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## Trans\* necropolitics Gender Identity Law in Argentina

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**Abstract:** On May 9<sup>th</sup>, 2012, the Argentinean Senate converted into law the long collective process, driven by trans\* activism, towards the legal recognition of gender identity. The Gender Identity Act (GIA) meant a large contribution to the field of civil and sexual rights interationally, especially in the matter of trans\* policy. Nevertheless, what was at stake in the approval of the GIA was not just a step forward in legal terms and at a personal level for trans\* people, but a whole set of representations, desires and social stakes on trans\* lives and population. Thus, as regards to the scope and achievements of the GIA and its social and parliamentary debates, we can assert that in that realm a specific trans\* life does not qualify as a living life. This article addresses the specific ways of presentation and apprehension of trans\* lives in parliamentary debates about the GIA, and in social disputes within trans\* activism. A biopolitical analysis of gender identity leads us to rethink the social conditions that sustain life and, by the same token, the interpretative frameworks of death.

**Keywords:** Gender Identity; Law; Trans\*; Biopolitics; Necropolitics

### **Necropolíticas trans\*: Ley de identidad de género en Argentina**

**Resumen:** El 9 de Mayo de 2012, el Senado Argentino convirtió en ley lo que fuera un largo proceso colectivo impulsado por el activismo trans\*, la llamada Ley de Reconocimiento a la Identidad de Género. La Ley de Identidad de Género (LIDG) significó un gran aporte de escala internacional en materia de derechos sexuales y civiles, y en particular, en materia de política trans\*. No obstante, lo que estaba en juego en la aprobación de la LIDG significaba no sólo un avance de carácter personal y global en términos jurídicos, sino también un conjunto de representaciones, deseos y apuestas sociales sobre la población y la vida trans\*. A tenor de los alcances y logros de la LIDG y sus respectivos debates, tanto sociales como parlamentarios, puede sostenerse que en ellos una vida concreta, una vida trans\*, no califica como vida viva. El artículo propone una reflexión crítica sobre los modos específicos de presentación y aprehensión de una vida trans\*, sea en los distintos debates parlamentarios en torno a la LIDG, sea en las disputas sociales del activismo trans\*. Desde un análisis biopolítico sobre la identidad de género, el texto busca repensar las condiciones sociales que sostienen la vida y, por lo mismo, aquellos marcos interpretativos de la muerte.

**Palabras clave:** Identidad de Género; Ley; Trans\*; Biopolítica; Necropolítica

### **Necropolíticas trans\*: Lei de Identidade de Gênero na Argentina**

**Resumo:** Em 9 de maio de 2012, o Senado argentino converteu em lei o que fora um longo processo coletivo impulsionado pelo ativismo trans\*, a chamada Lei de Reconhecimento da Identidade de Gênero. A Lei de Identidade de Gênero (LIDG) significou uma grande contribuição de escala internacional em matéria de direitos sexuais e civis e, em particular, em matéria de política trans\*. No entanto, o que estava em jogo na aprovação da LIDG significava não só um avanço de caráter pessoal e global em termos jurídicos, mas além disso um conjunto de representações, desejos e apostas sociais sobre a população e a vida trans\*. Nesse sentido, se nos ativermos aos alcances e êxitos da LIDG e aos seus respectivos debates tão sociais como parlamentares, poderemos sustentar que neles uma vida concreta, uma vida trans\*, não se qualifica como vida viva. O presente artigo se propõe a uma reflexão crítica sobre os modos específicos de apresentação e de apreensão de uma vida trans\*, seja nos distintos debates parlamentares em torno da LIDG, seja nas disputas sociais do ativismo trans\*. A partir de uma análise biopolítica sobre a identidade de gênero, vamos repensar as condições sociais que sustentam a vida e, pela mesma razão, aqueles marcos interpretativos da morte.

**Palavras-chave:** identidade de gênero; Lei; trans\*; biopolítica; necropolítica

## Trans\* necropolitics. Gender Identity Law in Argentina

*It is not just the life that has been concealed. It is not just the lies that have been told about life itself, some of which we have currently ceased to believe. It is also the life that was not lived.*

*Julian Barnes – Flaubert's Parrot*

On May 9<sup>th</sup>, 2012, the Argentinean Senate converted into law the long collective process driven by trans\* activism towards the legal recognition of gender identity. Approved after days of parliamentary debate, and effective since July 4<sup>th</sup>, the announced law meant a major social advance regarding the expansion of civil rights for the trans\* population. Celebrated with enthusiasm by various local sectors, the Gender Identity Act 26.743 (hereafter "GIA") internationally meant a significant contribution to the field of civil and sexual rights, especially in matters of trans\* policy. The important achievements of the GIA refer to the bodies and subjectivities of trans\* persons, to their diversity, as well as to a transformation for the Argentinean state.<sup>1</sup>

The approval of the GIA meant, for a countless trans\* persons, an extremely gratifying event, as a personal victory. The recognition of self-perceived identity and of the different modalities of gender expression, as well as the right to integral access to public health care, certainly constitute an historical occasion worthy of celebration.

