

Abortion Liberalization Demand in Argentina: Legal Discourses as Site of Power Struggle: A Case Study on the Structural Case *Portal de Belén vs. Córdoba* (2012-2013)

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Abstract

In Argentina, women and feminist movements concentrated abortion liberalization demand repertoires of action in state juridical institutions displacing other repertoires of action focused on the politicization of sexuality. This switch implied a change in the construction of abortion. From being constructed as part of sexual liberation demands during the 1960s and the 1970s, to being constructed as part of reproductive rights and broader human rights discourses during the 1980s and the 1990s, and particularly at Courts since 2000s. Precisely, the objective of this article is to analyze how abortion demand was constructed by a women's organization defending a structural case at Court in Córdoba province (Argentina) between 2012-2013.

Key words

Abortion demand; feminist movement; juridification of sociopolitical conflict; feminist legal studies

Resumen

En Argentina, los movimientos de mujeres y feministas concentraron los repertorios de acción de la demanda por la liberalización del aborto en las instituciones jurídicas estatales, desplazando otros repertorios de acción concentrados en la politización de la sexualidad. Este desplazamiento implicó una modificación en la construcción del aborto. De construirse como parte de las demandas por la liberación sexual durante las décadas de 1960 y 1970, durante las décadas de 1980 y 1990 pasó a construirse como parte de los discursos sobre derechos reproductivos y, más ampliamente, de los derechos humanos, y sobre todo como parte de disputas judiciales a partir del año 2000. Precisamente, el objetivo de este artículo es analizar cómo construyó la demanda de aborto por una organización de mujeres en defensa de un caso estructural en la provincia de Córdoba (Argentina) entre 2012-2013.

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Palabras clave

Demanda de aborto; movimiento feminista; juridificación de conflicto sociopolítico; estudios jurídicos feministas

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1. Presentation

Abortion in Argentina is regulated in the criminal code under the indication model since 1921 (Bergallo 2010b).¹ This is, abortion is illegal but the criminal code establishes exceptions to the penalty² called legal abortion cases or non-punishable abortion cases (Bergallo 2010b). The criminal code establishes in the article 86 two non-punishable abortion cases. When women's life or health are in danger, and when pregnancy is consequence of sexual abuse. Since its sanction in 1921, the lack of implementation of non-punishable abortion practice in different sub-sectors of Argentinian healthcare system makes the indication model function as those in which abortion is completely banned (Bergallo 2013a, 2013b). Women and feminist organizations dispute to overturn the informal rules banning legal abortion practice availability in public healthcare services (Bergallo 2013a, 2013b) is part of the larger abortion liberalization demand in Argentina (Bergallo 2011).

In Argentina, abortion liberalization demand emerged during the 1960s and 1970s connected with other demands anchored in the politicization of sexuality (Bellucci 1997, 2014). The socio-political context was defined by a strong state birth control, and overlapped social images of women (Felitti 2006). On the one hand, social images of modern women slowly incorporated into the labor market and universities since 1940s. On the other hand, social images of traditional women as housewives, housekeepers and mothers defined by mass media, and government politics (Felitti 2006). These tensions and contradictions of the flourishing process of modernization (Cosse 2006) marked the context in which women, feminist and sexual liberation groups started to politicize and challenge conservative notions of sexuality, reproduction, traditional family, and mandatory motherhood (Bellucci 1997, Felitti 2006).

During the dictatorship, between 1976-1983, these grassroots organizations were confined to disappearance and silence. With the returning of democracy in 1983 women, feminist and sexual liberation organizations re-appeared (Bellucci and Rapisardi 2001). In this period, abortion liberalization demand was displaced from its anchor in the politicization of sexuality to a rights-based discourse, and the emergent discourse of reproductive rights and human rights (Bellucci 1997, 2014). Specifically, since the 2000s abortion liberalization demand repertoires of action (Tilly cited in Retamozo 2006) concentrated in legal discourses and state juridical institutions. These repertoires of action (Tilly cited in Retamozo 2006) comprehended, on the one hand, a long-term initiative aiming reform the current abortion legislation (Bergallo 2011). In 2007 the National Campaign for the right to legal, secure and gratuitous abortion drafted a law reform project, and took it to the National Congress for its debate.

On the other hand, short-term initiatives aiming implement the current abortion legislation (Bergallo 2011). The struggle to reinstate formal legality implied women and feminist organizations collaboration in drafting procedural guidelines in order to regulate non-punishable abortion practice to be available in public healthcare services (Bergallo 2013a, 2013b). Short-term initiatives also comprehended women and feminist organizations collaboration with the defense of non-punishable abortion judicial process at Courts (Bergallo 2011). Precisely, the general objective of this article is to analyze how abortion demand was constructed by a women's organization defending one of these non-punishable abortion judicial cases in Córdoba province between 2012-2013. Specifically, the aim of this article is to identify discourses through which abortion demand was brought to Court. Finally, the aim of this article is to explore the potentials and limits of the use of these

¹ Translation into English belongs to the author. In this article, all the translations from Spanish into English belong to the author.

² Within criminal literature there is a debate on the character of this exceptions and its consequences for implementation of abortion practice in healthcare system (Bergallo 2011, p. 42). This debate exceeds the purposes of this article.

discourses for achieving social change. The research strategy defined for this article is the single-case study.

The transcendence of this brief study is due to the fact that socio-legal studies focused on women and feminist movements legal initiatives for abortion liberalization demand in Argentina are limited (Bergallo 2011). This article attempts to explore abortion liberalization demand in Argentina from a feminist socio-legal perspective.

2. Methodology and methods³

2.1. Research strategy based on case study. Singular-case study

The research strategy of inquiry for this article is the singular-case study (Yin 2003, Denzin and Lincoln 2005, Stake 2005, Neiman and Quaranta 2007), and we have constructed and developed the research design based on the instrumental singular-case study (Stake 2005, p. 444).

2.1.1. Relevant range of cases

For this article we have constructed a relevant range of cases through strategic sampling (Mason 2002) of the wider universe of non-punishable abortion cases (Mason 2002 p. 124-135). Particularly, the selection of non-punishable abortion cases comprehended to identify non-punishable abortion cases since 2005 up to 2013 in the existing research, the national and provincial jurisprudence journals that periodically publish them, and in the national press.

Figure 1. Relevant range of non-punishable abortion cases, 2005-2013⁴

Relevant range of non-punishable abortion cases	
Individual cases	Structural cases
1. <i>C.P.d.P., A.K.</i> (2005, Buenos Aires).	15. <i>Profamilia</i> (2008, Buenos Aires).
2. <i>L., M.R.</i> (2006, Buenos Aires).	16. <i>Mujeres por la Igualdad de Oportunidades</i> (2012, Salta).
3. <i>C., S.M.</i> (2006, Mendoza).	17. <i>Portal de Belén vs. Córdoba province</i> (2012, Córdoba).
4. <i>O., M.V.</i> (2007, Mar del Plata).	18. <i>Profamilia</i> (2012, Buenos Aires).
5. <i>A.M.A.</i> (2007, Santa Fe).	19. <i>Actores múltiples</i> (2012, Buenos Aires).
6. <i>Defensora de P y M. s/ medida cautelar</i> (2007, Parana).	
7. <i>B.,L.A.</i> (2008, Mendoza).	
8. <i>S.G.N</i> (2008, Bahía Blanca).	
9. <i>F.N.M</i> (2009, Río Negro).	
10. <i>A., S.B.</i> (2009, Córdoba).	
11. <i>N.N.</i> (2009, Viedma).	
12. <i>F., A. L.</i> (2010, Chubut).	
13. <i>P., M. s/ autorización judicial</i> (2010, Chubut).	
14. <i>N., R.F</i> (2010, Bariloche).	

Total number of cases: 19

Source: Morán Faúndes *et al.* (2011), Bergallo (2013a) La Ley on line⁵, Diario La Nación, Diario Página 12, Diario Clarín.

³ This section has been substantially reduced for publishing.

⁴ Cases are identified as they appear in the jurisprudence reference, in the existing literature or in the national press.

⁵ La Ley (Thomson Reuters). Available form: <http://www.laleyonline.com.ar/> [Accessed 15 July 2013].

1.2. The significant case

Among these cases one case is considered significant (Mason 2002). The actors involved, the scenario of the dispute and the context give the significance of this case: state judicial institutions (scenario) as part of the feminist resistance since 2000s, but also as part of the conservative reaction to sexual politics since 1990s (social actors). This case is not an isolated legal case, but as part of a larger initiative in abortion liberalization demand (context).

