

Disputes around Sex and Gender Equality in Contemporary Argentina

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Introduction

During the last few years in Argentina, the feminist and LGBT+¹ movements' claims acquired relevance and notoriety in the political arena. Some examples are the mobilizations and debates around the "Same Sex Marriage Law" (2010), the "Gender Identity Law" (2021), and the "Assisted Reproduction Law" (2013); the massive marches inspired by the "Colectivo Ni Una Menos"² that made gender violence visible in 2015; the centrality of the fight for the legalization of abortion since 2018, made possible by the feminist tide behind the "Campana Nacional por el Derecho al Aborto Legal, Seguro y Gratuito"; and the organizational

¹ Lesbians, Gays, Bisexuals, and Trans, in a non-limited enumeration. The "+" sign is indicative of the open nature of the acronym, contemplating at the same time the possible emergence of any other identity configuration that, on one hand, produces a rupture with hetero/cis/normality, and, on the other hand, politicizes its difference/dissidence (Azarian & Scarpino 2020). The order of the initials and the different identities represented in the acronym have historically varied according to the disputes and negotiations within the collective.

² We refer to a collective political organization that consolidated throughout the country through periodic assemblies after the call for a march against gender violence made by several journalists of different media outlets after the femicide of Chiara Paéz.

processes that emerged throughout the country to secure the recent Law of *Travesti*³ and Trans Labor Quota “Diana Sacayán-Lohana Berkins.”⁴ Thus, we are considering a context of expansive politicization around sex and gender⁵ inequalities that gives renewed vigor to the historical demands of the wider movement of women, feminist collectives, and LGBT+ activisms.

In Argentina, these sex and gender movements are distinguished by their constitutive heterogeneity, since within these movements there are a plurality of claims and political traditions that do not cohabit peacefully, but are in conflict. In the particular case of the struggles and/or LGBT+ activisms, the different initials of the acronym refer to diverse sex and gender identities, with each and every one of them marking specific differences and ruptures in the history of a collective that is not linear and is crossed by hierarchies, tensions and exclusions. In turn, the political contexts have an impact in the formulation of claims and in the movement’s advancement strategies, making possible articulatory processes with other social actors (state institutions, NGOs, political parties, social movements) and redefining antagonisms (neoliberal forces, conservative activisms, religious fundamentalisms), depending on the different contexts and the diverse political traditions that nurture the emancipatory imaginaries.

Even though the current politicization of sex and gender demands is a global phenomenon—as proven by the different Women, Lesbian, *Travesti*, Trans, Bisexual, Nonbinary and Intersex International Strikes since 2016—in Argentina the conditions that made these struggles popular and widespread resulted from a process of political identification overdetermined by the Kirchnerist⁶ political movement (Barros &

³ The term “travesti” is an autochthonous, Latin American political identity belonging to the transgender spectrum. It is an identity reclaimed by activists and it cannot be translated because there is no equivalent term in English. This text was originally written in Spanish in Córdoba, Argentina, and we tried to respect the self-denominations of the activists.

⁴ All translations from Spanish to English are ours.

⁵ We use the terms sex and gender in a broad sense, appealing to the concept of “sex-gender system” coined by Gayle Rubin in 1975, initiating the move from feminism’s second wave to third wave. With this concept, the author refers to “the set of arrangements by which a society transforms biological sexuality into products of human activity, and in which these transformed sexual needs are satisfied” (Rubin 2004, 770).

⁶ When we speak of “Kirchnerism” we do not refer to a political party, but a national and popular, plural, heterogeneous, and transversal movement, where numerous political parties and partisan groups converge (“Partido Justicialista”, “Nuevo Encuentro”, “La C  mpora”, among others) together with diverse social movements (“Movimiento Evita”, “Uni  n de Trabajadores de la Econom  a Popular”, “Madres de Plaza de Mayo”, among others). This space emerged in 2003, under the leadership of President N  stor Kirchner (2003-2007), and it continued taking form during the presidencies of Cristina Fern  ndez de Kirchner

Martínez 2019). Specifically, in the case of the LGBT+ movement, the legal advances achieved in the area of human rights were fundamental reinforcements, especially during the two administrations of Cristina Fernández de Kirchner (Tabbush, Díaz, Trebisacce & Keller 2016).⁷

In this article, we analyze the recent LGBT+ movement's politicization process around two important sex and gender equality claims: same sex marriage and gender identity. We argue that these political conquests produced a new political temporality marked by the recognition of sexual rights and public policies for the LGBT+ community. In addition, this cannot be understood without attending to the reactions and political articulations that arose in rejection of those claims, and in defense of a neoliberal and conservative political order, reinforcing patriarchal, cis-heterosexual, and sexist power logics. From our perspective, we currently see a new cycle of collective struggles and manifestations that give renewed vigor to the historical demands of the Argentine LGBT+ movement.

Our hypothesis is that this movement constituted itself from the political-militant interpellation made by the Kirchnerist movement, with a rights discourse oriented by the values of equality and social justice. From our point of view, this interpellation was a condition of possibility for the emergence of a popular political subject that today has exceptional national prominence. However, from other perspectives, these identification processes are seen as cooptation and assimilation, continuing with the larger neoliberal advance over feminisms and sexual diversities (Trebisacce 2018; Mattio 2019; Dahbar & Mattio 2020). From an anti-essentialist and relational perspective—following Ernesto Laclau and Chantal Mouffe's "Political Theory of Discourse" (1993; 1987)—we challenge those dominant interpretations of the feminist and LGBT+ movements in the local literature, offering a political-discursive analysis of the recent process of politicization of the Argentine LGBT+ movement. This theoretical-epistemological inscription requires that we give analytical centrality not only to the claims, actions, and organizational forms of

(2007-2015) and the resistance against neoliberal policies imposed in Argentina during the administration of Mauricio Macri (2015-2019).

