



Sexual and reproductive health without freedom?: The conflict over abortion in Argentina

¿Salud sexual y salud reproductiva sin libertad?: El
conflicto por el aborto en Argentina

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ABSTRACT The feminist movement installed a political debate regarding the right to abortion in 2018, proposing a transformation not only in the praxis of democracy, but also in its substance, through the decriminalization and legalization of abortion. In this context, this article seeks to describe and evaluate the democratic conflict produced based on the reasons and justifications underpinning the disputed content, in favor and against abortion. It also seeks to summarize the principal constitutional and conventional rulings that, by regulating abortion, shed light on the normative universe of what ought to be, in which human rights are inscribed. Lastly, the article attempts to explain how political control over body sovereignty was constructed and implemented in a patriarchal system, with sufficient legitimacy and power to last for centuries. Although there are no legal obstacles to the decriminalization and legalization of abortion, why is that the interests of freedom for women are not fully enabled within their array of rights, including the social right to health? What other interests, other than those of women, does this freedom represent?

KEY WORDS Abortion; Human Rights; Public Health; Argentina.

RESUMEN El movimiento feminista instaló el conflicto político por el derecho al aborto en 2018 y con él se propone consolidar una transformación en la sustancia de la democracia,—despenalización y legalización— y no solo en su praxis. En este contexto, este artículo se propone describir y valorar el conflicto en democracia sobre la base de las razones y fundamentos del contenido de la disputa, a favor y en contra del aborto, y reseñar las principales disposiciones constitucionales y convencionales que, al regular el aborto, echan luz acerca del universo normativo, del “deber ser”, en el que se inscribe como derecho humano. Por último, intentamos explicar cómo se construyó e instrumentó el control político de la soberanía de los cuerpos en un sistema patriarcal, con la legitimidad suficiente y con el poder necesario para perdurar durante siglos. Si bien no existen obstáculos jurídicos para la despenalización y la legalización del aborto, ¿por qué los intereses de libertad de las mujeres no están plenamente habilitados en todos sus derechos, entre ellos, en los derechos sociales de salud? o ¿qué otros intereses, que no sean los propios, representan esa libertad?

PALABRAS CLAVES Aborto; Derechos Humanos; Salud Pública; Argentina.

INTRODUCTION

The feminist movement installed the political debate over the right to abortion in Argentina in 2018, with the presentation of the Bill on Voluntary Termination of Pregnancy (VTP) in the National Congress, proposing a strong transformation not only in the substance of democracy – decriminalization and legalization – but also in its praxis. Decriminalization of abortion means that abortion would no longer amount to a criminal offense for women, and on the basis of such a decision, it would become a human right that would enforce the State to guarantee it. Legalization means recognizing the voluntary termination of pregnancy as a human right to freely decide over the body, thereby receiving from the State, as a guarantor of the social right to public health, the coverage of services involved in such practices. The proposed transformation aims for the consolidation of new rights, challenging inequalities, and providing more gender equality to democracy. The right is translated into political will in legal and illegal regulatory codes.⁽¹⁾

Those who oppose abortion, within their conservative interests, direct a strategy of *status quo* of democracy, in order to achieve their goals. The dispute is inscribed within two opposite scenarios: those who stand up for the rights of women to freely decide over their bodies and fight for the decriminalization and legalization of abortion, and those who attempt to fight against such freedom and oppose abortion rights. The *status quo* intends to keep controlling the freedom of women's bodies. Such freedom, as far as the Catholic doctrine is concerned, is associated with social-religious interest rather than personal interest, by guaranteeing with each birth the perpetuation of the human race. Interference based on religious beliefs in a matter of public interest, such as the acknowledgment and exercise of human rights, involves breaking the State of secular law, thereby retaining gender inequalities, such as deprivation of women's freedom of choice through impositions of private religious interests.

There are no constitutional nor conventional obstacles in the international human rights system for the decriminalization and legalization of abortion.⁽²⁾ If so, why is it that the interests of freedom for women are not fully enabled within their array of rights, including the social rights to health? Or, what other interests, other than those of women, does this freedom represent?

