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# The Travesti Critique of the Gender Identity Law in Argentina

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**Abstract** This article reviews the immediate *travesti* critique of the Argentine Gender Identity Law (law 26,743) in May 2012. Based on what was developed by Marlene Wayar, as an example of *sudaca* criticism and internal blasphemy, the *travesti* critique points out that the law does not recognize the specificity of the transvestite identity or its patent inequality, and it reintroduces the binary man/woman categories because it is capable of sanctioning only on the basis of a general population and within a liberal framework of state recognition. In this article the *travesti* critique of the Gender Identity Law is taken up to indicate a terrain of interrogations and challenges where the law becomes an instance of politicization, that is, where it becomes a field of strategic action and agency, but also a social tool and an instance of resistance, rejoinder, and reply.

**Keywords** Gender Identity Law in Argentina, trans interpretation, posthumanism, queer critique

*In memory of Mayte Amaya, trans activist, piquetera, and feminist from Córdoba, 1981–2017*

**A**fter Argentina's Gender Identity Law (law 26,743) was approved in May 2012, one particular reading gained special relevance regarding this legislation's significance amid the surrounding debate. On May 11, 2012, journalist and activist Marlene Wayar published the article "¿Qué pasó con la T?" ("What Happened to the T?"):

The law has passed: congratulations to those who worked tirelessly toward this goal, special regards to those we brought together to reach it, and great thanks to those who accompanied in solidarity. Now, let's get to its real-life impact. This is a law for those who want to maintain the man-woman norm. And for those of

1 us who had higher ambitions, it leaves us right where we were, or, better said, it  
2 relegates us to normalcy, into these solitary categories. (1)

3  
4 Unenthusiastically, Wayar writes against the celebratory spirit of the law's pass-  
5 ing and right to the heart of the activist camps. Wayar's article works to signal  
6 both the normative character and constrictive groupings of the man/woman  
7 categories. She highlights how the law holds up the erasure of a *travesti* identity.  
8 Exemplifying both *sudaca* criticism and a certain blasphemous quality,<sup>1</sup> the  
9 *travesti* critic calls attention to the fact that the law does not recognize the spe-  
10 cificities of travesti identity or the blatant inequalities travestis face (especially  
11 considering the marked structural disparities, including the increased precarity  
12 and vulnerability faced by trans and sexually dissident collectives).<sup>2</sup> As well, a  
13 *travesti* critique demonstrates how the law reintroduces the man/woman binary,  
14 founded as it is on lawmaking for the general populace and within a liberal  
15 framework of state recognition.

16 This article takes on the *travesti* critique (Wayar 2012) of the Gender  
17 Identity Law (*Ley de Identidad de Género*, LIG) to illuminate, problematize, and  
18 challenge where the law becomes an instance for politicizing, which is to say, this  
19 article notes the sites where the law becomes both a form of strategic and agential  
20 action and a social tool of resistance and contestation. With our sights set on  
21 reclaiming an attentive, wholistic reading of the legal text, this article first probes  
22 the activist lineages behind the law's success that was conceived and promoted  
23 by and from trans activisms, their allies, and LGBTQI coalitions and therefore  
24 operates as a social and political toolbox rather than a mere legal instrument.<sup>3</sup>  
25 Second, the article analyzes, as a starting point, the group of fundamental dis-  
26 placements introduced by the law, which assumes that such legal tools suggest a  
27 pursuit of the construction and recognition of a "*popular* and subaltern subject"  
28 (Figari 2016: 235).<sup>4</sup> Further, these slippages wage an argument for expanding the  
29 limits of intelligibility of sexed bodies and identities. The series of displacements  
30 permitted by the law within the state also significantly challenge the functionality  
31 of the complex technological matrix of sexual difference (Butler 1990).

32 This article's third section considers this series of slippages and resignifi-  
33 cations not only in a juridical, legal sense but also through the widening of the  
34 matrix of heterosexual intelligibility, the chain that ties sex, gender, and desire  
35 together. In this sense, the final section notes positions of intersection to illus-  
36 trate spaces of alliance and political encounter. In other words, the LIG is a set of  
37 legislative tools with a definitive political power that both exceeds and sustains its  
38 own normativity. It is a toolbox associated with the dejudicialization, depatho-  
39 logization, decriminalization, and destigmatization of diverse trans bodies and  
40 subjectivities.

### Contextualizing the Development and Debate

To know what one will be is to live as dead.

—Paul Nizan, *La conspiración*

The LIG arose from a process filled with debate and struggle by trans activists and their allies. The relatively recent nature of the struggle makes it easily traced through a series of predecessors in the 1990s to the organization and politicization of trans, travesti, and transsexual activists. Some important groups to mention are Travestis United, Association of Argentine Travestis, Organization of Travestis and Transsexuals of Argentina (led by Nadia Echazú), and Association for the Fight for Travesti Transsexual Identity (led by Lohana Berkins). The legislative proposals and political agendas around the right to identity and advocating for integrated attention to health care began to take shape in the first decades of the 2000s. These years saw the consolidation and greater public visibility of activism of sexual dissidence, along with the formation of the Anti-Discrimination Movement of Liberation (led by activist Diana Sacayán) in 2002; the Federación Argentina LGBT (FALGBT) in 2005; the National Front for the Gender Identity Law (Frente Nacional por la Ley de Identidad de Género, FNXLIG) in 2010; Trans Men of Argentina; and the Transgender Future organization; among so many others.

