

Abortion is legal!

By Nuria Giniger

Associate Researcher at the National Scientific and Technical Research Council (CONICET)
and Assistant Professor at University of Buenos Aires

Introduction

On 30 December 2020, the National Senate of Argentina passed the “Ley de Interrupción Voluntaria del Embarazo” (The Voluntary Interruption of Pregnancy Law). This legalization of abortion is a decisive element in the history of women’s struggles in Argentina. In this paper, we theorize this historical victory in order to think about the limits of and conditions for women’s emancipation in this context. In doing so, we shall offer a genealogical account of the women’s struggles in question and look at how they reflect differences between individual rights and social emancipation.

Women’s labor and desire have historically and structurally been made invisible. Since the beginnings of capitalism, women have had a socially assigned duty regarding the reproduction of the labor force. The structural nature of the workload required from women made their work, their lives, and their everyday struggles invisible. Today, the tasks of childcare and reproductive labor are generally still carried out by women in the Western nuclear family. Income inequality between men and women—and the sense of ownership of men over women—continue to render women’s wage and domestic labor invisible.

In the long history of women’s emancipation, the struggle for legal abortion is one of the most interesting themes for several reasons. On the one hand, it is a struggle that concerns both motherhood and the family structure more broadly. On the other, it relates to what women want for themselves in their own lives. Finally, in Argentina, struggles over the legalization of abortion appealed to a broad, “green” mass movement, showing in turn that women truly make up half of society.

In what follows, we aim to provide a short history of abortion rights struggles in Argentina. In doing so, we show the different approaches that Marxist and liberal feminisms take to the path ahead.

Women and political struggles

As Silvia Federici (2003) argues, women’s struggle for emancipation started long before capitalism was consolidated. During the French Revolution, Olympe de Gouges argued in the *Declaration of the Rights of Woman and of the Female Citizen* (1791) that women are equal citizens and should have the same rights and benefits as men. Women and men ought to be equal before the law. Since then,

many women have fought for the legal recognition of equal rights concerning the right to vote, rights of shared parental authority and so on.

In Argentina, the Criminal (Penal) Code was passed in 1921. Articles 85 and 88 of this law introduced, with some variation, prohibitions and penalties for abortion practices. In 1926 “La Ley de Derechos Civiles de la Mujer” (The Women’s Civil Rights Act) was adopted to give women parental authority over children from any previous marriage and rights to work without the husband’s legal authorization. However, it is important to point out that married women were not yet legally independent, remaining subordinated to their husband’s legal representation (Giordano, 2014). For this period, as Barrancos argues (2014), women’s emancipation struggles can roughly be divided into two traditions in Argentina: One that centered liberal feminisms and which fought for legal recognition and equal rights, and another which centered communist and Marxist movements that understood women’s liberation as part of a broader project of working class emancipation.

After the second world war, on the initiative of Eva Perón, the 1949 Constitution specified that parental authority was to be equally shared between both parents. Though many civil rights were instituted during Peronism (1946-1955), none linked to reproduction were included. In 1951, universal suffrage was enacted, while divorce became possible as of 1954. Such laws worked towards legal equality for women inside the nuclear family and supported women’s capacity to make their own decisions. However, once again, these advancements did not question the axiomatic role of the nuclear family in organizing social reproduction. As a consequence, issues relating to abortion, family planning, sexualities and reproductive rights were not on the agenda. Moreover, whatever progress had initially been made was soon reversed after the military coup in 1955, with only universal suffrage remaining.

During the 1960s and 1970s, women’s participation in social and political conflicts in Latin America was extended to all aspects of class struggle. Significantly, women’s activism¹ during the surge of mass struggles in the 1960s and

1970s introduced into these struggles the importance of female emancipation as inherent to the project of human liberation. Women participated in the parties’ and movements’ decisive organs, although in lesser proportion than men. In 1971, the leader of the Communist Party (PCA), Fanny Edelman, organized the publication a report to be presented to the National Conference of Communist Women, which detailed PCA women’s participation in the movements of workers, students and university staff, peasants and the professional classes, such as doctors, teachers, psychologists and so on. The report also brought to light gendered inequalities in working and living conditions. However, despite its critique of the bourgeois family, the report did not engage with issues of family planning, abortion or sexuality.

Women create a Campaign

The Argentinian dictatorship and genocide of the late 1970s drastically changed social relations in general and women’s activism in particular. After the dictatorship, groups of women began organizing themselves either under the umbrella of feminism (Self-consciousness Groups, as named by Maffia, 2011) or in collaboration with other organizations (such as those of housewives, women’s unions, communists, popular nationalists, popular liberal parties and various kinds of leftists). These struggles led to several outcomes. In 1985, a law on the sharing of paternal authority was passed. In 1986, women from different traditions and parties, unions and other organization summoned the first “Encuentro Nacional de Mujeres” (ENM, National Women’s Meeting), and in 1987 the law on divorce was reinstated.

