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Gender in Portuguese legislative and education systems: recognition and inclusivity of LGBTQI+ people in schools.

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Master's in Development Studies

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CIÊNCIAS SOCIAIS
E HUMANAS

Department of Political Economy

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Abstract

This Master thesis argues that the Portuguese state should be the principal regulator and promoter of an improved concept of gender in the legislative and education systems, in order to foster the social inclusion of the LGBTQI+ community, particularly transgender people. To this end, first, it correlates Human Rights and Human Capital concepts that belong to the Human and Social Development frame, in order to bring forward two perspectives in education, one focused on rights and the other on economic development. Since these concepts are used by international organizations with the purpose of improving livelihoods globally, by using Roger Dale's education governance framework, the aim is to demonstrate that the Portuguese state, as a member of the international community, is not the sole actor in the context of global governance. Rather, the state must also comply with policies and standards issued by the OECD and the European Union, which are integrated into the domestic legislation while regulating and dividing efforts with other coordination institutions. On this basis, the thesis associates feminist development with queer theory to contextualize gender and Nancy Fraser's politics of recognition in legal and educational institutions, at the same time identifying contradictions in the Portuguese gender legislation and exploring ways of improving the inclusion of trans people in the education system.

Keywords: Human Development, Social Development, Human Rights, Human Capital, Education Governance, LGBTQI+, Gender, Politics of Recognition.

JEL Classification:

H10 General

I24 Education and Inequality

I25 Education and Economic Development

I28 Government Policy

K38 Human Rights Law; Gender Law

Resumo

Esta dissertação de mestrado argumenta que o Estado Português deve ser o principal regulador e promotor de um aperfeiçoado conceito de género nos sistemas legislativo e educativo, de forma a promover a inclusão social da comunidade LGBTQI+, em particular dos transexuais. Com esta finalidade, em primeiro lugar, correlaciona os conceitos de Direitos Humanos e Capital Humano pertencentes ao quadro do Desenvolvimento Humano e Social, a fim de trazer duas perspectivas de educação, uma voltada para os direitos e outra para o desenvolvimento económico. Uma vez que estes conceitos são utilizados por organizações internacionais com o propósito de melhorar os meios de subsistência a nível global, ao utilizar a estrutura de governação da educação de Roger Dale, pretende-se demonstrar que o Estado Português, enquanto membro da comunidade internacional, não é o único ator neste contexto de governança global. Em vez disso, o estado também deve cumprir as políticas e normas emitidas pela OCDE e pela União Europeia, que são integradas na legislação doméstica, ao mesmo tempo que regula e divide esforços com outras instituições de coordenação. A partir disto, a tese associa o desenvolvimento feminista à teoria queer para contextualizar o género e a política de reconhecimento de Nancy Fraser nas instituições legais e educativas, ao mesmo tempo que identifica contradições na legislação portuguesa relativamente ao conceito género e explora formas de melhorar a inclusão das pessoas trans no sistema de educação.

Palavras-chave: Desenvolvimento Humano, Desenvolvimento Social, Direitos Humanos, Capital Humano, Governança da Educação, LGBTQI+, Género, Política de Reconhecimento.

Classificação JEL:

H10 Geral

I24 Educação e Desigualdade

I25 Educação e Desenvolvimento Económico

I28 Política Governamental

K38 Leis de Direitos Humanos; Lei de Género.

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Glossary

CRP	Constitution of the Portuguese Republic
ECHR	European Convention of Human Rights
EU	European Union
GAD	Gender and Development
HCT	Human Capital Theory
HDR	Human Development Report
HR	Human Rights
LGBTQI+	Lesbian, Gay, Bisexual, Transgender, Queer and Intersex
OECD	Organisation for Economic Co-operation and Development
PAD	Postmodernism and Development
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
WAD	Woman and Development
WED	Women, Environment and Development
WID	Woman in Development

Introduction

In August 2018 the Portuguese Government passed the law 38/2018 declaring the right to self-determination of gender identity and gender expression and protection of each person's sexual characteristics. Subsequently, this law was also to be executed in education, originating the Despacho nº 7247/2019, which implements administrative measures, in turn, agitating Portuguese society. This agitation came forward as a protest by civilians and parents concerned and against the idea of liberty when choosing public bathrooms according to a 'self-determined identity', likewise declaring that the state is imposing 'gender ideology' in schools'.¹ In sequence, this episode originated the 'gender' debate in Portugal regarding the intervention of the LGBTI Education Project in Portuguese schools (Rodrigues, I. 2019).

Upon the demanding gender equality, along with LGBTQI+ awareness and rights in society, Portuguese academy saw itself with little literature. Until, in recent years, this debate has been brought forward in even more diversified areas (Almeida, 1995; Carmona, 2020; Moleiro and Pinto, 2020; Rodrigues, O., 2019; Saleiro, 2013; Saleiro and Oliveira, 2018; Rodrigues, L., Oliveira, and Nogueira, 2015). However, regarding the area of development studies, the binary gender thinking and the exclusion of transgenders/non-binary people are still much alive. For example, in the United Nations Human Development reports and even in studies encompassing gender equality in education (Aikman, Halai and Rubagiza, 2011; Chisamya, *et al.*, 2012; Durrani, and Halai, 2018) the categories of 'female' and 'male' are firmly attributed.

The other problematic encompasses the laws and in the way that gender within itself is perceived. This is the case of the Portugal that does not know how to differentiate gender and regulate non-binary people inside the law, as shown by (Rodrigues. O, 2019) and Hines and Santos (2018). Even though Portugal has, at the time being, one of the most progressive laws in the OECD for LGBTQ+ issues (Saleiro and Oliveira, 2018, p. 141), laws must give space to be interpreted in new ways in different contexts as well as in view of new needs and new interests (Habermas, 1994, p. 108). As a result, the lack of definition is at the meantime

¹ Source: Polígrafo (2019) 'Governo obriga escolas a deixarem as crianças "escolher a casa de banho e o balneário de acordo com o seu 'género'?' Available at: <https://poligrafo.sapo.pt/fact-check/governo-obriga-escolas-a-deixarem-as-criancas-escolher-a-casa-de-banho-e-o-balneario-de-acordo-com-o-seu-genero>. Accessed: 21 June 2021)

Source: Sic Notícias (2019) 'Nova lei da identidade de género nas escolas gera polémica.' Available at: <https://sicnoticias.pt/pais/2019-08-22-Nova-lei-da-identidade-de-genero-nas-escolas-gera-polemica>. Accessed: 21 June 2021)

affecting the education system because the education community, mostly teachers, lack the resources to deal with their LGBTQI+ students (Carmona, 2020; rede ex aequo, 2019; Saleiro, 2017) hindering the progress for a more equitable/egalitarian society.

For these reasons, this dissertation intends to show that the state should be the principal regulator and promoter of an improved concept of gender in the legislative and education system as integral to a political education for democracy. We argue that it is the state's role because it is the key actor in governance and responsible for guaranteeing its citizens the right to recognition by law, while promoting through education a positive environment for LGBTQI+ human rights debates in accordance with the international normative human rights recommendations.

As human rights are present in law, gender and education, first, we begin by explaining concepts and the history related to Human Development, considering it is where human rights and liberal egalitarianism theory accrue. In contrast, the notion of human capital, a concept related to a liberal capitalist perspective, that in education focuses on the modernization of schooling and enhancing capabilities. This is important to debate how the education system is viewed as a platform for empowerment and citizenship, or as a tool for economic development (Robeyns, 2006).

The second chapter revolves around governance, as a result of the set premise of the state being the regulator of gender in education. Being that the state is not the only actor when making regulations, but also exterior powers, as international organizations, the methodology is centred on Dale and Robertson (2009) education governance to explain Portugal's place as a member state of the European union and the OECD while demonstrates the importance of other actors. Hence, this intends to show that governance, influenced by international organizations, affects a state's agency regarding education, laws and gender policy.

In the third chapter, with the intentions to engage in a conversation taking into consideration queer theory (Hines, 2009, 2007; Pyne, 2014; Rands, 2009; Sanger, 2010) the dialogue about gender attempts to demystify and denote its limitations when integrated in a structural binary society. To correlate contradictions found in Portuguese laws regarding gender and what can be done for more inclusivity, we adopt Nancy Fraser's politics of recognition. Lastly, it is debated how a more inclusive education can be achieved for the queer community, with the state or without it.

The set dissertation had as a first objective a participant observation of a School Association Training Center to find what was being done practice wise by teachers to include transgender children but, due to Covid-19, the focus shifted to a conceptual-theoretical

framework with a literature-based approach. The main source of analysis are documents, having as primary source academic research papers as well as books and, as secondary and inadvertent source (Belli, J., & Waters, S., 2014), documents produced by the Portuguese government, such as legislation, reports conjugated with other agencies records (Davies and Hughes, 2014) and as a complement, websites, for instance from the UN, the EU, ILGA and Portuguese news for contextualization.

Therefore, the first objective is to display how development, as an interdisciplinary area, came to shape the human rights discourse regarding the LGBTQI+ community and the education system with the help of governance, consequently influencing Portuguese policies, adopting the scale as an analytical approach, due to its fluidity in meaning, although level is recognized in a hierarchical interpretation.

Second, to exhibit, with the help of queer theory, the binary thinking of Portuguese regulations and what can be done to solve it.

Third, correlate gender studies with education for an effective social change.

Chapter 1: Human and Social Development

This section displays the history of development and its evolving process from modernization theory along with its deviation from the economist view of economic development to a development focused on the human social associations, therefore human and social development, which adopted the human rights and human capital discourse. These concepts are important to, first, understand the shaping of the education system and second, the clashing discourses on individual and collective rights that are needed to interpret gender identity and its laws.

