

From Pathologization to School Integration Policies for Sexually Dissident Students in Chile¹

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ABSTRACT

Through a historical journey, this work proposes a critical vision of the process that has marked the integration of sexual dissident students into the Chilean school system. In the first instance, from a legal perspective, the political and regulatory milestones that were carried out with the intention of penalizing, criminalizing, belittling and making sexual dissidents invisible are disclosed. Subsequently, educational policies on sexuality and the normative historical development in education on issues of sexuality and sexual dissidence are addressed. Finally, the pending tasks are considered regarding the integration and recognition of those sexual dissidents into the school system, which have been affected, during the last decade, by conservative and moralistic positions adopted by different political actors on the subject and, in addition, supported by the interest of transforming reality based on a change not only curricular, but also cultural and social understood from the communicative and participatory action, with those students present within an educational community and who demand to be respected, made visible and recognized.

KEYWORDS: school integration, sexual dissidents, educational community, regulations, sexual diversity

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INTRODUCTION

In the history of the Chilean educational system, the interventions that the State has made, related to the promulgation of policies and regulations that benefit the recognition and school integration of sexual dissident³ students, have been very few. In this sense, from different theoretical perspectives of a medical, legal and psychological nature, both the criminalization and the pathologization and contempt have been the imposed mark that has stigmatized these students to this day. In the same way, various events of a social and political nature have marked the agenda in terms of decision-making in the field of sexuality and human affectivity, affecting the implementation of policies, educational regulations and curricular bases in this regard.

Normative precedents regarding the criminalization, pathologization and medicalization of sexual dissidents in Chile.

During the last two centuries, there have been many attempts to penalize and pathologize sexual dissent. Thus, during the second half of the nineteenth century, specifically on November 12, 1874, the law that criminalized homosexuality in Chile was enacted. It was during the government of President Federico Errázuriz Zañartu (1871-1876), representative of the conservative party, where the crime of sodomy was decreed, Penal Code, Art. 365; on which the commissioners decided to include a sanction for said sexual orientation, understanding that the crime against nature implied those conducts understood as against nature, in this case, sodomy. In this sense, any possibility of recognition of this human group was completely denied from the legal point of view, in addition to setting a precedent with respect to the veto imposed on these individuals in their ability to confirm themselves as individuals and individualized and autonomous subjects (Honneth, 1997). In this way, the Article of Law is established as a criminal sanction that had not been modified for around one hundred years (Zapata, 2012, p. 10), leaving those who were not

part of the imposed heteronormative order in total legal helplessness.

Later, in 1972, during the government of President Salvador Allende Gossens, the first amendment to Article 365 was produced, through Law No. 17,727. In this reform, in addition to maintaining the penal sanction for homosexual erotic-affective relationships, the crime of rape is added, that is, the rape of a man towards another man. (Biblioteca del Congreso Nacional, 2019; Zapata, 2012, p. 11). Here, according to the doctrine, said Law established aggravating circumstances to sodomy (paragraphs 1 and 2) creating a figure that could be termed as qualified sodomy or sodomitic rape. On the other hand, the amendment does not refer to the substance of the crime of sodomy, but rather penalizes its forms of commission and where there was no discussion regarding its need and justification within the Penal Code. Again, the reform not only maintains the legal sanction for sexual relations between persons of the same sex, but also aggravates them by emphasizing another crime such as rape. Consequently, the denial of the potential of individuality and autonomy of said subjects as a form of legally guaranteed freedom is reinforced (Honneth, 1997). Said legal act would mark a precedent, in future decisions, regarding the social and legal recognition of those sexual dissidents. That is, with regard to achieving those rights denied regarding their freedom to decide regarding their own sexual orientation.

