

# Same-sex marriage and the public sphere in Argentina

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## Sexuality, culture and politics A South American reader

Although mature and vibrant, Latin American scholarship on sexuality still remains largely invisible to a global readership. In this collection of articles translated from Portuguese and Spanish, South American scholars explore the values, practices, knowledge, moralities and politics of sexuality in a variety of local contexts. While conventionally read as an intellectual legacy of Modernity, Latin American social thinking and research has in fact brought singular forms of engagement with, and new ways of looking at, political processes. Contributors to this reader have produced fresh and situated understandings of the relations between gender, sexuality, culture and society across the region. Topics in this volume include sexual politics and rights, sexual identities and communities, eroticism, pornography and sexual consumerism, sexual health and well-being, intersectional approaches to sexual cultures and behavior, sexual knowledge, and sexuality research methodologies in Latin America.

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## Same-sex marriage and the public sphere in Argentina\*

Renata Hiller\*\*

*The moment of birth of democracy, and of politics, is not the reign of law or of right, neither of the one of the "rights of man"; not even of the equality of citizens as such, but the emergence of the questioning of the law in and through the actual activity of the community.*

Cornelius Castoriadis, "Power, politics, autonomy" (1991)

Something unusual took place at the dawn of July 15, 2010: hundreds of people marched through the empty and quiet streets of the city at 4 am. Along with the horns of the first delivery trucks of the morning, the demonstrators improvised a march from the Legislative Palace to the *Obelisco*. They were celebrating the approval, that night, of a new marriage bill that contemplated homosexual couples. They carried rainbow flags, laughing and jumping by the silent traffic lights with no cars to direct. Here and there neighbors glanced from their French-style balconies, and clapped their hands along. Quickly, they went back inside. Not only it was 4 in the morning; it was also July, when it gets pretty cold in Buenos Aires. If street protests are usually public manifestations, this march was actually a paradox; there was no one there to watch. Nevertheless, all eyes were set on the public process that had just culminated in Argentina, making the country the first one in Latin America to recognize gays' and lesbians' right to marriage. What made that possible?

The march's paradoxical exposure resonates with the way the visibility of homosexuality and the re-definition of the public sphere operated through the debate of same-sex—or "egalitarian," as it came to be referred to in local debates—marriage. This is, in parallel to the discussion of whether marriage status should be modified or not, another discussion developed around the meanings, rulings and authorized voices of democratic political debate. This, in turn, to re-define the degree and form of exposure and publicity of (some) non-normative sexualities. Their regimes of visibility were altered.<sup>1</sup>

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<sup>1</sup> Due to reasons of length, this article will not address issues of gay and lesbian visibility in this process, or describe the possible reconfigurations of the visibility regime of these and other non-heterosexual sexualities. See Hiller, 2010.

The politicization of an issue historically undermined in the political arena (as sexuality matters usually are) allowed for a general discussion on how that sphere would be organized: which social actors would be invited for the debate and under which rulings; which spaces would be provided and whose voices would be authorized to settle the matter. In this sense, it was a “mutant” public sphere,<sup>2</sup> which re-defined its limits and procedures at different stages of the process. As it will be concluded, this “mutant” component contributed not only to the widening of the debate on same-sex marriage, but also to the democratization of the political system in a broader sense.

This article proposes a reading guide for a reconstruction of that process. The end of the story is already known, however, since our interest is to trace back that public sphere and its “mutations”, we will need to read it under a new scope in order to register the metamorphosis that took place (see Graphic 1). The changes that at some point of history may be naturalized as a necessity of historical timing or as the normal evolution of events, occurred in fact as a result of a mixture of *fortuna y virtud*.<sup>3</sup> The following notes describe the pace set by transformations on the public sphere of debate, while attempting to underline the share of chance and contingency that every political conflict entails.

## Same-sex marriage precedents

In 2002, the “Civil Union” law that allowed gays and lesbians couples to be in a legally binding relationship was approved by the City of Buenos Aires legislature. The project had been promoted by an LGBT activist organization, and sat the first significant precedent for the recognition of homosexual or same-sex couples’ rights. From that point on, those who registered a Civil Union could add their partners into their social security plan in the city of Buenos Aires. This included the right to health care, pension planning, joint credit applications, taking vacation on the same period of time, and being treated like a spouse in case of the partner’s sickness. This first step towards the recognition of equal rights had its own limitations: it lacked of fundamental rights such as inheritance rights or joint adoption, and its jurisdiction was circumscribed to the city of Buenos Aires. The limited character of this project exposed its incapacity to establish a real discussion on the civil equality of homosexual and heterosexual couples, which was under the realm of the (national) Civil Code, thus exceeding the city’s legislative jurisdiction.