We disagree with queer claims about the normative nature of the GIA contents due to its exclusive acknowledgment of men and women, within a binary gender framework. Contrary to that, it is important to highlight the wide range of gender experiences not included within the juridical frame of a law; that is, why insist in the allegedly normative nature of a legal regulation as retrograde or normative, in queer terms? Or, furthermore, why seek a queer, post-identity horizon of emancipation precisely in legal regulations? Is positive law, the Civil Registry or an identity card the only institutions to sustain and replicate the performance of a normative gender order? Despite this, it is important to highlight that the Argentinean GIA is actually capable of expanding and disarranging the recognition of identities. As Blas Radi states,

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<sup>1</sup> As Emiliano Litardo points out, the GIA additionally involves a "transformation for the state in its relation with the ways of administrating, from now on, the legal political recognition of trans masculine and trans feminine identities and bodies" (2012:1).

What defines a man or a woman now? Where are the gynecologists who will now specialize in trans women? Is there a urinal designed for men with a vagina? If a trans man is involved with a cis man, is he homosexual? And if he is involved with a cis woman, is he heterosexual? Or vice-versa? Or is he homosexual only if he is with another trans man? Which one is “homo” if one of them has undergone surgery and the other one has not? Or, along with the previous question: in legal terms, a pregnant trans man is a father, or a mother? Let us make clear that these are rhetorical questions whose consideration confirms that this law has the virtue of plunging identity in difference. (Radi, 2013:3)

The invocation, acknowledgment and representation of trans\* lives was configured through a series of preexisting social requirements and degrading factors. In a similar way, but with characteristics specific to the sanction of legislative standards, the flesh threshing machine converted, once again, trans\* lives into a profitable political capital. Positioned at an intersecting point between spaces of social and academic activism, the National Front for Gender Identity Law, and the research group “Incorporations. Corporeality, Citizenship and Abjection” (Dir. E.Mattio and M. Cabral –Secyt, 2008-2010)<sup>2</sup> became concerned about these modalities of corporeal intelligibility.

We support and celebrate legal reform in matters of civil and sexual rights, including not only egalitarian marriage (Act 26.618), but also the Gender Identity Act, but also the Medically Assisted Reproduction Act (also known as Assisted Fertilization Act, No. 26.862), which was largely supported by lesbian activist groups (vastly invisibilized by the hegemonic gay rights agenda). Not without considerations of the normative and legal limits of the law, power relationships involved in the social perception of gender neither begin nor end with the approval and subsequent regulation of the GIA. A step forward in sexual rights does not guarantee social equality. The formula “laws of equality” fails here, since juridical and legal equality are not identical to social inclusion—their temporalities do not match.

What was at stake in the approval of the GIA was not just a step forward in legal terms and at a personal level for trans\* people, but a whole set of representations, desires and social stakes on trans\* lives and population.

In a way, if we solely focus on the scope and achievements of the GIA and its respective social and parliamentary debates, we can assert that there is a specific life, the trans\* life, that does not qualify as living life. This happens precisely

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<sup>2</sup> This Group, along with other sectors of male trans\* activism, promoted the approval of an act on gender identity passed by the National University of Córdoba a few months before the approval of the GIA. The Act can be consulted at: <http://www.unc.edu.ar/extension-unc/vinculacion/genero/acciones-realizadas/2009-2012/ordenanza-identidad-de-genero/ohcs-9-2011.pdf>

because the density of life and death of what constitutes a trans\* life seems to be constantly depreciated—whether it is as undesirable lives, anonymous and tragic deaths, medical cases, martyrs for the cause, or forced to perform sex work. Why are some lives highly protected and preserved while others are, paradoxically, abandoned, disregarded and abused? Life and death as objects of political management are bound to relations of power, dominance and antagonisms that execute hierarchical and differential distributions over those lives which are to be protected and those which are to be disregarded. The agents who encouraged the GIA are themselves involved in this economy of power—those who, during social and parliamentary debates, would “throw the bodies on the table” to settle discussions, introducing, in this way, trans\* lives and deaths in a hierarchically depreciated manner as either victims, martyrs or lives abused to the extreme.

