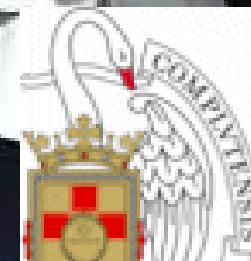


# Outstanding challenges in a post-equality era: The same-sex marriage and gender identity laws in Spain

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# Why Spain?



**History of gradual changes**

**Double moral/standards**

**A wish for modernity**

**Compensation of  
backwardness**

**Secularization process**

**Individualization**

**EU as a mirror**

**Productive social conflicts**

# Political context: 2005

## Different meanings of equality



During Zapatero's first legislature (2004-2008) **some of the most relevant demands from social movements entered the political agenda becoming public policies:**

- Comprehensive Law against gender violence (Law 1/2004).
- Same sex marriage (law 13/2005)
- New terminology on disability
- Dependency law
- Sign language as official language
- Equality Law 2007
- Transgender rights law 2007

**Dicourses on citizenship and democracy in which left wing parties** showed a larger commitment with social movements.



# Same sex marriage legislation

Law 13/2005 changes the Civil Code allowing same sex couples to marry, **under the same rights and obligations.**

- It constitutes a **simple technical arrangement**: art. 44 eliminates gender references to husband and wife for spouses.
- Keeps the **term “marriage”**.
- Includes benefits on: **adoption, inheritance, tax, nationality, residence, divorce, housing, etc.**
- But also demands: **monogamy, cohabitation, shared economy, mutual responsibility and care.**



# Narratives around marriage

Previous to the approval of same sex marriage, most political debates focused on:

- The **link between homosexuality and child abuse**
- **Adoption** rights separated/linked to marriage
- The **term “marriage”** opposed to “partnership rights” already existen in the regional level



# Narratives around marriage

During the Congress debate, the socialist government argued that **marriage is neither natural or divine**.

Zapatero (2005) said: **'marriage will be what each government wants it to be, has to do with giving back respect through the acknowledgment of rights, restoring dignity, affirming the identity and freedom of a minority'**.

The leftist party coalition said that marriage is symbol of formal equality, claiming that **'yet another step forward is being taken for the freedom of every man and woman to be citizens, to reach the Europe of rights and liberties, and for all of us to become first-class citizens'** (Navarro Casillas, 2005)

LGTB Movement: "We are families too" 2005

PUBLICIDAD

## ALERTA

### LEY DE MATRIMONIOS HOMOSEXUALES

Llamamiento **URGENTE** al público para que pidan a sus senadores el **RECHAZO** de esta ley

**LA APROBACIÓN DE ESTA LEY SERÁ UN ATENTADO CONTRA LA FAMILIA, NUESTRA SOCIEDAD Y NUESTRO PAÍS**

RECORDEMOS:

- El matrimonio es una institución única de Dios.
- La santidad del matrimonio es el vínculo providencial de todo orden moral en el mundo.
- No hay substitutos para el vínculo entre un niño y sus padres naturales.

SI ESTA LEY SE APRUEBA:

- Las escuelas enseñarán a nuestros hijos que la unión homosexual es normal y parte de la cultura española.
- Los niños adoptados por parejas homosexuales quedarán vulnerables (en Los Angeles (EE.UU.) estos niños necesitan escuelas especiales).
- El SIDA y otras enfermedades de origen homosexual proliferarán.
- Gays de todo el mundo buscarán refugio en España.

**EL MATRIMONIO GAY ES UN TRAVESTI DESTRUCTOR DE LA LEY DE DIOS**

PIDA A SU SENADOR QUE VOTE EN CONTRA DE ESTA LEY Y QUE SU DECISIÓN MORAL EN ESTE ASUNTO NO PASARÁ INADVERTIDA POR LA MAYORÍA SILENCIOSA DE LOS ESPAÑOLES QUE ESTÁN EN CONTRA DE ESTA LEY.

