

Argentina: first Country to legalize Abortion without “Women”

During the last days of 2020, the decriminalization and legalization of the voluntary termination of pregnancy in Argentina made headlines in the international press. The passing of this Act was the culmination of three decades of uninterrupted struggle, led by the *National Campaign for the Right to Legal, Safe and Free Abortion*, a flagship campaign of Argentine feminism, whose iconic green scarves have become a universal symbol of this right. On December 30th at dawn, the Congress of the Nation lit up in green, the streets became tidy, and the cry was unanimous: #it is legal. No more women killed or criminalized for clandestine abortions, no more forced motherhoods, no more the condemnation of an unwanted pregnancy for the daring to enjoy. The Argentine State finally recognized women’s autonomy over their life projects, those they wanted or could have. But did the Argentine State actually recognize “women”?

What the press did not say, either locally or internationally, is that the new law removed the category of “woman” from the Argentine Criminal Code to replace it with the neutral functionalist “gestating person”. Given that in Argentina the *Convention on the Elimination of All Forms of Discrimination against Women* has constitutional hierarchy, a constitutional category was thus removed to be replaced by a legal fiction based on the postulates of the postmodern queer ideology. Namely, that individuals are sexually neutral, that they themselves construct their sex or gender through socio-discursive and imaginary practices, and that their biological functions are dissociated from their psycho-affective identity in such a way that it is possible to assemble or disassemble them, buy them, sell them, or consume them *on demand*.

Many will try installing the story of a great feminist victory. I prefer telling the queer appropriation of a story that used to be feminist. The postmodern-queer usurpation of Argentine feminism has been a slow work of colonization which, in the case of the struggle for legal abortion, became particularly visible when the green Campaign’ scarves was flanked by the multicolored gay flag, and the stereotyped pink and light blue trans one. Symbolic takeover, if any. Crucially, the bill discussed and sanctioned last December is not the bill that was prepared and consulted during 3 decades by the National Campaign, but the queer bill delivered to Congress in an opportunistic time by the decision of the President together with the Ministry of Genders, and that was supposedly written by Vilma Ibarra, current Legal and Technical Secretary of the Nation.

There are substantial differences between the two bills. The Campaign’s bill, of course, recognized the legal category of “woman” in each and every one of its articles, also including the category of “gestating person” for those women who deeply do not feel to be such (<http://www.abortolegal.com.ar/proyecto-de-ley-presentado-por-la-campana/>). The bill submitted by the national Government, on the other hand, introduces the category of “woman” in its first four articles, specifically when it invokes the CEDAW and the Convention of Belém do Pará, and in the remaining 18 articles it encompasses both categories of “women” and “persons with other gender identities” in the category of “gestating persons”, which becomes the key and integrating concept for all gender identities, including women

(<https://www.senado.gob.ar/parlamentario/comisiones/verExp/53.20/CD/PL>). In addition, the Government's bill, unlike the Campaign's one, introduces conscientious objection to women's human rights, extends term from 5 to 10 days to perform an abortion, and penalizes women who do it after the 14th week of pregnancy.

Given the validity of the Gender Identity Act (2012) it was expected that "gestating person" or some other category that names subjective deep feelings concerning sex would be included in this law along with "woman". Strictly speaking, the legal logic indicates that the term to be included is "man", following the legal registration of those persons, even though this would have exposed the flagrant fallacy –introduced by the Gender Identity Act itself– of equivocally using a same term. What by no means was expected is the erasure of "woman". It was not, even though we already knew that this was the queer claim. Indeed, we know that queer activism and its legal flyer, the Yogyakarta Principles, have as their main objective the elimination of the recording of sex in any public document (Yogyakarta Principles, no. 31). Here is their overwhelming victory: removing women as legal subjects of the right to abortion from the Argentinean Criminal Code.

Of course, it will be the real women and girls of flesh and blood, who have little to do with genders fictions, who will enjoy the right to the voluntary termination of pregnancy. But at what price? At the price of the symbolic erasing, and perpetuation of sexual and reproductive exploitation. Patriarchy has always been too expensive for us. Right or left, hetero, homo, bi, trans or whatever it self-determines, patriarchy's quintessence is and will be the male domination of women's reproductive capacity and the rupture of the mother-child relationship. Men have never overcome this obsession, and even worse when the only way to legate their genetic patrimony is to buy it.

Under this law, the trans-patriarchy manages to modify the legal language for the purpose of, first, disregarding sex as a protected category and, consequently, the entire national and international legal framework, which recognizes and guarantees the human rights of women based on their sex, particularly those concerning maternity (CEDAW, Art. 12). Second, if the "gestating person" is not necessarily a woman nor a mother, then men may gestate and register as fathers of their child, and ejaculatory persons may register as mothers even if they have provided the sperm for that gestation. Biological motherhood is no longer a condition exclusive of women, but includes men or ejaculating persons. The purpose is therefore to empty the categories of woman, mother, man or father of their legal and conceptual content, in order to turn them into empty signifiers capable of meaning anything. Third, "gestating person" is the category used in the bill to regulate surrogacy submitted to the Congress by the same deputies who promoted the voluntary interruption of pregnancy law. The dissociation of gestation as a desexualized and desubjectivized function enables its treatment in terms of an assisted technique, object of a legal contract. However, the surrogacy contracts determine that the exploited women do not have the right to abortion neither if they do not want the child gestated for others, nor if they want it.

In Argentina, where feminism has been swept away by queer ideology, we have given birth to the first abortion act without women. Let it serve at least as an example of the infinite adaptive capacity of the patriarchy. Abortion can also be a trans-patriarchal project and our

enthusiasm can be a hook. It is important that the South American sisters, strengthened by the legalization of abortion in Argentina, can anticipate the queer move and avoid falling into the trap of a perverse ideology, which has captured the State policies with the sponsorship of big pharma and sexual exploitation.