

## Sexual rights, Religion and Post-Neoliberalism in Argentina (2003–2015)

DANIEL JONES, LUCÍA ARIZA AND MARIO PECHENY\*

### Abstract

This paper examines the relation between sexual politics and post-neoliberalism/populism in Kirchners' Argentina between 2003 and 2015, focusing on the role of religious actors. Despite the opposition of religious leaders, including that of Archbishop Jorge Bergoglio (now Pope Francis), Argentina advanced in the recognition of gender and sexual rights during the Kirchners' administrations. Conflicts around gender and sexuality, particularly around same-sex marriage, explain some of the tensions between political and religious actors in the period. The focus of this paper on sexual politics shows that the Kirchners' administrations, unlike other traditional populist or post-neoliberal administrations, had a strong liberal component, which explains the tensions between that populist government and conservative religious actors.

### Keywords

Argentina; sexual rights; Catholic Church; gender rights; neoliberalism.

### Author affiliation

Daniel Jones, PhD in Social Science, researcher on National Council on Science and Technology (CONICET) and Professor on Methodology and Sociological Theory in the University of Buenos Aires (UBA). His current projects explore the political interventions of religious actors in public debates and policies on sexuality, gender and drugs in contemporary Argentina.

Lucía Ariza, PhD is a Visiting Researcher at the Institute Gino Germani. Her research interests include the study of sexual and reproductive politics and culture in relation to fertility, population and genetics; and the development and popularization of alternative medicine in connection with gestation, sexual health and infertility in Argentina.

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\*Correspondence: Institute Gino Germani, J.E. Uriburu 950, 6th floor, 1181, Buenos Aires, Argentina, E-mail: pecheny.mario@gmail.com

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Mario Pecheny is Full Professor of Sociology of Health and of Political Science at the University of Buenos Aires and Principal Researcher at the National Council on Science and Technology (CONICET), Argentina.

## Introduction

In 2013, the Buenos Aires-born priest Jorge Bergoglio was named Pope Francis, 'the first Argentine Pope'. The ensuing curiosity about Francis has illuminated the political and religious history of Argentina, making it interesting beyond the domestic context. In relation to sexual politics, the Argentine case has remarkable features, having one of the most progressive legislations on gender and sexual rights in the world.

This article examines the ways in which a number of progressive gender and sexual issues have become part of the political arena and been constructed as objects of public policies, particularly during the 2000s, a 'populist' or 'post-neoliberalist' period. Following Perez, Aelo and Salerno (2011), we suggest the term 'post-neoliberalism' to name the characteristic features of the period under study (2003–2015). Post-neoliberal governments have followed populist traditions, which are historically considered to be anti-liberal (De Ipola and Portantiero 1981). Yet this paper argues that the administrations of Néstor Kirchner (2003–2007) and Cristina Fernández de Kirchner (2007–2015), which are generally considered to be part of recent populist experiences in Latin America, have promoted liberal individual rights and liberties, particularly in regard to gender and sexuality (Etchemendy and Garay 2011). In doing so, it invites a reconsideration of the extent to which populism is per se irreconcilable with liberalism. In other words, the above-mentioned Presidents have integrated a populist Peronist tradition with the liberal democratic tradition that reemerged in the 1980s during the transition to democracy.

The paper is based on qualitative analysis of newspaper articles, documents issued by Catholic and Evangelical institutions, surveys and research publications corresponding to the period 2003–2015. The analytical corpus includes pieces from national circulation newspapers Clarín, La Nación, and Página 12, and official statements and other documents produced by religious organizations, mainly the Argentine Episcopal Conference (AEC) and Evangelical federations, available at their websites and confessional media. All the material was read with a focus on issues as abortion, gay marriage, gender identity, fertility techniques, and sex work. We foreground the weight of liberal elements in populist governments and the consequent tensions that have arisen with key religious actors.

## Sexual Politics, Democracy and the Liberal Component of Populist Argentina

For decades, the liberal language of rights had not been politically relevant in Argentina, a country that throughout the 20th century alternated authoritarian and populist governments. However, a liberal rights language emerged as

an oppositional discourse during the 1976–1983 dictatorship. Civil society actors recovered the language of human rights, especially the right to life and due process against state terrorism, forced disappearances and torture, together with the demand for a democratic regime and the rule of law, grounded in those rights. Since then, most social actors have used the language of rights in order to frame their political statements (Jelin 2017).

Since transition to democracy in 1983, sexuality, reproduction and gender issues have also been framed as 'rights' and as such they have become central to the liberal dimension of politics and policies throughout the different administrations. Religious actors, mainly the Catholic Church, have constantly been the most visible opponents to this liberal dimension of democratic politics.<sup>1</sup> In this context, conflicts around sexual politics have become a crucial field of struggle regarding the role of religion and religious actors after the reestablishment of the liberal-democracy.