Subsequently, being in full democracy, during the government of President Eduardo Frei Ruiz-Tagle, in 1999, a modification was made to Article 365 decriminalizing sodomy. The context in which such change occurs is related to the modernization of Chilean legislation, in everything related to the crime of rape in particular, in addition to sexual crimes in general. The foregoing, having as a reference studies and statistics evidenced through national and international human rights organizations. In effect, a modification is introduced to the proposed repeal of the second and third paragraphs of Article 365, proposing to suppress the provision of the first paragraph of the aforementioned Article establishing in its replacement a new sanction to the adult who has sexual relations with a minor under 18 years of the same sex (Zapata, 2012), without the occurrence of the crime of rape, rape or sexual abuse. Finally, and after a

³ Sexual dissidents are all those people who do not ascribe or do not feel represented by the imposed heteronormative order, that is, those people belonging to the LGBTIQ+ community.

series of constitutional procedures, on July 2, 1997, the final text is promulgated (Bibliotecadel Congreso Nacional, 2019; Zapata, 2012, p. 21). Consequently, the Article proposed by the commission established: "The adult who has sexual relations with a minor under eighteen years of the same sex, without the circumstances of the crimes of rape, rape or sexual abuse, will be punished with minor imprisonment in its minimum and medium degrees. " Thus, while not sanctioning homosexuality between adult or adult males, it seeks to penalize the adult who has sexual relations with a minor of the same sex (Zapata, 2012). On the other hand, by eliminating the word sodomy, it could be inferred that it was sought to punish homosexual conduct with minors, whether they were men or women.

Thus, a legal event takes place that, in part, begins to make visible and empower a sector of the population that has remained hidden for a long time, socially denying themselves due to legal pressure. Perhaps here begins the long-awaited path towards an opening to social recognition, individual freedom and autonomy.

During this period, between the enactment of the law that criminalized sodomy in the 19th century until its decriminalization, at the end of the 20th century, there were no socio-educational transformations and / or policies that were directly related to addressing issues in sexual dissent. Consequently, there was no intention of recognizing the dissidents as citizens and subjects of rights, which were constantly violated and transgressed.

Therefore, the formulation of different initiatives related to the social recognition of dissidents would have to overcome different obstacles in order to be effective. Given the previous context, for example, the emergence of the Homosexual Integration and Liberation Movement, on June 28, 1991, with a political-cultural vindictive discourse (Garrido, 2015), as an organism that defends the human rights of the population. LGBTI with national scope, encompassing social, cultural, political, economic, legal and legislative spheres.

In the same way, since the beginning of the democratic era in Chile (post-dictatorship), both social and institutional organizations and the governments of the day have tried to influence the

implementation of different socio-educational recognition and integration policies that allude to the demands of the miscalled minorities, which are the object of discrimination, invisibility and contempt by the State. The foregoing, starting in the 2000s, after the repeal of sodomy as a crime. In this sense, it is important to mention that these policies will be circumscribed in a context of globalization within a neoliberal political and economic system, in which there will be a transition from a guarantor state to another privatizing state (Donoso and Donoso, 2009; Oliva, 2008; Soto Guzmán, 2008), that is, it is a fact that decision-making in socio-educational policies, in a privatizing State, will affect the processes of recognition and school integration of the affected population, since what is sought is that these discriminated subjects are also transform them into consumers, as will be seen later.

On the other hand, from the medical perspective, in the '70s and '80s there were different intellectuals who dedicated themselves to thinking about and investigating sexual disagreements and gender identity. That is, there is evidence at the academic level of those who observed homosexuality as a phenomenon in which various psychiatric disorders and / or sexual abnormalities are noted, such was the case of Dr. Armando Roa, professor and director of the Psychiatric Hospital of Santiago from that time (Cornejo, 2011).

As happened with the repeal of the law against sodomy, important milestones appear at the international level regarding the depathologization of sexual dissidents. This is how the World Health Organization, on May 17, 1990, makes the withdrawal of homosexuality, from its list, as a mental illness, like the American Psychiatric Association where in 1973 it decided to remove it of the Diagnostic Manual of Mental Disorders (Mas Grau, 2017; Téllez, 2014). The above, as a sign in concrete actions regarding social, legal and medical recognition in matters of sexual orientation.

Undoubtedly, advances in research and knowledge on the subject changed the medicalizing, punitive and pathologizing paradigm with which sexual and gender dissidents were known and understood, which does not mean that they have disappeared. The advance processes

were not exempt from controversies and counter-arguments emanating from conservative positions; However, the logic that prevailed was that of an opening towards a world to be recognized, accepted in its demands, which until now has been partially achieved.