The praxis of democracy seems to have been changed by feminism after the debate on abortion, at least for three distinctive traits. Firstly, it restored the value of deliberative democracy as a legitimizing source of law, in which public debate and opposing opinions, in favor and against abortion, prevailed as institutionalized political practices and enabled the organization of the decision-making center. More than seven hundred speakers from a wide spectrum, who were also joined by experts, expressed themselves using a double political network basis (of individual and collective actors, both civil and institutional), each with different positions and arguments (ideological networks) in the National Congress and managed to transcend it.

Secondly, the debate also flooded the streets, homes, parks, universities, schools, and social networks. Far and wide throughout the country, people carried out demonstrations in an active, massive, and peaceful manner. The dynamic moved to the streets, and both sides redoubled their strategies and added other political actions to that of the Congress. Active participation constitutes a clear element of political influence for decision-making.

Thirdly, the convictions seem to have overcome, to a great extent, each party's agenda and guidelines. Women succeeded in exercising transversal leadership, neutralizing social, ideological, and even some religious differences. The massive participation of teenagers and young people aged between 14 and 24 was a new event, which represents, among other things, the mainstreaming of public interest.

Although this issue is not new within the feminist movement struggles, it is – explicitly so – within the current national political

scenario. The legislative accomplishment managed to put together decades of struggle, alliances, and pursuit of change. Abortion, as a conflict and topic for debate legitimized by President Macri, was driven by feminism to be part of the public agenda, was part of the legislative agenda, and was disputed in the government agenda. It interpellates the political inequalities of freedom, which lead to some other inequalities, such as those concerning economical situations and social classes, perpetuated by the current institutionalized democracy. Objective reasons for social and political justice support the feminist transformations promoted in a constitutionally secular State and seek to displace the beliefs which still govern the public interest, although they belong to the private sector.

Abortion is a social problem of the State regarding public interest. Its immediate precedent occurred in the 1990s and in the first decade of the 2000s with the struggle led by the National Congress seeking the approval of a national policy that guarantees the exercise of sexual and reproductive rights. The feminist challenge⁽¹⁾ consisted of the interpellation of the conservative patriarchal order to accelerate the creation of a new one, which, inspired by freedom, seeks to achieve a power balance between genders through the political acquisition of full citizenship for women. For such purpose, feminism is resolved to install sex in the public sphere and to set it apart from reproduction itself, handing over to women the possibility of associating them or not as powers to exercise sexual and reproductive rights. The patriarchal conservative order was responsible for embedding and monitoring sex under the sphere of the forbidden and making it a prisoner of procreation. This is a true political conflict pursuing social transformation.

The consensus achieved in 2002 enabled such conflict to be unlocked, with the creation of the National Program for Sexual Health and Responsible Procreation [*Programa Nacional de Salud Sexual y Procreación Responsable*] through Act 25673, which guarantees the exercise of sexual and

reproductive rights as a health matter, while still restricting women's freedom. This institutional acknowledgment means a turning point for feminism by enabling some significant changes, although not sufficient, in the substance of our democracy. Despite these and other subsequent advances which we shall see later on, full-body sovereignty for women was not guaranteed nor recognized.

In this context, in the first place, this article seeks to describe and evaluate the democratic conflict of the reasons and basis underpinning the disputed content, in favor and against abortion. The praxis of democracy acquires singularity in this conflict, and it is analyzed with the sole purpose of identifying some aspects of its influence in the substance, yet it is not an object of study by itself.

In the second place, the main constitutional and conventional regulations are reviewed, which, by regulating abortion, shed light on the normative universe of "what ought to be," in which it is inscribed as a human right. Lastly, we attempt to explain how political control over sovereignty of bodies in a patriarchal system was built and ruled with sufficient legitimation and the required power to last for centuries. For that purpose, the *immunities*⁽³⁾ built in the national normative framework will be explained – resulting from alliances between law, politics and theology – which constitute the institutional arrangement that enabled the implementation of control in practice. To conclude, we will reexamine the institutionalizations won by feminism, which, as a concise chronicle, provide answers to the initial questions.

This paper has a more extensive research as a precedent, concerning a dissertation made between 2002 and 2006, at the Ph.D. in Economic Sciences at the Latin American Faculty of Social Sciences (FLACSO) [*Facultad Latinoamericana de Ciencias Sociales*], titled, "The citizen, sexual and reproductive rights of women in Argentina: 1990-2005" [*Los derechos de ciudadanía sexuales y reproductivos de la mujer in Argentina: 1990-2005*], led by Doctor Dora Barrancos.