In recent Argentina, Catholic actors have intervened in public debates regarding sexual issues not only through priests, but also through opinion leaders. They have lobbied members of the legislative and judiciary powers. Sometimes judges and politicians align themselves with conservative views of sexuality, reproduction and gender, but sometimes it is just a matter of political calculation that judges the Catholic Church's support as vital for their personal careers, resulting in their avoidance of conflict with Catholic leaders.<sup>2</sup> In Argentina, the political influence of religious actors has been more important at the institutional or decision-makers level than at the level of social practices: the Argentine population has rarely followed Catholic indications regarding sexual behavior<sup>3</sup> or voted Catholic candidates, given that there is no confessional political party.

The Catholic Church hierarchy and its conservative allies have systematically opposed any progressive legislation related to sexuality and gender, consistently failing to prevent the passing of such legislation. For example, the Catholic Church was unsuccessful in blocking divorce law in 1987, the creation of sexual education and reproductive health programs in the 1990s and the 2000s, the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1994, the recognition of gay and lesbian couples' access to marriage and adoption in 2010, the recognition of transgender identity rights in 2012, the implementation of universal access to fertility techniques in 2013, and the inclusion of family diversity and non biological filiation into the Civil Code in 2015. In some cases, like the Law for Integral Sexual Education

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<sup>1</sup> The preeminent role of the Catholic Church can be explained by: the power of enunciation of its hierarchy, by virtue of its vertical structure; the lobby power of bishops, due to the historical practice of pressuring politicians; the fact that Catholicism is the religion most adhered to in the country; the historical antecedence of the Church in relation to the national state; and the privileged constitutional and legal status of the Catholic Church in relation to the other religions. Further grounds for the Catholic Church power in Argentina can be found in Esquivel (2013), Mallimaci (2013).

<sup>2</sup> According to a 2011 survey to national representatives and senators, '34% of legislators consider that churches' support is important to win an election' (Esquivel 2015).

<sup>3</sup> For example, premarital sex, divorce, use of condoms, contraception and abortion are extended practices among Catholics. This has been the case at least since the beginning of the 20th century (Pantelides and Rofman 1983; Pantelides et al. 2007; Mallimaci et al. 2008).

of 2006, pressures from the Catholic Church did not manage to prevent its passing, yet they were successful in securing that the implementation of the law in Catholic schools would not enter into a disagreement with their doctrine.

Only one issue has remained practically unchanged since transition to democracy and beyond the legislative pieces described above, one that is consistent to the Catholic positions: the criminalization of abortion.<sup>4</sup> In August 2018, after a fierce debate at the National Congress inaugurated by President Macri's concession of a free vote on abortion to members of his own party, which was followed by unprecedented favorable demonstrations across the country and by a positive vote at the Lower House, legal abortion was rejected by the Senate. This outcome is in no small amount the result of Catholic and Evangelical lobby. It was the first time that an abortion bill was debated at the Parliament, after years of women's movement mobilization in its favor.

### ***Liberal Components of Neoliberalism and Populist Post-Neoliberalism***

After the debt crisis of the 1980s, structural adjustment and neoliberal policies aimed to solve the fiscal crisis of the state, as well as to discipline social actors. However, under neoliberalism, Argentina achieved key advances in terms of gender, sexual and reproductive rights.

Typically, IMF and World Bank-induced 'structural adjustment attacks universal policies, political mobilization, and rights recognition. Yet focused social policies and the *NGOization* of social movements (like the feminist and sexual diversity movements), which are of a characteristically neoliberal brew, have paradoxically stimulated advances in sexual and reproductive health and rights. The latter may appear contradictory with a neoliberal management of the social, insofar as they usually rely on state funding and collective, rather than individualistic, management of social needs. However, sexual and reproductive rights have been defended in terms of 'evidence-based', impersonal and apolitical public health needs, rather than in terms of democratization, rights and justice. The AIDS epidemic, family planning, and even malnutrition and poverty, have been politically articulated as providing health reasons, based on an impersonal discourse of medicalization and scientific evidence, that legitimized laws and policies promoting sexual rights. For instance, progress in gay rights has been achieved in the context of the responses to the AIDS epidemic (Pecheny 2002).

Some of these advances in sexual rights have in fact been instrumental for the neoliberal field. First, rights recognition often means less public expenses: for example, the recognition of same-sex couples has been defended by the AIDS movement and public health officials as a necessary condition for a better HIV prevention, and prevention helps to reduce the number of people receiving expensive HIV treatments and other economic costs. Second, the recognition of actors and demands as legitimate is instrumental for controlling potentially radical social actors: social demands are increasingly framed as issues that are

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<sup>4</sup> The Catholic Church hierarchy is not alone in this battle against legal abortion, since many conservative judges, public servants, legislators, and NGOs actively support this position (Faúndes et al. 2011: 127–156).

able to be processed through institutional channels, while social movements are increasingly institutionalized as formally regulated NGOs. Thus 'radical' measures, like the recognition of same-sex couples or universal access for HIV therapies, have been framed in de-radicalized ways and translated into instrumental laws and policies. In some cases, they have also encouraged private profit: pharmaceutical companies, private and public health providers, etc., make money if more people get access to drugs and treatment. In sum, on an empirical level, neoliberalism has not always meant less recognition of rights.