This article engages in a critical reflection on the specific ways of presentation and apprehension of trans\* lives in the different parliamentary debates that took place over the GIA, and in the social disputes within trans\* activism. By means of a biopolitical analysis of gender identity, we will rethink the social conditions that sustain life in that realm, as well as the interpretative frameworks of death therein. For that purpose, we shall take into consideration two central aspects and agents: In section 1, *Recent Past: “Juridical Life”*, we address the legal and juridical framework. In section 2, *Necropower or On How Affection Is Regulated*, we comment on trans\* activism. In section 3, *The Biopolitical Threshold: Post-Legality of Gender Identity*, we conclude with some indications implied in the biopolitical threshold contemporary to the approval of the GIL.

## 1. Recent Past: “Juridical Life”

The current GIA is the product of a long legal and political path that has outlined the borders of what we understand as trans.<sup>3</sup> The juridical norm (expressed in judicial rulings, legal protection sentences, administrative regulations, ordinances, acts, and resolutions) manages what qualifies as an anatomically sexed body, establishing hierarchies and requirements considered ontologically function-

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<sup>3</sup> When speaking of trans\* people we refer to all those persons who self-identify with a gender that is different from the one they were assigned at birth. In Argentina, the term “trans” deploys a vast list of representations, which refer to transvestite, transsexual and transgender collectives differentiated at the level of experience, but mainly, as political ones. The use of the expression “trans” does not exhaust the universe of differences and possibilities that constitute the trans\* universe. The asterisk that accompanies the word “trans” intends to represent the incomplete nature of the term. See: Cabral (2012a:254).

al to that body. The gender associated to a sexed body is the one assigned at birth; consequently, gender expression (femininity/masculinity) has correspondence with the genitally localized sexuality (female/male). This functional ontology is sustained in the universalization of cisgenderism;<sup>4</sup> i.e. those who do not identify with their gender assigned at birth are ontologically dysfunctional and pathological in biomedical terms (reaching the paroxysm of violence, intersexuality constitutes an impossible condition to embody). As we are well aware, these anatomical and sexual standards—that is, this ontology of bodies—vary according to the historical transformation of the norm. During the last decades in Argentina, the political and juridical norm altered significantly the possibilities for the exercise of bodily autonomy, which ranged from judicial rulings over trans\* bodies (the judicial officer on duty being the one to authorize the access to civil rights) to the decisional autonomy established in the current GIA. Likewise, the requirements about what is a functional sexed body suffered a transference, from the requirements of the legal and administrative apparatus, through compulsory judicial procedures, to the effective acknowledgment of the right to bodily modification. This aspect of decisional autonomy over bodily modification is referred to as a *dejudicialisation* of the procedures for the recognition of gender identity.

Argentina did not possess a specific legal norm on gender identity. Bodily modification was regulated through the dispositions in the criminal code and the No. 17732 Act, which regulates the practice of medicine. Formerly, those who wanted to modify their bodies by altering their genitalia and reproductive organs had to obtain a court order; successfully obtaining this permission involved a long process of verification, involving several stages. “Pathologization is the first requirement, but so is compliance with bodily requirements: (1) that the body of the person shall resemble as much as possible the bodies of the people whose gender the person chooses to belong to; and (2) that the person shall be sterile (irreversibly so)”. (Cabral, 2012a:258-259).

The axiomatic premises on which these authorizations and court decisions were sustained had their argumentative basis in a long dogmatic tradition in Ar-

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<sup>4</sup> By cissexuality or cisgenderism we refer to the boundaries of sexual difference that divide all identities and gender expressions between trans\* and non-trans\*. The distinction between man/woman and transsexual operates on a distributive logic that privileges the first element while not acknowledging the second one (or acknowledging it as a lesser kind). A simple explanation is based on gender assigned at birth: if a person self-identifies with it, then they are a cissexual person. By reversing the burden of proof, cissexuality refers to those to whom the attribute “trans” does not apply (transsexual, transgender, transvestite, cross dressers, multi-gender, non-binary, gender-fluid, queer, and other related denominations).

gentina, a tradition of clear eugenicist and punitive foundations.<sup>5</sup> This way, the sterilized trans\* body meant the political promise of a collective temporality: i.e., a—normative—shared future where monsters would not multiply.<sup>6</sup> Sterilization, as a requirement, was a safeguard against the potential risk of spreading, reproduction and increase of the trans\* demographic rate; a sanitary fear or biopolitical construction that operated as a eugenicist reverse, or thanatopolitics. Invoking the protection of a life (the infant as its paradigmatic figure), violence was enabled for the continuity of the species, in the name of citizens, of people.

