example, that any limitation of a right that seeks to be justified by the cost of a measure must be based on the satisfaction of another right. • Understand that the goods that protect rights are connected and interdependent (progress in the protection of one right favors all and regression harms all).", p. 29-30.

time theoretical-operational, which identifies various monitoring and accountability mechanisms that involve political, social and economic actors in the policy-making process, incorporating the principle of equality and non-discrimination, as well as responsibility"[19].

Without a doubt, the human rights approach must govern the analysis of transdisability, and that is what is intended in this document, from the various dimensions that will be raised. Disability perspective and human rights approach, whether transdisability is considered as a diagnosis – contrary to the social model; as if it were posed as a feature of identity – where recognition policies should be made compatible with redistributive policies; as if the possibility of transdisability is thought of as an opportunistic device (or fraud) where the violation of the law and the values that sustain human rights emerges.

## 3 On the condition-situation and position in transdisability

As is well known, the social model made visible the social, cultural, and contextual causes of disability[20], demanding its deconstruction, from the awareness of being a "socio-political problem, whose structural causality it is situated in the regime of social, economic, political and cultural organization in force in a society and at a given historical moment"[21]. This requires a holistic view that at least takes into account its three facets or dimensions, which interact and must be present in any analysis of the matter. Thus, disability can be understood from three dimensions, which Patricia Brogna identifies as a triad: condition-situation-position[22].

The *condition of disability* is the personal dimension. The way in which this condition is defined and conceived will undoubtedly have an impact on the identity of the person. If the gaze arises exclusively from "deficiency" or from a medical diagnosis, then it becomes an identity of insufficiency, lack and lack of autonomy[23]. And without a doubt, from this isolated conception it is very difficult to build an identity. If this dimension, on the other hand, arises from the observation and recognition of human diversity, identity will be configured in descriptive and not negative terms. As Bordieu has taught, *he who nominates, dominates.*

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[19] PAUTASSI, Laura. The contribution of the rights-based approach to social policies: a brief review. [s. l.]: ECLAC, 2010. p. 4.

[20] Idem

[21] Mareño Sempertegui, Mauricio. Disability in the academic dimension of the National University of Córdoba: a diagnostic approach. Secretariat of Research and Postgraduate Studies. Córdoba: School of Social Work - UNC, 2006.

[22] BROGNA, Patricia. A triadic notion: condition, situation and position of disability. Andamios, Mexico City, v. 20, n. 52, p. 333-362, May/Aug. 2023. Available in: https://andamios.uacm.edu.mx/index.php/andamios/article/view/1019. Accessed on: 08 January 2024.

[23] FERREIRA, Miguel Ángel. The social construction of disability: habitus, stereotypes and social exclusion. Nómadas - Revista Crítica de Ciencias Sociales, Madrid, v. 17, n. 1, p. 221-232, 2008. Available at: https://www.redalyc.org/articulo.oa?id=18101716. Accessed on: 21 May 2023. p. 226.

That is why the term *functional diversity* has been proposed to replace the term "deficiency" or "condition", because in this way a medical-rehabilitative perspective is transcended, and the negative connotation on words that allude to the characteristics of a human being is eliminated[24].

The second dimension to take into account is the *situation of disability*, which has been highlighted by political activism and the social model of disability since the seventies of the last century. The situation is the interrelational, situational and dynamic dimension that arises when social barriers come into play[25]. This dimension is in fact the one that places the person in a situation of disability, the one that "disables", restricts and/or prevents the exercise of rights on equal terms with other people. As Luis Cayo Perez Bueno explains, "people with disabilities, beyond the specific disability that occurs in them, and their economic and social position, by the mere fact of having a disability, suffer from an aggravated deficit of citizenship. More poverty, less employment, lower levels of education and remuneration, forced inactivity, diverse segregations, inadequate standards of living, increased dependence on bodies outside the people themselves, little control over their existence, denial or reduction of rights, unwanted institutionalization, impossibility of leading an autonomous life and being included in the community, greater exposure to violence and abuse, especially if they are women and girls, etc., all these materials and many more, almost always negative, fill the vital and social landscape that has fallen to their lot[26]."

The third dimension is the *position of disability*, which is structural. It is located in representations, in evaluations, in culture, being the result of our prejudices and stereotypes. It is necessary, therefore, to be aware that the position of disability is related to the value we assign to the condition and the situation of disability. And that the social representation of disability is not usually that of diversity, but that of deficiency, —assimilated to the deficit, to the "abnormal," to disability. The disability position is intimately related to the philosophy of ableism, which is explored later in this paper, given its relevance in the analysis of the implications of the definition and scope of transdisability itself.

Once these three dimensions have been reviewed – or triad of condition-situation and position – in the topic at hand it seems important to consider at least two scenarios: the decision to acquire a condition of disability by the person himself; and the identity of the group without having this condition.

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[24] PALACIOS, Agustina; Romañach, Javier The Diversity Model: Bioethics and Human Rights as Tools to Achieve Fullness dignity in functional diversity. Madrid: Diversitas, 2007.p. 34-37.

[25] BroGna, Patricia, cit.

[26] WELL, Luis Cayo Peréz. The International Convention on the Rights of Persons with Disabilities and its deployment and application in Spain. In: INTERNATIONAL CONGRESS ON HUMAN RIGHTS, 6., 2023, Valencia. Book of Minutes [...]. Valencia: Fundación Mainel, 2023. Available at: https://mainel.org/wp-content/uploads/Libro-de-Actas-VI-Congreso-Derechos-Humanos-y-Discapacidad.pdf. Accessed on: 08 January 2024. p. 39.

### 3.1 The Disability Condition in Transdisability

Within the first scenario, the self-provocation of a disability undoubtedly raises ethical, social and legal debates. If the person himself generates self-blindness with acid, it is a self-referential decision that it only involves autonomous action at the beginning, but the consequences of this action can undoubtedly affect third parties who provide support, as well as generate the need for resources – human and economic – on the part of the State – such as access to social benefits, or personal assistance, for example. However, so far the technical assessment of the disability does not distinguish whether the cause that gave rise to the condition has been voluntary or involuntary.

This does not prevent this point from meriting a debate, although the line and parameters of evaluation of this issue seem delicate. As this could lead to slippery solutions. Should it also be assessed whether the disability is the result of a self-negligent accident? Common sense seems to indicate that it is not, and that once the condition arises, it is not up to the State to evaluate or interfere. This position is even supported by authors who consider that the right to physical integrity, recognized in Article 15 of the Spanish Constitution, is a right of positive protection, which does not include the power to voluntarily attack one's own bodily integrity. Thus, for example, Martínez Pujalte states that what is recognized is the right to bodily integrity or inviolability, but this does not grant a right over the body or to the free disposal of the body[27]. However, although within this position the conduct of altering the body to acquire a disability would not have legal protection and the support of the public authorities could not be claimed, this does not mean that, once it has been carried out, the person with the condition, even if it has been acquired voluntarily, is considered a person with a disability. The cited author states that the case could be compared to a person who has a psychosocial disability as a result of having consumed alcohol or drugs, which could also be considered a self-caused disability[28].

Different is the case in which the person requests health professionals to intervene to cause the condition of disability, as has been the well-known case of the Scottish doctor Robert Smith, who in the nineties, for the first time in history, agreed to amputate the legs of two people. For him, amputation solved "body dysmorphic disorder" and amputation was the "only possible remedy for this severely disabling condition." According to his words, one of the

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[27] MARTINEZ PUJALTE, Antonio Luis. Fundamental rights and disability. Madrid: Cinca, 2015.

[28] Antonio-Luis Martínez-Pujalte is thanked for the exchange of e-mails on the subject.

patients was about to commit suicide and the operation saved his life[29].

In these cases, although we continue to place ourselves within the sphere of a self-referential decision, the intervention of third parties (if the intervention is carried out with their own resources), or also of public resources (if the intervention was carried out in the context of public health) is also added. Undoubtedly, at this point, other parameters and dimensions emerge for analysis.

From the ethical aspect, the principles of bioethics – autonomy, beneficence, not maleficiency – justice – do not seem to give simple or automatic answers. Among other issues, they lead us to questions such as: To what extent are we talking about the right to the free development of personality? Could a parallel be drawn with the decision of transgender people to undertake a sex-change surgery? Could we think in similar terms regarding the right to autonomy, applying similar arguments to those put forward against Jehovah's Witnesses, who reject a treatment or transfusion that can cost them their lives? Is the Hippocratic medical oath to do no harm violated in these cases, even when the patient autonomously expresses a wish? To what extent should their decision be respected? Is it fair for the health system to face the costs? Is it fair that the resources and benefits that the acquired condition may entail are then assumed?...

A central issue when integrating the issue with a disability perspective leads to the following question:

Could we be proposing ableist parameters when assessing the positive or not consequences of a decision of this nature?...

This is how Bayne and Levy understand it, who consider that when a person, having been informed about its consequences, autonomously exposes a desire, medical ethics obliges to give it relevance and respect it. The cited authors propose a comparison with the refusal of a blood transfusion of a person belonging to the Jehovah's Witness cult, since although such a decision could lead to death, it is the duty of the health professional to respect this decision. When a professional attends to a patient, he or she must not forget that in addition to from possessing a physical structure (which may or may not work), it is also an individual who has responsibilities, fears, and concerns; it has experiences, beliefs, opinions, and certainties. They belong to a certain culture and have the capacity to decide on their future. This consideration forces the health system to reconsider the criteria for limiting treatments[30].

In 2006, Savulescu stated that "amputation may not only be permissible on some occasions, but may even be desirable." Savulescu uses the Kantian conception to argue his

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[29] STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. Disability Studies Quarterly, [s. l.], v. 31, n. 4, 2011. Available In: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

[30] BAYNE, Tim; LEVY, Neil. Amputees by choice: body integrity identity disorder and the ethics of amputation. Journal of Applied Philosophy, [s. l.], v. 22, n. 1, p. 75-86, 2005.

position, and he believes that if a person who, after trying different types of treatments that have not been effective, asks that one of his healthy limbs be amputated, there are strong arguments to accede to this request. He states that although for most of society the action of amputating a healthy limb is something incomprehensible, if it generates happiness for the patient and makes him or her feel truly complete as a human being, we should accede to his or her request[31].

However, the principle of autonomy must be combined with those of beneficence-non-maleficence. In accordance with the principle of non-maleficence, doctors should not carry out amputations without a medical indication, due to the great risks involved and which often have serious consequences. Even if amputations were a possible therapy for the alleged *disorder of the identity of bodily integrity*, they would be risky experimental therapies that could only be justified if they claimed to save life or cure serious illnesses as long as an alternative therapy was not available. Above all, an amputation causes irreversible damage that cannot be healed, even if the patient's body image is restored spontaneously or through new therapy[32].

From these points of view, it has even been argued that the principle of beneficence could justify amputations to avoid even worse consequences. This argument is supported by the fact that some people are capable of crushing a leg or placing a limb under a moving train. Some cases even resulted in death[33]. The offer of properly performed amputations can prevent dangerous self-mutilations.

From the principle of justice, an argument against elective interventions or amputations is socioeconomic, as it generates high costs of medical treatment, rehabilitation, early retirement and loss of work. Public funding of elective amputations is ethically permissible only if the amputations are strictly necessary to cure a serious illness, but not when they are performed for aesthetic, erotic, or financial interests. In this way, since amputations cannot be justified as a medical therapy for BIID, they have to be excluded from public funding in relation to the principle of justice[34].