Advances in gender, reproductive and sexual rights also facilitate a self-representation of modern societies, politicians, and political systems. A recurrent topic of the modernization discourse which since the 1960s has been associated with more flexible gender and family patterns, is that of 'modern' sexual values, as opposed to traditional values (Cosse 2010). The association between 'being modern' and 'being sexually liberal' contributed, in the period under study in this article, to the legitimization of same-sex unions and same-sex marriage in the wider society and among legislators, and was criticized as such by conservative religious and non-religious actors.

After Argentina's 2001 default and the ensuing political crisis, a new period started with the Kirchners, who ruled the country between 2003 and 2015. These 12 years have been qualified of populist and post-neoliberal. Populisms have been historically characterized by an organic conception of a national community (De Ipola and Portantiero 1981). Accordingly, a polarizing vision of antagonisms privileges sameness over plurality, and unanimity over dissent (Etchemendy and Garay 2011). Likewise, Panizza defines populism as '(...) a way of identification available to any political actor, in a discursive field in which the notion of people's sovereignty and its inevitable corollary, the conflict between the weak and the powerful, constitute the central elements of its political imaginary' (Panizza 2009). But Kirchnerism is not a revival of 'the people', crystallized through a community of experiences of domination and interests determined in the world of labor; and it is not structured through an institutional device, union-based, corporative, as in traditional Peronism. Instead, the 'unity of the people', in opposition to the powerful, the dominant classes, is attempted at on the basis of the recognition of a set of fundamental rights, on a project of equality and integration, which articulates the membership to the popular community with the affirmation of the singularity of individual and collective experiences. This is not then a traditional kind of Populism.

We also qualify the Kirchners' Argentina as a case of 'post-neoliberalism'. The 'post' here does not mean just that this period comes after a period of neoliberalism, but it aims to describe a process of re-politicization of politics, a re-politicization of rhetoric, legitimacy, identities, and social mobilization. Human rights discourse was radicalized again, encouraged by a new stage of the politics of memory and justice, and a social justice discourse reemerged, with campaigns for gender and sexual rights reframing their claims in the name of equality and democracy. In this context, Argentina passed in 2010 legislation for equal marriage, with liberal, neoliberal and populist/post-neoliberal arguments contributing to its success.

The liberalism of Kirchners' administrations became evident in the promotion of a comprehensive individual rights agenda. This agenda included

antidiscrimination laws and policies,<sup>5</sup> rights of immigrants,<sup>6</sup> 'dignified death' (against overtreatment, respect of personal directives),<sup>7</sup> and particularly some key gender, reproductive and sexual rights (Tabbush et al. 2016). Under the Kirchners, the National Institute against Discrimination was active in relation to discrimination based on gender and sexuality in education and employment. Besides, several laws were approved in favor of women, gays, lesbians and transgender individuals, and many feminist and LGBT activists were included in policy networks, and seen by many as co-opted by the government in the period considered here (2003–2015).<sup>8</sup>

Relations between the Kirchners and the Catholic Church were hostile throughout their governments. Sexual rights were one of the main arenas of this public confrontation. Many governmental actions were understood as direct offenses by the Catholic hierarchy and press, like the denunciations of Catholic collaboration with state terrorism during the 1976–1983 dictatorship; the changes to the Catholic traditional priority place in protocol and public events; the displacement of Catholic organizations from state-funded social welfare; as well as all gender-related measures: same-sex marriage, sex education, post-abortion care, and universal access to emergency contraception and surgical contraception (Mallimaci and Esquivel 2014). 'Equal marriage' expressed the climax of political tensions between the Kirchners and the Catholic Church, which we describe in the following section.

### **LGBT Rights and Same-Sex Marriage**

The Argentine Homosexual Community (in Spanish: *Comunidad Homosexual Argentina*, CHA) was founded in 1984. CHA was a pioneer of the sexual diversity movement (which was called 'homosexual' movement at the time), which has been growing ever since (Brown 1999; Kornblit et al. 1998). Simultaneously, in the 1980s Argentina was hit by the HIV/AIDS epidemic. Since the onset of the first cases, the epidemic has moved forward without pause. Social and political responses to the epidemic have ranged from the initial response of ignorance, prejudice, and stigmatization, to the gradual creation of a discourse and legislation ensuring tolerance and protection for people living with HIV. The HIV/AIDS epidemic and some of the responses it brought about have actually helped to redefine the status of homosexuality and gender diversity.

The sexual diversity movement developed in a favorable context, such as a political liberalization after 1983 and the transnational networks that rose to

<sup>5</sup> A National Plan against Discrimination was launched in 2005 to be implemented by the National Institute against Discrimination (INADI).

<sup>6</sup> Law 25781 on Migration voted in 2003, defines migration as a human right.

<sup>7</sup> Law 26742 on 'dignified death' was voted in 2012.

