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Coeducation versus Single-Sex Education in Spain:
Does the Election between these Models have a
Repercussion on the Transmission of the Democratic
Value of Gender Equality at School?

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ISSN 1725-6739

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Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu
cadmus.eui.eu

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Abstract

This study aims to address, from a legal-constitutional and gender perspective, a political and scholarly legal debate that is currently at the forefront in Spain concerning two opposing educational models: coeducation versus single-sex education. It will be explained the terms of the debate now concerning single-sex education in Spain, related more to the recruitment stage than to a different pedagogical model or curriculum to be given. While this debate has been wide spread in the Anglo-American context, it has nevertheless not been developed extensively in the Spanish legal scholarly literature nor in the political sphere. Even so, as will be shown, some relevant studies have been undertaken regarding the issue of defending one or the other model and adopting a certain position with regard to the suitability or not of supporting single-sex schools with public funds. In this paper it will be examined who defends or rejects single-sex or coeducation in the legal scholarship and political debate and on what grounds. The main question I will attempt to answer in these pages is the following: does the election between these models in Spain have a repercussion on the transmission and achievement of constitutional/democratic values, such as the real and effective equality between men and women?

Keywords

Right to education, freedom of education, equality between men and women, coeducation, single-sex education.

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COEDUCATION VERSUS SINGLE-SEX EDUCATION IN SPAIN: DOES THE ELECTION BETWEEN THESE MODELS HAVE A REPERCUSSION ON THE TRANSMISSION OF THE DEMOCRATIC VALUE OF GENDER EQUALITY AT SCHOOL?¹

*Magdalena Lorenzo Rodríguez-Armas**

The terms of the debate, who defends/rejects coed/single-sex education and on what grounds

This study aims to address, from a legal-constitutional and gender perspective, a political and scholarly legal debate that is currently at the forefront in Spain concerning two opposing educational models: *coeducation* versus *single-sex* education. The main question I will attempt to answer in these pages is the following: does the choice between these models in Spain have a repercussion on the transmission and achievement of constitutional/democratic values, such as the *real* and *effective* equality between men and women?

The *coeducational* model defends mixed education, that is, where boys and girls share a classroom and/or a school and an educational/pedagogical model; the second model considers *single-sex or differentiated education* more suitable and involves boys and girls being placed separately in different classrooms and/or different schools, with different educational and/or pedagogical models. The fact that those who defend one or the other model in Spain use this different terminology is relevant because those who support the suitability of *single-sex education* maintain as their principal argument the biological differences between boys and girls whereas those who defend *coeducation* rely on the importance of the school as a socializing agent, a place where boys and girls share in relationships with all persons, without distinctions of any kind (racial, sexual, origin or any other circumstance). Although one might consider that there is a close connection between student recruitment and curriculum in the specific cases of single-sex education in Spain, the debate at hand concerns only the recruitment stage.

The starting point of this study must necessarily be that education in Spain is a fundamental right under Article 27 of the Spanish Constitution (hereinafter SC). Secondly, education is compulsory between the ages of 6 and 16 and thirdly, education is regulated as an entitlement (*derecho de prestación*). Nevertheless, individual or legal persons are entitled to create educational centers under SC Article 27.6 with the constitutional limit that by doing so, they have to respect *constitutional principles*. It is also relatively important to take into account that while single-sex experiences in other countries may follow different models proposed by public or private, secular or religious initiative, the fact is that in Spain single-sex educational institutions have been set up and/or promoted by religious organizations.

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¹For the draft of this work I have completed a research stay as visiting fellow in the Law Department of the European University Institute of Florence (www.eui.eu), from September to December, 2013. I would like to express my gratitude to Professor Ruth Rubio Marín, for her advice and help in the completion of this work and to Professor Hans Micklitz, Head of the Law Department, for facilitating my access to this high-level academic centre. I should also rightfully thank Professor Antonio Descalzo González, Head of the Public Law Department of the Universidad Carlos III de Madrid, and Professor Luciano Parejo Alfonso, for facilitating matters for me to be able to go ahead with this research. I would also like to thank Professor Javier García Roca from Universidad Complutense de Madrid and Professor Pia Letto-Vanamo, from Helsinki University for their interesting comments on this work that contributed to bettering it. Thanks to Professors Therese Wilson, from Griffith University (Australia) and Azadeh Dastyari, from Monash University (Australia), both visiting fellow colleagues, for their support in rewriting and discussing the English version of this work.

Those who defend coeducation consider that behind private schools' recruitment system consisting of separating by sex there are also different curricula - or at least different pedagogical models- used based on biological differences between boys and girls. To the extent that the group that defends *single-sex* education uses the biological differences between boys and girls to establish a different educational model, as previously mentioned, not only relating to the physical space but also to the curriculum content, it is thought that the above- mentioned differentiated education should be named "segregated" education. Segregation is the action of separating and isolating a person or a group of persons for social, political or cultural motives. While neither the Spanish constitutional text nor the Spanish educational legislation in force prohibits single-sex/differentiated education, I do not consider the use of this terminology to be appropriate if it is controlled by the educational administrators that the private centres that choose single-sex education do not practice segregation because this is in fact implicitly prohibited in the Spanish Constitution under Articles 1.1, 10.1 and 2 and 14.

As I mentioned above, there has recently been a political and scholarly legal debate in Spain about the advantages and disadvantages of both models, in terms of equality between women and men and in terms of boys' and girls' academic performance. I will explain the terms of the debate now concerning single-sex education in Spain, related more to the recruitment stage than to a different pedagogical model or curriculum to be given². While this debate has been wide spread in the Anglo-American context, it has nevertheless not been developed extensively in the Spanish legal scholarly literature nor in the political sphere. Even so, as will be shown further, some relevant studies have been undertaken regarding the issue of defending one or the other model and adopting a certain position with regard to the suitability or not of supporting single-sex schools with public funds. In this paper I will explain who defends or rejects single-sex or coeducation in the legal scholarship and political debate and on what grounds. Let us start by saying that the source of controversy in Spain's legal scholarship concerning which is the better model can be found, *prima facie*, in the two contrasting constitutionally protected values that can both, on occasion, be the subject of debate: on the one hand, the *principle of coeducation* that brings to the area of educational issues the constitutional *principle of non-discrimination on the grounds of sex*. On the other hand, one of the main goals of every educational system, namely *the effective transmission of knowledge and competencies*, is to facilitate the *higher academic achievement of boys and girls*. Furthermore, this controversy has given rise directly to a debate that focuses on the question as to whether both models must be equally supported with public funds or not. Moreover, in this study I will try to go beyond the current literature and offer a legal-constitutional perspective on the model that could best accommodate the right to education found in Article 27 of the Spanish Constitution of 1978 (hereinafter SC), in terms of the constitutional dictate that establishes the goal of education, that is the "full development of the human character with due respect for the democratic principles of coexistence and for the basic rights and freedoms" (Article 27.2 SC).

Taking into account the political debate, there are two fundamental political arguments. One of them, defended by the Spanish Socialist Workers' Party (PSOE) that promoted the *2006 Organic Law of Education*; the second, the People's Party (PP) that promoted the *2013 Organic Law of Improvement of Educational Quality*. As will be outlined below, I will describe both the legal content related to the subject of this paper as representative of the different positions of those two political opponents.

² Actually there are 16 schools in Madrid that follow single-sex education; all of them are promoted and/or supported by the religious organization called Opus Dei; 8 of them are for girls, 8 for boys. This information can be consulted on the web page: www.educaciondiferenciada.com/enlaces/colegios/. Fecha de consulta: 17.02.2014

Legislative history: regulating Right to Education in Spain

As was stated in the introduction, a political and scholarly legal debate over these educational models has recently arisen in Spain. This debate has currently intensified due to a new reform process of the education law that has recently been debated in the Spanish Parliament³.