⁷ In that period (2007-2015), LGBT+ organizations won important legal and political victories: in 2008, a military reform allowed gays and lesbians to serve in the military and banned discrimination based on sexual orientation in the armed forces, among other things. After an arduous struggle, the two most important laws for the movement were approved: in 2010, "Same Sex Marriage" (Law N° 26.618) and, in 2012, "Gender Identity" (Law N°26743). In 2013, the "Medically Assisted Reproduction Law" (N° 26862) was passed, allowing for new familial configurations for those who desire it. Finally, in 2015, Resolution N°1507/2015 of the Health Ministry lifted the prohibition on LGBT+ people donating blood (Azarian 2021).

LGBT+ organizations, but also to the different political traditions or languages that nurture them, in this way contributing to define their political actions' limits and possibilities.⁸

The process of recognition of same sex marriage in Argentina

The history of the legalization of same sex marriage in Argentina is directly linked to the country's LGBT+ movement. In retrospect, we can clearly observe that the military dictatorships of the second half of the twentieth century produced political contexts that were highly repressive and criminalizing for LGBT+ people, particularly towards mobilized groups. During the 1960s and 1970s, the "Frente de Liberación Homosexual" (FLH) led the anti-systemic fights of the time, but most of their actions were clandestine, since homosexuality was persecuted by democratic⁹ and dictatorial¹⁰ governments throughout the twentieth century. Only since the return to democracy in 1983, and with the emergence of new activist groups such as "Gays por los Derechos Civiles" and "Comunidad Homosexual Argentina" (CHA) has the LGBT+ movement (called homosexual activism at that time) gained public visibility (Rapisardi & Bellucci 2001).

Since the 1980s, LGBTQ+ activists have managed to build ties with the human rights movement that promoted claims of reparation and justice for the crimes committed by the last military dictatorship. In the late 1980s and early 1990s, the expansion of the HIV pandemic generated new claims: complaints against discrimination and abuse by the state's repressive forces, a questioning of the established sexual order, and a fight against the social stigmas that associated homosexuality with the pandemic. In this sense, and following Pecheny (2010) and Milanesio (2021), we can affirm that in the Argentina of the democratic recovery,

⁸ From our theoretical perspective, we affirm that there are historical conditions of possibility for the emergence of power practices and also for their political articulation, as Marchart argues: "political activity does not occur in a vacuum, but it is always entangled in sediment layers of tradition [...] Traditions are mainly structures riddled with power through which are perpetuated multifaceted forms of exclusion and dominance" (2009, 16-7).

⁹ During the mid-1940s police edicts were passed, which allowed the police force to act in matters regarding prostitution and disturbances in social and moral order. They were used to criminalize/sanction homosexuality, though sodomy was not considered a crime. In addition, in 1951, the Code of Military Justice was approved, which penalized homosexuality in the Military.

¹⁰ During the military dictatorship of Juan Carlos Onganía (1966-1970) there were high levels of censorship: operas, ballets, artistic exhibitions, films, books, etc. were prohibited. Police and military forces doubled their efforts to control the moral and social order. Later, the 1976-1983 military dictatorship persecuted and disappeared members of the LGBT+ movement.

sexuality decisively entered the political agenda. In this context, specific claims of legal recognition of same sex couples emerged.¹¹

By the new millennium, the claims of legal recognition of same sex marriage and/or civil unions became a priority for activists. In 2002, the Autonomous City of Buenos Aires approved a civil union law that guaranteed similar treatment to same sex and heterosexual couples for the equal exercise of rights, obligations, and benefits. This became the first precedent for civil unions in Latin America. Even though the rights recognized were limited, the legislative discussion and approval represented an important symbolic victory (Meccia 2006).

In 2005, the “Federación Argentina de Lesbianas, Gays, Bisexuales y Trans” was born within a context of the growing visibility of claims of same sex civil union/marriage. Important activists from LGBT+ organizations converged, both from neighboring countries like Chile, Uruguay, and Paraguay, as well as from within Argentina, including “La Fulana”,¹² “Nexo Asociación Civil”,¹³ “Vox Asociación Civil Rosarina”,¹⁴ “ATTTA”¹⁵ and “Fundación Buenos Aires Sida”,¹⁶ among others (Bazán 2010). Their objective was to have a unified national political program and to widen the activism agenda, which previously had focused on HIV prevention campaigns.

¹¹ What follows is a broad overview of the main milestones of LGBT+ movements in the 1980s and 1990s: in 1988, an anti-discrimination law was passed, but it did not include sexual orientation or gender identity as protected categories. In 1991, the Supreme Court ratified the rejection of formal status to the CHA (in 1992, this status was granted by way of a presidential decree). In 1992, the first Pride March was held in Buenos Aires. In 1993, the “Asociación de Travestis Argentinas” was founded, and was later renamed the “Asociación de Travestis, Transexuales y Transgéneros de Argentina”. In the mid-90s, the “Asociación de Lucha por la Identidad Travesti y Transexual” was founded. During the 1990s, two cities, Buenos Aires y Rosario, formally promulgated legislation to ban discrimination on the basis of sexual orientation. In 1995, Law N° 24455 was passed, which stated that insurance and prepaid health coverage must incorporate medical coverage and psychological and pharmacological assistance to AIDS patients. In 1996, sexual orientation was protected for the first time in the constitution of the Autonomous City of Buenos Aires.

