

# letrans

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**TRANSVIEW**

**Emiliano Litardo:**

“To depathologize is to privilege the person in his/her humanity”

## Gender Identity Law

In search of a right denied

*Le Trans is the first transgender magazine printed in Chile, an achievement of years of community work for the rights of Trans people. We came to the point in which, as a political Transgender movement, we are able to articulate a platform for the recognition of our identities, and to reclaim Trans existence. We have learned that “what is not said, does not exist” and if we don’t say that we are Trans, we do not exist, and neither does our history.*

*Those who already know us, know that we prefer to use “le” instead of he(el), she(la/ella), they(ellos/ellas) or any other pronoun, article, or gendered noun, words that are defined as masculine or feminine(in Spanish). Our language’s gender division, which mirrors the binary division of sex and gender, will always exclude and marginalize us to some degree. Against this exclusion, we say “Le Trans” as a survival strategy, a resistance to the omission of a culture that was not designed for “us”(nosotres), but can begin to be thought by “us”(nosotres).*

*Le Trans also stands for the recognition of the progress that we, as OTD Chile, have been making this last year and how our Trans activists and allies have managed to create this national association, despite all the problems and obstacles we have faced in the past.*

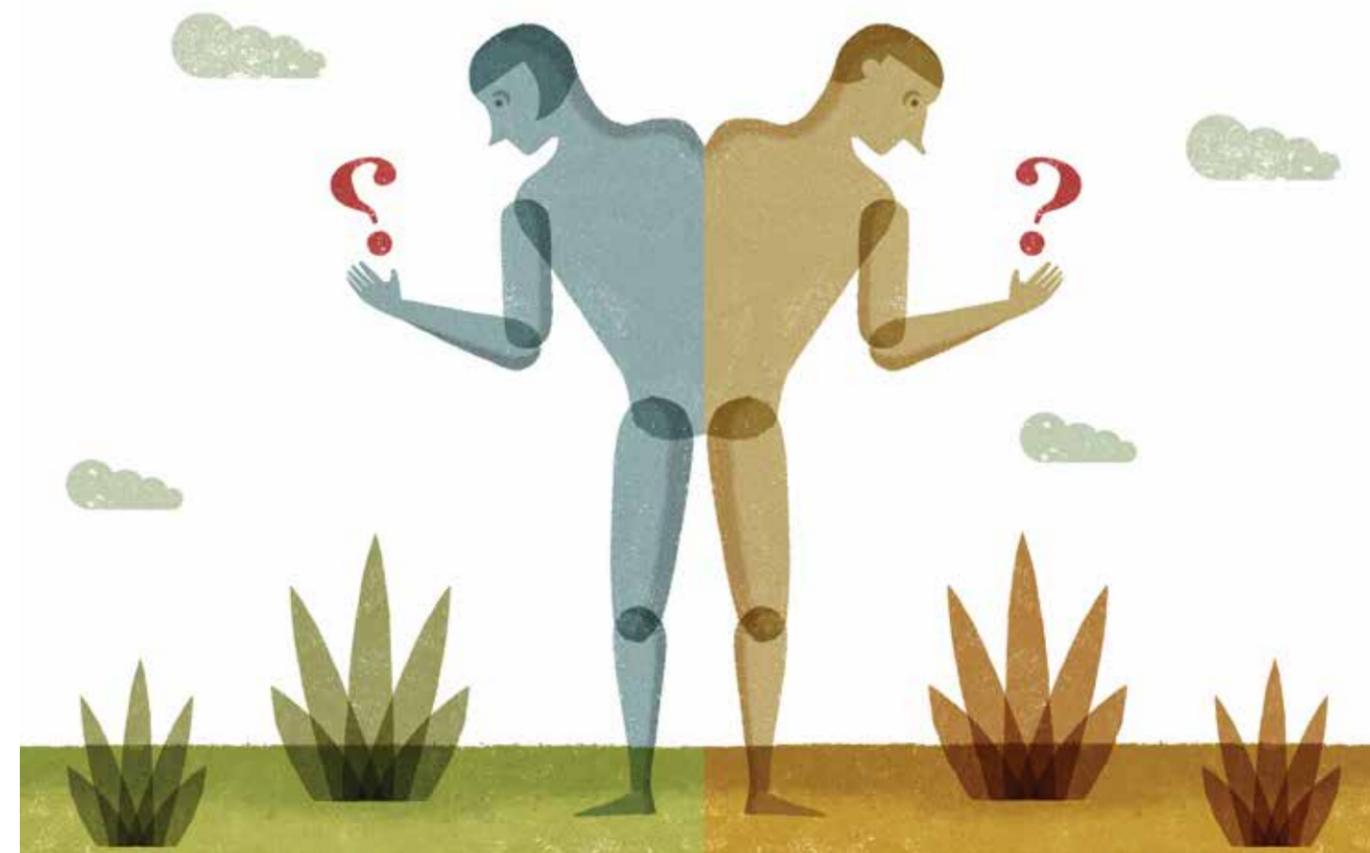
*Our dream is that Le Trans transcends borders, informs, breaks down stereotypes, and makes this world a place where Trans people don’t have to hide, hate, or deny ourselves ever again.*