2.2. Methods

2.2.1. Interviews

For this article, we have conducted face-to-face semi-structured interviews (Mason 2002). Data gathering through dialogue was recorded, and audio records were transcribed.

Figure 2. Interviews conducted

Interviews		
Interview	Interviewee	Duration, transcript and identification
Interview 1	Member of Catholics for Choice. Lawyer of the case, not legal representative of Catholic for Choice in the case.	Audio duration: 2 hours, 9 minutes. Transcript. Identified: Interviewee 1.
Interview 2	Lawyer of the case. Legal representative of Catholics for Choice in the case.	Audio duration: 1 hour, 31 minutes. Transcript. Identified: interviewee 2.
Interview 3	Lawyer. Experienced feminist litigant lawyer consulted about legal strategy by legal representatives of Catholics for Choice.	Audio duration: 1 hour, 16 minutes. Transcript. Identified: interviewee 3.

2.2.2. Using documents

For this article, we have used text-based documents. Generating data through documents included using judicial documents. All of them already existed.

The lawsuit, the answer to the lawsuit and all the evidence presented by the legal actors at Courts are written texts, documents. These documents are documents presented in Courts and are judicial documents, identified in this article as JD. These judicial documents and judges' resolutions are in a file, the judicial file identified in this article as JF. Data generation implied asking for documents at Court as well as requiring documents to the lawyers part of the singular case.

The data set is composed by six judicial documents presented by Catholics for Choice at Court.

Figure 3. Judicial file structure and judicial documents presented by Catholics for Choice

Judicial file structure and judicial documents presented by Catholics for Choice		
Instance	Intervention	Judicial document and its identification
First instance. Civil tribunal.	1. Intervention as third part interested requirement. 2. Lawsuit, injunction and the petition against legal abortion constitutionality response (defense). In legal representation of the collective interest of women.	1. Intervention. Identified as JD1. 2. Lawsuit response. Identified as JD2.
Second instance. Court of appeal.	3. Intervention as third part interested requirement and remedy of appeal against resolution admitting injunction. 4. Remedy of appeal against first instance final sentence.	3. Intervention at the Court of Appeal and remedy of appeal against injunction. Identified as JD3. 4. Remedy of appeal against first instance final sentence. Identified as JD4.
Third instance. Cordoba's Superior Tribunal.	5. Remedies of cassation and unconstitutionality against Court of appeal resolution confirming injunction. 6. Remedies of cassation against and unconstitutionality Court of appeal final sentence confirming part of first instance final sentence.	5. Remedies of cassation and unconstitutionality against Court of appeal resolution confirming injunction. Identified as JD5. 6. Remedies of cassation and unconstitutionality against Court of appeal final sentence. Identified as JD6.

2.3. Data analysis methods and process

2.3.1. Content analysis. Criteria for quality and validity of the results

Content analysis is one of the techniques that makes possible to address the research question, since it is a research method through which it is possible to detect and analyze words or concepts and establish meanings and connection between them (Sproule 2010, p. 325). The case study under analysis was designed to obtain an analytical generality, not statistical (Mason 2002, Yin 2003).

For analysis we have used the software Atlas.ti.

2.4. Ethical issues

When designing the process of sampling, generating and analyzing the data we have particularly considered issues related to ethics. The research process involved a systematic and rigorous process of self-reflexivity and critic regarding our standpoint and power position in every stage of the process (Tracy 2010, Willis 2010). I was one of the Catholics for Choice litigant lawyers in this case.

For this article we have gained informed consent to the interviewees and we have gained informed consent regarding the uses of judicial documents.

For the development of this project we have also considered the specific Code of Ethics approved by the International Sociological Association Executive Committee (International Sociological Association 2001).

3. Abortion liberalization demand in Argentina: from the politicization of sexuality to reproductive rights

Maybe because as it was related to juridical issues it was linked with the state, and nothing was recognized or demanded to the state, and less to pass legislation. Moreover, the state wanted to be destroyed, or replaced by other or by none, as anarchism stated. The great dilemma of the epoch [1960s/1970s] consisted of diffusing the use of contraceptive methods to separate sexuality from reproduction⁶ (Bellucci 2014, p. 217).

The dispute is in the state, in the sense that women demand abortion practice and legality, illegality, [...] justice and everything has to do with the state, with no recognition from the state. They [conservative actors] aim to create a context of no-service for women, the dispute is the service, the public healthcare service, that is the biggest legitimacy for this issue... (Interviewee I, p. 15).

The decade of 1960s was a decade of important political changes, marked by the French May of 1968 and the Cuban revolution of 1959 in the international scene, and the Cordobazo of 1969 in Argentina (Feijóo *et al.* 1990). Since the Cuban revolution, Latin American feminisms start to expand and consolidate in different countries (Vargas 2002, Femenias 2009). In Argentina, during the 1960s and 1970s feminist and sexual liberation groups started to challenge traditional notions of sexuality separating sexuality from reproduction, and to dispute representations of wanted and unwanted motherhood (Bellucci 1997, 2014, Felitti 2006, 2010).

During the last Peronist government⁷ the group *Política Sexual* (Sexual Politic) conformed by the *Unión Feminista Argentina* (UFA, Feminist Argentinian Union), the *Movimiento de Liberación Femenina* (MLF, Women's Liberation Movement) and the *Frente de Liberación Homosexual* (FLH, Homosexual Liberation Front) publicly opposed the government decree 659 of 1974 (Felitti 2010). The government decree restricted birth-control practices, the commercialization and distribution of contraceptive pills, and closed the hospital-based family-planning services in public hospitals⁸ (Felitti 2008, p. 8, Bellucci 2014). According to Bellucci (1997, 2014) abortion turned to be a political issue since then. In this period, abortion liberalization demand repertoires of action were especially connected with the politicization of sexuality within feminist and sexual liberation groups⁹.

One of the most visible groups was the UFA, a federation formed in 1970 with a "...non-hierarchical structure and principles, containing a diversity of currents and interests" (Bellucci 1997, p. 100). The consciousness-raising groups were characteristic of this organization (Felitti 2006). In 1971 was also formed the MLF. This latter organization tried to make visible abortion "...in the streets" (Bellucci 1997, p. 101), and in 1974 starts to publish *Persona*, the first feminist magazine of the time (Bellucci and Rapisardi 2001). They took the slogan *Legal and free abortion* from the French feminist campaign, although this still was not the moment to be offensive since abortion was still not decriminalized in many of the European countries, and started to be an issue in the United Nations a decade later or more (Bellucci 1997, 2014, Bellucci and Rapisardi 2001).

⁶ Piece of interview conducted to Osvaldo Baigorria, activist of Sexual Politic group (Bellucci 2014, p. 217).

⁷ Juan Perón was Argentinian president from 1973 up to 1974, and María Estella Martínez de Perón from 1974 up to 1976.

⁸ These restrictions remained during the last dictatorship between 1976-1983, and finally derogated by President Ricardo Alfonsín in 1986 (Felitti 2006, p. 5-8).

⁹ At the beginning of the XX century some groups had already started to politicize issues related to sexual freedom and contraception. For detailed analysis could be consulted Molyneux (1997) and Bellucci (1990).

During the dictatorship, between 1976-1983, grassroots organizations were confined to disappearance and silence. In the context of democratic transition and consolidation (Mazzei 2011) women, feminist and sexual liberation groups reappeared (Nari 1997). According to Bellucci (1997, p. 102), abortion was not going to be part of public demands although it was part of the debates within feminist groups, "...including the question whether or not to change the demand for *Legal and free abortion* to *Decriminalization of abortion*. During 1984 and in occasion of the International Women's Day, the Asociación de Trabajo y Estudios de la Mujer (ATEM, Woman's Work and Study Association) prepared a pamphlet that said *We don't want to have abortions, but we don't want to die from abortions either* (Bellucci 1997, p. 102). Decriminalization of abortion was a shared position among feminist groups (Bellucci 1997, 2014).

In these years, abortion becomes a topic for debate in the Encuentros Nacionales de Mujeres (ENM, National Women's Meetings). The ENM are national meetings celebrated every year in different cities of the country since 1986. Nowadays, more than forty thousand women participate each year -independently or as part of political parties, and women and feminist grassroots or non-governmental organizations (NGOs). These meetings are organized in thematic workshops developed during three days, and are based in the ideas of autonomy, self-management and financing, and horizontality (Alma and Lorenzo 2009). Every ENM finishes with a massive parade around the city in which are publicly expressed the diverse slogans of the meetings (Alma and Lorenzo 2009, p. 50). During these conferences decriminalization of abortion was presented as a "...demand and a right that must be won, and discussion on how to achieve this has continued to this day" (Bellucci 1997, p. 102).

