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I. INTRODUCTION

The legal regulation of marriage in Argentina has undergone reforms that, in a variety of ways, have dismantled religion's influence over law. While these reforms reaffirm the centrality of marriage in the construction of the sexual order, they also redefine marriage, distancing it from the sacrament defended by the Catholic Church. In 1888, civil and religious marriages were distinguished from one another as part of a reform process in response to late-century secularist and liberal ideologies.[1] Church and State became, at least legally, autonomous with respect to marriage; while the latter regulated the civil contract, the Church only concerned itself with the celebration of the religious sacrament. However, the legal construction of marriage was, of course, substantiated by the religious doctrine. Almost a century later, in 1987,[2] the related Divorce Law was passed,[3] made possible largely by the recent restoration of democracy and the influence of women's movements in the region.[4] The law distanced itself from religious sacrament by establishing the solubility of the bond as a constitutive part of the institution of marriage. Finally, in 2010, a new reform took place through which marriage was authorized between same-sex couples,[5] arising from a demand primarily promoted by the movement for sexual diversity. This reform broke from the principle of Catholic doctrine that the sexes are complementary and generated complete equality in marriage between partners of the same or opposite sexes.

While secularization is a process of triumphs and setbacks, 1888,

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1. *See* HTUN, SEX AND THE STATE: ABORTION, DIVORCE, AND THE FAMILY UNDER LATIN AMERICAN DICTATORSHIPS AND DEMOCRACIES 37 (2003).

2. A prior divorce law had been passed in 1954 during Juan Domingo Perón's presidency; however, that law was abolished a year later when he was overthrown by a military coup. *See id.* at 96.

3. Law No. 23.515, June 12, 1987, [26.157] B.O. 2.

4. *See* HTUN, *supra* note 1, at 95–102.

5. Law No. 26.618, July 22, 2010, [31.949] B.O. 1.

1987, and 2010 constitute milestones when the Catholic Church progressively lost influence in the construction of law. Although these reforms respond to different ideological moments and influences, their common element is the presence of Catholic hierarchy as the principal antagonist. Understanding how these reforms came about requires, in all three cases, observing the actors, discourses and strategies undertaken by the Catholic side, with the objective of avoiding legal change. Beyond the time that has passed since the beginnings of marriage secularization in 1888, the 2010 reform shows that the Catholic Church, far from withdrawing, continues to play a central role in public policies and the law—which has itself changed and become more sophisticated. While the 2010 reform, on the surface, tells a successful story about the State's growing capacity to regulate emotional and sexual bonds with greater independence from the Church, it also highlights the strong mobilization of hierarchies and believers, primarily Catholics and Evangelicals, to influence the construction of law. Not only was the Catholic hierarchy active, but leaders of other religions also joined with it to create an ecumenical conservative bloc united in the defense of a traditional sexual order.[6] Behind the broadening of rights obtained, and the deepening of democracy achieved, it is now clear that there also exists a powerful conservative religious bloc that is sure to play a central role in the country's politics of sexuality in the future.

The purpose of this essay is to consider some of the ways in which the sectors of society that strongly identified with religion sought to influence the process of legal reform that culminated in the authorization of marriage for same-sex couples. The essay focuses on the complex influence of Catholicism on the legal debate, given that without a doubt the Catholic Church remains the main challenge to the expansion of sexual rights in Latin America. First, the Catholic Church's sexual politics will be characterized by considering the main official Vatican documents on the matter. Beyond the fact that the Church's actions vary in different countries, examining the Vatican's construction of sexual politics is crucial for understanding the institution's political participation in opposition to the expansion of sexual rights. The calls for lawmakers, both in the Vatican documents and in the Church hierarchy's public interventions, are considered. Second, the essay will analyze the interventions of Catholic legislators during the Parliamentary debate in Argentina. Numerous legislators, at the moment of justifying their votes, identified as Catholics despite differing in their positions on marriage for same-sex couples. This essay proposes four types of articulations

6. Though the Catholic hierarchy had a leading role, there were also important manifestations against the legal reform by conservative evangelical leaders.

between religious identity and the role of lawmakers when regulating sexuality. By considering these two levels—the Catholic Church's sexual politics and the legislator's articulations—the essay aims to present a complex picture of the connections between religion and politics, which allowed for the legal reform recognizing marriage for same-sex couples.

II. THE SEXUAL POLITICS OF THE CATHOLIC CHURCH

The Second Vatican Council, 1962–1965, is a turning point for understanding the contemporary roles the Catholic Church has in national and international arenas. During the Council, the independence and autonomy of the Church and the political society from each other was recognized; however, the Church also reaffirmed its role as a public actor by passing "moral judgment in those matters which regard public order when the fundamental rights of a person or the salvation of souls require it."[7] The Church is thus not only a religious institution with a particular doctrine but also a public actor aiming to influence the political realm.[8] One of the spheres in which the Church demands participation is the execution of justice; while it is the State's task to define *how* justice is carried out, religions have a fundamental role in determining *what* justice is. It is precisely in the definition of what justice *is* where "politics and faith meet," given that "the Church is duty-bound to offer, through the purification of reason and through ethical formation, her own specific contribution towards understanding the requirements of justice and achieving them politically."[9] This task does not only involve Catholic hierarchy; various official documents also feature a direct call for the participation of the lay faithful in this quest for justice. While the Catholic Church accepts the distinction between citizen and believer as a dimension of contemporary democracies, this does not imply that the faithful should become depoliticized, as was affirmed by Pope John Paul II: "the lay faithful *are never to relinquish their participation in 'public life.'*"[10] As a specific Vatican document sustains, the faithful cannot choose pluralism or autonomy "to support policies affecting the com-

7. Second Vatican Council, *Pastoral Constitution on the Church in the Modern World-Gaudium et Spes* ¶ 76, VATICAN (Dec. 7, 1965), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html#top.