THE POLITICAL CONSTRUCTION OF FREEDOM AND HEALTH SHELTER

We believe that both the decriminalization and the legalization of abortion are now facing a political scenario that is sensitive toward gender inequalities, and favorable to the institutionalization of these changes. Sexual and reproductive rights, still with limitations based on the dogmas of a conservative patriarchal culture, succeeded in creating gender consciousness, supported by public numbers, while sexuality and reproduction were added to the public agenda as State matters.

From said political opening, at the end of the 20th century and beginnings of the 21st century, consecutive public actions, resulting from plural demands within the gender equality agenda, related directly or indirectly to sexuality and reproduction, and which had effective and progressive consequences in the life quality of democracy, were institutionalized: Act 24012 or Women's Quota Act [*Ley de cupo femenino*]; Act 26485 or Comprehensive Protection of Women Against Violence Act [*Ley de Protección Integral de las Mujeres*] and National Action Plan for the Prevention, Assistance and Eradication of Violence Against Women [*Plan Nacional de Acción para la Prevención, Asistencia y Erradicación de la Violencia contra las Mujeres*]; reform to the Criminal Code which replaces "offenses against honesty" with "offenses against sexual integrity;" special system of scholar absences for pregnant teenagers; Act 25929 or Humanized Childbirth Act [*Ley de Parto Humanizado*]; Act 26618 or Same-Sex Marriage Act [*Ley de Matrimonio Igualitario*]; Act 26743 or Gender Identity Act [*Ley de Identidad de Género*]; Act 26862 or Medically Assisted Reproduction Act [*Ley de Reproducción Médicamente Asistida*]; Act 26150 National Plan for Comprehensive Sexual Education [*Ley 26150 Programa Nacional de Educación Sexual Integral*]; Act 26364 or Human Trafficking Prevention and Punishment and Victim Assistance [*Ley 26364 de Prevención y Sanción de la Trata de Personas y Asistencia a sus Víctimas*]; among others.

The public regulation over sexuality and reproduction was the reason for the recurrent political conflict in the history of democracy in our country. When that conflict is concerned with rights, bibliography refers to the mutual agreement as *consensus iuris*.⁽⁴⁾ Although currently the *consensus iuris* stated the rupture of the divine interdependence contract, in terms of political practice, the positive laws and divine laws are still in conflict over the regulation of social relations which implicitly entails the acknowledgment of individuals as subjects of human rights.⁽⁵⁾ Those difficulties regarding the maintenance of a secular State illegitimately limit the dealing with gender inequalities. The recent conflict over abortion gave public visibility and certainty to this political restriction. Health, economical, and social inequalities are proved by official statistical data, clearly detailed in the Bill on Voluntary Termination of Pregnancy [*Proyecto de Ley de Interrupción voluntaria del Embarazo*], submitted to the National Congress on March 5th, 2018.

The purpose of the conflict is the creation and defense of particular identities, understood as political acquisitions and it adopts political character when, not only do they have a sufficient level of intensity to transcend the private sphere but also when the political acknowledgment of identity and the definition of collective purposes are at stake.⁽⁶⁾ Mutual agreement is its backside, and it primarily represents the mutual acknowledgment of plurality among opponents as a condition of possibility. By carrying out political activities, it allows for the coordination among aligned actors in an integration process with results in the public sphere.⁽⁴⁾

The logic of the conflict can promote the logic of consensus as long as the prevailing single rationality based on moral order (good-evil; friend-enemy; sacrificial-heroic), can be replaced by human rationality, based on plural order (fair-unfair; adversary-dissident). Then, the consensus could create a common political orientation, representative of a social order, which may act as a shelter of the public interest. On the other hand, the kind of acknowledgement established

among opponents also contributes to the logic of conflict and the possibility of mutual agreement. Fair enemies recognize legitimate rivalry in different situations. Absolute enemies do not recognize differences, they defend a single fair cause which suppresses every other closely related political activity.

Rather than conflict, social harmony is what governs the order of the sole religious purpose, given that the banning of freedom entails the suppression of the plurality of choices as well as eventualities, which trigger the disputes. The feminist movement fights for freedom of choice (continuation or termination of pregnancy) and acknowledges the eventualities (pregnancies) and motivations of the conflict.

