

# “Women are not in the Best Position to Make These Decisions by Themselves”: Gender Stereotypes in the Uruguayan Abortion Law

Lucía Berro Pizarossa \*

## Abstract

Efforts to protect women’s rights can cast dark shadows. Dangerous and often unnoticed stereotypes can motivate and infiltrate legal reforms. Recent changes to the law on abortion in Uruguay have been held out as a best practice model in South America. Recognising the power of the law to shape our understandings of how people are and should be, this article aims to unpack the stereotypes on women seeking abortions in the Uruguayan legal discourse and map how the law on abortion gives legal force to these harmful stereotyped ideas. This article analyses the parliamentary proceedings on the Voluntary Termination of Pregnancy Act. It asks: Do the debates on abortion in Uruguay reveal a cultural shift? Do members of parliament’s arguments hinge on harmful stereotypes? In asking these questions, this article explores the extent to which a fairly liberal and widely praised domestic abortion law complies with the national and international human rights obligations to eradicate harmful gender stereotypes. Mining the rhetoric used in the parliament debates reveals the stereotyped images of women that seek abortion services that—rather than reflecting the true complexity and diverse experiences of women that seek abortion—are grounded in women’s perceived degree of deviance from gendered stereotypes, particularly those surrounding motherhood. Uruguayan abortion law, while seemingly protecting women’s rights, in fact hinges on traditional gender attitudes and stereotypes. This article provides the foundations to further develop

---

\* Department of Transboundary Legal Studies, Faculty of Law, University of Groningen, The Netherlands, lberropizarossa@gmail.com.

sophisticated legal and political strategies for fulfilling women's sexual and reproductive health and rights.

**Keywords:** Abortion; Women's Rights; Gender Stereotypes; Parliamentary Debates; Uruguay

*Categories are constructed. Scars and bruises are felt with human bodies ... when we're talking about constructs having concrete consequences, these consequences are not constructed, they're felt. They're very real.*

*Cornel West*<sup>1</sup>

## ***1. Introduction***

Abortion continues to be a highly contentious and highly regulated procedure. In Latin America and the Caribbean, more than 97 per cent of women of reproductive age live in countries that legally restrict access to abortion.<sup>2</sup> However, the demands for safe and legal abortion are gaining momentum in the region. In 2017, the Chilean Congress ended a 28-year blanket ban on abortion. In 2018, the Argentinean Congress debated—and ultimately rejected—a law liberalizing abortion; the Brazilian Constitutional Court heard a case pushing for the liberalization of abortion<sup>3</sup>; and Venezuela's new constituent assembly vowed to debate access to abortion. In the wake of this regional abortion 'lawfare', Uruguay has emerged as a best practice model. In 2012, the country gained international praise and became a reference point in Latin America when it enacted one of the most liberal abortion laws on the continent. The Voluntary Termination of Pregnancy Act (Abortion Law N° 18.987) waives criminal penalties for the termination of pregnancy until the 12<sup>th</sup> week. In cases of sexual violence, women can access an abortion without fear of criminal liability until the 14<sup>th</sup> week of pregnancy. At any point during the pregnancy, the

---

<sup>1</sup> Cornel West, *The Cornel West Reader* (Basic Civitas Books, 1999) 510.

<sup>2</sup> Center for Reproductive Rights, 'The World's Abortion Laws 2019' <<http://www.worldabortionlaws.com/>> accessed 29 October 2018.

<sup>3</sup> *Arguição de Descumprimento de Preceito Fundamental n. 442* is pending as of January 2019.

<sup>4</sup> Siri Gloppen et al, 'Sexual and Reproductive Rights Lawfare: Global Battles' <<https://www.cmi.no/projects/1836-sexual-and-reproductive-rights-lawfare>> accessed 18 July 2018.

“Women are not in the Best Position to Make These Decisions by  
Themselves”

pregnancy can be terminated when it endangers the health of the mother or there are foetal abnormalities incompatible with extra-uterine life.

Undoubtedly, the law is a step forward. Abortion is now available on specific grounds and is provided within the public health system, free of charge. However, limits remain. After 12 weeks, in a pregnancy not involving sexual violence, the criminal prohibitions are still in place. In the cases of pregnancy resulting from sexual violence, the criminal prohibitions on abortion exist after the 14<sup>th</sup> week. Abortion is available at any time when the women’s life is at stake or there is a fatal foetal abnormality. Even in these limited situations where women can legally access an abortion, the Voluntary Termination of Pregnancy Act creates significant procedural hurdles. There is still work to be done to ensure women in Uruguay are able to fully and easily access an abortion. This will require both legal and political activism.

In developing strategies to enhance women’s sexual and reproductive health rights in Uruguay, this article takes a closer look at the parliamentary proceedings on the Voluntary Termination of Pregnancy Act. Do the debates on abortion in Uruguay reveal a cultural shift? Or do they continue to draw on traditional gender norms? It is crucial to unearth the stereotypes that underpin the law, even a law that partially enhances women’s ability to access safe abortion. In asking these questions, this article pinpoints the negative cultural attitudes about women and abortion that permeate the legislative debates. This analysis is crucial for further advocacy on women’s rights to safe and legal abortion. Cook and Cusack argue that ‘[n]aming a gender stereotype and identifying its harm is critical to its eradication’.<sup>5</sup> To understand women’s subordination, we must understand the stereotypes that contribute to women’s legal and social disadvantage.<sup>6</sup> The conclusions in this article challenge popular discourse in Uruguay on abortion and identify the patriarchal stereotypes in the parliamentary debates that were ultimately codified in the law.

This article begins by evaluating the current legal regime regulating access to abortion in Uruguay. Section 3 assesses Uruguay’s obligations under the UN Convention on Elimination of Discrimination of All Forms of Against Women (CEDAW) to demonstrate that there is an international and domestic legal obligation to combat pernicious gender stereotypes even in circumstances where there has been legal reform. Section 4 then proceeds to critically analyse the debates in the Uruguayan parliament on the decriminalization of abortion in order to understand

---

<sup>5</sup> Rebecca Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (UPP, 2010); Alexandra Timmer, ‘Toward an Anti-Stereotyping Approach for the European Court of Human Rights’ (2011) 11 *Human Rights Law Review* 707.

<sup>6</sup> Sandra Fredman, *Women and the Law* (Clarendon, 1997) 3.

how a woman seeking abortion is portrayed and constructed. It interrogates the Uruguayan abortion law and concludes that, while seemingly protecting women's rights, it in fact hinges on traditional gender attitudes and stereotypes on the roles of women and men.<sup>7</sup> This provides the foundations to further develop sophisticated legal and political strategies for fulfilling women's sexual and reproductive health rights in Uruguay.

## 2. *Uruguayan Abortion Law*

From 1907 to 2012, abortion was a crime in Uruguay with a sentence ranging from 3 to 9 years in prison.<sup>8</sup> Notwithstanding these harsh penalties, the criminal law did not prevent unsafe abortions. It is estimated that 30,000 to 50,000 clandestine abortions occurred each year, with devastating consequences for women's health and lives.<sup>9</sup> Research conducted during 1997-2001 demonstrated that although the maternal mortality rates of Uruguay were similar to those of comparably developed countries, there was a disproportionate number of deaths from unsafe abortions.<sup>10</sup> Unsafe abortions accounted for 28 per cent of maternal deaths, particularly affecting women in vulnerable situations.<sup>11</sup> After a lengthy and difficult process—that included a presidential veto—the Voluntary Termination of Pregnancy Act (Abortion Law N° 18.987) came into force, waiving criminal penalties for the termination of pregnancy under specific circumstances.

Although the law is a move towards liberalization, abortion remains a criminal matter. If an abortion does not meet the legislative criteria, it is an offense. In practice, the requirements to obtain a legal abortion are burdensome. A woman seeking to terminate a pregnancy must (i) be Uruguayan or a resident of Uruguay; and (ii) fit within the timeframe set by the law. For the termination to be legal under the Voluntary Termination of Pregnancy Act, the woman needs to comply with further procedural requirements, including:

---

<sup>7</sup> The Uruguayan abortion law operates on the assumption of two distinct categories: "women" and "men". While acknowledging the problematic nature of this distinction (firmly situated in a static cis hetero normative gender binary) the analysis in this article is limited to these categories.

<sup>8</sup> See Criminal Code (Uruguay), arts. 325 and 325(bis).

<sup>9</sup> Rafael Sanseviero (ed), *Condena, tolerancia y negacion: El aborto en Uruguay* (Centro Internacional de informacion para la Paz, 2003) 33.