The 1978 Spanish Constitution and the (former) Organic Law 2/2006, of 3 May, of Education: coeducation as the option for public education and the preferential and priority option for the public financing of private teaching institutions.

Let me turn first to the regulation of the right to education in the 1978 Spanish Constitution and in the implementing legislation. Before the 1978 Spanish Constitution was enacted, *General Law 14/1970, of August 4, of Education and Financing of the Educational Reform*⁴ repealed the imposition of single-sex education that had been in force up until then. Indeed, during the time of Franco's dictatorship the *Law on Primary Education of 17th July 1945*⁵ had stated in its preamble that the State would follow the "Christian principle of single-sex education". As a consequence of this, Article 14 of the above-mentioned law prescribed the separation of sexes and the "differentiated training" of boys and girls "for reasons of moral order and of pedagogic efficiency". This brought to Spain an educational model that not only prescribed physical separation of boys and girls for the purposes of education, but also prescribed different educational content and goals. In this respect, Article 11 provided that a male's primary education was focused on "top intellectual development or preparation for a professional life working in industry and trade or in the agricultural sector", whereas the female's primary education would prepare her "specially for the life of the home, crafts and domestic industries".

Before analysing the most relevant elements of the debate, I would like to examine the current regulation of the right to education in the Spanish legal system.

As mentioned above, the right to education is recognized in Article 27 of the Spanish Constitution of 1978, which is a complex constitutional provision.⁶ In fact, Article 27 has been characterized as an

³ The Spanish Parliament has registered parliamentary activity on this matter primarily after the entry into force of the *Organic Law 2/2006, of Education*. It is important to point out here that during the drafting process of this work the Spanish Parliament debated the *Project of Organic Law of Improvement of Educational Quality*. The first draft approved in the Congress of Deputies can be consulted in the following website: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-48-6.PDF?page=1. Date of reference: 26.10.2013

⁴ Can be found on the website of the Spanish Official State Bulletin http://www.boe.es/diario_boe/txt.php?Id=BOE-A-1970-852*analysis. Date of reference: 26.10.2013

⁵ Found on the web: <http://legislacion.educa-alv.es/archivos/b2/b2.358.pdf>. Date of reference: 26.10.2013

⁶ Article 27 SC establishes that:

1. Everyone has the right to education. Freedom of teaching is recognised.
2. Education shall aim at the full development of the human character with due respect for the democratic principles of coexistence and for the basic rights and freedoms.
3. The public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction that is in accordance with their own convictions.
4. Elementary education is compulsory and free.
5. The public authorities guarantee the right of everyone to education, through general education programming, with the effective participation of all parties concerned and the setting up of educational centres.
6. The right of individuals and legal entities to set up educational centres is recognised. provided they respect Constitutional principles.
7. Teachers, parents and, when appropriate, pupils, shall share in the control and management of all the centres maintained by the Administration out of public funds, under the terms established by the law.
8. The public authorities shall inspect and standardise the educational system in order to guarantee compliance with the law.

*intentionally ambiguous provision*⁷ founded on compromise and drafted to make it possible for conflicting political forces to reach a consensus on the text, in a country that at that time was in full transition towards democracy. The topic of education was a thorny matter in that the left-wing and right-wing parties were supporting very different ideas and principles. Therefore, the final draft seeks to provide a framework set of rules that would facilitate the design of an educational model acceptable to different governments at any given moment. But if that *intentionally ambiguous provision* was justified due to the intrinsic difficulties of that time in history, it is no less true that it cannot continue to be used to submit the state educational model to constant sways in the design of its principles and fundamental structures⁸. Hence, it is increasingly necessary in Spain to begin a new search for consensus concerning the above-mentioned model.⁹

Before analysing Article 27 SC, it should first be pointed out that the task of interpreting the above-mentioned rule, carried out by the Spanish Constitutional Court (hereinafter SCC), as supreme interpreter of the Spanish Constitution¹⁰, has been crucial in developing the educational model in place during the 35 years of the Spanish democracy. Thus, the SCC established from the very outset the *essential content*¹¹ of the right to education. It is noteworthy that the SCC has confirmed the importance of the transmission of values as part of that *essential content* of the constitutional right to education. Thus, in its judgment dated February 13, 1981¹² the SCC stated that "education is an activity directed systematically and with a minimum degree of continuity towards the transmission of a certain body of knowledge and values" and that exercising the *freedom to found educational establishments*, which is the freedom with which this study is primarily concerned, has the additional limitation that the SCC formulates as follows:

"The full respect to the constitutional principles such as those in the Preliminary Title of the Constitution (freedom, equality, justice, pluralism, unity of Spain, etc.), that are not intended to be fundamental rights, and the very important principle derived from Article 27.2 of the Constitution, namely that education has to serve certain values (democratic principle of coexisting, etc.) that not only fulfil a limitative function, but also has a role of providing positive inspiration."

In this way of constraining conduct, the SCC determines that the transmission of values is part of the *essential content* of the right to education and, therefore, as we will see, education is also concerned

(Contd.) _____

9. The public authorities shall give aid to teaching establishments which meet the requirements to be laid down by the law.

10. The autonomy of Universities is recognised, under the terms established by the law.

⁷ See this reference in MARTÍNEZ DE PISÓN, J., 'The constitutional sources of the educational rights', in vLex, February, 2001, pp. 1-22

⁸ Two are the ideas that are relevant here: one refers to the idea of *consensus* that was the key to the success of the Spanish transition to democracy. The other one is that it is said that there have been too many Education Laws approved in Spain, one in each political period. See in this respect the website of the Spanish Ministry of Education: <http://www.mcu.es/legislacionconvenio/loadSearchLegislation.do?cache=init&layout=legislacion&language=es>.

⁹ This one was the greatest interest of the last stage of the previous socialist government, in education. Thus, the previous Secretary of Education, Ángel Gabilondo Pujol, completed an exemplary work concerning the so called '*Social and Political Agreement for Education*', that was on the verge of being signed by all the social agents and politicians involved in this area but that, finally could not be taken to fruition due by the opposition of certain sectors in respect to different questions, amongst others, the subject "Education for citizenship and Human rights", to which I will refer in more detail/ later.

¹⁰ In accordance with Article 1 of the Organic Law 3/1979, of October 3, of the Constitutional Court, "The Constitutional Court, as supreme interpreter of the Constitution, is independent from other constitutional bodies and is submitted to the Constitution and to the present Organic Law".

¹¹ About the concept of *essential content* referring to the Spanish Constitution see LORENZO RODRÍGUEZ-ARMAS, M., "Análisis del contenido esencial de los derechos fundamentales enunciados en el artículo 53.1 de la Constitución española") Ed. Comares, Granada 1996.

¹² See this judgment in the website of the Spanish Constitutional Court: <http://www.tribunalconstitucional.es/es/jurisprudencia/Paginas/Sentencia.aspx?cod=16631> . Date of reference: 06/11/2013

with the transmission of the value of equality between women and men, as a constitutional value. I will analyse this in the following pages.

Turning now to analyse Article 27 SC, it is stipulated that "everyone has the right to education" and in the same paragraph it recognizes "the freedom of instruction"(27.1 SC). In addition, Article 27.2 SC establishes that "the objective of education shall be the full development of the human personality in respect for the democratic principles of coexistence and the basic rights and liberties". Furthermore, the "right of individuals and legal entities to set up educational centres is recognised, provided they respect constitutional principles" (27.6 SC). In this way¹³, the Constitution recognised the possibility of founding an educational establishment. However, such an establishment will be concerned with the respect of constitutional principles which is another form of expressing the above-mentioned aim of the right to education, that is, the "full development of the human personality in respect for the democratic principles of coexistence and the basic rights and liberties".