¹² “La Fulana” is a lesbian and bisexual women organization, founded in 1996 by María Rachid in Buenos Aires.

¹³ “Nexo” is a civil association created in Buenos Aires in 1992 to defend LGBT+ rights. It is dedicated to prevention and assistance regarding HIV and discrimination.

¹⁴ “VOX” is an organization that, since the late 1990s, fights for LGBT+ rights in the province of Santa Fe. It became a civil organization in 2001.

¹⁵ “Asociación de Travestis Argentinas” (ATA) was founded in 1993 in Buenos Aires. Later it added a second “T” (for transsexual) in 1996, and a third “T” for transgender in 2001 (Cutuli 2015). Thanks to the efforts of Claudia Pía Baudracco and Marcela Romero, in 2005, the organization started a national consolidation process in different provinces of the country and acquired legal status (Aversa 2018).

¹⁶ “Fundación Buenos Aires Sida” consolidated as such in 1996 when it obtained its legal status after intense activism in the area of the prevention of HIV and other sexually transmitted diseases.

The idea was to incorporate the claims for same sex marriage, gender identity, and an anti-discrimination law in the public debate, with the objective of nationalizing LGBT+ activism. Visibility was particularly important to the lesbian collective, after recognizing the hegemony of certain *porteño*¹⁷ gay activists united in the CHA.

In the following years, the FALGBT's visibility in the media grew, and it would become the primary driving force behind the reform of the Civil Code that recognized same sex marriage in 2010 (Bazán 2010). In February of 2007, the FALGBT launched the campaign “Los mismos derechos con los mismos nombres”, making their main goal clear: the extension of all the rights and obligations of civil marriage to same sex couples. This process also included other historical actors (such as the CHA) as well as new groups that emerged during those debates (such as “100% Diversidad y Derechos”).¹⁸

As for the legislative strategies, Eduardo Di Pollina, a national deputy of the Socialist Party, presented a project to reform the Civil Code in the National Chamber of Deputies in 2005 and 2007. In 2009, the deputies Vilma Ibarra and Silvia Augsburgberger resumed the project and managed to get a favorable ruling from the General Legislation Commission and the Family, Woman, Childhood, and Youth Commission in 2010. The project was approved in the lower chamber on May 5th, 2010 (Sgró Ruata 2011).

In particular, the actions of conservative groups in opposition to the initiative, with the support of the Argentine Catholic Church, intensified after the approval in the Chamber of Deputies. The main arguments put forth by the Church were the conception of sexuality with reproductive ends, within the framework of the sacrament of marriage, and the view of “homosexual practices” as “objectively disordered” and, therefore, condemnable.

As Sgró Ruata & Rabbia (2011) explain, the resonance of the issue in the public sphere and the consequent mobilizations for and against the initiative are evident in the exponential growth of news articles published in the national press regarding the bill. Even though the press tended to mainly depict the Catholic Church as the project's main antagonist, there were other actors as well. Lay groups, civil associations, and Catholic schools, universities, and professional associations all

¹⁷ *Porteño* refers to people from Buenos Aires, the capital of Argentina.

¹⁸ At that time, the judicialization of the claim through “writs of *amparo*” (protection of constitutional rights) presented by same sex couples in different points of the country was also a common strategy.

sponsored diverse actions (public manifestations, petitions, meetings with legislators, letters to readers, etc.) and tended to present a unified discourse in the streets, where “We want Mom and Dad” and “Marriage = Man + Woman” constituted their most common expressions. There were also very intense public declarations and the mobilization of conservative evangelical sectors, generally associated with the denominated “conservative biblical pole” (Wynarczyk 2006).

The voices of experts—particularly from the privileged fields of law and psychology—contributed their arguments for and against the initiative in public declarations, meetings with technical and legislative commissions, media, forums, and social media, generating a debate where scientificity was prioritized as the main legitimizing criteria for the arguments, even in religious sectors (Sgró Ruata 2012). In these circumstances, the discourses and strategies of diverse actors from every corner of the country, and from both the conservative and the LGBT+ movements, were made visible.

A relevant event that took place prior to the approval of the bill was the publication of a letter written by Cardinal Jorge Bergoglio (the current Pope Francis) to the “Carmelitas Descalzas” Congregation of Buenos Aires, where he expressed that the bill was “a move from the Father of Deceit” and a “pretension of the destruction of God’s plan.” These statements from the highest representative of the Catholic Church in Argentina generated great controversy and aggravated the debate only a week before legislative consideration of the bill.

In this context of profound politicization, the support given by President Cristina Fernández de Kirchner was of the utmost importance: recognizing same sex marriage, criticizing the actions undertaken and the pressure applied by the Catholic Church in opposition to the project, and rejecting the aggressive discourse of the Cardinal. In this framework of social mobilizations, vigils, and an intense legislative debate, at dawn on July 15th, 2010, Law N°26.618 was approved. Two weeks later, the Executive Power endorsed the law, which was accompanied by a speech in favor of the equality of rights.¹⁹

¹⁹ Cristina Fernández de Kirchner (2019, 249) stated that “The important thing is that on that day we were a more egalitarian society than the day before the passing of the law, because we didn’t take away anybody’s rights with that law, on the contrary, we were giving others the rights they were lacking and that we already had. I always felt that more than a law, we have promulgated a social construction and as such, it was transversal, diverse, plural and broad and it didn’t belong to anybody.”