8. José Casanova has proposed the term "deprivatization" to describe the contemporary role of religious institutions, particularly the Catholic Church, in the modern world. *See* JOSÉ CASANOVA, PUBLIC RELIGIONS IN THE MODERN WORLD (1994).

9. Pope Benedict XVI, *Deus Caritas Est—Encyclical Letter, Benedict XVI* ¶ 28(a), VATICAN (Dec. 25, 2005), http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html.

10. Pope John Paul II, *Christifideles Laici—John Paul II—Post-Synodal Apostolic Exhortation* ¶ 42, VATICAN (Dec. 30, 1988), http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_30121988_christifideles-laici_en.html.

mon good which compromise or undermine fundamental ethical requirements."[11]

The legal regulation of sexuality has become a decisive political cleavage for the Catholic Church's public participation. While the construction of the Church's official stance spans a long historical trajectory, with milestones such as the influences of Saint Augustine (354–430), Saint Thomas Aquinas (1225–1274), and the Catholic Counter-Reformation (1560–1648), the growing importance of feminism and the movement for sexual diversity has generated a greater dogmatization in the construction of the sexual order.[12] Faced with cultural and legal changes in ways of conceiving of sexuality that increasingly dissasociate it from reproduction, the Catholic Church decided to more intensely defend the traditional conception that ties sexuality to reproductive potential. Homosexuality, along with abortion, is one of the principal axes of resistance of Catholic hierarchy to the increasing legitimacy of sexual and reproductive rights. While the Catholic Church has generally maintained a stance against homosexuality,[13] in recent decades, and particularly during the papacies of John Paul II and Benedict XVI, it has generated various documents in response to the advances achieved by the movement for sexual diversity. One of the most noteworthy documents, from 1986 during the papacy of John Paul II, classified homosexual tendencies as an objective disorder.[14] The general content of this document makes the Church's official position, up until that point, even more rigid.[15] It should be clarified that by 1973, homosexuality had been removed from the psychiatric disorders dis-

11. Congregation for the Doctrine of the Faith, *Doctrinal Note on Some Questions Regarding the Participation of Catholics in Political Life* ¶ 5, VATICAN (Nov. 24, 2002), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html.

12. The entrance of sexual and reproductive rights in national and transnational public agendas generated a strong reaction from the Vatican. In particular, the United Nations Conferences in Cairo and Beijing were accompanied by a more active role of the Catholic Church defending a traditional conception of sexuality and of the family. *See* JENNIFER S. BUTLER, BORN AGAIN: THE CHRISTIAN RIGHT GLOBALIZED (2006); Juan Marco Vaggione, *Evangelium Vitae Today: How Conservative Forces are Using the 1995 Papal Encyclical to Reshape Public Policy in Latin America*, 31 CONSCIENCE: THE NEWSJOURNAL OF CATHOLIC OPINION 23 (2010), *available at* http://viewer.zmags.com/publication/f1f99f2e#/f1f99f2e/24.

13. There are, however, important debates on the history of the Church on homosexuality and on the interpretation of the Bible on homosexuality, particularly by feminist and queer theologies. *See, e.g.*, JOHN BOSWELL, CHRISTIANITY, SOCIAL TOLERANCE, AND HOMOSEXUALITY (1980).

14. *See* Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons*, VATICAN (Oct. 1, 1986), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html.

15. *See* Sacred Congregation for the Doctrine of the Faith, *Persona Humana—Declaration on Certain Questions Concerning Sexual Ethics* § 8, VATICAN (Dec. 29, 1975), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html (distinguishing two types of homosexual persons: those that are transitory or "not

cussed by the American Psychological Association in the Diagnostic and Statistical Manual of Mental Disorders.[16] The 1986 document also instructs bishops not to allow the existence of organizations with homosexual members if the organizations do not clearly affirm that homosexual activity is immoral—clearly in reaction to the existence of Catholic groups in support of sexual diversity.[17]

In its reaction towards sexual and reproductive rights, the Church asks the laity to take an active role in public debate and lawmaking processes in order to reject "a conception of pluralism that reflects moral relativism."[18] In particular, official documents instruct Catholic lawmakers on what to do when legal projects aiming to recognize rights for gays and lesbians are being debated in different contexts. Specifically, there are two main political tools with which the Vatican, particularly the Congregation for the Doctrine of the Faith, instructs Catholics on how they should act when faced with attempts to make legal change that favors sexual diversity. In 1992, the Congregation for the Doctrine of the Faith issued a document entitled *Some Considerations Concerning the Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons*.[19] In reaction to legislation against discrimination on the basis of sexuality, the Church held that there are areas in which expressly excluding people on the basis of sexual orientation does not constitute "unjust discrimination."[20] Specifically, the following areas are mentioned: adoption and care of minors, work as a school teacher or physical education teacher, and entry into the military.[21] Conscientious legislators, voters, or church authorities are then instructed to oppose legislation against hate crimes and legislation that prohibits discrimination based on sexual orientation. Against the existing policies of including sexual orientation as a reason for discrimination, the Vatican called for lawmakers to have a public role in defending the official Catholic position toward homosexuality.

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incurable" and those that are definitively and permanently homosexual from an "innate instinct" that is "incurable").

16. *See* Am. Psychiatric Ass'n, *Homosexuality and Sexual Orientation Disturbance: Proposed Change in DSM-II*, at 44, PSYCHIATRYONLINE, http://www.psychiatryonline.com/DSMPDF/DSM-II_Homosexuality_Revision.pdf (last visited Apr. 3, 2011).

17. For example, the American organization, DignityUSA, formed by an Augustinian Priest in 1969 as a ministry for gay and lesbian Catholics, was a concern for the Catholic Church's non-negotiable standpoint on homosexuality.

18. Congregation for the Doctrine of the Faith, *supra* note 11, ¶ 3.

19. Congregation for the Doctrine of Faith, *Some Considerations Concerning the Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons*, VATICAN (July 24, 1992), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19920724_homosexual-persons_en.html.