To facilitate the above-mentioned requirement, the Constitution provides that "the public authorities shall provide assistance to educational establishments that meet the requirements laid down by the law" (Article 27.9 CE). That leaves to the *interpositio legislatoris* the task of defining the requirements for the creation of educational establishments: whose ownership is vested in both public administrators and in individuals or legal entities of a private nature, on the one hand; and on the other hand, the specific definition of the student body: i.e. the 'admissions requirements'.

The *quid* here lies in the definition of those 'admissions requirements' because public financing of private educational establishments will depend on their fulfilment. Only with the fulfilment of the aforementioned requirements, will the private centres be named *centros docentes concertados* (hereinafter subsidised schools). Subsidised schools are those private educational establishments that maintain an agreement with the Administration, which pays the teachers and subsidises operations.

Following this explanation, it could be said that these 'admissions requirements' are responsible for causing controversy between coeducation and single-sex education. I will explain why I do not agree with this. The controversy arises when the different interpreters of the legal-constitutional order as to some private educational centres in Spain do not respect democratic values in the recruitment of their students.

Turning back to history, the previous educational laws, like the 1984 *Organic Law regulating the Right to Education* (hereinafter LODE)¹⁴ and the 2002 *Organic Law on the Quality of Education* (hereinafter LOCE)¹⁵ contemplated the prohibition of discrimination in 'admissions requirements' for "ideological, religious, moral, or social reasons, race or birth", but not on account of sex.

It was the 2006 *Organic Law of Education* (hereinafter LOE)¹⁶ that included sex as a cause of expressly prohibited discrimination. Therefore, the LOE establishes these requirements concretely in Article 84.3, and reinforces them through its Additional Provision 25 (hereinafter AP 25). Indeed, Article 84.3. LOE, regulates the student body's admission into compulsory education (in public and in private subsidised schools) stating that "in no case will there be discrimination because of birth, race, sex, religion, opinion or any other condition or personal or social circumstance". Likewise, the AP 25 establishes that:

"In order to favour the equality of rights and opportunities and to promote the effective equality between men and women, the educational establishments that develop the principle of coeducation in all the educational

¹³ See BASTIDA FREIJEDO, F, et al, ' General theory of the Fundamental Rights in the 1978 Spanish Constitution ', ed. Tecnos, 2005, pp. 103-116

¹⁴ Can be consulted in Spanish Official Bulletin website: <http://www.boe.es/boe/dias/1985/07/04/pdfs/A21015-21022.pdf>

¹⁵ Can be consulted in the Spanish Official Bulletin website: <http://www.boe.es/boe/dias/2002/12/24/pdfs/A45188-45220.pdf>

¹⁶ Can be consulted in the Spanish Official Bulletin website: <http://www.boe.es/boe/dias/2006/05/04/pdfs/A17158-17207.pdf>

stages, will be the recipient of preferential and priority attention in the application of the provisions gathered in the present Law, without prejudice to the provisions of international conventions signed by Spain ".

For "provisions gathered in the present Law" the legislator considers, amongst others things, those enumerated in LOE title VIII, on "Economic resources". Within this title, Article 155 establishes that "the public power will provide to the entirety of the educational system the necessary economic resources". It follows that to gain access to economic support the private centre must fulfil Article 84.3 LOE and, with it, AP 25, so that the above-mentioned centre will obtain *preferential* and *priority* attention for public economic resources to finance the educational services, as long as the educational offering they provide meets the requirements of this regulation and, therefore, these private schools could not differentiate between students because of sex, in admission to the school.

Consistent with this, the legislator has designed an educational system that gives preference to coeducation and, although it does not prohibit single-sex education, this preference for coeducation has consequences for the administration of economic resources. As has already been seen, the private school that differentiates between students on the basis of sex does not comply with the prohibition on sex discrimination set out in Article 84 LOE. We have, therefore, a constitutional law that in its Article 27 does not prohibit single-sex education but that, nevertheless, excludes single-sex education from public financing, as a consequence of the legislative development produced by the previously mentioned Art. 84.3. LOE.

Having discussed the specific regulation on the matter, it is relevant to underscore that it is the Spanish Constitution itself that indicates in Article 27.2 that the objective of education is the "full development of the human character with due respect for the democratic principles of co-existence and for the basic rights and freedoms". Two questions need to be asked with regard to these aims as articulated in the Constitution.

First, following the inclusion of the right to education in the Spanish Constitution and its legal development, it is implied that in the transmission of content and basic competencies contemplated in the academic curriculum¹⁷, the schools should also transmit values and democratic principles¹⁸ as is established in Article 27.2 CE and according to the interpretation of the aforementioned rule by the SCC as previously mentioned. To this end, I consider schools as highly qualified socializing agents and in this way they represent places of extraordinary importance to the transmission of the value of equality between girls and boys. I will return to this argument later.

Secondly and in close connection with this, one of these rights and freedoms dealt with under Article 27 is the *right to equality* (Article 14 SC), regulated in the constitutional text as a premise of the fundamental rights catalogue¹⁹ and regulated as a complex concept²⁰, with three dimensions:

¹⁷ See Article. 6 LOE definition of 'curriculum': " According to the stipulations of this Law, curriculum refers to the objectives, basic competences, contents, pedagogic methods and assessment criteria of each area of education regulated by the current Law".

¹⁸ Though the article has not dealt with this topic specifically, it seems appropriate to remember the controversy which arose in Spain concerning the inclusion of the subject ' Education for citizenship and Human rights ' in the compulsory education curricula . There was an avalanche of cases in which parents of pupils claimed the right of their children to object to this subject, because they alleged that its inclusion violated the parent's right " to ensure that their children receive religious and moral instruction in accordance with their own convictions" (Article 27.3 CE). In several judgments the Spanish Supreme Court pronounced on this matter, demonstrating the importance that training in democratic values has in providing education. For all judgments of the Supreme Court of November 12, 2012, Administrative Chamber, Judge Pablo LUCAS MURILLO DE LA CUEVA presiding, see: <http://www.poderjudicial.es/search/doAction?action=contentpdf&datasematch=TS&reference=6576032&links=educacion%20ciudadania&optimize=20121217&publicinterface=true>

¹⁹ The reference to the right to equality as a premise of all other rights of the Spanish Constitution was first presented by professor PÉREZ ROYO, J., "*Curso de Derecho Constitucional* " (Handbook of Constitutional Law), Marcial Pons ed., 1994, Madrid, Spain; see p. 243.

First, as a fundamental right in Article 14 CE (formal equality): “Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance”. Secondly, equality regulated as a guiding principle of the political action to remove obstacles that prevent or impede it, in Article 9.2 CE (material equality):

“It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life”.

And, finally but not less importantly, as a higher value of its legal system, formulated in Article 1.1 CE: “Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system”.

At the same time, the LOE, following the constitutional requirements, makes reference to the transmission of values. Thus it establishes the following:

“Article 1. Principles. The Spanish education system, set up in accordance with the values of the Constitution and based on the respect for the rights and liberties recognized therein, is inspired by the following principles:

(...)

b) Equity that guarantees equal opportunities, educational inclusion and non-discrimination and that acts as a compensating factor for the personal cultural, economic and social inequalities, with special emphasis on those derived from disabilities.

(...)

c) The transmission and application of values that favour personal liberty, responsibility, democratic citizenship, solidarity, tolerance, equality, respect and justice and that also help to overcome any type of discrimination.