In 2002, the National Program for Sexual Health and Responsible Procreation represented the *consensus iuris* reached as a result of the struggle for the sexual and reproductive rights started in the late 1980s. They were not acknowledged as areas related to women's body sovereignty, but to the public health sphere. Women's freedom of choice regarding sexual and reproductive health was sidestepped, and the *consensus iuris* sought shelter within public health.

The right to planned parenthood was strategically relevant in said sheltering since it enabled the access to some kind of freedom of choice regarding reproductive health (quantity and frequency of births), but not access to full freedom (continuation or termination of pregnancy) for women. Maternity continued to be an obligation and has always had public health guarantees; on the contrary, non-maternity has never had public health guarantees. The discrimination for reproductive conditions acts as a barrier for the exercise of freedom of choice and of access to public health: mothers are included, while women who do not desire motherhood are not.

Conservative Catholicism, the main opponent to sexual and reproductive freedom, understands these entitlements as a threat to the parameters regarding organization and natural regulation of life and society, which hold its doctrine and magisterium. This unequal and patriarchal order is underpinned

in a tightly-knit relationship between sexuality and reproduction that naturalizes and legitimizes this connection in which women's bodies, sexualities and identities are depersonalized in order to be objectified in the reproductive field as mothers.

In this respect, the family is a "single communal entity" characterized by unity and indissolubility. It is naturally intended to last, not out of the individual will, but out of divine design. By being the "life shrine," the server of life, the basis of all human rights is nestled within it: the right to life. A woman's calling is, by a religious and altruist self-sacrifice, to be a mother, a "defender of life and family educator." Within the family, women are those who hold and promote the values of life and faith; they have been "the guardian angel of the Christian soul of this continent"⁽⁷⁾ for centuries. They give and defend life. Thus, sexuality is a natural condition and sexual identity is derived only from sexual objectivity.

Individual freedom is not inherent to individuals, in fact it belongs to God and such origin determines the possibility and the boundaries of said freedom. Men are not free by themselves but because they are creatures of God, and their freedom is a "divine gift." Women, on the contrary, are immune to freedom. God does not give them freedom but retains them with a social religious interest: maternity is an obligation, as a condition for the reproduction and transcendence of the human race.

Women are the only ones privileged by nature to consecrate life. Because of that, women as procreators are as sacred as life itself, given that, every time they give birth, it is also a "rebirth" of God. When procreating women are preserved, the Catholic order maintains its own existence as a perception of the world. Women are stripped of their interest over their bodies and subjected to the religious interest of others.

The feminist dispute is aimed at obtaining specific and not abstract freedom related to rights inherent to personhood, which has prevented women from being their own proprietors for centuries.⁽¹⁾ It is based on

personal rights by understanding that both sexuality and reproduction are aspects of the individual, legally associated with the sphere of subjective rights, providing individual power to those decisions within these scenarios. This legal record imposes “not to do” duties on public power in order to avoid affecting certain liberties. It intends to create a full citizenship in which the freedom of women’s bodies is a conquest of political identity. Said conquest is based, in turn, on political justice reasons, understood as a need for equal liberties⁽⁸⁾ in the political community. Such equality also supposes having the same quantity of liberties for all individuals.⁽¹⁾

On the other hand, the political identity is also based on social justice reasons, that is to say, those circumstances that affect psychosocial and material conditions and opportunities of life. Cultural, economical, and social inequalities act as barriers preventing women from developing their abilities and their exercise of sexual and reproductive rights. The clandestinity of abortion, followed by the risk of death, constitutes a social problem with cruel displays of social and political injustice suffered by women who are deprived of their freedom of choice and access to public health.

Freedom over women’s bodies enables them to fully exercise their identitarian political capabilities. By privileging such freedom, feminism promotes women toward the public sphere of the political community and the exercise of full citizenship. Conservative Catholicism, by denying that freedom, forces women into the maternity and domestic private sphere, preventing them from exercising their rights as citizens. Without independence, there are not enough conditions for citizenship to consolidate a full insertion of women into the political community.

Unless freedom is ensured, public health cannot guarantee proper health conditions by itself. The principle of human rights interdependence (civil, political, economical, social, and cultural rights) so demands, as long as some of them require the presence of the others to exist. They cannot be restricted without affecting each other given that their results are always intertwined.