In this scenario, the framework of the LGBT+ movement's claims was displaced, shifting from an emphasis on sexual and affective freedoms to one on the social inequalities and legal exclusions entailed by a restrictive and traditional definition of the marriage institution. Thus, what in other countries was referred as "same sex marriage," "homosexual marriage," or "gay-lesbian marriage," in Argentina was called "equal marriage." We agree with Renata Hiller when she states that: "by inscribing themselves in the human rights, equality and non-discrimination language, those who drove the demand of expansion of the marriage institution showed how, far from implicating just a minority, discussing that meant calling into question the distinctions that were considered legitimate in a democratic State" (2012, 245).

This egalitarian conception of politics was the ideological support from which the Argentine LGBT+ movement enunciated their main claims during the following years, articulating a discourse of rights centered on the ideal of social justice. Consequently, the claim of historical reparation for those who were continually excluded by society and the State (expanding citizenship and renovating the local imaginary of emancipation) materialized.

If we analyze the process of the politicization of the LGBT+ movement via this historical perspective, we can affirm, as does Chávez Solca (2019), that their egalitarian claims were successful because they managed to inscribe themselves in a political tradition whose distinctive mark was the vast profusion of rights and consequent citizenship expansion for excluded sectors. That is how the Kirchnerist movement succeeded in articulating the LGBT+ movement's struggles around a conception of equality understood as social justice, making it a priority to accomplish full social inclusion of the groups that historically have been left behind.

This political language had performative effects in the LGBT+ movement in general and with respect to trans/*travesti* in particular. From the year 2010 on, new groups emerged, organizational processes were strengthened, and sex and gender identities that had been historically pathologized and criminalized were made publicly visible. In the third part of this article, we will show how the Kirchnerist ideological interpellations had a subjectivizing effect and made possible the emergence and constitution of a national and popular *travesti/trans* movement, empowered by the discourse of rights.

Reactive politicization against the expansion of rights for the LGBT+ movement

The politicization that took place in society as consequence of the public debate around the issue of same sex marriage makes it a particularly suited to analyze the political articulations achieved by conservative forces opposed to sex and gender equality politics implemented in contemporary Argentina. Indeed, the growth and legitimacy that LGBT+ movement acquired in politics in general produced a scenario of confrontations in which conservative sectors led a fight against the expansion of rights for LGBT+ people.

Since the same sex marriage project entered the Chamber of Deputies, numerous civil society organizations demonstrated opposition to the initiative both in institutional instances as well as through other public actions (such as street marches, media discussions, signing petitions, etc.). According to Sgró Ruata & Rabbia (2011), Morán Faundes (2018), and Vaggione (2009), that moment politically mobilized a central actor in opposition to the expansion of sexual and reproductive rights: the hierarchy of the Catholic Church, whose bishops and cardinals pressured legislators. It also coordinated nationwide actions, such as the march before Congress on July 13, 2010, which included different organizations and members of other churches (Evangelical and Pentecostal). In this framework, numerous actions against the law—pronounced “in defense of the family” and “children”—were prominent and publicly visible.

The fight for the recognition of same sex marriage made apparent the constitutive heterogeneity and the enormous mobilization capacity of conservative sectors in Argentina. In general, authors who have analyzed these conservative discourses give an account of the diverse nuances of a narrative based on a heterosexual, conjugal, monogamous, and reproductive model of sexuality. At the same time, this narrative is also grounded in religious and biological precepts that reproduce different sex and gender stereotypes (Sgró Ruata 2017 & 2022; Morán Faundes 2020; Morán Faundes & Peñas Defago 2016; Vaggione 2013). As these authors have pointed out, far from presenting univocal and homogeneous discourses, actors against sexual and reproductive rights formulate their arguments by employing different frameworks, specially legal, scientific, and religious. Thus, Vaggione developed the concept of “strategic secularism” (2005 & 2013) to understand the combination of the religious and the secular that defines conservative activism, but without reducing its degree of dogmatism. The adoption of secular discourses, mainly

scientific and legal, allows these sectors to penetrate diverse spaces and achieve important forms of popular identification.

In this sense, Morán Faundes, Peñas Defago, and Sgró Ruata & Vaggione (2019, 59) give an account of the “polyvalent identity politics” of conservative activism: many of these civil society actors (especially NGOs) defy static identification forms which are often thought to be associated with monolithic forms of religiosity. On the contrary, nowadays it is possible to find organizations that have constituted themselves based on diverse religious identity thresholds—that is, appealing to diverse degrees of closeness or distance from religion, and going from strictly religious identities to other forms of more secular identification (eminently political).

At the same time, the polyvalent identity politics that these organizations manifest is also based in the conformation of a plurality of identity expressions that represent specific social sectors, such as women, youth or traditionalist political parties. Therefore, these organizations diversify their forms of identification, seeking to appeal to different political subjects and even disputing the representation of the subjectivities and expressions that many times are attached to their main adversaries: the LGBT+ and feminist movements.