**Michel Riquelme**  
OTD Chile President

## GENDER IDENTITY LAWS

# What are they and who promotes them?

by Michel Riquelme, OTD Chile president



In the year 2012, the Argentinean Trans movement achieved the passage of a gender identity law based on the right to a person’s full self-determination, to decide how they wish to be named, and the gender by which they want to be recognized. This law caused quite a stir worldwide, because it was one of the first of its kind and in that it treated gender identity as a true human right.

Gender identity is the personal and internal experience of one’s gen-

der, how each person deeply feels it, which can correspond or not with the gender assigned at the moment of birth. This includes the person’s bodily experience (it can involve the modification of bodily appearance or function through medical, surgical, or any other kind of means, provided that the same is freely chosen) and other gender expressions, including clothes, the way of speaking, and mannerisms.

A high percentage of the popula-

tion identifies itself with the gender that they were assigned at birth by doctors and the state. If they are born with a vagina they identify as female, and if they are born with a penis they identify as male. However, there is another group of people that do not identify with the gender they were assigned at birth: transgender (or trans) people.

Since the 1950’s, some of these people have decided to undergo hormonal treatments, plastic surgery and

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The passage of the Gender Identity law in Argentina was a landmark decision. Since then, at least four countries have passed laws which regulate Trans people's legal situation (Denmark, Malta, Mexico, and Colombia). All these laws and norms are based on the right to gender identity, the principle of self-determination, and the depathologization of Trans identities.

genital reassignment surgery which allowed them to be treated by the rest of society according to the gender they really identified with. This created legal conflicts within the system, because there were now people who were legally males but lived as women, as well as people who were legally females and lived as men.

This situation began to be seen by science and law as a problem, because it prevented making a classification according to the binary and heteronormative model which was used by society. Trans people were treated as something unnatural, and their desire for sex change was diagnosed as a mental pathology called gender identity disorder, today; gender dysphoria.

Laws were developed under this erroneous paradigm, like that of Sweden in 1972, in which change of legal sex was permitted only to who went through full genital and plastic surgery and showed no signs of who they were before. They had to demonstrate to the State they had passed through a psychiatric, medical, and surgical process, that brought them as close as possible to the model of man or woman as traditionally acknowledged by society.

This erroneous paradigm was exported to many other countries where similar cases began to appear, and Chile was no exception. Even today, Trans

people who want to change their legal sex have to demonstrate to the Chilean State, through its judicial branch, that they have gone through the above process including compulsory sterilization. Married people, people who have had children, and people who are still underage, have little or no chance that a civil court judge will approve the sex and name change on their ID. This is not because a law prohibits it, but rather because the arbitrary and personal values of the judge overrule the heartfelt personal identity of the individual.