<sup>10</sup> Leonel Briozzo et al, 'Unsafe Abortion in Uruguay' (2004) 85 *International Journal of Gynecology and Obstetrics* 70.

<sup>11</sup> *ibid* 8.

“Women are not in the Best Position to Make These Decisions by Themselves”

- an initial medical consultation with a gynaecologist;
- a second consultation with an interdisciplinary team—gynaecologist, mental health professional and a professional in the social area, usually a social worker—in order to inform the woman of the ‘inherent health risks’ of an abortion and available alternatives;
- a mandatory waiting period of five days;
- a third consultation to confirm the intention to proceed with the abortion;
- the abortion itself (abortion with pills in most cases);<sup>12</sup> and
- a fourth post-abortion consultation.<sup>13</sup>

Abortion is available on demand—subject to the abovementioned conditions—until the 12<sup>th</sup> week of pregnancy after which abortion is a crime. There are a few legally prescribed exceptions. Abortion can be obtained until the 14<sup>th</sup> week of pregnancy in cases of rape, although there is a requirement that the woman needs to have filed a criminal complaint. There are no time limits in cases where the continuation of the pregnancy endangers the health of the woman or there are foetal malformations making extra-uterine life unviable.

The Voluntary Termination of Pregnancy Act was the second attempt at liberalizing abortion law between 2006 and 2012. The far more progressive earlier statute, the Right to Sexual and Reproductive Health, Law 18426, was vetoed by the President, despite having been passed in the Cámara de Diputados by 49 out of 99 votes (two MPs were absent) and in the Cámara de Senadores by 17 votes out of 31. Law 18426 decriminalized abortion and made it available on demand. This law also recognized a wide range of sexual and reproductive rights—from access to contraception to menopausal health care—and committed the state to promote national policies and services on sexual and reproductive health. However, its provisions on abortion were vetoed by the President and Parliament did not attain the number of votes needed to lift the veto. Abortion remained a criminal offense in all circumstances. Between June 2011 and October 2012, parliament debated the Voluntary Termination of Pregnancy Act. It passed by a similarly narrow margin. The Cámara de Diputados approved

---

<sup>12</sup> Verónica Fiol et al, ‘The Role of Medical Abortion in the Implementation of the Law on Voluntary Termination of Pregnancy in Uruguay’ (2016) 134 *International Journal of Gynecology & Obstetrics* S12.

<sup>13</sup> For a detailed analysis of the Voluntary Termination of Pregnancy Act see Lucía Berro Pizarrossa, ‘Legal Barriers to Access Abortion Services Through a Human Rights Lens: The Uruguayan Experience’ (2018) 26 *Reproductive Health Matters* 151.

the law by 50 votes out of 99 and the Cámara de Senadores by 17 votes out of the 31. This time there was no Presidential veto of the law.

The Voluntary Termination of Pregnancy Act was passed amidst the cross-currents of the different perspectives presented by feminist advocates of women's rights, public health arguments, and a very loud anti-abortion opposition.<sup>14</sup> These tensions were present in the debates and are evident in the law which only partially decriminalizes abortion. The Voluntary Termination of Pregnancy Act over-medicalizes, paternalizes and imposes a series of requirements for women wishing to access abortion services.

Uruguayan abortion law does not represent a lessening of control but rather a shift in the forms of control: from criminalization to medical control. It imposes a subtler and more refined means of deploying power. Grounded in a public health rationale, control over the abortion process is greatly enhanced by the law: the multiple consultations, the mandatory multi-professional authorization, and the scrutiny of women's private lives required by the law are indications of the extent of state control over women's reproductive decisions. The over-medicalization of abortion effectively hinders access to legal abortion services and, at its most extreme, continues to place women's lives at risk by forcing them to resort to clandestine abortions.<sup>15</sup> This legislative model that continues to regulate the procedure as both a criminal matter and an overly medicalised procedure feeds abortion-related stigma and hinders access to safe, legal and accessible abortion care.<sup>16</sup> Importantly, the narratives used by both proponents and opponents of the law represent strategic political decisions to garner support. The analysis in this article sheds some light on the discussions and will enable us to re-think the advocacy strategies for continued legal reform on full and easy access to abortion services.

---

<sup>14</sup> Susan Wood et al, 'Reform of Abortion Law in Uruguay: Context, Process and Lessons Learned' (2016) 24 *Reproductive Health Matters* 102.

<sup>15</sup> Observatorio Nacional en Género y Salud Sexual y Reproductiva, *Salud sexual y reproductiva y servicios de aborto en Uruguay* (MYSU, 2015) 10; CEDAW Committee, 'List of Issues and Questions: Uruguay' (2016) CEDAW/C/URY/Q/8-9/Add.1 [72].

<sup>16</sup> World Health Organization, 'Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008' (2011) <[https://www.who.int/reproductivehealth/publications/unsafe\\_abortion/9789241501118/en](https://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241501118/en)> accessed 17 January 2019.

“Women are not in the Best Position to Make These Decisions by Themselves”

### *3. The Legal Obligation to Reform Gender Stereotypes*

Uruguay has shown a strong commitment to the realization of human rights. It is party to all UN international human rights treaties. In general terms, in Uruguay, international law has the same binding force as domestic law. Under the Uruguayan Constitution—what Latin American jurists have called a ‘bloque de constitucionalidad’ or constitutionality block—all international human rights treaties ratified by the state are given constitutional rank. They are considered to be directly incorporated into domestic law and can be invoked in court.<sup>17</sup> In the context of abortion reform, this offers an exciting opportunity to use CEDAW to ground legal action.<sup>18</sup> CEDAW is unique in requiring states to transform laws, negative cultural attitudes and stereotypes that impede women’s human rights. This section defines stereotypes, canvasses the extent of Uruguay’s obligations under CEDAW and analyses the CEDAW Committee’s advocacy on stereotypes that relate to women’s sexual and reproductive health rights.

Stereotypes perform important cognitive functions and are helpful to comprehend the complexity of the world. At the same time, stereotypes can be harmful. Harmful stereotypes should be contested as they restrict individuals to supposed group characteristics, impairing their dignity, personal autonomy and human rights.<sup>19</sup> Gender stereotyping is defined by the UN Office of the High Commissioner of Human Rights as the ‘practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men’.<sup>20</sup> Article 5 of CEDAW specifically calls on states to modify negative cultural attitudes and gender stereotypes based on the inferiority of women and the superiority of men. It is a far-reaching obligation. The CEDAW Committee encourages states to develop an

---

<sup>17</sup> Armin von Bogdandy et al (eds), *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* (OUP, 2017) 248.

<sup>18</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

<sup>19</sup> Timmer (n 5) 707.

<sup>20</sup> Office of the High Commissioner of Human Rights, ‘Gender Stereotyping as a Human Rights Violation’ (2013) 9  
<<http://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>> accessed 18 July 2016.

approach to combat gender stereotypes that is effective,<sup>21</sup> sustained<sup>22</sup> and systematic.<sup>23</sup> Cusack and Pusey argue that under Article 5, states must transform institutions, systems and structures that cause or perpetuate discrimination and inequality and must modify or transform harmful norms, prejudices and stereotypes.<sup>24</sup> To fulfil its international and domestic commitments due to the constitutional character of international human rights law in Uruguay, the government must endeavour to identify and eradicate negative cultural patterns and stereotyping in all the areas of life including sexual and reproductive health rights (see Article 12 of CEDAW).<sup>25</sup>

Even in the 21<sup>st</sup> century, stereotypes are codified in legal regimes. Article 2(f) reinforces Article 5(a) by requiring states to take ‘all appropriate measures’ to modify or abolish ‘laws, regulations, customs and practices which constitute discrimination against women’. Article 2 places an affirmative obligation on states to achieve equality through domestic legislation. Stereotypical attitudes about the roles and responsibilities of women and men in public and in private life are not only reflected in people’s behaviour but are deeply entrenched in legislation and policy.<sup>26</sup> The CEDAW Committee urges states in unequivocal language to change such laws and public policies.

The CEDAW Committee’s work is also instrumental in identifying which stereotypes are harmful and need to be eradicated. Some of these harmful stereotypes are relevant to the Uruguayan abortion debates, so it is helpful to canvas the CEDAW Committee’s understanding of women, motherhood and victimhood. First, the CEDAW Committee has strongly criticized stereotypes that reduce women to the role of mothers and

---

<sup>21</sup> CEDAW Committee, ‘Concluding Observations: Mali’ (2006) CEDAW/C/MLI/CO/5 [18]; CEDAW Committee, ‘Concluding Observations: Fiji’ (2010) CEDAW/C/FJI/CO/4 [20].