(...)

k) Education for the prevention of conflicts and for their peaceful resolution, as well as non-violence in all areas of personal, family and social life²¹.

l) The development of equal rights and opportunities and the promotion of real equality between women and men.

Related to this, the law also establishes:

“Article 2: Aims. 1. The Spanish education system will focus on achieving the following aims:

a) The full development of students’ personality and capacities.

b) Education in the respect for basic rights and liberties, equal rights and opportunities between men and women and equal treatment and non-discrimination for the disabled.

c) Education in the practice of tolerance and freedom within the democratic principles of society and in the prevention of conflicts and peaceful conflict resolution.

(Contd.) _____

²⁰ As we state in ALONSO CAMPOS, M^a P., LORENZO RODRÍGUEZ-ARMAS, M., ‘Professional Woman and mother in the third Millennium’, in *Juridical and Economic Yearbook Escorialense*, XXXIV (2001) page 226. In this work it was put forth that “... the value of the equality represents a more complex notion, and therefore its constitutional recognition reflects the above-mentioned complexity”.

²¹ See *Organic Law 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence* (LOMPIVG) on the importance of education to anticipate violence and its relation with the aim of the equality of women and men. To find specific mention of the educational aims of all the stages of compulsory education in Spain see LORENZO RODRÍGUEZ-ARMAS, M. ‘Measures of awareness, prevention and detection of the Organic Law of measures against gender violence’, in ARANDA ÁLVAREZ, E. (director) et Allii, ‘Study on the Integral Law against Gender Violence’, Cuadernos Bartolomé de las Casas n^o 36, Ed. Institute of Human Rights “Bartolomé de las Casas” U. Carlos III of Madrid-Dykinson (2005), pp. 39-59.

(...)

e) Education for peace²², respect for human rights, community life, social cohesion, cooperation and solidarity between nations and the acquisition of values which favour respect for living things and the environment, especially the value of forests and sustainable development”.

Even so, it is obvious that this value/right/principle must be a guide at the moment of choosing an option for an educational model, in line with constitutional and legal predictions, in which the above-mentioned aims could be attained. The question I am asking here now, before continuing to the next point, is whether the aim of full respect for the constitutional principle of equality and the fundamental right to equality can be better achieved in a coeducational system or in a single-sex school. The answer to this question will be explored below.

The 2013 Organic Law of Improvement of Educational Quality: its parliamentary process, the elimination of coeducation as the preferential and priority option for education and its repercussions on the object of this study.

During the autumn of 2013 there was a debate in the Spanish Parliament on a new draft of *Organic Law, on the Improvement of Educational Quality* (hereinafter LOMCE)²³ proposed by the People's Party parliamentary group. Before the end of the last legislative term, the previous government attempted to tackle the question of educational equality by sending a bill on *Integral Law of Equality of treatment and non-discrimination*²⁴ to the Spanish Parliament. The above-mentioned bill included in its Article 16, the express prohibition of public financing for single-sex schools. But the bill was not passed before the legislative term drew to an end.

Returning to the LOMCE, this bill introduces a modification which concerns the point that we are considering and specifically regarding article 84.3 LOE. Hence, in its new draft, regarding pupil admission, the bill provides that:

“In no case will there be discrimination for reasons of birth, race, gender, religion, opinions or any other personal or social condition or circumstance. A pupil's admission or the organization of education differentiated by sex does not constitute discrimination providing that the education given is in accordance with article 2 of the *Convention against Discrimination in Education*, approved by the General Conference of the UNESCO on December 14, 1960. In no case will the choice of an educational model differentiated by sex involve less favourable treatment or a disadvantage for families, pupils or educational establishments when signing agreements for subsidies with educational administrations. To this effect, educational establishments will have to justify the choice of the above-mentioned system in an objective and reasonable manner, as well as carrying out the implementation of academic measures to favour equality”

The approval of this modification will significantly change the situation for single-sex educational establishments because the educational administrators will not be able to refuse authorizations of financial concessions to those single-sex schools and therefore, they will be able to receive public financial support.

²² The previously mentioned LOMPIVG also refers to 'education for peace', in relation to the importance of educating for pacific resolution of conflicts, between the sexes and therefore, to prevent 'Gender Violence'.

²³ See note 41 of this work. On the 28 of November 2013, the Spanish Parliament passed the LOMCE, establishing that single-sex education should be considered as complying with Article 27.2 CE and, therefore single-sex education cannot be excluded from public financing.

²⁴ About the *non nata Integral Law of Equality of treatment and non-discrimination*, see the opinion of the State Council Document CE-D-2011-625, in that the supreme consultative body of the Spanish government (ex-art. 107 CE and 1 of the Organic Law 3/1980, of April 22, of the State council) examined the draft bill. This opinion can be consulted at the website of the Spanish Council of State: <http://www.boe.es/buscar/doc.php?Id=CE-D-2011-625>. Date of consultation: 04/11/2013

In relation to this, it is important to highlight that, in order to guarantee the fulfilment of the educational objective provided for in article 27.2 CE (which includes the transmission of the value of equality), it is necessary for the State to establish mechanisms to require justification for the funding of the single-sex educational centre and that this could be assessed by the educational administrators. In this way, the opinion of the Spanish Council of State is of utmost interest (Document CE-D-2013-172)²⁵ and its opinion, as is known, must be taken into account even though it is not binding on the Spanish government. In effect, according to the highest consultative body the new law has to, in accordance with the most prevalent jurisprudence, “contain some provisions that allows us to measure the motives and the reasons for applying an exception to coeducation and which explains the equality of opportunities favoured with this option”. Furthermore it is considered that this option requires a thorough justification because of the important alteration that it means for the preferred model until now, and as it will be supported with public funds, which means that decision-making requires greater care.

In the next pages we will refer to the scholarly legal debate that has been taking place for a few years in Spain and that lies behind the legislator’s intention to modify Article 84.3 LOE.

Scholarly legal debate and constitutional analysis

It is necessary to refer to the scholarly legal debate that has taken place in response to the interpretation by the Courts of Justice in applying LOE Article 84.3 LOE and AP 25, since its entry into force in 2006. The controversy takes place when subsidised schools with an educational model that differentiates by sex want to agree to or renew their economic agreement. Upon refusal of the agreement by the public administrators, these schools and/or student’s parents have filed suit before the courts, alleging that the refusal of the subsidy authorization infringes on the rights and freedoms contained in article 27 SC, namely: freedom of education, the right to create and direct teaching institutions and the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions.

It is interesting to mention here the Spanish Supreme Court (hereinafter SSC) judgment, of July 23, 2012²⁶. In its judgment, the SSC, reflecting its jurisprudence on this matter²⁷, reasons that the fundamental right to create and direct teaching institutions as one of the manifestations of the freedom of education, does not include the right to choose the student body, at least when it is a question of educational establishments supported with public funds. Therefore, the predominant system of coeducation is, in the case of the subsidised schools, a manifestation of the decisions by the educational administration to finance coeducational schools. Hence, it is a part of this state intervention that in practical terms limits the right to manage teaching institutions taken by private schools that receive public funds under Article 27.9 CE.

Furthermore, the SSC considers that the right to choose the student body is not a part of the essential content of the right to create and direct a school centre. As a direct consequence the court holds that

²⁵ It can be consulted in the website of the Spanish Council of State: <http://www.boe.es/buscar/doc.php?Id=CE-D-2013-172>. Date of consultation: 04/11/2013.