In 1990, certain women from the leading group of the ENM put together a special committee called “Aborto como Derecho” (“Abortion as a Right”) and proposed that the 28 September be remembered as the “Día Latinoamericano y Caribeño por el Derecho al Aborto” (Latin America and Caribbean Day for the Decriminalization and Legalization of Abortion) (Tarducci, 2018). In 1992, they presented a draft for the legalization

of abortion to the National Congress for the first time. In the midst of an economic crisis, the “Aborto como derecho” committee was formed in 2001 as an assembly of women’s fractions from all leftist political organizations. In 2003, the assembly organized a weekly abortion workshop as part of the ENM, bringing together more than 300 people. On this occasion, green scarves were established as a symbol for the fight for legal abortion. One year later, at the ENM, the “Campaña Nacional por el Aborto Legal, Seguro y Gratuito” (National Campaign for Legal, Safe, and Free Abortion) was born with the following slogan: “Educación sexual para decidir, Anticonceptivos para no abortar y Aborto legal para no morir” (Education to decide, contraceptives to not abort, legal abortion to not die).

The Campaña, as it is now commonly known, developed a handful of initiatives to show the impact of clandestine abortions. They introduced new slogans including: “legal abortion in hospitals”. At the beginning of the Campaña, there was another slogan that has since been left behind: “keep your rosaries away from our ovaries”. Taken together, these three slogans highlight three crucial aspects in the struggle for legal, safe and free abortion:

1) The need for comprehensive sexual education and the distribution of free contraceptives. The women’s movement proposed these initiatives against those who argued that if abortion was legal, all women would want to abort. This was a very common argument from those who opposed the legalization of abortion.

2) The importance of the State in supporting a public healthcare system. Middle- and upper-class women could always abort, but working-class women did not typically have the means to access it. Clandestine abortions were very common in Argentina: there were many “clandestine clinics” (typically apartments where a doctor and *sometimes* a nurse would carry out the procedure. In certain other cases, where woman were wealthy or held an important role in society, they could abort in a clinic (where medical doctors would then report the incident as a spontaneous abortion).

3) The need to problematize the division between the Catholic Church and the state, at least regarding reproductive health issues and family planning. In Argentina and in Latin America more generally, the Catholic Church plays a significant role in issues concerning sexualities and family relationships.

Although the Campaña proposed the legalization of abortion to the parliament a total of eight times during the 2000s and 2010s, it was not until 2018 that the law was passed for the first time in the National Congress. That day almost one million people wore green scarves. Despite their different agendas, various feminist struggles united on the issue of abortion and femicides to form what became known as the #NiUnaMenos movement.

Finally, on the morning of the 30 December 2020, the senate approved the “Ley de Acceso a la Interrupción Voluntaria del Embarazo” (The Voluntary Interruption of Pregnancy Law), which legalized free and voluntary abortion as carried out by public healthcare providers until 14 weeks of pregnancy.

The individual, society and the family

The struggle for legal, safe and free abortion has a long history. People who can become pregnant, irrespective of their gender, have always faced various kinds of social pressure regarding pregnancy and childrearing. As this article has sought to demonstrate, the women’s movement in Argentina—known today as the feminist movement—has walked a long and arduous path over the years, but it has garnered mass support.

The struggle for legal abortion became a point of convergence for many related struggles, such as those against the state, against the Catholic Church or for other groups whose objectives were more typical of the traditional women’s movement. In general, we can say that the struggle for legal abortion focused on two main subjects. The first was that of abortion as a healthcare right. This proved particularly important for poor and working-class women. As mentioned above, the

role of public healthcare was a subject of much debate. Some anarchist and liberal women opposed any kind of state intervention and proposed instead that abortions be carried out along the line of self-organization. This would involve the administration of the drug misoprostol by “socorrista” (lifeguard) organizations. Conversely, contemporary left-wing and popular nationalist parties claimed that the state should be the guarantor of rights. It was typically these fractions of the women’s movement that rallied under the slogan “legal abortion in hospitals”.

Secondly, the feminist movement focused on the individual’s freedom to make their own sexual and reproductive choices. On this point, we can observe an interesting debate that resonated across the left. From an individual rights perspective, it is important to criticize submission and subjugation to both state and church. Any person who can become pregnant should have the right to choose if and when they wish to be a parent or not. However, this individual decision must engender a discussion of the family and which kinds of family society should nurture. In short, a narrow focus on abortion rights as mere individual choice forecloses a broader critique of the institution of the nuclear family.

It is precisely in this sense that the discussion of legal abortion within the current feminist movement diverges from central Marxist-feminist critiques of the family as an entry point to a revolutionary critique of capitalist society. There are, to be sure, many nuances and contradictions at play in this issue. For example, gender and class oppression are important elements that link together various issues such as the “women’s strike”, union participation, and the recognition of class inequality in feminist movements. However, it is important to note that liberal feminism—including its punitive and carceral aspects—gained ground in the movement through the issues of abortion, femicides, gender violence and sexualities.