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[31] SAVULESCU, Julien. Autonomy, the good life, and controversial choices. In: RHODES, Rosamund; FRANCISCO, Leslie; PRATAS, Anita (ed.). The Blackwell guide to medical ethics. Oxford: Blackwell Publishing, 2007. p. 17-37.

[32] GUINDO, Vivian García; ORONOZ, Naroa Iglesias. Diagnostic guidelines and treatment of Body Integrity Identity Disorder: A bibliographic review. 2016. Final Degree Project Academic year (Bachelor's Degree in Nursing) - Escola Universitària d'Infermeria Gimbernat, Sant Cugat del Vallès, 2016. p. 24. Available at: https://eugdspace.eug.es/bitstream/handle/20.500.13002/370/Orientaciones%20diagn%C3%B3sticas%20y%20tratamiento%20del%20Trastorno%20de%20la%20Identidad%20de%20la%20Integridad%20Corporal.pdf?sequence=1. Accessed on: Dec. 12, 2023.

[33] BAYNE, Tim; LEVY, Neil. Amputees by choice: body integrity identity disorder and the ethics of amputation. **Journal of Applied Philosophy**, [*s. l.*], v. 22, n. 1, p. 75-86, 2005. p. 79.

[34] GUINDO, Vivian García; ORONOZ, Naroa Iglesias. Diagnostic guidelines and treatment of Body Integrity Identity Disorder: A bibliographic review. 2016. Final Degree Project Academic year (Bachelor's Degree in Nursing) - Escola Universitària d'Infermeria Gimbernat, Sant Cugat del Vallès, 2016. p. 26. Available at: https://eugdspace.eug.es/bitstream/handle/20.500.13002/370/Orientaciones%20diagn%C3%B3sticas%20y%20tratami

Further complicating the subject under analysis, we could ask ourselves about the cases in which disability results from genetic engineering practices or neurotechnologies. Bariffi points out that the issue becomes even more complicated when these interventions occur in early reproductive stages, such as in embryonic development, transferring decision-making from the affected person to their parents. The nature of the debate is transformed, given that we are no longer faced with self-referential behaviors, but rather fathers or mothers deciding about their children, or their unborn children.

The debate takes us, in some respects, back to the deaf population of Chilmark in Martha's Vineyard (United States). By encouraging union and descent among its members with deafness, the number of deaf residents in the community and therefore sign language, increased considerably. This practice was not exempt controversial, as such an approach was perceived to isolate deaf people from society at large and encourage marriages within their community, increasing the prevalence of deafness[35].

Bariffi says that the digital age and the advent of artificial intelligence introduce significant challenges and opportunities that seem to test the principles of the social model of disability. "While this model promotes the adaptation of the environment and society to achieve inclusion, biotechnology based on artificial intelligence provides, for the first time, tools capable of interacting and adapting, and even with the potential to alter certain aspects of the disability itself. This technological advancement opens paths toward direct intervention on physical or cognitive limitations, which generates an ethical debate about the limits of technological intervention on human characteristics and what this means for our understanding and acceptance of diversity"[36].

The aforementioned author describes that advances in the fields of biology and genetics, such as the CRISPR gene editing technique, are opening the doors to the possibility of modifying, improving and, in theory, "correcting" the human genome. He states that "these techniques could lead to the elimination of hereditary diseases and the possibility of altering or choosing specific characteristics. However, these possibilities bring with them profound ethical questions: Should we select or discard embryos based on these techniques? Are we approaching a scenario where we seek to eradicate what we consider "deficiencies"?"[37]

In this context, the discussion on gene editing during fetal development arouses deep fears and misgivings, the consequence of a relevant historical legacy: "science has

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ento%20del%20Trastorno%20de%20la%20Identidad%20de%20la%20Integridad%20Corporal.pdf?sequence=1. Accessed on: Dec. 12, 2023.

[35] SACKS, Oliver. I see a voice: a journey to the world of the deaf. Translation: José Manuel Álvarez Flórez. Barcelona: Anagrama, 2003.

[36] BARIFFI, Francisco. The future of disability at the dawn of artificial evolution. **Diario CERMI,** Madrid, Feb 21. 2020. Available in: https://cermi.es/noticia/el-futuro-de-la-discapacidad-en-los-albores-de-la-evolucion-artificial. Accessed on: Dec. 12, 2023.

[37] Idem

often been used to justify and implement eugenic practices, concealment, marginalization, institutionalization and medical experimentation. Throughout history, technology has served simultaneously as a tool for social inclusion and as a factor of exclusion or segregation for certain groups within the disability collective, especially under the influence of the medical-rehabilitation model."[38]

Bariffi (2020) states that:

> It is essential to underline that the prospect of a disability-free future offered by technological advances may prove to be an oversimplification. The Convention on the Rights of Persons with Disabilities promotes the social model, which maintains that disability is not found in the person, but in the social barriers that obstruct equal opportunities. The focus should therefore shift from the idea of removing "gaps" to that of eradicating obstacles that limit full participation in society. The debate over the genetic manipulation of embryos with mutations that could result in disabilities not only focuses on the ethical and legal implications, such as the risk of institutionalizing structural discrimination and reviving the shadow of eugenics, but also contemplates the technological possibility of intentionally inducing such mutations in the embryo. This would involve the possibility of deliberately causing conditions such as deafness, achondroplasia, or Down syndrome.[39]

It seems that the answers to these questions may be dissimilar, depending on whether or not a disability perspective and a human rights approach are applied in their analysis. And above all, depending on whether or not it is possible, to transcend the ableism that is usually in force in our society. In any case, it also seems important to be aware that, even if we go beyond ableist views and philosophies, decisions that involve other people-either because decisions are made about them, as in the cases of prenatal genetics, or also in cases in which the person decides about himself but his decisions transcend his person and affect the needs of support, services, or social resources-, exceed the principle of autonomy, and require much stricter -or deeper- criteria of analysis and implementation.

## 4 Trans-dis-ability as a mental condition

Where do transdisability people fit into the world of disability? Some of the literature on the subject understands that transdisabled people have a mental health condition. This fact alone becomes part of the community of people with disabilities – as people with psychosocial disabilities, but probably not in the way they want.[40]

It has been stated that, if we understood transdisability from a diagnosis, and based ourselves on the principle of beneficence, medical interventions could be justified if the benefit

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[38] Ibidem

[39] Ibidem

[40] STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. Disability Studies Quarterly, [s. l.], v. 31, n. 4, 2011. Available In: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

to the patient could invalidate his or her harm. Therefore, the following conditions would need to be met: • Effectiveness • The sustainability of the effect • The absence of a less harmful therapy.[41]

However, in this work, from which the analysis is assumed from the social model of disability – with a disability perspective and a human rights approach – the consideration and framing of the issue from a diagnosis is not considered an option to be developed. As Alexandre Baril expresses, the objective is not to ask about the psychology or psychiatric pathology of those who wish to voluntarily acquire a disability, but to ask ourselves about the responses – ethical, social and legal – to this situation.[42]

The issue is manifested in the need for a medical label to achieve an identity, which is precisely the antithesis of the work that the community of people with disabilities has done in relation to the change towards the social model. Stevens, a woman with a disability cited in the prelude to this work, says that, after studying transdisability, she has more questions than answers. But he proposes to consider it through the lens of disability as art. It understands that by doing so, people with disabilities can find a home in the disability community, as long as they bring with them a full commitment and artistic integrity to the disability experience.[43]

These proposals can provide feedback on some lines of analysis of the social model of disability itself.... Alexandre Baril affirms that if we start from an anti-ableist perspective, transdisability should not generate an ethical or social debate. However, personally I understand that the anti-ableist view can still leave open debates to deepen.

## 5 Tensions with Ableism

An important point, which cannot be absent from the analysis, is the concept of ableism: a value system that considers certain typical characteristics of the body and mind to be fundamental to living a life worth living. Adhering to strict standards of appearance, functioning, and behavior, ableist thinking views the experience of disability as a misfortune that entails suffering and disadvantage and invariably detracts from the value of human life.[44]

Carolina Ferrante encourages us to think of the intersection between transability and ableism as something disruptive. The author wonders if transdisability would not function

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[41] Idem, p. 26

[42] BARIL, Alexandre. Needing to Acquire a Physical Impairment / Disability : ( Re ) Thinking the Connections between Trans and Disability Studies through Transability. **Hypatia**, [*n. l.*], v. 30, n. 1, p. 30-48, 2015. DOI: https://doi.org/10.1111/hypa.12113

[43] STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. Disability Studies Quarterly, [s. l.], v. 31, n. 4, 2011. Available In: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

[44] Thematic Study by the United Nations Special Rapporteur on the Rights of Persons with Disabilities, December 17, 2019, para. 9

as a way to stress ableism, to resist it, to propose that the identity of disability is something to be valued.[45] In a similar vein, Gerard Quinn expresses that hierarchies and privileges seem deeply rooted in the human condition. We even base our conception of the ideal "political community" on it: that it revolves around homogeneous "nations" with similar ideas and interests. Ableism is not an outlier: it is a direct result of refracting humanity into groups, some of which 'belong' and some of which do not. Ableism is actually a symptom of something much deeper. One of the "problems" with disability studies is that they turn ableism into an outlier or a ghost. When in reality it is part of a much broader problem.[46]

The professor from the University of Galway stresses that being "capable" means confirming a picture of the "typical functioning of the species". In other words, if utility is the primary value, being "capable" has the highest value. If the goal is utility, then ableism has a logic. What this overlooks is the value of every human being. But what this overlooks is that most of our societies (it is that is, our economies) are based on use value.[47]

Stevens argues that there is much to value in disability, and that inserting transdisability into body art is a powerful tool of resistance against ableism, particularly in a culture that consistently demands mandatory physical ability. Including disability in the concept of body art transgresses the standards and limits of what is socially perceived as beautiful. He explains that most people today modify their bodies through piercings, tattoos, and other practices, without facing the stigma of criminalization and deviance that was so closely associated with these women just a few decades ago. In fact, a socially acceptable form of body modification (plastic surgery) erases stigmatizing characteristics by changing the appearance and function of the body. While body art is often framed as intentional body modification, she proposes expanding the concept of body art to include the unintentional acquisition recovered from a non-normative embodiment, such as that brought about by a physical disability.[48]

Cosmetic surgery often provides a method of erasing racialized, gendered, and disabling body markers in a way that serves to normalize the body and erase stigmatizing traits. It is often recommended to erase disabling or disfiguring features by cosmetic surgery for mental health purposes, regardless of the inherent risks of the surgery, because it is supposed to improve the vaguely defined "quality of life."[49] An obvious problem that prevents transdisabled people from accessing the surgeries they need is the presumption that no one could want or need to have

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[45] Carolina Ferrante is thanked for her academic generosity and exchange of ideas, which have enriched this work.

[46] Gerard Quinn is thanked for his academic generosity and exchange of ideas, which have enriched this work.

[47] Idem

[48] STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. Disability Studies Quarterly, [s. l.], v. 31, n. 4, 2011. Available In: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

[49] Idem

a *disabled body*. That is why it is important to address this issue with a disability perspective and a human rights approach.