20. *Id.* ¶ 11.

21. *Id.*

Secondly, an important document that serves as a guide for action in Catholic sectors against the demands of the movement for sexual diversity was drawn up in 2003, titled *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons*.[22] The Vatican stands against the legal recognition of same-sex partners given that it means "not only the approval of deviant behaviour, with the consequence of making it a model in present-day society, but would also obscure basic values which belong to the common inheritance of humanity."[23] This document sets down the principal forms in which Catholic hierarchy and legislators ought to act, in their different roles, when faced with projects that seek to recognize rights for same-sex couples. In particular, it instructs a Catholic lawmaker "to express his opposition clearly and publicly and to vote against" any legislation that recognize rights to same-sex couples.[24] If such a law already exists, a lawmaker "must oppose it in the ways that are possible for him and make his opposition known."[25] Furthermore, the document offers a series of arguments that hierarchy and faithful alike can use in the mobilization against legal reforms. The document is not original in respect to doctrinal elements on homosexuality, given that they compile what has been said previously, but the document is original in its articulation of different types of secular arguments that justify opposing the recognition of rights for same-sex couples. Specifically, its main objective is to present "arguments drawn from reason" directed toward lawmakers, among others, so that, in accordance with specific characteristics of each region, they can protect and promote the "dignity of marriage, the foundation of the family, and the stability of society, of which this institution is a constitutive element."[26] These arguments are organized along four axes: a rational order, a biological/anthropological order, a social order, and a juridical order.[27] The Vatican then, not only defends a religious doctrine, but also a political standpoint on sexuality by asking Catholic politicians to have a public and active role.

III. CATHOLIC HIERARCHY AND LEGAL DEBATE

The increased legitimacy that sexual and reproductive rights have

22. Congregation for the Doctrine of the Faith, *Considerations Regarding Proposals to Give Legal Considerations to Unions Between Homosexual Persons*, VATICAN (June 3, 2003), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html.

23. *Id.* ¶ 11.

24. *Id.* ¶ 10.

25. *Id.*

26. *Id.* ¶ 1.

27. *Id.* § III.

acquired recently in Argentina, generated—as expected—a more active and visible participation of the Catholic hierarchy in the politics of sexuality. While the Catholic Church used to have a hegemonic power on family legislation, mostly carried out by direct influence and lobby over the state, feminism and the movement for sexual diversity has been successful in including sexuality as a political cleavage. In recent years in Argentina, there have been important legal reforms allowing, for example, the possibility for sexual education at schools or public policies on reproductive rights. This politicization of sexuality has forced the Church to become more outspoken and to adapt strategies in order to protect the legal status quo on family relations. The debate about same-sex marriage during 2010 was a pivotal moment as the Catholic hierarchy publicly mobilized to influence the debate and actively called on Catholic legislators to oppose the legal reform. This legal debate offered then, the possibility of analyzing the complex interactions between religion and politics when sexual rights are part of the agenda.

The Catholic Church's official pronouncement was made in April 2010, when the Plenary Assembly of the Argentine Bishops' Commission drafted *On the Unalterable Good of Marriage and the Family*.[28] This document, in addition to reaffirming doctrinal principles on homosexuality, makes references to secular arguments of a different type, following the line of the Vatican's documents. Among other arguments, it includes the defense and protection of minors, given that "[t]he union of people of the same sex lacks biological and anthropological elements belonging to marriage and family."[29] The legal arguments have a notable presence, and consider that "principles of natural law and public order" demand that the state defend marriage as between a man and a woman.[30] It holds that rejecting the law does not imply discrimination, given that "[a]ffirming a real difference is not discrimination. Nature does not discriminate when it makes us male or female. Our Civil Code does not discriminate when it demands the requirement of being a man and a woman in order to enter into marriage; it only recognizes a natural reality."[31] Finally, the document pointedly addresses itself to legislators and calls upon their consciences so that "when deciding on an issue of such

28. 99ª Asamblea Plenaria de la Conferencia Episcopal Argentina, *Sobre el Bien Inalterable del Matrimonio y la Familia [On the Unalterable Good of Marriage and the Family]*, EPISCOPADO (Apr. 20, 2011), http://www.episcopado.org/portal/component/content/article/519-sobre-el-bien-inalterable-del-matrimonio-y-la-familia.pdf; *see also* Argentina's Bishops Defend Marriage Against Moves to Recognize Homosexual Unions, CATHOLIC NEWS AGENCY (Apr. 24, 2010), http://www.catholicnewsagency.com/news/argentinas_bishops_defend_marriage_against_moves_to_recognize_homosexual_unions/.

29. 99ª Asamblea Plenaria de la Conferencia Episcopal Argentina, *supra* note 28, at 1, ¶ 4.

30. *Id.* at 1, ¶ 3.

31. *Id.* at 1, ¶ 5.

seriousness, [they] keep in mind these fundamental truths, for the good of the nation and its future generations."[32]

In parallel to this official document, the chief members of the Catholic hierarchy also became actors mobilized to prevent the legal reform. On the one hand, they held frequent meetings with legislators to explain the institutional opinion of the Church and to lobby them to reject the legal reform proposal.[33] These private meetings were accompanied by public declarations—having a strong media impact—addressed to legislators, whom the Church reminded of their "grave moral duty to oppose decisively this type of projects, which are so harmful for the common good of society."[34] Other public declarations were of a different tenor; they were characterized by offering secular arguments to justify rejecting the project.[35] In accordance with the Vatican's instructions, we can find anthropological, philosophical, socio-biological, and legal arguments.[36] Among all of these arguments, one of great impact was the affirmation that approving marriage for same-sex couples implied "denying scientific evidence and robbing children of the right to grow and develop in their psychosexual dimension, which requires male and female presence."[37] Due to the nature of the debate, legal arguments had an important weight in the interventions of Catholic hierarchy. It was put forth, for example, that "[r]edefining marriage by removing the requirement of heterosexuality alters the very nature of the institution, protected by the National Constitution, and introduces an essential modification to this institution"[38] or that "if this law is approved, all family law will be altered, along with other branches of law that are related to the institution of marriage."[39]

A couple of weeks before the vote in the Senate, the main representative of the Argentine Catholic Church, Cardinal Bergoglio,[40] used

32. *Id.* at 2, ¶ 6.