Pida información al Senado **91 538 15 18**

Padres y Madres de España  
E-mail: [padresmadres@terra.es](mailto:padresmadres@terra.es)



# Challenges

Despite the egalitarian spirit of the law, formal equality has **limits for same sex marriage in Spain.**

- If there were children, **non biological parents had to co-adopt them**, whereas heterosexual marriage implies parenting rights per se.
- The law **did not anticipate the possible interpretations that would discriminate same sex** couples in the automatic recognition of parenting rights, and specially affected lesbians.
- The Government had to introduce a provision inserted into the Gender identity law (art. 7) which states that **'when the woman is married to another woman, and not legally the facto separated, the latter can state in the Registry that she consents to the relationship with the baby when her partnet gives birth'**.

## Un juez niega a una mujer la custodia de sus dos hijas por ser homosexual

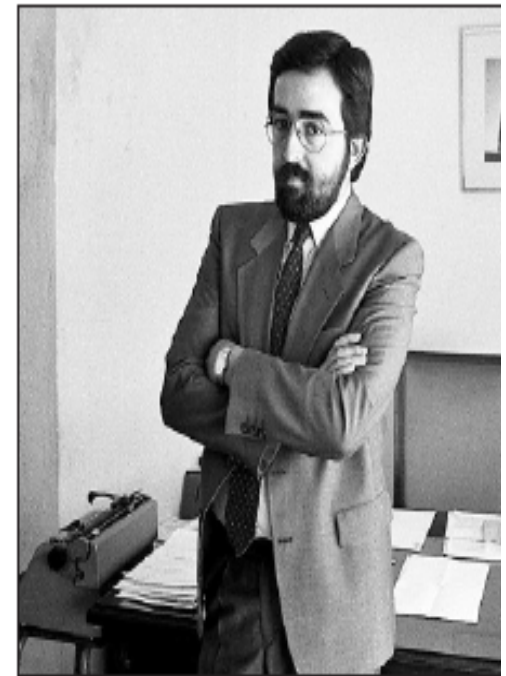
La sentencia de Ferrín Calamita insta a la madre a elegir entre su ac

PATRICIA ORTEGA DOLZ, Madrid  
Pese a estar siendo investigado por sus polémicas decisiones, el juez Fernando Ferrín Calamita, de Murcia, sigue dictando sentencias que ofenden a los homosexuales. En el

auto conocido ayer, del pasado 6 de junio, niega la custodia de sus hijas a una mujer por tener una relación homosexual. Asociaciones y organizaciones de mujeres y de gays y lesbianas manifestaron su repulsa por la decisión. cartas máximas que ab

“¿Por qué la condición homosexual perjudica a los hijos?”, se pregunta el juez en su auto, que por su redacción y valoraciones, parece más bien un conjunto de reflexiones y opiniones personales. “Pues porque los hijos tienen derecho a un padre y a una madre, no a dos madres o a dos padres. Los más prestigiosos especialistas así lo determinan. No hace falta siquiera ser especialista: el sentido común (que a veces es el menos común de los sentidos) así lo dice. El hombre y la mujer son complementarios entre sí. Dos mujeres o dos hombres, no”, escribe Ferrín Calamita.

En la rueda de prensa convocada ayer por 16 organizaciones de mujeres y de gays y lesbianas, no se escatimaba en apelativos para este auto judicial: “Es un atentado contra la democracia”, decía Ana María Pérez del Campo, presidenta de la Asociación de Mujeres Separadas y Divorciadas, que recordaba los numerosos momentos en los que el juez, ya con una investigación abierta por obstaculizar la adopción de una hija a la pareja de una mujer lesbiana, cuestiona en su auto las “leyes progresistas videntes que tiene



**DOS DÉCADAS DE POLÉMICA.** Fernando Ferrín Calamita (Cádiz). En 1987, año del que data esta imagen, llamó a la Guardia Civil se sintió “faltado al respeto” cuando las vio. La ley no prohibía lo que