Development, as it came to be known for its modernist project, was previously associated with continuously new stages of human society, admitting the idea of civilizational advance, as was consecrated by evolutionist theorists, hence contrasting primitive/civilized (associated with the study of the 'less civilized' allocated to anthropology) that played a key role in ideologies of colonialism, where concepts were "acculturation", "assimilation", "culture contact" and later, after decolonization, "social change", as a result of an unease within social sciences that were concerned with the problems of the development of new nations (Ferguson, 2005, p.143). Meanwhile, Peet and Hartwick (2015) recognize the concept of development as a product of the Enlightenment that has evolved from notions about how one could intervene to improve human existence. The Enlightenment, as it will be seen, is quintessential in later approaches, influencing notions of development, analogous to human rights. Nevertheless, the divergences and similarities of the past upsurging theory of development both observe the aim to provide grounds for immediate action for the peoples of the ex-colonies (Leys, 1996) to consequently promote human capital theory. Accordingly, these ex-colonies were the new 'developing countries' by the standards of 1950's "development economics". These countries would, if following theories of development, benefit from economic growth, therefore improving their living. Likewise, for that to operate, pre-suppositions of 'development theory' expanded towards a belief that it would be necessary to transition from 'traditional' to 'modern' forms of social organization, originating the Modernization theory, derived from Weber by Talcott Parsons, that traced a typology of social structures using 'structural-functional analysis' (Leys, 1996). Modernization as according to the western ideology, that all societies must develop in the same historical manner and direction passage, as Harber (2014, p. 69) notes, produce the fallacy that if there is a country underdeveloped, they need to "evolve" all of the structures, including schools.

One of the descendants of theorists who conceived modern values diffused through education and technology (ibid., p. 111) was Walt Whitman Rostow, who, by setting up stages on how to boost economic growth, contrived a universally historic counter-concept to Marxism, promoting the use of science and technology, while formulating the role of the innovative entrepreneur who would help achieve economic change, as well as societal development (Menzel, p. 213-214; McCowan, p. 36). Thus, the means of modernizing education and institutions as a way to achieve growth, upon the individual along with the nation is linked to human capital theory (Tonini, 2021, p. 72). Theory as follows, in the vision of Tonini (2021), is intrinsically related to, when referring Parsons and Turner (1951), a functionalist approach, where society is viewed as an interconnected biological organism, needing each other to survive. Ergo, educational institutions were necessary to maintain the social order required for a society to thrive (ibid., p. 72). Yet, structural functionalism has widely been criticised for leaving out conflict as noted by Peet and Hartwick (2015, p. 129-138) because the neoclassical equilibrium based on the necessity for societies to rigorously socialize their people through common symbols, beliefs, values, eliminates conflicts between the individual and the group for societies to survive. Although, as the individual consciousness emerges distinct from the collective consciousness and often conflicts with the collective. Therefore, Peet and Hartwick (2015) note that this conceptualisation leaves out conflicts, for instance, power imbalances, exploitation and other resistances. In addition, modernism in development, and other views within the discipline, makes no attempt to consider the disparities among societies and their multicultural views, since ‘social organizations such as schools tend to reflect the actual values and behaviours of their surrounding society [and] it would be surprising if schools universally were to act autonomously as a modernising change agent independently of their society’ Harber (2014, p. 73). Hence, development as a concept and theory needed to be metamorphosed so it could satisfy the ascending globalized society.

Amaro (2003), when historically summarizing the glossary of development, points out that in the 70’s the basic needs approach arose as a mandatory process of development, however, such only came as a serious preoccupation in the 90’s due to the “social ill-being” present in “developed countries”, in form of social exclusion, urging for a formulation of new concepts, issuing consequently the so called Human and social Development. human rights and human dignity are associated with development due to the respect for fundamental human rights and the commitment to guaranteeing the minimum for human survival and dignity. In fact, both concepts were formulated by the UN. Social Development, emerged at the UN 1995

Copenhagen Conference, the other, Human Development was formulated by the «Human Development Report» of the United Nations Development Program in 1990, as Amaro (2003) states. The former stated at the conference that Social Development acknowledges democracy as a transparent, administratively and accountable governance as indispensable foundations for the realization of social and people-centred sustainable development in all sectors of civil society², as will be the argument of the second chapter. Additionally, in the 2016 Report on the World Social Situation, against inequalities and social exclusion, the 2030 Agenda for Sustainable Development has pledged that no one will be left behind, defending a universal approach to social policy to maintain social cohesion and strengthen the social contract as well as an institutional change that include, contribute and provide its citizens opportunities to participate in public life equally, consequently, in search for the ones who are being left behind, they recognized the LGBTQI+ community as one of those groups.

The latter, in the Human Development Report, first launched in 1990, states:

“Human Development is a process of enlarging people's choices. In principle, these choices can be infinite and change over time. (...) Human Development has two sides: the formation of human capabilities – corresponding to improved health, knowledge and skills- and the use people make of their acquired capabilities - for leisure, productive purposes or being active in cultural, social and political affairs. If the scales of Human Development do not finely balance the two sides, considerable human frustration may result. According to this concept of human development, income is clearly only one option that people would like to have, albeit an important one. But is not the sum total of their lives. Development must, therefore, be more than just the expansion of income and wealth. Its focus must be people. [focuses on] three essential elements of human life -longevity, knowledge and decent living standards.” (HDR, 1990, p. 10-12).

This statement is recognized as the work of the most prominent author, Amartya Sen that simultaneously presents another version of thought to development and is used by the previous mentioned organization. He is best known for his work on the measurement of Human Development (thereby the HDR that was latter referred) and focuses on economic and moral evaluations focused on ‘Capabilities’, which refers to the set of resources/opportunities that a person might command, and which give rise to various ‘functioning’s’, enlarging the

² Source: Copenhagen Declaration on Social Development – Introduction (1995) Available at: <https://www.un.org/development/desa/dspd/world-summit-for-social-development-1995/wssd-1995-agreements/cdosd-introduction.html>. Accessed: 16 November 2021

choice of actors in all sectors of society (Corbridge, 2006, p. 232; Harber, 2014, p. 86-87; Tikly and Barret, 2011).

Sen (1999) considers his approach different to economic growth theories of development, these being in his vision, means to expand a person's freedom that also depend on social and economic arrangements as well as political and civil rights. Plus, the exercise of freedom is mediated by the role of social values and these shared norms can influence social features like gender equity. Therefore, individual conception of justice is influenced and depend on social associations. The author distinguishes five types of freedom: "(1) political freedoms, (2) economic facilities, (3) social opportunities, (4) transparency guarantees and (5) protective security. Each of these distinct types of rights and opportunities helps to advance the general capability of a person." (Sen, 1999, p. 10).

Tikly and Barrett (2011) observe that capabilities have advanced the thinking of how indicators are relevant to measuring the development, notwithstanding, unlike the human capital and human rights approaches, as we will discuss later, there is still a need to define different scales and levels of the individual at the level of global, regional and national policy frameworks. Yet, Corbridge (2006, p. 234) notes that Sen's work is focused on a type of liberalism that places great emphasis upon the power of ideas and reasoned debate in the promotion of public policy. Nonetheless, for the purposes of this thesis, the notions of capabilities, of freedom and opportunities for the individual are useful to understand the struggles for transgender in education both in the framework of human rights and human capital.

The aforesaid concepts and ramifications of Human Development joined the international development vocabulary, undoubtably announcing an alternative in opposition to the traditional economist approach of development (Draxler, 2014). Thus, the recent 'radical' version of "development" is different from the idea of "economic growth". According to Peet and Hartwick (2015, p. 1): "Development' means making a better life for everyone. In the present context of a highly uneven world in terms of income, a better life for most people still means, essentially, meeting basic needs: sufficient food to maintain good health; a safe, healthy place in which to live; affordable services available to everyone; and being treated with dignity and respect. These needs are basic to human survival. After meeting them, the course taken by development is subject to the material and cultural visions of different societies. This means that the methods and purposes of development should be subject to popular, democratic decision making."

Nevertheless, there are differences between the development proposed by organizations and the grassroots, suggesting that makes sense to continue to differentiate worldviews, approaches and methods, that give body to the action of alternative developments (Ferreira and Raposo, 2017). For example, these alternative developments brought with it an approach related to the Feminist Development that we will discuss in Chapter 3.

To debate education and the terms regarding human and social development, we distinguish the liberal capitalist perspective, from which derives human capital, along with liberal egalitarianism, related to the human rights discourse.

As McCowan (2015) states, ensuing the second world war, theories on how countries should most effectively rebuild and restructure their economies assumed that capitalism was ideal for a universalist organization for all countries to follow and prosper. As shown in table 1 below, made by the previous mentioned author, with respect to the paradigms of development theory, the liberal capitalist perspective has secluded economic growth as the primary feature of development, oblivious to inequality, where formal education systems as a modern institution has the function of inculcating a set of norms and attitudes, forming skills for diverse functions in society rooting in utilitarianism, in other words, to create productive workers. Thus, emanating the human capital theory. On the other end, the author reveals that liberal egalitarianism asserts the primacy of the individual, liberty-guarding one against the subordination of the individual to the collective whilst holding the state accountable for their constitutional rights, meanwhile prospecting practices for a universal morality which lacks in a clear relationship between who holds the rights and who is the duty-bearer, corresponding to the human rights discourse. Here, education systems whether uphold all the rights or the capability to educate empowering individuals or is a multiplier of capabilities (McCowan, 2015).

Paradigm	Vision	Strategy	Link to education	Variants
Liberal capitalist	Economic growth for 'catch-up' with developed countries	Modernizing economic activity and institutions, changing attitudes and enhancing workers' skills and productivity	Schooling instrumental in forming productive workers	Modernization theory; Human capital theory; Neo-liberalism
Marxist	Freedom from economic exploitation for peoples and countries subjected to international and local elites	De-linking from dependent relations with former colonial or neo-colonial powers	Education systems also dependent on the former colonial power and reproduce unequal relations	Dependency theory; World systems theory; Social reproduction
Postcolonial	Critique of representation as 'other' and assertion of authentic voice	Critique and deconstruction of dominant conceptions of development	Education instrument for disparagement of indigenous cultures and for articulation of critical vision	Post-structuralism; Post-development
Liberal egalitarian	Equality of opportunity and fundamental entitlements, with individual agency, wellbeing and liberty	Constitutional guarantees, global obligations and individuals holding state to account	Educational opportunities must be distributed fairly and must equip individuals for full participation in society	Basic needs; Human rights; Human development/ Capabilities;
Radical humanist	Transformation of consciousness for the emancipation of the people and creation of a just society	Individual and collective empowerment through learning and action	Education is intrinsic to development; social transformation starts with learning; dialectic of reflection and action	Freirean pedagogy; Participatory learning and action

Table 2. Paradigms of Development Theory. Source: McCowan, 2015, p. 35

Arguably, the liberal capitalist and liberal egalitarian, are the most influential perspectives used in international education due to its universality and both liberalisms benefit from Sen's perspective on a liberalism that promotes public policy to achieve more freedoms. Yet, as follows, these perspectives tend to clash because, as one of the arguments, the liberal capitalist perspective does not aid a person's non-instrumental knowledge, therefore the queer community at school. The other argument would be that more economic growth would improve the collective and give more opportunities.