This repertoire of contents is influenced by the praxis of democracy and it is reflected in the decision-making process. In the recent debate on abortion, deliberative democracy managed to restore its validity and legitimacy. The variety and plurality of discourse among the multiple actors gave solid and precise arguments in favor and against abortion which were picked up in legislative decisions. In that deliberation and argumentation, the aims of those who promote changes and those who oppose them are well noted.

Outside the institutional sphere of Congress, the prominence of people in the streets was very significant, both in terms of magnitude, due to its massive nature, and in terms of the diversity of strategies used in political actions by both political networks, which gained influence over the decision-making process. The transversality of public interest was visible and observable through active, massive, and plural political participation. The active participation of those who were against it was also numerous.

Argentine society revealed its political maturity together with its capability of struggling for the institutionalization of gender equality, in this case through the demand for human rights to the decriminalization and legalization of abortion. The paradox here is that society supports and demands the right to abortion, but their political representatives, both in the Legislative and the Executive spheres, expressed rejection for the most part. Once more, the crisis of political representation comes to the surface.

CONSTITUTIONAL AND CONVENTIONAL PROVISIONS ON ABORTION

The bill on Voluntary Termination of Pregnancy, presented at the Chamber of Deputies by the National Campaign for Legal, Safe and Free Abortion Rights (File No. 0230-D-2018), and that was discussed and dealt with in both Chambers of the National Congress in recent months, is constitutional. In addition,

it reveals the effective fulfillment of the obligations undertaken by the Argentine State by acknowledging the international human rights system instruments, including those regarding abortion.

However, in the repertoire presented by the opposition, the legal rhetoric of unconstitutionality and violation of human rights is one of their useful resources together with confessionals, in order to support the positions of legislators in the National Congress. We shall focus on unravelling these particular legal points.

The point we make is that the growth process with more equality and freedom has contributed to the promotion of a political maturity of society which is greater than what most of our political class shows. This can be verified by the active and massive participation of Argentine society regarding the demand for abortion human rights. Most of society demanded and supported abortion. Nonetheless, the political class, most of which is part of the Legislative and Executive Branches, is reluctant to these changes, even when demanded by the society it supposedly represents.

Our National Constitution, section 75, subsection 23, expressly establishes the need to,

Legislate and promote positive action measures that ensure real equality of opportunities and treatment as well as full enjoyment and exercise of the rights acknowledged by this Constitution and by the existing International Treaties on human rights, particularly regarding [...] women...⁽⁹⁾

Next, the subsection contains a social security and child protection system from pregnancy to the end of basic education; and, regarding the mother, protection during pregnancy up to the lactation period.

The reference to equality, both real and of treatment, as well as to those rights acknowledged by the international human rights system regarding women, results in positive interpretations to the abortion rights acknowledgment. By evoking reasons for the equality of opportunities and treatment of all

women, we believe the purpose is to avoid two gender inequality situations. The first situation involves any discrimination that could be based on reproductive conditions in order to be able to access public health. The second situation involves, any kind of social class discrimination to which some women could be subjugated to, such as those who live in poverty, as well as their unwelcomed reproductive condition, in order to be able to access public health.

The National Constitution does not expressly mention abortion. However, the National Constitutional Convention took it into account in its deliberations, and the passed formulation of section 75, subsection 23, appeared to allow, implicitly, its consideration. In this way, during the discussion held in the 34th Gathering, 3rd Regular Session on August 19th, 1994, of the National Constitutional Convention, about section 75, subsection 23, one of the opinions of a minority, which was not approved, suggested a different wording for said subsection given that, on the terms with which the winning decision was drafted, it allowed carrying out an abortion within the first trimester of pregnancy.⁽¹⁰⁾

In international law, abortion has been addressed particularly by the treaties' bodies (committees) – in charge of monitoring the validity and fulfillment of human rights by the States – ; by international courts, particularly the Inter-American Court of Human Rights, which is the ultimate interpreter of the American Convention of Human Rights; by the preparatory documents of the agreements and conventions and by the contributions resulting from the circumstances of their execution.

Therefore, the so-called *corpus juris* of human rights international law is composed of a group of interpretation instruments and bodies dedicated to the enforcement of its provisions, which regulate the relationships between sovereign States, that go beyond the treaty or convention text itself and altogether offers a more specific, complete, and direct approach to abortion.

