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Rights for the “Non-Conforming” Woman:

The Intersectionality of the Fight for Women’s Rights and LGBTQ+ Rights in Argentina

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A Proposal Submitted to the Honors Council
For Honors in the Spanish Department
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Abstract:

Argentina has faced many challenges throughout its history of activism as the people have pushed for an equal society. Different movements have sprung up over the years, but they have begun to twist together in recent times due to the need for support during repressive regimes. This brings into question the concept of intersectionality, which spans feminist, queer, and legal theory in its attempt to explain the need for overlap, modeling the natural development of personal identities and groups like family. The feminist movement and the LGBTQ+ movements have woven together in many rallies, especially during El Encuentro Nacional de Mujeres. In the feminist movement's focus on reproductive rights, they have left out surrogacy rights and regulation, which is something that the LGBTQ+ community highly values and needs to form their version of family.

Through personal experience of the activist scene in Argentina and qualitative research in theory and legal results, it is clear that surrogacy has been left out due to the different treatment of the interests of queer people. It shows that there is a stronghold over the government by the Catholic Church that prevents more equitable legislation that would greatly benefit the LGBTQ+ community in Argentina. The right to family should be protected no matter what considering its importance to full sexual citizenship. Surrogacy is a right that should be properly regulated in order to better protect the right to form a family for everyone equally, including gender non-conforming women and trans women.

Introduction:

Argentina is a beautiful South American country with a rich history, a productive present and a hopeful future. The people of Argentina have built a standing for human rights and a focus on civil rights, seen throughout their lengthy history, which has required change and movements toward a better future for all. Today, Argentina is a country that is lauded as a progressive dream for Latin America and is regularly making headway in comparison with North America and European countries. Two movements that have worked to make this possible are the women's movement, and the LGBTQ+ movement. The women's movement and women's activism have had different focuses throughout history as rights have been achieved, but they have been a long-standing fixture in Argentinian culture. On the other hand, the LGBTQ+ community has not been able to hold onto the same level of visibility until recently, even though this has not meant the same for the acceptance of the movement.

As a queer woman studying abroad in Argentina during the rule of the Macri government (2015-2019), I felt drawn to these two seemingly separate areas of activism. Before the activism that I engaged in while in Argentina, my personal experience was in community outreach in the United States that was primarily one-dimensional. This was the only exposure to activism that I had had, and I was surprised and extremely interested in exploring more. While in Argentina, I experienced firsthand the connection and intersectionality of the women's movement and the LGBTQ+ movement as the basis of study. After attending what was originally known as el Encuentro Nacional de Mujeres in 2019 but has recently expanded to be called el Encuentro Nacional de Mujeres, Lesbianas, Trans, Travestis, y No Binarias, I began to wonder about the possible connection. The Encuentro is a combined effort of all the previously listed identities and

works together to actualize their desires for a more equal society. These two communities have come together to support one another in separate but overlapping fights for justice, resulting in achievements for both. I think both are equally important and powerful, but the combination of the two is extraordinary and deserves to be studied. This combination is important, but it also highlights the areas that have been missed by the women's movement that are very important to the LGBTQ+ community.

In the United States, in past years, human rights organizations and communities have primarily stayed separate and have not expressed outward support in the form of inclusion and showing up for one another, and that makes Argentina's achievements even more distinct. Sociology focuses on studying the complex system of societies and this relates heavily to the concepts of activism and change that are essential for progress within these groups. This certain study lends itself to evaluating the changes within a society and how it has continued to develop through accomplishments. Legal theory explains how to think about changing the laws and why the laws should change in order to accomplish more milestones. Many of the significant accomplishments and focuses that gain attention in Argentina are related to the ideals of family. The imagery of the green pañuelo from the Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito has become easily recognizable as the women's movement has raised their voice calling for reproductive rights, which have been highly contested because of the interpreted juxtaposition with religion. This has caused problems for those fighting for reproductive rights and the way that this fight has been shaped to exclude the desires of trans and gender non-conforming women.

Being raised in a religious background gave me an understanding of how religion can profoundly affect a worldview, especially on the topic of family. For this reason, the effect of the

Catholic Church on Argentinian society and governmental rule cannot be left out in an exploration of the rights to a family of one's own making. In many places, Argentina included, religion is a major part of people's deciding basis for their core beliefs and this influence can change societies drastically, which can be explained through legal theory. While governments might claim to be without religion or to have religious freedom from the declared religion, as is the case in Argentina, it is almost impossible to fully separate this, and it has hurt activism in the country for both movements.

In addition to my life within a strong Christian church, my family is a blended one; my youngest brother was adopted. The right to a family, in whatever way it is formed, should be inherent. Adoption is legal in Argentina and has been legalized for LGBTQ+ couples following marriage equality in 2010, but full control over the familial ideals and bodily autonomy are still not completely free. The women's rights movement that has fought for bodily autonomy, protection, and civil rights for women has led the way for Argentina to become one of the more advanced countries in the region. This forward movement has helped the push for LGBTQ+ rights, specifically during the period following the fall of the military rule and recovery afterward.

These efforts were affected by the Macri government and the rise of activism in opposition to the repressive Catholic government. Macri brought in a more controlling government that caused problems for activism not only during his rule but also afterward. The increase in power and popularity of the Encuentro Nacional and the intersectionality that has occurred with the LGBTQ+ community has continued to increase the support; this can be seen on the societal level with the increase of acceptance and popularity that the pride festivals have helped create. Taking all of these influences and driving purposes into account leads to this topic

of familial rights and how this has been overlooked for people who might not conform to the expectations of the gender they were assigned at birth, or the gender identity that they were given. The concept of gender weighs very heavily on society and the arrangements that are considered “normal” or “right” for people to engage in.

Background History of Argentina:

Argentina has had a tumultuous political history that has produced many human rights movements and focused on a better society for everyone. For this study, I will be highlighting the history of the women’s movement and the LGBTQ+ movement. The first to formally develop was the women’s movement which was followed by the queer movement. The different presidencies through this time have profoundly influenced the effectiveness of these movements and have made it easier to track the historical pockets of improvement through time.

The first major historical milestone for the Feminist movement in Argentina was the passage of legislation granting women the right to vote in 1947. This milestone was a significant accomplishment that had been a fight for around fifty years of activism. Starting in the late nineteenth century, feminists had to use alliances with the Socialist party, professional associations, and women of influence to gain ground within their fight for equality. It included fighting for the right to work outside the home, which was granted in 1926. Eva Peron and the Peronist party worked to engage working-class women within the political and working scene. This increased female participation in politics and set a precedent for the engagement that can still be seen today (Hammond 2009, 14).

There was a lull in the emphasis on women’s rights and their place outside the home due to the later twentieth century’s repressive regime. However, this did not stop the movement

entirely, and in 1977, fourteen women marched around the Plaza de Mayo and became known as Las Madres de la Plaza de Mayo. They marched for answers about their disappeared children during the so-called “Dirty War” and used their gender identity as a form of protection to protest. Due to the sexism at the time, these women were not seen as the strong political figures they were, and they could use this to their advantage. Their movement and bravery are now considered instrumental in the restoration of democracy for Argentina (Howe, 44). The social activism that came from the feminist movement did not just affect women’s place in society but worked as a catalyst for the increase of social justice for many other marginalized groups including the LGBTQ+ community. Family and the right to family has always been a focus, and it is important that this is considered as well when thinking about the success in history and moving forward to the need for surrogacy.

It is important to acknowledge the difference in terminology between an authoritarian government and a dictatorship. Argentina has experienced both but the difference between the two makes the impact on the social movements stronger or allows for more freedom of movement for activism. A dictatorship or totalitarian regime is defined as “a form of government in which the state’s power is unlimited and controls virtually all aspects of public and private life. This control extends to all political and financial matters as well as the attitudes, morals, and beliefs of the people” (Longley). During the military dictatorship (1976-1983) it was very difficult for the Argentinian people to have the freedom of movement that made change possible, however, an authoritarian government does allow for only slightly more freedom. An authoritarian government is defined as “a strong central government that allows people a limited degree of political freedom. However, the political process, as well as all individual freedom, is controlled by the government without any constitutional accountability” (Longley). Under these

circumstances, the feminist movement and the LGBTQ+ movements had the ability to begin to vocalize and form their arguments, but they were still very restricted.