Since 1987 two groups made abortion a main issue for their work (Bellucci 1997). On the one hand, the *Comisión por el Derecho al Aborto* (Commission for Abortion Right), part of the radical feminism that carried out direct action (Bellucci 1997). The Commission was conformed in 1988 and was pioneer promoting debates and disseminating information on contraception and decriminalization and legalization of abortion, and imposed the slogan *Contraception to decide, abortion not to die* (Di Marco 2010, p. 57). According to Sutton and Borland (2013, p. 199), the Commission was the first Argentinian organization for abortion rights. On the other hand the organization *Católicas por el Derecho a Decidir* (CDD, Catholics for Choice). CDD is part of the religious community and the feminist movement mobilized for the access to sexual and reproductive rights in the region, giving priority to the decriminalization and legalization of abortion (Vaggione 2007, p. 104).

In Argentina, CDD is established since 1993. According to Rosado-Nunes and Jurkewicz (1999, p. 291), the ideas of Catholics for Choice had repercussion among catholic feminists in Latin America, and at present Catholics for Choice have extended their work in eight countries in Latin America: Bolivia, Chile, Argentina, Perú, Brazil, Colombia, Mexico and Uruguay. In some countries like Argentina, the constitution of the organization was through the conformation of an non-governmental organization, and among their strategies are to articulate with different social actors, to influence public opinion, and to be a public face when issues regarding sexuality reproductive rights and religious issues appear in public sphere (Rosado-Nunes and Jurkewicz 1999, p. 291).

During these decades, feminist demands are articulated in the liberal frame of citizenship expansion and human rights-based discourses (Felitti 2006), and women and feminist movements start to articulate demands referred to reproductive health, responsible procreation, and reproductive rights (Bellucci 1997, 2014). Particularly transcendent was the Women's Global Network for Reproductive Rights (WGNRR). After a meeting in São Paulo and as a result of the debates within the WGNRR, several campaigns on reproductive rights were promoted in the region

(Bellucci 1997, p. 102, 2014). According to Bellucci (1997, p. 102) this implied a change in the conception of women, their sexuality and their rights, and "...with this shift in focus and language, abortion as a subject of political discourse began to fade away and be replaced –or some would say displaced- by that of reproductive rights".

In 1994 during the Constitutional Assembly, the president Carlos Menem tried to incorporate in the Constitution a clause to protect the right to life from the moment of conception until its natural death, promoted by the Vatican to condemn abortion and euthanasia (Bellucci 1997, p. 103). In response to this was conformed *Mujeres Autoconvocadas por el Derecho a Decidir en Libertad* (MADEL, Self Convened Assembly of Women for the Right to Decide in Freedom), which in its first open letter expressed they were politicizing abortion as a right to decide, demanded access to the practice in public healthcare services and gave a human rights framework to the fight (Bellucci 1997, p. 103-104). Since then, the situation of abortion in the country became more visible (Pettracci and Pecheny 2007, Brown 2008), and the use of the terms reproductive health and sexual and reproductive rights was publicly installed (Ciriza 2007, Pettracci 2007).

During 1980s and 1990s then, abortion liberalization repertoires of action (Tilly cited in Retamozo 2006) were displaced from the politicization of sexuality to legal discourses and state juridical institutions, particularly the discourse of reproductive health and reproductive rights, and disputes at Courts. This shift in abortion liberalization demand repertoires of action toward rights-based discourses and state legal institutions could be located in a broader sociopolitical phenomenon of juridification of social and political conflicts in which social actors appropriate legalistic discourses related to citizenship, rights and human rights, or appeal to courts to articulate demands¹⁰ (O'Donnell 2005, Domingo 2009, Huneus *et al.* 2010, in a similar sense Dagnino 2003, p. 4). Domingo (2009, p. 34-35) locates this phenomenon particularly in the contexts of legitimation of Latin American democracies and the democratic rights-based citizenship part of the social contract that legitimizes the model of liberal democratic state.

Domingo (2009, p. 44) identifies as one of the causes of this phenomenon a series of changes in civil society, being the national and international human rights NGOs the ones that contributed to form a base of knowledge of citizenship, rights and human rights that now is relevant for citizens rights abuses committed in democracy. The author also identifies as a cause of the juridification phenomenon the latest Latin American constitutional reforms that expanded rights recognition, and incorporated institutional reforms (Domingo 2009, p. 46-47). Particularly, the 1994 Argentinian National Constitutional reform expanded rights and remedies through the incorporation of human rights treaties (Rossetti 2007), and the habeas corpus and *amparo colectivo*¹¹ processes (Bergallo 2005, p. 7).

It is particularly since the 2000s when women and feminist movements concentrated abortion liberalization demand repertoires of action in state juridical institutions. These repertoires of action involved initiatives on abortion law reform at the National Congress, and initiatives on regulation of the current abortion legislation in the local/provincial legislatures, health ministers, healthcare services, and the defense of non-punishable abortion judicial processes at Courts (Bergallo 2011).

¹⁰ Specifically, some authors conceptualize the process of Court appeal in these cases as judicialization of politics (Domingo 2004, 2009, Sieder *et al.* 2005, Huneus *et al.* 2010).

¹¹ The legal figure *amparo* or *amparo colectivo* does not have an exact translation into English. *Amparo colectivo* is a brief and fast process articulated to defend fundamental rights and collective interests.

4. Long-term initiative: The National Campaign and the Voluntary interruption of pregnancy law reform project

Since 1986 up to 2013 abortion is a topic during the ENM in workshops such as Women and abortion, Contraception and abortion, Women, contraception and abortion, Right to abortion (Alma and Lorenzo 2009, p. 257-270) Women and right to abortion, Sexual and reproductive rights (ENM's official web pages).¹² The XVIII ENM held in Rosario city in 2003 constitutes a turning point in abortion demand (Di Marco 2010). During this ENM were held the first workshop on Strategies for the access to legal, secure and free abortion, and the Assembly for the right to abortion (Alma and Lorenzo 2009, Sutton and Borland 2013).

According to Alma and Lorenzo (2009, p. 159) what brought together groups and organizations to the Assembly was the idea of "...deciding over their own bodies". During the parade, the NGO CDD distributed green handkerchiefs under the slogans right to decide and decriminalization of abortion that thousands of women wore on their heads and necks, giving visibility to abortion liberalization demand (Alma and Lorenzo 2009, p. 162). On May 2004 was held the first National meeting for the right to legal, secure and gratuitous abortion in Buenos Aires city and in the XIX ENM in Mendoza city in 2004 the Assembly for the right to abortion was held again. The workshop was held again in the ENM in Mendoza city in 2004 and in the ENM in Mar del Plata city in 2005.

These events created the conditions necessary for holding the first plenary meeting in Cordoba city in 2005, in which participated more than seventy women from different groups and organizations (Anzorena and Zurbriggen 2013, p. 25) from the provinces of Salta, Jujuy, Neuquén, Mendoza, Catamarca, Buenos Aires, Santa Fe, Entre Ríos y Córdoba (Bellucci 2014). In this plenary meeting, feminist groups and organizations gave name to the National Campaign for the right to legal, secure and gratuitous abortion -from now on, the Campaign-, under the slogan Sexual education to decide, contraception no to abort, legal abortion not to die (Anzorena and Zurbriggen 2013, p. 25). The Campaign is a "...federal and plural articulation part of the long tradition of demands for women's rights in Argentina [...] and it is anchored in the experiences of fights for legal abortion in Argentina" (Anzorena and Zurbriggen 2013, p. 24).

In this meeting it was defined a public and simultaneous presentation of the Campaign in different cities of the country for May 28th, the International day of action for women's health, including street actions and a national signature collection in support of legal abortion (Anzorena and Zurbriggen 2013, p. 25). The signatures collected, were delivered to the National Parliament on November 25th, the International day for the elimination of violence against women. After this, the groups and organizations part of the Campaign collectively drafted a law reform project *Interrupción Voluntaria del Embarazo* (IVE, Voluntary Interruption of Pregnancy) (Anzorena and Zurbriggen 2013, p. 25). Since then, every group and organizations define their own political actions in their local contexts with the main objective of gaining the debate of the abortion law reform project in the National Congress (Anzorena and Zurbriggen 2013, p. 26).