In the *corpus juris*, decriminalization is recommended by most of the committees

on human rights, which are authorized to interpret and enforce said regulations.^(11,12,13) Moreover, such committees put emphasis on ensuring that the access to such services, in conformity with human rights standards, is included in State duties in order to eradicate discrimination against women and guarantee their right to health as well as to other basic rights.⁽¹³⁾ The States' latest developments in rights enforcement are introduced by means of closing observations, general observations or general recommendations. These define the standards that must be used to determine the fulfillment of State obligations incurred in human rights treaties.

The focal point of our analysis are the provisions of the six main human rights international treaties. By means of a specific provision, each treaty creates its own monitoring body (committee) and presents the aims of its term.⁽¹⁴⁾ Thus, the Convention on the Elimination of All Forms of Discrimination Against Women creates the Committee on the Elimination of Discrimination against Women (CEDAW); the Convention on the Rights of the Child creates the Committee on the Rights of the Child (CRD); the International Covenant on Civil and Political Rights creates the Human Rights Committee (HRC); the International Covenant on Economic, Social and Cultural Rights creates the Committee on Economic, Social and Cultural Rights (CESCR); the International Convention on the Elimination of All Forms of Racial Discrimination creates the Committee on the Elimination of Racial Discrimination (CERD); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment creates the Committee against Torture (CAT).

In conclusion, we list below the main expressions declared by the Committees (General Recommendations, General Observations and Closing Observations) of the six treaties in question regarding the evaluation process of the member States in regards to the enforcement of the human rights provisions on abortion:^(11,12,13,15)

- Five of the six committees, except for the Committee on the Elimination of Racial

Discrimination, have expressed their concern on illegal or unsafe abortions.

- The Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have explicitly required that the member States review the legislation that criminalizes abortion.
- Most committees, except for the Committee on the Elimination of Racial Discrimination, have linked illegal and unsafe abortions to the high maternal mortality rate. Although this guideline is established when explicitly analyzing abortion restrictions as a violation of women's right to life, four out of the six committees have expressed their concern about the impact abortion-related deaths have on women's rights to life and health.
- The Committee on the Rights of the Child has acknowledged the connection between the lack of access of teenagers to planned parenthood information and services and maternal mortality, which is a consequence of high teenage pregnancy rates as well as of unsafe abortions. It recommends greater access to reproductive health programs and services for teenagers as a measure to decrease maternal mortality.
- The Committee on the Rights of the Child, in their 2010, 2016, and 2018 reports, explicitly recommended that the Argentine State should decriminalize voluntary abortion.
- The committees have addressed the issue of the barriers that women have to face when trying to access legal abortion services.
- The Committee on the Elimination of Discrimination against Women and the Human Rights Committee have addressed the issue of conscientious objection. The former argues that the provisions that allow for conscientious objection, without ensuring women an alternative to access abortion, violate women's sexual and reproductive rights.
- The Committee on Economic, Social and Cultural Rights, in its Observation No. 14

acknowledges women's human right to comprehensive health. This right is also mentioned in the Covenant on Economic, Social and Cultural Rights. The bill discussed in the National Congress ensures said right when, in a situation of risk or affectation of her health, a woman who has full legal capacity to exercise her rights uses it to terminate the pregnancy.

- Most of the committees have expressed their concern regarding sex-selective abortion. The Committee on the Elimination of Discrimination against Women has called upon the member States in order to develop strategies to overcome this practice, transforming traditional stereotypes regarding women's role in society. The Committee on the Rights of the Child calls for a more rigorous implementation of the laws forbidding sex-selective abortions.

Women, as established in international human rights standards, have the right to access comprehensive reproductive health services, including abortion, that ensure the right to life, health, intimacy, and non-discrimination. Such rights are violated when the States make abortion services unreachable for the women who need them.⁽¹²⁾ International human rights law establishes that the States can be held accountable for: passing restricting laws regarding abortion; not ensuring the access to abortion when it is legal as well as in view of the high death and injury rate of women who are forced to turn to unsafe abortions.

Decisions regarding abortion not only have an impact on the freedom over women's bodies, but they also jeopardize the human rights inherent to their personhood, dignity, and personal integrity.