The substantial change in this historical process was condensed in the undermining of the pathologizing biomedical standard (classified by psychiatric protocols as “gender identity disorder”)<sup>7</sup> that required compulsory sterilization in order to allow access to biotechnological and bodily modification. The normative core of the GIA refers to “biotechnological and bodily modification as a right that cannot be, at the same time, an obligation. This means that the same hormonal and surgical procedures cannot be required by the state as a price to be paid for gender recognition” (Cabral, 2012b). This aspect is referred to as *depathologization* of identities for the access to integral health care.<sup>8</sup> Note that integral or transitional

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<sup>5</sup> The colorful social-medical repertoire of eugenism spread widely in Argentina, including elements that range from the neo-lamarckian tradition, Italian biotypology and German racial hygiene to French puericulture, natalism and physiognomic school. The circulation of these medical and sanitary premises responded to the different ways in which elites understood the problem of the degeneration of populations of European origin settled in large urban centers of Latin America: “The issue of how to enhance the quality and quantity of inhabitants was a «purely Argentinean problem»” (Reggiani, 2005:280). In this context, some of the most prolific agents of Argentinean eugenics (such as Enrique Díaz de Guíjarro, Arturo Rossi, Victor Delfino and Carlos Bernardo de Quirós) founded different publications, forums and even the first and only Faculty of Eugenics of the world, which operated from 1957 to the decade of 1980 under the leadership of Carlos Bernardo de Quirós. Cf. M. Miranda (2001), M. Miranda and G. Vallejo (2005), and S. García (2005).

<sup>6</sup> Currently, about twenty European and Asian countries have the eugenic requirement of compulsory sterilization for achieving legal recognition of gender identity. For more on this regard, see the mapping made by Transgender Europe [http://www.tgeu.org/sites/default/files/Trans\\_Map\\_Index\\_2014.pdf](http://www.tgeu.org/sites/default/files/Trans_Map_Index_2014.pdf) (accessed 04/24/2015)

<sup>7</sup> Since 1980, the Diagnostic and Statistical Manual of Mental Disorders (DSM) and its correlated publications, such as the International Statistical Classification of Diseases and Related Health Problems (ICSD), published by the World Health Organization, classifies the whole spectrum of trans\* subjectivities and modes of being in terms of pathologies. While a person might be in discomfort with its gender, body or assigned sexual identity—and with all the expectations that come along with them—the problem begins when this discomfort is considered as a clinical symptom for a disorder.

<sup>8</sup> It is not by chance that the introduction of sanitary rights within a Gender Identity Act is supported by the normative force of the right to identity. Although in the context of the law trans persons have the right to access health care, that rights is subordinated to the right to gender



health care refers to the whole set of bodily modifications, surgeries, hormone therapies, prostheses and devices that a trans\* person might need for the effective implementation of their health rights.

## 2. Necropower or On How Affection Is Regulated

To continue with our development, we will consider a set of political and rhetorical strategies, from both trans\* activisms and parliamentary agents, which create a network of meanings that regards life as an exchangeable value. We will then link this complex of meanings with a specific economy of biopower: necropolitics, which makes, out of agonizing and dying bodies, a variable for political capitalization, a profitable value.

Life, in its multiplicity, complexity and evanescence, occupies the limit of what it is thinkable. This is why “biopolitics seem to be the insuperable horizon of our time” (Biset, 2012: 246). Foucault analyzed the subtle passage that takes place between a logic of sovereignty—make die or let live—and a logic of biopolitics—make live and let die. On one hand, power was the sovereign’s right of capture, response and defense, symbolized by the sword, the fate of death and its fatality. On the other hand, life is introduced in the field of political technologies, mass, populations, the human species, the living being. In his renowned quote: “... modern man is an animal in whose politics, life, as a living being, is questioned” (Foucault, 2003:173). Such logics overlap without overshadowing each other, but rather conform heterogeneous relations and the cross-linking of different mechanisms of power (sovereignty, discipline, biopolitics, governmentality). While it is true that in Foucault’s work there are at least four (Biset, 2012) or five mentions to biopolitics (Farhi Leto, 2010)—the respective fields are medicine in *The Birth of Social Medicine* (1974); war in *Society Must Be Defended* (1976); sexuality in *The History of Sexuality* (1976); sovereignty in *Security, Territory, Population* (1978) and economic rationale in *The Birth of Biopolitics*—, it is always about the ways in which the biological life of the population is governed.