After this first precedent, LGBT organizations and activists deployed various strategies, including the demands of recognition before state agencies such as ANSES,<sup>4</sup> as a

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<sup>2</sup> This notion of the public sphere derives from the works of Habermas (1989), and its critics and readers in the field of sexuality studies, such as Fraser 1997, Plummer 2003, Warner 2000 and De la Dehesa 2010, breaking away from state and society binaries, as put forward by several studies on Latin American democracy (Lander 1997; Avritzer y Costa 2004; Quiroga 2005). See Hiller, 2011.

<sup>3</sup> *Translator’s Note*: “out of fortune and merit”.

<sup>4</sup> *Translator’s Note*: National Social Security Administration.

way of setting “the agenda” of legal recognition of gay and lesbian couples in other Argentinean provinces. In addition to presenting several bills (some proposed to extend the Civil Union to the rest of the country, some demanded for the modification of marriage status), they staged ‘test cases’ applying for judiciary protection orders after homosexual couples had their marriage applications refused at civil registry offices. The use of strategic litigation encompassed the recent composition of the Supreme Court of Justice. There was a general speculation that the civil recognition of same-sex couples would replicate the process that led to the approval of the divorce law in 1987: a Supreme Court sentence might yield to the discussion of a particular bill at the Congress. Also, activists demanded for the recognition of same-sex marriages celebrated in other countries.

All these initiatives were widely publicized by LGBT actors. The media played a crucial role in this process. Likewise, same-sex marriage became a demand at the annual LGBT Pride Parades, as well as a topic on which many political candidates were asked to take a stand on. The articulation of some LGBT grass-roots organizations (the ones part of the Argentinean Federation of Lesbians, Gays, Bisexuals and Trans–FALGBT), with the National Institute Against Xenophobia, Discrimination and Racism (INADI) allowed for the installation of the issue in state agencies to the point of becoming part of the INADI programmatic agenda (INADI, 2005: 326). The INADI’s functions as controller and mere proponent of public policy (without executive power) hence it could not include same-sex marriage in the state’s “institutional agenda”.

On the contrary, all these initiatives render to the demand’s circulation in the realm of the so-called “systemic agenda,” or in non-governmental public spaces; in those spaces where specific issues and problems manage to expand, attain visibility, and become a “public affair”. However, “the character and the dynamics of the two agendas [systemic and institutional] are different from each other and can become dangerously dissenting” (Aguilar Villanueva, 1993: 33). In order to be treated in the governmental sphere, a problematic issue requires additional elements. Later on, we will analyze the importance of the definition and framing of the issue, as well as what we call “political opportunities.”

The alliances forged by sexual diversity organizations with key players at the Congress allowed elaborating a number of bills, such as those that addressed the legal recognition of gay and lesbian couples (as well as other bills that dealt with the civil recognition of trans identities, for example). In addition to these alliances, several political parties began to incorporate LGBT and feminists demands within their programs; some even created “diversity areas” and had members who held a double membership: to the party, and to an LGBT organization. In this vein, joint collaborative work amongst organizations and legislators led to the co-creation of a common agenda on marriage for a possible modification of the Civil Code, including the Presidents of both the General Legislation and the Family, Childhood and Adolescence committees. One of those committees

authored the bills. In spite of not knowing what results their decisions would lead to, “what we needed to do was to institutionalize the debate; it was a very important step to take” (Legislator Ibarra, RH interview). In other words, they were trying to introduce the issue into the institutional agenda of the Congress.

### **Stage One: The incorporation into the agenda and the definition of the institutional debate (October–December, 2009)**

During the last quarter of 2009, three Coordination Committee hearings were held without arriving at any decision that would lead to the debate of the bill at the Lower House.<sup>5</sup> Some features of this initial institutional treatment, however, became trademarks imprinting the process that would evolve in the following months. Those were: the participation of professionals invited as “experts”; the aspiration of making room for all voices; and an overall “political connectedness”. If, at first sight, everyone appeared to be in line with a democratic perspective, it is necessary to state a few exceptions.