The LIG recognizes that the right to gender identity is a fundamental human right as stipulated by the Yogyakarta Principles<sup>5</sup>: “Gender identity is understood as the internal and individual way in which gender is perceived by persons, that can correspond or not to the gender assigned at birth, including the personal experience of the body. This can involve modifying bodily appearance or functions through pharmacological, surgical or other means, provided it is freely chosen” (LIG, article 2).<sup>6</sup> The right to gender identity, then, is directly linked to the modification of the body. Precisely for this reason, the right to identity cannot be separated from legal access to health care, “through pharmacological, surgical, or other means.” Additionally, it is not by any means coincidental that the introduction of equal health rights within the LIG can be upheld through the right to identity’s own normative forces. The granting of such rights is predicated on the concept of a human right to identity as inherent to the struggle of other human rights groups. Particularly, the Grandmothers and Mothers of the Plaza de Mayo facilitated a discourse on the “right to identity” by invoking it repeatedly with reference to the restitution of the infants and children taken during the final civic-military dictatorship (1976–83). The LIG came to resignify and displace the available social grammars around the social danger of *travestismo*, entrenched in hygienic, criminological, and legal discourses since the founding of the nation-state. Further, as a legacy of the second half of the twentieth century, the LIG

1 displaced transsexuality as the dominant rhetoric. As Leticia Sabsay (2011) and  
2 Anahí Farji Neer (2017) suggest, state regulation looks upon both *travestismo* and  
3 homosexuality as threats to the nation and has tried to eradicate them through a  
4 series of norms primarily instated through police edicts (introduced in the 1930s  
5 in Buenos Aires and the 1950s in other provinces) and, later, through misde-  
6 meanor codes (from the 1990s on).<sup>7</sup> Both types of legislation incentivized the  
7 penalizing, disciplining, and surveilling of illicit conduct, as well as the policing of  
8 public spaces (Sabsay 2011). These very codes and edicts guaranteed that crimi-  
9 nalization and police persecution remained a constant in the daily lives of trans  
10 and *travesti* sex workers, who were subjected to raids, pogroms, *razzias*, forced  
11 disappearances, random jailing, and systematic harassment. Although not pro-  
12 hibited by or classified in the penal code, trans sex work simultaneously became  
13 a de facto criminal act (Berkins and Fernández 2005; Berkins 2008, 2015).

14 Additionally, medical practice inherited and passed along ideas from  
15 the likes of Harry Benjamin's endocrinological discourse, Norman Fisk's North  
16 American psychiatry, John Money's medicalizing discourse, and even more  
17 renowned diagnostic manuals and protocols, like the *International Classification*  
18 *of Diseases* and the *Diagnostic and Statistical Manual of Mental Disorders*, both of  
19 which still hold currency in Argentina's biomedical discourse today (Farji Neer  
20 and Cuenya 2014; Farji Neer 2017). From the mid-1950s, biomedical and psychi-  
21 atric discourses made transsexuality an object of regulation by the parts of the  
22 legal and medical fields handled by the state. In Argentina, until the approval of  
23 the LIG, a standard did not exist to regulate access to trans rights. Rather con-  
24 trarily, a group of guidelines did exist that judges would cite in deciding each  
25 particular case. The precedents invoked by magistrate judges before each case  
26 were either the Law of Exercise of Medicine or the laws of identification of  
27 persons (law 24,540) and name (law 18,248). These established the obligation "not  
28 to surgically intervene in order to modify the sex of the infirm, save that such  
29 intervention be effected after a judicial authorization." These laws also stipulated  
30 "the duty to identify the newly born and established that these data could only be  
31 modified provided just motive to intercede as expressed in a judicial resolution"  
32 (Farji Neer 2017: 76–77).

33 Facing each verdict, request, or process, the judicial system proceeded to  
34 investigate the sexuality of trans persons, under the double understanding of  
35 *travestismo* as social danger and transsexuality as reigning device and rhetoric.  
36 Persons who wished to modify their sexed body and/or alter their genitalia and  
37 reproductive organs had to undergo a lengthy process under express judicial  
38 authorization. Through these protocols, trans people were obliged to submit  
39 themselves to medical examinations. These included psychiatric, psychological,  
40 and internal and external physical tests based on the idea that sex as assigned at

1 birth is natural. This rhetoric persisted in both medical evaluations and judicial  
2 readings of trans embodiments: “The idea of understanding the transsexual  
3 subject as someone trapped in the wrong body suggests that the criterion of  
4 hegemonic femininity and masculinity should remain unquestioned and unin-  
5 terrupted” (Litardo 2013: 243). Under this notion, the proof of sex was reified as a  
6 tool. That is to say, the existence of a wrong body presupposes its opposite, a true  
7 sex and a correct body. For the state’s institutions, then, genitivity, psychological  
8 determinisms, and the natural equivalence between body and identity all served as  
9 foundations to colonize varied corporealities and reaffirm the universality of the  
10 cissexual norm.<sup>8</sup> For Argentina, such protocols produced sex as constitutive of the  
11 ontological ends of gender and sexed bodies.