The Campaign's abortion law reform project aims to reform the criminal code to modify the current indication model, and to adopt a mixed abortion regulation model that combines the model of abortion on demand during the first trimester of pregnancy with the indication model after this period of time (Bergallo 2011, p. 33).¹³ The law reform project also aims voluntary interruption of pregnancy practice to be guaranteed in public healthcare services, and to be incorporated in equal conditions with other health practices in prepaid healthcare coverage and private

¹² A detailed analysis of abortion framing in the ENM could be consulted in Sutton and Borland (2013).

¹³ A detailed analysis of the models of abortion juridical regulation and the dimensions of the process of abortion liberalization could be consulted Bergallo (2010b).

healthcare services. The law reform project was taken to the National Congress by the Campaign in 2007, and with deputy's supporting signatures¹⁴ in the years 2008, 2010 and 2012, loosing parliamentary technical conditions for debate the last three times. The project was presented for the last time on April 9th, 2014. According to Anzorena and Zurbriggen (2013, p. 23), the Campaign is a turning point in the fight for the right to abortion.¹⁵

5. Short-term initiatives: procedural guidelines and defense of non-punishable abortion judicial cases

Other repertoires of action concentrated in the state juridical institutions aim to enforce non-punishable abortion practice to be available in public healthcare services. These initiatives comprehended to regulate the current abortion legislation, and to defend non-punishable abortion judicial cases at Courts (Bergallo 2011). These repertoires of action are related with the fact that, since its regulation in the criminal code in 1921, abortion practice is not available in public healthcare services¹⁶ (Bergallo 2011, 2013a).¹⁷

5.1. *The procedural turn: abortion practice regulation*

Among these repertoires of action, one initiative involved women and feminist movement participation in drafting procedural guidelines in order to regulate non-punishable abortion practice to be available in the public healthcare services (Bergallo 2013a, 2013b). Procedural guidelines are medical and juridical guides that state the process that healthcare professionals have to follow when non-punishable abortion practice is demanded in healthcare services. Bergallo (2013a) defines this struggle to overturn informal rule banning abortion *procedural turn*.

In 2007 the National Ministry of Health adopted the *Guía técnica para la atención integral de los abortos no punibles* (Technical guideline for the comprehensive care of non-punishable abortions) promoted by the National Program of Sexual Health and Responsible Procreation. This Guideline was revised and updated in 2010. This regulatory guideline is enforceable only in national healthcare services, although some provinces adopted it to be enforced in the provincial healthcare services. From 2008 up to 2012, the regulatory guidelines moved to a series of greater regulations, with more specifications to the rules¹⁸. After the Supreme Court decided in the case *F., A.L. s/ medida autosatisfactiva* –from now on *F., A.L.*– in 2012 national and provincial legal debates expanded, and judicial battles redefined (Bergallo 2013a, 2013b)¹⁹.

5.2. *The defense of non-punishable abortion judicial cases*

From 2005 we started receiving and taking non-punishable abortion cases and make them visible. LMR, in 2006, was a very important case for the Campaign

¹⁴ Deputies signatures could be consulted in (Cámara de Diputados de la Nación 2014).

¹⁵ For the first time, in 1991 the *Multisectorial de la Mujer* (Multisectorial of Women) introduced a law reform project to the National Congress that included both the decriminalization of abortion and its provision in public healthcare services (Bellucci 1997, p. 102). We consider the Campaign's abortion law reform project as a turning point in abortion law reform demand, since it was drafted by the first federal and plural articulation mobilized for abortion liberalization in Argentina with this specific political aim. A detailed analysis of abortion law reform projects exceeds the purposes of this article.

¹⁶ Detailed analysis of the barriers for the access to non-punishable abortion practice could be consulted in Ramos *et al.* (2009), Ramón Michel (2011), González Prado (2013), and Ramón Michel *et al.* (2013).

¹⁷ For this article, we are considering feminist repertoires of action concentrated in state juridical institutions. We are not considering recent initiatives within women and feminist movements making available non-punishable abortion practice outside public healthcare system, and with different conceptions regarding legality/justice and feminist mobilization (for example, *Lesbianas y feministas por la decriminalización del aborto*, or *Socorristas en Red*).

¹⁸ A detailed analysis of the regulatory initiatives between 2007 and 2008 could be consulted in Menéndez (2011).

¹⁹ A detailed analysis of the regulatory initiatives after *F., A.L.* case could be consulted in Cavallo and Amette (2013).

because three organizations integrating the Campaign supported, accompanied and followed it. We took the case to the United Nations, and the Campaign was supporting [...] and we started to make solidarity in other non-punishable abortion cases; the Campaign was present in all cases, in all cases that appeared the Campaign was activated, as an immediate reaction (Interviewee 1, p. 17).

Besides, it is interesting because family members began to contact women's movement and organizations that were already part of the Campaign [...] another interesting experience [...] is that mothers and sisters part of these cases, in many of these cases started working on the Campaign, going to the National Women's Meetings, or going out in public [...] So I think it is also, well, that is what differentiate any lawyer to support a case from lawyers working on abortion right [...]. Generally, lawyers in this latter case relate to the abortion right, and to the Campaign (Interviewee 1, p. 18).

Another initiative has consisted in collaborating with the defense of non-punishable abortion judicial cases that increasingly got to Courts since 2005 (Bergallo 2013a, 2013b). Most of non-punishable abortion cases are individual cases, and involved judicial processes that got to Courts because non-punishable abortion practice demand was obstructed, delayed or denied in public healthcare services. In some of these cases, healthcare providers denied the realization of the practice, or required a judicial authorization for the realization of the practice (Ramón Michel 2011, Morán Faúndes *et al.* 2011, González Prado 2013). In some other cases, conservative actors of the civil society or part of judicial institutions required or ordered healthcare providers to suspend the realization of the practice. In these cases, women have been accompanied or assisted by lawyers and organizations part of women and feminist movements integrating the Campaign, or by lawyers from the jurisdiction where this happened (Bergallo 2013a). Women -or their legal representatives-, healthcare providers, civil society or institutional actors disputed the conditions for accessing the practice (Bergallo 2010a).

Among non-punishable abortion individual judicial cases, *L.M.R c/ Estado Argentino* -from now on L., M.R.- and the above-mentioned F., A.L. are particularly significant. L., M.R. case got to the United Nations Human Rights Committee in 2007 taken by three women and feminist organizations, the *Instituto de Género, Derecho y Desarrollo* (INSGENAR, Institute of Gender, Rights and Development), the *Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer* (CLADEM, Latin America and Caribbean Committee for the Defense of Women's Rights) and Catholics for Choice (Díaz *et al.* 2011). Organizations presented an individual communication to the Human Rights Committee denouncing healthcare providers and judicial actors denied the realization of a non-punishable abortion practice in the public healthcare services. The Committee decided in favor of the communication in 2011.

In 2012, the Supreme Court of the country decided on a non-punishable abortion case, the above-mentioned F., A.L. This case involved healthcare providers and judicial actors denial of a non-punishable abortion practice in the public healthcare services. The Supreme Court stated that non-punishable abortion legal figure is constitutional does not contradict human rights conventions. At the same time, the Supreme Court considered the context of medical and judicial denegation, dilation and obstruction of non-punishable abortion practice in the public healthcare services, and exhorted national and provincial governments to approve procedural guidelines in order to remove barriers of access to non-punishable abortion practice in public healthcare services. As mentioned above, this case is a turning point in the abortion liberalization demand since it accelerated regulatory initiatives, and redefined judicial battles²⁰ (Bergallo 2013a, 2013b).

²⁰ Conservative civil society and institutional actors intervened in legal disputes regarding sexuality and reproduction since 2000, and in non-punishable abortion legal disputes at Courts increasingly after F., A.L. A detailed analysis of these interventions in non-punishable abortion judicial battles between 2000

Some other non-punishable abortion cases involved judicial processes that were submitted before the Courts by civil society actors that dispute procedural guidelines previously pursued by women and feminist movements. Among them the case *Portal de Belén c/ Superior gobierno de la provincia de Córdoba (Portal de Belén vs. Córdoba province)*. Within a relevant range of cases, this case is considered significant on the one hand, because it occurred after the Supreme Court sentence in the case F., A.L. that redefined judicial battles and non-punishable abortion judicial cases. On the other hand, it is considered significant because of the actors involved in the legal action that have been central actors in the previous dispute for abortion liberalization since the 1990s. Equally, in this case are disputed and defined collective interests and then, abortion liberalization demand.