On the one hand, the participation of professionals invited as experts turned out to represent a significant input for the debate. The discussions and arguments put forward were useful for the legislators, the ones in charge of settling the matter at the Congress. Nevertheless, most of the experts invited were Psychologists and Constitutional and Family Lawyers. Others, such as anthropologists, historians, or Political Scientists, were relegated to a marginal status, which is indicative of the prejudices on what kind of knowledge is deemed relevant for the treatment of these issues. Also, and beyond our capacity of questioning the use of scientific discourse to solve political problems, scientific rationality involves rulings and procedures different from those of the political discussion. Therefore, the overlap of one discourse with the other entails a set of risks that demand attention. During the professionals’ hearings, all theoretical arguments were presented as equally valid; whereas academically they have different levels of authority and circulation.

On the other hand, the prevalent pluralism stating that every opinion deserved to be listened to became problematic, since some operated on the basis of discriminatory standards. This is one of the classic dilemmas of democracy: Are voices inherently contrary to the democratic spirit of liberty and equality equally valid to participate? In spite of attempts made by the committees’ presidencies to moderate the discussion, gay and lesbian activists had to sit through sessions listening to arguments as about, for example, their inherent incapacity to hold stable relationships; their proclivity to substance abuse, and the risk boys run when raised by lesbian couples, due to the latter’s hostility towards masculinity (*Comisiones de Legislación General y Familia*,

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<sup>5</sup> *Translator’s Note:* Argentina’s Parliamentary system is divided in two houses: the *Cámara de Diputados* and the *Cámara de Senadores*. For translation purposes, we will name them Lower House and Senate respectively.

*Niñez y de Adolescencia de la Honorable Cámara de Diputados de la Nación, 2009*).<sup>6</sup> Later on, one participant of the sessions would state: “It’s like making Jews argue against their torturers in the Holocaust... Or as the *Madres de Plaza de Mayo* always and consistently said: we cannot sit and ‘dialog’ with our assassins” (Carlos Figari, *Página/12*, 13/11/2009).

Finally, a third feature ever present since the initial Lower House Committee hearings was the overarching presence of “politically correct” discourse. Political correctness is a complex and hard to define phenomenon, precisely because it stands on generally implicit rulings. In this context, political correctness comprised avoiding certain tropes, known and identifiable as “discriminatory”. Thus, those who would later establish ontological differences between homo and heterosexual couples, also insisted on the necessity to respect and listen to the gay and lesbian community: “Homosexuals have no rights, they should not be discriminated: we must put an end to discrimination and give them rights, but not the same ones that marriage grants” (Carlos Vidal Taquini, Statement at Committee Hearing, 5/11/2009).

In this manner, the debate set the new limits to a “politically correct” discursive space; i.e., what can be said and heard in the contemporary public sphere. If in the 1990s, Buenos Aires’ Archbishop, Monsignor Quarracino, could openly recommend that homosexuals moved out to an island, where they could have “some sort of country apart, with lots of freedom” (Meccia, 2006:61); contemporary opponents to gay rights had to police their use of words and arguments.<sup>7</sup>

Except for what we will later call the moment of *in crescendo* authoritarianism, the Catholic Church’ official stance was consistent with its declarations on a regional level: the Church did not condemn homosexuality in itself, but promoted a “fair differentiation” of what was different. Likewise, the main confessional academic institutions (Austral University and Argentinean Catholic University) recommended that homosexual couples be granted civil rights, but under no circumstances the same rights as heterosexual families.

Also, the pathologization of homosexuality was not the main axis that oriented the terms of the debate. The association of homosexuality with pathology stemmed only from some expert voices. These arguments however did not make it to the institutional debates at the Congress sessions. Once again, these kind of associations were repudiated, reflecting their status in the social imaginary and its dissonance with the general political climate of the debate.

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<sup>6</sup> *Translator’s Note*: Lower House Committees on General Legislation and on Family, Childhood and Adolescence.

<sup>7</sup> For example, Rep. López Arias, a Peronist from Salta, symptomatically insisted seven times in a short speech at a Commission hearing that his was not a discriminatory position.