33. *See* Monseñor Antonio Marino, *La Iglesia Consideró "Muy Grave" el Avance del "Matrimonio Homosexual"* [*The Church Considers "Very Serious" the Progress of "Gay Marriage"*], AICA (May 5, 2010), http://www.aica.org/index.php?module=displaystory&story_id=21431&edition_id=1235&format=html.

34. Monseñor José Mariá Arancibia, *"El Verdadero Matrimonio," un Valor No Negociable* [*"The True Marriage," Is Not Negotiable*], AICA (May 26, 2010), http://www.aica.org/index.php?module=displaystory&story_id=21765&format=html&fech=2010-05-26.

35. *See, e.g.*, Monseñor Marcelo Martorell, LA DIÓCESIS DE PUERTO IGUAZÚ SE PRONUNCIA A FAVOR DEL MATRIMONIO Y LA FAMILIA [*The Diocese of Puerto Iguazu Advocates Marriage and Family*], AICA (June 17, 2010), http://www.aica.org/docs_blanco.php?id=422.

36. *See id.*

37. Marino, *supra* note 33.

38. *Mons. Mollaghan Llamó a Defender el Evangelio en la Cultura*, AICA (June 2, 2010), http://aica.org/front.php?id=21867.

39. *Mons. Aguer Llama a Movilizarse por el Matrimonio y la Familia*, AICA (June 20, 2010), http://aica.org/front.php?id=22154.

40. Cardinal Bergoglio is the Archbishop of Buenos Aires and President of the Argentinean

arguments of a religious nature that prompted strong rejection.[41] In a June 2010 letter addressed to the Carmelite Nuns of Buenos Aires in which, as well as asking the Nuns to pray that "God send his spirit to the Senators who have to vote," the Cardinal reiterated the content of previous documents, affirming that

> [here] is the envy of the Devil . . . who cunningly seeks to destroy the image of God. . . .
>
> . . . It is not about a simple political fight; it is the hope to destroy God's plan. It is not about a mere legislative project (this is only a tool) but rather a "move" by the father of lies who seeks to confuse and trick the children of God.[42]

With little time remaining to deal with the Senators, the strategy was to harden the public stance. Nonetheless, the tone of this letter triggered strong reactions by the press as well as legislators.[43] Although it was addressed to a group of nuns, when it became public, the letter caused some citizens and politicians who formerly identified with the Church's official stance to distance themselves from it. It is difficult to evaluate how much this letter hurt the Catholic Church's strategy, but various Senators who supported the reform mentioned it to justify their votes.

In order to influence lawmakers, the Church's hierarchy included a complex articulation of religious and secular arguments. The most politicized arguments to reject the legal reform were secular, particularly of the juridical order. This phenomenon, which has been previously described as "strategic secularism,"[44] characterizes the sexual politics of the Catholic Church and can be observed both in the Vatican documents and in the public participation of the Church's hierarchy. However, the

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Episcopal Conference. *See Arzobispo*, ARZOBISPADO DE BUENOS AIRES, http://www.arzbaires.org.ar/p_arzobispo.htm (last visited Mar. 28, 2011).

41. Another way the hierarchy participated was by mobilizing parishioners to take part in a public march, organized by different religious sectors, under the slogan "We want a mom and dad for our children." The public march took place in front of the Nation's Congress on the eve of the final vote and was organized by the Christian Alliance of Evangelical Churches (ACIERA), the Pentacostal Evangelical Confraternity Federation (FECEP), a group named "familias autoconvocadas," and the Department of Laity of the Argentinean Episcopal Conference (DEPLAI), which is part of the Catholic Church. *See Argentinean Evangelicals Protest Against Homosexual "Marriage,"* LIFESITENEWS.COM (June 1, 2010), http://www.lifesitenews.com/news/archive/ldn/2010/jun/10060110; *"Queremos Mamá y Papá para Nuestros Hijos": Convocatoria Nacional por el Matrimonio Entre Hombre y Mujer*, FAMILIAS ARGENTINAS (June 23, 2010), http://www.familiasargentinas.org.ar/wp/?p=58.

42. Jorge Mario Bergoglio, *La Carta Completa de Bergoglio: A las Monjas Carmelitas de Buenos Aires*, TN (June 22, 2010), http://www.tn.com.ar/politica/106762/la-carta-completa-de-bergoglio.

43. *See* Mariano De Vedia, *La Carta de Bergoglio, un Error Estratégico*, LANACION.COM (July 16, 2010), http://www.lanacion.com.ar/nota.asp?nota_id=1285258.

44. Juan Marco Vaggione, *Reactive Politicization and Religious Dissidence: The Political Mutations of the Religious*, 31 SOC. THEORY & PRACTICE 233, 242–44 (2005).

hierarchy, as exemplified by the Cardinal's letter, also based their position on religious arguments, in phrases such as "envy of the Devil" and "the hope to destroy God's plan."[45] This double articulation of arguments challenges simplistic understandings of the role of the Catholic Church in sexual politics.