The LGBTQ+ community has had to fight for recognition worldwide, and South America is no exception. The fight in Argentina formally began in November 1969 during a military rule. The Grupo Nuestro Mundo was founded in Buenos Aires during this time and was the first formal gay political organization in Latin America. In 1971, they joined forces with the Frente de Liberacion Homosexual or FLH, a more radical group that mainly focused on queer men. During Juan Peron's return to power, they were closely associated with the women's rights movement. However, after Peron's death, there was a rise in violence against homosexual individuals. After Onganía's government ended in 1973, discussions were abundant concerning human rights, but they were thwarted by disagreement and violence. The military dictatorship of 1976-1983 resulted in violence and state terrorism and the loss of what we now know as Los Desaparecidos. Many were tortured, killed, or disappeared for who they were or what they believed and homosexuality was targeted by the government and banned from the public media. The Dirty War in Argentina lasted from 1976 to 1983 and is widely regarded as one of the darkest and gruesome periods in Latin American history. It began with the overthrow of Isabel Perón, the widow of Juan Perón, the president, and this act was part of Operation Condor, which the United States supported. The dictatorship that took over afterward was called the Process of National Reorganization, often referred to as the *Proceso*. The "Dirty War" that was fought wasn't a conventional war with an outside force but rather one with its own people. Because the *Proceso* was in power, the torture and destruction of those that supported the previous president or spoke out against the current rule were rampant and widely unchecked as the government-controlled everything (Blakemore, 2019). The junta closed the National Congress, imposed censorship,

stopped trade unions, and imposed military control. The junta also carried out the brutality needed to keep this dictatorship in power and would take suspects away night and day to be imprisoned, tortured, and murdered. The main goal was to wipe out the left-wing terrorism, but this extended far past this goal into terrorizing the entire country (Editors of Encyclopaedia Britannica). During these seven years, 10,000- 30,000 people became the Desaparecidos, a group of people that were abducted and either most likely killed or never seen again, often enduring torture first. These victims were largely people who openly opposed the military or were family members of those who did, and it is believed that it was done by Argentinian governmental agents (Moments in US Diplomacy).” The community and FLH lost their influence since many of the members were killed or tortured after the coup. FLH was almost entirely wiped out, and with it, the hope that it brought. In 1976, FLH was forced to dissolve, and formal lesbian and gay activism disappeared under the repressive regime. There were specific paramilitary groups that were intent on wiping out homosexuality, and at least 400 lesbians and gay men were disappeared by the regime that was supported by the Catholic Church during this time.

After the military dictatorship fell in 1983 and Raul Alfonsin took control of the presidency, lesbian and gay life began to make a resurgence and a general “rebirth” of activism occurred. Inspired by the community’s activism during military rule and at the end of it, the Comunidad Homosexual Argentina or CHA was formed. CHA gave way to many other groups, including a lesbian feminist group named Las Lunas y Las Otros, the Sociedad de Integracion Gay-Lesbica Argentina (SIGLA), the Grupo de Investigacion en Sexualidad e Interaccion Social (ISIS), and Gays y Lesbianas por los Derechos Civiles (Gays DC). In 1991 Ilse Fuskova made an appearance as an out lesbian and caused a rise in lesbian activism that led to the formation of Convocatoria Lesbiana. In addition to gay and lesbian organizations, there was also a rise of

transgender groups and activism, and the first pride march was in July 1992 (Brown, 120-123). As activism rose, dissent within the groups grew, and factions began to form. There began to be an emphasis on queer men that left out queer women's issues like familial and reproductive rights. This forced a divide and caused many lesbian groups to find support through the feminist movement that was also beginning to reconnect and support the LGBTQ+ community, as seen in support of Las Lunas y Las Otros. This was the beginning of the movement towards a focus of intersectionality in the two groups.

In the current context, Argentina has become a front-runner for Latin America, sometimes legally ahead of leading world powers like the United States with the national legal marriage equality in 2010 and gender identity protection law in 2012. This status is an accomplishment considering the severe repression that occurred during the rule of Juan Carlos Onganía, who enacted strict laws that only allowed for heterosexuality and cisgender expression. At the end of the military dictatorship, Argentina was not yet the safe space that it is now, but the fight was just beginning. Unfortunately, due to the state's violent nature, there aren't reliable records of everyone that disappeared during that time. Although homophobia was still rampant after the dictatorship ended, the activist community took this as a time to fight back and gain ground. During this time, the LGBTQ+ community was not the only group working towards civil rights and allowed for a connection between groups, like the feminist movement. While this wasn't always harmonious, it did help groups to achieve more recognition.

1989 saw another president from the Peronist party, Carlos Menem, who introduced the economic austerity program which would lead to issues down the road for Argentina and its activists. However, during this time period, in 1992 Argentina hosted its first Pride parade in Buenos Aires even though the overall size of activism groups was still relatively small compared

to the size of the LGBTQ+ community in the country. Following him, Fernando de la Rúa inherited the presidency and a massive amount of debt leading to the crash in 2001 and the subsequent fleeing of de la Rúa from the country. Nestor Kirchner was sworn into office in 2003 and helped heal the financial crisis in the country. In the early 2000s, the activist community switched its focus from human rights to a more narrow approach on civil rights and liberties. This switch has most notably resulted in the legalization of same-sex marriage in 2010 and the gender identity law of 2012 (Shaffer). These pieces of legislation were achieved under Cristina Fernandez de Kirchner's presidency, who succeeded her husband, Nestor Kirchner. Although this was a significant step for the LGBTQ+ community, it did not mean protection or acceptance was guaranteed for the community. The presidency was then transferred to Mauricio Macri in 2015, bringing in a more repressive government and a rise of the Catholic Church's influence. He was president until December 2019, when Alberto Fernandez won the election (BBC News). Women faced stalemates in their fights for reproductive rights, and trans women face heightened levels of violence underneath Macri. (Usborne). While the laws might be on the books after many long years of activism, Argentina's culture has not caught up.

Latin America has faced a long history of violence either at the hands of outsiders or within their own countries. This internal violence has come in the shape of dictatorships, coups, guerrilla warfare, and civil unrest, leading to a high amount of gendered violence coming from both sides. The violence that has occurred in Argentina is a main contributing factor to the level of activism that can be seen. Several atrocities have been committed solely on the basis of gender, but in these cases, it was most often against women. Women have been subject to violence throughout history due in part to the dominant culture of machismo. This concept has presented itself in Latin America in femicidio, or the state's complicity in killing women, and the

act of killing women based solely on misogyny (Garcia-Del Moral & Neumann 2018). These acts of deadly violence against women have continued after wartime. Still, they now are being fought by grassroots organizations and international organizations, either by way of support for the women and families affected or by lobbying for policy change. While there have been changes over the years, there are still culturally and politically based problems in recent years. The transnational pressure has attempted to address the concerns of abuse and violence that these women have voiced

El Encuentro Nacional de Mujeres:

El Encuentro Nacional de Mujeres was founded in 1986 and has been meeting throughout the country since. This type of social activism is not seen almost anywhere else in the world on this scale. It is self-organized, which heavily contributes to its uniqueness and also its effectiveness. Since El Encuentro Nacional de Mujeres is a people's movement and is not funded or supported by the government, they have more freedom with their plans. With this freedom, the meeting is a place to talk about the national government and the state's problems to strengthen this feminist movement. Every year, the meeting's location changes to a different city or province to increase accessibility and eliminate the power issues in an effort to make it as egalitarian as possible. Also, during the meetings and marches, women can recognize their wishes and ideas about state laws in the province that they are from or are currently meeting in. It is generally regarded as a time of celebration but also for deliberation about what these women face in the world throughout the year. Many people treat it as a time to reunite with those across the country and share their experiences and lives with women they may have never met. At the

end of the Encuentro, there is a large march in the city held in that year, and the sounds of laughter, dancing, drums, and determination can be heard ringing through the streets.

In its many years, it has gathered thousands of women together and has been consistently growing, reaching approximately 70,000 people in recent years. In order to achieve this change, there was a need for visibility. The concept of visibility for social movements is like water for a plant; without water, the plant dies because there are not enough nutrients for growth. When giving visibility to a group that has been marginalized, it shines light on the problems of this group, and these problems are not just this group's, but they are society's. The meeting is held on a three-day-long weekend and lets women take a break from their day-to-day life to discuss Argentina's essential issues. Many of the topics relate to the main targets of the women's movement, but in recent years, they have branched out to include matters that don't just involve conforming women. If one were to attend, they would see seas of green and purple "pañuelos" or handkerchiefs representing the overwhelming support of the women's movement. However, as years have passed, there has been a shift in the colors of pañuelos to include different pride flags. This development is reflected in the meeting's name changing to include lesbians, bisexual women, trans individuals, and non-binary individuals. Their fight and self-organization pull from Las Madres's inspiration and provides hope to those who need it. This meeting has become multinational, with people traveling from nearby countries to attend as well as many study abroad students, including myself, have been welcomed into the fold. The inclusion of multinational or plurinacional in Spanish is not only just to include the people from foreign states recognized by formal boundaries. The change is intended to include recognition of the indigenous people in Argentina, like the Mapuche. They have been struggling for land rights and recognition of their claims to traditional tribal land. Indigenous women have been involved in

planning meetings since the first, but it hasn't been until recent years that they could make their claims and needs be heard amongst the crowd. The increase of the attendees' diversity has also increased the variety of planned talks; recently, more than half of the provinces' interests have been represented. In a report about this meeting, Amanda Alma said,

Más allá de las diferencias que cada partido político, movimiento social, o agrupación feminista expresa, el Encuentro Nacional de Mujeres funciona como un gran espacio de unidad. Una unidad forjada a partir de la diversidad de identidades políticas que se manifiestan dentro del mismo Encuentro, pero inmersa en la gran visibilidad colectiva.¹ (Encuentros Nacionales De Mujeres En Argentina: 33 Años De Lucha: Nueva Sociedad).