Once it appeared that the year would end without any news on the matter, a particular event offered the chance of a turning point: on November 12<sup>th</sup>, a court ruling by Judge Seijas in favor of gay civil rights went public. The ruling stated that local Judicial Power (in this case, the City of Buenos Aires) was entitled to settle an appeal filed by two men who had their marriage application turned down at the *Registro Civil y Capacidad de las Personas*.<sup>8</sup> The magistrate accepted the appeal, declaring articles 172 and 188 of the Civil Code unconstitutional, and ordered the authorities of the *Registro Civil* to marry the two men.

This event brought up two of the main elements in the public debate on same-sex marriage: the role of the Judiciary and its capacity to operate as the realm where social conflicts are settled; and the pertinence of local powers for matters of national interest. Both points must be framed in a wider context where gay and lesbian marriage is debated: the judicialization of politics as a common process in Argentina and in other countries; and the ever unsolved Argentinean federalism, where conflicts constantly rise between the City of Buenos Aires and the National Government.

The literature on social movements emphasizes the importance of political contexts to explain the successes and the failures in the struggle for their demands. The political process approach provides key concepts to undertake the analysis, such as that of “windows of opportunity.” This concept refers to resources external to the movement that enable the incorporation of a particular problem into the institutional debate (Kingdom, 1984). However, not only the nature of the external determinants that favored the Congress’ decision to discuss the same-sex marriage bill need a closer look, but also the elements of the very political system that favored this decision should be pointed out. In this sense, political contexts are unstable settings where several conflicts overlap with different degrees of intensity and visibility. From this perspective, the gay and lesbian same-sex marriage bill process becomes a paradigmatic setting to read the conjunction of circumstances, as well as a preferential viewpoint to address several other disputes, conflicts and contemporary political conflicts.

Let us quickly review the events: a couple showed up at the City Hall to make a marriage appointment. When their request got rejected (on the basis that they were two men), they applied for a legal protection procedure, which got rejected as well. In November, a judge from the Federal Administrative Court of Appeals approved the legal protection procedure and ordered the Civil Registry to marry the two men. The Major informed that the City was not going to appeal the measure. The petitioners made a new appointment to marry in December, honoring the international World AIDS day. In the meantime, the Catholic Lawyers Association lodged several appeals, until a judge yielded one of them, stating that the City’s Judicial Power was not entitled to declare unconstitutional a Civil Code ruling of national jurisdiction. On December 1<sup>st</sup>, with wide media coverage,

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<sup>8</sup> *Translator’s Note:* Civil Registry Office.

the wedding was canceled. The couple, however, married on December 28<sup>th</sup> in Tierra del Fuego, the southern province of the country.

The recourse to the Judiciary allows citizens and NGOs to protect their rights, present their demands and, eventually, use the co-active powers of the state to pursue their interests. For this reason, some authors render this strategy as a “paradigmatic form of political participation in a democratic system” (Smulovitz, 2011). Nevertheless, this strategy entails a number of paradoxes as well: the transformation of political problems into legal issues involves a necessary translation of the matter into a specific discourse (the legal and juridical), inaccessible to most of the population. Also, deriving these issues to the Judiciary means transferring the resolution of conflicts to the less representative of the three powers. Finally, although the judicial strategy can be effective for social movements’ demands, the recurrent centering of demands in individual terms and demanding political participation as atomized citizens results in a slowly disappearing of collective political action. (Pecheny, 2009; Smulovitz, 2001:20).

In regard to the tensions between the Federal Government and the local Executive Powers, one can hardly deny that is part of a long standing conflict in Argentinean history. The circumstances surrounding same-sex marriage were also influenced by this tension, both at this stage and later on, when the Senate discussed the bill. In that opportunity, the absence of an appeal by the Executive Power of the City to a local court ruling rendered the case “autonomous”: at this point, one must take into account that this judicial process coincided with the troubled and delayed creation of a City Police, as well as others tensions between the Federal Government and the Executive Power of the City—held by politically opposed parties—around obligations and resources.

Finally, and in spite of all legal protection procedures, lack of political will hindered the carrying out of the wedding in the city of Buenos Aires. Waging on the exposure of the process, and thanks to their lawyer’s insightful reading of the legal challenges, the couple managed to marry on a different date, in a different court, at a different town. The positive attitude of the Governor of Tierra del Fuego made it the chosen province, and Ushuaia, its capital, the place where they moved residency in order to make a marriage appointment. Unlike their last attempt to marry, it was decided not to call media attention at first, thus to avoid a new appeal before the wedding. This is how, in 2009, the first gay (lesbian) wedding finally came about.