1.2 Human Rights and Human Capital

There is a clash between the human rights discourse and human capital within education. Simply put, at one end, there is the notion that governments and international organisations are responsible for ensuring public services that are considered human rights, and in consequence public common goods. This perspective argues that human rights are governmental obligations because the right to education, apart from being recognized and promoted at all levels, local or global, is as a social investment. Therefore, education must remain a provided public service to secure their own population human rights and citizenship (Aubry & Dorsi, 2016; Draxler, 2014; Martinelli, 2013; Robeyns, 2006; Tomasevski, 2001). On the other, there is an ideology that recognizes the processes of globalization as an industry

and keep education as reliant on market forces that can and should take care of many of these services, which are essentially private goods traded just like any other, domestically and internationally (Draxler, 2014, p.3; Tomasevski, 2001, p.9).

What needs to be pinpointed is that the evolving policies for development cooperation in education respond and reflect ideologies from protagonist's equivalent to the United Nations, steering its way into a conflict of two visions concerning education – one side being education as a human right and, on the other, education as a tool for economic development (Draxler, 2014, p. 3).

1.2.2 Human Capital

Human capital has a history of, according to Kiker (1966), 'treating humans as money'. Kiker (1966) says that the first attempt to estimate the money value of a human being was by Sir William Petty in 1691, and then in 1867 by Theodor Wittstein, which viewed human beings as capital goods, assuming that an individual's lifetime earnings are equal to his lifetime maintenance cost plus education (ibid., 484). Later, Barriol, in 1908, defined social value as the amount of his earnings that an individual restores to Society. Therefore, several economists included their acquired abilities and skills as components of capital investing in means of increasing their productivity. In addition, human capital was used to give meaning to a person, being important to his family and country at the same time demonstrating the power of a nation. This concept is most known from the writings of Adam Smith, even not specifying 'capital' per se, the author referred to the skills of the workforce as "fixed capital," being useful abilities of humans (Kiker, 1966; Tonini, 2021).

Even though human capital became one of the subfields of economics when tried to explain income disparities and their effect on economic growth, it was in the 1960s that emerged the debate of human capital on the role of education in development, since this includes anything that contributes to the productive capacity of the workforce (Thomas and Burnett, 2016).

Schultz (1960) was one of the advocates that treated education as an investment of time and effort, concluding that the total costs of education increased than of the resources entering the physical capital. He viewed study as work and not leisure, likewise, human capital as belonging to a person that cannot be bought, sold or treated as a property under institutions and renders as a productive service of value to the economy, at the same time, valuing culture as a plus in the cumulative formation of a person. Parallely this is not as Robeyns (2006, p.

72) perspective, depicting that human capital theory “considers education relevant in so far as education creates skills and helps to acquire knowledge that serves as an investment in the productivity of the human being as an economic production factor, that is, as a worker. By regarding skills and knowledge as an investment in one’s labour productivity, economists can estimate the economic returns to education for different educational levels, types of education.”. However, it points some problems on this model: The first being viewing education only as economic, where the benefits are solely centered on having a better wage, and the second is forcing investing in skills and knowledge so far as they contribute to the economy, consequently hindering the value of non-instrumental knowledge (ibid, 72).

In addition to this perception, Weiss (1995, p. 151) argues that, according to the criteria of investment in human Capital, the investment in secondary education is low because being taught civics, or art, or music does not improve their labour productivity, even though enriches their lives and make them better citizens.

Notably, the discourse around human Capital and its investments appears around the concept of knowledge economy. As Shields (2013) asserts, knowledge economy is linked to educational performance, wherefore used to justify investments to improve national systems of education and support economic and social development by strengthening a country’s ability to use knowledge to improve the economic competitiveness.

As a result of competitiveness, the most significant indicator of development here, for investing in education, lies on the Gross Domestic Product (GDP) (Tikly and Barrett, 2011) and, because several investments were being made, there was a demand for education expenditure accountability due to the often search for functionality and economic productivity (Draxler, p.5).

Tonini (2021, p. 80) notes: “imperfect information and imperfect competition in the markets challenges this notion of equity in the value of capital investment decisions, indicating that HCT also discounts the influence of another major determinant of economic and educational policy—the role of the state.”

One of the ways that human capital is best pursued, mostly by governments with an interventionist economic tradition, is by creating a workforce which organizes the education system to serve them. Bourdieu (1998, p. 136) mentions that economists wish to have the technical capabilities produced by the production instrument, hence the dream of a school confused with a company. With this in mind, education became defined by the marketplace and planned by the public sector, serving as a management tool to evaluate aims, resources and competencies (Draxler, 2014, p. 60). Education and its investment can be handled by

institutions that do not act in isolation, but will depend on those who are in power to do so which limits the agency of individuals. These differences in economic growth between countries could be explained by the level of education, moreover, the investment in education would enhance one's productivity and earnings, and on a collective level, increase human capital (McCowan, 2015, p. 37). As human capital and sorting models assume that individuals choose their length of schooling as to their return in investment, this would explain that more wage is more time spent at school (Weiss 1995). But there is another facet to it. Thomas and Burnett (2016, p. 17) indicate some limitations in these studies. First, they encompass skill levels acquired through education rather than years spent in school; second, formal employment often for males not capturing the returns to education within the informal economy and lastly, the modelling issue is within the measurement of human capital which uses enrolment ratios and years of schooling as inputs into the production of human capital rather than an output of individuals education based on cross country data, assuming that the value of a year of schooling in the United States of America and Congo is the same.

Here, is showed that human capital theory does not in itself provide a framework for understanding education quality (Tikly and Barrett, 2011, p. 4) and as Shields (2013) points out, the attempt to improve competitiveness through investment in education does not necessarily lead to improved employment and economic growth.

As for Harber (2014), an education that does not debate complex and controversial social and moral issues would not be compatible with a capability approach because if a capability is a person's ability to do what they consider valuable, it enters in conflict with other ideas about how we decide what is just or fair in the distribution of resources therefore affecting the decision making and the distribution of power in schools.

Briefly, if we analyze a country's education system and draw the type of work that has the most investment on, this can provide answers regarding what the country wants to develop, although, in a globalized world there will be a standard.

In Tonini's (2021) vision, developing policies based on HCT can contribute to the underdevelopment, rather than the development, of a nation and, using this model did not necessarily prepare the youth for the jobs available. Because "having training or education is no guarantee of a job and having a job no guarantee of a decent living." (Ferguson, 2015: 38).

1.2.1 Human Rights

The dominance of the law concept is mostly asserted by a liberal perspective, due to the enlightenment era, juxtaposed with a socialist holist interpretation of human rights. These rights have three generations/ dimensions: the first generation as civil and political rights, related to the natural law of individual rights followed by illuminists therefore associated with the West; the second as economic, social and cultural rights pursued by socialists; and the third as collective rights, related to the 'south' countries (Nowak, 2007).

The first generation came through the struggles of people to liberate the individual from the divine order and the power of absolute dynasties so they could themselves have, other than liberty, equality, security and property, a participation in the democratic process (ibid., p. 7) originating the French revolution. This ensued political liberalism and democracy, being 'Liberalism [as] the freedom of individuals to fulfil themselves without interference from outside the state the church or society' and 'democracy [as] the freedom of citizen to actively participate to take part in political decision-making processes' (Nowak, 2003, p. 9). human rights were, as Nowak (2003, 2007) notes, a product of a nation, promoting a constitution implying a state's insurances to its people that later was turned into international law that would provide minimum standards and rules for human relations equally applicable to government law business international organisations or private individuals, where rights are inalienable and exist whether governments and laws respect them or not (McGrath, 2018, p. 84).

The second generation was unlocked by socialists due to the arrival of inequalities present in marginalized individuals, challenging the classical liberal economic conception of social justice promoting in turn, social welfare rights, now present at the UN Charter as universal (Ishay, 2004).

Therefore, indeed, is true, as is additionally pointed out by Boaventura de Sousa Santos (1997), when refers to western modernity, within the practices of human rights, as having two conceptions: the liberal one, which gives priority to civic and political rights; and the marxist, which gives priority to social and economic rights.

Yet, Nowak (2003, p. 5) asserts human rights as the only universally recognised system of values that are derived not only as a product of the west, (notably mainly European) but also a philosophical system with a set of moral values present in other cultures and religions worldwide.

Ishay (2004) on the other end, would argue to Nowak that the influence and conceptions of universal rights of the West is what has prevailed, and, while prior civilizations and

religion had a shared basic view of a common good, not all individuals were perceived as equal. Interestingly, for example, human rights are an agglomeration of several constitutions. However, let us remember that the most known French *Déclaration des Droits de l'Homme et du Citoyen* of 1789 did not include, as pointed at the time by Olympe de Gouges, les citoyennes, the women. And Nowak (2003, 2007) to steer away critics of the 'only western ideals of human rights', implies that these normative standards encompass two different world views and values: the liberal and the socialist as used by the African Human Charter which distinguished individual and collective rights, also referred by (McGrath 2018, p.85). This referred charter belongs to the third generation third generation of rights, the cultural rights. These rights include group and collective rights to self-determination, development and environmental sustainability (ibid., 2018) and have been related to cultural relativism, as in a Boasian³ anthropology definition, describing cultures as not inferior nor superior to others. This notion has been standing in opposition to a shared vision of rights by liberals and socialists and criticized due to the conception of group rights to self-determination of the third generation (Ishay, 2004, p. 364). Therefore, the concept of culture used is historically associated with holistic views, of consensus, harmony, or regulation of conflict; based on a junction between culture, population, territory, and polity, without considering the historical processes of transformation and contact (Almeida, 2012, p. 961). However, according to ILGA's 2019 Trans Legal Mapping Report, shows that the criminalisation of transgender and gender diverse people that occur in Africa is incompatible with the African Charter on Human and Peoples' Rights and the Resolution 275 of the African Commission.