While the majority of Catholic hierarchy called on the lawmakers to oppose the rights for same-sex couples, there were also some priests who articulated an opposite position and publicly mobilized in favor of the reform. The Catholic world is characterized by a great heterogeneity of stances regarding sexuality, despite its strongly restrictive doctrine. Among the different demonstrations of religious persons in favor of same-sex marriage, two stand out for their public impact. First, in Córdoba Province in May 2010, twelve priests from Grupo Sacerdotes Enrique Angelelli, Córdoba, a group influenced by liberation theology, came out in favor of the right to marriage for same-sex couples, and also their right to adopt—one of the most controversial subjects in the debate. In a document they published to justify their position, the group's priests commented that Jesus "never condemned nor mentioned homosexuality" and that "all biblical revelation points toward focusing on love, without any type of exclusion."[46] The priests stated that the possibility of passing the marriage law recognizing rights for same-sex couples "puts us on the path of Jesus' Gospel."[47] The other statement came two months later, just before the debate in the Senate, when a group of eighteen priests, mostly from the Quilmes diocese in the Buenos Aires Province, also came out in favor of the legal reform project. In a document published to explain their stance, the priests referred to a "climate of intolerance, and in many cases of attitudes truly worthy of the worst Crusades, motivated by troubling biblical, philosophical, and anthropological fundamentalisms" in an obvious response to the actions of Catholic hierarchy.[48] In addition to criticizing a static interpretation of natural law, the document also makes reference to the important historical changes that have taken place with respect to the "family" and affirms that "for Jesus the Kingdom of mercy, justice, and inclusion of those displaced from their community was more important than any other cultural conception or values of his time (including the family)."[49]

45. Bergoglio, *supra* note 42.

46. Nicolás Alessio, *Grupo de Sacerdotes Angelelli de Córdoba Apoyan la Ley de Matrimonio para Todas y Todos!*, LA VOZ, http://www.lavoz.com.ar/files/Grupo%20de%20Sacerdotes%20apoyan%20la%20ley%20de%20matrimonio%20para%20todas%20y%20todos.pdf (last visited Apr. 1, 2011).

47. *Id.*

48. Ignacio Blanco et al., *Preguntas que nos Surgen*, PÁGINA/12 (July 9, 2010), http://www.pagina12.com.ar/diario/sociedad/3-149180-2010-07-09.html.

49. *Id.*

Both documents asserted that legislators, even those who are deeply religious Christians, had the freedom of conscience to "think, define, and act differently from what the ecclesiastical hierarchy proposes."[50] While on a numerical level these demonstrations were not exceptional and do not allow us to think about a change in ecclesiastical hierarchy, they had an impact both at the level of the public sphere and on Parliamentary debate. On the one hand, both documents construct Catholicism as a heterogeneous tradition with respect to sexuality. They break with the supposed homogeneity of the Church, offering biblical interpretations and theological arguments that reconcile Catholicism with a broad stance regarding sexual freedom and diversity. These dissident constructions are part of one of the most important changes, both at the popular and the theological level.[51] On the other hand, the movement propagating sexual diversity carried out a strong campaign, which—under the slogan "Faith says Yes to marriage for same-sex couples"—politicized these "Catholic dissidences." The existence of evangelical churches (of the liberationist bent), which supported the legal reform, also politicized these "Catholic dissidences." In addition to the impact this religious pluralism could have had on the Parliamentary debate—in fact it was referred to by various legislators—it is also important to consider the level of public visibility that was achieved by showing another side of religion—one that is generally invisible for broad sectors of the population. This constitutes one of the most important cultural and political changes in favor of a democratic sexual order.

IV. CATHOLIC LAWMAKERS AND SAME-SEX MARRIAGE

The role of religious identities in the legislative process is one of the most debated aspects of contemporary democratic systems. Although for decades the paradigmatic influence of secularization theory displaced this topic, it has now come to occupy a prominent position in contemporary social theory. We can find a range of stances: from the necessity to exclude the religious (at the level of identities and arguments) at one end of the spectrum, to the middle position of requiring the "translation" of religious motivations into secular reasoning, to maintaining the legitimacy of religious arguments on equal footing with secular ones during the process of approving and applying the law at the opposite end of the spectrum.[52] Beyond these normative stances, religious identification is,

50. Alessio, *supra* note 46.

51. Juan Marco Vaggione, *The Politics of Dissent: The Role of Catholics for a Free Choice in Latin America*, *in* WOMEN, FEMINISM AND FUNDAMENTALISM (Ireen Dubel & Karen Vintges eds., 2007).

52. There is an important amount of work in this respect. For a general mapping, see LUCINDA PEACH, LEGISLATING MORALITY: PLURALISM AND RELIGIOUS IDENTITY IN LAWMAKING (2002).

without a doubt, an important dimension for understanding the positions of certain legislators when they debate sexual and reproductive rights. Although forms of belief are complex and diverse, for certain sectors the identification with conservative religious traditions significantly influences positions on sexuality.[53] As a result, for any given legislator, legislating about sexual rights implies—whether directly or indirectly—deciding on the role of personal religious beliefs in the carrying out of his or her duty.

Religious identification was very much present during the Parliamentary debate to decide on the right to marriage for same-sex couples. The fact that the legislators' political parties left the decision on the proposal open to the individual consciences of the voting legislators—an exceptional position in a culture of bloc-voting by parties—meant that in various moments of the debate legislators made express reference to their religious beliefs, particularly by self-identifying as Catholics. However, these "Catholic legislators" presented diverging stances and arguments on the proposed reform. This allows us to propose a typology to categorize the principal ways in which religious identification was used during the Parliamentary debate. Specifically, there were four ways in which legislators articulated Catholic identification: (a) as practicing Catholics, (b) as strategic Catholics, (c) as privatists, and (d) as dissidents. Legislators who identified as the first two articulations opposed marriage for same-sex couples, while those identifying as the second two were in favor.[54]

A. *Catholic Lawmakers Against the Reform*

The Vatican documents call upon Catholics to defend a sexual order that it considers threatened, given that there exist "ethical principles" that, by their nature and their functional role in social life, are "non-negotiable," including the defense of the family based on "monogamous marriage between a man and a woman" as one of the central

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For examples of more specific debates, see JÜRGEN HABERMAS, BETWEEN NATURALISM AND RELIGION: PHILOSOPHICAL ESSAYS (2008); MICHAEL J. PERRY, UNDER GOD? RELIGIOUS FAITH AND LIBERAL DEMOCRACY (2003); JOHN RAWLS, THE LAWS OF PEOPLE (Harvard University Press 1999).