# Challenges

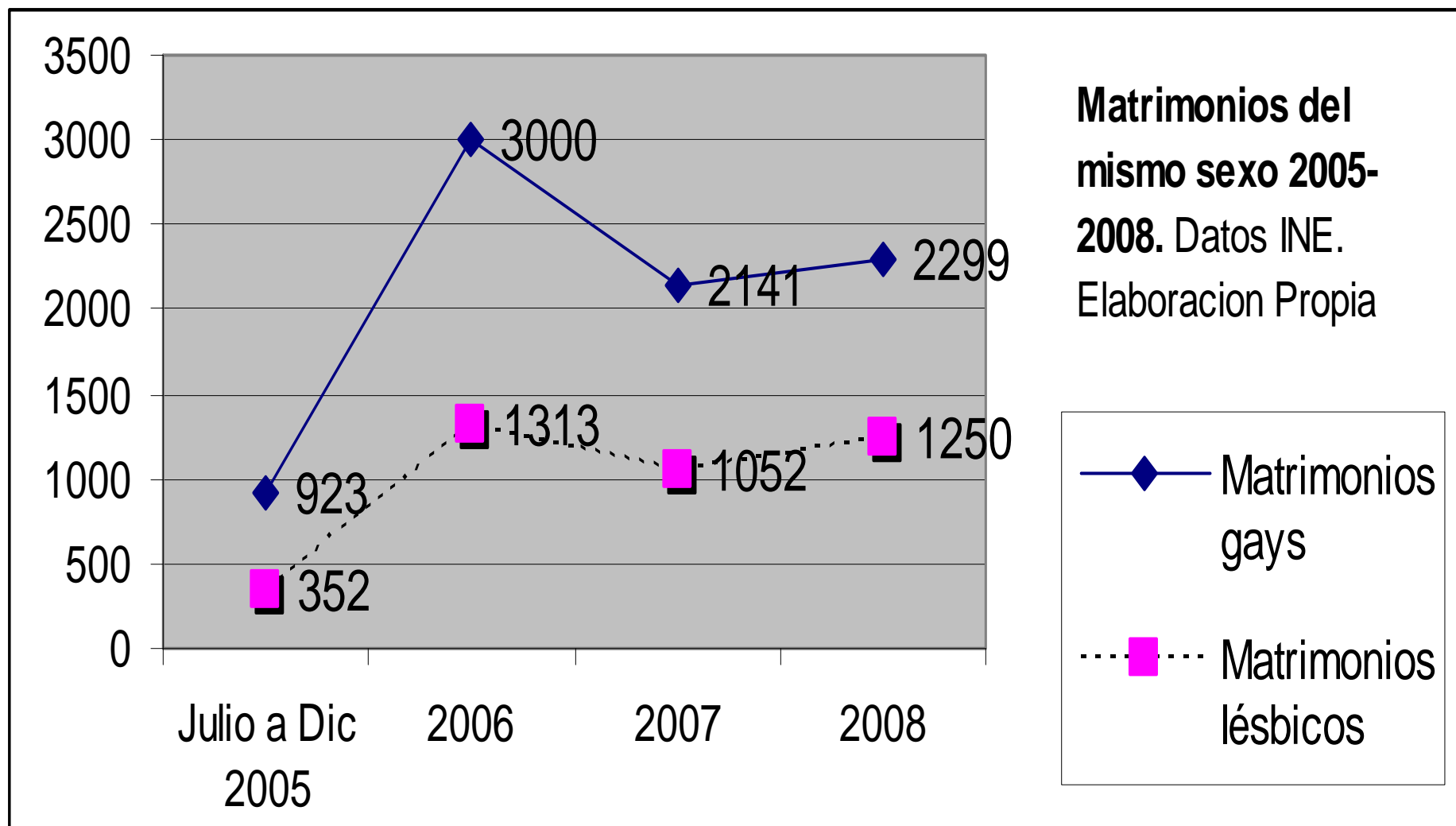
**Surrogacy parenting** is controversial: since it is banned in Spain but some cases performing surrogacy in the US and having problems recognizing their children in the Spanish embassy and Civil Register.



Ricardo Lucas (delante) y su marido, Iván Vallejo, juegan con el hijo de ambos, nacido en Chicago de un vientre de alquiler.- GARCÍA CORDERO



# Marriages July 2005 - 2008



# Some data to help us think...

- Same sex marriage comprised only **1-2% of total marriages**
- **More marriages in 2006** (new right being exercised), a low pick in 2007 (economical crisis?), a slow recovery in 2008.
- **Relevant gender and national gap in both marriage and divorce**
  - Gender: **74-71% men vs. 26-29% women**
  - Nationality: **same sex marriages with at least one foreign spouse were more likely than heterosexual couples**