In 2018, the Encuentro offered discussions on feminism, activities, couple relations, sex work, legal abortion, maternity wards, families, communication, social organizations, political representation, communication, lesbianism, lesbian activism, bisexual activism, fat activism, sexual and reproductive rights, health, disability, sexual harassment, femicides, justice, trafficking, work, unemployment, unionism, and poverty, amongst others (Gimenez). These are extremely important and diverse topics which are a great example of why there is a need for this type of outreach. By having several different options and forms of activism it allows for there to be an extended reach of the Encuentro which strengthens the entire platform's wishes. Each one of the categories that the Encuentro now includes challenges what it "means" to be a woman according to the performative gender theory. Judith Butler, an American theorist, presents this ideology, but Carlos Figari, an Argentinian theorist, sets Butler's work in the context of Argentinian society.

¹ Translation: Beyond the differences that each political party, social movement, or feminist grouping expresses, the National Meeting of Women functions as a great space of unity. A unity forged from the diversity of political identities that manifest themselves within the same Encounter, but immersed in the great collective visibility.

Thesis:

The support that the feminist movement has had for the LGBTQ+ community has been instrumental in paving the way for the community to find a foothold in the activist field. The history outlined in this thesis shows the foundation that the women's and human rights fields have laid. The women's movement and their dedication during the Dirty War allowed there to still be a focus on human rights during an extremely repressive government. Since these two wove together during this time, they have had a natural partnership in the years following. If you happen to be in Argentina and encounter a protest, it would be a very common sight to see elements of the women's movement no matter the issue at hand. Following the pattern of a naturally woven fabric of human rights movements, it makes logical sense that the women's movement and LGBTQ+ movement continue this trend. Within a heteronormative and patriarchal society, human rights organizations that go outside that norm have to work even harder to achieve recognition; joining forces can make this easier.

Human rights is a large umbrella that includes many different facets of interests. During the repressive governments that Argentina has gone through, women have found a way to utilize their gender and the gender performance assigned to femininity and motherhood in order to be able to protest without as many repercussions as their male counterparts. Las Madres fought for answers and for their families. Their dedication cemented their role as mothers and the fact that motherhood is an integral part of full sexual citizenship and acceptance in Argentina. This caused the aforementioned weaving and the consequent taking over of the women's rights movement or the feminist movement. Because of their leading role within human rights and their focus on familial and sexual rights, the LGBTQ+ community joined in their fight with their own interests as well.

This originally had a positive effect on the treatment of the “nonconforming” woman or queer women within the movement for reproductive rights and familial rights. However, in the women’s movements’ claim for reproductive rights for women, they have left out the protections of surrogacy in this claim, choosing instead to focus on the right to legal and safe abortion. The choice of abortion is in contrast to the catholic tradition of putting the nuclear family and motherhood first. The act of surrogacy according to the Catholic Church is another form of a deviant family style however, it is simply an equalizer for people who can’t have children due to physical or emotional reasons. This seemingly separate area of rights is actually connected through a theoretical framework and the understanding of gender performativity and gender dysphoria.

The concept of theory is used in academia as an explanation of our life and thought processes, so it is essential to the evaluation of the potential for an increase of protection and rights for everyone. Theory presents a more detached view of very personal issues which can make understanding why and how we do certain acts within society. Family is deeply tied to feminist, queer, and legal theory because of just how immersed the concept of family is within Argentinian society. Legal theory shows that the lack of these changes show the lack of full acceptance for the LGBTQ+ community and pervasiveness of the religious and patriarchal system in Argentina. Queer individuals as in gender non-conforming women or people and trans women often can not have children biologically even though there is a desire to have children. Surrogacy allows for there to be as many options to fulfill a strong social identity, forming a family. Gender non-conforming women are women who still identify as women but do not subscribe to generally accepted gender performance of femininity whereas

gender-nonconforming individuals are people who do not subscribe to either the gender performance of masculinity or femininity.

Argentina, like many other Latin American countries, has a strong culture surrounding family tied to religion originally, but it has spread throughout the secular framework as well. To form a family how you choose, is to say that you have full sexual citizenship within a society and as Argentina claims to make progress in the fight for the recognition of LGBTQ+ individuals it is vital that this issue is considered within the law and society. Sexual citizenship is defined as "the acknowledgment of one's own rights to sexual self-determination and importantly recognizes the equivalent right in others and promotes the capacity for sexual self-determination in all people, enabling them to feel secure, capable, and entitled to enact their sexual projects..."(Hirsch and Khan, xvi). These rights are vital for gender non-conforming women and trans women to be able to have the same options as any other woman in their own reproductive choices, but they have yet to be protected in the eyes of the law which is reflective of the values of the society. The focus on abortion rights was important because it was preventing people with uteri from having full sexual citizenship, it is important to also address the queer siblings to this central movement. Both groups have worked tirelessly to achieve a higher level of equality, but this clear oversight has put the trans and gender non-conforming women at a disadvantage. Surrogacy should be an inherent right in order to grant LGBTQ+ individuals, specifically for the "non-conforming" woman, to achieve full sexual citizenship.

Feminist and Queer Theory:

Feminist and queer theory is instrumental in framing how intersectionality has impacted the LGBTQ+ and feminist movements. In shaping this concept of intersectionality, it allows for a

deeper understanding and exploration of the progress that has been made within these movements. Intersectionality of identities and gender performativity helps explain how two separate movements have had to come together to achieve goals like reproductive rights. However, the lack of prevalence explains how not all reproductive rights have been achieved, like the regulation of surrogacy in a way that benefits both the adoptive family and the surrogate mother. Through the exploration of the theory of social justice there are answers to why certain things have been accomplished and others have not, it is therefore integral to the question of how to achieve rights for non-conforming women in Argentina.

These two separate fields of study do have overlapping ideas and contributing factors. Using texts from Kimberlé Crenshaw, Judith Butler, and Carlos Figari, I will frame general queer ideology broadly and specifically to Argentina. These three prominent authors provide the basis for understanding the effectiveness of movements like El Encuentro Nacional de Mujeres to address the issues of the LGBTQ+ movement. The term intersectionality is the keyword needed to understand the ideology and theory behind the movements. Without it, these movements' agendas would be single faceted and not as influential as they have evolved to be. This would completely leave out the progressive intersectional agendas that have become increasingly more popular.

Kimberlé Crenshaw is a leading scholar in critical race theory credited with creating the terminology of intersectionality, defining it as “attention on the vexed dynamics of difference and the solidarities of sameness in the context of anti-discrimination and social movement politics” (Cho, Crenshaw, and McCall 787). Even though this concept has a basis in American critical race theory, it has been adapted and taken to many other lengths to include queer theory and feminist theory. It is now a common term in social activism all around the world. This

concept works to undermine the effect that “single-axis” thinking and planning has in all life areas, including the social and legal fields. When the *Encuentro* was solely focused on one set of the group's needs, they were able to accomplish the goals, but it did not benefit everyone who identified as a woman, which was the original goal.

By expanding the understanding and those that were welcome within the movement, they were able to improve the intersectionality of their focus and work towards fighting for nonconforming women's rights. In fact, “Intersectionality is inextricably linked to an analysis of power, yet one challenge to intersectionality is its alleged emphasis on categories of identity versus structures of inequality” (Bach). This term sets the necessary level of understanding for interpreting the combination of work together that queer, feminist, and legal theory can accomplish. Intersectionality best lends itself to studies that include the study of power relations and the issues that result from these issues. It can and has left the body of critical race theory and has spread into many different disciplines to better advocate for those intersecting identities.