12 Medical evaluation and diagnostics became as much a legal requisite to  
13 access sex and documentation changes as an exercise of de facto legal persecution.  
14 They expressed the very form of power relations in which some bodies are forced  
15 to take medical and judicial steps even to gain access to the acknowledgment of  
16 their rights. These discourses provided the model for the law to unfold its strategy  
17 for making the human easier to identify: “Pathologizing is the first requisite along  
18 with the fulfillment of a certain appearance of the body: 1. Such a person’s body  
19 must resemble as closely as possible the body of the sex to which they decide to  
20 belong and 2. Additionally, such person must be irreversibly sterile” (Cabral 2012:  
21 258–59). The indisputable premise that sustained such authorizations and court  
22 verdicts could trace its argument backward through a long tradition of clearly  
23 eugenic and punitive threads cross-stitched throughout Argentine dogma.<sup>9</sup> As  
24 such, the sterilized trans body represented the political promise of a collective  
25 temporality—a normative, shared future. The monsters shall not multiply.<sup>10</sup> By  
26 requiring sterilization, the population could be reassured against the presence  
27 of potential risk of contagion, reproduction, and further growth of the trans  
28 demographic. Health scares or biopolitical construction functioned as a eugenic  
29 or thanato-political mishap. In the name of a life to protect—in the name of the  
30 paradigmatic model, the child—violence was deployed for the continuity of the  
31 species, the citizenry, the people.

### 32 33 **From Social Danger to Identity as Human Right**

34 Between 2008 and 2012 the provinces of Buenos Aires, Santa Fe, Santa Cruz, Río  
35 Negro, Neuquén, Formosa, and Tierra Del Fuego abolished or partially modified  
36 the articles pertaining to their misdemeanor codes that penalized acts of “dress-  
37 ing with clothes or attire of the opposite sex, indecorous outfits, exhibitionism, or  
38 causing public scandal” (Tierra Del Fuego provincial law 77/59, sanctioned in the  
39 year 1959).

40

1 Another important milestone occurred with the recognition of the  
2 Association of Struggle for Travesti-Transsexual Identity as a legal body, a  
3 recognition the group had been demanding for four years until the Supreme Justice  
4 Court offered a favorable opinion in 2006. The Supreme Justice Court considered,  
5 in that period, that elevating the quality of life of a systematically vulnerable group  
6 would benefit the entire community (Fernández, D’Uva, and Viturro 2008–9). In  
7 2010 the directive councils of several departments of different national universi-  
8 ties (La Plata, Buenos Aires, Comahue, Rosario, and Tucumán) created internal  
9 guidelines guaranteeing the recognition of identities within their institutions. The  
10 National University of Córdoba even instantiated guaranteed health care access  
11 and corresponding medical treatment through its teaching hospital (De Mauro  
12 Rucovsky 2015: 25).

13 Additionally in 2010—after the effective passing of gay marriage—two  
14 groups of trans and allied activists began to network and lobby with distinct  
15 political advocacy groups with their sights set on the passing of the LIG. From  
16 there, both the FALGBT and the FNXLIG brought forth judicial action in the form  
17 of protection orders and precautionary self-help measures. The groups strategized  
18 that the reading of judicial opinions and orders in their favor would secure juris-  
19 prudence and, consequently, advance the treatment of their bill. In any case, the  
20 activist groups procured judicial and legal measures that recognized sexual rights  
21 without required submission to medical or psychological examination and that  
22 sought to attend first and foremost to the autonomy of whomever demanded it.

23 The trans activism groups rallied around the FALGBT coalition and, in  
24 collaboration with the Spanish LGBT Federation, promoted two legal projects,  
25 including the filing of bills 7644-D-2010 and, with the help of FNXLIG, 8126-D-  
26 2010. The first version, bill 7644-D-2010, provoked a bit less controversy due to its  
27 mode of presentation. By separating the recognition of chosen name from that of  
28 access to medical care, the project created a hierarchy of the rights in play and, at  
29 the same time, an uneven reading between modes of embodiment and identifi-  
30 cation (Litardo 2015: 2). Ultimately, though, this first filing proved problematic  
31 because it demanded a stable, permanent gender identification and required the  
32 presentation of a legally certified declaration to claim the right to amend state  
33 documents. In one way or another, the sovereign role of the state presented itself  
34 as an administrative and surveilling apparatus of gender control, which danger-  
35 ously mirrored Spanish state law 3/2007 with a similarly pathologizing and pater-  
36 nalist spirit.