6. The case *Portal de Belén vs. Córdoba province*: structural case and site of power struggle

In Córdoba province there are national healthcare services under the national government regulation, and provincial healthcare services under the provincial government regulation. Like other provinces in the country, after the case F., A.L. decided by the Supreme Court in 2012, Córdoba province Ministry of Health enacted the resolution 93/12 on March 30th. This resolution included in its appendix the *Guía de atención de pacientes que soliciten la prácticas de aborto no punibles* (Guideline for patients requesting non-punishable abortion practices). The Ministry of Health drafted the procedural guideline with active collaboration of women and feminist organizations. This regulatory guideline states the procedure for cases in which women demand non-punishable abortion practices in provincial public healthcare services.

On April 12th 2012 the non-governmental organization Portal de Belén (the plaintiff) filed a lawsuit initiating an *amparo colectivo* process at provincial civil Courts against the Córdoba's province government to impede the enforcement of the provincial procedural guideline in provincial public healthcare services. Portal de Belén pursued this lawsuit alleging the defense of the collective interests of potential unborn children. This is a self-perceived pro-life non-governmental organization located in Córdoba since the 1990s, it has a house-shelter where receives lone mothers, and its primary objective is to defend life since conception until its natural death. Among other pro-life non-governmental organizations, Portal de Belén defends a conservative sexual politic in judicial instances, and other state institutions. For instance, Portal de Belén pursued a lawsuit -an *amparo colectivo*- against the National Ministry of Health in order to obtain a judicial order banning emergency contraception pill distribution. The Supreme Court sentenced in 2002.²¹

On April 13th 2012, the first instance judge admitted the lawsuit, and suspended partially the enforcement of the provincial procedural guideline in provincial public healthcare services. After the lawsuit was admitted the non-governmental organization Catholics for Choice claimed intervention in the legal case in defense of the collective interest of women potentially affected by the resolution of the case. Catholics for Choice legal position in the case is not as a defendant, but as a *third part interested*²² in the final resolution of the legal case. This allowed this non-governmental organization to make procedural and substantial defenses in the legal case. Other women and feminist organizations, public institutions, researchers and

and 2010 could be consulted in Morán Faúndes *et. al* 2011. The analysis of conservative actors politics displaced to legal discourses and institutions exceeds the purposes of this article.

²¹ An analysis of this case could be consulted in Peñas Defago and Morán Faúndes (2014).

²² *Third part interested* is a procedural legal figure that admits intervention in a legal case of persons that are not part of the legal case as plaintiffs or defendants but could be affected by the final resolution (final judgment or sentence) of that case. This procedural legal figure is grounded in the possibilities for those persons of making procedural and substantial defenses, and of incorporating evidence.

University professors intervened in the case as *amicus curiae*²³ supporting the enforcement of the provincial procedural guideline.²⁴

The case *Portal de Belén vs. Córdoba* in which civil society actors defend collective interests could be defined as a structural case and site of power struggle. Puga (2013, p. 17) understands that every collective process presumes a particular type of legal case: the structural case. In this type of legal case a group of persons potentially affected by the resolutions of the case do not intervene in the legal process although legal actors represent them and share with them a common or general interest (Puga 2013, p. 17). This general or common interest conforms a part of structural *litis -juridical conflict-*, that is the characteristic element of this type of legal case (Puga 2013, p. 48). Equally, Puga (2013, p. 49) states that in this type of legal cases judges have an active participation since the beginning and during the legal process. For example, from the moment certain legal actors participation is admitted or rejected, judges start to construct the *litis* and to define what is to be considered justiciable and part of the juridical conflict. This type of legal case, then, never refers to a pre-existing situation but to a construction of the juridical conflict (Puga 2013, p. 19).

Justiciable issues, juridical conflicts constructed, defined and re-defined in the legal case -as legal discourses- are a site of power struggle (Smart 1989, 1995). To define legal discourses as a site of power struggle Smart follows Michel Foucault's²⁵ conceptualization of power-truth-knowledge, conceiving power and discourses in its creative character, this is, as it "...creates resistance and local struggles that operate to bring about new forms of knowledge and resistance" (Smart 1989, p. 7). According to Smart (1989), law is a particular power discourse that could be thought as a truth discourse, positioning law itself as a hierarchical discourse. To understand legal discourse in its creative and constitutive character means to emphasize on legal discourse not as tool or instrument for liberation or oppression, but to look at it as an institutionalized site of power struggles, a place for articulating alternative visions in political confrontation (Smart 1989, p. 88-138).

Taking this on account, it is possible to define law as a creative discourse that "...has been part of the process of providing quite specific cultural meanings to women's bodies and [...] has, respectively, sexualized women's bodies..." (Smart 1989, p. 15). Moreover, Smart (1995, p. 191) argues "...we can begin to analyze law as a process of producing fixed gender identities rather than simply as the application of law to previously gendered subjects". This conceptualization of legal discourses as gendered instead of sexist or male²⁶ modifies the form of the enquiry,

²³ *Amicus curiae* (friends of the tribunal) is an intervention first regulated by the Supreme Court. Persons or organizations intervening in legal cases are usually experts that provide arguments to the tribunals. *Amicus curiae* are not part of the legal case, their intervention is voluntary and tribunals are not compelled to consider the arguments provided. *Amicus curiae* supporting Catholics for Choice position in the legal dispute were professors and researchers from the National University of Córdoba the Catholic University of Córdoba (UNC), and other academic institutions, the Sexual and Reproductive Rights Program of the Faculty of Law (UNC), the Penal Studies Association (APP) and the Institute for Comparative Studies in Penal and Social Sciences (INECIP), the Sexual Health and Responsible procreation National Program (PSSPR), dependent of the National Ministry of Health, Crisalida Popular Library Tucuman, the Association for Civil Rights (ADC), International Amnesty, the Center for Legal and Social Studies (CELS), and the Latin American Group of Justice and Gender (ELA).

²⁴ A detailed analysis of the judicial file and the judicial documents could be consulted in the methodology and methods section of this article.

²⁵ A detailed reference to Michel Foucault's work exceeds the purposes and extension of this article. However, it is unavoidable to address that Foucault's contribution on the concepts such as of power, knowledge, discourses of truth, power and subject/resistance, mechanisms of control and governmentality (Foucault 1978, 2005, 2008) had impact on feminist theory (Preciado 2010). Although Foucault did not developed a specific theory on law (Hunt 1992, Wickham 2002, 2006, in a different sense Rose and Valverde 1998, Golder and Fitzpatrick 2009), feminist scholars have considered the constitutive and productive character of discourses to re-address legal discourses as engendering and sexualizing. A debate on legal feminism and the work of Michel Foucault, particularly the work of Carol Smart, could be consulted in Munro (2001).

²⁶ This debate is presented below.

and understands legal discourse as a discourse that "...is productive not only of gender difference, but quite specific forms of polarized difference..." (Smart 1995, p. 192). This concept of legal discourses as gendered is related to the notion of engendering strategy, that Smart (1995, p. 194) synthesizes in the argument that a "...woman is a gendered subject position which legal discourse brings into being".

This feminist perspective on law, then, is immersed in broader debates on gender, particularly with those that criticize the essentialist and anatomic definitions of gender and sexuality. In a similar sense, Butler (1990, p. 8) argues that "...the juridical structures of language and politics constitute the contemporary field of power [...] and the task is to formulate within this constituted frame a critique of the categories of identity that contemporary juridical structures engender, naturalize, and immobilize".

7. Legal discourses through which abortion demand is constructed in the case *Portal de Belén vs. Córdoba province*

In structural cases, the group of persons potentially affected and the legal actors that represent them in the legal process share a common interest that constitutes the *litis* or collective interest. This common interest is shared as a whole, as a unity (Puga 2013, p. 18-19). The *litis* conforms a unique narrative of the legal case that is not particularized in the interests of the legal actors that intervene in the legal process (Puga 2013, p. 19). In the structural case there is a grievance that is conceived as the juridical consequence of the interest of the group of persons potentially affected²⁷ (Puga 2013, p. 48). In consequence, the collective interest is constructed through the definition of *rights violations*.

In this sense, the collective interest defended by Catholics for Choice in the legal case constitutes the core through which the demand on abortion and the legal subject are constructed. The discourses through which abortion demand is constructed are overlapped, anchored in the specific context of conservative politicization of women's and feminists organizations agendas, and at the same time immersed and permeated by the human rights rhetoric. In the following two titles are presented those discourses and its analysis.