## **Stage Two: Social actors, alliances, strategies and the definition of the matter (January-May 2010)**

The first months of 2010 were marked by new court rulings that allowed for other gay and lesbian marriages to take place: on February 24<sup>th</sup>, a judge that in November 2009 ordered social security administrators to cover fertilization costs for a lesbian couple,



ordered the Civil Registry to marry two men based on the argument that the current Civil Code did not forbid same-sex marriage. Instead of using the unconstitutionality argument, the judge pointed out that same-sex marriage was a situation unforeseen by 'the encoder,' thus the Code should be interpreted in a dynamic way, under the general principles of law (*Liberatori* Ruling II). The first lesbian marriage took place in April. Norma and Cachita (the media made the wedding public under these names) would establish a new picture of lesbianism by showing the loving bond between two retired women that had been together for over thirty years. By the time the bill was discussed at the Congress, five homosexual couples had been married. All of them had gathered media attention, and contributed to build on an argument that gay and lesbian activists were also trying to install: "our families do already exist".

In the meantime, a favorable parliamentary alliance was being forged. During a press conference in February, several legislators of various political parties stated their support for the bill. Some even expressed their stance in the name of their parties; others were cautious in their word choices, and made a point of speaking in strictly personal terms. For his status as president of the governing-party platform, *Frente para la Victoria* (FPV),<sup>9</sup> Rep. Agustín Rossi was under the spotlight, and he too manifested his platform's support for the bill. Later on, his brother Alejandro Rossi, also an FPV/PJ legislator, expressed his support in a more cautious manner, alleging "a personal, non-partisan opinion". Such ambivalence within the FPV/PJ was indicative of a similar process in the other major political parties.

It is certain that the role of the political parties during this process was neither completely irrelevant, nor straightforwardly irrefutable. Notions such as "partisan discipline" and "freedom of conscience" must be scrutinized under the lens of the specific contexts suffusing these demands. Set on the aftermath of the June elections in 2009, when the governing party had lost its majority, and five months before the next parliamentary elections (when a partial renewal of seats would occur), this was the first substantial bill that acquired sufficient *quorum* for debate. Therefore, this voting implied the unraveling of alliances forged for the election, as well as their reorganization facing the parliamentary year.

Only a few political parties with five or more legislators in the room (86% of the Lower House) voted unanimously: the *Movimiento Proyecto Sur* (5 seats, in favor); *Generación para un Encuentro Nacional* (GEN) (*idem*); *Nuevo Encuentro Popular y Solidario* (*idem*); *Partido Socialista* (6 seats, in favor) and the *Partido Peronista* (6 seats, against). In terms of party unanimity, this list continues with the *Coalición Cívica* (19 seats, 84% in favor) and the *Peronismo Federal* (28 seats, 78% against). In terms of vote splitting, with a majority against were the *Unión Cívica Radical* (UCR) (43 seats, 53% against), the *Propuesta Republicana* (PRO) (11 seats, 54% against) and the

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<sup>9</sup> Branch of the *Justicialista* Party (PJ) led by the late President Nestor Kirchner, and her widow, President Cristina Fernández.

*Frente Cívico de Santiago del Estero* (7 seats, 57% against). Finally, the *Frente para la Victoria* also had its share of vote splitting, with a majority in favor (85 seats, 54% in favor). (See Table 1).

**Table 1 – Main Party Votes – Lower House**

	Absent	Abstained	Affirmative	Negative	Total	Uniformity
Frente para la Victoria- PJ	10	0	46	29	85	54% in favor
Unión Cívica Radical	1	1	17	24	43	56% against
Peronismo Federal	0	0	6	22	28	78% against
Coalición Cívica	0	2	16	1	19	84% in favor
Propuesta Republicana	1	0	4	6	11	54% against
Frente Cívico por Santiago	1	1	1	4	7	57% against
Partido Socialista	0	0	6	0	6	100% in favor
Peronista	0	0	0	6	6	100% against
GEN	0	0	5	0	5	100% in favor
Movimiento Proyecto Sur	0	0	5	0	5	100% in favor
Nuevo Encuentro Popular y Solidario	0	0	5	0	5	100% in favor
<b>Total Majority Parties (85,9%)</b>	<b>13</b>	<b>4</b>	<b>111</b>	<b>92</b>	<b>220</b>	
<b>Total Lower House (100%)</b>	<b>16</b>	<b>4</b>	<b>126</b>	<b>110</b>	<b>256</b>	

At the Senate, the two only majority parties (FPV/PJ, 31 seats and the UCR, 14 seats) leaned towards the same Lower House' majority stance, yet keeping the same vote split: both platforms raised their uniformity percentage from 53% or 54% to 64%, FPV/PJ in favor and the UCR, against. (See Table 2).