²⁶ Chamber 3, section 4; this decision can be consulted in the website of the Spanish State Judicial Council: <http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=6460940&links=educaci%F3n%20diferenciada%20%22SANTIAGO%20MARTINEZ-VARES%20GARCIA%22&optimize=20120807&publicinterface=true>. Date of consult: 04/11/2013.

²⁷ The jurisprudence mentioned was included in the Supreme Court decision of April 16, 2008 (Chamber 3, Section 7). It can be consulted in the website of the Spanish State Judicial Council: <http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=70658&links=%22675/2005%22&optimize=20080612&publicinterface=true>. Date of consult: 04/11/2013

neither does single-sex education form a part of the essential content of the right to direct schools, which corresponds to the holders of the aforementioned centres as a manifestation of the freedom of education. For the high court the difference of emphasis between the two, the LOE and *Organic Law 10/2002, of December 23, of Education Quality* (hereinafter LOCE) was introduced with the Supreme Court's judgment of February 24, 2010 (chamber 3, section 4). The second law mentioned protected the maintenance of the differentiated schools' support with public funds, contrary to the express exclusion made in the LOE of 2006 and therefore, the SSC decided in accordance with the new regulation to exclude those schools differentiated by sex from public support. The Court noted that education separated by sex under the LOCE was legal in Spain and that it was authorized by agreement under the *UNESCO Convention against Discrimination in Education*, approved in 1960. But the Supreme Court concluded by saying that education involving separation of the sexes stopped being legal for teaching institutions supported with public funds as soon as the LOE of 2006 introduced under article 84.2 the criterion of not discriminating on the basis of sex, thereby imposing the criterion of coeducation on these centres. With this the Court also clarified an important interpretive doubt, which arises from the AP 25 saying that coeducational centres will have *preferential* and *priority* attention in the application of the law and, therefore, also regarding the concession of the agreement and public funding.

For the SSC, there is no interpretative doubt at all that article 84 LOE excluded single-sex centres of education from the possibility of public support because article 3 prohibited sex discrimination in pupil admission, and that this is a fundamental condition for access to public financial support. Furthermore, it asserts that the inability of those schools that differentiate by sex in pupil admission to obtain public funding does not interfere with any constitutional right of the parents who preserve the right of free choice of centre, nor with the right of the owners of the single-sex centres to create centres with a particular ideology or character.

As a result of the interpretation of the enacted legislation by the Spanish Supreme Court two clearly opposed scholarly opinions have developed in Spanish legal scholarship. The first one focuses its attention on the right to education regulated under SC article 27.1 (first part); the second one on the freedom of education recognized under article 27.1 (second part).

The first of these maintains that coeducation is the only one that should be supported with public funds as being the model that really fits with the goal of the right to education as defined in the Spanish Constitution under article 27.2. This is my position, stated in similar terms earlier by other authors in Spain²⁸. This point of view emphasises the joint experience of the same school tasks, and a culture based on the constitutional values of equality and non-discrimination between men and women; with this, the stereotypes and discrimination due to gender would be eliminated, or at least they would be channelled, for the free choice of studies or professional destinations or for the conviviality in the most diverse social spheres, as much in childhood as in adulthood.

Those who defend *single-sex education*, on the other hand, do so under the pretext of providing solutions to some symptoms of school failure and the differences between boys' and girls' academic performance in certain subjects (literature and social sciences-boys; and mathematics and natural sciences-girls) during some periods of their education, especially in adolescence. Thus, a pedagogic

²⁸ See ALÁEZ CORRAL, B, 'El ideario educativo constitucional como fundamento de la exclusión de la educación diferenciada por razón de sexo de la financiación pública (The *educational constitutional ideology* as the basis of excluding from public financing education differentiated by sex) ', in *Spanish Review of Constitutional Law*, n. 86, May - August, pp. 31 to 64; ed. Centre for Political and Constitutional Studies, Madrid 2009. See also SALAZAR BENÍTEZ, O., "Educación diferenciada por sexo y contenido esencial del derecho a la educación" (Sex differentiated education and the essential content of the right to education), published in the website of the Constitutionalists' Association of Spain.

criticism of *coeducation* that follows the path of a new educational discourse²⁹ has resurfaced which calls the substitution of coeducation for education separated by sex for certain subjects of the curriculum. The basic premise here is that the differences between boys and girls belong to the natural, biological and psychological order, and they affect the personal development and the behaviour of boys and girls; hence this position stems from the need to turn these biological-sexual differences into differences of gender.

Following this argument, those who favour *coeducation* centre their attention on the right to education, whereas those who defend *single-sex education* focus on the freedom of education; both right and freedom are included, as was shown above, in article 27 of the SC. Thus, the pedagogic controversy becomes a *legal-constitutional controversy*³⁰ that has to do with the determination of the “deliberately open” content of article 27 SC. Indeed, this argument focuses on the analysis of the right to education’ content; this content is comprehensive of what has been called and was referred to above as the *educational constitutional ideology*³¹, concerning all of the elements that every educational model must include to be considered as compliant with the Spanish Constitution. Thus, this content does not consist exclusively of exercising the freedom of education, nor in receiving educational subsidies; it consists, fundamentally, of the receiving civic training³² based on the democratic-constitutional values, viz. the right to educational provision (article 27.1 SC), educational constitutional ideology (article 27.2 SC), state power of organization and planning of education (article 27.5 SC) etc., that is not possible without the free process of transmission of knowledge - freedom of education (article 27.1 SC), freedom to found educational establishments (article 27.6 SC), and university autonomy (article 27.10 SC). Only by orientating the regulatory content of the right to education in the democratic ideology of the Constitution is it possible to adequately protect the interests of the minors and to guarantee with it, the progressive exercise of their fundamental rights. In addition, it does not mean in any case a loss of ideological and religious neutrality that must dictate the actions of the State in educational matters, any more than the constitutional law establishes what the final outcomes of the educational rights and freedoms will be.

With respect to *single-sex education*, it is not integrated into the hard core of the right to education’s essential content³³; it is an allowed manifestation under the freedom of education that, as with all constitutional rights and freedoms is not absolute and, therefore, must be submitted to the final aim of the right to education under SC Article 27.2 inasmuch as with the limits provided under SC Article 27.6 to individual and legal entities by setting up educational centres: respect for Constitutional principles³⁴. Thus, differentiated education can be lawful while it does not contradict that basic core of

²⁹ See in the *multicultural debate* and from the perspective of educational theories, RINGROSE, J., “Successful girls? Complicating postfeminist, neoliberal discourses of educational achievement and gender equality”, in *Gender and Education*, Vol. 19, No. 4, July 2007, p. 471.

³⁰ As it was called by ALÁEZ CORRAL, B., cited above, p. 52.

³¹ In reference to the terminology used by the renowned Spanish jurist Francisco Tomás y Valiente, in his dissenting opinion to the Spanish Constitutional Court decision of February 13, 1981 on, amongst other matters, the constitutionality of implementation of educational ideologies in private teaching institutions. Here the jurist asserted that article 27.2 CE constitutes the “*Educational ideology of the constitution*”

³² From the Legal Theory perspective, it is interesting to remember the contribution made to this legal controversy by Professor PECES-BARBA MARTÍNEZ. See his work “La España Civil” (Civil Spain), in ed. Galaxia Gutenberg/Círculo de Lectores, Barcelona 2005; see especially p. 102 where he asserted that SC article 27.2 constitutes the “ethos of teaching, as of the public as also of the private and religious one”; in that sense he maintained that the latter educational model, the private and religious one, can have their own character or particular ethos that cannot depart from the ultimate goal of education.

³³ In line with our theses on the essential content of rights supported in LORENZO RODRÍGUEZ-ARMAS, M., ‘Analysis of the essential content of the fundamental rights enumerated in article 53.1 of the Spanish Constitution’, cited above.