Francisco Valdes, a current leading scholar in queer legal theory, defines queer legal theory as “uniquely positioned to promote expansive critical insights into the various species of interlocking isms that keep women and sexual minorities down,” which is why using this lens will allow me to explore both communities. In movements where identity and gender identity play a role in activism, it is crucial to work with this concept. It provokes the very foundation of what it means to be a woman within the culture and the law. He introduces and defines Latina/o Critical Theory or LatCrit as a name that

combines two signifiers, one focused on a social identity and the other on an analytical stance: 'Lat' stands for 'Latinas/os' and 'Crit' stands for 'critical'. When the two are put

together, 'LatCrit' stands for 'Latina/o Critical Theory' - one among several 'outsider' strands of contemporary 'perspective' jurisprudence...(Valdes, 148)

This way of thinking has been working towards understanding and processing the prior jurisprudential experiments of critical race theory in general. It originates from the United States' Hispanic population but has since spread outside the borders and into Latin and Central America. LatCrit focuses on building a sense of community and identity in its projects as a discipline and is a good representation of the intersectionality that comes from critical race theory.

Carlos Figari provides Argentinian context about what it means to be queer and also a member of the LGBTQ community because, for Argentina, that is not always synonymous. The term queer was not extremely popular in South America within academia. In the beginning, it only gained popularity through the English and Humanities departments at universities. However, it wasn't until the introduction of Judith Butler's queer theory work in the early 90s that it even became widely popular within universities and was used to signify "theoretical and political discourse" (Figari, 621). Within this realm, queer explicitly designated a political and theoretical area rather than the interchangeable term it has grown into today. This was due to a desire to encourage distance between the study of gender and the study of sex and sexuality that already had a foundation within some social sciences. Theorists who studied this found the queer theory drawing and dragging them towards social activism as it was becoming safer to do so in more accepting regimes. Many carefully point out that in Argentina, "that no one studied heterosexuals and their families to see if they have the right to exist" (Figari, 623).

Judith Butler is known for her contributions to queer theory, especially in defining gender performance and identity. Butler says that gender is performed and "is in no way a stable identity or locus of agency from which various acts proceed; rather, it is an identity tenuously constituted

in time —an identity instituted through a stylized repetition of acts" (Butler, 519). The gender and sex are combined before birth; the sex is assigned through ultrasound, and gendering begins soon after. This gender assignment then affects everything for the rest of the infant's life. After finding out the sex, the colors of toys and presents are gendered, blue for boys and pink for girls. We have defined activities, chores, toys, and clothes for boys or girls through childhood. People learn from a young age what it means to "be a girl or a woman" versus what it means to "be a boy or a man." These phrases are in quotes because they are the constructed ideals. This is not to say that there are no real consequences for coming in contact with these social barriers, just that we build this based on how we act and what concepts we value. The construction of gender affects every part of society and how we relate to one another. By beginning the cycle of the gender structure at such a young age, it fools that participant into believing that it is natural, which makes it more difficult to question. While gendering is passively begun in our self-development, once we are aware of the world around us, we actively engage with gender and gender expectations. For instance, women are typically depicted in nurturing or passive roles, while men are shown as more aggressive or active. Having repeated large-scale, visual stories of gender that people interact with can shape one's understanding and relationship with gender. Cisgender women who fit the binary category of what it means to be a woman carry the assumption of motherhood even though this same expectation is not put on those that break the bonds of "womanhood" by having a queer identity. This concept is the easiest to see on the micro or individual level; one can analyze their own body and display to see this phenomenon. We actively make choices for ourselves based on our gender assignment that we might not have organically done, but it confirms or denies societal expectations. In order to see why we make these choices, it is imperative to look at the micro and interrelational levels.

The interrelational level studies how we relate to those around us, so it is essential to the analysis. On this level, one can begin to see the impact of gender and society. The combination of the gendered self coming in contact with other gendered beings results in a sort of "checking" of the gender standards, which reinforces the performance of gender that Butler initially identified. Our interactions with others define our gender presentation as either correct or incorrect within the societal expectation. When children are in school, they are frequently separated by gender and assigned tasks that the teacher has accepted as fitting for that gender through their own gendering. This reinforces what the children may have already been taught and further contributes to their gendering project. This constant association of gender with these roles is one of the causes of gender inequality in our society. These interactions between members of a community contribute to the macro-level of analysis. The macro-level analysis combines both of the lower levels to look at a complete large scale picture of the society. On this level, it is easy to see the full gender structure and its trickle-down effect. One material example of this is gender and the legal system. Law can reflect the country's values; it is hard to believe that a nation that doesn't give a specific population the right to vote values deeply what they have to contribute. It also shows the real consequences of not ascribing to the gender role assigned to your sex. Many countries have laws that penalize this behavior, which only works to reaffirm a rigid gender structure (Risman 2018).

When feminist theory was in its infancy, lead philosophers around the globe began to look at Las Madres's emphasis to connect their ideology with that of gender. Ana María Bach provides a basis for feminist philosophy and development in Argentina and studies on reproductive rights in the frame of feminist philosophy and reproductive justice ideas. She was part of a group of academics that were inspired to construct a formal basis for feminist theory

after hearing a lecture in 1987 by María Lugones, an Argentinian philosopher. In a recent work commenting on how to decolonize feminism, she is quoted saying,

It is a matter of the geopolitics of knowledge. It is a matter of how we produce a feminism that takes the global designs for racialized female and male energy and, erasing the colonial difference, takes that energy to be used toward the destruction of the worlds of meaning of our own possibilities. Our possibilities lie in commonality rather than subordination; they do not lie in parity with our superior in the hierarchy that constitutes the coloniality (Lugones, 752).

The association founded by Ana María Bach and others was working to understand feminist philosophy better as it was coming onto the social scene by using their various backgrounds and uses this ideology from Lugones that was still in its formation stage. It wasn't until 1991 that feminist philosophy was officially presented in Argentina at the First National Conference of Philosophy in Salta (Bach). It has, however, faced mixed reviews in its acceptance which is revealing within its own right as to how such theory is interpreted. Bach says that, "Feminism is transgressive, and academic discussion seeks in many cases, perhaps without wanting to, to tame subversive aspects not to lose intellectual prestige and to be able to play by the rules of the game of the academic institution." Queer and feminist theory squarely intersect on the rights of the nonconforming woman, lesbians, queer women, and trans women. For years trans women were not taken seriously and treated as homosexual men in dresses which is exceptionally harmful to gender identities and progress.

Legal Theory:

Crenshaw contributed heavily within the social sciences and critical race theory. This way of theory can help set the foundation for understanding the legal theory that explains the need for the social level and the legal level to reach one another to accomplish rights for the nonconforming woman. Legal theory can help explain the speed, or rather the slowness of the movements' progress by explaining how a society relates to law culturally. In order to understand why the movement towards reproductive rights and freedoms has progressed at the rate it has, it is important to understand how law fits within a society and the fact that it can not operate outside the culture that it comes from. This is proved by the fact that while something might be considered okay and decent during one time period, that does not guarantee the same reaction or treatment of that ruling as the culture changes and the laws change along with it. The patriarchal ideology behind the nuclear heterosexual family should follow this thought process and continue to adapt to the complex setting of the Argentinian society. Having rules that are quite simple in their own essence would not be conducive to a society of quite complex people, and each has its own different desires. Specialists within critical race theory are considering this and are attempting to discover how they can change the system to serve one group of people better while also not denying the complexity of the situation. With this consideration, it would be easier for it to last the test of time because the careful consideration that they apply to this specific instance could also be applied to others. Richard Epstein and the critical race theorists are both attempting to refine the current system to better achieve society's freedom and the individual actors within it. The two different thoughts also would like to increase the law's utility and make it easier for those who need to use it. However, Richard Epstein and the critical race theorists would disagree vastly on the best and correct method to use in order to reach these

common goals. With increased utility of the law, it makes it easier for there to be changes to the law that might help spur cultural changes as well. This is a vital concept for any activist group, but especially for the LGBTQ+ movement and the feminist movement.

Within a story, a character can either be dynamic, or they can be static. A static character is a character that has little development and generally does not go under any significant change in their beliefs or their ways of acting. However, a dynamic character is a character that grows during the story and learns along the way. That character will usually develop and go through a significant change before the end of the story. The issue with having a static character is if that character has certain traits that are not liked by the rest of the society or other characters interacting with them. There is little hope for a change in character that would make them a better fit for society. A dynamic character, that is, one that will change, does not have this problem. The character will change before the story is over to better fit society if that is the way that they are pushed. A legal system is very similar to an account for a nation, a coming of age story more precisely. Ronald Dworkin, a legal theorist, proposed that a legal system should resemble a dynamic character within this story. He wanted the law to change and expand to fit the needs of society. Richard Epstein doesn't think the law should be a developmental element but solely a static character. Dworkin's theory of law is more practical and valuable to the ideology of the nuclear family in society. If we had a system that was designed as static at the beginning of this coming of age story, then the laws today would not apply to the society and would not work to best suit the people of today. This does not open the doors for a possible change that would benefit society as the idea of family is developing. The effects can be seen in the hesitation and time frame that has been given to the LGBTQ+ community in their efforts to form a family in Argentina.