Correspondingly this is to show that there is a conflict in human rights regarding the universalist and culture, individual and collective. For example, Dembour (2001), suggests moving between universalism and relativism. Boaventura de Sousa Santos (1997), argues that human rights can only be achieved if they free themselves from their false universalism and become truly multicultural. For that to happen, such is required to distinguish the struggle for equality from the struggle for equal recognition of differences, so these struggles can be effective. Either way, "although rights are understood to be universal, the ability to enjoy them is clearly unequal and has a particular focus on the rights of certain groups in society without the specific focus on the enjoyments of rights by such groups and individuals, is argued that universality rights cannot be operationalized" (McGrath, 2018, p. 98). Most of the

³ The Boasian anthropology promoted cultural relativism theory, started by Franz Boas, which depicts that although all cultures have differences, no culture is above another, therefore one's beliefs and norms should be understood based on that person's own culture.

time, democratic rights granted by new legal instruments, as constitutions, have sometimes come to appear empty, as the abstract freedoms they proclaim often seem to translate into narrow legal claims (Ferguson, 2015, p. 47).

Howbeit, human rights texts do not use the term ‘right’ to provide for individuals’ liberty to choose, instead, treaties carefully require that States have a duty to ‘have respect for the liberty of’ (Aubry, S., & Dorsi, D., 2016 p. 613). Whether or not an object of a right has any instrumental value, does not matter for its claim to be the object of a right. The problem of the rights-based discourse is purely rhetorical (Robeyns, 2006, p. 76) The rhetoric embedded here gives a lot to unpack regarding its conflicts between the individual and collective rights, the “difference is that when the social-equality right conflicts with the liberty dimension, the social-equality right dimension has greater legal weight and/or scope” (Aubry, S., & Dorsi, D., 2016 p. 616).

1.2.1.1 LGBTQ+ Rights

Social movements for identity recognition, in this case for LGBTQ+ rights worldwide, were achieved in 2007 by the Yogyakarta Principles ensuring sexual orientation and gender identity as a human right for all, leaving behind the pathological illness association and should be seen as a sequence of the human rights Declaration (Saleiro, 2013; Saleiro and Oliveira, 2018). The Yogyakarta Principles were born out of the inconsistent and often insufficient context response of gender identity and sexual orientation rights internationally and this Soft Law instrument interprets and guides the application of rights related to sexual orientation and gender identity and expression, either by states, entities within the United Nations human rights system, national human rights institutions, the media, non-governmental organizations and other actors operating in the area (Rodrigues, O., 2019).

In the new Yogyakarta diploma ‘plus 10’⁴, the 31st principle affirms everyone has the right to have identity documents and states, and as long as there is a recording of genders must make available a multitude of gender options. In principle 16 of state obligations relating to the right to education states must ensure the inclusion of comprehensive, affirmative and accurate material on sexual, biological, physical and psychological diversity, and the human rights of people of diverse sexual orientations, gender identities, gender expressions and sex characteristics, in curricula, taking into consideration the evolving

⁴ Source: The Yogyakarta Principles diploma ‘plus 10’. Available at: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf. Accessed: 16 November 2021.

capacity of the child; in teacher training and continuing professional development programmes

After this, the Parliamentary Assembly of the Council of Europe adopts the Resolution 1728 (2010)⁵ on human rights, sexual orientation and gender identity and, as Saleiro and Oliveira (2018) describe, the human rights council of Europe gave a call of attention to Portugal to comply with these measures, therefore issuing the law n°7/2011 as the gender identity law and at the time, the law n° 38/2018 as self-determination of gender identity and gender expression and protection of each person's sexual characteristics.

1.2.1.2 Education Rights

Education as a human right is recognized and promoted, through processes of globalization, within international policy documents. While most countries have international treaties protecting these rights, others integrate it onto their domestic legislation, being a nearly universally legally binding framework. (Aubry, S., & Dorsi, D., 2016; McGrath, 2018; Shields, 2013; Tomasevski, 2001).

To recall, one of the features of modernization that has a link here, in regards to human rights education as well as in development, are the model of indicators utilized to compare the progress of ones countries development to another. In this case, human rights in education are monitored do determine if whether there is progress or complaisance with the norms (Mcgrath, 2018). Nevertheless, as pointed out by Bajaj and Mabona (2021) different ideologies of human rights education will depend on relationships to power and conditions of marginalization and on social location. Some programs, for example, the Amnesty International's human rights Friendly Schools framework, proposes education about human rights (cognitive), education through human rights (participatory methods that create skills for active citizenship), and education for human rights (fostering learners' ability to speak out and act in the face of injustices). However, this program, when adopted "in sites of relative privilege, may discuss citizenship and participation, whether in conflict settings, coexistence and respect for difference may be prioritized". Therefore, even when using the previous indicators, nuances may be missed since many international human rights treaties dealing with economic social and cultural rights were written with a set of standards transposed into

⁵ Source: European Parliament resolution on human rights, sexual orientation and gender identity (2011) Available at: https://www.europarl.europa.eu/doceo/document/B-7-2011-0523_EN.html. Accessed: 16 November 2021.

domestic law and then interpreted and applied to their domestic legislation (Tomasevski, 2001, p. 11)

One of the ways that nuances may be tackled and monitored is by using Katarina Tomaševski's 4A Scheme, adopted by the Committee on Economic, Social and Cultural Rights and at the same time by the Right to Education, established by the author.⁶ It was also made a guide using indicators to monitor the right to education to "help advocates to strengthen their advocacy by using human rights indicators, helping to: Obtain evidence about the scope and magnitude of various forms of deprivations and inequalities in the field of education; Reveal and challenge policy failures that contribute to the perpetuation of those deprivations and inequalities; Assess the implementation and enforcement of education laws and policies; Uncover hidden forms of discrimination and providing standardised measures that can be compared across various population groups." (Right to Education Project, 2016) And uses the 4A scheme (Tomasevski, 2001) which features:

1. Availability—Education is free and there is adequate infrastructure and trained teachers able to support the delivery of education.
2. Accessibility—The education system is non-discriminatory and accessible to all, and positive steps are taken to include the most marginalised.
3. Acceptability—The content of education is relevant, non-discriminatory and culturally appropriate, and of quality; schools are safe and teachers are professional.
4. Adaptability—Education evolves with the changing needs of society and challenges inequalities, such as gender discrimination; education adapts to suit locally specific needs and contexts.

As will further be discussed in the the last chapter, this scheme can be adjusted and is useful to access inequalities that the LGBTQI+ community might face in education, or, as McGrath's uses (2018, p. 105) to display the government's obligations in the right to education. Furthermore, this scheme serves to hold government's accountable to human rights violations, something that, as Nowak (2003, p. 29-30) explains, governments do not like being accused of. This is why objective fact-finding, publicity, and 'mobilization of shame' are still the most effective prevention strategies, although, there is a belief that prevention measure constitutes a violation of national sovereignty.

⁶ Source: Right to Education 'What are the 4A's?' Available at: <https://www.right-to-education.org/page/understanding-education-right>. Accessed: 23 September 2020

Therefore, this chapter demonstrated that Human development is oriented in achieving social and individual welfare through human and social development, either through human rights and human capital. Correspondingly, the philosophical and policy scales associated with human rights and capital have correspondingly competing agendas in education, they still permit the international community amplitude to pursue the right to education as well as search for economic productivity (Draxler, 2014, p.5) or, in other words, observe that both of them are prevalent in education. Furthermore, the chapter presented the LGBTQI+ rights frame to be discussed in the subsequent chapters, proposing the 4a scheme to be integrated in education

Chapter 2: The State's role as an education regulator

The previous chapter argued that there are two perspectives in education, one being focused on rights and the other on economic development, while bringing forward cultural rights and the conflicts between the collective and the individual rights. On this basis, this chapter, first, aims to demonstrate that a state is not an independent actor in a globalized world and, second, it seeks to explain Portugal's place in these global governance structures. A multiscale governance approach recognises Portugal's membership in the European Union and the OECD, while demonstrating the importance and purpose of other actors, such as NGO's, in LGBTQI+ inclusion in education. After all, one of the goals of social development is to have accountable governance for social and individual development in all sectors.

2.1 Multiscalar Governance

Hitherto, the argument is grounded on Dale's (2005, 2009) approach on education governance, proposing a division of efforts between state, market and community. This owes to the author's vision of the national level as not the only one, in a globalized world, to have a place on education governance (Dale, 2005, p. 64).

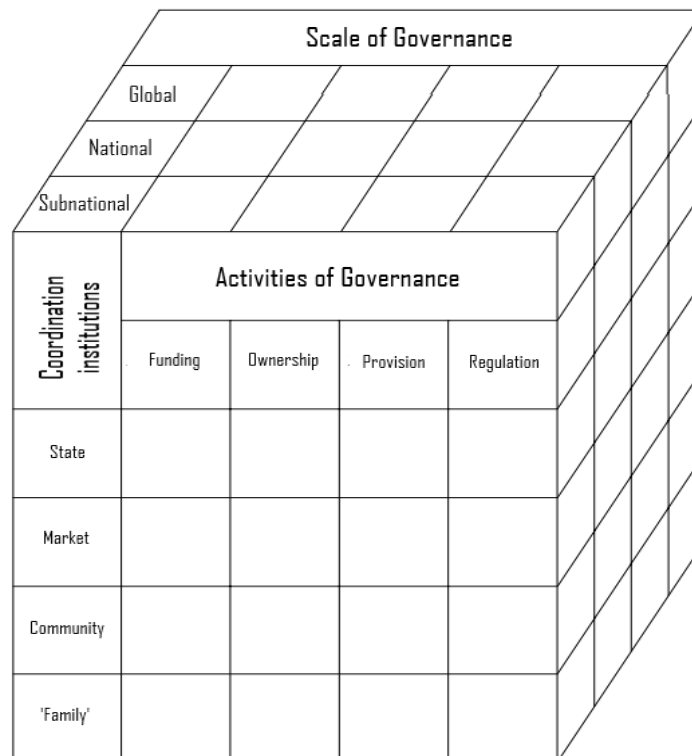


Figure 1. Dale's multi-scale education organization

In Dale's approach about education governance, he alludes to the neoliberal globalized world as is facing a shift in the division of labor where national education systems are responding to the diverse patterns of demand for human capital that they are thought to be able to supply, thus calling it the "globalization of production". Here, the state has the capacity and responsibility to achieve social cohesion through the education system. Still, one of the problems, as he illustrates, are the lack of regulations for public-private partnerships by the state. Such is quintessential to have the state as a participant along with other institutions, therefore regulation is the main thing means through which sovereignty is expressed and maintained. To achieve this, is necessary to pass from control to authority by a division of effort between the state, the market, the community and the "family". "These activities are not necessarily located at the national scale but may also 'occur' at sub- and supranational scales" (Muhr, 2016, p. 559).