# Same sex marriage and non nationals

- The first moments of the applications of law 13/2005 were not easy, as **some civil servants objected to carrying it out and questions were raised about whether it extended to non-Spanish nationals.**
- Both same sex and heterosexual marriages between non Spanish nationals are often **suspected and even presumed to be fraudulent marriages of convenience.**
- There is a **relevant amount of same sex marriages with one member who has neither Spanish nationality nor a resident permit and is in a special migratory situation**, is not taking into account in law 13/2005, which did not benefit from an ex ante evaluation of this potential situation.
- **Question** were also raised about the legal status of marriage to people of different countries, **in cases in which same-sex marriage was not recognized in their home countries.**



# Same sex marriage and non nationals

## Two cases had a key impact:

- The marriage application of a Spanish and an Indian man in Barcelona, which denied because **India** doesn't allow this kind of marriage.
- The marriage between a Spanish woman and an **Argentinian** woman in Catalonia, on July 22, 2005, which was authorised because the judge gave preference to the right to marry over the fact that Argentina does not allow this kind of marriage.
- The **debate was over a few days later when the Assembly of Prosecutors released a notification on July 27th, 2005, allowing marriage to people whose countries did not recognise same sex marriage**

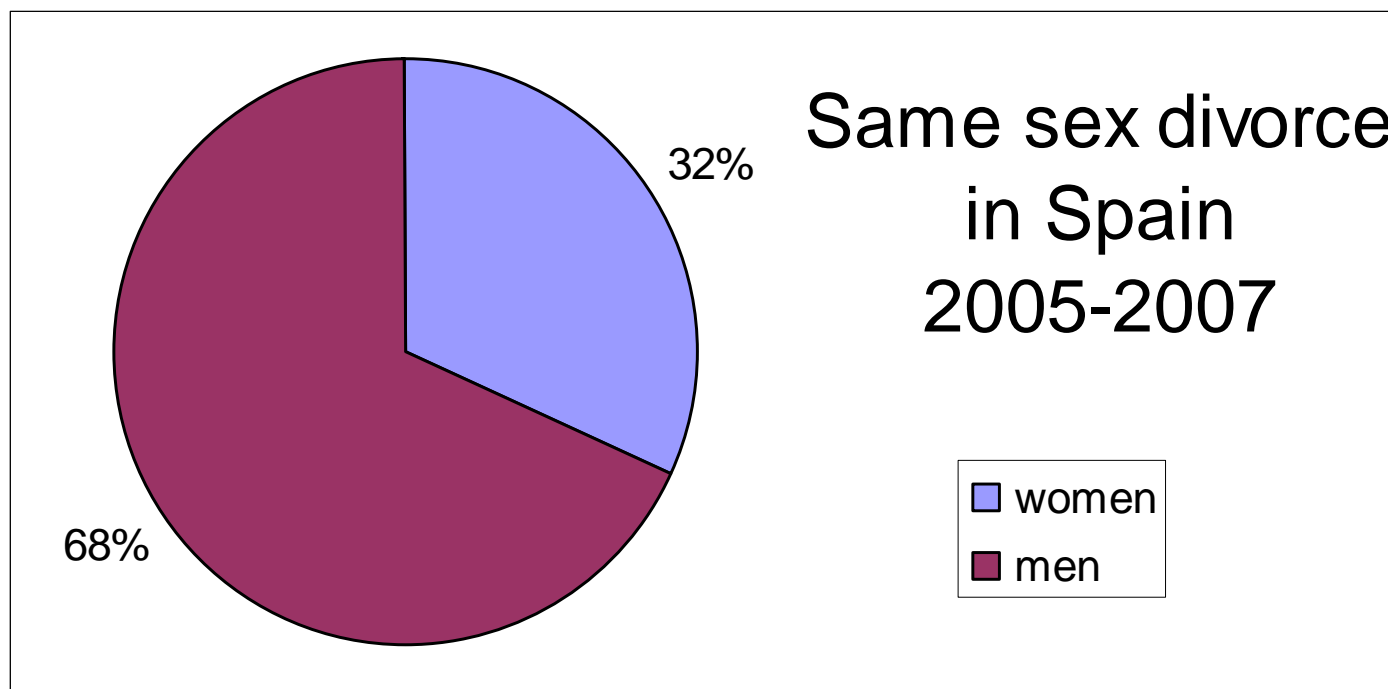


Verónica y Tani se besan ante el juez Jorge Vergara, titular del Registro Civil de Mollet del Vallés.- REUTERS

# The neutral subject of policy making

- The absence of intersectional perspective within law 13/2005 did not prevent discrimination against lesbians and non national citizens.
- Problems to interpret and apply the law since the law did not anticipate actions to compensate structural discrimination.