³⁴ Article 27.6 SC establishes the “right of individuals and legal entities to set up educational centres provided they respect Constitutional principles”.

the right to education, the content of which must necessarily include the aim of that right *ex* article 27.2 CE. On the contrary, it could be asserted that if these differentiated schools do not comply with the constitutional aim of the right to education, this would constitute a violation of that essential content and, therefore, this should lead to a refusal of the authorization of the creation of single-sex schools. In relation to this, the problem tackled here is to know if the type of pedagogy that separates sexes in Spanish private schools, to the extent that takes into account the physical and biological differences derived from the sex as crucial, can be viewed in accordance with the constitutional ideology that considers rights and fundamental freedoms implicitly, among others that of the equality between men and women. This doubt increases if we bear in mind that the Spanish Constitutional Court does not have a very favourable opinion of biological differences of sex being the supporting criterion for a difference in treatment. On the contrary, sex is one of the categories considered especially 'loathsome' in the view of the Spanish Constitutional Court³⁵. In my opinion this should lead to the consequence that, although differentiated education is not prohibited in the Spanish Constitution, the kind of educational establishments that offer single sex education nowadays in Spain, should not receive public financing due to the lack of the attainment of constitutional values such as equality between women and men in the admissions stage³⁶.

On the other hand, this scholarly stance calls for specific and clear requirements that educational legislation should establish in order to receive public financing. Consequently, with this the options given by the LOE are expressions of diverse policies of fundamental rights within the framework of an open Constitution, referring to Popper's idea of an *open society*³⁷. Hence, it is in the legislators' hands, in the development of rights consistent with the public policies that guarantee them, to determine priorities that according to appropriate criteria are oriented to appropriate policy outcomes. Thus, the legislator can orient the law and its application to the attainment of the above-mentioned "educational constitutional ideology" taking into account reasonable limits. With this, the legislator has to deal with constitutional limits to the public financing of educational policies as was done under article 84.3 LOE that, as we discussed before, establishes the express prohibition of differentiation of any kind in the student admissions processes. Furthermore, it is important to call upon those responsible for the Spanish constitutional design of the educational model, which is undertaken through a distribution of competencies between the central government and the Spanish autonomous regions (*Comunidades Autónomas*), which are regional entities with legislative and executive competencies.

In Spain, the central government and the autonomous regions share competencies in educational matters; the central government dictates the so-called *basic regulations* and the autonomous regions

³⁵ See LÓPEZ GUERRA, L., 'Igualdad, no discriminación y acción positiva en la Constitución Española de 1978 (Equality, non-discrimination and positive action in the Spanish Constitution of 1978)', in "Mujer y Constitución (Woman and the Constitution)", *Centre for Political and Constitutional Studies*, Madrid 2000, pp. 19-41. See also a specific reference to this concept of sex as a 'specially odious' category in LORENZO RODRÍGUEZ-ARMAS, M., 'La igualdad real y efectiva desde la perspectiva del género en la jurisprudencia del Tribunal Constitucional Federal Alemán y el Tribunal Constitucional español (The real and effective equality from the gender perspective in the jurisprudence of the Constitutional Federal German Court and the Spanish Constitutional Court)', in 'Anuario Jurídico y Económico Escurialense' (Juridical and Economical Escurialense Yearbook, XL (2007) pp. 181-194. See this publication in the website of the Real Centro Universitario Escorial-María Cristina (Royal University Centre Escorial-María Cristina) of Madrid (Spain): <http://www.rcumariacristina.com/wp-content/uploads/2010/12/6-MAGDALENA-LORENZO.pdf>

³⁶ In Madrid, the capital of Spain, there are 16 religious educational establishments that provide single-sex education; all of them are promoted and/or supported by a religious organization; 8 of them are for girls, 8 for boys. This information can be consulted on the following website: www.educaciondiferenciada.com/enlaces/colegios/. Date of reference: 17.02.2014

³⁷ See POPPER, C., 'The open society and its enemies', in the Spanish new version ('La sociedad abierta y sus enemigos') of 2010, ed. Paidós. See also the introduction of this work with a constitutional perspective in Spain by LUCAS VERDÚ, P., 'La Constitución abierta y sus enemigos' ('Open Constitution and its enemies'), Universidad Complutense de Madrid, Servicio de publicaciones, 1993.

develop these *basic regulations*³⁸. In addition, given the understanding that in Spain the central government has basic competence in educational matters under SC article 149.1.1³⁹, it is considered to be in accordance with this constitutional provision that funding policies regarding private educational establishments should be considered a *basic regulation* and in that sense, a State competence. Only in this way is it possible to offer a homogeneous regulation in the entire national territory that guarantees the equality of the citizens in exercising rights and freedoms under SC article 27, and more specifically, only in this way can the State's response to *single-sex* school proliferation also be equal in the entire country. In conclusion, only the central government can exclude public funding to schools that do not fit with the "educational constitutional ideology".

The second scholarly stance defending the opposite position starts from the biological differences between boys and girls arguing that single-sex education provides more opportunities to both sexes by being educated separately. This is defended by specialists in Administrative Law⁴⁰. There is a specific concern expressed by those who espouse this view about the harm that coeducation has meant for the intellectual development of males and demands a differentiated educational model to improve the academic performance of boys. This argument follows the so-called "neoliberal discourse of failing boys" situated within the framework of *liberal feminism* and closely linked to neoliberal educational theories⁴¹. In spite of the fact that there is no scientific evidence that demonstrates that differentiated education is better adapted to help students reach higher educational levels⁴², I have to differ for other additional reasons: the cost -not only the economic one- to a society for supporting classrooms or schools differentiated by sex could be very high in terms of the loss of the minimal advisable conditions to put into practice the transmission of democratic values such as *equality*, under article 1.1 SC. I will come back to this argument. What I would like to add now is that, accordingly with democratic educational theory⁴³ within the multiculturalism debate, schools should be treated as social microcosms where boys and girls learn diversity and how to solve the problems of conviviality that they begin to face within a complex and plural world. From an educational science perspective⁴⁴, the belief that education promotes the individual development of all children has been challenged; it has

³⁸ As ALÁEZ CORRAL remembers in his work, basic legislation is the one that guarantees equal exercise of rights of all citizens, as was established by the Spanish Constitutional Court in its decision of March 20, 1997.

³⁹ Article 149.1.1a and 30a mandates that "the State holds exclusive competence over the following matters: 1a) regulation of the basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and in the fulfilment of their constitutional duties; (...) 30a) regulation of the conditions relative to the obtaining, issuing and standardisation of academic degrees and professional qualifications and basic rules for the development of Article 27 of the Constitution, in order to guarantee the fulfilment of the obligations of the public authorities in this matter".

⁴⁰ See CALVO CHARRO, M. 'Los niños con los niños, las niñas con las niñas (The boys with the boys, the girls with the girls)' edited by Almuzara, 2005. See also, ESTEVE PARDO, J., 'Paradojas de la discriminación en materia educativa. A propósito de la Sentencia del Tribunal Supremo Federal Alemán de 30 de enero de 2013 sobre el modelo de educación diferenciada (Paradoxes of discrimination in educational matter. About the judgment of the Supreme Federal German Court of January 30, 2013 on the model of differentiated education)', in "El cronista del Estado Social y Democrático de Derecho" (The chronicler of the social and democratic State of Law), n. 37, April, 2013, pp. 4 to 12. See the concrete reference on page 11.

⁴¹ See RINGROSE, J., "Successful girls? Complicating postfeminist, neoliberal discourses of educational achievement and gender equality", in *Gender and Education*, Vol. 19, No. 4, July 2007, pp. 471-489 (specifically p. 474 "The panic over failing boys").