<sup>22</sup> CEDAW Committee, ‘Concluding Observations: Côte d’Ivoire’ (2011) CEDAW/C/CIV/CO/1-3 [26]; CEDAW Committee, ‘Concluding Observations: Vanuatu’ (2007) CEDAW/C/VUT/CO/3 [22]; CEDAW Committee, ‘Concluding Observations: Kenya’ (2007) CEDAW/C/KEN/CO/6 [21].

<sup>23</sup> CEDAW Committee, ‘Concluding Observations: Colombia’ (1999) A/54/38/Rev.1 [182]; ‘Concluding Observations: Côte d’Ivoire’ (n 22) [26]; CEDAW Committee, ‘Concluding Observations: Former Yugoslav Republic of Macedonia’ (2013) CEDAW/C/MKD/CO/4-5 [27]; CEDAW Committee, ‘Concluding Observations: Qatar’ (2014) CEDAW/C/QAT/CO/1 [22]; ‘Concluding Observations: Vanuatu’ (n 22) [22].

<sup>24</sup> Simone Cusack and Lisa Pusey, ‘CEDAW and the Rights to Non-Discrimination and Equality’ (2013) 14 *Melbourne Journal of International Law* 1, 12.

<sup>25</sup> Elizabeth Sepper, ‘Confronting the “Sacred and Unchangeable”: The Obligation to Modify Cultural Patterns under the Women’s Discrimination Treaty’ (2007) 30 *University of Pennsylvania Journal of International Law* 601.

<sup>26</sup> CEDAW Committee, ‘Concluding Observations: Cuba’ (2000) A/55/38 [251], [261].

“Women are not in the Best Position to Make These Decisions by  
Themselves”

homemakers.<sup>27</sup> The preamble to CEDAW calls for a change in the traditional roles of men and women in society and in the family as a prerequisite for achieving full equality between men and women. Article 5 takes a sophisticated approach to women and motherhood. The provision is divided into two paragraphs:

*States Parties shall take all appropriate measures:*

*(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*

*(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*

On one hand, Article 5(a) recognizes the important role of women in the reproduction of humankind. Article 5(b), on the other hand, prevents seeing women solely as mothers.<sup>28</sup> The ‘repeated emphasis on the role of women as mothers and caregivers’<sup>29</sup> configures a pernicious gender stereotype which is the direct cause of women’s ‘disadvantageous and unequal status’.<sup>30</sup> The CEDAW Committee is very clear on rejecting the existing ‘sexual division of work’<sup>31</sup> in which women are primarily regarded as mothers and caregivers<sup>32</sup> having the primary responsibility for child-

---

<sup>27</sup> CEDAW Committee, ‘Concluding Observations: People’s Democratic Republic of Korea’ (2002) CEDAW/C/PRK/1 [53].

<sup>28</sup> Rikki Holtmaat, ‘Preventing Violence against Women: The Due Diligence Standard with Respect to the Obligation to Banish Gender Stereotypes on the Grounds of Article 5 (a) of the CEDAW Convention’ in Carin Benminger-Budel (ed), *Due Diligence and its Application to Protect Women from Violence* (Martinus Nijhoff, 2008) 73.

<sup>29</sup> CEDAW Committee, ‘Concluding Observations: Russian Federation’ (2010) CEDAW/C/USR/CO/7 [20].

<sup>30</sup> *ibid.*

<sup>31</sup> CEDAW Committee, ‘Concluding Observations: Congo’ (2002) CEDAW/C/COG/1-5.

<sup>32</sup> CEDAW Committee, ‘Concluding Observations: Mauritania’ (2014) CEDAW/C/MRT/CO/2-3 [22].

rearing and domestic tasks.<sup>33</sup> The Committee considers that these stereotypes relegate women and girls to a ‘subordinate and subservient role’ within the family.<sup>34</sup>

Second, the CEDAW Committee also calls attention to the assumption that women are weak and vulnerable and ask states to contest such stereotypes.<sup>35</sup> It warns states against protective laws and policies stemming from such assumptions.<sup>36</sup> This stereotype infantilizes women and portrays them as unable to make decisions on their own. The CEDAW Committee has expressed concern about cases where a woman requires her husband’s consent regarding sterilization and abortion, even when her life is in danger.<sup>37</sup> The CEDAW Committee connected the requirement of spousal consent with persistent entrenched patriarchal attitudes on the roles and responsibilities of women and men.<sup>38</sup>

The work of the CEDAW Committee provides tools to analyse the stereotypes present in the latest legal developments in Uruguay. This is particularly relevant because—in the words of Balkin—‘[w]hat law does, and can do, is proliferate ideas, concepts, institutions and forms of social imagination ... Law has the opportunity to do this because of its status as law, because it is intertwined with, supports and is supported by the power and authority of the state’.<sup>39</sup> Undoubtedly, the law shapes people’s behaviour, sometimes ‘construct[ing] their very beings’<sup>40</sup> and therefore has the power to give legal force to gender stereotypes. Uncovering the stereotypes in Uruguayan abortion law can be a route to accountability as Uruguay has an international and domestic obligation under Articles 2(f) and 5 of CEDAW to foster cultural change.

---

<sup>33</sup> CEDAW Committee, ‘Concluding Observations: Mauritius’ (2011) CEDAW/C/MUS/CO/6-7 [18].

<sup>34</sup> CEDAW Committee, ‘Concluding Observations: Maldives’ (2007) CEDAW/C/MDV/CO/3 [17].

<sup>35</sup> CEDAW Committee, ‘Concluding Observations: Nepal’ (2003) CEDAW/C/NPL/2-3; CEDAW Committee, ‘Consideration of Reports: Finland’ (1989) A/44/38 [256].

<sup>36</sup> CEDAW Committee, ‘Concluding Observations: Finland’ (1989) A/44/38 [256]; CEDAW Committee, ‘Concluding Observations: Gabon’ (1989) A/44/38 [55]-[56]; CEDAW Committee, ‘Concluding Observations: Kuwait’ (2004) A/59/38 [72]; CEDAW Committee, ‘Concluding Observations: Belarus’ (2004) A / 59/38 [351]; CEDAW Committee, ‘Consideration of Reports: Kuwait’ (2004) A/59/38 [72]; CEDAW Committee, ‘Consideration of Reports: Kuwait’ (2004) A / 59/38 [72]. CEDAW Committee, ‘Consideration of Reports: Suriname’ (2002) A/57/38 (Part II) [56].

<sup>37</sup> CEDAW Committee, ‘Concluding Observations: Indonesia’ (2012) CEDAW/C/IDN/CO/5 [16]-[18].

<sup>38</sup> *ibid.*

<sup>39</sup> Jack Balkin, ‘The Proliferation of Legal Truth’ (2003) 26 *Harvard Journal of Law and Public Policy* 108.

<sup>40</sup> Donald Nicholson, ‘Criminal Law and Feminism’ in Donald Nicholson and Lois Bibbings (eds), *Feminist Perspectives on Criminal Law* (Routledge, 2013) 13.

“Women are not in the Best Position to Make These Decisions by Themselves”

#### 4. *Mapping the Debates*

Stereotypes are ubiquitous yet often invisible; they are the ‘subtlest and most pervasive of all influences’.<sup>41</sup> They are particularly dangerous when they are translated into legal norms. This section argues a close consideration of the abortion debates in parliament reveals that Uruguayan abortion law is built on gender stereotypes.

Various salient images emerge from the debates. Women that seek to terminate their pregnancies are portrayed as victims, selfish, irrational and incompetent decision-makers. All these images are complex, layered and correspond to a large extent to the political intentions of the parliamentarians, but they do share an underlying similarity. Women are and should naturally be mothers; women are and should naturally be more capable of nurture; women are and should be self-sacrificial; and prioritize community interests above their own desires. Fundamentally, they all refer to the stereotype that conflates womanhood and motherhood; that envisages ‘motherhood as women’s privileged vocation or the embodiment of an authentic or natural female practice’.<sup>42</sup>

The construction of women that emerges from the parliamentary debates is that of a monolithic group. Except for very limited references to class, Members of Parliament (MPs) do not discuss the ways rural, disabled, trans or non-binary people or women of colour may be disproportionately burdened in terms of access to abortion. Further work is needed in order to address the different ways in which the law can reflect on the intersection of age, class, race, and more in accessing abortion.