Educational policies on sexuality

In Chile there are no educational laws and / or policies that directly protect and recognize the sexual dissident population at school. However, some legal resources could be mentioned to address the issue, such as, for example, the Political Constitution of the Republic of Chile, which recognizes that "people are born free and equal in dignity and rights." In the same way, the General Law 20,630 of Education, in 2012, in its Article No. 5, which establishes that the State is responsible for "promoting a culture of peace and arbitrary non-discrimination" (De Stéfano and Pichardo, 2017). Also, Law 20,536 of 2011, in its Article 16b, on school violence. On the other hand, we find Law 20,845 on school inclusion of 2015 and Law 20,609 of 2012, better known as the Anti-discrimination Law or the Zamudio Law⁴, which establishes in Article 2 the definition, prohibition and sanction of arbitrary discrimination. Finally, there is circular 0768 of the year 2017 on the rights of trans girls, boys and young people in the field of education.

As can be seen, although in Chile there is an intention to protect sexual dissidents at school, the determination of recognition actions against belittling and harassment has not yet been explicitly established, as well as their visibility, as they continue to be at the discretion of each educational establishment, protected by the freedom of teaching and the flexible curriculum. Perhaps an important point of transformation will be one that establishes it within specific curricular guidelines in a common teaching framework at the national level.

For its part, regarding the National Policy for School Coexistence 2015-2018, it is interesting to

note that what is expressed in said document shows the intention that each educational establishment motivates an opening of the school culture to recognize and incorporate diversity. However, the foregoing is without effect when educational establishments are the ones that, ultimately, decide to make effective or not such recognition and incorporation both in their classrooms and in their educational processes. That is, and as the same document from the Ministry of Education expresses, it is a flexible policy.

It should be noted that both the State of Chile and the Inter-American Commission on Human Rights and the Movement for Homosexual Integration and Liberation agreed under signature (as a friendly solution), in 2016, that the reality of sexual dissidence should be included in the Citizen Training Plan, in the Sexuality, Affectivity and Gender Program and in the protocols and booklets on non-discrimination of the Ministry of Education (De Stéfano and Pichardo, 2017). Regarding their contents, these will be complementary to the national curricular base and to the curricula for the levels of kindergarten and school education (De Stéfano and Pichardo, 2017). Until the present year 2019, the curricular bases of both kindergarten and basic education and secondary education (MINEDUC, 2018a, 2018b; MINEDUC, 2016) do not explicitly address or recognize diversity in terms of sexual and gender dissidence, being relegated to superficial textual mentions and to be approached at the discretion of each educational establishment.

According to the above, it is necessary to bear in mind that the school is an institution that fulfills the function of intervening in the formation of people, systematically, according to a specific man and society that it is intended to achieve (Soto Guzmán, 2003). In this sense, from the articulation of a pre-established, standardized and homogeneous curriculum, it is evident in school systems decisions that determine forms of socialization and participation that are not random and obey decisions of power. The school is the socializing institution par excellence, after the family, where the curriculum produces various effects on the formation of its students and the community in general.

⁴ Zamudio Law (unofficial name) in recognition of Daniel Zamudio, a young homosexual brutally murdered by individuals who adhere to Neo-Nazism. Fact occurred on March 27, 2012.

Now, with respect to the aforementioned, the questioning regarding the place occupied by the needs and desires of an educational community in a given context is born. Undoubtedly, this questioning goes through those who make up the structure of the educational system, namely the school; Well, being inserted in their own reality, they see how many of their concerns do not find answers and, even more, they are invisible, omitted or silenced. Then, the curriculum would require a new proposal that responds to what the current curricular paradigm is not capable of responding to.