<sup>8</sup> For example, Argentine LGBT activist María Rachid, co-founder of the Argentine Federation of Lesbians, Gays, Bisexuals and Trans (FALGBT), acted as vice-president of INADI in 2010. She was elected legislator for the City of Buenos Aires in 2011, representing the then ruling party. Cecilia Merchán, referent of the women's movement, was national deputy for the same coalition and named in 2013 as Coordinator of Strategic Articulation of the Under-secretary for Institutional Reform and the Strengthening of Democracy, and in charge of the Committee for the Fight Against Traffic and Exploitation of Persons.

defend and advocate human rights and non-discrimination. If non-discrimination had become the common denominator for all such groups toward the end of the '80s, the AIDS question became the main and almost exclusive concern of gay men's organizations. Lesbian organizations were more inclined towards the feminist and women's movements, denouncing oppression based on both sexual orientation as well as gender. For gay organizations, fighting the disease became the main objective, acquiring certain 'citizen's rights' through that struggle. Since the mid-1990s a debate has grown in Argentina about the positive rights of gays and lesbians. This is partly a response to the consequences of the epidemic (and given the visible inequalities suffered by people with different sexual orientations in terms of access to social security, health treatments, inheritance, etc.), but also an attempt to disentangle rights issues from health issues, for example, legal recognition of LGBT organizations, same sex unions, adoption for gay/lesbian couples, and so forth (Moreno 2008).

Same-sex marriage legislation was passed in Argentina in 2010 (Hiller 2010). President Cristina Fernández de Kirchner supported the marriage reform, despite the hostility of the Catholic Church led by Jorge Bergoglio, Archbishop of Buenos Aires (Corrales and Pecheny 2011) and conservative Evangelical churches and federations (Jones and Cunial 2012). Most of the Catholic and Evangelical spokespersons were against the Bill. Only a few Catholic priests, Protestant pastors and Jew rabbis, historically related to human rights organizations, called to endorse it (Enrique Angelelli Priest Group, 19-5-14).

The reform allowed same-sex couples to get married, with exactly the same rights and responsibilities as heterosexual couples. Political parties gave freedom of vote to their legislators. Conservative religious actors led the resistance, but failed. Legislators from almost all political parties voted for the reform, which was approved by a slight but clear majority. The process involved the discussion and vote in the Chamber of Deputies and the Senate during the winter of 2010, in the midst of a passionate public debate (Hiller 2010). As Roberto Gargarella explained, one of the problems conservative advocates had was that they could not sustain their opposition without using discriminatory arguments (unacceptable in a democratic regime) or religious arguments (unacceptable as such in a pluralistic and/or secularized political debate) (Gargarella in Clérico and Aldao 2010). The framing of gay marriage as 'equal marriage' (*matrimonio igualitario*), as a claim for equality, was key for its success. Equal marriage gained legitimacy through a rhetoric that could relate to values like liberty and equality, social justice, non-discrimination, but also the defense of families and romantic love. The right to love, the right to build a family, have proved to be powerful 'positive' arguments, not incompatible with the defense of institutions (Díez 2015).

However, after the Deputies approved the Marriage Reform Bill and before its discussion in Senate, Cardinal Jorge Bergoglio, then President of the AEC addressed a letter to the Carmelite nuns condemning the reform as an 'attempt to destroy the plan of God' (Bergoglio, 8-7-10). When the reform was discussed in the Congress, Archbishop Bergoglio was vocally hostile to the recognition of gay and lesbian rights. President Cristina Fernández de Kirchner responded on TV directly to the priest: the content and tone of the exchange were unusually strong (Clarín, 12-7-10).

In March 2013, tensions between the President and Bergoglio suddenly vanished. After Bergoglio moved to the Vatican, Fernández de Kirchner and Pope

Francis started to exhibit public cordiality. The President visited the Vatican on several occasions, often accompanied by a large delegation of governors and legislators. Furthermore, during the 2015 presidential campaign, the ruling party's candidate appeared to be the closest to the Pope. When Mauricio Macri, his opponent (PRO-Cambiamos, a center-right alliance), won the election, the press underlined the fact that Macri was not officially congratulated by Francis from the Vatican, which the media interpreted as a sign that the Pope had supported the other candidate. These contradictory dynamics show that relations between administrations, political leaders and parties, and religious actors, have not been linear in the period considered.

In Argentina politicians usually fear that voting against the Catholic Church would entail electoral costs. However, the example of equal marriage has shown that it is not (always) the case. Endorsement of LGBT rights did not have electoral costs to the President and her party, and might even have brought her votes. In the 2011 campaign, a year after the passing of equal marriage, the incumbent Cristina Fernández de Kirchner invoked same-sex marriage as one of the main accomplishments of her first term in government (*Cristina 2011 La Fuerza de La Igualdad* spot 6). She was re-elected with 54% of votes.<sup>9</sup>

Since the approval of the reform, no religious or political actor has tried to repel the new law on constitutional or political grounds, and the population increasingly accepts the legal recognition of same-sex couples and LGBT rights in general (Pecheny 2014). In the 2015 presidential election, *all* of the candidates expressed their support for equal marriage, including those who had voted against it in 2010, like current vice-president Gabriela Michetti, from the right-wing party PRO. The other significant law about LGBT rights approved in that period was about gender identity.