For example, in Portuguese academia, Dale's multiscale governance has been used by Antunes (2017) and Antunes and Viseu (2019). At a European scale, by Melo (2010), amongst others. Another example based on Dale's approach is Muhr's (2016) analysis off a case of South-South cooperation based upon the access to university education in Brazil and Venezuela. By using the national, regional and transnational inter-municipal cross-border scales to analyse to the structural 'distributional (in)justice, the author shows that state-interventionist policies enhance the equity of access to university education with respect to accessibility and availability as well as presents South-South cooperation has an alternative to dominant neoliberal global governance of education.

This approach is also defended by Martinelli (2013), with the argument of achieving creativity for social innovative initiatives in order to understand both the reasons and impacts of mobilization, and to devise policy recommendations that can link bottom- up instances and actions with top- down regulation and redistribution. At the same time, the state should define the goals and responsibilities of a Public Private Partnership and how and for what private providers will be held accountable, not only legally but also through civil society/public engagement in monitoring and oversight (Koning, 2018).

We chose this approach even though, notably, there still is a divergence in meaning regarding the term 'governance'. Said is evident from different views on governance of various international organisations (Weiss, 2002) and these distinct contexts use the term governance as a presupposition that governing can be divided into different activities, carried or not, with or by the state, (Melo, 2010, p.78) whether in government actions or corporate governance even if their actors establish connections with other multiscale components of governance

(Dallabrida, 2015, p. 308). For example, the World Bank “define governance as “the traditions and institutions by which authority in a country is exercised. This includes (a) the process by which governments are selected, monitored and replaced; (b) the capacity of the government to effectively formulate and implement sound policies; and (c) the respect of citizens and the state for the institutions that govern economic and social interactions among them” (Kaufmann, Kraay, and Mastruzzi, 2011, p. 4). And as Wiess (2000, p. 797) notes, the UNDP defines it as the exercise of economic, political and administrative authority to manage a country's affairs at all levels through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences whereas the OECD is use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development.

These latter concepts are related to a global scale of governance that influences other states at the national level, meaning, that due to globalization, authority and sovereignty of a nation state gets consequently intertwined with supranational organizations. Therefore, a country's educational policy is mostly not determined by its national government but rather by the declarations and commitments of international organisations (Shields, 2013 p. 64).

To be more explicit, this instance considers Portugal, a nation state, simultaneously member of the European Union, integrated in international organizations and conventions. Therefore, even though Portugal has sovereignty inside their nation-state, it still must compromise to the international community. In the case of human rights, regarding both education and LGBTQ+ rights, these are regulated and promoted by the United Nations human rights and multilateral structures of the UN, such as UNESCO and the office of the united nations high commissioner for human rights (McGrath, 2018, p. 83-84). In another instance, and scale, regarding LGBTQI+ rights, namely in the EU, these are regulated by the European Convention on Human Rights (ECHR), an international treaty under which the Member States promise to secure fundamental civil and political rights, which provides the major source of international protection of LGBTQI+ rights and ensured by the European Court of Human Rights.⁷

Since global governance shifts the location of authority in the context of integration and fragmentation (Weiss, p. 806), Dale (2005, p. 72) notes that this fragmentation is in scaling and functions, as sovereignty is not about the state's control but its authority.

⁷ Equal Jus Legal handbook to lgbt rights in Europe. Available at: https://www.ilga-europe.org/sites/default/files/Attachments/equal_jus_legal_handbook_to_lgbt_rights_in_europe_0.pdf. Accessed: 16 November 2021.

Melo (2010), influenced by Dale's approach, noted that nation states "lose" some power when they transfer their sovereignty and normative power in favour of the European Union, whilst Member states remain responsible for their education systems, having to develop policies according to the EU standards and achieve supranational goals, consecutively legitimizing the European Union's authority to criticize and recommend solutions based on what they want. As Dale (2009) notes, this legitimization, used to demonstrate the EU competence in education, is based on the open method coordination, because, at the EU level, the key actor is within European policy since the problems are seen as common problems and not a state's individual national problems.

As McGrath (2018, p. 93-94) notes, when a state endorses a treaty that guarantees the right to education, it is obliged to respect protect and fulfil this right by not interfering and prevent non-state actors from doing it as well, typically through laws and regulations, and at the same time, take positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples. In addition, the author recognizes the importance of terminology in the distinction between obligations that are immediate, and those that are progressive because, some obligations must be realized, and others, as with other economic, social and cultural rights, the full realization can be hampered by a lack of resources.

Yet, in spite of the fact that international organizations produce several legal norms, these have discrepancies or inconsistencies between discourse and practice, as mentioned in the previous chapter. Accordingly, the fulfilment by some member states is facultative since they are not mandatory. Worldwide, Weiss (2002) refers that these countries are in some instances protected by the article 2(7) of the UN Charter, sovereignty and non-interference in the internal affairs of states, nevertheless, there is no justification or constitutional specification that assigns the highest form of authority to states, but representatives from national governments act as if there were. Therefore, to respond to an ever-changing environment, more inclusive and participatory truly 'democratic' mechanisms of governance must be created at the global and national level as well (ibid., 810).

This is paramount in my argument given the fact that "this dual allegiance to one's state and to universal human rights has contributed to the perpetuation of a double standard of moral behaviour, in which various appeals to human rights obligations remain subordinated to the 'the national interest'" (Ishay, 2004, p. 363). Meaning that member states might choose to condemn LGBTQI+ rights

2.2 The Government's Role

The production of legal norms “are applied within a particular geographical area of the state to a socially delimited collectivity of members of that state. Within this well-defined sphere of validity, legal norms put the political decisions with which a society organized as a state acts upon itself into the form of collectively binding programs” (Habermas, 1994, p. 124). However, as Tomasevski (2001) notes, there are two conceptions for the government's role in education: the state as the sole funder and provider of education, or as to be only the regulator. Since rights are made and maintained by the state and the state can be shaped, human rights are seen as safeguards against abuses of government power, providing a powerful argument against all state intervention, in order to avert an authoritarian one, giving space to the free market whilst clashing with the role of the government. Correspondingly, this shows that liberty in form of rights can be limited by the State and that is why is needed at least a strong regulation role for the State to demonstrate to public and private actors in the education system that the state's role is central, at least for regulatory purposes, which corresponds to its obligation to protect the rights from third party abuses (Aubry, S., & Dorsi, D., 2016).

In the eyes of Verger, Lubienski and Steiner-Khamsi (2016) the idea of education as a sector for investment and profit making is a sector that is increasingly globalized and managed by private organizations that still rely upon the funding of public resources, which in most developed nations, is dominated by state actors in terms of provision, regulation, and spending. The state, as they refer, even though has a perspective of the welfare regime state vs. the market in the provision of public services, continues to be a key institution to make, maintain and modify the industry sectors since they conceive the state, especially in a neoliberal context, as a necessary ally in market-making processes. For example, according to Antunes e Viseu (2019) the 1976 Constitution of the Portuguese Republic refers the state as responsible for creating a universal public education upholding the democratization of education and social rights. Yet, since the mid-1990s public education policies have been developed within the national but structured by global processes, fostering privatization, marketization processes and actors that weaken and endanger this fundamental right. In Portugal's case, most policy making occurs at the national and regional European Union scales (often continue receiving EU funding), which makes it more difficult to incorporate civil society's actors in policy development- policies aimed at promoting strong roots in the community and amplifying the scope of social, educational and pedagogical intervention, to improve local recognition and participation (Antunes, 2017).

Chang (2003) has a section of the book detailing that the neoliberal view defends some or less regulation and intervention of the state, because neoliberals manifested the belief that, one, the state cannot be trusted to attend to all interests since it will be only interested on its own, and, the free market is efficient and the state counterproductive. The author's premise falls onto the debate that since neoliberals prefer individual actions over group actions, is pointed out the conflict of interests of how liberals cannot deprive individuals of the freedom to join a collectivity (because liberals defend the freedom of individual choice) displaying that in this perceptive there are legitimate interest groups and others who are not. Therefore, those who control individual components may be unable to initiate and achieve a structural change, as they may suffer from a lack of systemic strategic vision not regarding other relevant agents. Even though member states retain attributes of sovereignty, the state and intergovernmental organizations are now sharing their authority and losing their control to other agents (Weiss, 2002, p. 810), for example NGO's.

What this discloses is if the state fails to provide something, the third sector comes in. This can be whether an obstacle to the state or an opportunity, as evidenced by Brehm and Silova (2019, p. 289) there is a belief that NGOs must act to protect humans' rights from nations states that don't comply since there are universal rights that transcend all legal rights of nation-states. Granting all this, such can backfire to the state. For example, the People's action for learning network constructed a discourse that combines accountability and transparency with empowerment and progress to hold governments accountable for the education it delivers. Then, the discourse revolves around how the state is not able to take care of education rights and NGOs are. Even so if the state reaches for Public Partnerships and consequently does not achieve the set objectives, the state is still the one to get blamed as the previous authors mentioned.

Nevertheless, Koning (2018) says there is an encouragement by the Sustainable Development Goals for education in promoting the use of partnerships between governments, the private sector and civil society to address inequalities in the provision of and access to public services. Yet, she notes PPPs give rise to several concerns related to equity and accountability being that the cost-efficiencies in PPPs often result in the exploitation of teacher's labour and many private providers schemes have been found to restrict unionization, depress teachers' salaries and employ under-qualified teachers.

As emphasized by Martinelli (2013), there is the assumption that NGOs are the new deliverers of social services, substituting the inefficiency of national welfare state system

services in reaching particular groups or areas. Since the key vehicle of citizenship are social services, is mandatory for national governments to ensure it through policies. The author continues saying that the issue of citizenship and universal rights must be privileged in order to make the bridge between social innovation and social policy, and similarly can be achieved by innovative policy-oriented thinking. Then, the most reasonable approach would be a shared distribution of power between different levels of government and the creation of policy-making by multiscale governance that would tend to blur the boundaries between the responsibilities of state, market and civil society, generating new opportunities for civil-society and market actors to influence policy-making processes. (Miquel et al, 2013).