37 For their part, trans and allied activists united around the FNXLIG to  
38 draft a version of their own law (file 8126-D-2010, shared with the FALGBT),  
39 which served as the base for the ordered, definitive text of the LIG. The draft  
40 mostly concerned the amendment of identification documents and access to

1 medical treatment in order to construct a bodily image corresponding to gender  
2 identity. Both points were included in the Compulsory Medical Plan and made  
3 free of charge. This version was based on the Yogyakarta Principles of interna-  
4 tional legislation around questions of sexual orientation and gender identity,  
5 especially the cited second article regarding the definition of gender identity. After  
6 a series of advocacy negotiations in situ, two proposed amendments were elim-  
7 inated in the National Front's original project for the LIG: the second article  
8 referring to age limits "confirming the minimum age of sixteen years" and the  
9 ninth article on abusive therapies that forbid the genital mutilation of intersex  
10 persons: "It remains prohibited that intersexual children and adolescents be inter-  
11 vened surgically due to their intersexuality by the sole decision of a doctor, guardian  
12 or parents without taking into account the superior interest of the child or ado-  
13 lescent plainly and with their consent. Intersexuality does not constitute a pathology  
14 that needs be corrected clinically." As both activist groups came to an agreement  
15 and the Chamber of Deputies approved the bill in November 2011, the Gender  
16 Identity Law (no. 26,743) reached final approval in the Senate on May 9, 2012.

17 The LIG's legal and political standards mark a meaningful shift in the  
18 exercise of bodily autonomy ranging from administrative and judicial decision  
19 making on trans corporealities—that the civil servant on duty authorizes access  
20 to certain rights—to the autonomous power of decision on bodily modifications  
21 facilitated by the LIG. The sixth article of law 26,743 defines the procedures exactly  
22 as follows:

23  
24 The public officer will proceed—without any additional legal or administrative  
25 procedure required—to notify the amendment of the sex and the change of first  
26 name to the Civil Register . . . so it will issue a new birth certificate incorporating  
27 the said changes, and to issue a new national identity card reflecting the amended  
28 sex and the new first name as now recorded. Any reference to the current law in the  
29 amended birth certificate and in the new national identity document issued as a  
30 result of it is forbidden. The procedures for amending the records as described in  
31 the current law are free, personal and do not require the intervention of any agent  
32 or lawyer.

33  
34 With the same tone, another of the LIG's substantive changes effectively dis-  
35 mantled the biomedical, pathologizing standard (classified according to such  
36 psychiatric protocols as "gender dysphoria") that forced trans persons to be  
37 sterilized to gain access to bodily and biotechnological modifications. From there,  
38 even within the normative basis of the LIG, it addresses "bodily and biotech-  
39 nological modifications" as "a right of comprehensive health and, at the same  
40 time, are not to be an obligation." As such, the fourth article indicates the legal  
requirements:

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1 All persons requesting that their recorded sex be amended and their first name  
2 and images changed invoking the current law, must comply with the following  
3 requirements:

- 4 1. To prove that they have reached the minimum age of eighteen (18) years
- 5 2. To submit to the National Bureau of Vital Statistics or their corre-  
6 sponding district offices, a request stating that they fall under the  
7 protection of the current law and requesting the amendment of their  
8 birth certificate in the records and a new national identity card, with the  
9 same number as the original one.
- 10 3. To provide the new first name with which they want to be registered.

11 In no case will it be needed to prove that a surgical procedure for total or partial  
12 genital reassignment, hormonal therapies or any other psychological or medical  
13 treatment has taken place.

14  
15  
16 The law makes explicit that those same “surgical and hormonal procedures  
17 cannot be an obligatory requirement for the state as the price to recognize gender  
18 identity” (Cabral 2012: 1). As such, in human rights, the LIG is a politics of repa-  
19 ration that recognizes gender identity on two levels. First, following a mechanism  
20 of recognition, the national identity documents can be modified by new docu-  
21 ments in which self-identified gender identity is validated, as pronounced in the  
22 above-cited sixth article: “The public officer will proceed—without any addi-  
23 tional legal or administrative procedure required—to notify the amendment of  
24 the sex and the change of first name to the Civil Register.” The amendment of sex  
25 as well as change of name and image can be obtained beginning with a personal  
26 step, an expression of one’s own volition, at the offices of the Civil Register. No  
27 longer is it necessary to depend on judicial authorization, pathological certifi-  
28 cation, or a confirmation of will to receive surgical intervention. Likewise, such  
29 a right to be recognized also implies the amendment of other legal documents  
30 including a modified birth certificate.