### **Gender Identity Law**

Transgender individuals have been one of the most discriminated groups of the population (Berkins 2007; Berkins and Fernández 2005; Cabral and Víturro 2006). Since 2012, the Law 26743 guarantees transgender individuals the right to modify their name and civil ID according to their self-perceived gender identity. It also entails adult trans persons to have free-of-charge and universal access to hormone and surgical treatments, with no further requirement than the informed consent of the adult individual. In the Senate, the Law was voted unanimously, with just one abstention. Religious actors were against the bill, but not so vocally as in the case of equal marriage (Agencia Informativa Católica Argentina 2018). The reasons for this unproblematic passing may lie in the fact that the defeat in relation to gay marriage was still hurting, or that the transgender issue was not central enough for the Catholic hierarchy. But in any case, the law was voted in the context of a silent opposition, something which might seem counterintuitive from the point of view of recent mobilizations against transgender rights, carried out in the name of a battle against 'gender ideology'.

<sup>9</sup> According to the 2010 Survey Public Opinion in Latin America (LAPOP) carried out in 25 countries, Argentina was at the time the second country of the Americas (after Canada) with the higher average support for same sex marriage: 57.7% of the respondents supported the legislation (Lodola and Corral 2010).



## Trafficking and Sex Work

In Argentina, prostitution has not been criminalized as such. However, throughout the 20th century, municipal and provincial rules to preserve 'morality' (called *edictos*) allowed harassment and persecution by the police. These rules have been progressively eliminated since transition to democracy in 1983. A female sex workers' association AMMAR was created in 1994, to demand for labor rights and other labor-centered rights for its members (Justo Von Lurzer 2004).

While some part of the feminist movement, particularly sex workers organizations, fought for the recognition of their rights, another discourse has re-entered the scene: abolitionism. Beginning in the 2000s, sex work has been object of an attack in the name of anti-trafficking policies. In Argentina, the term 'sex trafficking' is frequently used by anti-sex work actors to refer to all forms of sex work that might or might not include coercion and displacement. It is a biased use that aims to gain social acceptance for the anti-sex work discourse, by aligning with the purportedly democratic and human rights-based struggle against 'trafficking'. This discourse has been contested by local feminist actors, who oppose the current 'anti-trafficking' position on the grounds of police and governmental abuse of power that usually ensues following its implementation.

Anti-trafficking policies were first promoted in the context of the 2001 political and economic crisis and its records of unemployment, gender-based violence, and informal activities of subsistence, including sex work. In Argentina, sex work and sex trafficking have historically been considered separate issues. This situation changed when a global anti-sex trafficking discourse entered the country, under Néstor Kirchner's presidency (2003–2007): Argentina progressively adjusted its approach to anti-trafficking policies promoted by the U.S and an active field of anti-trafficking NGOs emerged (Varela 2015).

In 2008, the Congress voted law 26364 on Prevention and sanction of trafficking in persons and assistance to victims. The Law distinguished between ' "forced" ' and ' "free" ' prostitution, accepted the possibility that an adult could voluntarily migrate in order to work in the sex trade, and did not criminalize those who promote or facilitate migration in those cases (Ministerio de Justicia y Derechos Humanos, Argentina, *Ley 26364* 2008). However, the distinction between ' "free" ' and ' "forced" ' prostitution has become a controversial subject for local anti-trafficking local organizations. In 2012, the law was reformed following abolitionist demands. As a consequence, only those cases of prostitution in which no third party obtains any economic benefit remain outside the trafficking frame. In addition, a set of legal regulations and bureaucracies was established in order to monitor and prosecute commercial sex, now named under the terms ' "human trafficking" ' and accompanied by references to the ' "rescue" ' of its victims. This has included the indication to close whiskey bars and cabarets, the prohibition of ads, police violations of private homes, etc.) (Ministerio de Justicia y Derechos Humanos, Argentina, *Ley 26364 26842* 2008, reformed in 2012). The public understanding has thus changed dramatically from its original purpose (fighting trafficking and sexual exploitation) and has become increasingly oriented towards the elimination of commercial sex in all its forms (Daich and Varela 2014).

Feminist and religious leaders (Bergoglio/Francis himself) and organizations advocate for abolitionism in Argentina. As a post-neoliberal project, anti-sex

trafficking campaigns tried to respond to the gender-negative consequences of patriarchal neoliberalism, but with no anti-capitalist transformations that would modify the structural conditions of unequal gendered relations. This ambivalence might help to understand why and how radical feminists and social justice advocates, religious actors, and conservative and neoliberal leaders, embraced the cause against sex-trafficking and prostitution. Victim-based discourses reinstated particular forms of sexual and gendered morality: in a context of (post-neo-)liberal values and discourses about autonomy, only feminist-framed protections could be accepted as legitimate. In 2015, the new right-wing government of Mauricio Macri did not have any trouble incorporating the anti-trafficking policies of the previous governments.