7.1. *Abortion as a matter of health: no-discrimination and opportunity of access*

In the judicial documents presented by Catholics for Choice at Court, it is possible to address a group of legal discourses that define abortion and the collective interest of women. These discourses, as mentioned above, are defined as rights violations in response to both Portal de Belen lawsuit, and the first and second instance sentences. From the judicial documents do not emerge displaced discourses from one document to another. This is, the core of the judicial documents remains intact.²⁸

The right to **equality** and no **discrimination** [...] here is where it is included the right to conform a family, the rights to access to reproductive and sexual health services" (JD1, p. 10, JD2, p. 15).

The right to health care is the origin of government duty f guarantee **health care** in general and **reproductive health** in particular. This duty includes the implementation of measures to encourage voluntary and safe motherhood and pregnancy termination as permitted by law... (JD1, p. 9, JD2, p. 14).

²⁷ The author distinguishes the causes of the grievance in the different types of cases. For a detail explanation could be consulted Puga (2013, p. 27-47).

²⁸ All quotations translations belong to the authors. Bolds, italics and underlines remains as in the original documents. Due to the extension, the mention to international conventions and treaties are not included in quotations, but in the judicial documents each right violation refers to a human right treaty. A detailed analysis of the judicial file, the judicial documents and a reference to interviews could be consulted in the methodology and methods section of this article.

The right to **reproductive self-determination** is based on the right to plan their own families, and includes the right to determine freely and responsibly the number and spacing of children they already have information and resources to do" (JD1, p. 9, JD2, p. 10).

Forcing a woman to sustain a **forced pregnancy** is a **specific act of discrimination against women**, as they require an heroic conduct from women, since women are the only ones that can carry on the pregnancy (JD3, p. 10).

There is no doubt that the defense of **the right to health** is being debated here, beyond their obvious individual exercise, it is to be a "collective" right [...] and encompasses all women in reproductive age potential users of the health system in the province of Córdoba that seek access to the safe practice of abortion in the cases of art. 86 of the Criminal Code (JD1, p. 5, JD2, p. 15).

Clandestine abortion is one of the first causes of maternal death in our country, which could be reduced by ensuring access to health services [...] the objective is to reduce deaths from abortions performed in unsafe conditions, not to increase them forcing the clandestine practice. That is why the state should guarantee access to health services rather than deny it (JD1, p. 9-10, JD2, p. 15).

...Suspending the non-punishable abortions guideline has terrible consequences for poor women. That's why non-punishable abortion safely practiced is also a social **justice issue** (JD3, p. 10).

...Here, the reforms have much to do with access, trenching this initial discussion of where we go, [...] it was very clear to us that the access was essential, because even, I mean, in America today appears more clearly this need. I think that in the 73 was not so clear form feminisms in the United States than with that privacy was not enough; the lack of secure access, public health issue rather than the right to privacy, which established the Court [...] We are more concerned about access (Interview 1, p. 11).

Abortion, as a matter of health -the right to health- is anchored in the classic and social liberal discourse of equality understood as no-discrimination and as a matter of access to abortion practice. Equality as no-discrimination is defined by identifying the sexist content of law, this is, by addressing the undesirable and unacceptable (Smart 1995) narratives of the collective of women that legal discourses constitute. Then, equality is inscribed in the imaginary of universality, neutrality, and same treatment. Forced pregnancy is identified as an act of specific discrimination against women based in their reproductive capacities.

Equality as material access to abortion practice differentiates the collective of women. Its content is defined by chosen motherhood and without risks –at the same time, the content of health and reproductive health-, the possibility to conform a family and to choose how many children to have and with whom -women are already informed to choose motherhood-, as well as the possibility to access to reproductive healthcare services. At the same time, this is the specific content of reproductive rights and reproductive autonomy. As a matter of access, equality implies the material access to healthcare services, as an issue of social justice. Social justice implies avoiding maternal mortality as a consequence of abortion practiced in clandestine and unsafe conditions. All clandestine practices -defined as abortion practiced outside the public healthcare services- are identified as unsafe. The right to health, then, is also considered in its collective dimension.

Equality as a demand for legal reforms is anchored in the thought of feminisms developed in the XIX²⁹ and beginning of the XX century mostly addressed as feminisms of equality, liberal feminisms, and legal reformism. Classic liberal feminist discourses were anchored in the liberal paradigm of the epoch (Jaramillo 2009, p. 113). According to Amorós (2000, p. 100), feminism developed as an

²⁹ For Argentinian feminisms that articulated demands in terms of equality at the beginning of the XX century could be consulted Bellucci (1990).

emancipatory project in the parameters of the Enlightenment tradition under the ideas of equality, autonomy, and solidarity. The idea of citizenship arises as an abstraction and keeps women demand to be included in the public sphere in equal terms with men (Amorós 2000). Rights-based discourses are thought in terms of equal treatment and equal opportunities (Frazer and Lacey 1993, Chamallas 2003) through the adoption of universal categories in legal discourses, this is, denying gender differences³⁰.

According to Olsen (1995), legal reformists pose that legal discourses fail to be rational, objective, truly universal and principled when making irrational distinctions between women and men –not treating both the same. Then, formal equality and anti-discrimination legislation return to law the character of rational, objective and truly universal (Olsen 1995, p. 480). Identifying law with sexism, the critique on law is based on the idea that law disadvantages women by giving them fewer resources, by judging women behavior according to certain standards or by denying them equal opportunities (Smart 1995, p. 187-189). Eradicating discrimination relays on the incorporation of gender-neutral terminology, and eliminating sex-based classifications (Chamallas 2003). This challenges the normative order and re-interprets these practices as unacceptable, undesirable (Smart 1995, p. 190), and as an illegitimate act of differentiation (Siegel 1995, p. 60).

In the case of abortion, these arguments on equality emphasize abortion restrictions "...reflect status-based judgments about women, and [...] inflicts status based injuries on women" (Siegel 1995, p. 64). In the first case, imposing a duty on pregnant woman not otherwise imposed on citizens or family members, "...rarely noted because women are expected to perform the role of motherhood, and this role expectation makes reasonable, or invisible the imposition of forced motherhood" (Siegel 1995, p. 65). The justification and structure of abortion restriction reflects stereotypical assumptions about women (Siegel 1995). In the second case "...the injuries inflicted on women [...] reflect institutional practices of the society that would force women to bear children" (Siegel 1995, p. 96).

Although liberal feminisms have contributed to social change in terms of formal equality in the last century, these politics have been criticized as they are incapable of addressing gender inequality (Frazer and Lacey 1993, Lacey 1998, Jaramillo 2009). These critiques are nuanced in the present case, since the demand transcend the classical liberal notion of equality as formal equality, overlapping discourses from different philosophical and political traditions of feminism. In this case, equality is also defined as an issue of social justice, addressing the structural inequality within the collective of women. Social liberal arguments imply that liberty can only be exercised if material equality is ensured, and emphasizes the necessity of considering social inequalities (Jaramillo 2009). The debate equality vs. difference is one of the most significant debates within feminist legal thought (Morgan 1995, Olsen 1995, Jaramillo 2009).

On the one hand, in the case under analysis abortion as a matter of health, the right to health, is immediately connected with the state duty of guarantee the access. On the other hand, in the case under analysis abortion is constructed through the rhetoric of difference. This means to re-define, in the same demand, the conceptions of gender and sexuality as sameness. Abortion as matter of access to healthcare system, defined through reproductive rights and reproductive autonomy, chosen motherhood, family planning and maternal mortality is anchored in the rhetoric of difference. Then, equality as no-discrimination arguments are overlapped with discourses that engender women bodies to assert differences and particularities of the collective of women in relation to reproduction, motherhood and family.

³⁰ Historically, liberal feminisms have focused on demands for women enlargement of civil and political rights -mainly equal opportunities and access to education- political representation and participation, and formal labor and waged work (Chamallas 2003).

These overlapped legal discourses reflect the tensions within feminist approaches, but also the complexities of the historical conformation and roots of the abortion liberalization demand, that seems to be present in the case.

7.2. Abortion and privacy: physician-patient relationship and sexual harassment

The classical liberal argument of equality as no-discrimination is complemented by the notion of privacy. In this sense, undesirable and unacceptable narratives not only discriminate by requiring from women a supererogatory behaviour in relation to reproductive capacities. They also discriminate by requiring from them to prove the truth of sexual harassment and its consequent forced pregnancy. In the case, the particular conditions of sexuality under abuse are considered as part of a private sphere, a place where the state and its institutions should not intervene. At the same time, privacy is defined in relation to physician-patient relationship.