⁴² Though from the perspective of the Sciences of Education in its branch of pedagogy there is an interesting study of Halpern, Diane F. et Alii, 'The Pseudoscience of Single-Sex Schooling', in *Science*, on September 2011, n. 333 pp. 1706-1707. It is asserted that "there is not well-designed research showing that single - sex education improves students' academic performance, but there is evidence that sex segregation increases gender stereotyping and legitimizes institutional sexism".

⁴³ See RINGROSE, J., p.472.

⁴⁴ See CONAGHAN, M. And NOLL, R.A., "Silent Voices in a Fifth Grade Classroom: An Exploration into Students' Cultural and Gender Discourses", in *The Journal of Multiculturalism in Education*, Volume 8 (October 2012) I, p. 2.

been shown that students need to have the opportunity to discuss within the school what was called “identity kits” or “discourses”⁴⁵ that counter the *status quo*. Following these arguments, this will enable students to challenge society’s view of what is considered “gender appropriate” behaviour and proper social actions and provide students the opportunity to create their own beliefs and become independent thinkers. To reach this goal in which school are represented as a microcosm where boys and girls can both reach the highest academic performance and at the same time to learn the democratic value of equality, the first condition is that girls and boys must share the same school space and curricula.

At this point I deem it worthy of mentioning the reference to the concept of the “basic human functional capabilities”⁴⁶ part of which its creator, Martha Nussbaum, considered as essential an adequate education including literacy and basic mathematical and scientific training as an education directed toward the development of the human personality and personal dignity. In addition, she considered that a good example of the right to education is to aim for the transmission of the importance of respect for rights and freedoms. In this respect, the school has to facilitate the socialization of boys and girls in order to gather the “basic human functional capability” of “being able to use senses, to imagine, to think, and to reason...in a way informed and cultivated by an adequate education (...)”⁴⁷. I see a direct connection to what was called “basic human functional capabilities” regarding this understanding of an education right and the duty for the education system to pursue it. Therefore, can an educational system that does not pursue these goals be seen as one that could guarantee the “basic human functional capabilities” of children? Does this implicitly mean that this concept could be equally fulfilled in the current single-sex Spanish religious educational institutions as in the coeducational Spanish public/private education? I do not think so.

Returning to the legal-constitutional analysis, to add arguments against this second scholarly stance that as was explained, defends the specific kind of single-sex education that is promoted in Spain, it would help to apply the balancing of the interests at stake theory (*Güterabwägungsprinzip* in German)⁴⁸ to this context: on the one hand, a *constitutional value* -that of the *equality between men and women*- with, on the other hand, a *protected legal good* as *better overall academic performance*. Those constitutional goods are not of an equivalent constitutional nature; thus they cannot have the same weight. Nevertheless, from my point of view the aim to *better overall academic performance* is not inconsistent with the principle of coeducation which as I have stated above I consider to be a part of the democratic value of equality; on the contrary, it should be possible to guarantee obtaining *better overall academic performance* without differentiation between students at the recruitment stage – much less in the curricula to be given- because of their origin, social position, religion, language, sex or any another circumstance.

There is another argument in this scholarly stance that supports single-sex education in Spain⁴⁹. It has been discussed after having analysed a judgment of the German Administrative Federal Court of January, 2013⁵⁰. This was a case rejecting the authorization of the concession of a financial support

⁴⁵ Cited in CONAGHAN and NOLL work, p.2.

⁴⁶ See NUSSBAUM, M., “Human capabilities, Female Human Beings” in “Global Justice: Seminal Essays (POGGE, T. and MOELLENDORF, D. Eds) Paragon House ed., United States, 2008. As she maintains in page 546 “a good example of an education right that I would support is given in the ANC South African Constitution draft, Article 11: “(...) Education shall be directed toward the development of the human personality and a sense of personal dignity, and shall aim at strengthening respect for human rights and fundamental freedoms and promoting understanding, tolerance and friendship amongst South Africans and between nations”. I see here a clear connection between SC Article 27.2 and the above cited constitutional provision.

⁴⁷ NUSSBAUM, M., cited above, p. 516.

⁴⁸ LORENZO RODRÍGUEZ-ARMAS, M., “Analysis of the essential content...”, cited above, p. 124.

⁴⁹ See ESTEVE PARDO, J., cited above, footnote 42.

⁵⁰ This resolution can be consulted in the website of the *Bundesverwaltungsgericht*: <http://www.bverwg.de/entscheidungen/entscheidung.php?ent=300113U6C6.12.0> Date of consult: 04/11/2013

agreement to a school for boys. The treatment given in Spain by public authorities to single-sex education was considered to be completely unacceptable. From this point of view, this type of educational offer is suffering clear discrimination in Spain. We differ from this point of view when it is stated that *coeducation* neither is –nor ever can be– a part of the *educational constitutional ideology* because, as is held, it is not an educational aim, nor a value or an end in itself. It is just an instrument, an educational model with which one may strive to reach educational aims but nothing more than this. I do not agree with this position, as I have argued above, transmission of democratic values is part of the essential content of the right to education.

Nevertheless, as has been made clear by educational scholars in Spain⁵¹, it should be said that having a coeducational model does not guarantee by itself an education in the constitutional value of equality, nor in other constitutional values, because without paying attention to other elements of the educational process that are also very relevant – such as the specific training of teachers– the traditional educational pattern that produces gender stereotypes can be reproduced. Consequently, one could maintain that coeducation is a necessary step to achieve education *in the relationships* between girls and boys, because by incorporating the gender perspective they will be better prepared for civil conviviality where men and women share the same spaces.

Human rights standards

Referring to the human rights standards the first scholarly position reviewed maintains that the interpretation of the international agreements ratified by Spain should not counter its arguments. Thus, those arguments are in accordance with the international agreements ratified by Spain, with specific reference to the 1948 UN *Universal Declaration of Human Rights*, to the 2010 *Chapter of Fundamental Rights of the European Union* and to the 1969 *Convention against discrimination in education* of the UNESCO⁵². Article 2.a) of this *Convention* does not even contradict this position⁵³. It does not try to favour *differentiated education*; it only establishes an exception to the general rule of *coeducation*, set out in article 1.1.c⁵⁴. Although this scholarly position considers that the establishment of the general rule of coeducation is in its spirit, in my opinion this interpretation is not obvious and lends strength to the second position discussed above to maintain *single-sex education* as optimal as

⁵¹ MAÑERU, A. et. al, 'The sexual difference in the education, the policies of equality and the transverse topics', in Magazine of Education n. 309, pp. 127-150, in the reference made in LORENZO RODRÍGUEZ-ARMAS, M. 'Measures of awareness, prevention and detection of the Organic Law of measures against the gender violence ', in ARANDA ÁLVAREZ, E. (director) et al, "Studies on the Integral Law against Gender Violence", *Cuadernos Bartolomé de las Casas* no. 36, Ed. Human Rights Institute "Bartolomé de las Casas" Universidad Carlos III de Madrid, ed. Dykinson, 2005, p. 42. See also, FUENTES GUERRA, M., ' We look for the equality or the difference in the education of the women', in " Social and juridical Perspectives of the woman: from the present towards the future ", Córdoba: Service of Publications of the University of Córdoba, 2000, pp. 95-104.

⁵² ALÁEZ CORRAL states that neither article 2 of the UN Universal Declaration of Human, nor Article 13 of the International Covenant on Economic, Social and Cultural Rights of the UN of 1966, nor Article 14 of the Charter of Fundamental Rights of the European Union of 2010, add anything to the abstract Spanish constitutional dispositions???, at least regarding the integration of differentiated education inside the essential content of the right to education of Article 27.