It seems to be that life, and not death, is what is to be thought of, what becomes the object of politics. At this point, the opposing values are reversed. The GIA meant, throughout the long debate that led to it, a permanent oscillation. On one hand, the public visibilization of trans\* bodies and subjectivities. On the

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identity. This is due to the weight of the social victories achieved by various human rights organizations and activist groups. The right to identity is one that is not often discussed in Argentina, and its normative and legal articulation constitutes a political success by trans\* activism.

other, living persons who, nevertheless, were not fully characterized as such—or, in other terms, a population marked from the very beginning as socially dead. Why is it that, during the parliamentary debate, one of the main rhetorical strategies was to appeal to the saving of trans\* people from the calvary of poverty and precariousness to which they are thrown? Why, against certain stratagems of activism, the GIA, for a large group of legislators, operated as a sacrament on trans\* bodies which appeared to be already dead—i.e., living dead? The value of absent bodies—lives that were already “dead”, trans spectres, zombies—kept appearing unceasingly in the speeches many legislators.<sup>9</sup>

There are many people having hard times, who cannot access a decent job or enjoy the same rights their equals have. Why is this? Because they practice and maintain a different sexuality. It is very sad to have in our hands the possibility of changing the realities I am addressing, and not doing anything with it. What else should we wait for? More deaths? More violence? More humiliations? More mistreatment? (Senator Itúrriz de Cappellini, 2012:75)

The community of transsexuals and transvestites has historically been one of the most vulnerable ones, given that since the return of democracy (or even before then) their status has been a pending issue. I say vulnerable because, since they were kids, they already suffered the detachment from family that led to dropping out of school. They have also been marginalized from universities. Finally, they were sentenced, as if it was the only activity left for them, to a painful compulsory practice of prostitution... Can there be something as immoral as marginalization, discrimination, mistreatment and sometimes even death? Because, according to several reports we have received, they have a life expectancy of 36 years due to disease or to the collocation of implants of poor quality that finally lead to death. (Senator Artaza, 2012:77-78)

The members of the trans community are, in general, the people with the lowest life expectancy and the highest difficulty for accessing education, and are frequently expelled from employment sectors. They now suffer tremendous discrimination and social violence. (Representative Ibarra, 2011:1)

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<sup>9</sup> Such representations can be traced back in the debates that took place in both legislative chambers. Senate of the Nation Term 130°, Meeting No. 5 - Third Ordinary Session - May 9th 2012. Stenographic version available on line: <http://www.senado.gov.ar/parlamentario/sesiones/2012-05-09%2000%3A00%3A00/05/downloadTac> (accessed 04/29/2015). Chamber of Deputies of the Nation Term 129°, Meeting No. 5 - Seventh Session - Ordinary Session (Special) - November 30<sup>th</sup> 2011. Stenographic version available on line: <http://www1.hcdn.gov.ar/sesionesxml/item.asp?per=129&r=10&n=13> (accessed 04/29/2015), <http://www1.hcdn.gov.ar/sesionesxml/item.asp?per=129&r=10&n=15> (accessed 04/29/2015)

The easier thing to do would be to bring in here all the testimonies of pain and suffering that we have been hearing not only today but since many years ago. (Senator Morandini, 2012:83)

There are certain paths in political thought whose focus is not life, but death. In this perspective, what we understand as death and thanatopolitics acquires more relevance. Death no longer is an absent center (muteness, that of which nothing can be said), but a job, a task, an individualized practice of power. Hence thanatopolitics is understood as a calculus, within biopolitical studies, at the intersection between the fields of warfare and biology. “How can the power that has the essential goal of fostering life allow death? How to exert the power over death, how to exert the function of death, in a political system centered in bio-power?” (Foucault, 2010: 230).

To assert the complexity of the imperative of death, or the thanatopolitical vector, means to inquire into how life, death and bodies subscribe to an order and a representation of power. To be more specific, it is about thinking about the place where life and death seem to dissolve as an antagonistic pair. The bond between life and death is not only drawn when political forms operate death (factories of corpses: Auschwitz-Birkenau, Treblinka, Belzec, E.S.M.A.). We need to inquire, rather, into the specific configuration this bond acquires in the contemporary world.

In recent research (Agamben 2003, Esposito 2006, Valencia 2010, Mbembe 2011, Chávez and Ježik 2012, and Segato 2013) thanatopolitics gains a derogatory meaning and, according to Biset (2012), it is defined in at least three modalities:

A) The decision of the sovereign who can sentence to death (the “right of sword,” the sovereign’s “make die”). In an exclusively modern form, Thomas Hobbes was the author who best defined this logic of power in which what makes men equal is their ability to put another man to death, his ability being transferred to the sovereign through an agreed contract.

B) The singular form of biopolitics under a totalitarian regime. A figure that transcends modernity and underlies at the core of Western politics, if we understand (along with Agamben, for instance) that the politicization of human life always meant the abandonment of an unrestrained power of death. The political question would regard the split between those who can live and those whose life is dispensable. In Agamben’s perspective (2003), sovereignty (at its ontological level) and biopolitics identify with each other at the device of capture and termination of life, when it comes to the possibility of putting a life to death without this constituting a homicide: this constitutes the hierarchical split between bare life and qualified life.