It is striking that both proponents and opponents of reform ground their arguments on these stereotypes, and we can see echoes of these stereotypes in the law that emerged from these debates. The following subsections map how Uruguayan parliamentary discussions portray women seeking abortions. It investigates four prominent stereotypes from the debates, women as: (a) mothers; (b) selfish; (c) victims; and (d) irresponsible. It also investigates two other themes prominent in the debates: (i) competition of rights raised by abortion (linked to women as selfish); and (ii) the over medicalization of abortion (linked to women as victims).

This analysis focuses on the parliamentary discussions on Law 18426 on the Right to Sexual and Reproductive Health (the initial attempt at

---

<sup>41</sup> Walter Lippman *Public Opinion* (BN Publishing, 1921).

<sup>42</sup> Denise Riley, *War in the Nursery: Theories of the Child and Mother* (Virago, 1983) cited in Linda Alcoff, ‘Cultural Feminism versus Post-Structuralism: The Identity Crisis in Feminist Theory’ in Nancy Tuana and Rosemarie Tong (eds), *Feminism and Philosophy: Essential Readings in Theory, Reinterpretation, and Application* (Boulder, 1995) 451.

decriminalizing abortion which was ultimately vetoed by the President) and Law 18.987 on Voluntary Termination of Pregnancy. It brings together statements of MPs in the Chamber of Representatives (Cámara de Representantes) and Chamber of Senators (Cámara de Senadores) to present a critical account of the stereotyped images that underpin abortion law in Uruguay. To enrich the analysis, this section also assesses the interventions of civil society representatives and other stakeholders who participated in the debates.<sup>43</sup>

## A. *Women as Mothers*

The ‘motherhood mandate’ is the idea that the goal of a woman’s life is to raise children. It has been identified as one of the most pervasive stereotypes in need of eradication by the CEDAW Committee. This stereotype is reflected in the MPs’ understandings of abortion as a threat to women’s ‘natural’ role. Consequently, in the debates abortion is portrayed as a wrong that threatens the family and more generally the systems that build on ‘natural’ gender roles.

First, the debates on abortion in Uruguay reveal just how deeply embedded the stereotypes on women’s ‘natural and sacred’ role are:

*We do not renounce our vocation to find mechanisms and procedures that assist expectant mothers in such a way that they can fulfil the sacred role of giving birth to their children.*<sup>44</sup>

This reflects the idea that women ‘should prioritize childbearing and childrearing over all other roles they might perform or choose ... nothing should be more important for women than the bearing and rearing of children’.<sup>45</sup> This is the ‘motherhood mandate’. A woman’s core purpose is to raise children; it ‘is a woman’s *raison d’être* [and] it is mandatory’.<sup>46</sup> The conflation of being a woman and motherhood plays a prominent role in women’s subordination.<sup>47</sup> The motherhood mandate is so strong, argues an MP, that women secretly wish to become mothers:

---

<sup>43</sup> This article will not refer to the specific authors of the featured interventions. The parliamentary discussions are accessible at <<https://parlamento.gub.uy>> accessed 17 January 2019.

<sup>44</sup> Cámara de Representantes 52<sup>a</sup> Extraordinary Session (2012) 118 (emphasis added).

<sup>45</sup> Simone Cusack and Rebecca Cook, ‘Stereotyping Women in the Health Sector: Lessons from CEDAW’ (2010) 16 *Journal of Civil Rights and Social Justice* 56.

<sup>46</sup> Nancy Russo ‘The Motherhood Mandate’ (1976) 32(3) *Journal of Social Issues* 143.

<sup>47</sup> See Nancy Chodorow, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender* (University of California Press, 1999); Adrienne Rich, *Of Woman Born: Motherhood as Experience and Institution* (WW Norton & Company, 1995).

“Women are not in the Best Position to Make These Decisions by  
Themselves”

*We cannot fully confirm this, but in most cases, it is not an accident. The specialists say...that from a psychoanalytic point of view, neglecting to take the appropriate measures can imply an unconscious desire to be a father or mother.*<sup>48</sup>

This is highly paternalistic and, as argued below, links to stereotypes in the parliamentary debates and the Voluntary Termination of Pregnancy Act on women’s decision-making capabilities.

Abortion radically disrupts women’s ‘natural’ role and as such it is presented as morally and legally reprehensible. Opponent MPs argue that abortion goes ‘against nature’<sup>49</sup> and against the ‘mandate that [women] receive from nature, to perpetuate the species’.<sup>50</sup> They explain that ‘every abortion has, at least, two victims: one of them dies and the other survives but suffers the consequences of such an abominable crime’.<sup>51</sup> Abortion is equated with crimes committed during the Uruguayan dictatorship<sup>52</sup> and opponents consider the Voluntary Termination of Pregnancy Act to have ‘prioritized death over life’.<sup>53</sup>

It is perhaps unsurprising to see opponents of abortion reform base their arguments on the role of women within the traditional family. However, this approach is not confined to opponents of abortion. Both sides of the abortion debate draw on gender stereotypes, pernicious attitudes about women, and dangerous rhetoric to justify their legislative positions. These attitudes are echoed in the law, as the Voluntary Termination of Pregnancy Act ‘forbids’, ‘controls’ or ‘protects’ women.

Indeed, proponents of the reform do not unequivocally support women’s sexual and reproductive health rights. MPs supporting changes to the law argued that they were ‘not in favour of abortion’.<sup>54</sup> One MP in favour of the reforms explained that ‘none of the legislators [are] in favour of abortion or refuse to recognize that life begins at conception’.<sup>55</sup> In the parliamentarians’ eyes, ‘no woman ... wants to do something like this ... they arrive at this decision with a lot of pain’.<sup>56</sup> The proponents support the law as a necessary evil as it will ‘reduce the number of abortions because

---

<sup>48</sup> Cámara de Representantes 52<sup>a</sup> Extraordinary session (2012) 93.

<sup>49</sup> *ibid* 34.

<sup>50</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 253.

<sup>51</sup> Cámara de Representantes 52<sup>a</sup> Extraordinary session (2012) 172.

<sup>52</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 214.

<sup>53</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 210.

<sup>54</sup> *ibid* 215.

<sup>55</sup> Special Commission for consideration of termination of pregnancy bill, Folder 1354/2012, Annex I to Repartido 785 (2012) 15.

<sup>56</sup> Cámara de Senadores 61<sup>a</sup> Extraordinary session (2011) 114.

the right to be born of the foetus will be in the mind of the woman that needs to make the decision'.<sup>57</sup>

Proponents of the law also rely on stereotypes of women as mothers. They hold that decriminalizing abortion is needed to preserve women's future reproductive capacity. One MP supporting the reforms states:

*We must try to avoid that, facing a situation of desperation, a woman resorts to some type of procedure which results in her death or some other consequences that makes her unable to procreate.*<sup>58</sup>

*Several women, some of them single mothers...[that] have gotten an abortion in bad conditions and now can't have children when they want to.*<sup>59</sup>

According to this position, women must be granted access, albeit limited access, to abortion services because unsafe abortions pose a greater threat to their future fertility and inevitable later desire to become a mother. The MPs supporting the reforms are not concerned about women's agency or the consequences of unsafe abortions. While it might have been politically strategic to argue for abortion reform to protect women's reproductive capacity, this comes at the expense of transforming gender stereotypes. The current abortion laws in Uruguay are not aimed at protecting women's right to make autonomous decisions.

Second, a corollary to this normative ideal of motherhood is that the exercise and enjoyment of sexual and reproductive health and rights are a fundamental threat to the traditional patriarchal family.<sup>60</sup> Abortion is depicted by the opposition as profoundly anti-social behaviour that clashes with women's role as mothers. The MPs forcefully make these claims:

*We have been legislating to the detriment of the family.*<sup>61</sup>

*There are no different types of family, there is only one ... We cannot accompany this project because they continue to attack the basic principles of society and legitimizing this to undermine the main institution supporting any community.*<sup>62</sup>

---

<sup>57</sup> Special Commission for consideration of termination of pregnancy bill (n 55) 15.

<sup>58</sup> General Assembly 13<sup>th</sup> Extraordinary session (2008) (emphasis added).

<sup>59</sup> Cámara de Senadores 61<sup>a</sup> Extraordinary session (2011) 169 (emphasis added).

<sup>60</sup> Alicia Ely Yamin and Paola Bergallo, 'Narratives of Essentialism and Exceptionalism: The Challenges and Possibilities of Using Human Rights to Improve Access to Safe Abortion' (2017) 19 Health and Human Rights 1.

<sup>61</sup> Cámara de Representantes 52<sup>a</sup> Extraordinary session (2012) 92.

<sup>62</sup> *ibid* 93.