# Same sex divorce



## Data on Divorce:

- 2005: none
- 2006: 3
- 2007: 38 (we acknowledge that lack of complete data on divorce)

Taking into account that men marry more often than women (75/25) in this period, the 32% of divorce among lesbians translates into a slightly larger divorce rate of lesbian marriages.



# Marriage and divorce

- Changes in the Civil Code for gay marriage and divorce, making divorce easier by abolishing separation requirements – took place almost at the same place.
- They created a **new definition of marriage based on affection, not so much on morality or reproduction.**

# Questions for the future research

- Why gay and lesbian do (not) marry?
- Has homophobia in(de)creased since marriage is allowed?
- Those who choose not to marry, are perceived as second class citizens?
- Is ssm marriage privileging those who are middle class, own property, have children, etc.? In which ways?
- Is same sex marriage and the current transgender legislation in a trend of transformations of the understanding of sexuality and gender roles in Spanish society?
- Does same sex marriage reinforce/challenge gender binaries?
- What does same sex marriage for other sexual rights unachieved, such as transgender rights, surrogacy, tackling homophobia at schools, etc. ?

# Trans rights in Spain: 1977-2010





Intimate Citizenship in Spain: transgender rights							
1970	1975	1980	1985	1990	1995	2000	2005
	Ongoing reforms to remove formal discrimination in the laws: mostly concerning women and sexual minorities						
						Entrance in electoral programs and increasing visibility of transgender rights	
							Transgender Rights struggle for Gender Identity Law
- Decriminalization of Contraception (1974)	- Transvestite, transgender, homosex. march against LRPS law 1978, Barcelona - Law LRPS that punished homosex. and transvestites appealed 1979.	- Homosexual association become legal (1980). -- Divorce (1981) - Decriminalization Sex Change (1983)	- Abortion (1985) - Assisted Reproduction 1988. - Public Scandal law appealed 1989	- Participation of transgender organizations within feminist movement's conference 1993. - Starting point of partnership rights with the development of 12 laws (1993-2005).	- New Penal Code. - Andalusia's Parliament approves the treatment of transgender people within Health System 1998. - Leftist Party Law Proposal 1999 - Socialist Party Law Proposal 1999 - Report by the Carlos III Institute (Health Ministry), 1999.	- Proposals in same sex marriage and transgender rights by most leftist political parties. Elections 2004. - Transgender Platform for rights 2004	- Same sex marriage (law 13/2005) - Divorce Law reform. - Sex and name recognition act (law 3/2007). - Proposals by leftist parties on transgender rights. Regional elections 2007.

# Transgender Rights in Spain

Since Spain lacked any legislation regulating or promoting transgender rights, the Courts have ruled on trans rights.

On four occasions, the High Court (*Tribunal Supremo*) (between 1987 and 1991) ruled on trans rights, based on the Spanish Constitution's articles 10 on free development of personality and 14 on non discrimination.

# Transgender Rights in Spain

- **2004 The Transgender Platform presented a 12 point list of demands within a 'Gender Identity Law' Proposal.**
- **2004 National elections many political parties promised legislation on transgender rights** (Catalonia Republican Leftist Party; Catalonia Nationalist and Green Party; Socialist Party and the Left Wing Party), **along with same sex marriage, violence against women and other demands promoted by civil society.**
- **Once the socialist party was appointed in 2004, some of the demands from civil society that were present in the socialist electoral program become legislation,** such as violence against women, same sex marriage, etc.