The passage of the Gender Identity law in Argentina was a landmark decision. Since then, at least four countries have passed laws which regulate Trans people's legal situation (Denmark, Malta, Mexico, and Colombia). All these laws and norms are based on the right to gender identity, the principle of self-determination, and the

depathologization of Trans identities. The name and gender change process takes place directly in the civil registry or even in the presence of a public notary, like in Colombia, without the State making people self-pathologize, or requiring them to be sterilized, thus denying them the opportunity to form a family and violating their human rights.

In Chile, the bill (bulletin n° 8924-07) which recognizes and gives protection to gender identity, was submitted to Congress in 2013 and was promoted by several sexual diversity organizations. However, the bill presents contradictions between the principle of self-determination and the way in which it implements the name and gender change process, because it continues to leave the final decision on this issue to a judge, in this case a family court judge. This contradiction brought complaints from several organizations, which formed the national coalition "Fuerza Trans" and demanded that the government intervene with the bill to correct this problem, namely that the process should take place directly in the civil registry, as an administrative procedure, like in these other countries in the world. **LT**



# Nilska Wersikowsky and the Trans OTD Meeting Group

by Michel Riquelme, OTD Chile president



## FACILITATE, DON'T PATHOLOGIZE

Since November 2014, every Tuesday at 18:30, the Trans OTD encounter group meets, where people of diverse Trans identities, their relatives, and friends gather around to talk and participate in group dynamics. Guided by Nilska, the group members' experiences, sensations, and emotions emerge

**T**his social-clinical psychologist, cyclist, and music lover, has coordinated and facilitated the group since its beginnings. "It's a space where people share their experiences without prejudice, with respect to the other, in which the protagonist is the group itself, with his/her experiences and particular stories".

### What is the group dynamic like and what topics does it address?

Topics are varied, They are determined by what the group demands, through the experiences that people manifest, for example; sexuality and emotion, expression of emotions, poetry and creativity, corporality, group cohesion and the Trans community, empowerment and autonomy, psychodrama, etc. The dynamics and structure have to be flexible because the group is adaptable, and the number and types of people change. The dynamics

are also varied. We don't only work discursively, but also through the body, games, relaxation, creativity, and art.

### How would you describe your experience coordinating and facilitating the group?

It has been an enriching experience, to be part of a group from which I've gained knowledge. I was able to put into practice a more "critical" psychology, where the psychologist's role is not a normative and pathologizing one, but a facilitator who appeals more to the wellbeing of people and society.

### Taking your experience in nursery school education, how do you think the subject of gender diversity can be worked on in early education?

Working with the subject of gender diversity starting in early education

is key, because it promotes more ways of being for the children from the time they are very small, beyond the traditional boundaries of being a man or a woman. By providing more ways of being, we are helping children to improve their wellbeing. This resonates with the international norms for children's rights. For this to happen, a more flexible socialization in relation to genders is necessary, beyond the sex assigned at birth. This is necessary to create a less violent and discriminatory society, more equitable and fair than the one we have now. For this to be possible, it is important to work with teachers and families, based on introspection about stereotypes and the gender regulatory models with which we have been socialized and which we have internalized. This is to replace the socialization of rigid gender stereotypes in pedagogical practice with flexible ones, which has been going on in a few institutions for awhile. **LT**



On May 9th, 2012, the law 26.743 or Gender Identity Law, was passed in Argentina. It was an unprecedented and daring step in Latin America and it was encouraged by sexual diversity (LGBTI\*) organizations united in a national front for the Gender Identity Law.



## Emiliano Litardo

Coordinator of the drafting of the Gender Identity Law in Argentina

# “To depathologize is to privilege the person in his/her humanity”

by Armando Escoffier, *Le Trans coordinator*

Emiliano Litardo was a principal figure in the development and realization of this project. An attorney from UBA and activist for sexual diversity. Emiliano was also the coordinator for the drafting of a law which, according to Litardo, “proposes in a comprehensive manner the recognition of the self-perceived name of all Trans people, as well as access to surgical interventions for genital reassignment, either partial or total, without any type of biomedical conditions or psychological diagnosis”.