53. David Yamane & Elizabeth Oldmixon, *Religion in the Legislative Arena: Affiliation, Salience, Advocacy, and Public Policymaking*, 31 LEGIS. STUDIES Q. 433 (2006); Donald P. Haider-Markel, *Morality in Congress? Legislative Voting on Gay Issues*, *in* THE PUBLIC CLASH OF PRIVATE VALUES: THE POLITICS OF MORALITY POLICY (Chatham House Press 2001); Eric Woodrum & Beth L. Davison, *Reexamination of Religious Influence on Abortion Attitudes*, 33 REV. OF RELIGIOUS RES. 229 (1992); HTUN, *supra* note 1.

54. These articulations are built as ideal types and though based on the Parliamentary debates, they do not necessarily exactly describe the complex ways in which lawmakers articulated their religious identities at the moment of voting.

aspects to be defended.[55] The Catholic official documents and hierarchy target lawmakers as privileged actors to oppose sexual and reproductive rights. By instructing them on how to legislate, the Catholic Church aims to reject legal changes that give rights to gays and lesbians.

One way in which religion entered into the Parliamentary debate was by way of legislators who, in tune with the position of Vatican hierarchy and the Argentine Catholic Church, defended marriage as an exclusively heterosexual institution and voted against the legal reform. This defense of the Church's official stance was carried out, however, in different forms. We can analytically distinguish two different articulations among these Catholic legislators: 1) practicing Catholics, who opposed the reform by including religious arguments and justifications; and 2) strategic Catholics, who based their opposition to the law on secular arguments.

1. Practicing Catholics

The practicing type of legislator includes those legislators who, in addition to identifying as Catholics, cite official arguments and declarations of the Catholic Church to justify their position. For practicing Catholic legislators, religious arguments are not excluded from the debate; rather they are considered among the main reasons for denying rights to same-sex couples. As can be observed in the Parliamentary speeches excerpted below, there are different religious justifications included in the debate, such as: biblical references, quotes from official Vatican documents, and the use of natural law as divinely inspired.

> In this occasion I express the position of our block based on faith. In this regard I will refer to *Chapters I and II of Genesis* where we read: "God created man in his own image. In God's image he created him; male and female he created them." "Then the Lord God formed a woman from the rib that he had taken from the man. He brought her to the man. Then the man said: 'This at last is bone of my bones and flesh of my flesh; she shall be called woman.'" "And God blessed them. And God said to them: "Be fruitful and multiply and fill the earth and subdue it."[56]

> Pope John Paul II in his *apostolic exhortation Familiaris Consortio* in November 1981, written in the light of what the Church envisioned as a step on the institution of the Christian family, stated

55. Congregation for the Doctrine of the Faith, *supra* note 11, ¶¶ 3, 4.

56. LEDESMA, Julio Ruben. "Antecedentes Parlamentarios, Periodo 128, Reunion 7, Sesión 4 [Parliamentary history, Period 128, Reunion 7, Session 4]," Argentina, May 4, 2010 (emphasis added), *available at* http://www.diputados.gov.ar (follow "Sesiones" hyperlink; then follow "Versiones taquigráficas de las sesiones" hyperlink; then follow "Periodo 128" hyperlink; then follow "Reunion 7 – Sesion 4" hyperlink).

> that: "Sexuality, by means of which man and woman give themselves to one another through the acts which are proper and exclusive to spouses, is by no means something purely biological, but concerns the innermost being of the human person as such."
>
> . . . "The institution of marriage is not an undue interference by society or authority nor the extrinsic imposition of a form. Rather it is an interior requirement of the covenant of conjugal love which is publicly affirmed as unique and exclusive, in order to live in complete fidelity to the plan of God, the Creator."[57]

> In each and every one of the speeches I have spoken throughout my career and, in particular, last year, when I participated in the elections to become a Senator, *I have always relied on God and divine providence* who are the ones who show me the way forward.
>
> Consequently, I believe in the existence of a natural order, an order that I have felt due to the years that I have lived in the countryside, in permanent contact with nature that showed me every day the things that God put in our way.
>
> This natural order shows me that not everything is the same; that there are differences between male and female.[58]

2. Strategic Catholics

The strategic type of Catholic legislator publicly identifies him or herself as Catholic, but in the moment of justifying rejection of proposed legislation does so using exclusively secular arguments. These types of legislators are distinguished from practicing legislators because while they recognize the influence of the Catholic Church, they do not make direct reference to religious positions or arguments in defending marriage as an exclusively heterosexual institution. On the contrary, the arguments used to justify rejecting these rights for same-sex couples are legal, scientific, or psychological, among others. While the defense of the religious worldview is a central motivator in rejecting sexual rights, at the rhetorical level there is a strategic displacement toward secular justifications. As previously discussed, this type of argumentation also reflects a discursive strategy propelled from within the Catholic Church itself. In the central documents regarding the issue, as well as in the public declarations made by members of the Catholic hierarchy, a series

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57. *Id.*

58. MEABE, Sra. "Antecedentes Parlamentarios, Reunion 14, Sesión 9 [Parliamentary history, Reunion 14, Session 9]," Argentina, July 14–15, 2011 (emphasis added), *available at* http://www.senado.gov.ar/web/taqui/cuerpo1.php?Page=2&iPageSize=10&cOrden=0&cSentido=DESC&anio=&operador=&pal1=&pal2= (follow "Ver" hyperlink for "Fecha de Sesión" "14/07/2010").

of secular arguments is presented for use by Catholic legislators to influence the debate.