Many of the articles on tradability to date lack a critical lens of disability studies. This theoretical framework provides adequate analysis on how removing a limb or cutting the spinal cord on demand is considered unethical "harm" due to the historically denigrated status of disability.[50] In this way, Stevens expresses that part of his difficulty in reconciling why someone would want to have a disability is due to his own internalized ableism. Belonging to a culture that devalues disability status and exalts physical ability, so she is often caught perpetuating the dominant discourse on disability (even when it comes to self-perception): that people with disabilities are somehow "damaged, flawed, and less socially marketable than people without disabilities."

As is well known, among other authors, Michael Oliver (1990) advocates a change from the medical model of disability to the social model of disability, which separates deterioration from disability. The medical model presents disability as a personal matter, in which the only remedy is a somatic cure and not a restructuring of society. The social model changes the meaning of disability from "a problem of the person" to a problem of the ableist society; society is the disabling factor. In this paradigm, impairment is the limitation that one has in capacity, while disability is a cultural construct that devalues people who have this condition. Therefore, disability must be understood as a social issue, in which society incapacitates people by erecting structural and attitudinal barriers in the lives of people with disabilities.[51]

The claim that disability is not natural is a powerful way to institutionalize the notion that people without disabilities are the norm, are superior, and that no one should ever want or need a *disabled* body. "Culturally perpetuated and produced standards [such] as 'beauty,' 'independence,' 'fitness,' 'competence,' and 'normality' exclude and deactivate many human bodies while validating and affirming others." (Garland-Thomson, 1996, p. 7). The institution of compulsory physical fitness is detrimental to all people by fostering the illusion that totailness should want to be physically fit and that any anything else is undesirable and worthless.[52]

## 6 Similarities? Between transsexuality and transdisability

Trans people, like transgender people, often experience depression because their

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[50] Ibidem

[51] BRUNO, Richard Louis. Devotees, pretenders and wannabes: two cases of factitious disability disorder. Sexuality and Disability, [s. l.], v. 15, n. 4, p. 243-260, 1997. DOI: https://doi.org/10.1023/A:1024769330761. Accessed on: Dec 12 2023.

[52] GARLAND-THOMSON, Rosemarie. Extraordinary bodies: figuring physical disability in american culture and literature. New York: Columbia University Press, 1996. p. 7.

bodies don't match their psyche. Many claim that the only way to effectively cure their depression is to change their bodies to reflect their identity, not through pharmacological or psychological intervention. Stevens relates that while there is no monolithic narrative for every trans or transgender person, the similarities in some of their stories are striking.[53]

Even if a transdisabled person can afford medical intervention, in most cases they are denied the surgeries necessary to reconcile their bodies and their identities. The Hippocratic oath, by which doctors pledge to "do no harm" to their patients, is the main barrier between a transdisabled person and their disability; Professionals cannot help people acquire a disability that is presumed to have a detrimental effect on their lives. Stevens stresses that this barrier depends on seeing disability as a form of embodiment that only has negative effects on the person's life, thus objectifying the medicalization of disability. The Hippocratic Oath entails an uneven application in practice. Medical interventions that many people consider barbaric and harmful, such as plastic surgery, are considered legal and ethical because they work to transform their patients' bodies into the ideal standard of beauty, health, and embodiment.[54]

Alexandre Baril explains that the relevant criteria of inclusion/exclusion have been defined by a cis* and healthy majority and that it is precisely these historically constituted constructions that have made it difficult to perceive the continuities between them. By the term "continuities," he proposes not only that trans and transdisability experiences have commonalities and exist on the same continuum, but also that they are intertwined and that these interconnections can be brought to light through intersectional analysis in trans and disability studies.

Many transgender people who wish to modify their genitals, or are forced to do so by the state in order to gain recognition of their self-perceived gender, experience a loss of their "natural" ability to reproduce. Surgery can also reduce function or sensation in erogenous zones or other parts of the body, cause fistula incontinence, or have other side effects. For these reasons, although the main motivation of transgender people is not to modify their physical capacity or functionality, it is difficult to distinguish so-called sex changes from capacity transitions because many of the former involve minor or major transformations of the body's capacities, functions, and capabilities. and general health. He argues that the construction of gender depends not only on the male and female body, but also on the non-disabled body. People with disabilities find no trace of our sexualities in that world. They are

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[53] STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. Disability Studies Quarterly, [s. l.], v. 31, n. 4, 2011. Available In: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

[54] STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. Disability Studies Quarterly, [s. l.], v. 31, n. 4, 2011. Available In: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

considered undesirable without gender and asexual... "Let's think first about gender and how perceptions of gender are shaped. Being a woman and having a disability means not being seen as a woman; being male and having a disability, as if I were not a man. The gestures that help define gender (the way people walk, move their hips, gesture with their hands, move their mouth and eyes while talking, take up space with the body) are all based on how able-bodied people move..."[55]. The author argues that all body modifications, including tradability, they involve sex and gender.

The difference would lie in self-identification and individual subjectivity: one group wishes to change sex/gender category, the other to belong to the category of persons with disabilities or to acquire a different form of corporeality in relation to function or ability. "Beyond blurring boundaries and exploring similarities, comparing and establishing a continuum between these two phenomena also creates an opportunity to re-examine the recurrent feminist debates on autonomy and bodily freedom. This continuum invites a broader investigation into the "normality" of the body as assumed by dominant regimes and reveals the cis* (cis(dis)abled and cissexual privileges on which negative reactions to these "extreme" modifications are based." (…) From a holistic view of identity, this fragmentary conception of health, the body, and sex/gender seems excessively limited. The experience of disability varies according to many aspects of identity, and adopting an intersectional analysis that includes the cis*/trans* dimension in disability studies is an opportunity to incorporate these differences.[56]

Robert McRuer explains that, just as Butler showed that non-normative genders and sexualities pay a price in the system of compulsory heterosexuality, in the context of disability non-normative bodies and minds are oppressed by a system of *compulsory able-bodiedness.* Due to an ableist view of "normal" and "productive" bodies, the requests of transdisabled people are often considered irrational. In this sense, there are also similarities with stigmatization, criminalization, and definitional issues that have limited the visibility of the trans community and justified its marginalization and rejection. Baril highlights that, like trans people, trans people suffer social, economic, medical discrimination, and those who do not have access to medical support often try to modify their bodies through illegal means (black market hormones, silicone injections).

McRuer stressed that *able-bodiedness* was not actually a neutral characteristic of being, let alone a choice. *Able-bodieness* is, on the other hand, something that the system makes seem desirable and mandatory. "This is where Judith Butler's theories come in handy,

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[55] BARIL, Alexandre. 'How dare you pretend to be disabled?' The discounting of transabled people and their claims in disability movements and studies. Disability & Society, [s. l.], v. 30, n. 5, p. 689-703, 2015. Available at: http://dx.doi.org/10.1080/09687599.2015.1050088. Accessed on: Dec 12 2023.

[56] BARIL, Alexandre. 'How dare you pretend to be disabled?' The discounting of transabled people and their claims in disability movements and studies. Disability & Society, [s. l.], v. 30, n. 5, p. 689-703, 2015. Available at: http://dx.doi.org/10.1080/09687599.2015.1050088. Accessed on: Dec 12 2023.

particularly her concept of 'gender performativity'. The ideal forms of masculinity and femininity are, according to Butler, forms that we are forced to seek and repeat, being at the same time ideals that we can never achieve perfectly without contradiction or incoherence. She calls this phenomenon "gender trouble" (the title of one of her books translated into Spanish as "Gender in Dispute"), which at the birth of queer theory was a very important idea. The MacRuer ideas embodied in compulsory *able-bodiedness* had an impact on (at least) two concepts of Butler's ideas. First, *able-bodiednesses* is one of the foundations of the dominant forms of gender and sexuality (and vice versa, the dominant forms of embodiment were based on heterosexuality and the traditional understanding of masculinity and femininity). Secondly, I wanted to show that *compulsory able-bodiedness* is equally impossible to achieve perfectly and without any contradiction. And, just as Butler showed that non-normative genders and sexualities pay a price in the system of compulsory heterosexuality, his theory seeks to examine how non-normative bodies and minds are oppressed in a system of *compulsory able-bodiedness.*[57]

Transdisability activists compare their identities to transgender identities for a number of reasons. Both groups seek surgical modification of their bodies to reconcile the outer incarnation with the inner identity. Dr. Michael First, who coined the label Body Integrity Identity Disorder, found in his study of 52 people who desired an elective amputation that most expressed desires similar to those of many transgender people. First found that the beginning of the discovery of the desire to acquire a disability occurred during early childhood, as did many transgender people. In addition, transgender and transdisability people often report parallel narratives of being "stuck in the wrong body." Their desire for body modification is motivated by the need to feel "whole" and for their appearance to reflect their internal identity (pers. comm. 2008).[58]

Alexandre Baril argues that reactions to tradability are not only rooted in forms of ableism that target people with disabilities, but also in three other dominant systems: sexism, heteronormativity, and classism/neoliberalism.[59] Together with Kathryn Trevenen, they describe that negative reactions are first rooted in ableist norms. Conceptualizing tradability as a choice "extreme," performed by people whose mental health is in question, allows the obligatory physical capacity of everyday life to remain hidden. They note that people often invest as much effort as their transdiability counterparts in modifying their bodies to achieve particular normative

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[57] MCRUER, Robert. Crip theory, cultural signs of queerness and disability. Translation: Javier Sáez del Almo. Madrid: Kaótica Libros, 2021.

[58] STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. Disability Studies Quarterly, [s. l.], v. 31, n. 4, 2011. Available In: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

[59] BARIL, Alexandre; TREVENEN, Kathryn. Transabled women lost in translation? An introduction to: "extreme" transformations: (re)thinking solidarities among social movements through the case of voluntary disability acquisition. Medicine Anthropology Theory, [s. l.], v. 3, n. 1, p. 137-162, 2016. DOI: https://doi.org/10.17157/mat.3.1.388

ideals, but this choice goes unnoticed. Adopting an intersectional approach, they argue that sex/gender, sexuality and class categories are based on ableism because their construction is linked to codes (ways of moving, speaking, etc.) that assume a non-disabled body. From this perspective, it is possible that transdisability realities are met with resistance not only because they challenge ableist standards, but because these transformations transgress sex/gender, sexuality, and dominant tendencies.[60]

"Tattoos, piercings, bioelectronic implants, bodybuilding, plastic surgery, gender change, voluntary amputation... The list of body modifications is almost endless. Although some of these practices have existed for centuries within a variety of geographical, economic, political, social, and religious spaces, others are more recent and are practiced only in specific areas and regions. Certain modifications are covered by state medical systems, others are socially normalized and do not require state intervention, some exist in subcultures, and others are sometimes criminalized. The motivations behind the need to transform the body are so diverse: the desire to stand out, to follow certain rules, to create art, to express a deeper identity, to pursue pleasure or to acquire power (...). “

In ableist societies, a "valid" body identity is associated with mobility, independence, autonomy, productivity, and success, while an "invalid" body identity is associated with weakness, powerlessness, dependence, unproductivity, and failure. From this perspective, transdisability is considered a transition from a normal state to an abnormal state or, in other words, a movement towards circumstances considered inferior.[61] In this way, he is encouraged to question the unequal application of the Hippocratic Oath and argues that ableism is at the root of the idea that disability is a harm. But it also raises important reservations about the incorporation of transdisabled people into the disability community.[62] This brings us to the next paragraph.