He studied chemistry in Neuquén, later changing to Law in Buenos Aires, in part thanks to his issues with algebra and also due to his family moving. As he attempted to become part of the culture of the capi-

tal city, he became an activist and simultaneously came out of the closet.

Slender, with vivid eyes, this 35 year old attorney began his activism in the Socialist group “La Palacios” at the age of 20, when he joined the group Educación Popular, and finally began his LGBTI activism with the creation of RESACA (Anti-capitalist Sexual Revolution), which started as a group of dialogue and study, and ended up with political activism in the streets.

How did you develop anti-capitalist

views and how do you associate them with a sexual revolution?

My critical position on capitalism is due to, on the one hand, having lived through the oppression and financial speculation that capitalism created. For a long time my family had to face financial problems as a consequence of commercial exploitations and of the structural unemployment in Argentina in the 90’s, which flared up again in 2001. On the other hand, I learned about the cultural and social exploitation that capitalism imposes on our bodies and

knowledge, which you don’t notice until you are persecuted for not being what is expected. During my adolescence, my sexuality was always challenged and made public as an insult by my high school classmates. Even though I hadn’t said that I was homosexual, gay, or that I liked men, the expectations of heterosexuality were enough for them to insult me. Now that I think about it, my body language, how I talked, or my mannerisms were the proof of the insult, those things that heterosexuality as a code does not legitimize or that it cannot consider tolerable without applying a correction. On this point I think, gender/sex related struggles have to interconnect with other struggles, in this case, with a critical view of the bourgeois system. It is not possible to think of us as homosexuals, Trans or lesbians without considering the exploitations or oppressions that capitalism exercises on our identities.

If I had been wealthy, I’m sure I wouldn’t have been a target of insults or attacks. Both social class and race are factors which must be included in the fight

against the sex-gender system’s norms. The criteria of sexual or gender normalization found in the capitalist system a niche to take root and expand, especially given the scientific assumptions that support discrimination and stigmatization that then translates to exclusion and structural marginalization. Being poor, faggoty, and provincial, demands a much more complex view of these struggles, one that is committed to an intersectional method or framework, in order to analyze why the value of the diversity is always attacked, impugned, or corrected by the cultural, political, and economic hegemony. Gender/sex or racial subordination is not due to one causal factor, and those who are the victims of subordination define themselves in terms of power relationships that involve economic, social, cultural and political aspects.

This is why it is important not to lose the direction of the discussion of the fight for LGBT rights and include other resistance battles associated with legal principles and how the laws are written: the ways

in which wage labor is conceived, population control mechanisms (migration, ecological regulation, birth control, sterilization policies), punishment systems, health systems, among others. Allowing marriage between people of the same sex does not eliminate discrimination against the gay and lesbian population, or the institutional violence against sexual diversity, if for example the economic system keeps excluding from its system of public records the gender identity, sexual orientation, or non-normative race of people. It is not enough to gain liberal rights without a critical understanding of how they were created and by whom. Otherwise, we would be supporting a liberal economic system which constantly imposes exclusions and normative politics. For that matter, the liberal equality before the law supported by capitalist logic, becomes neutral and ahistorical according to gender, sex, social class, or race so as to resemble the democratization of non-discrimination principles and equality, and to maintain the legitimacy of the system uncriticized, all of which strengthens the privileges of the white, bourgeois, patriarchal men which gave it birth. Discrimination on the basis of gender identity or sexual orientation is not an individual problem, nor is being a faggot, Trans, or a lesbian is a private matter. That is not what liberal equality before the law and the capitalist system wishes to make us believe. Political emancipation begins with criticizing the bias of the right and calling into question their systems of representation of sexual differences, especially revealing what is masquerading as neutral or non-political in a system that privileges certain conditions of political-cultural admissibility.