Ronald Dworkin focused on looking at law at its foundation and how the judges and lawyers interpret the law. He wanted to go to the source of the law to discover what the law is in actuality or in practice. Using the judiciary court as an example, one can see that there are differences in the interpretation of the law in non-unanimous decisions. If there were no differences in interpretation, there would be no reason for the dissenting argument. Through examining these arguments and the source of the law, Dworkin believed that it would reveal the character of a legal system and that it would reveal the morals of a society. In Argentina, it reveals that there is a patriarchal lens that is tainting the view and character of the legal system. The morality of the law shows an emphasis on the preservation of the patriarchal society and of the rule of the Catholic Church over the legal system. Some might disagree and say that this is simply due to a different view of the law but Dworkin separates this into a better understanding of law.

In order to assist in the definitions of different views of law, Dworkin separated it into two systems: the rule book conception and the human rights conception. By using the rule book conception of law, the law would only exist to regulate. This conception would mean that there is no place for politics in law, and anything that might seem political would be an incorrect interpretation of the law and the intent of that law. Laws that might seem political would actually just be filling in the gaps left by previous laws, and to prove this, one would have to examine the original intent of the politicians who passed the law. Surrogacy and reproductive rights for LGBTQ+ couples or non-traditional couples might seem like a politically motivated option, but it is not taking away from any source of political power, it is only working to fill in a gap that has been ignored in the past.

Also, cases that we would consider to be “hard cases” could be solved by reviewing the rule book closer. Dworkin pondered whether a law is unjust in a society that follows a rule book thinking of law to challenge this ideology. He believed within that conception that the laws do not reflect the accepted theories of justices of that society. But instead, it is simply a rule book that the people need to abide by. Dworkin favors the second system that he proposed: the human rights conception of law.

To define his human rights conception, Dworkin expands by saying the legal system is a direct reflection of the beliefs of the rights of those in the society. To best evaluate the system, one needs to study law, like learning the humanities or writing a literary analysis. One needs to look at the reasons, emotions, and motivations of the judges, lawyers, and politicians, just like evaluating characters in a literary work. Dworkin said that judges should be like authors in a chain novel, adding their take before “passing it along” and not straying from the core ideas set from the beginning. To do this correctly, the judge needs to evaluate the intent and rationale of those that came before them and create a flow that continues in a unified fashion but also continues to evolve the law to fit society.

Dworkin says that the chain novel method is the best way for those within the law to interpret it, but they need to be cautious because it is about moral impact and judgment. He believes that we need to use this method in order to achieve a community of principles. A community of principles is a community with chosen regulations that result in political morality and justice and ensures that views are represented. With this basis, the people of the community would obey the laws out of their own will because the laws were based on what the community valued, and therefore it is more stable. When people solely follow laws out of fear of the consequences, such as fear of incarceration, the law becomes coercive, and if people can find

ways to avoid those consequences, then there is nothing binding them to obey the law. With the government having a monopoly on the state's power, one should want the laws to be based on the values that the whole community has, rather than solely what the state believes. The main caveat to this community's design is that it requires those within the community to agree to be a part of the system and have the integrity to abide by the decided values. It is the integrity of the law and of participants that makes the laws just. When people feel like their voices are not being heard within the community, Dworkin says that the view of law switches and this is where one can see the rise of activism, especially in cases like the LGBTQ+ movement and the feminist movement. This view of law requires an acceptance of mortality and morality within the law. This does have negative consequences when morality is rooted heavily in religion, which can and has negatively affected the LGBTQ+ community and their pathway toward equality.

Richard Epstein also focused on law at its core and foundation, but instead of looking at its morality and how one could add to the law, Epstein wanted to remove the complexity he saw in that law method. He believed that the law system at the time was nuanced, full of errors, allowed people to use the law to find loopholes within the system, and too costly for society and individuals. With the number of laws that were in place, he said that it created a need for lawyers because they were the only ones that were able to fully understand the law due to the amount of time spent studying it. Epstein said that this was the cost of aspirations being too high for the legal system. He wanted to create a network of laws that was simple and that were not based on ideals for justice.

Epstein believed that one should evaluate the system of law based on a cost-benefit analysis. To do this, one would need to weigh the cost and benefits of law and decide if the law was necessary based on that analysis, instead of whether it was considered just by the affected

society. For example, if you were considering passing a law that would ensure no one was ever wrongfully convicted in effect, but it was going to come at a very high cost for the state and taxpayers, Epstein would say that it should not be enacted into law unless everyone decided that the administrative cost was worth it. This does conflict with religion frequently, which is an issue that has occurred in Argentina with the strong hold that the Catholic Church has over the legal system and the LGBTQ+ movement. With 80% of the country professing the Catholic faith as their religion it is natural to see how the other 20% might be spoken over when it comes to the legal system. Complex laws that stem from this religious cultural background leave out those who do not believe in that faith. Since the early 2000s there have been rallies in Buenos Aires calling for this separation but, “in 2002 the Church was decisive in beginning the “Argentine Dialogue,” and from then on Caritas and other Church-oriented groups have played a highly appreciated role in the social field..”, (Padilla, 67). He believed that simple laws would allow people to pursue their self-interests better and that the legal system's usefulness would be increased.

According to Epstein, if we had simple laws that operated more like a framework, we would all be able to pursue our interests with more ease. He compared how our rules of the road operate, if we had no laws, our streets would be clogged with crashes, and no one would be able to get to where they would like to go. Also, inversely, if there were too many rules of the road, the road would be clogged due to traffic caused by following the guidelines. However, with the proper amount of rules, everyone can get to where they want to go quickly and effectively. It would also cost less because the administrative cost, such as the costs for the salaries of the police, judges, public defenders, or the cost to keep the lights on at the courthouse, would be lower due to the lack of necessity. Using Dworkin's definition of law, Epstein prescribes to the

school of thought that Dworkin would say is the rule book conception of law. He wants the law to be seen as solely instrumental, and a means to an end rather than influential and just. Simple laws would permit a furtherance of equality for queer people, but it also could backfire and give those that wish to prevent the rights of these people more power through the lack of protection that would be missing from the lack of these laws.

A few of Epstein's simple rules that he proposed were self-ownership and the idea of first possession. These two rules would eliminate the need for many others. According to Epstein, self-ownership is empirical and very cost-effective; it also removes the concern of anarchy and reaches the perfect balance. The idea of first possession is that, whoever gets the desired object first, is the owner. That object can later be traded through the contract, and the possession can change, but it can't be taken away. Epstein does acknowledge that there is a chance for inequality, but he says that the benefit outweighs the cost in this case. He says that this unilateral acquisition would increase the utility of the owner and would allow for them to pursue their self-interests with their property. He argues that these and his other rules are universally applicable and would benefit everyone due to the vagueness of the laws that make them so universal. Simple laws would pave the way for universal laws in the style that Epstein proposes. The concept of universal laws would open the door for surrogacy to be regulated in a law that would benefit everyone in Argentina. It would also increase the level of self-ownership according to Epstein and greatly improve the quality of the law and society.

Familial Ideology:

Families and the idea of what makes a good family have been evolving throughout the changing societies to adapt to what we need to survive. We as humans like to categorize things;

people, goods, actions, ideas. It comes to us naturally and is done most of the time without thinking about it. We also like to categorize social groups, often as what is good and what is wrong. Part of this is evolutionary; it is meant to protect us from what people before us have deemed as dangerous to the survival and continuance of the human race. One of these social groups is the concept of family, and the family has changed to fit what we need, whether it be a tribe, a village, a mother, father, etc. This has helped us to define how we think we need to raise the next group of people, and when a familial group or a member of the family breaks these set roles, it is deemed as asocial.

The ideas of motherhood and womanhood are constantly policed in Argentinian society. Gender roles have had a role within society in the past, but as activism has increased, these roles are being molded to fit what is needed now. When one violates the preconceived notions of what it means to embody one of these identities, there are undeniable repercussions. Las Madres de la Plaza de Mayo were allowed to perform their activism because they were continuing to conform to the prescribed gender roles and gender performativity of what was defined as “femininity”. Until recently in history, women have not routinely left home, and this evolution of gender roles has not occurred without pushback. The achievement of this change is one of the many of the women’s movements, but it has also introduced other issues within the family structure.