Within this framework, thanatopolitics identifies not only the overall link between death and politics, but a biopolitical interpretation of Nazism. Thanato-

politics name a practice of biopower according to which the increase of life has, as its reverse, a practice of death: “the more you kill, the more you will make die, or the more you let die, the more, for that very reason, you will live”. (Foucault, 2010:230). Given this, the logic of biopolitics is disrupted because the practice of making live is correlative to that of making die, not its inverse value, as in the logic of sovereign power. It is a specific form of biopolitics; i.e. it would be the name for biopolitics under Nazism, where the enlargement of life and death takes place in a parallel combination. The singularity of this reading lies in the correlative character of the development of life and the development of death, their mutual dependency. On account of this, death ceases to be an exclusive decision made by the sovereign in order to become “the motor force that makes social development possible” (Biset, 2012:250); death expands equally through the social body that demands it as the source of its thriving. The death of some becomes necessary for the enlargement of the life of others.

From this perspective, thanatopolitics would be the denomination for the contemporary machine of death, where the emphasis should fall on *machine* as in death. The idea of the “machine” allows us to reflect on the equal expansion of death as social motor force, at the same time that it displays its technical functioning. (Biset, 2012:250)

C) Moreover, the term thanatopolitics is often used to qualify not the general link between death and politics that we can identify during the Nazi period (disciplined machine of death), but the specific form that it acquires in our geopolitical coordinates. There is an inextricable union between biopolitics and thanatopolitics, not only because every time that life is taken to be the object of politics the mortality of dispensable lives is established too, but also because the dissolution of the frontiers between biopolitics and thanatopolitics would be typical of the contemporary world. With the aim of further analyzing the link between death and politics beyond Nazism, in the same biopolitical perspective, the notion *necropolitics* emerges. The term necropolitics does not qualify the statute of death as the simple allowing death of biopolitics, nor as the mutual dependency of life and death identified under Nazism. Rather, it entails the redefinition of sovereignty as the right to kill. It is not referred to the sovereign right to decide over death that founds the modern state, since in such case the decision consists in ruling death as a final instance; it is about a power directed towards life and its enhancement, made effective as the exercise of mortuary practices, *granting and managing death*. This specific operations of power, denominated *necropolitical governmentality* or *zombiopolitical* logic (Platzeck, 2015), confronts us with new scenarios.

That is the key point. It is death, rather than the positivity of life, what is put to work for the sake of the trans\* political agenda. This is why this is not about the renowned *droit de glaïre* (right to kill) as the exercise of a sovereign power that administers life by protecting it and, paradoxically, deploys the material destruction of bodies and human populations. For the sake of this contextual precision, thanatopolitics coincides with the potential-symbolic production and regulation of necrotic bodies that have value for political capitalization (*necropower*). Consequently, the reverse of a politics of life as action of death is a material and perceptual issue: the differential distribution of precariousness “in which some populations lack networks of social and economic support and are differentially more exposed to damages, violence and death” (Butler, 2010:45-46). In other terms, trans\* necropolitics is practiced at every moment as a *zombiopolitical* demarcation (Platzeck, 2015) between good lives and bad lives or between precarious lives and precarized lives—that is, the ones subjected to precarity, the differential distribution of precariousness (Butler, 2010). The necropolitical calculus reminds us that, in order to protect certain lives (cissexual ones), many others have to be sacrificed (trans\* lives). A certain logic of acknowledgment is based on necropolitical calculus and management of death: to achieve growth, expansion and protection of civic life (cissexual universality), the vulnerability, precariousness and death of others (trans\* lives) becomes necessary. And this happens at legislative debates regarding trans\* lives too: they are previously depreciated, or represented all the same in the threshold between life and death as *undead* lives, half alive and half dead; spectral lives,<sup>10</sup> immaterial citizenships, resurrected bodies or bodies in the threshold.