## 7 Trans-dis-ability as a trait of identity

Another scenario arises in the case of people who say they perceive themselves as having the identity of disability, but who do not have, nor do they want to, cause themselves any physical, mental, intellectual or sensory condition (which is usually an integral part of the identity of the group called people with disabilities). In these cases, part of the debates raised by the previous examples dissolve, but others emerge:

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[60] Ditto

[61] STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. Disability Studies Quarterly, [s. l.], v. 31, n. 4, 2011. Available In: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

[62] Idem

Can we think of a person with a disability without the individual condition? Is it possible to belong to the group of people with disabilities without the condition that is usually part of the same legal definition of disability? Can this case be considered similar to that of transgender people who do not want to modify their bodies? Should the same social and legal responses then be applied? Could these cases be understood as part of the right to the free development of personality? How should the legal effects be foreseen if this were recognized?

Perhaps we should ask ourselves in the first place who has the authority to determine the authenticity of another person's identity. In principle, the construction of identity is part of the subjectivity of the person. The right to identity is constituted by everything that identifies and individualizes a person, and that constitutes him, in his uniqueness as such, before himself as before society. The human being is only constituted from seeking and achieving his identity. We are talking about an individual identity and also a social identity.

The content and scope of the right to identity seems to leave little room for definitions or framing external to the person. However, like all other rights, the right to identity is not absolute, and can be restricted as long as it respects the principles and values that underpin human rights. In the case at hand, questions arise that require frameworks and limits to the law, such as: Is it fair recognize the legal effects of positive action measures, compensatory for the inequality and structural discrimination faced by the group of people with disabilities in these cases? Is it possible to recognize access to accessibility rights, such as personal assistance or reasonable accommodations without such a disability condition?

Some positions consider the condition to be essential in the definition of disability, as it is a trait that is part of the identity of persons with disabilities. "Just as we would not call a white person black or apply affirmative action measures established for racial minorities, we should not call people with disabilities people who do not have a disability."[63] Here, in the first place, it is worth highlighting some subject that is still pending on the part of the social model of disability. Several decades have passed since it has been conceived, and during this time it has been deepened and revised.[64] And there are several reasons why it is being debated today.[65] These reasons are intrinsic to its own success; being, as Shakespeare puts it, its

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[63] MARTINEZ PUJALTE, Antonio-Luis Martínez-Pujalte is thanked for the exchange of e-mails on the subject.

[64] Among others: Crow, L., "Including all for our lives: renewing the social model of disability", in *Exploring the Divide,* Barnes, C., and Mercer, G., The Disability Press, Leeds, 1996; MORRIS, J. (ed.), *Encounters with Strangers. Feminism and Disability*, Narcea, Madrid, 1996; MORRIS, J., *Pride against prejudice. A Personal Politics of Disability,* Women's Press Ltd., London, 1991. WENDELL, S., *The Rejected Body. Feminist Philosophical Reflections on Disability*, Routledge, New York, 1996. Zola, I., "Towards the necessary universaling of a disability policy", *The Milbank Quarterly* vol. 67, 1989. See also De Asís RoiG, R., "On the social model of disability: criticism and success", *Papeles el tiempo de los derechos*, No. 1, 2011, ISSN: 1989-8797, pp. 1 and 2. Cuenca GOMEZ, P., "Human Rights and Models of Treatment of Disability", *Papeles El Tiempo de los Derechos*, no. 3, 2011, ps.1-16.

[65] For reasons of space, a selection and synthesis of the criticisms of the social model is made, but the theme undoubtedly has a greater depth.

strength its greatest weakness.[66] Other movements such as feminism have been revised over time, have been subjected to multiple interpretations, have responded to their criticisms, have modified their positions. However, the British tradition of the social model has remained static in relation to its foundational assumptions.[67]

As is well known, the distinction between "deficiency" and disability has been central to the social model.[68] Deficiency – the individual condition of the person – is defined in individual and biological terms. Disability is defined as a social construct – the result of the interaction of this condition with social barriers. However, as Shakespeare explains, the distinction between biological-individual and social is difficult to sustain. Individual experience can never be separated from the social context... there is no deficiency without society, nor society without deficiency... and it seems necessary to have a deficiency to face a disabling barrier.[69] The individual condition is not the only cause of the difficulties that people with disabilities face, but it is one of them. If we take away the relationship between this condition and disability and make it broader, disability would include any oppression, and that makes it very ambiguous. On the other hand, individual conditions are often the consequence of social factors (poverty, malnutrition, etc.). In addition, meaning and what is considered "deficiency" is a cultural issue, which depends on social values and attitudes.[70]

The fact that social barriers and individual status interact has been highlighted. For disability to be triggered, the individual condition must be present: disability is the form of discrimination specifically directed at people who have, may have or have had a *deficiency*. This does not mean that the *condition* generates the disability, but that it is a necessary category for this type of oppression to occur. However, we must not lose sight of the fact that social factors can define, at the most fundamental level, what is perceived as a condition of disability. The perception of the norm and the difference varies culturally and historically. When

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[66] SHAKESPEARE, T. "Critiquing the social model of disability". *In*: EMENS, Elizabeth F.; STEIN, Michael Ashley (Eds). **Disability and Equality Law**. London: Routledge, 2016, p. 266-273.

[67] Idem, p. 72 In relation to the social model and the Latin American context, see FERRANTE, Carolina. In Memory of Mike Oliver: A Living Sociological Legacy for Latin American Critical Disability Studies. Scientific Bulletin Sapiens Research, [s. l.], v. 9, n. 2, p 80-90, 2019. Available at: https://www.srg.com.co/bcsr/index.php/bcsr. Accessed on: Dec 12 2023. The author offers an excellent argument regarding the sociological view proposed by Oliver, considering the social model a toolbox for Latin American critical disability studies.

[68] It is clarified that the term used in English by the author is respected, and whose translation is "impairment", but that personally it is He rejects this term because he understands that it contains a medical-rehabilitative bias.

[69] SHAKESPEARE, T., cit. p. 17

[70] Idem, p. 73 Along these lines, Abberley wonders what the utopia would be in relation to disability. And he responds that it is perfectly correct and necessary to explore and document the socioeconomic determinants of disability, but that this is not the only thing to do. Because, in order to carry it out effectively, it seems necessary to analyse what it is that we foresee, if we do not want to unintentionally elevate the partial and historically conditioned demands of a sector of people with disabilities to general principles of disability theory and policy. And "for this to happen, we must consider the individual condition in a world without disabilities. Idem, p. 84 See: ABBERLEY, Paul. The concept of oppression and the development of a social theory of disability. Disability, Handicap and Society, [s. l.], v. 2, n. 1, p. 5-19, 1987; Abberley, P., "Disabled People and 'Normality'". *In:* SWAIN, J, FINKELSTEIN, V., & OLIVER M. (EDS.). **Disabling Barriers-Enabling Environments** London: Sage, 1993.

ideas change, people's definitions change. For example, many people considered "psychosocial disabled" simply do not conform to the rules contemporaneous behavior.[71]". This last question is raised by Ingstand and Reynolds[72]. The authors argue that trying to universalize the category "disability" faces conceptual problems of the most diverse kind. In this way, the deficiency (in the language of these authors) is neither pre-social nor pre-cultural, there is nothing "natural or pure" in the body outside of discourse.[73] Shakespeare uses the comparison with feminism. In the 1970s, the sex-gender distinction was criticized for creating a false dualism that understood gender as social and sex as biological. Judith Butler abandoned this distinction, concluding that sex is also social.[74] The same can be applied to the condition of disability. And it is emphasized that while in theoretical and/or political terms the distinction between the individual condition and disability may seem easier, in practical terms (in practical terms (in the everyday life) is usually not so simple.[75]

These issues had already been warned by authors such as Morris, Crow, and Thomas, among others, who several decades ago called for the "revision of the social model".[76] Liz Crow stated some time ago that this crossover requires reflection and bringing back to the debate the issue of the *condition in disability*[77]. Of course, if we think that since its inception the social model has tried to detach from its discourse the approach to the *individual condition*, precisely to emphasize social factors, this has been difficult to assimilate. Considering the way in which the medical model approached disability, focusing on people's individual limitations, it does not seem surprising that the social model has focused so emphatically and exclusively on the importance of *disabling barriers* and fought to dismantle them.

Crow insisted on the need to deepen the condition of disability because, otherwise, "the *non-disabled world*" will continue to do so for people with disabilities, and will do so in a disqualifying way[78]". Thus, he explained that there has been a tendency to consider disability as if it were *the totality* of the issue; running the risk of assuming that the individual condition has nothing to do with determining the experiences of people with disabilities. Instead of facing

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[71] Crow, L., "Including all for our lives..., cit..

[72] INGSTAD, Benedicte; WHITE, Susan Reynolds (ed.). Disability and culture. Berkley: University of California Press, 1995. In this work, they argue that the concept of disability is a cultural, relative construction, and that it varies according to historical and social contexts. They also address the place of difference and equality, the latter as an imposition, which, according to them, leads to disability ending up being ignored and people having to be equated as much as possible to the "normal" assumptions.

[73] ANGELINO, María Alfonsina; ROSATO, Ana. Disability and the ideology of normality: denaturalizing the deficit. Buenos Aires: Centro de Publicaciones Educational and Didactic Material, 2009.

[74] BUTLER, Judith. **Gender in dispute:** feminism and the subversion of identity. Barcelona: Paidos, 2007.

[75] SHAKESPEARE, T., cit, p. 74

[76] PALACIOS, Agustina. The social model of disability: origins, characterization and embodiment in the International Convention on the Rights of Persons with Disabilities. Madrid: Cinca, 2008. (Cermi Collection, 36). p. 178.

[77] Crow, Liz, "Including all for our lives...", cit, pp. 55-72.

[78] Idem.

the contradictions and complexity of these experiences, it has chosen to present the individual condition as something irrelevant and neutral and, sometimes, positive, but never as what it really implies. And the experience of the individual condition is not always irrelevant, neutral, or positive. For many people with disabilities, the personal struggle related to their condition will continue even when the disabling barriers no longer exist.[79]

Disabling external barriers can create disadvantageous social and economic situations, but subjective experience is also part of everyday reality. For this reason, Crow stated that a way must be found to integrate functional diversity into the total experience and self-perception, and that this will benefit one's own physical and emotional well-being and, in addition, the individual and collective ability to fight disability. For many people with disabilities, the experience of their bodies – and not just disabling barriers – makes it difficult for them to participate in politics.[80] If the movement excludes many people with disabilities, situational awareness will be partial: the collective capacity to conceive of a non-disabled world will be diminished.[81]

The social model of disability has denied in its beginnings that the idea of individual condition was problematic; focusing, instead, on discrimination as the key obstacle to the quality of life of people with disabilities. The logical consequence of this approach was to seek the solution by eliminating social factors, and the efforts of the movement of persons with disabilities were devoted to this. In other words, the movement has placed special emphasis on social change to end discrimination against persons with disabilities. There is a very strong resistance to considering the individual condition as a relevant aspect for political analysis. The denial of the problematic character of this individual condition probably constitutes an error of the social model. Although, as a general rule, social factors predominate in the determination of experience and quality of life , the individual condition *continues to be* relevant.[82]

In this sense, Rafael De Asís Roig exposes the argument of covert identity.[83] It is stated that the social model uses a standard of normality that can become discriminatory. The author describes that it is something similar to what can happen with a universal egalitarian model projected on women or, for example, also on native peoples, which does not take into account

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[79] Ibid.