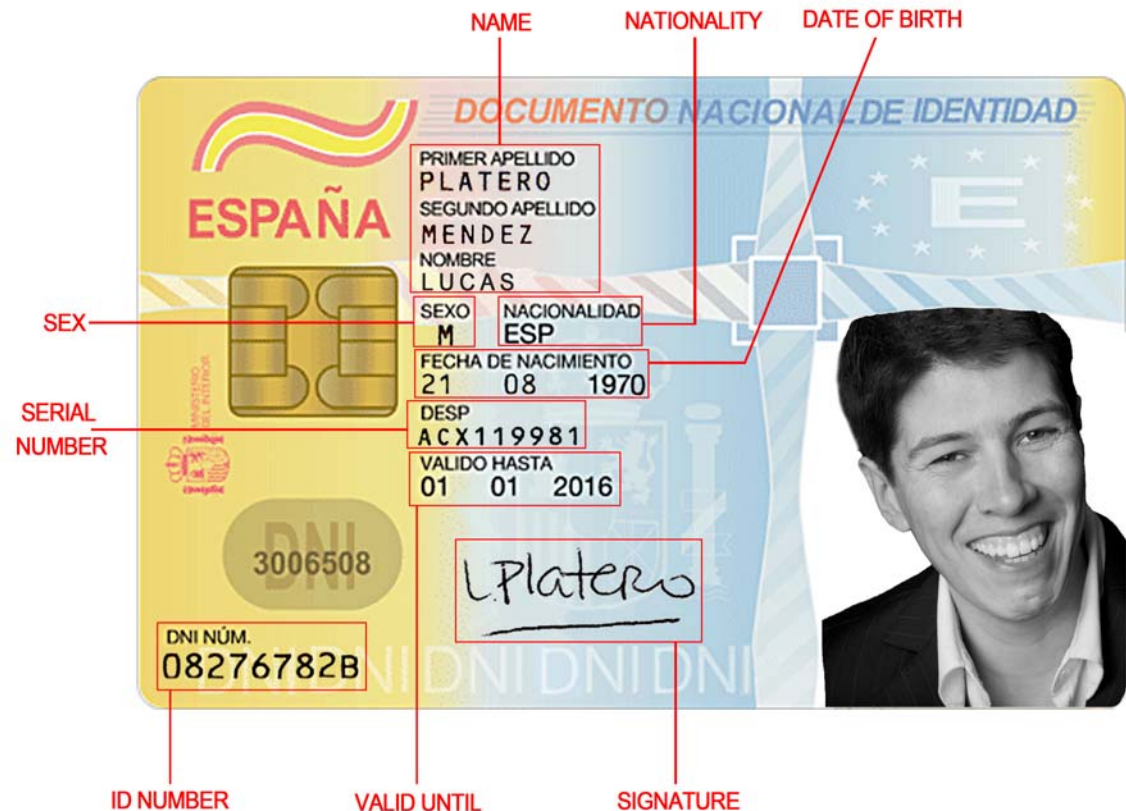


# Transgender Rights in Spain

In march 2007, the Socialist Government approved a law which granted transgender individuals the rights to use the name and sex of their choice on official documents, without the compulsory requirement of surgery.

"a seemingly unproblematic object like the DNI can be a powerful registration mechanism in which rules and legislation are updated and enforced" (2008:149).

Not only it **associates a person's geopolitical and ethnic origin with a number** and establishes **kinship** with a biological family. It also **ties a person's image to a gender**, for which there are only two possible options.





# Transgender Rights in Spain

The new law grants **adult Spanish citizens** the right to change a person's legal name and sex marker in all documents.