For this reason, we oppose those who address conservative activism as a homogeneous political movement (Mujica 2007; Blancarte 2008; Madrazo Lajous & Vela Barba 2013; Dides 2013). On the contrary, we emphasize the constitutive heterogeneity of the conservative sector and its capacity to articulate multiple forms of popular identification through diverse political and argumentative strategies in the public space. The different actors that converge within this activism have tended to present their agenda as a politic in defense of life and family, defining themselves in many cases under the categories of “pro-life” and “pro-family.”

A key aspect that many authors point out in this dispute over the expansion of rights in the last few decades refers to a reappropriation of human rights rhetoric by conservative sectors, emulating the discourse privileged by the Argentine feminist and LGBT+ movements in their claims for pluralist sexual policies (Morán Faundes, Peñas Defago, Sgró Ruata & Vaggione 2019). In this sense, these discourses oppose issues such as abortion, contraception, sex education, or same sex marriage by invoking the defense of life, conscientious objection, and the rights of children.

In the Argentine context, conservative discourse was rapidly inscribed in the political spectrum; these were the flags raised by political right-wing parties linked to the Catholic Church and their most iconic representatives in opposition to egalitarian

laws put forward by the LGBT+ movement. In contrast, the claims made by the *travesti*/trans movement were inscribed in a human rights discourse articulated by Kirchnerism around social justice, which sought to emphasize the reparation of historically oppressed groups.

Cries of victory for the Argentine LGBT+ movement

The constitution of the Argentine LGBT+ movement was grounded on two main claims: equal marriage and gender identity for *travesti*, transgender, and transsexual people. The issue of gender identity was gradually addressed on many fronts. A first milestone was the fight for legal status recognition for the Asociación de Lucha por la Identidad Travesti y Transexual (ALITT) [Association for the Fight for *Travesti* and *Transexual* Identity], championed by the *travesti* leader Loahana Berkins (Fernández 2020). In the first instance, the petition was denied based on the argument that the association lacked the pursuit of a general common good extended to all of society. The organization responded that the association's objective was to encourage democratic and inclusive civic practices and fight against the culture of discrimination that pathologized, stigmatized, and excluded trans/*travesti* identities. The judicial litigation was delayed until the year 2007, when the new Supreme Court, composed of progressive judges appointed by ex-President Néstor Kirchner, ruled in favor of the recognition of legal status. This verdict was a fundamental impulse for the organization of the *travesti*/trans movement, finding its way towards a new political temporality, marked by a rights discourse and State recognition of *travesti*/trans identities.

As Cutuli (2015) indicates, other relevant events for the *travesti* activism of those years included the foundation of “El Teje”, the first Latin American *travesti* newspaper, under the direction of Marlene Wayar (also in 2007). The following year, the Federal Textile Cooperative Nadia Echazú was inaugurated in the Capital. It was the first organization of its kind in the whole country to be composed of *travesti* people and to be endorsed by the National Institute of Associativism and Social Economy. At the beginning of 2021, the first popular trans baccalaureate “Mocha Celis” opened its doors, providing schooling with a cooperativist perspective and educating *travesti*, transgender, and transsexual people expelled by the educational system and the formal working market.

In relation to the gender identity recognition claim, the efforts of ATTTA activists were crucial in pushing the FALGBT to draft a bill. The legal project was

imbued with an integral conception of justice that exceeded the idea of respect towards the self-perceived gender. The Federation's different organizations agreed on the need to fight for social inclusion politics for the *travesti*/trans collective, the most excluded segment of the LGBT+ population.

The first gender identity law project was presented in 2009, encouraged by Claudia Pía Baudracco, a nationally renowned ATTTA and FALGBT activist. At that time, however, there was no political and social consensus for such an advanced law—not in the political forces, nor in public opinion—and therefore, the project was not seriously considered. Among these multiple difficulties, there not only were prejudices and disinformation extended at a local level, but there was also a tendency to pathologize trans identities in the comparative law; at that time, there were not respectful laws towards self-perceived gender identity in any country in the world. For instance, even though a gender identity law had recently been approved in Spain, it required a prior medical diagnosis of gender dysphoria. Even worse, the German, Austrian, and Swedish laws required surgical sterilization before being able to initiate the process of changing gender identity (Cabral 2012).

After a second and still unsuccessful project, the formidable politicization that took place after the approval of the same sex marriage law laid the groundwork for the final passing of the gender identity law in 2012. Again, activism's strategies unfolded on different fronts: from achieving support among the different organizations, to eradicating stereotypes installed by mass media, to litigation in court. The formulation of protective actions (*amparo*) was the privileged mechanism to achieve the recognition of the right to self-identification. Similar to same sex marriage, LGBT+ organizations developed a strategy of first appealing to the civil registry, and after this administrative body refused, they appealed to the judiciary branch.

In the processing of gender identity petitions, more than two hundred legal protective actions were presented throughout the country, with dissimilar court decisions. The first favorable verdict in Argentina and in all of Latin America—recognizing the gender identity of Tania Luna without the previous requirement of surgical intervention—was obtained by the CHA on September 19, 2008. Nevertheless, she had to wait two years to obtain her National Identity Document (Cigliutti 2014).

The state recognition of the self-perceived gender initiated a paradigm shift in Argentina: before, surgical interventions were required, as well as a series of traumatic examinations. These could include an examination by a psychiatrist,

psychological tests, hormonal treatments, and review of criminal records.²⁰ This was an exemplary case of the violation of trans people's fundamental human rights, and thanks to FALGBT's work and political incursions, it rapidly acquired public visibility.