[80] For example, he explains, a person's limited energy can reduce his or her ability to attend meetings and other events. If these circumstances are not recognized, alternative forms of participation are unlikely to be sought.

[81] Idem.

[82] Ibid.

[83] The Professor at the Carlos III University identifies a group of criticisms and problems of the social model that are developed from an approach that is alien to that of rights; the second group, on the contrary, is made from within the discourse of rights. Within the first group it refers to two positions; the welfare argument and the fear argument. On the other hand, within the second group he distinguishes five positions: the exception argument, the partial projection argument, the diversity argument, the identity argument, and the covert identity argument. ROIG, Rafael de Asís. On the social model of disability: criticism and success. Papeles el Tiempo de los Derechos, [s. l.], n. 1, p. 1-12, 2011. Available at: https://hdl.handle.net/10016/19304. Accessed on: 21 May 2023.

their specificity or, if you prefer, their identity. That standard of normality is, after all, an approach to identity that can leave diversity aside. Hence, the social model has to deal with the justification of this construction of people and, probably, question the use of a universal and abstract model of people by opening up to particular discourses.[84] In a similar vein, Toboso explains that by neglecting the consideration of the body and the diversity inherent in all embodied life, the social model has produced an analytical framework that homogenizes the phenomenon of disability under categories that do not contemplate the existence of very diverse social identities experienced by persons with disabilities.[85] This also leads us to the need to include an intersectional perspective in the social model, which enables the construction of a complex identity[86], which in no way can be subordinated only to a condition, but much less so if that condition is defined as a deficiency – a deficit. And so we are faced with the demand of the paradigm of the intersectionality of categories, added to the paradigm of the intersectionality of theories, in the light of the approach and discourse of human rights. It would then be a matter of depathologizing, not only actions but identities...

Beyond these issues that the social model of disability undoubtedly raises and invites us to deconstruct, it is worth analyzing other positions that maintain that it is possible to belong to a human group without this condition, and that gender identity has evolved precisely in this perspective. Law No. 4/2023 understands sexual identity as the "internal and individual experience of sex as each person feels and defines it, which may or may not correspond to the sex assigned at birth."[87] Article 44 establishes that the "exercise of the right to rectification in the registry of the mention relating to sex may in no case be conditioned to the prior presentation of a medical or psychological report relating to the nonconformity with the sex mentioned in the birth registration, nor to the prior modification of the appearance or bodily function of the person through medical procedures, surgical or other types of surgery."[88]

This is undoubtedly a line to be explored, but perhaps unlike gender identity, disability identity is in a more incipient stage, which requires deepening the debate on the "condition" from a depathologizing perspective. Here we return to the need to deepen and combat the ableism that still prevails in our culture. However, the identification of the condition-

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[84] Idem, p. 8

[85] TOBOSO, Martín Mario. Functional diversity: towards a new paradigm in disability studies and policies. Politics and Society, Madrid, v. 55, n. 3, p. 783-804, 2018. Available at: http://hdl.handle.net/10261/184123. Accessed on: Dec 12 2023.

[86] MENDEZ, Rubens Ramón. Access to where? "Domesticity" as an element of analysis on the "intersection" between women and disability. Universitas: Journal of Philosophy, Law and Politics, n. 23, p. 119-133, 2016. Available at: https://e-revistas.uc3m.es/index.php/ UNIV/article/view/2948. Accessed on: Dec. 21, 2023.

[87] SPAIN. Law No. 4/2023 of 28 February 2023. For the real and effective equality of trans people and for the guarantee of the rights of LGTBI people. Madrid: Government of Spain, 2023. Available at: https://www.boe.es/buscar/act.php?id=BOE-A-2023-5366. Accessed on: Dec. 12, 2023.

[88] Idem, Art. 44.3

situation triad and disability position can help to take first positions. Disability is the result of condition and situation. Well, it should at least be possible to demand the demonstration of one of these dimensions.

## 8 Trans-dis-capacity as an opportunistic device

There is no doubt that the issue at hand can give rise to fraud and abuse of rights. That under the there are people who fake the self-perception of belonging to the collective – cases fabricated for convenience in order to access certain rights, benefits or benefits that are specifically provided for people with disabilities. This is undoubtedly a variable, albeit hypothetical and corresponding to an illegal act – a fraud.

The possibility that the recognition of a right may give rise to fraud should never be the reason for the non-recognition of a right. This has been expressed, for example, by the Argentine Supreme Court in the case of F.A.L. s/self-satisfying measure[89], when it stated "That although this Court warns of the possibility of configuring "fabricated cases", it considers that the risk derived from the irregular actions of certain individuals, which at this point only appears to be hypothetical and could result, possibly, a criminal offense – can never be a sufficient reason to impose (...) obstacles that violate the effective enjoyment of their legitimate rights...".[90]

It is worth noting in this regard, a recent resolution that is understood to be applicable to our field of analysis, in which a judge denied the change of sex on the grounds that it was a case of fraud, stating that "the use of the legal norm to obtain a purpose different from that provided for in the law, in addition to being fraudulent and contrary to the legal system, it incorporates a special contempt for the dignity of the person which, in the case of transgender people, has taken a long time to be recognized as a human right."[91]

## 9 From theory to practice: transdisability and access to justice

This section investigates, by way of example, some issues that arise in transcapacity and the right of access to justice. Although the analysis focuses on the scope of the justice system, it is likely that the solutions can be applied to other areas or systems, or at least be analyzed in such contexts.

The Supreme Court of Justice of the Nation of Mexico (SCJN) has resolved a

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[89] Supreme Court of the Argentine Nation, case F.A.L., on Self-Satisfying Measure, 2012.

[90] Idem, para. 29

[91] VEGA, Guilhermo. A judge denies the change of registered sex of an Air Force sergeant for fraud of law. **El País**, Las Palmas de Gran Canaria, 27 Sept. 2023. Available in: https://elpais.com/sociedad/2023-09-27/no-queria-ser-mujer-queria-ser-subteniente-la-justicia-niega-el- cambio-de-sexo-registral-a-un-militar-por-fraude-de-ley.html. Accessed on: 21 May 2023.

series of cases in which the situation of self-perception of disability has been raised and analyzed. These cases were not framed as transdisability, but nevertheless some principles developed by the Court can inspire public policy solutions.

Thus, the SCJN stresses that an essential element for judges to be able to protect the right of access to justice of people with disabilities is to be aware that in the specific case one of the parties has a disability condition that generates a disadvantage in the procedure by coming into contact with various barriers. that is, a disability.[92] This is relevant, "given that persons with disabilities enjoy a legal framework of particular protection due to their condition of special vulnerability and *de facto* inequality vis-à-vis society and the legal system".[93]

Consequently, it is essential that, in the first place, the judges identify, in each case that they are responsible for judging, whether any of the parties is in a *situation* of disability, since it is from this identification that they may be able to comply with their obligations to guarantee their rights within the procedure. Once the involvement of a person with disabilities in the process has been identified, the jurisdictional authorities must act in accordance with the social model. This implies being aware that – in the light of the CRPD – disability is the result of the condition and the barrier, and therefore it is possible to determine whether in a specific case there is some type of barrier that, "together with the functional diversity of one of the parties, can translate into a disability, which is essential to fulfil its role in the special protection of that party".[94] To that end, the Mexican Supreme Court has established criteria for the jurisdictional authorities to identify

if a person with a disability is involved in a proceeding. From the study of precedents On the subject, it is possible to notice two main ways to identify them:

1) the self-perception or self-recognition of the person with disabilities involved in the procedure;[95]

2) the identification of a person with a disability by the jurisdictional authority.[96]

Based on these two possibilities, criteria have been developed that guide judges to Identify if they are facing a case in which a person with a disability participates.[97]

In relation to the self-perception or self-recognition by the person with disabilities involved in the procedure, according to the standards of the SCJN, two scenarios may occur:

1) That the self-identification or self-perception of the condition of disability does not

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[92] *Protocol to judge with a disability perspective*, Supreme Court of Justice of the Nation, Mexico, 2022. Protocol for judging with perspective of disability, p. 132

[93] Idem, p. 133

[94] 94 Ibid., p. 135

[95] *Cf.* SCJN, Amparo in Revision 702/2018 and Direct Amparo in Revision 3788/2017.

[96] *Cf.* SCJN, Direct Amparo in Revision 3788/2017 and Direct Amparo in Revision 4441/2018.

[97] *Protocol for judging with a disability perspective*, Supreme Court of Justice of the Nation, Mexico, 2022.Protocol for judging with perspective of disability, p. 135 et seq

affect the rights of third parties nor do procedural adjustments be required. In this case, the recognition is accredited "under oath to tell the truth".

2) That self-identification or self-perception could affect the rights of third parties and procedural adjustments are requested. In this case, a higher standard is applied than in the previous one, since the judge must gather evidence to prove that the alleged disability condition exists and that it generates a procedural disadvantage related to the possibility of proving facts in court.

Based on these assumptions, the Protocol for judging with a perspective of disability illustrates the standards that the SCJN has developed distinguishing two scenarios.[98]

*i. Self-recognition or self-perception by the person with disabilities when the rights of third parties are not involved and procedural adjustments are not requested*

The first scenario relates to the possibility that a person or a group of people self-identify or self-identify as persons with disabilities under oath to tell the truth, but do not request procedural adjustments. Since there is no procedural disadvantage that must be proven; the SCJN established that such self-recognition or self-perception in good faith can be taken for granted, without the need for evidence aimed at proving the condition of disability, with the intention of "privileging its judicial protection", as long as *(i)* there is no interested third party "to whom any procedural disadvantage or prejudice could result if the statements of facts made are taken as true", and *(ii)* there is no evidence to the contrary in the record that would disprove that statement.[99]

This assumption of self-recognition – under oath to tell the truth – is of great relevance to understand the social model and the perspective of disability that should prevail in the resolution of cases, since, although it is true that people with disabilities have the right to special protection, their potential situation of vulnerability does not always entail a procedural disadvantage that must be proven. nor can it be solved through adjustments and measures at the expense of the judge. However, this recognition often only becomes relevant to resolve the merits of the dispute in accordance with the legal framework for the protection of persons with disabilities, without this entailing *per se* the adoption of adjustments in the jurisdictional venue.

*ii. Self-recognition or self-perception by the person with disabilities when the rights of third parties are involved and adjustments to the procedure are required*

The second scenario of self-recognition or self-perception can be actualized at any time during the process in which a party who claims to live with a disability and, in addition, indicates that this condition places him or her at a disadvantage within the procedure, requesting the judge to exercise his or her powers in order to resolve this issue. In other words,

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[98] Idem, p. 138

[99] *Ibid.*, para. 89.

this assumption implies that one of the parties maintains that his or her condition of disability entails a procedural vulnerability and requests that the jurisdictional authority implement reasonable or procedural accommodations; therefore, the judge must respond in a well-founded and reasoned manner to this request This standard derives, mainly, from two matters heard by the SCJN.