⁵³ "Article 2. "When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of Article 1 of this Convention: a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study; (...)"

⁵⁴ Indeed, Article 1.1 of the Convention provides that "for the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: (...) c) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons".

coeducation. What I see is that the *Convention* establishes a general frame of protection for boys and girls in the education system against any discrimination, without tackling the specific discrimination that might exist in certain types of educational models that differentiate by sex in providing access to the educational system and/or in the curricula. It could be that the *Convention* shows certain weakness in the face of the power of States to determine their own educational systems. To cover this possible interpretative gap, it would be necessary to look at other international instruments that are endorsed by the *Principle of coeducation* opposing the pedagogic model of education differentiated by sex, in order to introduce the necessary perspective of gender needed to guarantee the transmission of the value of equality between women and men. Thus the *UN Convention on the Elimination of all Forms of Discrimination against Women* 1979 encourages coeducation with the special aim of ensuring the “elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education” and considers essential the “revision of textbooks and school programmes and the adaptation of teaching methods”⁵⁵. There is definitely a clear position in favour of coeducation in the context of international treaties.

Conclusions

These are the key findings of this essay:

1. The "priority" holders of the right to education under Spanish Constitution article 27 are boys and girls. Nevertheless, as a complex law that regulates a set of rights, that provision also regulates freedom of education. Thus, the Constitution recognizes as holders of the freedom of creation of teaching institutions any individual or legal person (art. 27.6 CE). Furthermore, the Spanish Constitution also requires that parents, as holders of a specific right related to children's right to education, are given the right to ensure that their children receive religious and moral instruction in accordance with their own convictions (article 27.3 CE).
2. The goal of education under SC Article 27.2 shall aim at the ‘full development of the human character with due respect for the democratic principles of coexistence and for the basic rights and freedoms’.
3. Equality is regulated in the SC as a *fundamental right* under Article 14; as a *principle* that promotes action on the part of the public power under article 9.2; and as a *high value* of the Spanish legal order under Article 1.1.
4. The educational system must contemplate this *right/principle/value* and its transmission through the educational curriculum. Regarding teacher training in this field, this training should be a top priority as it should also be with the other democratic principles, rights and freedoms proclaimed in the Spanish Constitution.
5. In Spain *coeducation* is an educational principle which derives directly from the *right/principle/value* of equality cited above.
6. In view of what has been stated, all public schools in Spain follow the *Principle of Coeducation*.
7. On the other hand, basic education in Spain (primary school, ages 6 to 12; secondary schools, ages 12 to 16) is compulsory and free under article 27.4 SC.
8. Regarding *single-sex education*, it is a pedagogical model that it is not prohibited in the Spanish legal system. Some private schools in Spain have a *single-sex* pedagogical model, all of which are founded or promoted by religious organizations.

⁵⁵ See its “Article 10. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (...) (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods”.

9. Private education can be supported by public funds through the concession of the so-called *educational subsidies*. So they become *charter* or *subsidised schools*.
10. The educational legislation under 2006 *Organic Law of Education* granted a *preferential* and *priority* treatment to private schools that apply the *principle of coeducation* (article 84.3 LOE). These schools could so receive public funding.
11. The educational legislation recently enacted in Spain with the 2013 *Organic Law of Improvement of the Educational Quality* repealed the 2006 *Organic Law of Education* and establishes that single-sex education will be considered in accordance with SC Article 27 and therefore, it cannot be excluded from public financing.

Concluding remarks concerning the political and legal scholarly debate:

1. Though the principal problem seemingly resides in whether differentiated education, which in Spain is only admissible in the private area, must be supported with public funds or not, there is a basic problem that underlies this question. This basic problem, from my point of view, is more important than the question of who supports one or the other model. What is this basic problem? Are we facing a merely economic question or is it a question of strengthening and deepening of rights such as the right to equality between men and women?
2. Following this, I consider that the basic problem has to be with the essential content of the right to education and the distinction made between two different scholarly positions. Thus, the scholarly stance that holds that the right to education understood as the transmission of knowledge and competences and the transmission of values, as opposed to the other scholarly position that thinks that the transmission of values does not form part of that content. The first group focuses their point of view on the idea of a right to education from a holistic vision, that is, the transmission of knowledge, competencies and democratic values; the second group base their vision on the freedom of education and the right of parents to ensure that their children receive religious and moral instruction that is in accordance with their own convictions.
3. To respond to this basic problem it is necessary to focus on, on the one hand, the Constitution itself, particularly Article 27.2; it is also worthwhile to look at the educational legislation, as well as the jurisprudence of the Spanish Supreme and Constitutional Courts outlined previously. On the one hand, the constitutional provision itself speaks about an education that will have to tend to the "full development of the human character", not exclusively to the transmission of knowledge and competencies. As was outlined in this study, on the other hand, the Spanish Constitutional Court has confirmed this position from the very beginning of its existence by interpreting Article 27 and defining its *essential content*. It is in this respect that I maintain that the transmission of the equality value, among others democratic values, should have the needed importance to be sufficiently transmitted within the curricula. Therefore, both public and private schools should have to adopt this goal given the importance that it has in democratic States. Following this argument, I also consider of utmost importance that in order to guarantee that this goal is incorporated in practice in schools, the State has a concrete obligation with regard to the implementation, development and supervision of the fulfilment of Article 27 CE.
4. Transmission of values and constitutional principles as that of the equality between men and women in the training process of teachers working in compulsory education is also of utmost importance. Without this specific teacher training during their educational process this would not be guaranteed.
5. What kind of school context will make it more possible to realize a transmission of the equality value? *Coeducational schools* or schools *differentiated by sexes*? This is where I will answer the central question formulated at the beginning of this paper. Is it possible to transmit this value better in Spanish coeducation or in the differentiated by sex model followed in some private religious schools that exist currently in Spain? It is true that coeducational education does not guarantee in and of itself education in values such as equality, in the way that it does not guarantee

the transmission of other values and constitutional principle, such as tolerance or solidarity. But it is also true that schools, as socializing agents are potentially optimal for educating concerning respect towards all persons; thus, *coeducation* in Spain seems to be the most suitable to transmit this value of equality between the sexes and therefore, to teach how to peacefully resolve the conflicts that could arise between girls and boys from a very early age.

6. Continuing with my argument I consider it essential to place in a central position the transmission of democratic values in the compulsory schools curricula. It is also essential to contemplate the introduction of specific school materials and subjects with that goal, in order to transmit them to children with a mainstreaming perspective, as occurs with specific measures and school subjects.
7. From the legal-constitutional perspective, I consider inadmissible the legislative reform aimed at eliminating the *preferential and priority* treatment in the public support given to coeducation as was established under LOE article 84.3 and AP 25. It is true that this is not an economic issue, but in times of crisis it is much more important to give that preferential and priority treatment to this education model rather than to private religious schools that separate students by sex.
8. Finally, I consider it of utmost importance that our political representatives work toward political consensus, by designing the educational model and by searching for new educational methodologies; it is a question of obtaining the best academic results for children without damaging the transmission of democratic values and rights, so fundamental in the formation of citizens that occupy the centre of all public policies in all democratic societies⁵⁶.

⁵⁶ Simultaneously with the conclusion of this article, the Spanish Parliament approved the LOMCE, introducing a modification that establishes that single-sex education cannot be excluded from public financing. The law was approved only with the votes from the parliamentary group that supports the government, that is the right-wing parliamentary group. Once again in the Spanish parliamentary sphere, consensus was lost on the way.