31 Second, the law guarantees obligatory access to the medical system, as  
32 pronounced by the eleventh article: “Public health officials, be they from the  
33 state-, private- or trade union-run health insurance systems, must guarantee in  
34 an ongoing way the rights recognized by this law. All medical procedures con-  
35 templated in this article are included in the Compulsory Medical Plan.” The LIG  
36 guarantees access to health rights within the Compulsory Medical Plan and  
37 grants, precisely due to it, that the Ministry of Health comply with hormonal  
38 treatments and sexual prostheses, transition processes, and correspondent sur-  
39 geries for any person who may so desire. Each of these is covered by the three  
40

1 health subsystems (public, private, and trade union). Lastly, the LIG also includes  
2 migrants, in accordance with the legal requirements established by decree 1007/  
3 2012 (Farji Neer 2017: 110).

#### 4 **The Trans Experience between *Travesti* Cuts and Sutures**

5  
6 Papers may say one thing,  
7 But nature says something else!  
8 They'll be man or woman until the end of their days.  
9 —Roberto Jacoby and Syd Krochmalny, *Diarios del odio*

10  
11 It certainly did not take long for criticism of the LIG to arrive. One could even  
12 consider the critiques as a constitutive part of the process of planning and devel-  
13 opment within activist circles themselves. As indicated, for Wayar (2010: 1), *travesti*  
14 criticism was shaped from the beginning as an operation of intragroup blas-  
15 phemy. *Travestis* do not fit the paradigm of citizenship because the only subjects  
16 who fit this category are men and women. Wayar adds that “we *travestis* are not  
17 men or women; we are constructions of personal substance, our own absolutely  
18 and highly personal body of laws” (1). Wayar’s position is compelling because it  
19 indexes a problem in the very articulation of the legal standard set by the LIG.  
20 *Travesti* identity—a political identity that carries its own weight within South  
21 America’s trans activism—still lacks formal recognition within the LIG’s repara-  
22 tional framework: “What is the problem with legitimizing the categories of man  
23 and woman? Because one identity remains ultimately canceled out: the *travesti* or  
24 the trans ceases to exist. What does this law demand of us? That we stop being that  
25 very thing that we are and that should be recognized as our identity” (Wayar 2012:  
26 1). As well, the LIG’s definition of gender identity requires truth and stability in  
27 the self-identification of the subject. This notion presupposes not only the sub-  
28 ject’s disjointed perception of the body but also a necessary correlation between  
29 self-perceived identity and the subject’s very existence: “Every *compañerx* that  
30 changes their ID card will be un-inscribing themselves of a trans identity so that  
31 the state can read him or her as they identify them ‘man’ and ‘woman.’ And what  
32 happens if our *travesti* is still noticeable? It will be our fault for not making enough  
33 of an effort to appear as what we say we are” (Wayar 2012: 1). On this point the  
34 LIG does not permit the proliferation of identities, genders, and sexual positions  
35 because the state reads them and reduces them to the man/woman binary. It is  
36 worth signaling that, if the LIG demands subjects’ very existence and stability  
37 through their own self-perception, this requirement is merely a bureaucratic detail.  
38 This administrative identification only requires an identification document. And  
39 even more, the LIG imposes neither a quota in the requests of document changes  
40 nor medical treatments or surgeries, meaning that a proliferation or disturbance

1 of identities, genders, and positionings is still possible within the normative frame-  
2 work of the law.

3 However, Wayar emphasizes that the recognition of transness in both  
4 social terms and its legal articulations would possibly be settled by the majority  
5 of the population's measures on behalf of *all* citizens, but for no one in particular.  
6 Here, the chain of equivalencies tends to erase the specific, material nature of  
7 trans reality: whether of trans men (still the least visible in the vision of sexual  
8 dissidence and LGBTQI coalitions), travestis, transgendered people, or trans-  
9 sexuals. The political *travesti* identity, notably born out of the Río de la Plata  
10 area of South America, lacks specific recognition within the reparational mech-  
11 anism of the LIG. Additionally, as Wayar (2012) seems to note, the law's process  
12 of dispute and negotiation was hatched in the name of a markedly liberal trans  
13 model of citizenship, which is to say, it developed in terms of individual, pos-  
14 sensive, and personal rights. Although the same critique is highly valuable, the  
15 radical nature of *travesti* identity would also be inscribed in a liberal model of  
16 citizenship, even if the T were included within the LIG's standards.

17 Following this position, we should signal that, to paraphrase Carlos Figari  
18 (2012: 48), this discussion of *travesti* criticism should be necessarily analyzed  
19 through its usefulness and locally situated emergence, but not at the expense of  
20 the essential value of a critical perspective. This viewpoint is suggested by such  
21 recent reports as *La revolución de las mariposas* produced by the public trans-  
22 inclusive high school Mocha Celis in 2017, *Cumbia, copeteo y lágrimas: Informe*  
23 *nacional sobre la situación de las travestis, transexuales y transgéneros* by Berkins  
24 in 2007, and its predecessor *La gesta del nombre propio: Informe sobre la situación de*  
25 *la comunidad travesti en la Argentina* by Berkins and Josefina Fernández in 2005.  
26 The activist experience in the southern hemisphere—attached to deep inequality  
27 and social conflict—allows for the articulation of subaltern and popular subjects  
28 (Figari 2016: 235) and specific genealogies across boundaries.