The first is related to an amparo proceeding filed against the decision issued in the second instance in an ordinary civil trial, in which one of the parties claimed compensation for psychological and moral damage after a quarrel. As far as we are concerned, the SCJN analyzed whether in the case the Collegiate Court should have ordered the exercise of the of informal powers in evidentiary matters to guarantee the right to equality and access to justice of the complainant, who was a person with a disability.[100]

The second matter derives from a trial of real estate lease controversy. Similar to the previous case, the complainant filed a direct amparo against the decision of the second instance and the SCJN heard the appeal for review derived and in it reanalyzed the right to equality and access to justice of the appellant, who was also a person with a disability.[101]

In these matters, the rights of third parties were involved. For this reason, the SCJN developed a standard different from the case addressed in the previous section, according to which judges must analyze whether the person, in fact, has a disability and whether this condition generates a procedural disadvantage that, if applicable, requires the implementation of procedural adjustments.

Thus, it was pointed out that when a party who recognizes or self-identifies as a person with a disability alleges that it causes him a procedural disadvantage and requests the jurisdictional authority to implement reasonable or procedural accommodations, the judge must give a well-founded and reasoned response, based on the study of a methodology consisting of four steps.

The **first step** is to analyze two issues: 1) whether the applicant is a person with a disability and 2) whether the condition of disability translates into a procedural disadvantage that prevents access to effective justice under equal conditions. Subsequently, in accordance with the body of evidence and during the proceedings, the judge must determine whether the condition of disability translates into a reduction or prejudice that harms the person's access to justice on equal terms. On this first step, the SCJN clarified that, if the condition of disability exists, but does not translate into a procedural disadvantage, the jurisdictional authority will not be obliged to make an adjustment to the procedure in order to guarantee procedural equality in the trial. The **second step** obliges the judge to verify that the procedural

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[100] *Cf.* SCJN, Direct Amparo in Revision 3788/2017, p. 1

[101] SCJN, Direct Amparo in Revision 4441/2018, para. 1.443

disadvantage identified has not been corrected through other reasonable accommodations or some procedure provided for by law. The **third step** imposes on the jurisdictional authority the obligation to corroborate that the request made by the person is part of its sphere of competence. Finally, the **fourth step** establishes the duty of the judge to confirm that the power whose exercise is requested is suitable to reduce the procedural disadvantage without disproportionately harming the rights of third parties.

Although the last three steps are not directly related to the self-recognition or self-perception of persons with disabilities, they provide a glimpse of the obligations of enhanced protection that are updated for the judge when a person recognizes himself or herself as such within a procedure in which the rights of third parties could be affected. In addition, they show the duty to collect evidence informally from the jurisdictional authority to prove the elements that constitute each of these steps. .

Finally, it is clarified that the hypotheses related to self-perception or self-recognition that the SCJN has resolved are not the only ones that the judge may face in his or her daily work, since the disabilities are diverse and the controversies and rights at stake in each of them are also diverse. Thus, there are cases on the subject that have not yet been resolved by the doctrine of the Constitutional Court, for example, those cases in which a self-recognition of disability is alleged, in which adjustments to the procedure are not requested or a procedural disadvantage is alleged, but which, if the condition of disability is considered to be proven,  the rights of third parties are affected. In this scenario or in any other not yet resolved by the SCJN, the judge must assess whether the self-recognition in good faith is appropriate, under oath of telling the truth, or whether, if applicable, it would require evidence to prove some aspect that it deems relevant.

Adequate perspective to analyze a disability condition and its evidentiary implications:

The aforementioned Protocol describes that the definition of disability according to the social model is made up of three elements: "(*i)* functional diversity, *(ii)* the environment or context that surrounds the person with functional diversity and *(iii)* the interaction of both elements, which results in the person with disability participating fully in society."[102]

In this sense, it is important to note that the Mexican Supreme Court has considered that, in order to prove a condition of disability in a procedure, "it is not enough to consider functional diversity, since this would entail falling into a medical model, contrary to the rights of this group." Rather it is especially important that the judging party gathers the necessary evidence to evaluate all the elements that actualize a situation of disability, with

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[102] Protocol, cit., p.143

special emphasis on visualizing the barriers that are updated in each specific case.[103]

This is because it follows from the CRPD that it is not enough for a person to have a disability condition, but that there must be an interaction with barriers in the environment that they face in order to exercise their rights. In accordance with this frame of reference, the assessment of disability should not be limited to an assessment from an exclusively medical approach, but should be attended to a multidisciplinary analysis that considers the situation of the person and their environment in each specific case.[104]

As we saw previously, the SCJN has pointed out that when one of the parties self-identifies as a person with a disability and alleges a procedural disadvantage or when the condition of disability is warned ex officio by the judging party and entails procedural disadvantages to be repaired, the judge must gather evidence to prove whether, in fact, disability exists and if it translates into a procedural disadvantage that implies the adoption of adjustments and measures to guarantee, under equal conditions, the right of access to justice of the person with disabilities involved.

In this sense, as analyzed in the previous section, there are also cases in which a self-perception or self-recognition in good faith or under oath of telling the truth will suffice to consider the condition of disability accredited, in which it will not be necessary for the judge to gather evidence, since the rights of third parties are not infringed nor is the adoption of adjustments required to repair a procedural disadvantage.

However, the way in which disability must be accredited, in the light of the social model, implies noticing not only the conditions, but also the barriers and the interaction between them from a multidisciplinary approach. An example of this can be seen in Amparo in Revision 166/2019, relating to a case in which a child with a disability was denied childcare for exceeding the age provided for in the regulation to access said right. In this regard, the SCJN observed that the arguments for denying the service were based solely on a medical examination, referring to the child's bone age, so the limitation of the right was based on the medical model, which is contrary to the protection of persons with disabilities. In this sense, the SCJN considered that bone age does not determine the need to receive this service, but that the authorities should have comprehensively analyzed the child's development.[105]

Another example of analysis with a view to determining whether the case involves

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[103] SCJN, Amparo in Revision 3788/2017, para. 68 and Direct Amparo in Revision 4441/2018, para. 108.460

[104] SCJN, Amparo en Revision 166/2019, p. 17. In order to prove the disability, if deemed appropriate, the judge may create a multidisciplinary team to carry out the necessary tests for this purpose, ensuring that the principle of speed that must prevail in trials involving persons with disabilities is respected at all times, as set out in the section on cross-cutting obligations of this Protocol.

[105] SCJN, Amparo in Revision 702/2018. As can be seen from this matter, a comprehensive view when analyzing the condition of disability may require the judge to collect expert evidence made up of a multidisciplinary team, avoiding that it is only of a medical nature. In order to guide judges, the SCJN has indicated that some of the experts whose intervention can be requested are social work, law, psychology and sociology.

a person with a disability is what was resolved in Amparo in Revision 251/2016. This matter involved a person with a psychosocial disability and, in this regard, the SCJN observed that this person faced economic barriers, so he could be considered a person with a disability and, consequently, enjoy the legal framework of protection that favors that group.

In this regard, it was specified that not all people who have a condition encounter social barriers, so the disability condition will have to be accredited on a case-by-case basis. However, the SCJN observed that scientific evidence shows that the vast majority of people living with a psychosocial condition face obstacles derived from their own diversity, as well as stereotypes and prejudices around the so-called "mental illnesses". Therefore, they often encounter obstacles to enjoying their rights on equal terms. From the foregoing, it can be seen that the conclusion of the SCJN regarding that, in the specific case, said person had a condition of disability did not only take into account his condition, but also the barriers imposed by the environment, as required by the social model.

Likewise, from the aforementioned Amparo in Revision 251/2016 it is noted that the assessment of the existence of a disability does not require in all cases the discharge of certain types of evidence, since, as happened in that case, the SCJN concluded that there was a barrier to fully integrate into the workplace and obtain income, for which it was based on what was alleged by the person. This is consistent with the criteria referred to so far, which denote the importance of taking into account the manifestations of people in relation to their conditions and the barriers that affect them.[106]

In addition, it should be noted that, in the practice of expert reports and in the collection of evidence for the determination of a disability condition, an important source of assessment will be the people close to the person whose situation is sought to be accredited. This, since the people who make up the person's social circle know their environment and, consequently, can formulate criteria that are closer to reality. However, in this specific case, it will be of special importance that the judge observes that there are no conflicts of interest.

Finally, with regard to the accreditation of discrimination on the grounds of disability, the SCJN has analyzed the case in which a person is subjected to discriminatory acts, regardless of whether his or her disability status is real or apparent. In this regard, in Direct Amparo 31/2018, the SCJN analyzed the content of the right to education and non-discrimination of a child with Attention Deficit Hyperactivity Disorder (ADHD), who was denied re-enrollment by his school on the grounds that he had problems of indiscipline.

In this matter, the school, the authority indicated as responsible, argued that it had not been proven that the complainant was a person with a disability. In this regard, the SCJN pointed out that, even if the child was not a person with ADHD, he suffered discrimination due

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[106] Amparo in Revision 702/2018 and Amparo in Revision 3788/2017.

to his disability, real or "apparent." For this reason, the SCJN concluded that it is possible that discriminatory acts may be carried out against people whose diversities are not reliably accredited.[107]

Thus, it was resolved that "the disability can be 'alleged or apparent', but the differences in treatment based on that 'apparent disability', cause the discrimination to be real". According to this logic, in cases where the difference in treatment is based on an apparent disability, whether or not such a condition is proven, this may give rise to a discriminatory act contrary to the second paragraph of Article 1 of the CRPD.

The foregoing allows us to argue that those who administer justice should take into account the following ideas in order to adopt an adequate perspective to analyze a condition of disability and assess its evidentiary implications:

Self-recognition or self-perception as a person with a disability must be recognized in good faith and without evidence, as long as *(i)* there is no interested third party "to whom any procedural disadvantage or prejudice could result if the statements of facts made were to be taken as true".

*(ii)* there is no evidence to the contrary in the record that would disprove that statement and *(iii)* no adjustments to the procedure are requested.

When one of the parties self-identifies as a person with a disability and requests the adoption of adjustments to the procedure, the judges must issue a well-founded and reasoned response in which it is analyzed *(i)* whether the applicant is a person with a disability and *(ii)* whether the condition of disability translates into a procedural disadvantage related to the possibility of proving facts in court that prevents access to effective justice on an equal footing. conditions.

If the judge notices ex officio that one of the parties has a functional diversity that, when it comes into contact with the barriers of the environment, generates a procedural disadvantage, he or she must take the necessary measures to make effective his or her right of access to justice, regardless of whether or not he or she self-identifies as a person with a disability.

There are cases in which the recognition of the condition of disability in the litis will only have an impact on the resolution of the merits of the dispute, that is, on the application of the legal framework for people with disabilities, so that not all matters in which a person with a disability is present imply *per se* the adoption of adjustments or the updating of procedural disadvantages.

The analysis to identify a disability must move away from the medical model and,

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[107] MEXICO. Supreme Court of Justice of the Nation. Direct Amparo 31/2018. Rapporteur: Min. Alberto Pérez Dayán. Available at: https://bj.scjn.gob. mx/doc/sentencias_pub/TyVU3XgB_UqKst8oFMfc/31%252F2018. Accessed on: Dec. 12, 2023. p. 31.

on the contrary, be multidisciplinary, that is, consider the situation of the person and their environment. Therefore, judges, when self-perception in good faith or under oath of telling the truth is inapplicable, have the power to collect expert evidence from various disciplines to assess whether in the case the litigant is affected by a disability that generates a procedural disadvantage that must be repaired.