This begins to weigh the balance of the paternal versus maternal rights, while also considering the importance of the nuclear family. Motherhood is often regarded as dependent upon men and women’s generalized need for a caretaker. When one separates a male presence from the familial unit, such as in the case of a single mother or some same-sex parents, society begins to scream for a father figure for the sake of the children. Even in a situation like this, the

“father figure” may be a sperm donor with no objective emotional relation to the child. In a study specializing in lesbian mothers and sperm donors conflicts, the researchers stated that, “In particular, the recent reassertion of fathers' rights coupled with the continued undervaluing of women's roles as mothers forms the backdrop for this dispute. The issues raised by this case concern not only biological claims and lesbian and gay parenting, but also the broader issues of women's caregiving role and their ability to raise children autonomously from men” (Arnup & Boyd, 7).

This is often phrased as trying to protect the rights of every party involved. Still, it just works to demonize these mothers that have not actually performed any action to directly harm the child by deciding to give them a home and a life. However, it is strictly because these family units do not conform to the conventional unit that they face social issues. This causes repercussions later into the child's life and the parents as the lack of acceptance puts unnecessary strain on a family.

Loving family units are often sought as safe havens for children so that they can have the best opportunity to succeed in the future, except for when that loving family unit steps outside the traditional nuclear family. Many homes that include single parents or LGBTQ+ parents are regarded as subpar and can receive worse treatment in systems, which contributes to the aversion that people have towards queer people forming families. “Public tensions regarding LGBTQ+ issues, including whether LGBTQ+ parents and their children even “count” as families, are beginning to play out in the area of education (Watson and Russell, 76). A system that is organized to teach children is unsure if it can achieve this because of the “moral” consideration of what it means to be a family. These societal repercussions are no longer solely affecting the parenthood and the individual person but also the treatment of the children in public spaces,

which raises the question: which is worse, a different familial unit, or societal standards of good and normal? The treatment of families causes a breakdown in the possibility of having a family in the first place for queer couples. This right is vital to the survival and continuation of civil rights and the acceptance of LGBTQ+ couples.

Legal Achievements:

Social change encompasses many aspects of a society, the intrapersonal or individual level, the societal or collective level, and the political or legal approval. The change requires there to be acceptance of the concept being introduced on all levels of society by the majority. For example, the laws can change, but if there is no level of intrapersonal acceptance, then violence towards the change or people that it affects might remain the same or increase. Part of this acceptance or lack thereof can be seen within the social movements. If one movement has overlapping constituents but doesn't necessarily advocate for their needs as well, then it can raise questions of support and intersectionality. Both the LGBTQ+ community and the women's rights movement have made several legal accomplishments that can mark the success of their joint and individual fights and show where there was a separation in the ideals. It is important to recognize the achievements that these movements have been able to achieve, while also laying out a framework for how to move even closer to equity.

Argentina legalized homosexual activity in 1887, but this is not the same as marriage equality, which was not passed into law until 2010. ("LGBT Rights in Argentina") The early legalization date might lead some into thinking that acceptance followed this legal change, but this is not the case. Argentina has a deep history of discrimination and violence dating back to when the European explorers arrived and began to influence the culture. Repression and violence

were the themes of much of Argentina's history, especially for the LGBTQ+ community and Argentina's women (Shaffer, 32). Marriage equality has been a very significant achievement that promotes the equality that both groups have fought for, both together and independently. The overlap of this group is the non-conforming women: lesbians, queer women, trans women, and gender-nonconforming women.

As the definition for the previously mentioned identities can vary based on cultural bounds, for the purpose of this study, lesbians are women who are solely attracted to the same-sex versus queer women include anyone who has a romantic attraction for women, but not exclusively. Trans or transgender women are women who were assigned male at birth and do not identify with that gender marker but rather use the female gender marker. In contrast, gender-nonconforming women are women who do not identify with the presentation or role of the traditional female category ("Transgender FAQ"). In a community that was primarily led by men in the community until recently, the women with these identities within the LGBTQ+ movement fought for recognition. They were also fighting for their rights as women to stand within the women's movement questioning the level of intersectionality that was presented.

Trans women slipped through the cracks the most out of any other identity. They were explicitly left out of either movement, with gender identity protections not coming until 2012. However, the bill passed in 2012 was remarkably inclusive and allowed for one to change the gender marker on identification without the need for a medical transition first. The legalization of marriage equality and the gender identity bill did not immediately lead to acceptance on the collective or individual level. There remains work to be done, and part of that work has now combined with the women's movement. Masculinity and femininity assigned at birth are so

deeply tied to an idea of a pure binary that must work off one another when that is not the case. This so-called rigid setting is flexible even though it is not without fear of societal retribution.

Women have been a solid political force through the times of repression in Argentina, most famously Las Madres de la Plaza de Mayo, who advocated for knowledge of their disappeared children during the Dirty War. There was an earlier political success for women in 1947 when women's suffrage was passed (Hammond 2011, 1). This opened up that realm of acceptance for further efforts, which have now mainly been focused on the #NiUnaMeños movement or Not One Less, which started in 2015 and is focused on eliminating femicides, homicides on the basis of being a woman. The women and girls of today see the effects of the machismo culture, which was heightened and perpetuated during the Dirty War. Argentina has a very high number of femicides even though they are in peacetime. Ni Una Meños would like to see not one more woman killed because of misogyny and work as a collective to speak against gender violence. Their demands of the government are for the "compilation and publication of official statistics on violence against women, guarantees of protection and justice for women affected by violence, the creation of shelters for victims, the legalization of abortion and the provision of comprehensive sex and gender education (Palmer, 2017). This movement has had a major effect on the furthering of awareness for gendered violence and femicide. One area where they have been particularly active in is the attempt to remove parental rights from those that have been convicted of having played a part in the mother's death. When the Ni Una Meños movement started, the father would still have rights to the children despite having played some part in the femicide of their mother. This contributed to the attitude of acceptance towards femicides as it did nothing to take the power away from the patriarchy on a state level. The

movement has achieved success with the new administration and has received a promise that the new administration will fulfill at least five of the demands (Terzian, 2017).

There has also been a focus on the Campaña Nacional Por al Derecho al Aborto Legal Seguro y Gratuito or the National Campaign for the Right to Legal, Safe, and Free Abortion which as its name implies, has focused on abortion rights for women and making this medical procedure accessible to all. Female activists have been instrumental in promoting human rights in Argentina, not just on the basis of sex but in many other walks of life. They have genuinely adopted an intersectional approach out of necessity for change. They are an excellent working example of Kimberlé Crenshaw's ideas of intersectionality concerning abortion rights. Still, not everyone has been as open with regard to adoption rights and surrogacy rights, which are included in the fight for reproductive rights. This organization has recently achieved their main goal of recognition and legalization of abortion rights. Before this, abortion was only allowed in extreme cases like sexual assault and high health risk to the mother, but now it has been extended to everyone up to 14 weeks of the pregnancy (Watson). It was an amazing achievement for the Campaña Nacional Por al Derecho al Aborto but, now that it has been achieved, there is room for a greater focus on the ideology of the family and how that can be achieved for every LGBTQ+ person who desires to start a family in whatever way they choose. The focus on reproductive rights is an essential building block to familial equality and the changing of the idea of a nuclear family. Continuing in building an equal society is the family block, which makes it increasingly important to grant non-conforming families the right to be "normal" and have the right to choose. The fight for reproductive rights now needs to shift to a fight for full recognition and away from the stronghold that the Catholic Church has imposed over the legal and cultural ideology of motherhood and family.

Transgender and Non-conforming Rights to Family:

At the base of the unit, is the family itself, which in most traditional spaces includes the parent(s) and the children. For LGBTQ+ couples, this often is complicated because having children usually doesn't happen in the same way as for a heterosexual couple. Some lesbian couples, bisexual couples, or couples that include one or more transgender people might be able to have biological children. However, this can cause gender dysphoria, because of the need for one to perform the task of carrying the fetus to full term.

The Mayo Clinic defines gender dysphoria as “the feeling of discomfort or distress that might occur in people whose gender identity differs from their sex assigned at birth or sex-related physical characteristics”(“Gender Dysphoria”). This is a significant complication that many transgender individuals and gender non-conforming people face because of how pervasive gender performativity is in society. Gender dysphoria spurs from gender performativity and shows the consequences that it can have on the mind. It is important to acknowledge the fact that this concept as a clinical diagnosis is contested, however, this definition does have a place within the sociological view of the relationship between gender, oneself, and society. As previously mentioned in the theory review, Butler introduced this concept into the literature, and it has been adopted by queer studies almost everywhere, Argentina included. Gender exists as we perform it and is constantly reinforced in everyday actions, which can make a transition difficult because of the amount of energy that it requires. Many people who suffer from this don't feel comfortable with the gendered performance that was assigned to them at birth and begin to explore the combination of masculinity and femininity.