A paradigmatic case of this type of articulation is seen in the case of Senator Negre de Alonso, a leader of pro-life and pro-family activism at a transnational level.[59] A Senator who identifies with conservative Catholicism, she was a leader of the sectors opposed to the reform. Despite her strong connection to Catholic hierarchy, during her speech in the Senate she explicitly refrained from articulating religious arguments.

> I did say during my opening remarks . . . "that we were legislating for a secular State" and that we should leave the religion. But the religion and faith that everyone cherishes, even in the case of those who are atheists or agnostics because they have a position on it, should not mean a discriminator element when legislating. Specifically, I did not mention God or church documents. I did not make any reference to anything like that.[60]

Without referring to religious reasoning, the rejection of the reform was justified with exclusively secular arguments, particularly of a legal bent, such as the one pointed out by the following example:

> On the other hand, international treaties included in the Constitution guarantee the right to marry between a man and a woman: Article 17 of the Pact of San Jose, Costa Rica, Article 23 of the International Covenant on Civil and Political Rights, and Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women. Also, Article 10 of the International Covenant on Economic, Social and Cultural Rights, among others, places the State in the function of protecting the institution of the family, considering the family as a natural and fundamental element in society and as a cell of the State.
>
> . . . .
>
> I also wish to clarify that to discriminate is to distinguish and, in this sense, the Argentinean Supreme Court has said in many occasions that the constitutional equality is the equality among equals in equal circumstances.[61]

B. *Catholic Lawmakers in Favor of the Reform*

Religious beliefs have not receded as a dimension of identity, con-

59. Senator Negre de Alonso is a leading member of the World Action Group of Parliament Members and Governors for Life and the Family. *See Senadora Nacional Liliana Teresita Negre De Alonso*, SENADO, http://www.senado.gov.ar/web/senadores/biografia.php?id_sena=266 (last visited Apr. 2, 2011).

60. NEGRE DE ALONSO, Sra. "Antecedentes Parlamentarios, Reunion 14, Sesión 9," *supra* note 58.

61. MONLLAU, Sra. "Antecedentes Parlamentarios, Reunion 14, Sesión 9," *supra* note 58.

tradicting, at least partially, that which secularization theory has proposed; however, important changes have taken place in the forms of belief. Among these changes we can observe the distancing of a sector of believers from the official stance of the Catholic Church. While it is difficult to analyze this phenomenon historically, what the majority of surveys carried out in Latin America makes clear is that for a significant group of believers, Catholic identity can be reconciled with more flexible and broad positions on sexuality.[62] While hierarchy continues to defend a conception of sexuality that is reduced to marriage and reproductive ends, some Catholics separate themselves from such a conception, in their opinions and behaviors. While secularization did not entail a step backward at the level of believers, it did intensify their autonomy and independence in the face of official doctrines and institutions.[63]

This pluralization in the Catholic sphere of ways of thinking about the sexual order was also evident in the Parliamentary debate. A significant number of legislators showed their Catholic identification *and* voted in favor of same-sex marriage, going against the Vatican's doctrinal principles and instructions. The importance of these types of legislators is that they expressly referred to their religious orientation while approving the legal reform. Just as there are people at the level of the populace who continue identifying as Catholic while distancing themselves from hierarchy's positions, likewise, many legislators voted against official doctrine while simultaneously claiming identification as Catholics. We can distinguish two types of articulation among these legislators: (1) privatists, who separate their religious beliefs from their legislative duty, and (2) dissidents, who include their religious beliefs in the debate.

1. PRIVATISTS

Among those legislators who expressly demonstrated their Catholic identity, some did so to argue that it should not be part of the Parliamentary debate. For this type of legislator, religious beliefs belong to the private sphere and should be excluded from the process of lawmaking. As individuals, they acknowledge their personal beliefs, but as politicians they consider they cannot impose their beliefs on society in general. The idea that religious beliefs are private and not public is one of

62. *See, e.g.*, Ceil Piette Conicet, *Primer Encuesta Sobre Creencias y Actitudes Religiosas en Argentina [First Survey of Religious Beliefs and Attitudes in Argentina]*, CULTO (Aug. 26, 2008), http://www.culto.gov.ar/encuestareligion.pdf.

63. According to Peter L. Berger, secularization implied more pluralism though not necessarily less religious beliefs. *See* Peter L. Berger, *The Desecularization of the World: A Global Overview*, *in* THE DESECULARIZATION OF THE WORLD: RESURGENT RELIGION AND WORLD POLITICS 1, 3 (Peter L. Berger ed., 1999).

the main components of secularization theory and of laic definitions of democracy. It does not necessarily seek the erasure or disappearance of religious identities (at least in the most realistic versions), but aims for the distinction and separation of the religious and the secular, as well as the closeting of the religious within the private sphere when the time comes to legislate.[64]

> I believe in God, in Christ, I am Catholic, I have family, I'm straight
>
> . . . .
>
> . . . .
>
> Religious arguments are all valid—I have them—but they are useful as intimate convictions. However, when I come to this Senate to legislate, I have to do it without forgetting that there are believers and nonbelievers. I cannot impose my religious beliefs to anyone and based on them determine who and who does not have protection.[65]
>
> To bring into the debate issues connected to the Catholic faith—to which I strongly believe because I am Roman Catholic—it is not desirable, in my opinion. There are postulates of the Catholic Church in which I believe, but are inapplicable in this case. I reiterate that we are not talking about religious issues or about the sacrament of marriage. This is a debate on civil rights and individual liberties.[66]

2. DISSIDENTS

Among those who supported the right to marriage for same-sex couples, we can identify another articulation of Catholic identity: the dissident. Instead of "privatizing" religious beliefs, and thereby excluding them from the debate (as with the privatist), these Catholic legislators used religious arguments to support the right of same-sex couples to marry. While privatists depoliticize their religious beliefs, for dissidents, religious beliefs become public discourses in opposition to the official doctrine propagated by the Catholic hierarchy. In the religious tradition that is used to impose a restrictive conception of sexuality, the dissidents find elements to support sexual and reproductive rights. This type of legislator disputes the stance and declarations of hierarchy by means of alternative interpretations of Christian principles. While the Catholic Church presents the official stance as unified and homogeneous, these legislators publicize the existence of debates and disputes present within Catholicism, many of them theological.