In some cases, the existence of barriers can be deduced from the contextual analysis made by the judge based on the facts of the case, without the need to unburden evidence.

In cases where the difference in treatment is based on an apparent disability, whether or not it is proven such a condition may give rise to a discriminatory act.[108]

## 10 By way of conclusions:

The prevalence of transdisabled people is not easily determined. Among other reasons, the absence of research on the subject stands out. Added to this is stigma and marginalization, which lead many transdisabled people to remain silent about their identity or condition. Likewise, the pathologization of this issue as a mental condition leads to its concealment and/or medicalization.

Applying a disability perspective and a human rights approach has consequences of great importance for the analysis of transdisability, which begin by becoming aware of and making visible the prevailing ableism in the society of which we are a part. The disability perspective and the human rights approach are necessary whether transdisability is considered as a diagnosis – contrary to the social model; as if it were posed as a feature of identity – where recognition policies should be made compatible with redistributive policies; as if the possibility of transdisability is thought of as an opportunistic device (or fraud) where the violation of the law and the values that sustain human rights emerges.

The self-provocation of a disability seems at first to be an autonomous action, but the consequences of this action can undoubtedly affect third parties who provide support, as well as generate the need for resources – human and economic – on the part of the State – such as access to a social benefit, or personal assistance. However, the technical assessment of the disability should not distinguish whether the cause that gave rise to the condition has been voluntary or involuntary. Once the condition is presented, it is not the responsibility of the State to evaluate or interfere.

The issue is different with respect to the legal protection to claim the support of the public authorities in the provocation of a disability. Although within the sphere of a self-

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[108] Ibid., 149

referential decision, here the intervention of third parties (if the intervention is carried out with their own resources) or also of public resources (if the intervention was carried out in the context of public health) is added. From the principle of justice, an argument against elective interventions or amputations could be socioeconomic, due to the high costs of medical treatment, rehabilitation, early retirement, and various social benefits involved (needs for supports, services, or social resources).

In cases in which the disability results from genetic engineering practices or neurotechnologies, although it is necessary to become aware of and make visible – and overcome – ableist arguments, decisions that involve other people – because decisions are made about them, as for example in the cases of prenatal genetics – require much stricter criteria of analysis and implementation.  where the bioethical principles of beneficence-non-maleficence and the principles of human rights, seem to lead to restrictive solutions – prohibitive – in principle, of this possibility.

Regarding the framing of transdisability as a diagnosis, analysis from the social model of disability – with a disability perspective and a human rights approach – does not seem to be a viable path to explore. Or at least not relevant in the context of this analysis.

It is very relevant to delve into the tensions between transdisability and ableism. Without a doubt, transdisability works as a way of stressing ableism, of resisting it, of proposing that the identity of the disability deserves to be valued. However, our culture devalues the status of disability and from this perspective, transdisability is seen as a transition from a normal state to an abnormal state or, in other words, a movement towards circumstances considered inferior – and denoting the social position of subordination in which the collective lives.

Despite the need to overcome an ableist philosophy and ideology, there are reservations about the incorporation of transdisabled people into the community of people with disabilities. It is certainly questionable to consider that someone has the authority to determine the authenticity of another person's identity. The content and scope of the right to identity seems to leave little room for external definitions or framing to the person himself. However, like all other rights, the right to identity is not absolute, and can be restricted as long as it respects the principles and values that underpin human rights. As is well known, recognition as a person with a disability grants a series of rights and social benefits that are binding on the State and society. That is why, when analysing this issue, recognition policies must be harmonised with redistributive policies. On the one hand, the right to identity according to the person's own self-perception should be taken into account, but on the other hand it is not possible to ignore that the redistributive policies or measures derived from such recognition can affect the rights of third parties.

Therefore, the following distinctions can be investigated:

The CRPD states that disability is the result of the interaction between condition and situation. Therefore, in order to be able to apply a disability perspective, both dimensions are necessary, in principle. This is despite the fact that a holistic reading of the instrument allows for some flexibility in anti-discrimination matters, but in such a context, it should at least be possible to demonstrate one of these dimensions.

The CRPD defines disability as the result of the interaction of the personal dimension (condition) and social barriers (situation and position). It is from there that it foresees and demands social and legal responses, for which it seems to require the coexistence of all these dimensions. However, in developing responses within the principle/right of equality and non-discrimination, it presents a broader conception, by establishing the term "discrimination on the basis of disability" and providing protection not only to "persons with disabilities", but to any person who may be discriminated against on that basis, such as family members of persons with disabilities who suffer such discrimination, without having such a condition. From this dimension of anti-discrimination law, it is worth asking whether this precept does not leave open the possibility of demanding protection for said to those who are accused of transdisability for this reason.

The case of recognition as a person with a disability seems to be different as a requirement for access to rights, benefits or services, which must consider redistributive parameters and scarcity of resources, among many other variables. In such circumstances, in the case of scarce social resources, or the involvement of the rights of third parties, regulation and assessment by the State is legitimate, provided that a disability perspective and a rights-based approach are applied. From this point of view, a distinction could be made between recognition policies, based on the right to autonomy and identity of the person, and redistributive policies, which involve access to public resources.

Within the politics of recognition, it is worth asking whether it is possible to draw a parallel with the trans community. Like transsexual people, people with disabilities have had to fight against a medicalized gaze.

At this point it is possible to identify more doubts than certainties, but the need and importance of a debate in which gender and disability perspectives cannot be absent seems clear, hand in hand with a human rights approach, under an umbrella of an intersectional perspective that does not reduce a person's identity to a condition or category. To this end, it seems imperative to strengthen the voices involved, enabling mechanisms of expression and listening, in order to be able to provide social and legal responses in a holistic way and at the height of the circumstances.

In this sense, transdisability as a feature of identity deserves a more in-depth approach within the same group of people with disabilities, whose social model has been criticized and revised, among other reasons because it does not take into account that the recognition of the importance of the individual condition for people with disabilities does not mean that the way of interpreting the experience generated by people without disabilities (or from a perspective based on a diagnosis). In fact, the individual condition, at its most basic level, is a concept that is also related to a social construction from which people with disabilities can no longer be absent.

There is no doubt that the issue at hand may lead to people pretending to belong to the group – cases fabricated for convenience – in order to access certain rights, benefits or benefits that are specifically provided for people with disabilities. However, the possibility that the recognition of a right may give rise to fraud should never be the reason for the non-recognition of a right. In any case, there are institutions to respond to these situations and repair or channel them, if they arise in casuistry.

## Bibliography

ARGENTINA. Supreme Court of the Argentine Nation. **F.A.L**. Case Self-satisfying measure. Judgment, 13 March 2012.
ABBERLEY, Paul. The concept of oppression and the development of a social theory of disability. **Disability, Handicap and Society**, [s. l.], v. 2, n. 1, p. 5-19, 1987.

ABBERLEY, Paul. Disabled people and normality. In: SWAIN, John; FINKELSTEIN, Vic; FRENCH, Sally; OLVIER, Mike (ed.). **Disabling barriers - enabling environments**. London: Sage, 1993.

ANGELINO, María Alfonsina; ROSATO, Ana. **Disability and the ideology of normality**: denaturalizing the deficit. Buenos Aires: Centro de Publicaciones Educativas y Material Didáctico, 2009.

BARIFFI, Francisco, **When Disability is a Choice**: Exploring the Challenges of Transdisability and Genetic Engineering. Document, Nov 07. /2023.

BARIFFI, Francisco. The future of disability at the dawn of artificial evolution. **Diario Cermi**, Madrid, 21 fev. 2020. Available in: The Future of Disability at the Dawn of Artificial Evolution (cermi.es). Available at: https://cermi.es/noticia/el-futuro-de-la-discapacidad-en-los-albores-de-la-evolucion-artificial Accessed on: 08 January 2024.

BARIL, Alexandre. 'How dare you pretend to be disabled?' The discounting of transabled people and their claims in disability movements and studies. **Disability & Society**, [s. l.], v. 30, n. 5, p. 689-703, 2015. Available in: http://dx.doi.org/10.1080/09687599.2015.1050088. Accessed on: Dec 12 2023.

BARIL, Alexandre. Needing to Acquire a Physical Impairment / Disability : ( Re ) Thinking the Connections between Trans and Disability Studies through Transability. **Hypatia**, [*n. l.*], v. 30, n. 1, p. 30-48, 2015. DOI: https://doi.org/10.1111/hypa.12113

BARIL, Alexandre; TREVENEN, Kathryn. Transabled women lost in translation? An introduction to: "extreme" transformations: (re)thinking solidarities among social movements through the case of voluntary disability acquisition. **Medicine Anthropology Theory**, [s. l.], v. 3, n. 1, p. 137-162, 2016. DOI: https://doi.

org/10.17157/mat.3.1.388

BAYNE, Tim; LEVY, Neil. Amputees by choice: body integrity identity disorder and the ethics of amputation. **Journal of Applied Philosophy**, [s. l.], v. 22, n. 1, p. 75-86, 2005.

BROGNA, Patricia. A triadic notion: condition, situation and position of disability. **Andamios**, Mexico City, v. 20, n. 52, p. 333-362, May/Aug. 2023. Available in: https://andamios.uacm.edu.mx/index.php/scaffolding/article/view/1019. Accessed on: 08 January 2024.

BRUNO, Richard Louis. Devotees, pretenders and wannabes: two cases of factitious disability disorder. **Sexuality and Disability,** [s. l.], v. 15, n. 4, p. 243-260, 1997. DOI: https://doi.org/10.1023/A:1024769330761. Accessed on: Dec 12 2023.

BUTLER, Judith. **Gender in dispute**: feminism and the subversion of identity. Barcelona: Paidos, 2007. CAMPOY CERVERA, Ignacio. Building a model of human rights for children, with and without
disability. **Revista Derechos y Libertades**, [s. l.], n. 37, Época II, p. 131-165, jun. 2017. DOI: https://doi. org/10.14679/1050. Accessed on: Dec 12 2023.

CROW, Liz. Including all for our lives: renewing the social model of disability. In: BARNES, Colin; MERCER, Geoff (ed.). **Exploring the divide**. Leeds: The Disability Press, 1996. p. 55-72.
CUENCA GOMES, Patricia. Human rights and models of treatment of disability. **Papeles el Tiemp de los Derechos**, [s. l.], n. 3, p. 1-16, 2011. Available at: https://hdl.handle.net/10016/19335. Accessed on: 21 May 2023.

DEGENER, Theresia. A new human rights model of disability. In: FINA, Valentina Della; CELA, Rachere; PALMISANO, Giuseppe (ed.). **The United Nation Convention on the Rights of Person with Disabilities**: a commentary. [s. l.]: Springer, 2017. p. 42-59.

DICTIONARY of the Spanish language. **Royal Spanish Academy**, [s. l.], 2023. Available at: https://dle.rae.es/ dis-. Accessed on: 21 May 2024.

FERRANTE, Carolina. In Memory of Mike Oliver: A Living Sociological Legacy for Latin American Critical Disability Studies. **Scientific Bulletin Sapiens Research**, [s. l.], v. 9, n. 2, p 80-90, 2019. Available at: https://www.srg.com.co/bcsr/index.php/bcsr. Accessed on: Dec 12 2023.