**Table 2- Majority Party Votes-Senate**

	Absent	Abstained	Affirmative	Negative	Total	Uniformity
Frente para la Victoria- PJ	3	1	20	7	31	64% in favor
Unión Cívica Radical – UCR	1	0	4	9	14	64% against
<b>Total Majority Parties (62,5%)</b>	<b>4</b>	<b>1</b>	<b>24</b>	<b>16</b>	<b>45</b>	
<b>Total Lower House (100%)</b>	<b>9</b>	<b>3</b>	<b>33</b>	<b>27</b>	<b>72</b>	

As the tables show, partisan affiliation can hardly be reckoned as a definable factor to understand the legislators' vote. Other explicative factors seem more relevant: "men were less supportive of the bill than women: 4 out of 10 male legislators against 6 out of 10 female legislators voted in favor of the bill" (Tow, 2010). At the Senate, the proportion was replicated amongst male legislators; 4 out of 10 male legislators against 5 out of 10 female legislators voted in favor. As for marital status, "noticeably, the percentages are similar in both the Senate and the Lower House, with a ratio of 45% in favor-55% against for married legislators, and 80% in favor-20% against for

non-married legislators. These numbers suggest that marital status turned out to be a valid predictor for the same-sex marriage vote” (Ibid.).

In a partisan analysis, and as one interviewee would say, “beans are counted one by one”. The novelty of the issue—this is, the rapid incorporation of the same-sex marriage *qua* marriage debate into the political agenda—and the lack of solid alliances within the majority parties gave promoters and opponents to the bill a vast audience to convince, in and outside of Congress. I will call this audience “the recipient”. My hypothesis is that it operated as a starting point for LGBT activists (mindful that they “had to convince heterosexuals, because there aren’t enough homosexuals” [to pass a bill] - Alex Freire, RH interview). The opposition, on the other, hand overestimated their capacity to influence, as well as their loyal audience, or “pro-recipient” (see Verón 1987). By the time this became evident to the actors themselves, it was already too late. Let us see this into detail:

One set of actors to be included in this analysis comprises what I will call a reactive public sphere,<sup>10</sup> which can be defined as another public sphere where discourses are elaborated and circulated. It is not a subaltern public sphere (as the LGBT), for it lacks of the conditions that comprises the LGBT subaltern space: heteronomy (the designation by others); invisibility; and juridical-political inequality. We name it “reactive” because instead of being linked to a demand for change, it pursuits the preservation of the *status-quo*.

This public space was almost monopolized by religious activists, yet it is appropriate to issue two caveats here: on the one hand, many representatives and members of churches and creeds expressed their support for the bill; and, on the other, the reactive public sphere does not define its “religiosity” by the type of arguments their actors put to use, but by a discourse resembling what Juan Marco Vaggione characterized as “strategic secularism”:

The concept of strategic secularism accounts for transformations of the main arguments used by religious activism to oppose sexual and reproductive rights. (...) Scientific, legal and bio-ethical discourses play a privileged role in the politics of sexuality, which implies a displacement, though purely strategic, towards secular argumentation (Vaggione, 2011: 311).

Several strategies, actors and discourses in circulation cohabit within this reactive public sphere. Firstly, Evangelical churches have increasingly participated in this debate, echoing other political processes in the region linked to sexuality and gender (Sardá, 2008). As Jones (2010) points out, due perhaps to the heterogeneity of

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<sup>10</sup> The concept of *reactive public sphere* connects Nancy Fraser’s (1997) propositions about public spheres with Vaggione’s (2005) concept of *reactive politization*.

its institutional actors, as a whole, Evangelical sectors were far from unanimously opposing same-sex marriage. Equally relevant were the disputes for an emergent 're-biblicization' of progressive Evangelical groups, who "discuss and dispute Evangelical identity emphasizing other possible readings of the Bible, different from the (selective) conservative literalism that condemns homosexuality and utilizes these arguments to prevent gays and lesbians from acquiring certain rights" (Jones 2010:12).