“Women are not in the Best Position to Make These Decisions by  
Themselves”

*Not only a potential life is killed, but also a woman and the  
basic cell of the social fabric—the family—are destroyed.*<sup>63</sup>

Third, MPs draw a connection between abortion and what is called ‘gender ideology’: the decoupling of sex/gender and the threat of this decoupling to traditional gender roles. This association between anti-abortion rhetoric and a stricter attachment to traditional gender roles has been very prevalent in the Uruguayan—and international—political arena. Abortion is presented not only as a threat to the traditional family but also to ‘natural’ gender roles and hierarchies. The following intervention in the debates is noteworthy:

*[In this law], of course, there is a kind of legalization - we say - of the ideology called "gender perspective," which denies the natural character of the distinction between the male and female sexes. We would have to agree that, at least, it is highly debatable and that it is not convenient for the Uruguayan State to adopt this as a law that is imposed on all citizens, regardless of the way of thinking of each one.*<sup>64</sup>

In the same line, another MP explicitly uses the phrase ‘gender ideology’:

*From an instrumental point of view, we have to know that, as its explanatory statement says, this bill is based on the biology [sic] of gender. We are very concerned to think that in Uruguay, not only in this bill but in the National Plan of Sexual Education, we talk about the ideology of gender.*<sup>65</sup>

The concept of ‘gender ideology’ appeared in the 90s after the Cairo and Beijing Conferences set the global agenda on sexual and reproductive health rights.<sup>66</sup> Garbagnoli defines the term as ‘a controversial invention of the Catholic conservative circles which aims to caricature and thus to

---

<sup>63</sup> *ibid* 64.

<sup>64</sup> Parliamentary Public Health Commission, Session 18 September 2007 (Distribuido No 1961) (emphasis added).

<sup>65</sup> Parliamentary Public Health Commission, Session 11 November 2003 (Distribuido No 2538) (emphasis added).

<sup>66</sup> UN International Conference on Population and Development, ‘Programme of Action of the International Conference on Population and Development’ (1994) A/CONF.171/13 and Beijing Declaration and Platform of Action  
<<http://www.un.org/womenwatch/daw/beijing/platform/>> accessed on 6 August 2018.

delegitimize a field of study'.<sup>67</sup> Those who oppose abortion rights, and sexual and reproductive health rights more generally, have argued that recognizing such rights represents what the Holy See, for example, considers to be a 'culture of death'<sup>68</sup> and as a fundamental threat to the traditional patriarchal family.<sup>69</sup> We can see the MPs using traditional gender stereotypes to justify keeping in place restrictive abortion laws.<sup>70</sup>

## *B. Women as Selfish*

In the parliamentary debates, women are not portrayed as autonomous actors, but subjects in service of the traditional patriarchal, heterosexual family and their future children. The debates also demonstrate that the MPs opposing the Voluntary Termination of Pregnancy Act stereotype women who seek abortions as self-centred; prioritizing individual desires over obligations to family and the needs of the community.

As one opposition MP explains, women that seek abortions are a particular 'type of person':

*We have studied some civilizations that have moved towards favouring pleasure and that have produced people of this type: hedonistic, without natural affection, individualistic and egocentric. I continue with these words to be able to paint the picture in which, I believe, the issue of abortion is circumscribed.<sup>71</sup>*

The decision to have an abortion is portrayed as an individual irresponsibility and increasing access to abortion is a collective irresponsibility.<sup>72</sup> An MP claims that:

---

<sup>67</sup> Sara Garbagnoli, 'Against the Heresy of Immanence: Vatican's 'Gender' as a New Rhetorical Device against the Denaturalisation of the Sexual Order' (2016) 6 Religion and Gender 187.

<sup>68</sup> UN International Conference on Population and Development, 'Statement of Pope John Paul II' <<http://www.un.org/popin/icpd/prepcomm/govern/940423171030.html>> accessed on 4 August 2018.

<sup>69</sup> Yamin and Bergallo (n 60) 1.

<sup>70</sup> See Jennifer Strickler & Nicholas Danigelis, 'Changing Frameworks in Attitudes Toward Abortion' (2002) 17 Sociological Forum 187; Sally Wall et al, 'Gender Role and Religion as Predictors of Attitude Toward Abortion in Croatia, Slovenia, the Czech Republic and the United States' (1999) 30 Journal of Cross-Cultural Psychology 443.

<sup>71</sup> Parliamentary Public Health Commission, Session 11 November 2003 (Distribuido No 2536) (emphasis added).

<sup>72</sup> Special Commission for consideration of termination of pregnancy bill, Folder 1354/2012, Anex I to Repartido 785 (2012) 16.

“Women are not in the Best Position to Make These Decisions by Themselves”

*Neither the act of individual irresponsibility nor the failure of the State can be replaced by a law that allows the elimination of human life created from individual and collective irresponsibility.*<sup>73</sup>

Also, the MPs argue that abortion facilitates women’s selfish enjoyment of sex. On this view, abortion threatens the traditional understandings of sexual activity: sex for procreation. Consequently, abortion is stigmatized because it envisions that a woman may have non-procreative sex including sex for pleasure. The opponents to the decriminalization of abortion are deeply concerned that access to abortion will change sexual activity and relations. MPs stated:

*It seems like personal pleasure is more important than the biological function of procreation.*<sup>74</sup>

*[Women] had to pay, suffering and pain, for having yielded to the pleasures of sex without taking responsibility for motherhood. The assumption was: she wanted to have sex; she enjoyed it; did not prevent pregnancy because she is irresponsible and does not want to be a mother at all or to be [a mother] again for selfish reasons.*<sup>75</sup>

In the debates, MPs stigmatize women seeking abortions as damaged, coming from broken families,<sup>76</sup> and sexually promiscuous. They describe women wanting abortions as:

*Women that have relatives in jail ... that don’t know who is the father of the child because in the last weeks they had sex with two or three men.*<sup>77</sup>

*[Women] have various children from different fathers.*<sup>78</sup>

Opponents of abortion argue that women seeking abortions are promiscuous and refuse to bear the burden of their irresponsible behaviour. As such, they are not entitled to access an abortion as it undermines their role as mothers and rewards their recklessness.

---

<sup>73</sup> *ibid.*

<sup>74</sup> Cámara de Senadores 39<sup>th</sup> Ordinary session (2007) 75 (emphasis added).

<sup>75</sup> Cámara de Senadores 61<sup>st</sup> Extraordinary session (2011)177.

<sup>76</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 214.

<sup>77</sup> Cámara de Senadores 61<sup>st</sup> Extraordinary session (2011)167.

<sup>78</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 214.

Another illustration of the MPs idea of women as selfish or irresponsible is the reference to abortion tourism. The Uruguayan law provides that access to abortion is restricted to women that have Uruguayan nationality or that have resided permanently in the country for at least one year (Article 13 of the Voluntary Termination of Pregnancy Act). In the discussions on this requirement, the MPs considered—with virtually no opposition—that setting requirements of citizenship and/or permanent residence to access abortion services was appropriate. This was aimed at preventing ‘abortion tourism’.<sup>79</sup> The nationality/residency requirement, the MPs argue, will prevent the creation of an image of Uruguay ‘as a country in which it is possible to obtain abortions’.<sup>80</sup> Abortion is not only singled out as an exceptional healthcare service—no other services are subjected to these requirements<sup>81</sup>—but by using the word ‘tourism’, the MPs evokes images of ease and leisure and obscuring the fact that women travelling to Uruguay to have abortions likely have limited access to health care services in their own countries. At the same time, it perpetuates the image of women as irresponsible—taking the decisions to terminate the pregnancy on a whim, carelessly or even leisurely.

## 1. Abortion as a Competition Between Rights

The stereotypes described above respond to a large extent to a dominant thread in the debates: the portrayal of abortion as the battle between different rights and rights-holders. In the Uruguayan debates the right to abortion is seen as a claim for which a woman has to compete with the foetus, the potential father, other women and/or the state and the community. Access to an abortion becomes a ‘competitive assertion of entitlements’.<sup>82</sup>

First, the opposition MPs bestow rights upon the foetus:

*Throughout history we have debated which right should prevail. Today, we have heard that the right of life of the embryo does not exist, I think it does.*<sup>83</sup>

<sup>79</sup> Cámara de Senadores 61<sup>a</sup> Extraordinary session (2011) 117. The term refers to a fairly common phenomenon where women are forced to travel, sometimes to other countries, in order to access abortion or other reproductive healthcare services.

<sup>80</sup> *ibid.*

<sup>81</sup> Law N° 18.211 on the National Healthcare System (SNIS) art. 1; see also Constitution of the Oriental Republic of Uruguay, arts. 44, 72, and 332.