In this sense, it is also worth questioning to what extent the curriculum plays an equal role in terms of the opportunities for participation it offers in issues of sexual dissidence, if it is actually born in the light of decisions and interpretations of a single sector and not from a democratic participation in social agreements, marginalizing the voices of those involved. From the point of view of participatory justice theory, Nancy Fraser (2008) argues that it is necessary to understand justice in three dimensions: a) distributive, b) recognition and c) representation. Consequently, from a participatory conception based on the three dimensions, the creation of the curriculum would be providing the necessary tools to achieve political and social equality to certain groups, in this case sexual dissident students.

Development of the normative framework in education on sexuality and sexual dissidence

To understand the development of educational policies that promote the integration and recognition of the population of sexual dissidents, one must take into consideration the school curriculum that, until the return to democracy, was in force in the country. As previously stated, during the Civic-Military Dictatorship the national school curriculum completely disengaged from teaching on issues of sexuality and affectivity, since these issues corresponded to the private sphere, that is, reserved only for families and influenced under a context social, political and economic of neoliberal orientation.

The first steps in sex education in Chile were taken during the government of former president Eduardo Frei Montalva, in the 1960s. In his government, the program "Family Life and Sexual

Education" was implemented, which was attached to the educational reform of 1965 and which was developed solely and exclusively in the male-female relationship, making any other type of sexual orientation invisible (Cornejo, 2008; Pérez A., 2015, Izady et al, 2020). In this sense, living without individual rights or social recognition (sexual and gender dissidents) meant, through a regulation, for the member of that society, not having any type of opportunity for the formation of their self-esteem (Honneth, 1997) relegating it to contempt. With such educational reform, the objective of incorporating sexuality education in the country's schools was fulfilled, at the same time that it would have its continuity in the government of President Salvador Allende, at the beginning of the '70s. It goes without saying that all the advances made up to that moment, in matters of sexuality and from a heteronormative framework, were rendered ineffective with the coup d'état on September 11, 1973. The program was closed due to the moralistic and conservative approaches of the new dictatorial regime. This event would be a new milestone that would establish a before and after regarding the adoption of educational policies related to sexual and affective education in the country.

According to the foregoing, it should be borne in mind that between 1973 and 1989 there were no policies of any kind on the matter (Alvarado, 2013; Figueroa, 2012; Gutiérrez Ibacache, 2016). It is in this context, back to democracy, that Chilean sex education takes on new airs, and during the (transition) government of President Patricio Aylwin Azocar, in 1993, the Sexuality Education Policy of the Ministry of Education was developed. However, despite this, sexual education in Chile was not legally compulsory, therefore, the programs were left to the discretion of the freedom of teaching of each educational establishment, being hindered other initiatives on the subject.

Considering the above, the experience of recognition in the affective and sexual plane of the population in general and, especially, of sexual dissidents, became increasingly necessary because, when experiencing it, it empowers the subject to share with other members of the community in what makes him able to participate and gives him the possibility of treating himself positively, that is, as a form of self-respect

(Honneth. 1997). Thus, in Chile, political and religious groups of a conservative and moralistic character have always had a marked interference in the making of legal and normative decisions in State policies, which causes a delay in their implementation. In the same way, changes of government with ideologically marked political factions between right and left also affect the normal and continuous development of legal devices.

Subsequently, in 1995, with the clear intention of continuing with advances in sexual education, the Conversation Days on Affectivity and Sexuality were established. These sessions are considered the first formal program in sex education after the end of the dictatorship, since there was a direct intervention in the educational establishments of the country (Gutiérrez Ibacache, 2016), which turned out to be revolutionary for the context of the time because it had the participation not only of the students, but also with the parents and teachers. In this way, the establishment of sexual and affective education in the country is being configured, still having as a central objective only the biological and reproductive knowledge on the subject, in addition to continuing to reinforce the binary idea of relationships between men and women. Consequently, there continues to be disregard for making visible and recognizing other ways of expressing the sexuality and affectivity of an important part of the population that does not ascribe to the imposed heteronormative order.