A spectral or *zombiopolitical* (Platzeck, 2015) issue, the representation of trans\* lives is permanently configured as a threshold of living-dead persons or, to be more specific, as the return of *undead* bodies. In the trans\* body, the “non-living” and the “non-viable” coexist along with civil death and extreme precariousness. The trans\* population constitutes non-living figures of the threat to cissexual life. Trans\* death spreads all over the social medium while cissexual life requires it as the source of its own growth. Legislative action organized around the social death of a collective body that is, nevertheless, tagged as already dead (albeit *living*). In this sense, every trans\* person invoked in this process was and is a survivor

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<sup>10</sup> “We will call spectre, in a restrained way, those entities which survive (even if they do so under a postulate) their own death, or who establish an indistinctness between life and death. From that point of view, a spectre can be completely immaterial or it can acquire different «consistencies» that, as a philosopher said, can reach the point of stubbornly claiming its existence in flesh and bone, even if its nature was one eminently determined by the Spirit.” (Ludeña, 2012:14)

of sex work, prostitution, institutional violence (declared but not acknowledged by the Argentinean state), biomedicine, etc. “Survivor is not, in this case, that who was able to kill the other one and strengthen its own power, but a form of existence that, facing the show of anonymous corpses, of mutilated corpses, *lives its life being already dead*” (Biset, 2012:254).

Once again, the representation of trans\* lives is constructed as one of second class or degraded citizenship. In the abyss of social life, an inexorable fate seems to determine the destiny of every trans\* life—prostitution outdoors. To legislate in order to save transzombies of their condition of circulating prostitutes:

We should have never allowed what happened: we should have never had the streets full of trans people thrown into prostitution, in many cases due to the difficulties presented to them regarding insertion in the employment sphere. (Deputy Ibarra, 2011:2)

Objects, not subjects, of sex work or forced prostitution, the dead-bodies of trans\* people walk through the city. And it is reasonable to assume that in that walking, wandering and circulation, a number of social meanings are settled: dangerousness, risk, prevention, crime, suspicion. “Their condition as «walkers» involves a double challenge—a challenge to death (they walk, hence they live)” (Platzek, 2015:9) and to the logics of urban circulation (the sexual borders of the city).

From this point of view, the regulations over the trans\* population create spectres and zombies as objects of statistics, anonymous obituaries and mortality rates. Something similar happens in academic research in the social sciences, sexology, and queer studies, that make trans\* lives its paradigmatic object: a subaltern subject; a survival rate; an object that can be colonized; an epistemic capital of death.

In spite of this, the subjectivity of trans\* persons as individuals seems not to be assured. On top of this objectification of trans\* subjectivities, we have to add the political management of victimization and the martyrology that operate as true cognitive devaluating factors:

The great question is: how can we make these poor people to be acknowledged as experts in the matters on which they are experts? How can we turn this community, which we ourselves have contributed to victimize and put in such situation of vulnerability, into not only an empowered community but into one acknowledged as one of experts who are able to generate public policies, work in hospitals, participate in bioethics committees? (Cabral, 2012b).

### 3. The Biopolitical Threshold: Post-Legality of Gender Identity

The GIA grants both health and identity rights over different gender expressions; nevertheless, it is not a law about reparation that considers the need to socially support certain lives and individuals. This is a material and perceptual issue necessary to address. Where do we place institutional violence towards this population sectors? When did we assume that some sorts of violence should be repaired, and others forgotten?

Transgenderism was penalized in many Argentinean provinces not many years ago. In times of state terrorism (during the last civil-military dictatorship), and even during democracy, the most systematical institutional violence (i.e. a culture of terror) was and still is practiced against the trans\* population.

A threshold of thanatopolitical capture: the violence in the civil-military-ecclesiastic state of terror instituted during the last dictatorship was followed by democratic violence—a repressive legacy that remains sound. A paradigmatic example: sex work and prostitution are not classified in the penal code and, therefore, do not imply a crime or illegal activity *per se*; however, municipal administrative codes of community conduct and police codes establish real sexual borders (Sabsay, 2011) that result in the methodical harassment of trans\* people. Under the category of “scandalous prostitution”, “human traffic”, “procuring” or “disturbance in thoroughfare”, they are persecuted and displaced from the public urban space. The state, as a set of heterogeneous and contradictory agencies, holds the legitimate monopoly on violence (through its police force). Therefore, is the only remaining task to simply measure the “democratic” implementation of necropower?

*Necropolitical governmentality* over trans\* people means an uninterrupted practice of institutional violence towards them, regardless of the form of government—whether it is a dictatorship or a democracy. What other practices of state agency and necropolitical governmentality are possible? In 2004, President Nestor Kirchner asked for forgiveness on behalf of the state for the crimes against humanity that took place in Argentina during the last civil-military dictatorship (ecclesiastic, financial and judicial). With such a symbolic act, a *policy of symbolic and moral repair* was completed, which had as its background a number of *economic reparation policies* (during Alfonsín’s government between 1983 and 1989 and Menem’s between 1989 and 1999).<sup>11</sup> Should we not demand economic and moral

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<sup>11</sup> During Alfonsín’s presidency, the 23.466 Act, passed on October 30th, 1986, granted a pension to spouses and children of people who went missing during the last dictatorship. In Menem’s government, with Alicia Pierini in charge, the Decree No. 70/91 of the National Executive Power was passed on January 10th, 1991, along with the 24.043 Act in December

compensation for crimes against humanity committed by the Argentinean State, such as institutional violence (administrative, medical, scholar, from the police) against the trans\* collective? During 2014, two legislative projects shaped an acknowledgment of the trans\* collective through policies of reparation and compensation.<sup>12</sup> In this way, the state would come to (barely) acknowledge such necropolitical calculus through a quite significant possibility: *reparative justice*.