### **Fertility Techniques**

The Argentine legislation on assisted reproduction is recent, comprising two legal documents: the Medically Assisted Human Reproduction Act (MAHR), passed in 2013, and the New Civil and Commercial Code (CCC) of 2015. The MAHR was a pioneering piece of legislation on both the national and international levels, insofar as it legally guaranteed access to assisted reproduction techniques (ARTs) irrespective of the sexual orientation, civil status and age (except the majority of age) of the person.

Widely celebrated due to its inclusive and non-pathologizing character, especially given the fact that it uncoupled access to ARTs and infertility, the MAHR was resisted by sectors of the Catholic Church. Similarly, the passing of the CCC, which replaced the old 1869's Civil Code, was broadly celebrated by vast sectors linked to the progressive field (Herrera 2014). The CCC introduced changes and clarifications in relation to private law, persons under the age of 18, personal rights, family relationships, and filiation, among many others.

However, one aspect of the finally passed version, relating to the beginning of the human person (art. 19), is particularly problematic for such progressive celebration. In effect, while the reform bill established that 'The existence of the human person starts with conception *inside the maternal womb*', and clarified that in the case of ARTs the person 'begins *with the implantation of the embryo in the uterus*', the final version states that 'the existence of the human person starts "in conception" '. And although art. 20 indicates that 'conception is the period (...) set of the duration of pregnancy', equating conception with pregnancy, art.19's formulation is still identical with that of the Catholic Church.<sup>10</sup> Hence, the final version granted person rights to the fetus, something that is problematic toward the legalization of abortion, while considerably reducing the definitional power of art. 19 in regard to the beginning of the person. By relinquishing to define what is to be understood exactly by the term 'conception', itself a highly ambivalent notion, and by not differentiating clearly between fertilization (the genetic recombination in the fertilized egg) and conception (the implantation of the embryo in the uterus), an exceptional

<sup>10</sup> 'The human being is to be respected and treated as a person from the moment of conception; and therefore from that same moment his rights as a person must be recognized' (Dignitas Personae, accessed 15/08/2018).

opportunity to identify the beginning of the human person exclusively with the implantation in the uterus was lost.

This negative result for progressive politics was not an easy success for the Catholic Church. In fact, many parliamentary voices attempted to secure a non-restrictive legislation for ARTs (and abortion). A substantive debate developed at the High Chamber, where senators generally allied to the progressive field contributed scientific arguments to differentiate the notion of 'life' from that of 'person' and 'conception' from 'fertilization' (Ariza 2017). During this debate, many legislators argued against an understanding of the not-implanted embryo as a 'person':

(...) it cannot be said that a person is a frozen embryo (...) the person cannot be if it does not have the potentiality to be born alive and to develop. Such potentiality, at least in regard to current scientific progress, does not exist if the embryo has not implanted in the woman's womb (Senator Escudero, National Senate, 27/11/2013).

These voices secured significant advances in a number of issues in regard to the exercise of reproductive freedom for the CCC, for example with the inclusion of the idea of 'procreational will' to describe filiation in the case of same-sex couples. However, the beginning of the human person was left in the CCC as defined exactly in the same terms used to define it by the Catholic Church. It was a clear political victory of the latter, which managed to produce a sufficient definition from the Catholic point of view, but a clearly deficient one from the progressive viewpoint. The latter would have expected to be able to distinguish with greater specificity between the different evolutionary stages of the embryo, as a basis of regulation that granted the status of person only to the fertilized egg effectively implanted in the uterus. That this substitution happened, as Senator Norma Morandini put, 'on the spur of the moment',<sup>11</sup> is a proof of the pressures exercised by a part of the Catholic Church in relation to art. 19's formulation. It is also a proof of the substantive support that the official sector of the Catholics received from another important Deputy, the Kirchnerist Julián Domínguez, who was President of Chamber of Deputies and very close to the Catholic Church hierarchy. Opportunely, Domínguez expressed in relation to the reform bill: 'we will contemplate in our opinion the contributions formulated by the [Catholic] Church' (La Nación, 11-11-13). Several of the modifications introduced in the bill are generally understood to be concessions to the Catholic Church backed by Domínguez (Jones and Dulbecco 2014).

Furthermore, the nocturnal pressures exercised by the Catholic Church were not the only reasons that determined the course of the definitions finally furnished by the CCC in regard to the human person. It was the task of Senator Liliana Negre de Alonso, a recognized representative of the Catholic interest, to defend in the High Chamber two central arguments in favor of the finally approved version of art. 19: the leveling of the concept of 'life' with that of 'person', and that of 'fertilization' to 'conception' (Ariza 2017). With this operation, which backed the political pressures exercised by the Catholic Church that we have referred to above, its hierarchy and other conservative allies obtained a

<sup>11</sup> 19th Meeting, 9th Special Session of the National Senate, 27/11/2013, p. 70.

victory, especially as this was achieved after a first formulation of a non-restrictive character.