Similarly, many young adults expressed that they don't feel comfortable with the performance expected from them and would “try-out” aspects of their correct gender after

feeling uncomfortable or like they were in the wrong body. For someone who does not identify with the gender that they were assigned at birth, carrying a child can be either impossible biologically or mentally, due to the effect that gender performativity has on one's mental state and health. Because of this, trans individuals and other queer couples can struggle with peers, family, and society and how this also is personally affecting the quality of their life. Surrogacy allows for there to be a biological connection between the parents while avoiding the risk of causing damage mentally or physically by forcing someone to take on a high risk pregnancy.

Some regard the idea of the nuclear family, the father, the mother, and children as a sacred idea that can not and should be altered for the sake of the children's developmental health. But this is not how a family is formed, nor how it should be judged. Argentina was the first country in South America to pass a bill equalizing marriage for all. This follows the passing of civil unions in 2002. Mario Pecheny, a leading scholar in Argentina concerning gender and family who edited a book by Renata Hiller, adds that, "Marriage and family, according to this discourse, have been always (or perhaps since the moment of the first baptism in human history) a determined type of union organized around reproduction, which is why any other type of affective alliance ought to be construed in a different manner" (Hiller, 215). With marriage already granted, it elevates the importance of securing full reproductive rights for these unions and breaking away from the traditional nuclear family.

When it comes to the concept of breaking this nuclear family trope with LGBTQ+ individuals adopting and creating families of their own design, Argentina has passed laws that protect adoption rights for nontraditional families, but not legislation that could provide protection for the potential adoptive family and surrogate mother. However, this type of "patchwork legislation" works to enforce the idea of the nuclear family because there is universal

protection for only one kind of family: the traditional mother and father with children's biological family. The first case recognizing a gay couple as the full parents of a surrogate child occurred on June 29, 2012. The child was born in New Delhi and was the first record recognition of two male parents in Argentina. This case, while a major accomplishment for everyone within the LGBTQ+ community, does carry a level of privilege that is held by gay men in a patriarchal society. This couple also had the resources to pursue international surrogacy, which is not an option for every socioeconomic class (Vaughn). It is an important step, but there is still more work to be done. In the 57 cases regarding surrogacy that have made it to a day in court not one has included a solely female partnership (Herrera). Surrogacy is not an equal access choice, but by regulation it would allow for there to be control and an increase of available resources for possible families and surrogate mothers.

Adoption rights were reinforced for same-sex couples by Act 26.618 in 2014 after marriage equality was granted in 2010. This act provided the same protections for homosexual couples that had been provided to heterosexual couples. This was an important step and provided an option for couples that can not have their own biological children for different reasons. By having this as an option for couples, they can still have the opportunity to have children and form a semblance of the traditional nuclear family, except perhaps with different gender roles. The possible excitement for this right is tempered by the fact that there are no national laws that protect this community from discrimination. Some provinces like the city of Buenos Aires and Rosario do include discrimination protections within their civil rights law. People who live in more rural areas are more likely to struggle with finding access to reproductive advocacy and help (Villar de Onis).

This movement towards family can still be strenuous for LGBTQ+ individuals, no matter where they are located, because they have to choose if they want to adopt directly from the system or if they want to go in a different direction of surrogacy or in vitro fertilization (IVF). But even these choices have their own inherent issues that have been overlooked within the feminist movement for reproductive rights and the protection that the law provides. The gray area of the law has made these issues into a battleground for religion and the LGBTQ+ movement, which has historically caused issues within Argentina. Through the years of authoritarianism and repressive regimes, religion has been used to create an inferiority surrounding the queer community. The Catholic Church has influenced a great deal of the legislation and rulings through the years. Because of this, these people have had to fight for recognition of themselves and also their own issues like gender dysphoria.

Due to the prevalence of gender dysphoria, many trans men and some gender non-conforming lesbians can't carry children, so they turn towards surrogacy. Surrogacy is defined in two different ways, the first being, "traditional/genetic surrogacy is when a surrogate is artificially impregnated with sperm, usually from the intended parent, but may also be donor sperm, with the intention of that sperm fertilizing her (the surrogate's) egg, thereby making her both the genetic and gestational mother" and the second being "gestational surrogacy, embryos that are not genetically related to the surrogate are implanted into the uterus of the surrogate, who will then carry the gestation to term, the intended parent(s) being the individual(s) with ownership of the aforementioned embryos" (Torres, Gloria, et al.). These surrogacy options provide parents with more choice in the child that they end up officially adopting. The standard process is for an agreement to be made between the surrogate and the intended parents.

Surrogacy is a prevalent option for people within the LGBTQ+ community, especially trans individuals, but these agreements are not protected or regulated by the government in Argentina.

The non-regulation of surrogacy agreements is due to the leftover effects of the Catholic and conservative regime. Many groups and Catholic organizations see this as immoral and against a good society because it brings into question the ability “to sell” a child in their eyes. But the desire to leave children out of an economic transaction has left surrogacy in a legal gray zone and doesn’t work to protect either party fully. In wanting to protect the traditional family unit discussed earlier, they are leaving out trans couples who desire to participate in surrogacy in order to have their own child. The law favors the surrogate mother, and because the agreements are not regulated by law, a surrogate mother can decide to keep the child even if there has been money exchanged for the service or for the care of the surrogate to benefit the child. Due to this method's lack of regulation, transgender people’s rights to a family of their own choosing are not being protected fully. The cultural and legal realm should change with the times and with each other. As the culture in Argentina moves forward and adapts to include more versions of family, the legal realm should as well. By allowing the Catholic Church to dictate the version of family that should be upheld over the rest, it leaves out the different family structures that are so important to society.

Despite the shift towards intersectionality that the feminist movement has made to include members of the LGBTQ+ community, this is not included in the central claims for reproductive rights. Even though there was a focus in meetings, like the Encuentro, to welcome and listen to trans women’s and non-binary people’s thoughts, this has not been included. In order to reach more equal reproductive rights legislation, these types of arrangements need to be protected so that both parties are represented and valued in the exchange. This would benefit

everyone involved and it is so much more than the concern that surrogacy is the act of selling a child. The lack of change in the legal standing reflects the standing of the society and the values that they feel they should fight for, and the rights of the non-conforming woman are being threatened by the lack of protection. People have begun to call for there to be a change in the law calling some laws unconstitutional. In the case of a heterosexual couple that wanted to conceive and adopt through surrogacy Sabrina Berger pointed out that this act governing surrogacy is unconstitutional because it limits personal freedoms. She identifies main issues with the lack of regulation for surrogacy and lists them as,

el derecho a la autonomía personal, derecho a que se respete la vida privada y familiar, derecho a fundar una familia, derecho a procrear (vinculado con la voluntad procreacional), derecho a la salud sexual y reproductiva, derecho a gozar de los beneficios del progreso científico, derecho a acceder a los tratamientos de reproducción humana asistida según lo previsto por la ley 26.862, derecho a la no discriminación.²

(Berger, 1)

These violations to the personhood of this couple carries over tenfold into the queer couples because they are carrying the weight of “othering” that a queer identity has within a heteronormative and patriarchal society. The issues also carry over to the inequality that can be seen in IVF with surrogacy. IVF can be an essential part of surrogacy and can also be a costly contributing factor to the process.

A proposed plan for regulation by an organization called Surrogacy 365 has Argentina having six different types of action protocols for IVF, and they correspond to different family

² Translation: the right to personal autonomy, the right to respect for private and family life, the right to start a family, the right to procreate (linked to the procreational will), the right to sexual and reproductive health, the right to enjoy the benefits of scientific progress, the right to access assisted human reproduction treatments as provided for by Law 26,862, right to non-discrimination.

types. The first type is for married heterosexual couples, and it involves the steps of Argentina IVF with own eggs, embryo shipping, a transfer to Ukrainian surrogate mother (SM), and birth in Kyiv, Ukraine. This means that the IVF happens in Argentina with the couples' own gametes, and the gestation happens in Kyiv. This would cost a couple approximately 60,000 USD and is the lowest priced option. The second type is also for married heterosexual couples, and it includes Argentina IVF with egg donation, embryo shipping, a transfer to Canadian SM, and birth in Kyiv, Ukraine. This would cost a couple approximately 63,000 USD making it even more costly. The third type opens up to all family models making it the most cost-friendly option to non-married heterosexual couples and would cost approximately 72,000 USD. It includes Argentina IVF with the surrogate's own eggs, embryo shipping, a transfer to Canadian SM, and birth in Toronto, Canada. Continuing in Canada, the cost to have IVF with the same steps but with an egg donation is 75,000 USD. The most expensive options include a birth in the United States, using the surrogate's own eggs. It is approximately 92,000 USD and 95,000 USD with an egg donation (Surrogacy 365). This would allow for more regulation on the acts of surrogacy but make it even harder for non-heterosexual couples to use this option due to the financial concerns that this presents. This regulation would not be as open for everyone as a regulatory system in Argentina would and could be.