The reactive public sphere did not absorb the plurality of religious groups. On the contrary, their hegemonic voices positioned their religious authorities as the sole guardians of public morality for both the congregation and the whole society, demanding their obedience and loyalty. The lack of a persuasive discourse oriented to attract those who had yet not taken a stance might be one of the keys to understand the failure of religious activism during this debate. Otherwise, how can we read the letter written to the the Buenos Aires' Order of the Carmelites by the President of the Argentinean Episcopalian Conference, addressing the "devil's envy" and "the works of the father of lies"? (AICA, 22/06/2010) One can hardly picture such a message to attract both the Carmelites and the secular audience. In this sense, to name this debate a "Holy War" is an appeal only for those willing to affirm previous beliefs, but can hardly be so to those slightly apart from any form of religious fundamentalism.

At the first stages of the debate, religious activists declared their stance through: a) the attendance of religious groups at Lower House Committee hearings; b) the participation of scholars from confessional universities as experts at committee hearings; and c) litigation by attorneys belonging to confessional lawyers' associations. As for the Catholic authorities, who also publicly declared their opposition to the bill, it failed to add new supporters. On the contrary, its *in crescendo* authoritarianism lead to an utter and explicit rejection of such type of declarations by certain senators.

By the end of the voting at the Lower House (at this point we jump ahead to further events), religious activism made a turn and deepened its performance. On the one hand, the local representatives of the Archbishop manifested their stance in several provinces, as Senate hearings went public. On the other hand, this stage involved greater activism by grass-roots organizations, attempting to gather what Héctor Aguer, Archbishop of La Plata, called a "quiet majority". (AICA, 5/7/2010).

Evangelical associations were first to call on public mobilizations: The Christian Alliance of Evangelical Churches (Aciera) and the Evangelical Pentecostal Federation Confraternity (Fecep) gathered in front of the National Congress the day before the Senate debate. The rally, whose attendance was estimated in eight thousand (*La Nación*, 1/6/2010), featuring the bill's opponents in a public demonstration for the first time, gathered wide media coverage. Later on, the hearings in several provinces would activated a movement against the modification of marital status. In this process, symbols like the orange color were created to identify and make opponents' claims visible.

Finally, the day before the Senate debate, the Secular Department of the Argentinean Episcopalian Conference (DEPLAI), Aciera, Fecep and other organizations called for another rally in front of the National Congress. The great number of people gathered is indicative of networks, solidarity binds, and common goals that render this activism dynamic and in constant motion. These groups, however, have had enormous difficulties to link with other social actors as a way of expanding their discourse onto other forums. Promoters of the bill, on the other hand, turned to strategic allies that positioned the initiative in a framework of social basis and shared cultural symbols (Tarrow, 1998). The support of Human Rights organizations and the presence of the *Madres de Plaza de Mayo* at different stages of the process, as well as alliances union representatives, artists, academics and religious representatives, contributed to establish same-sex marriage as an overarching issue that involved a greater democratization of the society.

The Lower House's approval may have taken a few by surprise. The truth is that by the time of the voting, the issue had already been settled. This does not mean that the voting was solved, but that its interpretative grids were set. Koopman and Statham refer to a "discursive structure of opportunities" that "determine which ideas are considered 'sensitive', which reality constructions are seen as 'realistic,' and which demands are taken as 'legitimate' in a particular political context and political moment" (Koopmans and Statham, 1999: 228). In the following paragraphs, and before we move ahead to the last stage of this process, we present the main arguments that defined what the issue at stake was in the same-sex marriage debate. In this regard, we will attempt to demonstrate how the dynamics between a promoter and a reactive discourse resulted into a debate around the meanings of equality.

## Meanings of Equality

The principle of equality was the main axis on which promoters of the bill articulated the same-sex marriage demand. "The same rights with the same names" was the motto that emphasized the necessity to disavow the discriminatory practices the state had been upholding until then. This definition on the matter "framed" (Snow and Benford, 1998) the demand by inscribing it into History and rendering it intelligible through the comparison to similar demands such as women's suffrage, or the legal recognition of children born out of wedlock—a bill approved in the 1980's decade.