<sup>82</sup> Nicola Lacey, ‘Feminist Legal Theory and the Rights of Women’ in Karen Knopf (ed), *Gender and Human Rights* (OUP, 2004).

<sup>83</sup> Cámara de Senadores 61<sup>a</sup> Ordinary session (2011) 158.

“Women are not in the Best Position to Make These Decisions by  
Themselves”

The MPs are arguing that the foetus is as an independent entity and a rights-holder. Following this argument through, as a rights-holder, the foetus must be protected from the harms of abortion.

The proponents of reform also see abortion as a battle between women’s rights and foetal interests. Unlike the opponents, however, the proponents give greater weight to women’s rights. MPs state that:

*[I]n those first twelve weeks our system makes a choice for the lesser evil. We believe that within the abovementioned period, the mother’s rights should prevail and after that the unborn rights should take precedence.*<sup>84</sup>

*[T]his draft bill solves this conflict [of rights], choosing a middle path—the “lesser evil”— which is the addition of a third party that will help the woman make her decision and a reflection period.*<sup>85</sup>

This presents abortion in a negative light—as something to avoid—transforming a safe and common experience<sup>86</sup> into an exceptional and highly stigmatized health care procedure. By presenting abortion as an evil, MPs set the foundations to argue for further control of women’s decisions which is examined below.

Second, potential fathers are also presented as victims of abortion. According to the opposition MPs:

*The law enshrines expressly the right to hide from the father not only the abortion, but also the pregnancy. This is a direct promotion of irresponsible paternity.*<sup>87</sup>

*The father is not consulted to see if he agrees with taking his offspring’s life forever.*<sup>88</sup>

---

<sup>84</sup> *ibid* 175.

<sup>85</sup> Special Commission for consideration of termination of pregnancy bill, Folder 1354/2012 (n 55) 2.

<sup>86</sup> Globally, one in four pregnancies end in abortion—including in countries with high rates of contraceptive prevalence—and nearly one in four women will have an abortion by age 45. Gilda Sedgh et al, ‘Abortion Incidence Between 1990 and 2014: Global, Regional, and Subregional Levels and Trends’ (2016) 388 *The Lancet* 258; Iqbal H Shah and Elisabeth Åhman, ‘Age Patterns of Unsafe Abortion in Developing Country Regions’ (2012) 12 *Reproductive Health Matters* 9; Rachel Jones and Jenna Jerman, ‘Population Group Abortion Rates and Lifetime Incidence of Abortion: United States 2008–2014’ (2017) 107 *American Journal of Public Health* 1904.

<sup>87</sup> Câmara de Representantes 52<sup>a</sup> Extraordinary session (2012) 88 (emphasis added).

<sup>88</sup> *ibid* 70.

*It is unacceptable to allow the termination of human life by the subjective decision of only one of the responsible people involved in its creation.*<sup>89</sup>

*But yes, if the mother decides to have it we are going to ask the father to give money to maintain the child.*<sup>90</sup>

Gender stereotypes permeate these statements from MPs opposing the law. The woman is portrayed as self-centred and irresponsible because she is making the decision to terminate the pregnancy without the consent of the potential father. Fatherhood is given more weight than a woman's bodily autonomy.

Proponents do not emphasize the rights of fathers. However, in discussing the role of men, proponents contribute to stereotypes that men do not have a responsibility in conception or parenting. Proponent MPs held that:

*We, male legislators, whether we assumed it or not, are deciding in abstract what concretely is a reality that only women will face.*<sup>91</sup>

*Here we are, gathered in a body mostly comprised by men, deciding on a draft bill that will never affect us directly.*<sup>92</sup>

These remarks on pregnancy distance men from their shared responsibility for contraception and children. This perpetuates the notion that men's responsibilities begin at birth while the responsibilities for women extend far back into pregnancy as the responsibilities for contraception fall exclusively on women.<sup>93</sup>

Third, the opposition MPs draw on the stereotypes of selfish, sexually irresponsible women to create a conflict between women. Opposition MPs juxtapose the stereotype of a woman who 'gets pregnant carelessly and then, apparently equally carelessly, terminates the pregnancy'<sup>94</sup> with women who long for children, but cannot have them. Women that seek abortions are selfish not only to themselves, their unborn children and the potential fathers, but also to women and men struggling with infertility. They refer

---

<sup>89</sup> Special commission for Consideration of termination of pregnancy bill (n 55) 15.

<sup>90</sup> Câmara de Representantes 52<sup>a</sup> Extraordinary session (2012)168.

<sup>91</sup> Câmara de Senadores 39<sup>a</sup> Ordinary session (2007) 59.

<sup>92</sup> *ibid* 58.

<sup>93</sup> Sally Sheldon 'Reconceiving Masculinity: Imagining Men's reproductive Bodies in Law' (1999) 26(2) *Journal of Law and Society* 129, 148.

<sup>94</sup> Carol Smart, *Feminism and the Power of Law* (Routledge, 1989).

“Women are not in the Best Position to Make These Decisions by Themselves”

to long adoption lists and to abortion as something that ‘makes a human being a big problem, when in reality, a new birth could be a blessing and a joyful occasion’.<sup>95</sup> An MP posits:

*Adoption is a very important mechanism in this topic of unwanted pregnancies. One can think of other countries that have adopted similar policies for women with unwanted pregnancies, so they won’t take the life of the product of her pregnancy, but instead the child can be adopted by somebody else and form a family.*<sup>96</sup>

This pits women against each other. The opposition debates elevate women who are trying to become mothers and denigrate women who reject the motherhood mandate.

Furthermore, other than a competition for human rights with other rights holders, opponents frame abortion as a conflict between women’s rights and the demographic needs and population growth policies of the state. Opposition MPs argued that women have to procreate—even if they don’t want to—because the country has a low birth rate. For example, MPs claim:

*All of us who have taken positions on this subject, we have done so considering that it is the best for society ... We have a population almost stagnated, which grows very little ... [due to] the low birth rate and emigration, two indicators that predict a dark and problematic future for Uruguayan society.*<sup>97</sup>

*Ours is a country with a low birth rate and we must protect motherhood.*<sup>98</sup>

*In a country that needs to change its demographic composition—that has an aging population—increasing the possibility of reducing births seems like a contradiction.*<sup>99</sup>

---

<sup>95</sup> Cámara de Senadores 61<sup>a</sup> Ordinary session (2011) 116.

<sup>96</sup> *ibid* 86.

<sup>97</sup> Cámara de Senadores 39<sup>th</sup> Ordinary session Distribuido 1127/2011 (2007) 75 (emphasis added).

<sup>98</sup> Cámara de Representantes 52<sup>nd</sup> Extraordinary session (2012) 64 (emphasis added).

<sup>99</sup> Cámara de Senadores 61<sup>a</sup> Ordinary session (2011) 103 (emphasis added).

*I was also going to make reference to the popular song that says that children are needed for the sun to rise. Certainly, in our aging country, children are needed for the sun to rise!*<sup>100</sup>

Within this position, MPs present abortion instead of being a human right of women but as a threat to the patriotic duty to the demographic goals of the country. When there is a low-birth rate, abortion becomes morally reprehensible; the needs of the state justify forcing women into motherhood.

### *C. Women as Victims*

Narratives of victimhood are widespread in the parliamentary debates. Woman seeking abortions, from a multitude of perspectives, are portrayed as victims. This narrative is typically used by proponents of abortion reform who argue that women should be seen as victims so as to capitalise on public sympathy. The opponents of the law also use narratives of victimhood to justify state intervention and ‘save’ women from their own decisions by helping them to make the ‘right choice’. This subsection explores these different uses of the stereotype of ‘women as victims’.

Proponents rely on the image of women as tragic victims of sexual violence. Women experience ‘all kinds of violence’.<sup>101</sup> In the words of one of the MPs supporting the reforms, women want to get abortions because they have been, for example, ‘raped by her employer or by the son of the employer’.<sup>102</sup> The rape victim is innocent and should be allowed to terminate the pregnancy. The core of the argument is not women’s autonomy but a sort of ‘permission’ in face of sexual violence. This is reflected in the legal provisions where there is a longer time period to access abortion in the case of rape. Victims of sexual assault under Article 6 of the Voluntary Termination of Pregnancy are granted a longer time period to legally access abortion— until 14 weeks instead of the general 12-week rule.

Justifying the liberalization of abortion as a remedial measure for sexual violence creates a paradox. Women have slightly greater agency over their reproductive health when there has been a prior lack of autonomy over sexual relations. Sheldon argues that women are construed in this manner because this enables the MPs to equate consensual

<sup>100</sup> Cámara de Representantes 52<sup>a</sup> Extraordinary session (2012) 71 (emphasis added).