## Abortion

Abortion is illegal in Argentina, except in the case of risk for the life or health of the woman, and in the case of rape (Bergallo 2011). Since the Constitution reform of 1994, a number of bills proposing to decriminalize abortion have been presented to the Congress, but none had ever been debated until 2018. In March 2012, the Supreme Court issued a ruling specifying that decriminalization contemplates any pregnancy resulting from any kind of rape, and rejected the need of a judicial order to perform the abortion in the case of rape. It also stated that each jurisdiction should have a protocol for the situations (rape, health risks) in which according to the Penal Code abortions are not punishable. However, most abortions are still performed clandestinely, and the claim for legalization is until now the main pending issue in sexual politics in Argentina.

Together with lesbian and gay marriage, abortion is the key sexual politics issue for the Catholic Church, and one of the most controversial political issues for the Argentine democracy.

In the 1990s, during Carlos Menem's presidency, government authorities and the Catholic Church were mainly allies. One of Menem's friendly signs toward the Catholic hierarchy was to propose the inclusion of the 'right to life' since 'conception' in the reformed Constitution. Yet interestingly, it was also during the 1990s that reproductive rights developed most rapidly in Argentina (Petracci and Ramos 2006).

Between 2005 and 2011 Bergoglio's presidency of the AEC coincided with the Kirchner's governments. During those years, abortion was situated in the media and legislative agenda. The government promoted sexual and reproductive rights, yet these were understood not to include legal abortion. This position was relativized to a certain extent by the implementation of governmental health measures oriented to reduce abortion-related gestational mortality (Brown 2014).

Meanwhile the opposition of the Catholic authorities was constantly and bluntly exposed (Bergallo 2011). The AEC's and individual bishop's regular statements against abortion, as well as their messages 'in defense of life' during religious ceremonies, aimed to foreclose the discussion of liberal legislation. Anti-abortion campaigns reaffirmed Catholic authority on sexuality and gender, and delineated a relation between the ecclesiastic hierarchy to the state (Jones and Dulbecco 2015). During Cristina Kirchner's second term, more than 70 legislators from different political parties, including a large number of pro-government Deputies and Senators, signed a multi-party bill for legal abortion. Notwithstanding, the president and her party's chiefs blocked any attempt to discuss the bill with the help of a legislative majority in both Chambers.

Catholic authorities reject that women practice abortions and particularly that they have the right to do so (Jones and Dulbecco 2014). The Catholic hierarchy and priests constantly reaffirm their rejection of abortion and their position 'in favor of life', disallowing the termination of pregnancies in any circumstances, including the exceptions recognized by the Penal Code.

Many conservative religious actors and other actors that do not affirm themselves as religious (NGOs like Portal de Belén) also frame their discourse in liberal terms in the case of abortion. They defend the embryo, the fetus or the unborn child in the name of a secular right to life, guaranteed in principle by international and regional conventions on human rights, the Constitution and several laws. The value of freedom and life hold a particular significance in Argentina after the disappearances and tortures carried by the de facto dictatorial governments of the 1970s, which kidnapped hundreds of babies.

In contrast, other religious actors have stated their support for liberalization, against the Catholic official position expressed by its hierarchy. Within the historical protestant field, the Methodist Church and the Evangelic Church of Rio de la Plata have encouraged the public debate on the legal status of abortion (Jones et al. 2013). Both institutions intensely defended Human Rights during the last dictatorship, in an ecumenical alliance with progressive Catholic and Jewish sectors. Since the return of democracy in 1983 they have participated in many political debates showing liberal and progressive positions (Jones et al. 2014). Likewise, the group of Catholics for Free Choice-Argentina participates in the National Campaign for Legal Abortion, while human rights organizations, like the prominent Center of Legal and Social Studies (CELS), have endorsed liberalization (Foster and Miguens 2015).

Abortion is still a pending issue, in part due to the persistence of structural gender inequalities and the subordinate status of women in society and politics (Bergallo 2011). But this is too general as an explanation. In terms of political mobilization, until recently, feminist movements had not been capable of unitary action and broader alliances, including friendly religious actors.<sup>12</sup> Most importantly, despite a long history of political struggles and argumentation, unlike same-sex marriage, abortion has not been fully integrated yet into a language of rights, a positive language, like the defense of women's dignity, of families, and of life (Pecheny 2011). Thus, in the case of abortion, its formulation through a post-neoliberal discourse that gravitates around the ideas of autonomy, individuality, freedom and choice, and which is resonant with other discourses deployed in sexual politics, has not been capable of galvanizing the necessary supports for its legal approval. The 'popular' part is still missing, as it has proved so difficult to articulate 'abortion' with positive notions of 'life', 'family', 'community', or even 'love'. Furthermore, the promotion of a 'culture of life', a privileged instrument for the Catholic Church to legitimize its rejection to abortion, is an efficient source of social identification (Brown 2014). The culture of life constructs life and children as a sacred (that is non-political) value. The sacred vision of life and its purported products (children), which is an idea with profound resonances in the secular, beyond the religious, world, blocks any liberal attempt to relativize the rights involved in the interruption of a pregnancy (Pecheny 2011). On the contrary, equal marriage gained legitimacy through its association to 'constructive' values, including romantic love and the protection of family and children, and to liberal values, including freedom and equality.