Did you begin your involvement with the Trans world when you joined the CHA (Argentinean Homosexual Commu-



**nity)? Why? What brought you to this world?**

I joined the CHA when I got my degree, basically because I wanted to join an organization that had a legal arm. I met beautiful people and made contact with a different world compared to my previous experience in RESACA. This time there was an institutional apparatus that made the legal work much easier. I had my political formation in RESACA and in the CHA I acquired a strategic vision in the legal area. The challenge that their legal demands created seemed more stimulating than the agendas concerning marriage equality. I think partly it was my hypercritical view in that moment of the institution of marriage and what this kind of traditional, liberal right implied. The Trans movement and the Argentinean critical feminist movement have helped me since I started to work with them. Their theoretical perspectives and social demands were the ones that challenged me to approach my work as an ally.

**How did the National Front for the Gender Identity Law originate?**

It emerged as a collective experience at the hand of Lohana Berkins, who encouraged us to form a dialogue and political debate group around an identity bill with all the Trans voices and allies, which became the basis for the identity law which was passed. Once or twice a week, we gathered in a bar on De Mayo Avenue, and all the people who wanted to contribution could come. It was the best activist experience I've ever had. I witnessed to how it is possible to produce a law without using the traditional methods of power but rather relying on historical activism, shouting joyfully at the top of our lungs. We always were happy despite the attacks. We never lost



hope nor the political conviction in what we were doing.

**What was the path to coordinating the writing of the law?**

It was a collective process. We got in touch with parliamentarians and began to coordinate work-groups.

**Which are the fundamental principles behind the Argentinean Gender Identity Law?**

The Law 26,743 involved a shift for the State. This shift implied the legal and political recognition of trans people's identities and corporality. This Law relocates the power of medical-legal discourse. This discourse operated pre-eminently to define trans people's situations of vulnerability. It enabled and restrained the recognition of people's right to their gender identity.

The Gender Identity Law includes the possibility of rectifying the civil registry details when they did not match the gender declared by the person. Additionally, the Law incorporates access to health in a (a) comprehensive, (b) complementary, (c) au-

tonomous, and (d) sufficient manner. The Law conceives a comprehensive access to health, which involves the access to hormones, sex reassignment surgery (total or partial). No medical diagnosis is required to claim these rights. Exercising these rights does not entail a bioethics committee, nor does it undermine the access to any other right (e.g. reproductive rights). In contrast, several European legislations request sterilisation to pursue reassignment surgery. In order to avoid that, the Argentinean Law deactivates and condemns any act that precludes, obstructs, denies or injures any of the rights included in it. The Law frames such acts as discriminatory.

The Argentinean Law highlights the person's will. It avoids judicialising or bureaucratizing people's access to their right to gender identity. This Law simplifies people's expression of intention by using a simple form in which the person requests the name rectification. In cases of sex reassignment, only informed consent is requested. Re-claiming the right to bodily autonomy, the Gender Identity Law avoids any normative definition of identity categories such as

'transvestite', 'transsexual' or 'transgender'.

Similarly, that Law recognises gender identity for trans children and adolescents in all the areas in which they develop activities. The Law fully recognises their self-assigned names and their access to comprehensive health. It also incorporates the notion of 'child's lawyer'. The national legislation provides children and adolescents the right to be autonomous agents in deciding over their own bodies. These rights extend to migrants as well. In short the Argentinean state recognises trans people as legitimate political individuals. Trans people's identity is not conceived as pathological, ill or dysphoric. Although identities may sometimes be expressed using binaries (masculine and feminine) the Law has the advantage of conceiving these categories of masculinity and femininity as political and not ontological.

**When we speak of depathologisation of trans identities, what are we talking about and how is the Argentinean Law addressing it?**

I have partially responded to that earlier. We have made a change of paradigm with the Gender Identity Law, because now the state has to recognise and respect gender identity. This basically means detaching decisions from the international pathology catalogues (CIE-10 and DSM-V) and recognising that gender is an individual, autonomous manifestation, and that gender may or may not coincide with the genitals/sex assigned at birth. Depathologisation means prioritising the subject in its humanity, it means re-claiming our rights. In contrast, keeping pathologising criteria to decide on gender identity contradicts human rights and international reports that call for the urgent respect of difference.