...right to **privacy** is protected in various international treaties [...] Its relationship with the right to health and reproductive rights issues becomes evidenced in professional medical confidentiality, **informed consent** and / or authorization for interventions on the body (JD1, p. 10, JD2, p. 15).

Requiring a criminal complaint under the idea of "protecting" women sexually abused, or that intend to check the "truth" that the pregnancy is the result of a rape implies to violate the **privacy** and **intimacy** women (JD2, p. 23).

Forcing a woman to carry out **forced pregnancy** that is the product of a rape, means to force her to an unacceptable sacrifice, heroic behavior, without justification that violates their fundamental rights as a person, becoming the state, in new perpetrator of institutional violence against that woman (JD5, p. 11).

Thus, the requirement to carry out a criminal complaint becomes supererogatory for women, requires her to adopt a heroic attitude, violating the principle of **equality**. At the same time, we cannot ignore the powerful symbolic effect and prescriptive projecting any obstacle or restriction of access to legal abortion from sexual violence. The principles of equality and non-discrimination require amending such disproportion to ensure that women do not support charges above the rest of society and to ensure that there are no rules that affect their rights in a differentiated way. The forced imposition of pregnancy resulting from sexual violence from obstruction and / or denial of legal abortion services implies the instrumentalization of women's bodies under gender stereotypes that result in violations of their equality, dignity and privacy (JD2, p. 23).

Reinforcing the right to health, the basis of the claim

On the other hand, if we consider that violence against women and pregnancy resulting from sexual violence affect the right to health, physical and mental integrity of women, pregnancy termination in these cases, is a measure aimed at protecting this right. In this sense, **the right to health constitutes a basis for access to abortion in cases of rape, as protecting the right of women to preserve their well-being and to avoid the deepening of physical harm, mental and social health** (JD2, p. 25, JD5, p. 28).

Abortion is also constructed in relation to privacy right. Privacy right is defined in relation to medical secret, informed consent and authorization of other people to intervene in the practice. Equally, privacy right is defined in relation to sexual abuse, since judges and physicians intervention requiring a criminal complaint against the abuser as a requisite for the realization of the practice implies its violation. This is, sexuality issues are displaced to the private sphere. At the same, abortion and privacy are defined in relation to violence. The right to live a life free of violence implies no intervention in case of sexual abuse to protect sexual integrity, not to be forced to continue with a pregnancy that is consequence of abuse and to have access to the non-punishable abortion practice. If the state does not guarantee these conditions, it is a second perpetrator of the violence – institutional violence. Finally, these arguments are condensed as a matter of

equality and non-discrimination. This is, when the state, physicians or judges do not guarantee these rights, are violating equality and no-discrimination.

Privacy right is a core issue on liberal feminisms discourses. Chamallas (2003, p. 33-34) emphasizes the impact that had the sentence *Roe vs. Wade*³¹ in the United State as a conquest of liberal feminisms demands. In the *Roe vs. Wade* judicial case judges consider abortion practice as a private issue, a negative freedom, and therefore a sphere where the state should not intervene (Siegel 1995, p. 43, West 2009). In the case under study, abortion is defined as a matter of health, of access to healthcare system and abortion is also defined in relation to privacy right, but privacy is addressed to define the physician-patient relationship and, within this relationship, to define issues regarding sexual abuse. Therefore, abortion and the legal subject of abortion are constructed through discourses of reproduction, motherhood (chosen motherhood, preventing maternal mortality) and family planning; referring to sexuality in the form of sexual abuse and displacing it to a private sphere. Equally, abortion practice is defined in relation to physician-patient relationship in the institutionalized-state healthcare system.

It is during the 1980s when feminisms start to revise the equal-treatment-rights approach and problematize difference, and introduced sexuality in debates (Chamallas 2003, p. 15). Particularly relevant within feminism has been the theorization of the sex-gender system³², since it made possible for feminists to unpack how it had been constructed through sexualized binaries presented as complementary and hierarchical (Smart 1989, Olsen 1995). Feminists understood sex as something biologically given, that bodies are born already sexed as male and female and just in a variable historicizing process are constituted as women and men (Mattio 2012, p. 88). The sex-gender theorization was not only descriptive but also aimed to destabilize the sexual order (Mattio 2012, p. 89). In fact, studies on sex-gender system contributed to demystify the traditional differential assignments to femininities and masculinities (Mattio 2012, p. 89). In the case, addressing differences in the construction of abortion attempt to demystify or destabilize assumptions regarding women, motherhood and their relation with traditional notions of family.

The theorization and consideration of differences and of sexuality had an impact on feminist understanding of law. Feminists started to question the little social change operated through law reforms based on the liberal framework of equality as sameness, and to question the idea of law as sexist. Different approaches gave complexity to the theorization of legal discourses since 1980s (Smart 1995). That is the case of those challenging the idea of legal discourses' abstractions and posing its restructuration by considering women's experiences. Among them, psychoanalytical approaches (mostly developed by Carol Gilligan) consider law not as sexist but as male, and state ethics of justice –considered as male- and ethics of caring –considered as female- could both be deployed in legal discourses (Smart 1995). According to these approaches including feminine differences could complement male legal discourses.

Some other approaches developed what the radical feminist³³ Catherine MacKinnon called the maleness of law (MacKinnon 1987, Smart 1995, p. 166). MacKinnon develops a theory of women's oppression through considerations of sexuality as a place of exploitation (Smart 1995), and considers objectivity and neutrality are male or masculine values and practices that come to be celebrated as universal. Then, law does not fail in applying some objective or neutral criterion to women but

³¹ The United States Supreme Court is briefly addressed here since it has been a leading decision in abortion issues, and has permeated abortion debates among feminist legal scholars.

³² Theoretical debates within feminist theories have been substantially reduced for publishing.

³³ The theorization of sexuality separated radical feminism from liberal feminisms, being radical feminism pioneer in considering sexuality as a political construction (Puleo 2010), and a site of exploitation (Barry 2010).

applies a criterion that is itself masculine (Smart 1995, p. 189). MacKinnon proposes a specific feminist method according to which women can collectively reconstitute what is common to women's experiences, and construct feminism in opposition to male power (Smart 1995, p. 190). Legal discourse needs to be replaced by a feminist jurisprudence (MacKinnon 1987). In the case under analysis, sexuality -referred expressively in the form of abuse- is displaced to a private sphere. A life free of violence implies the state -particularly judges and physicians - do not intervene in order to protect sexual integrity.

Based on the rising feminist theories of the epoch, the difference and radical legal feminisms have been questioned, at least, on two bases. The first one is related to the understanding of the sex-gender system and sexuality remaining in essentialist conceptions, and centering women as a homogeneous category as the subject of feminism. The second one referring to how construction of legal discourses from these approaches maintains the notion of law as a unitarian set of principles acting in one direction (Smart 1995, p. 185). According to Smart (1995), these conceptions on law do not challenge the power of law, but reinforces it.

Since 1980s in the United States, a group of studies receive Michel Foucault's work, particularly in conceptualizing sexuality as a power device in modern western societies, where sex is defined from its social regulation (Miskolci 2009, p. 152-154). More specifically, these group of studies are presented as "... a group of academic works in the field of sexuality studies that challenge the frames and power relations, analyzing how heterosexuality still remains as compulsive or as a normal pattern shaping social relations, subjectivities and even institutions" (Miskolci 2012, p. 4). According to Preciado (2010, p. 1) "...this transformation of feminism will take place through successive decentering of the female subject that transversally and simultaneously questions the natural and universal character of the feminine condition". Particularly, Judith Butler has presented a reformulation of the concept of gender, dislocating the epistemological and theoretical assumptions regarding formulations developed to explain the universal subordination of women (Piscitelli 2002, p. 12-14).

According to Piscitelli (2002, p. 14), Butler reflects the way sex and gender became considered as given by conducting a genealogy of how different discourses produce this duality and challenging the immutable character of sex. Butler (1990, p. 12-13) states the traditional understanding of the sex-gender system maintains sex as unconstructed and natural, and the "...body appears a passive medium on which cultural meanings are inscribed [...] but the body itself is a construction [...] Bodies cannot be said to have a significant existence prior to the mark of their gender". At the same time, "...the insistence upon the coherence and unity of the category of women has effectively refused the multiplicity of cultural, social, and political intersections in which the concrete array of women are constructed" (Butler 1990, p. 19-20). Equally, this implies that

Intelligible genders are those which in some sense institute and maintain relations of coherence and continuity among sex, gender, sexual practice, and desire. The cultural matrix through which gender identity has become intelligible requires that certain kinds of identities cannot exist -that is, those in which gender does not follow from sex and those in which the practices of desire do not follow from either sex or gender (Butler 1990, p. 23-24).