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<sup>12</sup> The only religious actor that plays a significant role within the feminist movement and the demand for legal abortion are the Catholics for Free Choice. Yet this group is not recognized as a religious group by other religious actors.

As of the finalization of this article, legal abortion was debated at both chambers: after a favorable vote in the House of Representatives, it was rejected at the Senate by a count of 38 votes against and 31.

## Discussion and Conclusion: Post-Neoliberalism, Sexual Politics and Religious Actors

Post-neoliberalism integrates elements of liberalism (that is, political liberalism, recognition of individual rights and autonomy, modernization), of neoliberalism (that is, the new wave of economic liberalism, hegemony of instrumental criteria of cost-effectiveness, market-oriented technocracy and policies) and 'post' (that is, the political responses to the negative consequences of neoliberal policies, and a revival of populist or Left identities and political culture). Schematically, in recent Argentina liberalism coincides with the 1980s, first decade of transition to democracy; neoliberalism coincides with the 1990s and the democratic consolidation; post-neoliberalism coincides with the 2000s, until 2015. In each period, key advances have been made concerning sexual rights.

In the 1980s, in a new democratic context favorable to individual autonomy, non-discrimination and pluralism, conservative religious actors played the role of moral guardians of the social order. After the dictatorship, the 1970s language of sex liberation reappeared in the 1980s transformed into the liberal language and the demands for rights, into institutional claims for positive laws, public policies and inclusion. During the first decade of the transition to democracy, gender equality rights, the reparation of civil inequalities between women and men, and the aggiornamento of family laws, were a priority of President Raúl Alfonsín, the Center-Left government and the majorities in Congress. The legalization of divorce in 1987 was significant in this process, helped by the Catholic hierarchy's loss of legitimacy that followed from its collaboration with the dictatorship. This created a favorable environment for secular advances in gender and sexual rights; a process that differentiated from post-dictatorship periods in other close countries, for example Chile.

In the 1990s, regarding neo-liberalism and its aspiration to technical justifications of politics and policies, religious actors claimed that the laws of a market economy, demographic or epidemiological needs, among other 'imperatives', do not legitimize ethically or politically unacceptable policies. This position entailed a complexity: the Catholic Church raised ethical concerns regarding the negative consequences of structural adjustment in terms of poverty and inequalities, while it criticized the promotion of condom use to prevent HIV transmission given its 'technical', evidence-based character, considering it immoral insofar as it promoted sexual promiscuity.

Yet the neo-liberal period was favorable to gender and sexual rights, partly because some 'health imperatives' and cost-effectiveness analyses related to the prevention of teenage unintentional pregnancies or the AIDS epidemic, together with the hegemony of focalized social policies, allowed for an unprecedented recognition of sexual rights and subjects in a context of structural adjustment. Paradoxically, social movements' claims for social justice and the recognition of rights found support in technical reasons and cost-effectiveness arguments, cherished by neoliberal institutions like the World Bank.

After 2003 and until 2015, the post-neoliberal revalorization of 'popular actors' reframed also sexual politics: women and LGBT citizens became part of the 'people' whose oppression the populist movement came to fight against, but interestingly without losing the liberal rights imprint. Progressive, urban and middle-class sectors who are usually active in the formation of public opinion and agenda setting were incorporated by Kirchnerism, resulting in a populist experience with a significant liberal component, in which sexual politics has been a key element.

During this post-neoliberalist period, religious actors have been ambivalent. On the one hand, the political vision of religious actors, including 'popular Catholics' like Bergoglio, has been consistent with the revalorization of the political as collective, with a critique of the negative effects of previous neoliberal policies. On the other hand, religious actors have played an active role in denouncing corruption and in organizing the political opposition to the post-neoliberal governments.

'Post-neoliberal' governments in Argentina have comprised the three features that characterize the neologism: liberal, neoliberal, and post. The twelve Kirchnerist years can be named by an oxymoron: a liberal populism. This combines populist leaderships, symbols, social mobilization and social protection with the promotion of individual rights and liberal-democratic institutionalization. For those who think that, in a populist regime, popular identities necessarily constitute themselves in opposition to the institutional order, to the formal politics represented by the liberal order and the rule of law, this is a strange combination. But Kirchnerism has well integrated a populist style of leadership, with the liberal democratic tradition that had reemerged during the first years of the new democracy. Sexual issues have been central to this liberalism, which transformed in a way the anti-liberal nature of populist Peronism. In this framework, same-sex marriage and gender identity laws, together with other measures related to gender and sexuality, provided Kirchnerism a modernizing character that allowed it to articulate, through a larger set of liberal demands, those 'progressive' urban, middle-class sectors to the working-class, popular *plebs*.

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