29 As such, we would do well to consider another question: under what  
30 sociohistoric conditions and in what sense did trans activism organize their agenda  
31 and develop the LIG and its demands? And, further, must the LIG encompass  
32 only the trans population? Or, should it perhaps recognize specifically political  
33 identities like *travesti*? Even when the identities in the LIG, and within the whole  
34 Argentine legal system, are recognized as a binary, the political and legal power  
35 of the text is indubitably located in exposing the malleability of categories like  
36 masculinity and femininity. They are inherently *not* like the epigraph from this  
37 section's beginning: "They'll be man or woman until the end of their days."<sup>11</sup> In  
38 this sense, the recognition in the LIG is not tied to specific identities—not trans-  
39 gender, travesti, or transmasculine—but rather accounts for the undecidability  
40 of gendered ways of living: "Gender identity is understood as the internal and

1 individual way in which gender is perceived by persons, that can correspond or  
2 not to the gender assigned at birth, including the personal experience of the body.  
3 This can involve modifying bodily appearance or functions through pharmaco-  
4 logical, surgical or other means, provided it is freely chosen. It also includes other  
5 expressions of gender such as dress, ways of speaking and gestures” (law 26,743,  
6 article 2, “Definition”). What is signaled by the law’s articles, especially in the  
7 second article quoted above, is the definition of gender identity, taken in turn  
8 from the Yogyakarta Principles.

9 The recognition of gender identity in the LIG marks a minimum departure  
10 point—and not an arrival—with respect to the state of law, which is to say, it  
11 does not pronounce itself upon the effective mechanisms to resist inequality of  
12 the trans population, but it achieves, as was signaled, the departure point that no  
13 citizen has more rights than another. This is the scale on which these activisms  
14 and the development of the LIG can be understood. No specific law can resolve  
15 the entirety of the trans agenda, but it does constitute an advance—always  
16 partial—in that direction. Several subsequent examples of this path have emerged  
17 in the wake of the LIG: Buenos Aires’s provincial law 14,783 on trans labor quotas,  
18 named after Amancay Diana Sacayán and creating job posts for trans workers, the  
19 provincial laws following this on trans labor rights, the projected national law  
20 presented in Argentina’s congress (bill S-4214/16), and the projected law No. 2526-  
21 D-2016 with the hashtag #reconocer es reparar (to recognize is to repair) on the  
22 “reparational rules for victims of institutional violence due to gender identity”  
23 (Cosecha Roja 2016).

24 In this sense, the passing of the LIG implies a transformation for the state  
25 in its relation to the manner in which it executes the legal and political recognition  
26 of trans identities and embodiments. But also, the LIG functions as a mechanism  
27 of expansion and disruption of identitarian recognition and its matrices. This  
28 reading of the law supposes a displacement, perhaps a critical method, within the  
29 juridical mechanism. Specifically, the law’s productivity lies in its function as legal  
30 instrument and the LIG’s potentiality to become not only content or focused  
31 theme but also a strategic field of action. Therefore, this law enables both a zone of  
32 political immanence and a critical reading of the matrix of cishetero intelligibility.

33 The LIG, as a legal, social, and cultural tool, not only allows for the  
34 amendment of the appearance or function of the body between biological sex  
35 and self-perceived gender—the recognition of self-perceived identity and cor-  
36 responding medical access—but also permits document changes without either  
37 obligatory psychiatric-psychological treatments or bodily modifications and  
38 surgeries. As the fourth article indicates, it is important to recall: “In no case will  
39 it be needed to prove that a surgical procedure for total or partial genital reas-  
40 signment, hormonal therapies, or any other psychological or medical treatment

has taken place.” In this final sense, a political potentiality dwells within the very legal letter of Argentina’s identity law. In its very inner workings, it allows for different people to embody a particular gender and corresponding gendered name. As previously indicated, the political and legal potency of the text lies undoubtedly within its exposure of masculinity and femininity as modifiable categories. It speaks to a slippage of enormous political power where legal recognition of identity is not subordinated to corporeal biologization of identities (the ability to carry a legible, intelligible body according to biomedical parameters). As signaled in the seventh article, the law likewise will not subject trans people to psychiatric experts or biomedical exploration by committees: “In all cases, the number in the persons’ national identity document will be relevant over the first name or morphological appearance of the persons, for identification purposes” (LIG, article 7). In this way, access to surgery and bodily modifications is not dependent on the named change, as indicated in the eleventh article: “There will be no need to prove the will to have a total or partial reassignment surgery in order to access comprehensive hormonal treatment. The only requirement will be, in both cases, informed consent by the individual concerned.” It addresses, then, a twofold resignification: in gender-expressive naming and in terms of sexed embodiment.

