Abstract

In 2013, the Argentine state promulgated Law 26844, a landmark legislation that ended more than half a century of de jure discrimination against domestic workers and of de facto discrimination against women, given that 98.5% of domestic workers in Argentina are women (Gorban 2012). In this way, Argentina advanced toward undoing the infamous legacy of second-class citizenship status women have held throughout Argentina’s history (Giordano 2013). This paper examines ethnographically how the legal reconfiguration of domestic workers from “servants” with almost no labor rights to “workers” with full labor rights translates into the daily lives of domestic workers in Buenos Aires. I draw from the experiences of care-takers, cooks, and cleaners who were acutely familiar with the new legislative framework—from formal education on Law 26844 and from personal experience having worked under formal employment contracts as stipulated by Law 26844. I suggest that despite the egalitarian aspirations of a legislation that, in the words of former President of Argentina Cristina Fernandez de Kirchner, is “equalizing of rights,” significant contradictions remain in the state’s attempt to remedy the foundational gendered exclusions the state generated—through the historical division between the public, androcentric sphere of politics and work and the private, feminine, a-political sphere of family. Domestic workers’ experiences with the Argentine state’s attempt to render the private sphere a sphere of work make manifest the ways in which the modern, capitalist state remains a heteropatriarchal institution (MacKinnon 1989; Pateman 1988) limited in its capacity to fully recognize women as political subjects.

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Susana and I are hanging out at what she calls “her place in the world”—a community center in Burzaco in the province of Buenos Aires where she is a leader and where she is now working for pay, which has allowed her to quit working as a paid domestic worker for good. As is usually the case with her, the conversation is thoughtful and always intent on making the connection between the realities of daily life, its larger implications, and the need for change. “For me the law needs to be useful for us to propose something.” The way she sees it, and I quote, is that “we leave one oppression to enter another, and the employer has to understand that one is a laburante (meaning, a worker), just like she is, that just like she has to go out to work, I also have to go out to take care of her kids… It is hard to articulate this other oppression—that I am a compañera that is going to take care of your kids. And the only solution they offer us is to sue…”

“They” in Susana’s narrative refers to the Labor Tribunal for the Personnel of Private Households, a court dedicated exclusively to solving the disputes that take place between domestic workers and employers and the primary state institution dedicated to bringing about justice for domestic workers in Buenos Aires. And “the law” refers to the relatively recently established special regime of labor contract for the personnel of private households. According to Jaramillo Fonnegra and Rosas (2014), the establishment in the year 2013 of this legal framework to regulate paid domestic work reconstructed the legal status of domestic workers, from “servants” with almost no labor rights to “workers” with rights virtually equal to all other workers under the law.¹ These changes in the law put an end to more than half a century of state-sanctioned discrimination against domestic workers, who up until 2013 had been explicitly excluded from the rights and protections guaranteed by the law that regulates virtually all other activities considered “work” by the Argentine state, and whose labor had been regulated by an executive order that severely limited

¹ With the notable exception of sex workers, whose labor rights are not yet recognized by the Argentine state.
the rights they had access to, under the premise that the activities of cooking, cleaning, and caring that they carried out in private households were not “work” but a “service.” As discussed by a number of scholars, this type of state-sanctioned discrimination against domestic workers enabled the entrenchment of extremely precarious conditions of work, where an overwhelming majority of domestic workers were pushed to the informal economy, resulting in their labor being regulated through structures of pseudo-kinship and economies of reciprocity and entrenching cultures of patronage and servitude (Canevaro 2009; Courtis and Pacecca 2010; Pereyra and Tizziani 2014).

The change to legally characterizing paid domestic work as “work” on the part of the Argentine state has also served to explicitly recognize what Anderson (2000) calls the fiction of the public/private divide when considering, as she suggests, the ways in which paid domestic work, by being work—a public activity—that takes place inside the home—a private sphere—problematizes this divide. But while significant, such recognition of paid domestic work as “work” also brings about important questions on the limits to actual access to rights and protections for domestic workers in the private sphere of the home when considering the ways in which the modern, heteropatriarchal state, and Argentina is no exception, has relied on the fiction of the private/public divide for the provision of access to rights and protections and consequently, for access to citizenship.