Once again, with the termination of the Conversation Days on Affectivity and Sexuality program (in force until 2000) due to political and religious pressures, from the Ministry of Education, new initiatives began to be established, beginning with the creation of the Commission for Evaluation and Recommendations on Health Sexual (Gutiérrez Ibacache, 2016). In this context, in 2005, an Education Plan on Sexuality and Affectivity was delivered, which was in force until 2010. The above, framed within the guidelines of the Mandatory Curriculum Framework in the Transversal Fundamental Objectives. The measures adopted did not achieve the expected response in relation to the previous Plan, nor in its coverage, so sexual education in Chile continued to be pending, at least during that decade. On the other hand, it is important to highlight that, from a

legal and administrative point of view, the Ministry of Education was not empowered to protect the implementation of this type of education in educational establishments in the country.

In 2010, during the term of President Michelle Bachelet's government, emphasis was placed on policies oriented to gender issues, with equity and inclusion as the main variables. In this way, an important milestone is marked when Law 20,418 is promulgated, which dictates Norms on Information, Orientation and benefits in matters of Fertility Regulation. In this sense, the Law indicates that Sex Education is a right and a guarantee for everyone in the country (Gutiérrez Ibacache, 2016; Palma, Reyes and Moreno, 2013). In other words, in Chile the compulsory nature and quality of Sex Education is guaranteed by law, and secondary educational establishments are obliged to impart it.

This is how, finally, the Ministry of Education provides the guidelines to implement the Program on Sexuality, Affectivity and Gender, fostering instances of generation of knowledge, skills and attitudes in high school students. Unfortunately, the Law has a marked biological and binary approach to sexuality education, as it addresses areas such as: Personal development and self-esteem, affectivity, social skills, family life, sexual roles and stereotypes (men and women in society), values and sexuality, responsible parenthood, stages of the life cycle, development of moral judgment and prevention of risk situations such as early pregnancy and sexually transmitted infections, among others (MINEDUC, 2013). In this way, the reproductive binary hegemonic gaze continues to be perpetuated, making invisible and disparaging those groups of sexual and gender dissidents.

After the first government of President Michelle Bachelet (2006-2010) and during the first government of President Sebastián Piñera (2010-2014), priorities were focused on citizen security and the economy. At the educational level, the gender agenda that inspired the previous government was replaced by one oriented towards capabilities and merit, leaving the role of women in the background, putting the family first. Undoubtedly, the conservative and value trait in these issues was felt, signifying a setback with

respect to what was achieved in the previous administration.

It was in this socio-political environment that the Ministry of Education together with the National Women's Service, created in 1991 with the aim of promoting equal opportunities between men and women, began to learn about and evaluate different proposals for sexual education programs (Gutiérrez Ibacache, 2016; Pérez A., 2015) which were made available to educational establishments during 2011 (in total 7 programs), without being analyzed or evaluated by experts in the educational field or sexuality and gender. The imprint was only on the part of the health area.

According to the information presented, obviously, the position of the government at that time was to safeguard the choice of educational establishments through the programmatic offer between private companies, that is, each school, high school and / or supporter had 7 alternative⁵sex education programs, which promoted their own vision or position regarding education in sexuality, reproduction, affectivity and gender. In the same way, being private, it implied that when acquired they had to be paid to be implemented (Gutiérrez Ibacache, 2016; Palma, Reyes and Moreno, 2013), therefore, the market logic in the educational system was and continues to be undeniable.

According to the foregoing, the future in terms of sex education was not very comforting, because the plurality of programs and the possibility of choosing and purchasing them by educational establishments ended up accentuating, even more, the lack of integrative capacity for sex education. In other words, the non-existence of a single

program or curricular framework that clearly provides the pedagogical guidelines of minimum knowledge, without any type of bias regarding the good and bad of human sexuality (Palma, Reyes and Moreno, 2013) and giving at the same time the corresponding recognition to those who are not part of the heteronormative sexual and affective order.

This is how it is evident that the curriculum plays an essential role not only in the transmission and communication of content and knowledge, but also in the ways in which these are understood by a given educational community. Consequently, as certain knowledge and content are omitted or invalidated, the possibility of their entering into a communicative and participatory process is denied, that is, validated, both among those who appear as oppressed and invisible as well as those oppressors and dominators, clearly allusion to the situation to which sexual dissident students are exposed in any educational community. As Paulo Freire (2005) said "men are not made in silence, but in words, at work, in action, in reflection". In this sense, it is interesting to show that from the critical theory of the curriculum a new paradigm has been born called the critical communicative paradigm (Ferrada, 2001; 2015), which emphasizes communicative action, taking steps that extend beyond ideological dissensions. That is, what is sought is to propose a paradigmatic change of the curriculum through an approach based on communicative action from a post-critical proposal of the curriculum.