<sup>101</sup> Cámara de Senadores 61<sup>a</sup> Extraordinary session (2011) 167.

<sup>102</sup> *ibid* 114.

“Women are not in the Best Position to Make These Decisions by  
Themselves”

intercourse with desired conception: ‘[w]anting sex equals wanting pregnancy and motherhood’.<sup>103</sup> Following through with this line of reasoning, women seeking abortions due to sexual violence can still be seen as subscribing to the motherhood as they are only rejecting that particular pregnancy. Abortion is therefore presented not as a woman’s desired choice but as a painful decision available in the absence of choice.

Even the other limited instances where abortion is decriminalized, health consequences of the pregnancy affecting the life of the women or foetal malformations, it is in situations where women can still ascribe to motherhood but are permitted to reject that specific pregnancy. These women are seen as victims of their circumstances and thus morally blameless. This image allows the parliamentarians—and the public in general—to reconcile the deeply embedded stereotype of women as natural mothers with the liberalization of abortion.

Proponents of law reform further deploy the victim narrative. When abortion is criminalized, women become victims of the criminal justice system. Proponents of reforming the law take multiple perspectives on the nature of this harm. On one hand, some MPs argued that women are bearing a double burden as they are ‘confronting a painful situation’—the interruption of pregnancy—and ‘committing a crime’.<sup>104</sup> This statement is operating on the principle that abortion will always be emotionally painful. On the other hand, other proponents of the law consider that ‘there are no traumatic consequences stemming from the procedure itself’ but exclusively from ‘the environment and the fact that they are committing a crime’.<sup>105</sup>

Regardless of the emotions involved in deciding to end a pregnancy, the criminalization of the abortion means women experience the procedure with ‘fear and even with panic’<sup>106</sup> and abortion becomes a ‘humiliating clandestine’ experience.<sup>107</sup> The MPs explain that women are ‘not really criminals, but victims of their circumstances’.<sup>108</sup> When criminalized, abortion is a trauma that involves a great deal of suffering.<sup>109</sup> The law on abortion needs to be liberalized to prevent women from ‘resorting to rat poison in order to interrupt their pregnancy’.<sup>110</sup> The proponents of reforming abortion law argue that the criminalization of

---

<sup>103</sup> Sally Sheldon, “‘Who is the Mother to Make the Judgment?’: The Constructions of Woman in English Abortion Law” (1993) 1 *Feminist Legal Studies* 3.

<sup>104</sup> Cámara de Senadores 39<sup>th</sup> Ordinary session (2007) 47.

<sup>105</sup> *ibid* 53.

<sup>106</sup> Special commission for consideration of termination of pregnancy bill (n 55) 6.

<sup>107</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 208.

<sup>108</sup> Cámara de Senadores 61<sup>st</sup> Extraordinary session (2011) 177.

<sup>109</sup> *ibid*.

<sup>110</sup> *ibid* 114.

abortion creates trauma, thereby using the narrative of victimhood to gain public sympathy. MPs rightly highlight the devastating consequences of criminalized abortion. However, the law continues to regulate abortion as a criminal matter outside of the exceptions carved out. The reforms brought no real change as abortion continues to fall within the realm of penal law.<sup>111</sup>

Those in favour of maintaining the criminalization of abortion argue that abortion creates victims and perpetuates harms that women need to be protected from as ‘no woman takes with joy or satisfaction’ the decision to have an abortion.<sup>112</sup> MPs who opposed the liberalization of abortion laws in Uruguay stated:

*[The proponents of the law] forget all the scars and traumas that abortion leaves in all women.*<sup>113</sup>

*It is hard to imagine bigger suffering than the one that a woman that has had an abortion will experience when she realizes what she has done. To the natural pain caused by the avoidable death of her child, one needs to add the burden of knowing that she is responsible for such a painful loss.*<sup>114</sup>

*When a pregnant child or woman in a situation of desperation—oftentimes also alone—have to make this decision, and access to abortion is easy, is ‘at hand’ because it has been decriminalized, it will be much easier for her to make such decision and they can regret it, which is irremediable.*<sup>115</sup>

A similar kind of image is presented when MPs argue that ‘post-abortion depression will affect her throughout her entire life’.<sup>116</sup> They argue that women who have accessed abortion services will suffer:

*Post-abortion syndrome, consisting of depression, suicidal thoughts, anxiety, guilt ... alcohol and drug abuse, divorce,*

---

<sup>111</sup> Niki Johnson, Cecilia Rocha and Marcela Schenck, *La inserción del aborto en la agenda político-pública uruguaya 1985-2013: un análisis desde el Movimiento Feminista* (Cotidiano Mujer, 2013).

<sup>112</sup> Cámara de Senadores 61<sup>st</sup> Extraordinary session (2011) 145.

<sup>113</sup> Cámara de Representantes 52<sup>nd</sup> Extraordinary session (2012) 170 (emphasis added).

<sup>114</sup> *ibid* 172 (emphasis added).

<sup>115</sup> Cámara de Senadores 61<sup>st</sup> Extraordinary session (2011) 146 (emphasis added).

<sup>116</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 211.

“Women are not in the Best Position to Make These Decisions by  
Themselves”

*neglect of pre-existing children and difficulties in general in  
their relationships.*<sup>117</sup>

Having an abortion is presented as a life-altering decision that extends the trauma into the woman’s future: ‘her life will change forever’.<sup>118</sup> No scientific evidence is provided to support these arguments. This is not surprising as the existing empirical evidence indicates women are not harmed or traumatized by abortion.<sup>119</sup> Noticeably, the opponents do not consider or give any weight to how being forced to continue with a pregnancy and being responsible for the care of a child will be immeasurably and immensely life-altering.

The opponents argue that the supposed severe harms of abortion—physical and psychological—justify restrictions on accessing abortion. Women are weak and the criminalization of abortion therefore ‘*protects women*’.<sup>120</sup> The MPs in opposition to the law argue that ‘we need to *protect and help* pregnant women, not incentivize abortive practices’.<sup>121</sup> The anti-abortion arguments claim that by prohibiting abortion the state is in fact protecting women against abortion’s harms. Both the opponents and proponents of the law minimise the agency of women.

## 1. The Public Health Narrative

The image of women as victims is strongly connected to the framing of abortion as an issue of public health. Indeed, proponents of the law—with very few notable exceptions—frame abortion not (only) as a criminal matter but as an issue of public health. This rationale is powerful in the Uruguayan context as an instrument to regulate societal issues.<sup>122</sup> This argument was spearheaded by public health authorities that were invited to participate in the debate and later claimed that:

---

<sup>117</sup> Cámara de Representantes 52<sup>nd</sup> Extraordinary session (2012) 70.

<sup>118</sup> Special commission for consideration of termination of pregnancy bill, Folder 1354/2012, Annex I to Repartido 785 (2012) 6; Cámara de Senadores 61<sup>st</sup> Extraordinary session (2011) 129.

<sup>119</sup> Results conducted in the US confirm that overwhelming majority of women—95 per cent of women—felt that termination was the right decision for them: Corinne Rocca et al, ‘Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study’ (2015) 10 Plos One 1.

<sup>120</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 209.

<sup>121</sup> Cámara de Senadores 61<sup>st</sup> Extraordinary session (2011) 107 (emphasis added).

<sup>122</sup> Wood et al (n 14) 102-10.

*the aim of this legislation was three-fold: to reduce maternal mortality, to reduce abortion-related complications, and to reduce the practice of abortion.*<sup>123</sup>

This approach is also conceptualized as a harm reduction model characterized by a pragmatic approach to health outcomes rather than a focus on women's autonomy.<sup>124</sup> Scholars warn against the dangers of this framing as it proposes a 'professional, medical management of social problems' focusing on 'individual consequences and societal costs rather than their social causes' and failing to push for transformative gender equality as mandated under CEDAW.<sup>125</sup> Within this framing, abortion is still in some sense 'wrong'—thus the need for its eradication—rather than an integral and normal component of women's right to health.