The legalization of same sex marriage in 2010 was a decisive triumph of the LGBT+ movement that overcame conservative actions led by a political-ecclesiastical sectors. They could not stop the advancement of the LGBT+ movement, which was now discussing the ground-breaking gender identity law. By 2011, there were several legislative projects in the Argentine Parliament, developed by different LGBT+ organizations and presented by Kirchnerist deputies or allies.²¹ Until that time, the only prevailing agreement was based on the urgent need for a law that included *travesti*, transsexual, and transgender people as citizens. There were disagreements on the content of the law, until an important alliance between heterogeneous sectors of the LGBT+ activism was formed: the "Frente Nacional por la Ley de Identidad de Género". This coalition was integrated by the "Asociación de Lucha por la Identidad Travesti y Transexual" (ALITT), "Comunidad Homosexual Argentina" (CHA), "Cooperativa Nadia Echazú", "Movimiento Antidiscriminatorio de Liberación" (MAL), "Futuro Transgenérico", "Putos Peronistas", "Encuentro por la Diversidad-Córdoba", "Jóvenes por la Diversidad", "Antroposex", "Crisálida Tucumán", "Adistar Salta", and autonomous activists. This coalition gathered the broadest support from political and social sectors: national legislators from all political parties, human rights organizations, labor unions, and other social movements.

The coalition successfully hegemonized the discursive field, defining the following priorities: de-pathologization, de-judicialization, decriminalization and destigmatization of trans identities (Litardo 2011). The differences between the FALGBT and the "Frente Nacional por la Ley de Identidad de Género" were expressed in the formulation of the claim: the "Frente Nacional por la Ley de Identidad de Género" assumed as a priority the need to guarantee transitional health—besides the change of the name, which was demanded by the FALGBT.

²⁰ According to Marcela Romero's own words in the segment "Somos. Un recorrido por la historia del movimiento LGBT+", broadcasted via Facebook Live in 2020.

²¹ On August 18, 2011, in a joint meeting of the Chamber of Deputies' General Legislation and Justice commissions, Claudia Pía Baudracco delivered an unforgettable line with this recognition: "Today, all these initiatives say yes to democracy and citizenship. The enjoyment of the latter is the equality floor that will allow us to be subjects of full rights" (in Aversa & Máximo 2021, 228-239).

Lohana Berkins, the most iconic *travesti* leader, summoned other trans representatives from the FALGBT (Claudia Pía Baudracco and Marcela Romero) and other independent trans activists, and worked together with the goal of reaching an exclusively trans political agreement on the content of the law (Fernández 2020). The text gathered the contributions of the four gender identity legislative projects and solidly expressed the principles of de-pathologization and de-judicialization of trans identities, also safeguarding the right of full access to health services, including transitional health (Cabral 2012).

At the end of November of 2011, the Chamber of Deputies gave preliminary approval of the law with 167 votes in favor, and only seventeen votes against and seven abstentions. Such institutional success was possible thanks to the political articulation between trans and *travesti* activists from Buenos Aires, who could jointly formulate their identity claim, demonstrating signs of unity and organization. A pleasant surprise occurred in the Senate (the conservative stronghold of the Congress) because the treatment of the gender identity law was much less complicated. That is how, on May 9, 2012, the gender identity law was approved in the Chamber of Senators, with fifty-five votes in favor and just one abstention. The day ended with festivities in Plaza del Congreso, where Lohana Berkins delivered an unforgettable speech:

Many *travestis* gave their lives to get here. Today, to that society that calls us *negras*, vicious, thieves, to that society who wants to hide us permanently, we say we are first class citizens! Those who think who can humiliate us should be careful, because we are no longer the *travestis* of old times. Because today we know we are subjects of rights. Equality, equality, equality! And let's get all ready to go to Plaza de Mayo, because we won't accept less than the President promulgating our law. For those of yesterday, for those of today, for the thousands of children throughout the country that will be able to say they live in a country that has a State that recognizes them, that respects them and, above all, that will give them their identity." (Berkins as cited in Fernández 2020, 174-5)

While Argentina advanced towards the expansion of sexual and reproductive rights, the prevailing norms in the rest of the world still violated the human rights of the trans community. At the beginning of 2012, twenty-nine European countries still demanded sterilization as a requirement for gender identity legal recognition (Cabral 2012). The Argentine law questioned the sex and gender hierarchy that structures western culture (Litardo 2018).

This paradigm shift produced many ruptures. As Cabral (2012) points out, one of them is the shift from access to identity as an entirely personal right (anchored

in the “Private Right”) to a political ground: the field of human rights. The human rights paradigm entails a comprehensive and public policy approach in matters of health, education, work, housing, a life free of violence, etc. At the same time, and in terms of political performativity, we argue that the most significant outcome of the debate and the approval of the gender identity law was the formation of a national and popular trans-*travesti* political subject, a subject differentiated from the gay-lesbian leadership of LGBT+ activism.

In this sense, we contend that the law had an enormous impact on the citizenship empowerment of the trans/*travesti* community, strengthened by rights discourse and equality rhetoric. Within this ideological matrix, the Argentine LGBT+ movement’s current main claim of social inclusion is articulated: this includes a percentage employment quota in both the private and public sectors, historical reparation, and integral social inclusion for trans-*travesti* people. In this sense, the trans/*travesti* groups that organized and expanded in these last years constituted themselves by claiming the rights that the gender identity law promised but could not guarantee: health, work, home, the end of violence, hate, and transphobia. In short, a full and dignified life.²²

Tensions within LGBT+ activism: between identity politics and queer critiques

The gender identity law was celebrated as a pride banner for the Argentine LGBT+ movement in general and the trans-*travesti* collective in particular. Nonetheless, there have been various criticisms of the law, mostly from radical sexual dissidence activism linked to different local appropriations of queer theory.