#### **Facing the LIG: “I Reclaim My Right to Monsterhood” —Susy Shock**

The LIG implicates an advance in terms of human rights with respect to its legislative content. It refuses the subjection of trans bodies and subjectivities to courtrooms, pathologies, and criminalization. It also signifies the dismantling of a juridical matrix that exposed trans diversities to both eugenic and pathologizing forces. Even with these gains, the law still raises a series of questions. What are in play around the LIG’s political borders are the norms of social recognizability of sexed subjectivity. In this same sense, the LIG’s existence does not change the experience or social treatment of gender. However, the law’s overarching spirit unleashes an understanding of the normative power forces that construct sexed bodies. Following the LIG, what political uses and sexual counterpractices are possible? As a social procedure and toolbox, what short circuits and destabilizing effects does the LIG permit and enable? The LIG effectively has the virtue of assuming identity in difference. From there, masculinity and femininity are malleable and modifiable categories and, as such, are political categories before ontologies. In line with this thinking, Blas Radi (2013: 3) states:

What defines a man or a woman now? What gynecologist specializes in trans women? Is there a urinal designed for men with a vagina? If a trans man has relations with a cis man is he homosexual? And if he has relations with a cis-woman, is he heterosexual or vice versa? Or is he homosexual only if he is with

1 another trans man? To what degree is the act “homo” if one man has been operated  
2 and the other has not? Or, in accordance with the question proposed previously,  
3 before the law, does a pregnant trans man become a father or a mother?  
4

5 These questions arise since, in order to be human, everyone needs a legible gender.  
6 Expressed differently, if the matrix of heterosexual intelligibility sustains itself  
7 on the apparent causality that links biological sex → gender identity → gender  
8 expression → sexual orientation or desire, then this law makes possible the dis-  
9 ruption of this cisgender-heterosexual causal chain. As has been signaled, people  
10 could very well amend their name identification and retain their assigned bio-  
11 logical sex. It is also possible within this mechanism to modify the assigned bio-  
12 logical sex through the medical system without replacing the administrative and  
13 named documents.

14 In the preceding pages, *travesti* criticism was taken on from different  
15 dimensions. Beyond the tautological character of the criticism to signal the inevi-  
16 table reproduction of the gender binary, the LIG effectively reifies the binary  
17 in the same way the entirety of the Argentine legal system does. Such a provision  
18 seems unquestionable. This reading, though, advocates for other sexual epis-  
19 temologies that might avoid such reifications of the stale, stereotypical division  
20 between the LIG and the *travesti(s)*. Both against and through these epistemol-  
21 ogies, what emerges is a politics of transversal and trans alliance that deontolo-  
22 gizes sexual difference and the matrix of hetero-cis sexual intelligibility and  
23 opens new configurations of sexed bodies, subaltern and popular subjects, and  
24 their political strategies.<sup>12</sup>

25 Since the LIG’s passing until now, we have observed the expansion of  
26 the LIG in its social, strategic use by diverse collectives and political spaces that  
27 include trans and queer activists but also other collectives that productively go  
28 beyond them. Following the *plebeya* (and even picaresque) strategy and reinter-  
29 pretation of the juridical doctrine, the legal apparatus and, more generally, the  
30 state’s agencies,<sup>13</sup> it is possible to foresee a shared setting for the right to identity,  
31 access to the public health system (including for lesbians, gays, sexual dissidents,  
32 and queers), and the wide range of associated rights. The LIG’s proclamation  
33 of bodily autonomy as a sexual right, as well as access to public health systems,  
34 sets precedents for other cases. The so-called right to a respectful birth without  
35 surgical intervention and, at the time of this article’s writing, the law of volun-  
36 tary termination of pregnancy both exemplify feminist appropriations that have  
37 recourse to or can make use of the LIG. In this sense, one meeting point between  
38 subaltern and popular, queer, feminist, and sexually dissident subjects can be  
39 sewn around the use, appropriation, and instrumentalization of the LIG in its  
40 situatedness, in local contexts of structural inequality, the growth of poverty, and

1 intensifying violence that have marred the recent Argentine stage. In effect, this  
 2 poses a *plebeño* use of the LIG that supports a possible alliance between both  
 3 subjects without preconceived revolutionary or identitarian notions.  
 4

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 6 **Martin De Mauro Rucovsky** was part of the National Front for the Gender Identity Law and the  
 7 “Incorporations” research team from 2008 to the present. He is currently a doctoral student at  
 8 the National University of Córdoba, Argentina, and is the author of *Bodies on Scene: Materiality*  
 9 *and Sexed Body in Judith Butler and Paul B. Preciado* (2016).