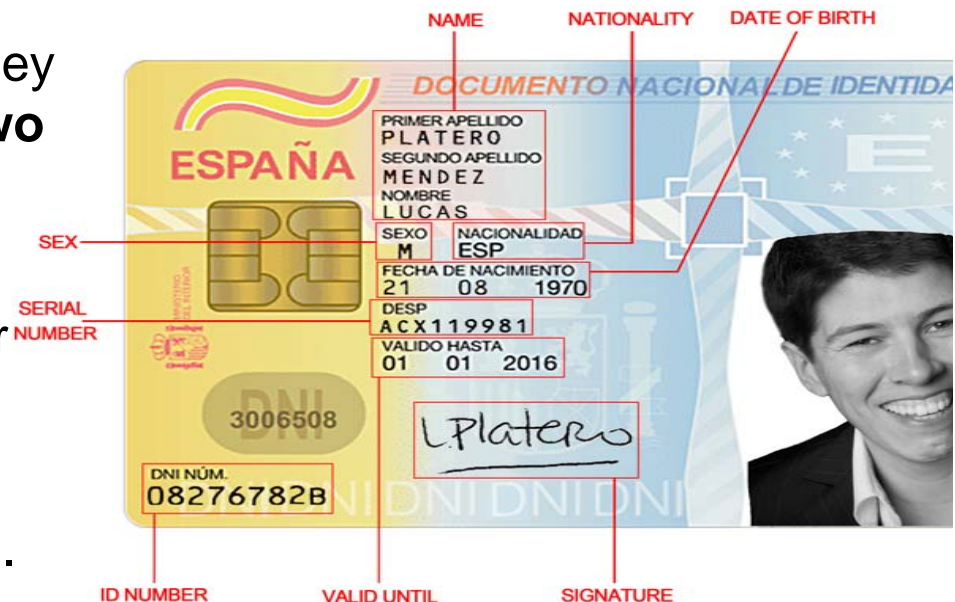
Applicants are **required** to have the so-called **gender dysphoria diagnosis**; they are also required to have **undergone two years of 'medical treatment'** (usually interpreted as hormone treatment).

Transgender people of advanced age or poor health are **exempt** from that last requirement.

The applicant must be a Spanish citizen.

**Sterility is not required.**

The **new name chosen must be unambiguous** with respect to gender.





# Transgender Rights in Spain

The passing of Law 3/2007 can be related to several factors:

- Sucessfully achieved partnership rights and same sex marriage**

- The existence of a **trans-movement**,

- The main claim was a comprehensive gender identity law that included the **rectification of the register concerning people's sex** (see 2004 Transgender Platform and how these demands are inspired by the EU 1989 Resolution on discrimination against transgender people).

**Cheapest demand included.**

- Significant influence of the European Union**, which resulted in the legitimization of new civil rights.



# Transgender Rights: current debates

- Health Coverage: uneven health service among the regions
- Anti-patohologization movement
- Limits of law 3/2007
- Lack of intersectional analysis: minors, foreigners / migration, trans women in the labour market / discrimination in the labour market, prostitution, mental health problems...



# Some conclusions

- The achievement of rights by sexual minorities in Spain **promotes a public image of a modern and progressive country**, opposed to the catholic and conservative stereotypes
- In this vanguard scenario, **some political actors get credit for these changes** (mostly the **socialist government** and in a secondary position to leftist parties) **while others make out of their rejection a source of mobilization** (mainly the conservative party and the catholic church), turning sexuality as a matter of polarized standpoints.
- The achievement of these new rights can be seen as a two folded issue:
  - these changes means progress and better quality of life for sexual minorities,
  - these laws give the impression of having ended the fight and struggle for sexual minorities' rights, since they present themselves as a solution to all LGTB problems.
- Simultaneously, these new achievements are also interpreted as a starting point of the future demands and the construction of rights within a new frame: labour market rights.

# Some conclusions

- The passing of the 13/2005 and 3/2007 laws have the **explicit aim of overcoming inequality**, and giving previously unknown rights to citizens.
  - These laws **attempt to be not only neutral but also egalitarian**, as well as compensating for a historical situation of exclusion of gays, lesbians and transgender citizens. And they are designed to include disenfranchised individuals within mainstream citizenship.
  - Yet they **are not designed to transform society in depth**.
  - Therefore, to some extent **they end up contributing to the reproduction of inequality** because they **lack**:
    - a sufficient gender perspective,
    - and do not observe the issues of **nationality, age, place of residency, social class and access to economic resources of the people to whom they are directed**
- in other words they do not guarantee *substantive* equality.

# Some conclusions

- Not only do these laws lack a multiple discrimination perspective but they are also designed within a frame that could be labelled 'assimilationist',
- intended to include those citizens previously discriminated on the basis of belonging to a sexual minority, rather than attempting to transform the social construction of sexuality itself.
- This is not to deny that laws allowing same-sex marriage and transgender rights are symbolically transformative,
- yet the specific design of these two laws (13/2005 and 3/2007) constrains the scope of their impact.
- Such a perspective reminds us that public policies are not neutral; they are situated in a context of existing norms and understandings – those of heterosexuality.





Gender euphoria, by  
"Guerrilla Travolaka"