It should be noted that, along with all the above, there are governmental and non-governmental institutions that were created with the purpose of contributing to generate changes in the way of seeing and recognizing sexual dissidents, both at a social level. as a politician. Such is the case, among others, of the social organization called Gay Action, better known in its beginnings as the Chilean AIDS Prevention Corporation, which was founded in 1987 with the intention of dealing with the incipient threat of the HIV / AIDS epidemic or the Movement for Sexual Diversity (since 2010), initially known as the Unified Movement of Sexual Minorities, founded in 1997, who work in the field of human rights, HIV / AIDS and citizenship.

⁵ The 7 sex education programs offered were: Teen Star (Pontifical Catholic University of Chile); Education program in values, affectivity and sexuality PAS (University San Sebastián); Learning to love (Catholic University of the Holy Conception); Sexuality, self-esteem and prevention of teenage pregnancy (AprofaTraining S.A.); Adolescence, time of decisions (Cemera - Faculty of Medicine University of Chile); Learning Program in Sexuality and Affectivity (Department of Psychology of the University of Chile); Comprehensive sexual education course (Dr. Capponi comprehensive sexual education center).

In the same way, government institutions have been created with common purposes to the previous ones, such is the case of the National AIDS Commission, created in 1990 in order to develop, coordinate and evaluate the program for the prevention and control of AIDS in Chile. In turn, the National Youth Institute, created in 1991, with the objective of generating programs that promote social inclusion and participation, respect for rights and the ability to propose, decision-making power and responsibility. More recently, in 2016, the Ministry of Women and Gender Equity began its activities, with the mission of creating policies, plans and programs that benefit women and working to eliminate any type of gender discrimination.

In summary, during all the periods mentioned so far, there has been no desire to incorporate, through specific educational policies and / or regulations, those groups that are commonly marginalized and invisible within the school system, that is, those sexual dissidents. All efforts have been focused, consciously or unconsciously, on perpetuating the heteronormative sexual and affective paradigm, curricularly centered on biology, where the normal is rooted in the erotic-affective relationships between a man and a woman, relegating to indifference and contempt for all those who disagree with this imposed order.

CONCLUSION

In the Chilean educational system, school integration and the recognition of sexual dissident students have been deeply influenced by various social, political and economic events. Within this entire journey, it can be seen that the processes aimed at pathologizing, penalizing and medicalizing sexual dissidence have left traces that persist to this day. In this sense, different conservative and moralizing positions have tried to influence decisions regarding the integration and recognition of said population into the school system, as well as regarding the content and knowledge on sexuality that the national curriculum imparts. Consequently, within the national curriculum, the null treatment of sexuality during the institutional crisis of almost two decades (Coup d'état, 1970s and 1980s), left an entire generation devoid of essential

knowledge regarding the development of their own sexuality, affectivity and identity.

The Chilean school system, supported by the freedom of teaching and curricular flexibility, leaves to the discretion of the educational establishments what and how the treatment of certain contents will be carried out, including sexuality, affectivity and sexual orientations (sexual dissidence). Faced with the above scenario, different legal initiatives have been launched to achieve full integration (inclusion) and recognition of sexual dissident students in the school system. However, none of the proposals is really translated into concrete actions through the curriculum. For such recognition and integration of sexual dissident students to be effective, it necessarily requires incorporation and visibility into the school curriculum. The above, as a way of bringing different positions on the subject, becoming aware of a present reality through different processes of work and reflection. Finally, a paradigm shift is necessary in the way the national curriculum is projected. That is, to bring the curriculum closer to a critical communicative paradigm, as well as to the role in terms of opportunities for participation from the point of view of the theory of participatory justice.

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