10  
 11 **Ian Russell** is a PhD candidate in Brown University’s Department of Hispanic Studies. His work  
 12 focuses on transatlantic performance and queer temporalities.  
 13

#### 14 Notes

- 15 1. *Sudaca* is a pejorative term used by Spaniards to refer to Latin Americans that has been  
 16 reappropriated throughout Latin America’s transition to a neoliberal and neocolonial  
 17 economy as a means of signifying and reclaiming a marginalized (racially and econom-  
 18 ically) subject position within these power relations.—Translator
- 19 2. The use of the qualifier *trans* does not respond to the homogenizing use of the differ-  
 20 ences that distinguish identities, desires, and corporealities. “The term ‘*travesti*’ in Latin  
 21 America comes from the medical field and has been appropriated, re-elaborated, and  
 22 embodied by the *travestis* themselves in an act of self-naming. This is the term by which  
 23 we recognize ourselves and that we chose to construct ourselves as subjects of law. This  
 24 process of appropriation of *travestismo* as a site from which we raise our voices and lay  
 25 out our demands constitutes a political struggle” (Berkins 2008: 2–3).
- 26 3. The author of this article renders gendered nouns and adjectives with an asterisk (\*), for  
 27 example, “aliad\*s,” to disrupt the binaries that are built into language. This is difficult to  
 28 reflect in English translation—I have opted for nongendered language—but should be  
 29 noted as a fundamental attribute of the author’s project within this essay.—Translator
- 30 4. The Yogyakarta Principles is a document about human rights in the areas of sexual ori-  
 31 entation and gender identity, published as the outcome of an international meeting  
 32 of human rights groups in Yogyakarta, Indonesia, in November 2006. The principles  
 33 influenced the proposed UN declaration on sexual orientation and gender identity in  
 34 2008. The principles were supplemented in 2017 (the Yogyakarta Principles plus 10),  
 35 expanding to include new grounds of gender expression and sex characteristics and a  
 36 number of new principles.
- 37 5. By *popular subject* (popular position, popular pole, popular sectors), I am referring to  
 38 mass sectors of society crossed by markers of class, race, gender, and ethnicity that are  
 39 intimately tied up with structural inequalities. As well, rereading Ernesto Laclau and the  
 40 tradition of populist thought in Latin America, *popular* refers to his impact in jointly  
 articulating heterogeneous political and social demands.
6. This and all following citations of the Gender Identity Law itself are from Alejandra  
 Sardá-Chandiramani and Radhika Chandiramani’s original translation of the law

- published by Global Action for Trans\*Equality, available at [tgeu.org/argentina-gender-identity-law/](http://tgeu.org/argentina-gender-identity-law/).—Translator
7. Lohana Berkins (2008: 1), for her part, shows how the criminalization of *travesti* identity effected by the state through police edicts, minor, and misdemeanor codes restricted access to public space of various social groups—women working in prostitution, *cartonerxs* (cardboard scavenger), *piqueterxs* (unemployed picketers), street vendors, and so on.
  8. *Cissexual norm* refers to the limits of sexual difference that divide all identities and gender expressions into trans and nontrans. The distinctions among men, women, and transsexual persons functions on a logic of distribution that privileges the first two groups, while it fails to recognize the third (or recognizes it under the rule of a much smaller boundary). Cissexuality inverts the burden of proof by defining those subjects who lack the attribute of being trans.
  9. The varied discursive registers that sedimented a eugenic position include the influx of the neo-Lamarckian tradition, Italian biotypology, German racial hygiene, the French physiognomic school, natalism, and pediatrics. The spread of these principles responded to the forms in which the elite classes conceived the problems of degeneration of populations of European origin living in the big urban centers of Latin America. In this context, some of the most prolific agents of Argentine eugenics (e.g., Enrique Díaz de Guijarro, Arturo Rossi, and Victor Delfino) founded distinct publications, forums, and even the first and only Department of Eugenics in the world, which ran from 1957 through the 1980s under the tutelage of Carlos Bernardo de Quirós. See Miranda and Vallejo 2005.
  10. Currently, some twenty European and Asian countries impose obligatory sterilization as a eugenic requirement in order to obtain legal recognition of gender identity. See the map of Transgender Europe ([www.tgeu.org/sites/default/files/Trans\\_Map\\_Index\\_2014.pdf](http://www.tgeu.org/sites/default/files/Trans_Map_Index_2014.pdf), accessed December 12, 2017) and the volume *Gender Is Not an Illness* (Sheherezade 2017).
  11. The artists Roberto Jacoby and Syd Krochmalny created the installation *Newspapers of Hate (Diarios del odio)* that compile reader comments that appear in the online edition of the papers *La Nación* and *Clarín*. The exhibition was reinvented in 2016 in the form of poetry, with the same title.
  12. On this point, I follow Carlos Figari (2016) with respect to a politics of allyship and coalitions as a method of struggle, collective work, and common agendas, just as we suggest in relation to the FNXLIG or the recently formed National Front for the Diana Sacayán Law.
  13. Inspired by the work of thinker, poet, and activist Nestor Perlongher (1949–92), *plebeyo/a* refers to certain practices linked to popular culture, populist governments, and social activism. Based on the experiences of the marginalized, the lumpenproletariat, the downtrodden, the blasphemous, the contradictory, popular religious traditions, and a neobaroque aesthetic, *plebeyo/a* pertains to Latin America and, specifically, the Río de la Plata.

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