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64. For a discussion on the privatization of religion as part of secularization thesis, see CASANOVA, *supra* note 8. For an important analysis of the normative debate on the role of religion in lawmaking processes, see HABERMAS, *supra* note 52.

65. FERNÁNDEZ, Sr. "Antecedentes Parlamentarios, Reunion 14, Sesión 9," *supra* note 58.

66. VARGAS AIGNASSE, Geronimo. "Antecedentes Parlamentarios, Periodo 128, Reunion 7, Sesión 4," *supra* note 56.

As the excerpts below demonstrate, this type of articulation was present during the debate in different forms, such as: including Catholicism as heterogeneous, inscribing progressive religious arguments, and distancing from the Church's hierarchy.

> To ensure the plurality of the debate is good that each of us speak about their own faith and their own interpretation of it, because there are others people, like me, who are practicing Catholics and have read all the gospels and we only know that the first law is that of love, to love diversity and not to love exclusion.[67]
>
> . . . .
>
> All the arguments that I have found, to find excuses, have their sole origin in natural law and on claims of paragraphs from the Bible. In this regard I must say that in the Bible I have not found a paragraph in which Christ is angry with homosexuals. He was angry with the Pharisees, the liars, the cheaters, with tax collectors, but Christ did not discriminate. I have not found anything.[68]
>
> . . . .
>
> I am a Catholic man, not practicing, but Christian. I am married and I have children who are baptized However, I felt ashamed of the words of one who had to be my pastor, of Bishop Bergoglio. I think that to say that (as the Bishop did) it is the devil's envy to destroy God and that [the devil] is behind this project, is not correct for a person who should be an evangelist.[69]

V. CONCLUSIONS

The passage of the law granting same-sex couples the right to marry is yet another milestone in the process of secularizing the law. As was to be expected, the Catholic Church was the main obstacle—it mobilized in various ways to defend against a legal regulation not in tune with its doctrine, as it had at other historical moments. So it was at the end of the nineteenth century when law was reformed to distinguish civil from religious marriage; likewise during the twentieth century each time passage of divorce legislation was attempted, and, unsurprisingly, also during the contemporary approval of same-sex marriage. Each of these legal changes was made possible by a combination of several factors, but they all represent a fissure in the power of the Catholic hierarchy in controlling legal regulation of sexuality. Each of these reforms required greater State autonomy against the Catholic Church in the regulation of affective and sexual bonds. While the Catholic Church has not

67. CARRIÓ, Elisa María Avelina. "Antecedentes Parlamentarios, Periodo 128, Reunion 7, Sesión 4," *supra* note 56.

68. JUEZ, Sr. "Antecedentes Parlamentarios, Reunion 14, Sesión 9," *supra* note 58.

69. MARTÍNEZ, Sr. "Antecedentes Parlamentarios, Reunion 14, Sesión 9," *supra* note 58.

abandoned its role as moral guardian, it has lost the hegemonic power it once held in the legal constructions that regulate the family and sexuality.

Nonetheless, as this essay has analyzed, the debate that culminated in the 2010 reform makes clear the complex forms in which religion and politics overlap in the debate over sexual rights. Far from privatizing or withdrawing, religious influences, both those in favor and those against same-sex marriage, took on a decisive dimension. On one hand, the defense of marriage as exclusively heterosexual was carried out by a bloc of actors and arguments that amalgamated religious and secular dimensions. Social and political leaders mobilized alongside Catholic hierarchy in the defense of marriage as an exclusively heterosexual institution. The Catholic Church called on citizens and politicians, especially legislators, to take an active role in the legal defense of marriage in accordance with Catholic doctrine. As the Vatican instructed, the arguments used to resist the legal change—inscribed in official documents, declarations of religious hierarchy, or in the interventions of some Catholic legislators—combined religious and secular arguments.

On the other hand, religion also entered into the legal debate in support of the right to same-sex marriage. In addition to the presence of religious actors of different denominations in support of the legal reform,[70] sectors that self-identified as Catholic actively mobilized to achieve legal change by opposing hierarchy and official doctrine. As this essay has shown, priests and Catholic legislators took part in the debate to support legal change, thus breaking with Catholicism's seemingly homogeneous conception against sexual and reproductive rights. Moreover, groups of priests mobilized publicly, maintaining that Catholic tradition allowed a favorable stance toward sexual rights, and inscribing religious arguments in favor or rights for same-sex couples. Although this was a minority phenomenon from the interior of the religious institution, without a doubt it had a crucial political impact given that it broke with the construction of Catholicism as inevitably conservative with respect to sexuality. Furthermore, some Catholic legislators based their acceptance of the legal reform on religious arguments that opposed the main hierarchies and existing documents on the issue. These legislators opened an alternative space that breaks with the Vatican's instructions with respect to believers' political roles, and at the same time, with the privatization of religious beliefs as the only way to support sexual rights. These legislators defended their right to justify their support for the legal reform based on their own beliefs as Catholics.

70. *See Matrimonio para Todas y Todos [Marriage for All]* ¶ 69, FEDERACIÓN ARGENTINA LGBT, http://www.lgbt.org.ar/blog/Matrimonio/7.html (last visited Apr. 2, 2011).

The legal reform authorizing same-sex marriage indicates a deepening of State legislative autonomy with respect to the influence of the Catholic Church. However, this autonomy does not necessarily entail a separation of the religious and the political. On the contrary, in the debate on sexual rights, the religious and the political are strongly superimposed and fused in such ways that it is difficult to trace their borders. As the legal reform allowing same-sex marriage in Argentina illuminates, is not necessarily a question of less religion but of more plural and heterogeneous religious standpoints during public debates.