It is important to demonstrate these tensions as family planning and sexualities are still commonly perceived as individual matters. This is, of course, not entirely true. It is a position that has been inherited from liberal feminists and can

shown to be untenable by way of three arguments. First, the (neo)liberal idea that we can somehow freely choose our sexuality or our sexual practices dramatically contrasts with the reality of everyday struggles and with the elevated number of femicides. In the current era of the COVID pandemic, this liberal illusion reveals itself as farcical given the overwhelming evidence that no one can survive alone.

Second, the abortion law has not resolved any of the other gender-related social inequalities. There are still millions of unemployed women whose wages are still lower than those of men. LGBT+ persons are still discriminated against in the workplace, in the health care system and so on. There is a need for structural accounts rather than the idea that family planning is an individual decision.

Third, the social organization of capitalism needs a family system based on non-waged, feminized labor. To produce anything (goods, services, knowledge) capitalism needs workers. These workers need to be raised and fed. While private property remains at the core of the capitalist organization of society, these tasks are all carried out privately, i.e. inside the family, or bought as care services. Therefore, to discuss the concept of the family is, in a sense, to discuss the totality of capitalist organization, which includes sexualities, desire, nourishment, education, housing, clothing and leisure.

In many ways, the growing feminist movement in Argentina is democratic and horizontal, and in many cases it is also self-financed and self-managing. It is truly of the masses, and follows a trajectory of its own. It provides fertile ground for the discussion of sexuality and gender politics as part of a broader political project toward human emancipation. In this sense, and in the search for a world where we are socially equal, different and free, Engels wrote: “With the passage of the means of production into common property, the individual family ceases to be the economic unit of society. Private housekeeping is transformed into a social industry. The care and education of the children becomes a public matter. Society takes care of all children equally, irrespective of whether they are born in wedlock or not.” (1884: 81).

In this essay, we have given a genealogical account of the movement that fought for abortion, and we have provided an account of its liberal limitations. Women have always been organized in Argentina, whether the struggle for abortion rights were in focus or not. At times, it was the idea of women as both workers and as members of the

working class that took precedence. At others, the focus was on equality in terms of individual rights. In this text, we have shown that with the historical victory of legal abortion, we have been presented with an historical opportunity to discuss the institution of the family in a wider societal perspective for the purpose of human emancipation.

Notes

- ¹ The development of feminism as a mass movement in the United States had no echo in Argentina during the same period (Bustamente, 2016).

References

- Barrancos, Dora (2014a) "Participación política y luchas por el sufragio femenino en Argentina (1900-1947)". Cuadernos Inter.c.a.mbio sobre Centroamérica y el Caribe, Vol 11, No. 1 (2014), 15-27
- Elgorreaga, Florencia (2019) *Hijas de la patria. Mujeres, ideología y política en la literatura argentina (1810-1860)*. Buenos Aires: Tren en Movimiento
- Engels, Frederich (1884) *The Origin of the Family, Private Property and the State*. In: <https://www.marxists.org/archive/marx/works/1884/origin-family/index.htm>
- Federici, S. (2003). *Caliban and the witch: Women, the body and primitive accumulation*. Autonomedia ; Pluto.
- Giordano, Veronica (2014) "De "ciudadanas incapaces" a sujetos de "igualdad de derechos": Las transformaciones de los derechos civiles de las mujeres y del matrimonio en Argentina"; Universidad de Buenos Aires. Facultad de Ciencias Sociales; *Sociedad*; 33; 5-2014; 1-20
- Gramsci, Antonio (1977) *Cuadernos del carcere*. Edizione critica dell'Istituto Gramsci. A cura di Valentino Gerratana. Turim: Giulio Einaudi
- Kos, Ludwik & Zubkowski, Rabcewicz (1961) "El Derecho de Familia en la Unión Soviética". *Derecho PUCP: Revista de la Facultad de Derecho*, N°. 20, pp. 97-107
- Lenguita, Paula (2019) "Mujeres insurgentes en la antesala del Cordobazo". *Cuadernos de Historia. Serie economía y sociedad*, N° 23, 43-62
- Maffia, Diana (2011) *Mujeres pariendo historia*. Legislatura Porteña, Ciudad Autónoma de Buenos Aires.
- McGee Deutsch, S. (2016). "A Labor Filled With Love": Communists, Women, and Solidarity in Argentina, 1930-1946 (Trabajo inédito). University of Texas at El Paso.
- Tarducci, Mónica (2018) "Escenas claves de la lucha por el derecho al aborto en Argentina". *Salud Colectiva* 14 (3) Jul-Sep 2018
- Tesoriero, Victoria (2019) "La Marea Verde como nuevo actor político". *Cambios en el movimiento feminista argentino*. Rev. Plaza Pública, Año 12 - N° 22