Lastly, the current demands of some committees regarding abortion so that they issue more effective recommendations to the member States in order for them to result in liability for their non-compliance and that are based on their own existing provisions are noteworthy. On the one hand, the Committee on the Elimination of Discrimination against Women could use their General Recommendation No. 24 as a basis in order to

hold States accountable for not ensuring safe and legal abortion services to women facing an unwanted pregnancy.⁽¹²⁾

On the other hand, the Committee against Torture could approach the issue of abortion on its closing Observations, stating that the purposeful refusal to provide abortion services constitutes a form of violence against women and can be considered torture or inhuman or cruel treatment. It would imply a broadening of the definition of torture or cruel, inhuman or degrading treatment so that it includes the cases of deliberate denial of access to public health services regarding abortion to women. In addition, violence against women, including the severe threat to their life and health resulting from the denial of access to public health services for safe abortions could be placed within the aims of the committee if it's based on Section 1 of the Convention against Torture.⁽¹²⁾

In short, in the legal field, National supreme laws do not hinder neither the decriminalization nor the legalization of abortion.

ALLIANCES TO CONTROL FREEDOM: INDUCED MATERNAL IMMUNITY

Argentine democracy has defined and implemented procedures to sneak in religious interests and to institutionalize them as if they were public. This statement is based on the argument regarding the legal and political control over the sovereignty of women's bodies through the institutionalization of mediation maneuvers between law, politics, and theology, which ease the public imposition of the private, Catholic, and conservative order. Such maneuvers, called *natural immunity* and *induced maternal immunity*,⁽³⁾ managed to be challenged and, to a large extent, weakened by the feminist movement by means of massive political practices aimed at achieving equality, with a great institutional impact. The "Ni Una Menos" movement and the "National Campaign for Legal, Safe and Free Abortion" endorse this statement, among other collective declarations.

Women's bodies have been provided for their transcendental mission with a "*natural immunity*" as a sacred condition that later evolved toward a secular political construction to control freedom, which we call "*induced maternal immunity*."⁽¹⁾

Immunity, conceptually speaking, is both an exemption and a privilege. For some people, it is perceived as an exception regarding a general rule governing everyone. It is a peculiar condition, not common to all in society. From the canon law perspective, it includes not only the exemption of an obligation or a privilege, but it also interrupts the divine social circuit of the donation of individual freedom.⁽¹⁾

Women's bodies are "naturally immune" to freedom because they are the source of divine creation, their nature is to give life. If they could have freedom, as men do, the world's cosmovision would cease to be transcendental to be finite. The action of donating the freedom of women's bodies is viewed as unnatural in itself because it creates conditions to dispose of the decision of giving life or not.

This religious interest, with social-patriarchal purposes, supports and explains the conservative Catholicism anti-rights position on abortion. Abortion is the main and only right capable of risking such interest because women's freedom of choice, pregnancy continuation or termination, threatens the Catholic essence and transcendence.

Furthermore, patriarchal society completes "*natural immunity*" and secularizes it by building an "*induced maternal immunity*." In order to ensure the preservation of the religious (and social) interest over women's bodies, at the expense of personal interest, maternal control is reinforced but by means of a rodeo procedure⁽³⁾ that shifts the transcendence ritual. Said political and legal procedure entails the neutralization of freedom to control it through health. The rights to sexual and reproductive health, as well as the right to planned parenthood, ensure women, by means of a national policy of Sexual

Health and Responsible Procreation, the exercise of a certain amount of freedom, but not absolute freedom. Therefore, healthy maternity is protected but without explicitly stating the lack of absolute freedom to exercise other decisions, such as the voluntary termination of pregnancy and the absence of public health services to make it a reality.

The law, as well as politics,⁽³⁾ are useful for the immunity mechanism when creating regulations that preserve the mother figure and prevent the free development of women who do not desire motherhood. The law achieves this because it retains the mother through a compensation mechanism: it ensures her access to sexual and reproductive health as an answer to a greater demand for the exercise of freedom of the body in order to decide. "*Induced maternal immunity*" expresses a complex construction of alliances to control the protection of the body as an object of political interest.

For its part, theology promotes the immunity procedure for three purposes. Firstly, it sets out to shelter motherhood's saving value and, by means of it, control its freedom and consequences of sin. Secondly, it manages to prevent the generalization of abortion because of its infinite scope rather than preventing the spreading of the disinterest in motherhood. Said prevention logic of generalization is also present in the theory of sin.