**In which way do you think, the law**

**breaks the binary point of view and promotes the degenitalization of gender?**

The law denies psychological determinism and body/identity naturalism, which served as a basis from which to control unusual bodies and gender expressions. A Trans masculine body is no different from a biological male in the view of the State. Thus, an act of institutional violence was ended by this law. Although there is still need for further in-depth changes designed to call into question normative patterns which still are present in the field of socio-sexual struggles and praxis, this regulation represents progress within the frame of what Dean Spade calls "differential consciousness".

**How would you evaluate the law, three years after its passage, regarding its application and results?**

Satisfactory. It's a new legal category (-categoria juridica) for our culture. The right to one's gender identity is a human right

and the State is obligated to respect it. Not long ago, article 11 of the law, which guaranteed the right to free personal development associated with comprehensive health was legalized. It's a step. We are continuing down the road to secure this paradigm shift, and educating all the institutions on how to adjust to these changes. Ultimately, we continue to work, with joy and a critical eye, for the effective implementation of the law.

In this way, this renowned activist, attorney, and a erstwhile poet, awakens us from a binary dream to a reality of multiple shades, as he himself points out when referring to his journey on the paths of love. "Dreaming about her, waking up with him" carries him from the imaginarium of what is right, to the freedom of his homosexual reality. And in this awakening, he works with others to leave an indelible mark in the fight for freedom and respect for human diversity: "... I met Martin, and I learned that going holding hands on the street with the person you love, could be a politically lovely gesture". **LT**

*Emiliano Litardo and Gabriela Spinelli, both members of Abosex, a consulting agency founded by Litardo to defend sexual diversity rights.*



# JUNE 27th MARCH

Convened by the Sexual Diversity Front, which gathers together different LGBTI organizations, more than 50,000 people took to the streets of Santiago, Talca, and Concepcion on June 27th of this year.

The slogan: "Together for a Gender Identity Law, administrative procedure", was the motto created by the Front, made up of OTD Chile, Fundación Iguales, Todo Mejora, MUMS, Fundación Daniel Zamudio, Rompiendo el Silencio, Acción Gay and Valdiversa. As it has been the trend in the latest LGBT marches, an important increase of families and young people was noticeable, together with multiple organizations supporting the cause.

The spokeswoman of the Front, Mara Rita Villarroel, stressed in her opening speech: "... We need a law, but not any law, we need an administrative law, the same as in Argentina, Malta, Mexico and Colombia. We want Chile to join the Trans revolution, to recognize the right to self-determination and to end the pathologization of our gender identities". **LT**



## What would you do if the person you fell in love with was transsexual?

**Daniela Vega**, transsexual actress

What would I do? The question about how transsexual people do in their interpersonal relationships, in particular their intimate ones, revolves a lot around

the details and often comes from morbid curiosity. Human sexuality has been well studied, and maybe art can refine the question. It could be therefore, a question which might be better answered from the political and ideological point of view, rather than practical one, that is infinitely variable in terms of Trans, cis, hetero, bi, etc.



**Daniela Aguilera**, partner of a transsexual woman.

In fact, the person who I'm in love with is transsexual, a Trans feminine lesbian and well, I keep moving forward, supporting her in her process and her full transition, and to be happy.



**Camila Aroca**, law student, U de Chile.

I believe I would actually support him/her in the process, because I don't think that being transsexual means that the relationship is over. I think a lot of people see these situations as if the people they are with had lied to them, but sometimes, in that process, the Trans person themselves couldn't accept it. So, that person had difficulties in accepting him/herself and she/he couldn't express it in the relationship. It isn't that he/she lied. If he/she wanted to transition, I think I would support him/her in the process.



**Nicolás Copano**, Journalist and newscaster.

What would I do? the usual. But I haven't been in love with a transsexual person, so I haven't experienced it.

But if I had been in love with a transsexual person, well... well, and why not? Because I haven't been attracted to a transsexual person... it's like that.





EL CARIÑO NO TIENE  
GÉNERO, COLOR NI ESPECIE

*Affection has no gender, color or species*

Illustration:  
Compliments of Camilo Jerez



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