The juridical norm (GIA), as an operation of disciplinary power, is applied to a trans\* population but not to the government of trans\* individuals. It recognizes and guarantees access to certain rights, but it does not refer to the global networks that support life and make it proper to be lived—whether they involve education, employment, housing, nutrition, integral health, protection against police abuse, etc. In this sense, different sectors of trans\* activism have organized employment cooperatives as well as a community high school, and are promoting a legislative project on employment quota, all of which constitute valuable examples, in different modalities, of organized response to the necropolitical management of their lives.

What it is at stake now, around the political frontiers of the GIA, are the norms of social recognition of that which is a sexed subjectivity. Furthermore, the GIA does not modify social treatment towards gender or its experience. Even well past the “legal spring” that meant that great victory, the guarantees established in the GIA do not assure their beneficiaries to be safe from violence and systematic harm by the police and biomedical apparatus, as well as from different social sanctions.

Furthermore, the degrading treatment that the biomedical institution provides to trans\* people is a whole different challenge. The wide set of mutilating practices without consent to which intersex people are subdued still remain current in the field of medical private practices, and still invisible as ever. Despite one of the draft bills (No. 8126) took a position on these matters, the law that was passed, unfortunately, did not include the specific article on the “prohibition of genital intersex mutilation”. This meant, doubtlessly, a defeat in the entire process of negotiation. Nevertheless, the approval of the Gender, Gender Expression and Sexual Features Act that forbids “normalizing” interventions in the faraway Republic of Malta opens a brand new horizon in the matter of sexual and human rights for intersex children and adults.

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23rd, 1991, granting economical repair to political prisoners and victims of forced disappearances. These actions were made effective in the context of a notably paradoxical process: on one hand, the respect due to the Organization of American States (OAS) and the compliance with its organisms' decisions. On the other hand, simultaneously, a process of impunity and amnesty towards the genocidal acts committed by members of the armed forces.

<sup>12</sup> About such projects and their respective debates, see *Tester de violencia*, on line version: <http://www.accesglobal.info/tester-de-violencia/> (accessed 04/30/2015)



The effective regulation of the GIA in health matters challenges the different state agents (Ministry of Public Health at a municipal, provincial, national level; medical corporations, medical sciences faculties, etc.) from a more complex perspective that results in very specific and localized practices. In a first instance, the inclusion of trans\* activists, specialists, patients and health users was rejected. However, a number of meetings, forums and training workshops were carried out by trans\* organizations themselves. It is pertinent to repeat the question:

How can we turn this community, which we ourselves have contributed to victimize and put in such situation of vulnerability, into not only an empowered community but into one acknowledged as one of experts who are able to generate public policies, work in hospitals, participate in bioethics committees? (Cabral, 2012b)

With regards to health issues, the effective regulation of the GIA under the responsibility of the national Ministry of Health maintains at its core the dispute over the biopolitical or thanatopolitical management of bodies: who, in what way and to what degree of engagement will train health care professionals, practitioners and agents? Lastly, at a present time branded by the temporality of death, the need and urgency of access to health rights continue to point at an outstanding debt: when will regulation be carried out, in a specific and sustainable way?

At the present day, while concluding the writing process of this paper, the regulation of health rights contained in the GIA are in the process of becoming effective, according to the public commitments that the Ministry of Health has accepted. The call for the drafting of these regulations took place behind closed doors at the Ministry, which meant an—eliminary—filter and an uneven recognition between those who were invited and those who could effectively participate in that stage. Moreover, the lack of access to health rights prescribed in the GIA that remain without regulation have taken yet another life.<sup>13</sup> Sheltered under the generalized negligence of all state agents, (including the Faculty of Medical Sciences at National University of Córdoba), the necropolitical dynamics that manages trans\* people's lives does not cease to operate.

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<sup>13</sup> See: <http://www.diariouno.com.ar/pais/Murio-una-transexual-que-se-habia-inyectado-silicona-industrial-en-San-Juan-20150506-0082.html>; and <http://www.cadena3.com/contenido/2015/05/11/Un-transexual-murio-tras-inyectarse-silicona-en-senos-145416.asp> (accessed 05/07/2015)

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