On the one hand, we find the critique taken up by Marlene Wayar, who published an article titled “What happened with the T?” in a scathing questioning of the body of the law. She argued that the man-woman binomial was intact, and the potentially normalizing effects of that classification became a tangible threat for those who fought many years for the construction of a *travesti* identity. The criticism was aimed at the law’s restrictions regarding the “right to choose who to be and what to be called.” Certainly, the legal text does not mention *travesti*, nor transsexual, nor

²² According to the report “Argentine *travesti* and trans’ human rights situation,” issued in 2016 by different social organizations (“Akahatá”, “Agrupación Nacional Puntos Peronistas”, and “Cooperativa de Trabajo La Paquito”, among others), *travesti*/trans people face structural barriers that prevent them from gaining access to fundamental human rights. The report is available here: <https://www.cels.org.ar/web/publicaciones/situacion-de-los-derechos-humanos-de-las-travestis-y-trans-en-la-argentina/>

transgender people as subjects of rights to be legally protected. This was specifically agreed on by the activists involved in the discussion and writing of the law, who decided not to define the different sex and gender identities. According to Lohana Berkins, the reason for this decision was not to impose fixed taxonomies on future generations. In her own words:

...*travestismo*, transsexuality and transgenderism are understood in a multiplicity of ways and expressions. To give a closed definition could mean that many people can be left out of the law. That's when we decided not to put any classificatory category and the way we found to get out of that discussion was the concept of gender identity. (Berkins, as cited in Fernández 2020, 170).

On the other hand, we want to reflect on a sharp critique that is increasingly resonant in academic circles but also in certain radicalized sectors of sexual dissidence activism, which questions the concrete effects of laws in the material conditions of trans people's lives (Mattio 2015; Spade 2015; Rueda 2019). Situated in Córdoba, an Argentine province that is particularly hostile toward the feminist and LGBT+ movement, Eduardo Mattio analyzes how the legal classification of gender identity guarantees only the bureaucratic administration of changes to records, without regulating the right to transitional health. From a biopolitics framework (close to queer theory),²³ Mattio states that it is not a simple omission, but rather a congenital defect of the state-law order. Drawing on work by the Italian philosopher Roberto Esposito, Mattio demonstrates how the law institutes an abstract subject under the figure of the person, legally coding different feminist and LGBT+ claims.²⁴ In his own words: "it would seem like the fiction of personal identity upon which the law is based can only cover those parts of the self relative to trans people's intangible dignity, and not the concrete needs that the eventual body modification guaranteed by the state would suppose" (2015, 32).

This conception of the law says nothing of the political and cultural changes that legal reforms produce (Vaggione 2012). These changes are conveyed in two senses: on one hand, for the State and the society as a whole, the law means a limit on the historically legitimated violence towards the *travesti*/trans community; and, on

²³ Within queer studies, readings of Foucault's work that emphasize the liberal subject of rights and the state's dominion predominate. In that sense, those interpretations reject LGBT+ activism's institutionalized strategies that translate into identity politics and claims of inclusion laws. Within this framework, in Foucauldian terms, these are control mechanisms of bodies and populations.

²⁴ Mattio (2015) analyzes the juridical codification of the following claims: the legal recognition of abortion, regulation of sex work, and recognition of gender identity.

the other, it was the birth of a nationally-organized political subject that acquired public and collective identity.

In the trans studies field, the queer critique of legal reform has been extremely resonant. An important illustration of this is what Dean Spade (2015) has expressed: inspired by Wendy Brown's (2003) criticism of liberalism's subject of rights, he calls into question this strategy privileged by the current sexual and gender movements, considering it to be powerless against neoliberalism. Alba Rueda (2019) echoes the objection formulated by Spade (2015), nuancing the critiques of the rights discourse in the light of recent Argentine history. Rueda recognizes that the approval of the gender identity law was a fundamental push for the consolidation of a political subject that is currently omnipresent in the public sphere.

In this sense, the president of "Mujeres Trans Argentina" stated that:

the political agenda of the social organizations is not limited by a liberal hoax where the political system washes its hands with a false formal equality. It is about spaces of political confrontation where the force of inequality gives an account of the enormous effort made by the social movements to achieve a legal framework that protects their lives or improves the living conditions of trans people." (2019, 2)

When she lists the new pathways opened by the gender identity law, the author highlights the current struggles for social inclusion. In these struggles, the structural vulnerabilities of the trans/*travesti* population are made clear, manifested in their most urgent claims: access to the formal labor market and the ending of social and institutional violence.