As a result of this public health framing, reproductive autonomy is heavily regulated and medicalized. The assumption that women seeking abortions are emotionally fraught and in need of support is echoed in the law and in the debates. MPs characterise a woman seeking abortions as somebody that is in a state of 'anguish, despair and isolation' and 'in the worst of circumstances'.<sup>126</sup> Due to this emotional hardship she faces, a woman is unable to make this decision alone and 'need[s] to be accompanied'.<sup>127</sup> The woman's decision is not enough to access legal abortion services. Articles 2 and 3 of the Voluntary Termination of Pregnancy Act require the approval of a gynaecologist and a multidisciplinary team before a woman can access an abortion. In the case of an abortion resulting from sexual violence, a woman is required under Article 6 of the Voluntary Termination of Pregnancy Act to have filed an official criminal complaint. Unless the woman accepts the participation of all these parties in her personal healthcare decision, she will be committing a crime if she has an abortion. The medical profession has, what Halliday describes as, a gate-keeping role: it has the power to grant an abortion.<sup>128</sup>

The law also doubts the woman's decision to have an abortion. The second consultation which focuses on the risks of abortion and the availability of alternatives is designed to persuade women against abortion.

---

<sup>123</sup> Leonel Briozzo, 'From Risk and Harm Reduction to Decriminalizing Abortion: The Uruguayan model for Women's Rights' (2016) 134 *International Journal of Gynecology & Obstetrics* 134.

<sup>124</sup> Joanna Erdman, 'Access to Information on Safe Abortion: A Harm Reduction and Human Rights Approach' (2011) 34 *Harvard Journal of Law & Gender* 413.

<sup>125</sup> Gordon Roe, 'Harm Reduction as Paradigm: Is Better than Bad Good Enough? The Origins of Harm Reduction' (2005) 15 *Critical Public Health* 243.

<sup>126</sup> Cámara de Senadores 47<sup>th</sup> Ordinary session (2012) 208.

<sup>127</sup> Special commission for consideration of termination of pregnancy bill (n 55) 6.

<sup>128</sup> Samantha Halliday, *Autonomy and Pregnancy. A Comparative Analysis of Compelled Obstetric Intervention* (Routledge, 2016) 172.

## “Women are not in the Best Position to Make These Decisions by Themselves”

As conceded explicitly by Article 3 of the Voluntary Termination of Pregnancy Act, the aim of the consultation is to ‘contribute to *overcome the causes* that lead to the interruption of pregnancy’. The overall concern of the law is not the recognition of women’s rights to abortion but rather the desire to regulate women’s decisions on matters that the MPs perceive as a necessary evil. The law also polices women’s decision-making processes by imposing mandatory counselling and a mandatory waiting period of at least five days (Article 4 of the Voluntary Termination of Pregnancy Act).

Underpinning these requirements is the stereotype that women—because they are naturally mothers—experience more conflict about abortion than other healthcare decisions and require additional time and information beyond that typically offered as part of informed consent.<sup>129</sup> The number of consultations the law requires ‘constructs women as emotionally vulnerable and medically ignorant’;<sup>130</sup> which is diametrically opposed to the ‘scientific, rational and objective’<sup>131</sup> characterisation of the medical profession. Sheldon notes that modern trends in medicine have shifted away from ‘doctor knows best’ paternalism.<sup>132</sup> Patients are routinely trusted, and indeed expected, to make their own informed medical decisions. Abortion, however, remains predominantly in the control of medical professionals. The public health framing undermines women’s rights to make autonomous decisions over their reproductive health.

### *D. Women as Irresponsible*

Underpinning all of the MPs’ statements, whether proponent or opponent of the reform, is the idea that women cannot be trusted to make decisions over their reproductive lives. An MP explains that women have an ‘ambivalent desire to terminate the pregnancy but also to become mothers’.<sup>133</sup> Abortion, which is a health care service that only women need, is then constructed as an exceptional procedure that requires a high degree of surveillance and intervention. The debates on the Voluntary Termination of Pregnancy Act signal—in the words of one MP—that ‘in any

---

<sup>129</sup> LJ Ralph et al, ‘Measuring Decisional Certainty Among Women Seeking Abortion’ (2017) 95 *Contraception* 269.

<sup>130</sup> MB Mahowald, ‘Sex-Role Stereotypes in Medicine’ (1987) 2 *Hypatia* 21, 25.

<sup>131</sup> Halliday (n 128) 212.

<sup>132</sup> Sally Sheldon, ‘The Decriminalisation of Abortion: An Argument for Modernisation’ (2015) 610 *Oxford Journal of Legal Studies* 12.

<sup>133</sup> Special commission for consideration of termination of pregnancy bill (n 55) 6.

case, women [that seek abortions] are not in the best position to make these decisions by themselves'.<sup>134</sup>

First, opponents argue that women cannot be trusted with liberal abortion laws. Easy access to abortion, opponents hold, will result in an increase in abortion rates. Women will use abortion as a form of contraception and abortions will become banal.<sup>135</sup> An MP claims that by liberalizing abortion laws:

*We are telling those young women, sometimes even children, that they can act irresponsibly; that is easier and less costly to terminate a life than to protect themselves from pregnancy.*<sup>136</sup>

As another example, a MP argues that:

*decriminalizing abortion means liberalizing it, facilitating the adoption of irresponsible attitudes in terms of prevention of pregnancy.*<sup>137</sup>

Concerns that abortion perpetuates negligent and irresponsible behaviour are also linked to the fears, discussed above, about women's sexual agency. When women have access to abortion on demand, this will result in women enjoying the freedom to engage in non-procreational sexual experiences.

Second, one of the MPs showed concern because the reasons for seeking abortion services are 'extremely subjective'<sup>138</sup>—the law allows women to argue 'according to her own judgement' why she decides to terminate the pregnancy. These concerns around the reasons for having an abortion are manifested in the law. Although abortion is legally available on broad grounds, a woman still needs to explain and get the approval of the gynaecologist for the reasons that 'prevent her from continuing the pregnancy' (Article 3 of the Voluntary Termination of Pregnancy Act). Under Uruguay's abortion law, women are not decision-makers and their decision to have an abortion does not guarantee access to an abortion. The procedural hurdles in place under the law are deemed a necessary intervention in the lives of these women, who are otherwise unable to make decisions on their own. An MP in support of the law explains:

---

<sup>134</sup> *ibid.*

<sup>135</sup> *ibid* 2.

<sup>136</sup> Cámara de Senadores 61<sup>a</sup> Extraordinary session (2011) 143.

<sup>137</sup> *ibid* (emphasis added).

<sup>138</sup> Cámara de Senadores 39<sup>th</sup> Ordinary session (2007).

“Women are not in the Best Position to Make These Decisions by Themselves”

*this draft bill solves this conflict [woman v. foetus], choosing for a middle path—the lesser evil—which is the addition of a third party that will help the woman make her decision and a reflection period.*<sup>139</sup>

## 5. Conclusion

The persistent refusal of the law and political-legal discourse in Uruguay to recognise that the termination of a pregnancy is a decision that fundamentally belongs to the woman is rooted in gender stereotypes enforcing the generalized view that women should be mothers. Article 2(f) and Article 5 of CEDAW together impose the obligation to transform laws, policies and institutions. Although the law undoubtedly represents a step forward—as criminal penalties for abortion may be waived in certain circumstances—it fails to promote the change in cultural patterns that CEDAW requires because it hinges on harmful gender stereotypes. Thus, Uruguayan abortion law is in violation of its international obligations and its own constitution.

Those advocating for the liberalization of abortion laws in line with human rights standards are faced with the dilemma of having to choose between the more principled but risky argument in favour of women’s autonomy and the less palatable but safer one based on harm reduction.<sup>140</sup> The image of women as victims seems to be more politically compelling and morally palatable than the idea that abortion is an essential and normal health care service and human right. There is no ‘one size fits all’ solution, but the analysis here warns of the dangers of using stereotyped images of women, even if it ultimately resulted in the adoption of a more liberal abortion law.

Uruguay must adopt, under Article 2(f) of CEDAW ‘all appropriate measures’ to modify or abolish this law—and all laws—that hinge on stereotypes. Identifying the stereotypes that underpin the abortion law allows us to spearhead law reform processes that ‘build authentic, non-essentialist, and dignified subjectivities’<sup>141</sup> and help further the cultural change required by CEDAW. Without the careful crafting of legislation,

---

<sup>139</sup> Special Commission for consideration of termination of pregnancy bill, (n 55) 2.

<sup>140</sup> Jennifer Hendricks, ‘Converging Trajectories: Interest Convergence, Justice Kennedy, and Jeannie Suk’s “The Trajectory of Trauma”’ (2010) 110 *Columbia Law Review* 795.

<sup>141</sup> Veronica Undurraga, ‘Gender Stereotyping in the Case Law of the Inter-American Court of Human Rights’ in Eva Brems and Alexandra Timmer (eds), *Stereotypes and Human Rights Law* (Intersentia, 2016).

such laws will be complicit in perpetuating stereotypes and will run counter to human rights obligations.