FERREIRA, Miguel Ángel. The social construction of disability: habitus, stereotypes and social exclusion. **Nómadas - Revista Crítica de Ciencias Sociales**, Madrid, v. 17, n. 1, p. 221-232, 2008. Available in: https:// www.redalyc.org/articulo.oa?id=18101716. Accessed on: 21 May 2023.

FIRST, Michael. Desire for amputation of a limb: paraphilia, psychosis, or a new type of identity disorder. **Psychological Medicine**, [s. l.], v. 35, n. 6, p. 919-928, jun. 2005. DOI: 10.1017/s0033291704003320. Accessed on: Dec. 12, 2023.

FOOLS some, cheeks others. Trans world. Fluid sex on wheels... and with a motor: a Norwegian man identifies as a disabled woman and, of course, needs a wheelchair. **Hispanidad**, [*n. l.*], 04 Nov. 2022. Available in: https://www.hispanidad.com/sociedad/mundo-trans-sexo-fluido-sobre-ruedas-con-motor-hombre- noruego-se-identifica-como-mujer-discapacitada-y-claro-necesita-silla-ruedas_12038054_102.html. Access on: 21 May 2024.

GARLAND-THOMSON, Rosemarie. **Extraordinary bodies**: figuring physical disability in american culture and literature. New York: Columbia University Press, 1996.

GIMÉNEZ MERCADO, Claudia; ADARME, Xavier Valente. The Human Rights Approach to Public Policy: Ideas for a Debate in the Making. **Cuadernos del CENDES,** Caracas, year 27, n. 74, p. 51-79, May/Aug. 2010. Available at: https://www.redalyc.org/articulo.oa?id=40316176004 Accessed on: 12 Dec. 2023.

GUINDO, Vivian García; ORONOZ, Naroa Iglesias. **Diagnostic guidelines and treatment of Body Integrity Identity Disorder:** A bibliographic review. 2016. Final Degree Project Academic year (Bachelor's Degree in Nursing) - Escola Universitària d'Infermeria Gimbernat, Sant Cugat del Vallès, 2016. Available in: https://eugdspace.eug.es/bitstream/handle/20.500.13002/370/Orientaciones%20 diagn%C3%B3sticas%20y%20tratamiento%20del%20Disorder%20de%20la%20Identidad% 20de%20la%20 Integridad%20Corporal.pdf?sequence=1. Accessed on: Dec. 12, 2023.

INGSTAD, Benedicte; WHITE, Susan Reynolds (ed.). **Disability and culture**. Berkley: University of California Press, 1995.

MAREÑO SEMPERTEGUi, Mauricio. **Disability in the academic dimension of the National University of Córdoba**: a diagnostic approach. Secretariat of Research and Postgraduate Studies. Córdoba: School of Social Work - UNC, 2006.

MARTINEZ PUJALTE, Antonio Luis. **Fundamental rights and disability**. Madrid: Cinca, 2015.

MCRUER, Robert. **Crip theory, cultural signs of queerness and disability**. Translation: Javier Sáez del Almo. Madrid: Kaótica Libros, 2021.

MENDEZ, Rubens Ramón. Access to where? "Domesticity" as an element of analysis on the "intersection" between women and disability. **Universitas**: Revista de Filosofia, Derecho y Política, n. 23, p. 119-133, 2016. Available at: https://e-revistas.uc3m.es/index.php/UNIV/article/view/2948. Access On: 21 Dec. 2023.

MEXICO. Supreme Court of Justice of Mexico. **Protocol for judging with a gender perspective**: doing reality the right to equality. Mexico City: Supreme Court of Justice of Mexico, 2013.

MEXICO. Supreme Court of Justice of the Nation. **Direct Amparo 31/2018**. Rapporteur: Min. Alberto Pérez Dayán. Available at: https://bj.scjn.gob.mx/doc/sentencias_pub/TyVU3XgB_UqKst8oFMfc/31%252F2018. Accessed on: Dec. 12, 2023.

MEXICO. Supreme Court of Justice of the Nation. **Direct amparo in revision 3788/2017**. Rapporteur: Min. José Ramón Cossío Díaz. www.scjn.gob.mx/sites/default/files/listas/documento_dos/2018-04/ADR-3788-2017-180402.pdf. Accessed on: 21 May 2023.

MEXICO. Supreme Court of Justice of the Nation. **Direct amparo in revision 4441/2018**. Complainant and appellant: Sandra Olivia Sánchez Madrid. Rapporteur: Min. José Ramón Cossío Díaz. Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files /listas/documento_dos /2018-11/ADR-4441-2018-181112.pdf. Accessed on: Dec. 12, 2023.

MEXICO. Supreme Court of Justice of the Nation. **Amparo in Revision 702/2018**. Complainants and appellants: Jesús Enríque Vázquez Quiroz and others. Rapporteur: Min. Norma Lucía Piña Hernández. Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.scjn.gob.mx/sites/default/files/listas/documento_dos /2019-09/AR-702-2018-190912.pdf. Accessed on: Dec. 12, 2023.

MEXICO. Supreme Court of Justice of the Nation. **Amparo in Revision 166/2019**. Rapporteur: Min. José Fernando Franco González Salas. Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https:// www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2021-10/AR%20 166-2019.pdf. Accessed on: 21 May 2023.

MEXICO. Supreme Court of Justice of the Nation. **Protocol for judging from the perspective of disability**. Mexico City: Supreme Court of Justice of the Nation, 2022. Available at: https://www.scjn.gob. mx/human-rights/protocols-of-action/to-judge-with-disability-perspective. Access on: 21 May 2023.

MORRIS, Jenny. **Encounters with strangers**: feminism and disability. Madrid: Narcea, 1996.

MORRIS, Jenny. **Pride against prejudice**: a personal politics of disability. London: Women's Press, 1991.

PALACIOS, Agustina. A path of fertile ground on the long and arduous road towards inclusive equality: a judgment with a disability perspective and a human rights approach. **Revista Derecho de Familia y las Personas**, [s. l.], v. 4, p. 1-14, dec. 2020. Available at: http://hdl.handle.net/11336/174433. Accessed on: 21 May 2023.

PALACIOS, Agustina. **The social model of disability:** origins, characterization and embodiment in the International Convention on the Rights of Persons with Disabilities. Madrid: Cinca, 2008. (Cermi Collection, 36).

PALACIOS, Agustina; Romañach, Javier **The Diversity Model**: Bioethics and Human Rights as Tools to Achieve Full Dignity in Functional Diversity. Madrid: Diversitas, 2007.
PAUTASSI, Laura. **The contribution of the rights-based approach to social policies**: a brief review. [s. l.]: ECLAC, 2010.

ROIG, Rafael de Asís. On the social model of disability: criticism and success. **Papeles el Tiempo de los Derechos**, [s. l.], n. 1, p. 1-12, 2011. Available at: https://hdl.handle.net/10016/19304. Accessed on: 21 May 2023.

SACKS, Oliver. **I see a voice**: a journey to the world of the deaf. Translation: José Manuel Álvarez Flórez. Barcelona: Anagrama, 2003.

SAVULESCU, Julien. Autonomy, the good life, and controversial choices. In: RHODES, Rosamund; FRANCISCO, Leslie; PRATAS, Anita (ed.). **The Blackwell guide to medical ethics**. Oxford: Blackwell Publishing, 2007. p. 17-37.

SHAKESPEARE, Tom. **Critiquing the social model of disability**. In: EMENS, Elizabeth F.; STEIN, Micheal Ashley (ed.). London: Routledge, 2016. p. 266-273.

SPAIN. **Law No. 4/2023 of 28 February 2023**. For the real and effective equality of trans people and for the guarantee of the rights of LGTBI people. Madrid: Government of Spain, 2023. Available in: https://www.boe.es/buscar/act.php?id=BOE-A-2023-5366. Accessed on: Dec. 12, 2023.

STEVENS, Bethany. Interrogating transability: a catalyst to view disability as body art. **Disability Studies Quarterly**, [s. l.], v. 31, n. 4, 2011. Available at: https://dsq-sds.org/index.php/dsq/article/view/1705/1755. Accessed on: Dec 12 2023.

TOBOSO, Martín Mario. Functional diversity: towards a new paradigm in disability studies and policies. **Política y Sociedad**, Madrid, v. 55, n. 3, p. 783-804, 2018. Available in: http://hdl.handle. net/10261/184123. Accessed on: Dec 12 2023.

UNITED NATIONS. Committee on the Rights of Persons with Disabilities. **Convention on the Rights of Persons with Disabilities**: Concluding observations on the initial report of Argentina, adopted by the Committee at its eighth session (17-28 September 2012). [Geneva]: CRPD, 2012.

UNITED NATIONS. Committee on the Rights of Persons with Disabilities. **Convention on the Rights of Persons with Disabilities**: Concluding observations on the initial report of China, adopted by the Committee at its eighth session (17-28 September 2012). [Geneva]: CRPD, 2013.

UNITED NATIONS. Committee on the Rights of Persons with Disabilities. **Convention on the Rights of Persons with Disabilities**: General Comment No. 3 (2016) on women and girls with disabilities. [Geneva]: CRPD, 2016.

UNITED NATIONS. Committee on the Rights of Persons with Disabilities. **Convention on the Rights of Persons with Disabilities**: General Comment No. 6 (2018) on equality and non-discrimination. [Geneva]: CRPD, 2018.

UNITED NATIONS. Human Rights Council. **Rights of persons with disabilities**: report of the Office of the Special Rapporteur on the rights of persons with disabilities. [Geneva]: CDH, 2019.

UNITED NATIONS. Office of the High Commissioner for Human Rights. **Human Rights and Poverty Reduction**: A Conceptual Framework. New York: United Nations, 2004. O'CONNOR, Sean. My life with BIID. *In*: STIRN, Aglaja; THIEL, Aylin; ODDO, Silvia (ed.). **Body Integrity Identity Disorder**: psychological, neurobiological, ethical and legal aspects. Germany: Pabst Science Publications, 2009. p. 88-93.

VEGA, Guillermo. A judge denies the change of registered sex of an Air Force sergeant for fraud of law.**El País**, Las Palmas de Gran Canaria, 27 Sept. 2023. Available at: https://elpais.com/sociedad/2023-09-27/ no-queria-ser-mujer-queria-ser-subteniente-la-justicia-negaga-el-cambio-de-sexo-registral-a-un-militar-por-fraude-de-ley.html . Accessed at: Dec 12 2023.

WELL, Luis Cayo Peréz. The International Convention on the Rights of Persons with Disabilities and its deployment and application in Spain. In: INTERNATIONAL CONGRESS ON HUMAN RIGHTS, 6., 2023, Valencia. **Book of Minutes** [...]. Valencia: Fundación Mainel, 2023. Available in: https://mainel. org/wp-content/uploads/Libro-de-Actas-VI-Congreso-Derechos-Humanos-y-Discapacidad.pdf. Access on: 08 January 2024.

WENDELL, Susan. **The rejected body**: feminist philosophical reflections on disability. New York: Routledge, 1996.

ZOLA, Irving Kenneth. Towards the necessary universaling of a disability policy. **The Milbank Quartely**, [s. l.], v. 67, p. 401-408, 1989.

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