An example of this progress is the court sentence for the hate crime towards activist Amancay Diana Sacayán that occurred in 2015. This verdict, rendered in June 2018, involved a ground-breaking interpretation of hate crimes toward *travestis*. It was evaluated as *travesticidio* because a woman was assassinated by a man in a context of gender violence, having been motivated by hate towards Diana's *travesti* identity. This criminal reform introduced the two aggravating circumstances used by the tribunal in that historical sentence: "femicide," and a new classification of homicide as "executed by mediating hate towards gender, sexual orientation, gender identity or its expression," categories applicable to lesbians, gays, bisexuals, transsexuals, *travestis*, transgender, intersexual, and queer people, in a long but not limited enumeration

(Allione, Azarian, Comeres Benejam et al. 2020). It was the first trial for a *travesticidio* in Argentina.²⁵

We also agree with Rueda (2019) when she states that in the last few years, the right to gender identity has been the foundation for the visibilization of absent sex and gender identities in the LGBT+ acronym—for instance, trans-femininities and non-binary people, who were legally recognized in July 2021 by a presidential decree.²⁶ Similarly, it resulted in a strong public questioning launched by the *travesti/trans* collective with their definition of “social *travesticidios*,” or those preventable deaths of *travesti/trans* people in a situation of extreme degradation. As a result, there were multiple mobilizations against *travesticidios* all over the country.

From the previous examples we can deduce that the “right to be” is the cornerstone in the struggle against structural inequalities and violence suffered by the *trans/travesti* community. The defense of life, its viability and its dignity, is the main claim of a community that demands its right to exist.²⁷ To paraphrase Michael Foucault:

Life, much more than law, became the political struggles’ bet, even if these were formulated through statements of the law. The “right” to life, to a body, to health, to happiness, to the satisfaction of needs; the “right” [...] to find what one is and everything that cannot be; this “right,” so incomprehensible for the classic legal system, was the political replica to all the new proceedings of power. (2008, 137)

Undoubtedly, these political struggles are diverse and multiple. The claim for laws and public policies was one strategy among others. Nonetheless, it was LGBT+ activists’ main tactic during the Kirchnerist governments (Azarian 2021). Current LGBT+ activists are inscribed in this discursive surface, politically articulating itself with diverse social organizations in the framework of a radical democratic project. Regarding the relations between the Argentine *travesti/trans* collective and human rights organizations, women’s movements, and, in particular, with the governments

²⁵ In spite of the constant call for justice for Diana Sacayán led by LGBT+ organizations throughout the country, which socially installed the figure of “travesticidio” as a specific crime towards a very vulnerable sector of the population, this sentence was revoked on October 6, 2020, after a cassation appeal presented by the convict’s defense.

²⁶ Since the Decree 476/2021 in Argentina, a Non-binary National Identification Document can be obtained; the option “X” can be chosen. “This nomenclature encompasses non-binary, indeterminate, non-specified indefinite, non-informed gender self-perception, and any other definition that a person that does not feel comprehended in the male/female binomial can identify themselves with.”

²⁷ In Butler’s terms (2004), struggles are oriented to produce social conditions which produce more livable lives.

of Néstor Kirchner and Cristina Fernández de Kirchner, Amancay Diana Sacayán affirms the following:

I am a human rights and a gender equality rights militant [...] There is a thought that was nourished by our strategic alliances with the women's movement, because we passed through Madres,²⁸ because we got to know Madres de Plaza de Mayo, because we did our careers there, most of us went through there. We also constructed our identity there. Our gender identity law wouldn't have been the best in the world if we didn't part from understanding identity like we did after meeting Madres de Plaza de Mayo [...] Our complaint was transformed into concrete policies that happened when, from the year 2004, the administration of Néstor Kirchner started and there we understood the gesture and moment and we dove right in promoting public policies.

From our historical context, we cannot ignore that in contemporary Argentina the language of rights has a plebeian mark. It does not refer to the political subject of European liberalism, but to an incessant dispute for the equality, empowerment, and social inclusion of the most disadvantaged groups (Barros 2011).

Final thoughts

Inscribed in a context of expansive politicization, the current claims for inclusion formulated by the LGBT+ movement—such as integral social inclusion for trans people—represent a historical reparation based on equal opportunities and the effective access to education, work, health, and all the rights that make a dignified and worthy life. We maintain that this historical reparation entails such a degree of impugnation to sexist/cis/hetero/patriarchal society that the claim for social inclusion does not have assimilationist tints, in the sense that is expressed by queer/*cuir* local activism. In this sense, val flores states that: “the problem with erecting the state as the only possible front of action is that it translates any social movement's agenda into an inclusion program that can be assimilated without much difficulty, constituting itself as a sexual and political control mechanism” (val flores, as cited in Dabhar & Mattio 2020, 274).

The criticism informed by queer theory is formulated by certain radicalized sectors of the activism that reject the identitarian conception of politics prioritized by the current LGBT+ movement, whose fight for inclusion is inscribed in public policies and rights guaranteed by the State. Nonetheless, from our point of view, this

²⁸ “Madres de Plaza de Mayo” is an important human rights organization formed during the last military dictatorship (1976-1983) with the aim to recover *desaparecidos* [forced disappearances].

does not entail erecting the State as the only battlefield, nor does it intend to overvalue institutional positions. Throughout the country, most LGBT+ groups dispute resources and political incidence in the State, and, at the same time, they deploy an intense fieldwork, linked to the satisfaction of basic needs, in a social praxis that overflows institutional channels.

Undoubtedly, the impact of feminist and LGBT+ movements has initiated a new temporality in Argentine sexual politics. Different aspects of social life that were considered part of the private world, and therefore outside of politics, were re-signified and transformed. This temporality has also given space to important reactions and rearticulations from conservative sectors, generally linked to religion, who politically defend a strongly restrictive sexual morality. Even though these strategies are articulated by the Catholic Church, there is something new in their unfolding: a shift towards secular justifications (in the field of science, law or bioethics) that neutralizes religious elements and politically articulates them in the framework of a growing process of popular identification.

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