Thus, the Church's social doctrine does not condemn the women who have an abortion, even though her behaviour is deemed sinful and subject to forgiveness, because it understands that there were hardships of life that resulted in that situation.⁽¹⁶⁾ It does condemn those who make abortion a professional practice or favor its authorization and who allow its generalization (doctors, midwives, legislators, public officers, health workers).

Thirdly, through an alliance between theology and politics, a "sense of immediacy" prevails in public actions by synthesizing motherhood in a main biological content limited to the control over the body.

CLOSING WORDS

The conflict over abortion provided visibility and public certainty to the issues that secular law States face in order to consolidate themselves and allow for the progress of democracy's institutionality together with democratic life as everyday experiences. The patriarchal religious interest still governs public interest at the expense of restrictions to personal interest and equality. It imposes itself by means of a deprivation of rights, institutionalized through legal and political alliances, and executed by public and private actors closer to beliefs rather than to a democracy of rights.

Historical evidence is recurring regarding the State's confessionality, as are constant and systematic the struggles that the feminist movement went through against the patriarchal order to attain more equality to democracy. The praxis of the conflict showed that the recovery of deliberative democracy in congress, as well as the mass political participation of society in the institutions and on the streets, form multiple mechanisms of reinforcement of democracy, transversality of public interest, and broadening of gender equality rights. While society expressed political maturity and sensitivity for equality, most of the political class leading democracy seems to have positioned itself far away from these traits and even away from aspirations of change.

There are no legal barriers of supreme hierarchy, be it constitutional or conventional on human rights for the decriminalization or legalization of abortion. The current normative institutional agreements, imposed to materialize restrictive alliances on abortion, occur within domestic common law. In civil law, the exercise of the non-transferable right on the sovereignty of women's bodies is forbidden; in terms of social rights to health, the voluntary termination of pregnancy as a public health practice respectful of freedom is forbidden; and in criminal law, women who willingly have abortions are criminalized, and only some causes for abortion are legalized. Catholic religious interests were institutionalized as public interests.

On August 8th, 2018, the Chamber of Senators rejected the Bill on Voluntary Termination of Pregnancy, and it did not become law. However, feminism's political prominence, public incidence and mobilizing power increased. The feminist conquests in the name of equality were progressive in the fight for sexuality and reproduction, as steps toward freedom, and hand in hand with public health. They create an institutional chronicle of at least six steps, from the 1990s until today. Each step, with its passage, granted more rights to democracy and, with them, more gender equality to social life.

With transformation in view, August 8th added another step. The climb for the conquering of abortion rights is on track. Going over the last 24 years:

1. 1994 Amendment of the Constitution: acknowledgment of human sexual and reproductive rights.
2. Act 25673 on the creation of the National Program for Sexual Health and Responsible Procreation [*Programa Nacional de Salud Sexual y Procreación Responsable*], 2002, and Regulatory Executive Order 1282/2003: exercise of sexual and reproductive rights, right to planned parenthood (reversible contraception).
3. Act 26130 on Surgical Contraception: right to irreversible surgical contraception (tubal ligation and vasectomy).
4. Technical guidelines and conventions from the National Health Ministry, 2005-2015: standards for public comprehensive health care on legal terminations of pregnancies, respectful of sexual and reproductive rights; Guideline for the Improvement of Post Abortion Attention [*Guía para el Mejoramiento de la Atención Post Aborto*] (Order 989/2005 and its consecutive updates in 2007, 2009, 2015); Technical Guideline for Comprehensive Attention of Non-Punishable Abortions [*Guía Técnica para la Atención Integral de los Abortos no Punibles*] (Order 1184/2010).
5. National Supreme Court of Justice decision, "F.A.L without self-enforcing measure," 2012: right to abortion after rape.

6. Presentation and treatment of the Bill on Voluntary Termination of Pregnancy of the National Campaign for Legal, Safe and Free Abortion, in the National Congress, 2018 (preliminary approval, Chamber of Deputies, June 14th; rejected, Chamber of Senators, August 8th).

Confessional interest has gradually weakened as confirmed by these events, both personal interest and public interest are on track toward body sovereignty.

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