Since the EU policy is a key modernist institution for installing modernist values and practices with the available means of bringing about forms of social change, the Lisbon declaration insisted that they could only be met at the level of the community, rather than member state level (Dale, 2009, p. 1269). Accordingly, the available means are by funding, and given the the fact that the state has to respond to international organizations and other actors involved in the process, being the most important their own community, and the concerns attached, here is argued that the state must be involved in all sectors, as acclaimed by Dale (2005) because since the Portuguese state has funds for programmes from the European Union, one of the ways to achieve accountability and have the legitimacy to it would still be by undergoing the benchmarking process as a conjugator of different actor in the multiscale governance. Therefore, better education projects as well as programmes for lgbtqi inclusivity with European funding are in need of the state's attention to coordinate the institutions in all sectors to provide to the of people their rights as a whole.

Hence, this chapter attempted to explain the multiscale governance by the global level to the national level and that even though a state has its sovereignty, it still has to abide to benchmarkings and be held accountable for the provision of rights. Here, the Portuguese government would benefit from working with exterior organizations to reinforce its education system regarding the subject on gender, as will be seen later, if such is to be regulated and promoted at several levels.

Chapter 3: Gender in Portuguese Legislative and Educational Governance

Following the elaboration of the multiscale governance approach in the previous chapter, and the argument that states are not the sole actor in activities of education and legislation governance, this chapter attempts to explain the place of feminist development perspectives in relation to queer theory evidencing the contradictions in Portuguese legislation regarding the term gender as well as to integrate politics of recognition, as tools for empowerment. Finally, demonstrate the struggles that the education community face with the topic.

3.1 Gender

This chapter has, as base, the quintessential queer theory which overlaps with multiple communities. We take the same care as Hines (2009, p. 92-93) as a non-transgender person and followed the guidelines laid out by Hale (1997) for non-transgender people working on transgender.⁸ Transgender is used as an umbrella term encompassing long lists of identities.

Before we enter the Portuguese context, we hereby intend to provide a contextualization regarding queer theory and its relations with feminism and development. We note, this is because, even though gender fluidity has been present throughout all our Human existence, as reported by anthropologists (Towle and Morgan, 2013), it was during feminist revolutions that notions of gender were debated simultaneously in academia and within the LGBTQI+ community. Yet, at the time being, queer studies have been leading the area, due to the occurring dilemmas inside feminism, mainly by ‘trans-exclusionary radical feminists’.

Therefore, for context, the brochure ‘questions and answers’ of the rede ex aequo (2018) explains:

- Biological sex- refers to our anatomy which includes sexual organs, chromosomes and hormones. (feminine, masculine, intersex)
- Gender identity- social construction based on expected cultural roles (man, women, both, none, others)
- Gender expression- the way we present ourselves in society through clothes, manners, for example. (Feminine, androgenous, masculine)

⁸ Source: Hale (1997) ‘Suggested Rules for Non-Transsexuals Writing about Transsexuals, Transsexuality, Transsexualism, or Trans ____.’ Available at: <https://www.sandystone.com/hale.rules.html>. Accessed: 10 May 2020.

- Sexual orientation- for whom we fell attraction either psychologically, emotionally, or physically (homosexual, heterosexual, bisexual, pansexual, asexual)

Overall, cisgender refers to the coincidental gender identity with the sex at birth and (Saleiro and Oliveira, 2018), transsexuals, which is not binary, as transgender, does not imply the obligation of any physical intervention other than the one or those that each person chooses / wants to carry out.

According to Peet and Hartwick (2015), during the third wave feminism the ambiguity in gendered terms and categories emerged, putting queer theory and transgender politics on the forefront of rejecting binaries. Apart from conflicts between feminists inside the movement concerning their vision of development, feminists and development activists attempted to reformulate development theory in view of the argument of placing gender relations in development theory, as showed below.

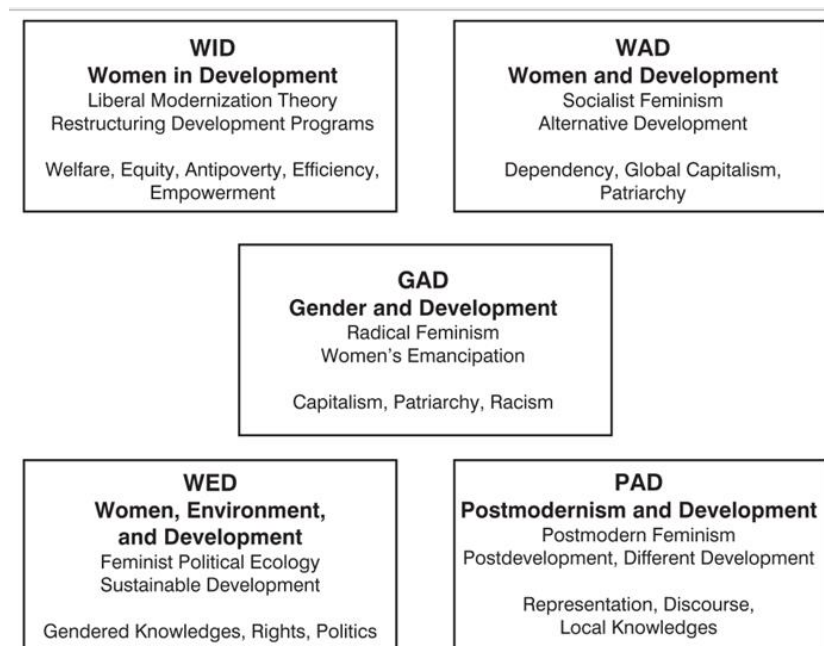


Figure 2. Types of feminism in Development. (Peet and Hartwick, 2015, p.284)

The first one, the WID approach, is more of a liberal approach, because they defended that women had to be integrated into the economy and brought into the modernization process. In opposition was the WAD perspective, a socialist one, who argued that it was exactly modernization that had impoverished them. Meanwhile, ‘Third World’ women were

urging to be integrated as empowered agents in development. These liberal and socialist perspectives had rather an additional focus on ‘women’ than on gender relations, which was something that the GAD approach recognized. The ‘GAD argued that women were not a homogenous group but rather were divided by class, race, and creed and unlike WID and WAD, GAD saw the state as an important actor promoting women’s emancipation’ (ibid., p. 298-299). The WED, aside the sustainability discourse, treated gender as a critical variable in interaction with class, race for change through involvement in collective struggles. PAD theorists provided space for the voices of the marginalized at the same time critiquing modernization (ibid., p. 302). In Mcgrath’s (2018) vision, the PAD would be the Post-Structural feminism that stresses the fluidity of gender identities, rather than stressing equality, as in WID and GAD, they focus is more on the recognition of difference but the nature of this approach has had little policy impact, although contributed to the LGBTQ+ theoretical backbone.

Towle and Morgan (2013, p. 472-473) indicate that M. Kay Martin and Barbara Voorhies introduced the term third gender in 1975 to draw attention to the ethnographic evidence that gender categories in some cultures could not be adequately explained with a two-gender framework and in the 1980s anthropologists combined post-colonial studies and the emergence of gay and lesbian social movements to scrutinize the social construction of Western gender dichotomies and sexual forms of expression. Therefore, third gender began to be applied to behaviours that transcended or challenged dyadic male-female codes or norms. Such was also applied to societies (most of them non-Western) that seemed to provide institutionalized “intermediate” gender concepts and practices. The authors emphasize that many transgender activists and their allies, the cross-cultural perspective provides a welcome alternative to the heavily psychologized, medicalized, and moralistic analyses previously invoked in the West to explain gender variation.

Evidently this is not a foreign concept, and is/was present in Albania as Burnesha, in Russia as Chukchi, Bugis in Indonesia, Fa’afafine in Samoa, Meti in Nepal, two spirit for Native Americans⁹, Hijras in India and Muxe in Mexico are some of the examples.

Consequently, the queer field leads to, according to Bracho (2021, p. 408), more intersectional analyses that examines how sexuality interacts with race, gender, nationalism, citizenship, and diasporas in various regional contexts via transnational flows of people and

⁹ Source: Infographic: International day against homophobia and transphobia. United Nations Free and Equal. May 17, 2014.

ideas. This theory, originated as a post-structuralist discourse and method for challenging heteronormativity, has expanded the scope by taking on increasingly intersectional and global lenses in explorations of diverse sexualities and gender expressions, and has queered other fields by providing conceptual tools for dismantling the normal. Queer theory insists on the agency of individuals to express identities in between or beyond traditional or normative categories, thus the term queer was preferred by the LGBTQI+ community because highlighted the complexity and fluidity of these, turning them into an umbrella term for nonnormative gender and sexual identities rendered in opposition to heteronormative constructs, for instance as male/female, masculine/feminine, or homosexual/heterosexual. (ibid., p. 400-402). Yet, in the author's perspective, studies in comparative education do not explicitly draw on queer theory, even though this term encompasses a global outlook due to the conception of identity related to cultural, economic globalization, human rights frameworks and law, as refereed throughout this dissertation. At the same time, Bracho (2021) notes that if categories of identity are consummated, there will be a conflict regarding the idea of transgression that queer theory stands for.

Hence, the interpolation of feminisms would revindicate and help demonstrate several fractures in society, augmenting flows into studies about intersection when incorporating queer theory.

In Portugal, apart from medicine, there is still a void in the study of gender fluidity in development. Hitherto, there have been brought up to light by scholars in social sciences due to LGBTQI+ awareness. For example, my Web of Science search using the search term for "LGBT Portugal" reveals that first publications became available in 2007 and have gradually increased to 2020 indicating, under the scope of "education educational research, social issues, social sciences interdisciplinary, sociology, Women's studies, political science and humanities multidisciplinary" 19 results. Also, under 'Portugal transgenders', with the same scope, started in 2012 and peaked as well in 2020 and has the same publications. Before, trans identities were (and still are by non-supporters) within the discourse of medical and psychological pathologies. When Saleiro (2013, p. 27) dissects gender, the author refers that this was previously searched in sexuality studies, although, later, the psychiatrist Robert Stoller, in 1964, came with the term "gender identity" when referring to a person's feeling of being a member of a given sex, distinct from the "gender role". Nevertheless, the contemporary use of the term gender incorporates concepts of gender expectations, gender expression, gender attribution, gender assignment, and gender identity (Rands, 2009, p. 420).