The plan that was proposed is a good step forward because it means that people are thinking about the future and moving forward. However, the cost inequality brings into question if this could ever fully be achieved without transnational acceptance and progress. Despite the progress that Argentina could make, if the community doesn't also have acceptance from outside countries that are willing to provide support to the hopeful parents and surrogates, then it won't matter exactly how Argentina regulates. For this reason, it is vital that Argentina regulates

within the country itself. Internally based regulations and provisions would allow for there to potentially be a more even distribution of cost for all couples. However, this would first require there to be a change in the culture and a lessening of the importance of the Catholic Church's hold that was supported during Marci's time as president.

The major arguments against surrogacy have been from the Catholic Church and is another form of repression for the LGBTQ+ community. They argue against it for many reasons saying that it is unethical, immoral, and exploitative for women or couples to engage in surrogacy (Morse). Surrogacy is not immoral and is a way to allow for more autonomy, something that both the LGBTQ+ community and the women's movement have fought for. While introducing a monetary exchange does mean that there are concerns to be addressed, this doesn't necessarily mean that it is immoral. With proper regulation there could be a common understanding that everyone in the agreement is entering into it with full consent and knowledge which would eradicate the potential exploitation that could occur without this regulation. The Catholic Church highlights several reasons for why they believe that surrogacy is immoral, using platforms that they don't normally stand behind as a way to increase their reach. They argue that regulating surrogacy would drag "baby-making" into the law, but it already has been with the concept of adoption (Morse and Neumayr).

Adoption is legal in Argentina and does not present these concerns, so in an arranged situation that is essentially just known adoption from the beginning would not and should not bring concerns into the situation that are not there for adoption. Feminist philosophy argues for the equalization and recognition of the intersectionality that Crenshaw has given the study. There is an emphasis on the crossover of feminist and queer theory, and it perfectly intersects on the concept of gender non-conforming women and trans women. They are frequently left out of

the mainstream of activism and the lack of regulation of surrogacy, which is potentially a necessary way to have a family, is a perfect example. As Figari states, it is ever increasingly more important to protect queer families as they have had to be studied in order to have the potential for the same rights as heterosexual couples. But regulation would not just affect the queer women, it would also be a great help to the heterosexual couples and the women who want to be surrogates.

According to the previously established legal framework of Dworkin, the lack of regulation of surrogacy can be explained by the social factors that are prohibiting the law to move forward. The presence of the strong Catholic influence on the government and the overall acceptance of these views within the society shows the moral code that the law is following. However, the increase in surrogacy as a common practice shows that the social level is beginning to move towards a more accepting standard. As this change increases, it becomes even more important for the judicial and the legislative systems to move towards an agreement with the populace. This has been reflected in the courts, as cases have been favoring the adoptive family rather than the surrogate mother in adoption cases. This support suggests that the legislative branch is behind the social and the judicial system and as the society adjusts, and so there is an obligation for change. There has been a proposed bill in conjunction with the proposed plans that would allow for in-country surrogacy regulation, but it is increasingly imperative that it goes through and is accepted by the public (El Diario).

With the proposed bill, Argentina would reach the requirements for the total social change that Dworkin explains within the human rights approach that would show the progress that Argentina is claiming to have made. Even though this would increase the legal reach, which Epstein does argue against, it would increase self-ownership and better protect everyone in the

long run which would conform with the framework that Epstein proposes. Despite the fact that both frameworks seem to be contradictory, the leading legal theorists both outline ways in which the regulation would be better for the society. The regulation of surrogacy would not only benefit non-traditional couples but would also benefit heterosexual women who need this as an option. Transgender couples and gender non-conforming women deserve the right to have the full protections of being a parent without the demand for the physical contribution that can cause extreme gender dysphoria. Gender performativity is how cultures shape the definition of gender roles and subsequently the familial roles. Family is a very important basis of culture in Argentina and this simply reiterates the need for the protection of trans women and gender non-conforming women's right to family in the way they see fit. The theory of feminism and queer studies shows that this is an all encompassing issue and the definition of the need for intersectionality. Maintaining intersectionality within the movements would improve the potential for achieving equality and full recognition of reproductive rights for everyone, rather than a select few.

Conclusion:

_____ Equal rights have been a focus for the marginalized people of societies for as long as people could have a voice and express it. Argentina is no exception, and has an equally long history of inequality and brave people fighting for what they believed in. Through the different presidencies and leading up to the Dirty War, the women's movement began to form and fight for their rights. They were not alone, as the LGBTQ+ community also began to form, but the LGBTQ+ community was hit harder during the more repressive and Catholic Church influenced regimes. The parallel fights intertwined and have become a beacon of intersectionality in Latin

America. Their efforts are best shown through the Encuentro Nacional de Mujeres that has moved to include gender non-conforming women, trans women, and queer women. Issues that were originally left to be shouldered by one group have been shifted to more shoulders making the fight even more seen.

Visibility has been extremely important in these fights and the Campaña Nacional Por al Derecho al Aborto Legal Seguro y Gratuito achieved international recognition for their efforts for reproductive justice. However, their scope of reproductive rights is limited and has not worked to include the need for a regulation of surrogacy. Surrogacy being unregulated affects cisgender women who want to be surrogates, and queer women and couples who cannot carry a child biologically due to the negative physical or mental complications. The rights to family of one's choosing for non-conforming women, women who are not gender conforming or gender role conforming, are not being fully protected. Feminist, queer, and legal theory show how important this is and how they have been left but also how to continue forward to build a more inclusive society for all and to continue to move away from the heteronormative matrix that is ruling the law.

Feminist theory shows the importance of gender within society and the effect that it can have on activism. Las Madres shows exactly how important gendered politics are when it comes to the treatment of the people through a repressive government. Their bravery in the face of uncertainty led to the impressive women's movement in Argentina that formed the Encuentro Nacional de Mujeres and the Campaña Nacional Por el Derecho al Aborto Legal, Seguro y Gratuito. The fight for civil rights and reproductive rights leaves the bounds of heteronormative activism and naturally crosses into the queer and legal realm when regarding surrogacy motherhood and adoption. The Encuentro Nacional de Mujeres shows the leap into an uncharted

territory of intersectionality and shines a light on how the future might look with further consideration of multifaceted identities.

Queer theory explains exactly why this is important through the concept of gender performativity and how damaging it can be through gender dysphoria. Queer studies is still relatively new in terms of academia, but it has spread through the world, and Butler's concepts are no exception. Carlos Figari grounds these concepts in an Argentinian frame shaping the understanding of why this set of civil rights are so important. It is not enough to just have surrogacy not illegal for these people that need it. The lack of thought towards why this need exists shows the influence that the patriarchal society and Catholic Church have had on the legal realm.

The application of legal theory on the evaluation of a "social" issue is difficult but necessary in order to understand the timeline of the change in legal recognition. The fact that laws will have to adapt is inevitable, but the timeline and characteristics of the law reflect the characteristics of the society. Dynamic and static mentalities surrounding law affects activists' potential impact on change. The simplicity and complexity of legal decisions affects the applicability of the law and, in this case, how possible regulating surrogacy is. Simple laws are thought to increase utility of the law and complex laws to limit it. However, Epstein, who advocates for simple laws, also advocates for the increased emphasis on utility for the self. Regulating surrogacy would accomplish this desired goal for Epstein and also Dworkin's main point of allowing law to change and reflect the morals of the society. Right now, the lack of regulation maintains that the morals strictly follow those of the Catholic Church, but as the society of Argentina is changing, it is increasingly important to recognize this through the law.

Family ideology is changing and people are beginning to form families that leave the cookie cutter nuclear family model that has been handed down for generations. By allowing intersectionality in the fight for civil rights between the women's movement and the LGBTQ+ community. Intersectionality increases the visibility, reach, and potential for change, but it also does increase the amount of people that are affected by this issue. Surrogacy is an incredibly important option for people who are considering a family but can not carry a child to full term through their own means. By regulating this necessary option, it would increase the security for the family and surrogate mother, as well as increase equality in Argentina. Intersectionality between the feminist movement and LGBTQ+ community has been invaluable for their prior accomplishments and is vital for equal access to reproductive rights for gender non-conforming women and people in Argentina. However, despite the achievements, the rights of sexual citizenship for the "non-conforming" woman have not been secured fully, and the next step should be to fight for their rights to family and surrogacy.

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