Then, Butler directs the critiques on the sex-gender system defined before based on the ideas that it still focused on a biological determinism, assumes unitarian and homogeneous subject for feminism, and a continuum between sex-gender-desire. Butler (2006) poses a counterpoint in the conceptualization of gender in relation to that given by MacKinnon. Butler (2006, p. 85) understands that in establishing gender as a result of heterosexual relationship of subordination MacKinnon assumes no heterosexual relationships outside domination, assumes no non-heterosexual relationships, and assumes that any gendered persons are free of such relations.

In this latter perspective are based feminist legal scholars that question the definition of legal discourses as sexist or male, and define legal discourses as gendered.

8. Suffering the paradoxes of rights³⁴

This analysis illuminates how law reform work that merely tinkers with systems to make them look more inclusive while living their most violent operations intact must be a concern of many social movements today [...] Activists considering using law as a reform tool, then, have to be extraordinarily vigilant to determine if we are actually strengthening and expanding various systems' capacities to harm, or if our work is part of dismantling these capacities (Spade 2011, p. 91).

As we have mentioned above, legal discourses and the legal case are considered as sites of power struggle and in their constitutive, productive character³⁵ (Smart 1995). In this particular case it implies, on the one hand, to address that in the context of legal initiatives for abortion liberalization, this structural case opened and delimited an arena for shaping, re-shaping and re-defining the larger demand. On the other hand, it implies to address that through legal discourses that construct abortion demand, abortion legal subject has been engendered and sexualized. In that sense, legal discourses have the potential of re-signifying a subject and give it a code of legibility (Butler 2006, Sabsay 2011). However, that re-definition need to be criticized considering the limits and exclusions operated by categories (Butler 2006, p. 63). In other words, the implications of legalization of politics it is to be re-thought (Brown 2002).

Brown (2002, p. 422) states that rights imply the possibility of re-inscribing a designation as women that protects and enable further regulation through that designation. At the same time, that designation implies that women are interpellated as women on the exercise of these rights, in a discursive and political context in which woman is "...iterated and reiterated" (Brown 2002, p. 423). Brown states that universal and differentiated character of rights creates a paradox, a dilemma. If rights are gender-universal or neutral, it potentially makes invisible and fixes power relationships. In the case under study, abortion has been addressed under the rhetoric of equality as non-discrimination, demanding the elimination of sex-based differences. In that sense, abortion demand is claimed in an abstract way that is incapable of addressing the particularities of women, and inequalities remain unaddressed (Brown 2002, p. 424). If rights are gender-specific, it fixes a subject position in its own subordination (Brown 2002, p. 423). This dilemma has other specific variations.

First, the cases in which legal reformers inscribe the truth and experiences of some women by pretending to do it for all women, and "...how can rights protect those from certain injuries, harms, without reifying the subject identities that the harms themselves produce?" (Brown 2002, p. 423). Then, the process through which legal discourses bring women into being (Smart 1995) as engendered and sexualized could reinforce the subject position is intended to challenge. In the case under analysis, abortion is constructed under the arguments of fertility, reproductive autonomy, chosen motherhood and family planning. At the same time, sexuality is only considered under the form of sexual abuse, in relation to violence and displaced to private sphere. Linked with this latter is the idea of impeding forced motherhood, clandestine abortions and maternal mortality. In this double move it is constituted a maternalized and a sexualized body under terror (Frug 1992) this is,

³⁴ This title belongs to the article *Suffering the paradoxes of rights* written by Wendy Brown (2002).

³⁵ We do not mean that the subject is just produced discursively. Sabsay (2011, p. 83) recovers the dimension Judith Butler is giving to agency in relation with this productive character as "...the constitution of political subjects that resisting or agreeing with them, articulating through them". In that sense, legal discourses are unfinished processes, never stop repeating and quotation itself to keep its own authority, and the subjects are subjective themselves through that practice of repetition and quotation, that is why always has a potential of being re-signified (Sabsay 2011, p. 82-83).

polarized in the pregnancy = motherhood / not motherhood, and pregnancy = abuse / violence or death frame.

Franke (1997, 2001, p. 182) poses how questions of sexuality within legal feminisms have been reduced to two concerns for women, dependency, the "...responsibilities that motherhood entails", and danger such as sexual harassment, rape, violence, etc. Then, Franke (2001, p. 182) argues that "...this concentration on the elimination of sexual danger and dependency for women risks making women's actual experience with pleasure invisible, [...] positions women solely as victims, and fails to empower our movement with women's curiosity, desire, adventure and success". Women's bodies are engendered and sexualized in the places are intended to challenge. Although these arguments are directed to criticize regulations of motherhood and sexual harassment in the U.S.A., certain parallels could be traced with the case under study.

Second, when women's rights are recognized in its specificity is the tendency to "...re-inscribe heterosexuality as defining both what women are and what constitutes women's vulnerability and violability" (Brown 2002, p. 424). In this sense, the dilemma emerges when gender is treated as synonymous with sexuality. As Brown (2002, p. 425) states "...The framing of reproductive freedom primarily in terms of accidental and unwanted pregnancy -the need for abortion- represents the first problem". Then, anchoring demands on reproductive autonomy, could reinforce essentialist constitutions of subjects, maintaining the continuum sex-gender-desire (Butler 1990, 2006) untouchable. In other words, "...the rights that women have and exercise as women tend to consolidate the regulative norms of gender and thus function at odds with challenging those norms" (Brown 2002, p. 425).

Therefore, understanding rights in its constitutive character challenges feminist legal discourses that consider rights as a tool for liberation and/or oppression, and maintain essentialist constitutions of subjects when defining women as subjects of rights.

9. Final thoughts

In the last decades, feminist movements have succeeded in installing public debate on issues related to genders and sexualities. At the same time, these movements have re-defined and re-signified the traditional understandings of inequality, law and politics, challenging contemporary democracies, and posing a profound socio-cultural change (Vaggione 2012). Especially, abortion liberalization demand in Argentina is anchored in tensions and complexities of the socio-political context in which has been articulated. During the 1960s and 1970s, abortion demand emerged in a socio-political context in which women were incorporating wedged labor, universities and in the representative political life, but at the same time in which the feminine mystique was reinforced (Felitti 2006, Cosse 2006) These years were also signed by a strong state birth control (Felitti 2006). However, women and feminist groups made the claim visible and articulated the demand close to demands that politicized sexuality.

During the 1980s and 1990s, abortion liberalization demand shifted and was located within the incipient discourses of reproductive rights, and human rights. The 1990s socio-political context was adverse, and the *Menemist* government was aligned with anti-abortion politics of the Vatican (Bellucci 1997, 2014). During these years emerged several women and feminist groups that claimed for abortion liberalization (Bellucci 2014). During the 2000s, abortion liberalization demand seemed more solid and women and feminist movements articulated national alliances for legal reform, and enforcement of the current abortion permissive legislation. Among these latter, legal initiatives comprehended the defense of non-punishable abortion cases at Courts. Through this article we have developed how a women's organization constructs abortion demand in on of these cases, the structural case *Portal de Belén vs. Córdoba* province.

As mentioned above, in the case under analysis abortion demand is constructed as a matter of health and equality, and through reproductive autonomy, forced pregnancy, chosen motherhood, family planning, and maternal mortality. On the one hand, equality in this case was defined as a matter of non-discrimination that requires the elimination of sex-based differentiations. The women's organization states the regulation banning abortion practice is sexist, legal discourses and regulations have a gender bias when judging women behavior according to certain standards or by denying them equal opportunities. Under this conception are the forced pregnancy and maternal mortality as the materiality of discrimination. On the other hand, equality is defined as a matter of equal access, which meant to differentiate the collective interests, and to address a specific treatment and protection to the state. The content of equality in this case was given by reproduction, reproductive autonomy, chosen motherhood, and the possibility of planning a family. At the same time, sexuality –as sexual abuse- is displaced to the private sphere. Paradoxically, these legal discourses as repertoires of action for social change maternalize and sexualize under terror women's bodies, reinscribing a legal subject that feminism are supposed to challenge.

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