Gender then, refers to the roles and meanings assigned based on their presumed biological sex and Sexuality, in contrast, refers to the ways in which individuals organize their erotic and sexual lives (Namaste, 2006, p. 587-588). Briefly, the main notion portrays that sex can be defined as biological (characterized by their genitalia) and gender, the identity, that is socially constructed. When we say socially constructed, we mean that gender and sex are both symbols, with different meanings that at the same time can overlap. Likewise, such will depend on the amount of meaning that an individual or collective inserts into it. Even when limited by language that do not have words to encompass a wide diversity of identity markers (Sanger, 2010, p. 263). Indeed, the symbols are manipulated by social actors consciously or unconsciously altering your reality (Cohan, 1969) and they spread across all levels of society, from family to work, from prestige to status, social class to age, passing through verbal and gestural language, in short, the list would be as vast as the social totality (Almeida, 1995).

“The gender attribution process is an interaction between displayer and attributor, but concrete displays are not informative unless interpreted in light of the rules which the attributor has for deciding what means to be a female or male. As members of a sociocultural group, the displayer and the attributor share a knowledge of the socially constructed signs of gender. They learn these signs as part of the process of socialization (becoming members). In our culture these signs include genitals, secondary gender characteristics, dress and accessories, and nonverbal and paralinguistic behaviours.” (Suzanne J. Kessler and Wendy McKenna, 2006, p. 175)

The binary gender, analogous to the thinking of Levi-Strauss on binary opposition theory, is a dichotomy analysed by Ortner (1974), originating the thought in relation to the culture/nature divide- which culture is made by men and women belong to nature due to nurturing - plays well with what Sanger (2010, p. 270) says, with trans identities, as their consideration problematizes the relationship between sex (nature) and gender (culture). Thus, since gender is part of a cultural, therefore social construct, there is the approach that gender is rather a spectrum. But of course, having a spectrum of genders is not a feasible way to assert oneself in a society driven by categorizations, even so regulatory ones and in addition to the intersection of such terms conjugate collective and individual. In fact, the human rights discourse and citizenship doesn't consider the spectrum of diversity of queer theory, presenting the dilemma of how to deconstruct identity categories and positively account for difference without losing sight of the subjective experiences that constitute difference itself, due to the problem of lack in articulated language, based on subjectivity (Hines, 2009, p. 97). Besides, the infinite specificities are still forced into performed genres resulting in categorical

collapse (Jones, 2006, p. 449). In fact, this perpetuates the marginalization and exclusion of non-gender variant people in registries and laws. Recognizing terms for this marginalized group may aid inclusion or these excluded people will continue to assert their own language through which to resist societal norms. (Sanger, 2010, p. 264) even though there still may be sections of social movements that see state recognition as a route that subjugates difference and transgression (Hines, 2009, p. 95).

In 2018 it was issued a report by Badgett & Sell (2018) proposing a set of indicators for the LGBTI Inclusion Index supported by the UNDP and the World Bank. Such recognized the struggles of LGBTIQ people in a two-page section of the 2019 HDR noting: “The search for dignity can also be crucial for policymaking, particularly when recognition (in the sense of equal treatment) is required to complement other pro-equity policies, including redistribution.” (ibid., p. 53) yet with no inclusive indicator, as well as the 2020 HDR with the gender index report assuming gender as rather male or female.

Gender diversity is attempting to dilute strict frontiers between cis and trans. this reference is useful for children and teens to view gender identity and leaving space for self-determination (Saleiro, 2017). Additionally, is essential to adopt an intersectional perspective on discrimination in order to make reporting mechanisms (and, by extension, prevention and support mechanisms) more inclusive and effective (ILGA, 2018).

Indeed, words and categorization may drive to exclusion. However, to improve, the first thing to do is to recognize the limitation of specificities. Second, adopt non-binary as the main term to encompass all the terms, in law, politics and society in general. Although legal terms give some level of recognition, does not mean that society as a whole accepts them.

3.2 The Politics of Gender Legislative Recognition

Modern constitutions, as Habermas (1994, p. 107) notes, exist because citizens came together voluntarily to form a legal community of free and equal consociates whose rights of those individuals must grant one another a way of order their life together legitimately by means of positive law. Then, if legal identification is required for many fundamental activities in daily life, as applying for jobs, renting accommodation, opening a bank account, or voting (Moleiro and Pinto, 2020) Habermas questions whether a theory of rights that is so individualistically constructed deal adequately with struggles for recognition of collective identities.

As for identities, one becomes an individual by the recognition of its difference by others. The identity of oneself, insofar as identity politics depicts, holds several characteristics, being

sex, gender, class or ethnicity in regards to the social structure one's is inserted in. Through their socialization processes, however, the state's persons are composed by cultural forms of life in which they have developed their identity, even if they have become disengaged from their original traditions (Habermas, 1994, p. 126). Instead of attempting to use identity politics, we adopted the notion of recognition by Nancy Fraser (200, 2003). This is because, as she points out, identity politics don't tend to consider economic inequalities as factor of distribution and they tend to focus solely on culture, creating social conflicts around multiculturalism and universal human rights. This tension leads to some reprioritizing class over gender, sexuality, ethnicity or, rejecting minorities altogether insisting upon assimilation to standardized norms (Fraser, 2000). Gender, as the author notes, is neither simply a class nor simply a status group, gender is a hybrid category rooted simultaneously in the economic structure and the status order of society. (Fraser, 2003, p. 21) The intention of minority groups in their rallies, in this case of trans community, by the accounts of Fraser, is to be recognized by law and consequently have a share of the wealth and power in existing mainstream society. The recognition dimension is based on institutionalized patters of cultural value (either educational, religious or familiar) and the share is named as redistribution that corresponds to the economic class subordination and system (Ibid., p. 50). Fraser states that misrecognition is normally present in law and sometimes institutionalized via government policies, even informally by social practices that impede people of accessing resources to interact with others, constituting an impediment to participate in society, therefore injustices. Also, participation has a guideline to establish 'who' belongs and 'who' decides the rules, telling not only who can make claims for redistribution and recognition, but also how such claims are bestowed upon (Fraser, 2011, p. 75).

Even though most European countries adopted gender identity laws since the 80's, its only in 2011 when the Portuguese Parliament recognized it and passed the Gender Identity Law (Law no.7/2011, Portuguese Republic), at the time being, the most respectful law worldwide regarding trans people, noticed by Saleiro and Oliveira (2018). Nevertheless, several trans organizations displayed a failure of the previous law to offer an adequate response, causing a political move to invite trans and intersex activists to provide suggestions in order to update the law as was pointed out by Santos (2018:11).

The consequent revision revoked the Law no.7/2011, giving place to the actual Law n°38/2018, which alludes to self-determination to gender identity and gender expression with the protection of a person's sexual characteristics, ensuing Portugal as one of the most inclusive LGBTQ+ laws in the OECD as referred in their 2020 'Report Over the rainbow?'

The road to LGBTI Inclusion'. Notwithstanding, this report recommends Portugal to grant transgender and intersex individuals' access to a non-binary gender option in the civil registry and include questions on self-identification in national representative surveys such as the collection of information on the share of transgender and intersex people among the adult population. Notably was an achievement due to the fact that the law was made possible with the input of the LGBTQ+ community.

Carmona's (2020) work with families of trans and gender fluid children/ teenagers and their experience display that 81.8% of the participants qualified the Portuguese legal framework as positive, characterizing the processes required at a legal level, e.g., being possible to change one's name in the civil registry without the obligation of a medical report, as easier and faster. Still, participants noted that the big problem is civil society and whether it is accepted or not along with the stigmas they create. (ibid., p. 30-31) Furthermore, on top of the laws, the legislation should address that those people who are having these experiences could be treated as any ordinary person and not as different people.

As Rodrigues, O. (2019) displays, there is no preamble nor statement within Portuguese laws that explains and distinguishes concepts as gender or sex. This leads to a paradox, in which legally, gender and sex are recognized without a legal definition of what is to be a "man" or a "woman". When, allegedly, Portuguese policy only recognizes the biological sex of male and female, the law assumes that a person is living according to one of these categories since the person's sex must be immediately and transparently known to ensure legal security, rights and duties. This factor underlies the legal system's delay in recognizing name and sex change procedures in the civil registry without the corresponding corrective sex surgeries, as well as the non-recognition of more than two genders (ibid., p. 5-6), Although, if the Portuguese Constitution gives the right to a personal identity (art.26 CRP/ Portuguese Republican Constitution) in Rodrigues, O. (2019) interpretation, this also gives the freedom to auto determine your identity. Meaning that one can determine one's gender since there is no legal recognition of what she/he/they might be. Therefore, there is a violation to your dignity when you cannot express or show your identity. Thus, the political struggle for recognition begins with the interpretation of gender-specific achievements and interests (Habermas, 1994) to avoid perpetuating the invisibility of other gender identities and juridical inefficiency.

"The lack of legal gender recognition is one of the most challenging barriers to trans and gender-diverse people's social inclusion. When personal documents do not match the holder's appearance, it becomes a huge obstacle to carry out common activities in daily life, as opening a bank account, applying for a scholarship, finding a job and renting or buying

property. The third main group of causes of social exclusion of LGBTI people has to do with state inaction on public policy issues of sexual and gender diversity (...) full social inclusion of LGBTI people requires more than removing discriminatory legislation and enacting legal protections. Effective public policies designed and implemented to tackle, reduce and eventually eradicate social prejudice and stigma are required to counter the effects of systemic exclusion” (HDR, 2019, p. 54).

Fraser (2000) argues that recognition depends not only on regulation but is also a conjugation of interaction and regulation values that able equal participation by individual group members as full partners in social interaction. Participations should be at all relevant institutional sites, including the Portuguese education system, that faces a structural process of mis framing gender through the process of omission. Here, civil society has an important role to play in engaging transformative politics.

From this perspective, social justice is not possible without recognition. Even though discourses of citizenship are constructed along a heterosexual model (Hines, and Santos, 2018) the state has a determinant role to fulfil, cause its only when an intervention aimed at protecting and recognizing the difference of each one, she/he/they is granted respect for the equal dignity of the person. In this way, the State is then responsible for being lenient when acting in a way that compromises equal dignity (Rodrigues, O., 2019, p. 25).