According to Castel (2003), “work” has historically been a marker of social utility and value for states. Being a worker has often been condition sine-qua-non for access to citizenship in the form of labor rights and social protections. However, as classical feminist political theorists such as Pateman (1988) pointed out long ago, modern states have often relegated “work” and “politics” to the public, male sphere of civil society while relegating “family,” to the private, feminine realm, thus entrenching gender inequality. Authors such as Okin (1989) and MacKinnon
(1989) show the ways in which such distinctions between the public and the private spheres have been enshrined in law through states’ deliberate lack of intervention in public matters that take place within the realm of the home, such as domestic violence or, as in the case I am presenting here, paid domestic work. In addition, as Narayan (1997) argues, citizenship rights have often been conferred on the basis of the useful contributions that members of a society can make to it, and in doing so, states have privileged productive labor over reproductive labor as the basis on which to judge the usefulness of such contributions, once again entrenching gender inequality by valuing domestic work differently than other kinds of work and consequently by valuing differently the possibility of access to citizenship rights.

It is significant, consequently, to situate a discussion of the advancement of domestic workers’ labor rights in Argentina within the context of the long history of struggle for rendering putatively private matters an issue of public concern and, specifically within the context of the long history of struggle for women’s rights and access to full citizenship. While, as shown by Brown (2016), this is particularly evident in women’s historical lack of access to reproductive rights, it is also evident, as I argue here, in women’s lack of access to labor rights in occupations in which women have predominated as workers. I propose an understanding of access to labor rights in the context of paid domestic work as access to control over women’s body, their labor, and the products of their labor, when considering the ways in which domestic work, as Boris and Parreñas (2010) point out, is often intimate labor, existing in a spectrum of intimacy and entailing interdependence between buyers and sellers of this labor and implicating the body. It is also important to think of domestic workers’ rights as women’s rights when considering that 98.5% of all domestic workers in Argentina are women (Gorbán 2013) who often, as Crenshaw (1991) would put it, stand at the intersection of interlocking structures of oppression including not only
gender but also class, status, nationality, race, and ethnicity. If, as other authors have argued, the state has relied on the fiction of the gendered private/public divide and on the gendered differential valuation of work for the conferring of rights, it is worth inquiring into the ways in which the same state may reconcile such foundational gendered exclusions with the advancement of domestic workers’ rights in the private sphere of the home by looking at domestic workers’ experiences with access to such rights.

In this presentation, I draw from the paradigmatic experience of Imelda, whom I met in the office of the Association of United Migrant and Refugee Women of Argentina, with whom I collaborated during my field research. Imelda has been working as a domestic worker almost as long as she has been living in Argentina, meaning for the past 18 years. A native of Peru, she travels daily into Argentina’s capital from Buenos Aires province to carry out the activities of cleaning that middle-class families in Argentina’s capital often outsource to working-class and migrant women like herself. Imelda works in four different houses and while in two of these she is registered formally as a worker, in two others she is not. Imelda finds it beneficial to work as a registered worker, given that, as she points out, in one of the jobs she works formally, when she fell sick, she was able to go on sick leave and in the event of a public holiday was able to take the day off. But while one of her employers who has hired her formally does everything, as she would put it, como corresponde (i.e., “as they should”) accessing rights at another one of the households she works at has been contentious:

“I mean, if there is a public holiday, they pay me, and if there are vacations, they pay me that also, because I also have a right to rest. But with Mr. Horacio, I tell him “I am not coming in” [when it is a public holiday] and he doesn’t pay me. With him I barely tell him “look, I won’t come in” and he says “Ok Imelda, don’t come in” [...] I told him to raise my salary, and I told him “sir, it has been several years that you don’t raise my salary and truth be told, everything is more expensive now, and even the bus ticket is more expensive, so I am going to charge you more.” So he told me “no, Imelda, but right now I can’t give you a raise.” “Well, sir” I said
“when you registered me we said there was vacation, we said that there was mid and end of year bonus, and that if I got sick and did not come in to work you had to pay me, because I do not miss work because I want to but I miss work because of an illness.” So he tells me “No, Imelda, but that was just registered on paper, nothing more than that.” That is why he registered me, in order not to have any problems… Because afterwards I do not have a right to anything and that is what he told me, it is what he made me understand. So that was it. And then I talked to him again, after, I don’t know, one year, I touched upon this topic again and I tell him “sir, as you know I am en blanco² (i.e., “registered”) and this week it is a public holiday.” So he said, “so you won’t be coming in, Imelda? No problem! I won’t be here either.” And that was it. That is why, I am telling you, he is curt and he doesn’t touch upon the subject [of payment of public holidays] anymore because he knows I am going to talk to him about the fact that I am going to charge him more and that’s it… [...] it doesn’t come from him, it is me who has to complain, “well, sir, I am going to charge you so and so, look, sir, I am going to charge you for my bus ticket because it is more expensive now,” it is not like he doesn’t know that the ticket is more expensive, but he does not raise my wage by himself. That is why I am not interested in continuing to work with him, and I am telling you, for the past two years I keep on insisting, telling him, I mean, lying to him in a way: “I am going to leave, sir” I tell him, “look for someone else.” (emphasis added).

According to data from the Ministry Labor cited in Canevaro (2017) the number of registered workers is nowadays three times higher than before the changes in the law were enacted. At the same time, the percentage of workers that continues to work informally is 75% of all workers. According to the data gathered by the Work Tribunal for the Personnel of Private Households, the number of court cases has also quadrupled since the changes to the law, since the current legal framework establishes severe penalties to employers who hire their workers informally or who fire them without a justifiable reason. But the punitive character of the state only falls on employers in the event of the end to the work relationship, and as the rates of registration show, such threat of punishment is not yet persuasive enough for the majority of employers, who continue to employ their workers informally. As Imelda’s experiences show, on

² The expression “en blanco” translates literally as “in white,” and refers to formal employment. The expression “en negro” translates literally as “in black,” and refers to informal, often precarious, work. These expressions stigmatize informal work and its obvious racialization can be attributed to the racial formation and to the racialization of informal work (Cadena 2000; Omi and Winant 1994) extant in Argentina.
a day to day basis, the state continues to rely on domestic workers’ unpaid labor of patience,
persuasion, leniency, concealment, and cordiality for the implementation of the new legal
framework, putting workers in the contradictory position of being entitled to labor rights and being
responsible for initiating enforcement.

Imelda must exercise patience with her employer, waiting for Mr. Horacio to willingly
decide to pay for her non-worked day on a public holiday, and when he does not, she must exercise
leniency before the impossibility of negotiation. When negotiating her salary increase, Imelda also
finds herself in the position of trying to persuade Mr. Horacio to do so by bringing up the higher
cost of living in Argentina and the higher cost of transportation, rather than simply the fact that a
raise is due. She also finds herself in the position of having to patiently justify missing work days
in the event of an illness and of patiently waiting for one year in order to bring up the topic of
taking the day off during a public holiday, once again finding herself in the position of having to
be lenient with her employer before the impossibility of access to negotiation of such a right. And
as a last resort, she finds herself in the position of having to lie to her employer about leaving her
job soon as a way to persuade him to raise her salary. As Imelda would put it, it doesn’t come from
her employer, she has to complain: she has to do the work of making sure her rights are respected
through the exercise of what Hochschild (2003) would define as a certain type of emotional labor
in the passage from non-contractual to contractual modes of regulation, putting the onus on her,
rather than on Mr Horacio.

Imelda’s experiences with the new domestic work law and her labor of patience,
persuasion, leniency, concealment, and cordiality to access labor rights underline the problems
that arise when the modern state that has propagated the vision of the public-private divide, where
the home is coded as a sphere of family, not of work, attempts to undo this same categorization
by, as Susana would put it, offering workers only the possibility to sue in the context of intersectional structural inequality and consequently differentiated material conditions of existence between domestic workers and employers.

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