Hence, in this case, Portugal has partially recognized gender self-determination because as Rodrigues, O (2019) shows, such does not recognize in policy documents the gender fluidity option, as the Yogyakarta diploma ‘plus 10’, 31st principle recommends, which constitutes a serious limitation if not a contradiction. Thus, pro-trans* laws and social policy often remain focused on binary conceptualisations of the body, disregarding the nuances through which trans* lived experiences and embodiments are managed and negotiated everyday (Hine, 2018).

For example, Argentina’s Legal Gender Recognition law on living conditions, stigma and discrimination experiences of trans women (Arístegui, Radusky, Zalazar et al., 2017) showed positive changes, as in education, health care, work, security, and civil rights. Additionally, a general empowering effect on the community can be inferred after the law’s enactment. However, remaining barriers to full implementation were identified. These are both internal and subjective (e.g., age, internalized stigma), and external (e.g. lack of trained professionals and public servants, reluctance to implementation in conservative provinces) (Moleiro and Pinto, 2020, p. 223).

However, even if Portugal recognized the third gender/non-binary legally, that would not be enough to achieve social change. For example, Panjwani (2018) studied subjective experiences of a historical transgender group common in Pakistan, the khwājā sīrās or also named hījās. Despite being granted legal status in the country, the official and cultural recognition as “third gender”, they suffer from systematic discrimination and exclusion as well as limited access to justice due to structural prejudice, hindering the implementation of third-gender sensitive policies and services.

In the case of Portugal, the legal shortcomings and contradictions impede a full trans identity recognition.

3.3 Education Sensitive to Gender

Having explained what gender is and how laws play a part as one of the steps for recognition, this section is debating how schools are important to achieve social change.

As said previously, school revolves around two main theories of knowledge, one being persecuted by the human capital perspective, and the other by human rights. Here the focus is upon the non-capitalized knowledge as Educational political democratization.

As Harber (2014) argues, democracy seen as the goal of political development. But political learning can be, one, Indoctrination, which intentionally inculcate values and beliefs as facts or truth, second, socialisation, as some ideas and values are taken more seriously than others. These two can inculcate nationalism and national identity if activated. However, “a genuine political education for democracy is not a form of social and political control. It is an attempt to create critical awareness of political phenomena by open, balanced discussion of a range of evidence and opinions. It encourages individuals to make up their own minds about issues after considering the arguments and evidence. Education for democracy is not neutral - no education is neutral - but it does not, either deliberately or by default, transmit one-sided views of substantive values” (Harber, 2014, p. 89).

Therefore, this is against the criticism that the state is trying to inculcate a ‘gender ideology’. What is intended is to spread awareness based on human rights for a participatory citizenship. For that, teachers are amongst one of the most important advocates for gender minority students (Brant and Willox, 2020; Meyer and Leonardi, 2018; Saleiro, 2017; Simons et al, 2018; Rands, 2009; Riley et al., 2013) and the recommendation is to have more knowledgeable educators in the area. The teacher and the classroom are an important part of a person’s life, at least in Portugal is 12 years. Assumptions of gender-stereotyped education,

as Rands (2009) notes, derive from what the author calls ‘gender oppression matrix’, and due to unawareness of teachers, they can promote it. They can perpetuate the gender world present in society or take a gender-free or gender-blind approach when they ignore issues of gender. But this approach is not recommended by the author because this prevents educators from using certain strategies that may be needed to promote gender equity. Rather, the author promotes a gender-sensitive education, which the premise is to pay attention to gender to counteract “sex bias or further sex equality” and encourage educators to constantly ask questions and reflect on practice deciding that the best strategy in the given time.

Albeit, Carmona’s (2020) study showed that there is a lack of professionals in the school community who are properly prepared to deal with students who identify with a different gender and the role of teachers, school integration, peer acceptance and the use of correct names and pronouns in the school environment is important. Furthermore, 36.4% of the participants recommended more of medical follow-up at this level in all schools. And policies in the education system capable of accompanying their children and young people; community education and government assistance capable of supporting families; contacting trans community members more studies available and awareness.

Considering the state is lacking to tackle this, schools must request aid outside the institution and choose to intervene alongside associations with this expertise. The collaborative opening of the school to civil society entities, namely LGBT associations, is a possible and desirable path, and tools and practices that they already have, for instance, teaching materials and training sessions between peers, can be enhanced (Saleiro, 2017, p. 161). That can be found via ILGA, the ex aequo for instance.

As an example, the ex aequo network's LGBTI Education Project has the objective to fight against disinformation and discrimination in education by means of sessions to debate and clarify these issues in schools since 2005. The 2019 Report consists of a sample of 1070 valid responses, and each form was filled out anonymously by the age group of between 16 and 17 years old, in addition to 24 professors and three non-professors (in this case psychologists). The data presented that 86% of the participants think that issues of sexual orientation, gender identity and expression and sexual characteristics are important to be addressed at school, showing the interest of students in these themes as well as awareness of the sensitive nature of the same. Moreover, 53.5% of the students say that “very rarely” these issues are addressed at school. Concluding that these reflect a perceived lack of preparation on the part of teachers to address issues of sexual orientation, gender identity and expression, and sexual characteristics, as well as a need to make the education system more inclusive. The

responses indicate a high incidence of homo-bi-trans-interphobic discrimination situations in the school context. Notably, school psychology professors and professionals strongly support these sessions as a way to combat situations of discrimination and as a way to educate young people about diversity and inclusion.

Indeed, there are limitations. One being that high religion values are an hinderance, the other, due to regional cultures is not effective to peruse universal approaches. Furthermore, findings indicated that transgender students in rural areas encountered more adverse school climates than gender minority students living in urban or suburban areas (Simmons et al., 2018 Saleiro (2017) views Portuguese parents nowadays allowing and supporting gender diversity due to their children, being the first generation of children who are permitted to live as their intended gender. The manifestation of awareness by parents to support their sons and daughters in their experience of gender created, by collective demand, AMPLOS (Association of Mothers and Fathers for Freedom of Sexual Orientation and Gender Identity) being the ones who make possible the very emergence of the category of trans or diverse children in terms of gender. The author indicates that the right to gender identity and expression involves the right to information about what one is and what rights one has, and this is also made possible by the information that is becoming more accessible, if not at school in other media (social communication, Internet). But the school is the medium that offers the most guarantees, in terms of coverage, quality of content transmitted and age-appropriateness, as assumed by the Commissioner for human rights of the Council of Europe (Council of Europe, 2014). This notion is also backed up by Riley et al. (2013) recommending that resources and education programmes related to gender variance be freely available in libraries, schools, doctors' surgeries and other public places. Furthermore, lack of access to information prevents many young people whose gender differs from the dominant model from having the language to name their experiences and feelings (Rands, 2009).

Another suggestion would be to learn directly from the trans community, as showed by Meyer and Leonardi (2018), participants, being children or teachers, said that their own education about transgender people and gender diversity came through knowing trans people or queer families and helped them be more aware of others and to be more inclusive. Besides, a 'culture of conversation' is a process in which people acknowledge and work with their biases and assumptions through critical self-reflection, with vulnerability, and alongside of one another because, as the author argue, meaningful and sustained change – individual and institutional – will not come through didactic presentations. Collective, ongoing interaction built upon critical self-reflection and productive dissent must be a part of the change process.

In adopting Tomasevski's 4A scheme in acceptability would be give children the recognition of having rights, of sex and gender as well, similarly as is being done by the Citizenship and development classes (*cidadania e desenvolvimento*); in availability, to have teachers and psychologists trained to deal with gender variance; adaptability would be the education community prepared to adapt to need of gender variant people; Accessibility to resources as programmes as the ILGA and *ex aequo* do, but in an institutionalized way. Hence, this chapter evidenced, by using queer theory, that the term gender is still used loosely and contradictorily in Portuguese laws as well as not integrating the non-binary/fluid option in registries, not giving this marginalized group recognition to their identity. Finally, showed the limitations education communities have in dealing with this group and offered suggestions.

Conclusion

This thesis has integrated the history of development and its concepts of human and social development, important to understand the shaping of the education system in globalization, as well as its tensions of an education based on right or economy. At the same time, explained the clash in individual and collective rights that are needed to interpret gender identity and its laws. Also, such demonstrated based on Roger Dale's education governance framework, that Portugal is a state dependant of other global governance structures and has to comply with policies and standards issued by them.

Finally, associated feminist development with queer theory to contextualize gender and Nancy Fraser's politics of recognition in legal and educational institutions, at the same time identifying contradictions in the Portuguese gender legislation, the difficulties in the education system and exploring ways of improving the inclusion of trans people in the education system.

Here, the elucidation that Human and Social development still dictate the ways on how to achieve active participation in all sectors of civil society by using concepts as Human Rights and Human Capital by means of global governance through several actors as a foundation in trying to hold states accountable in accomplishing a more equitable society. Therefore, by these conventions, Portugal, a nation state, simultaneously member of the European Union and integrated in international organizations, has a compromise to fulfil these norms as well as to provide the right to education and self-determination of identity. Yet, by using queer theory and politics of recognition, we have argued that legally Portugal has only partially recognized gender self-determination by not recognizing in documents the gender fluidity option. Regarding education, Portuguese education communities tend to outsource issues related to gender and LBGTQI+ issues due the lack of training of teachers and phycologists, hence failing to accomplish the Yogyakarta diploma 'plus 10', 31st and 16th recommendations. Accordingly, the use of Tomasevski's 4A scheme is relevant, not only as an empowerment tool, but also to analyze tensions within the education system and hold the government accountable for inequalities and to display the government's obligations in the right to education.

The aforesaid would seem that the main argument would be state versus the market, and that the influence of the liberal capitalist and liberal egalitarian perspectives either by collective or individual notions make theorists clash as opposites, however, the school system can have both education as a human right and as a tool for economic development as long as,

by the accounts of Dale's education governance framework, these should work together as long as the market recognizes the state's sovereignty along with the community.

Since this is conceptual-theoretical thesis, there are limitations in terms of actual practices, accordingly, one of the objectives is to contribute to better development programmes that further include transgender. Then, to better understand these implications, future empirical studies in Portugal should address this marginalized group by developing precise programme that tackles these issues with the inclusion of several actors of governance.

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