The idea of referring to the same-sex marriage law as an "equality law" can be traced back to the space where local and Spanish LGBT activism articulated. In Spain, the same-sex marriage demand had been framed in this same manner. On the contrary, the "right to be different" claim, as mobilized during the Civil Union law, was hardly put to use. The LGBT sphere prioritized the public nature of the demand, and foreclosed the definition of the debate within the frame of the "right to privacy". The insistence on equality rather than difference can be understood by looking at matter at issue:

the marriage institution could hardly be framed under the right to privacy, on behalf of an “intimate” difference. Marriage is a complex institution where various expectations and multiples meanings articulate. Politically, marriage comprises a juridical *status* that organizes people amongst themselves and their relationship to the state. Marriage also intervenes in the distribution of patrimonial, residency, social security and other rights. In addition to this, the debate included the regime of joint adoption, an unavoidable matter of state interest.

Also, the context where the debate takes place affects the conceptual schemes by which same-sex marriage is addressed. This is one of a general “fading-out” of the liberal paradigm in Latin American contemporary socio-political debates. This means that classic liberal discourse was not entirely a *valid language* in a larger context signed by state interventionism.

Paradoxically, the opponent’s discourse reinforced the framing of the same-sex marriage demand as an equality law. In this sense, we take into consideration notions regarding controversial discourse: in political practice, every discourse defines itself by opposition to an adversative Other (Verón, 1987). In the same way that social actors are not pre-established entities, their discourse is also constituted on the basis of dialogue with, and tension against, antagonistic others. In this particular case, the arguments on equality can only be understood in their relationship to those outlined by same-sex marriage critics; in particular to their main argument, the idea of so-called “fair discrimination”:

It’s only fair to treat as equal what is equal; it’s only fair to treat as unequal what unequal is, but it’s not fair to treat as equal what is unequal, and what is equal as unequal. By this I mean that the comparison of the rights of those citizens who make a compromise to strategic social roles, such as procreation, cannot be considered under the same terms as others; the contrary would unfair discrimination (Dip. Merlo, HCDN, May 4<sup>th</sup>, 2010).

In this perspective, homosexual couples are different from heterosexual couples, not only in their composition but also in their purposes. Therefore, homosexual couples should not be given the same juridical *status*. In order to demonstrate their will to grant civil rights to homosexual couples, opponents to the bill proposed the same juridical forms they fought against a few years earlier: Civil Union for example, permitted to homosexual couples, gave them certain legal safety while restricting the exercise of certain legal powers (joint adoption mainly) and the use of the word “marriage” only to heterosexual couples.

This was the setting that framed the same-sex marriage demand: no longer was it a matter of whether to grant certain rights or not (except for adoption, all rights would be readily granted), but of what the meanings of equality were, and by which specific

public policy measures it would be achieved. The meaning of equality that was discussed following the same-sex marriage debate is political, rather than “contrastive”. To distinguish “equality from difference,” the historian Joan Scott (1988) argues that what is opposed to equality is not difference, but inequality or lack of equivalence, the “noncommensurability” (*lack of common measurements*). Political equality involves, precisely, the existence of differences that are not considered as relevant in terms of citizenship. The same-sex marriage debate operated then as an arena of disputes on how to reconcile the recognition of a plural, diverse society, with the principles of equal rights and equal access to citizenship. As from that moment, the same-sex marriage demand would be known under a new title: “egalitarian marriage”.

### Stage Three: Disputed Spaces (May-June 2010)

Within a few months, the initial demand for the legal recognition of homosexual couples consolidated into a bill that called for the reformulation of the marriage law. This stage then previewed two possible state outcomes, one opposite two the other: one granted total equality, and the other bestowed certain rights, maintaining a differential *status* for heterosexual couples. The dynamics of the process (participant’s practices, circulating discourses and circumstantial setting) framed the debate as “equal treatment versus discrimination,” hence disposing other types of questions and stances.

During the debate at the Senate, promoters of equal marriage stood for the Civil Code reform voted earlier at the Lower House, which replaced the words “man and woman” for “spouses”. Opponents rejected this modification, and proposed instead to reformulate the Civil Union so that hetero and homosexual couples could benefit from some protection. This proposal, however, explicitly prevented couples under the Civil Union regime from adopting or accessing *in vitro* fertilization (17° Article, Committee report, Civil Union Bill, 2010). In case there were any doubts on this proposal’s discriminatory bias, the Civil Union bill secured state officials the right to conscientious objection, allowing them (as opposed to The Law) to warrant of the access to civil rights at their own discretion (Art. 24).

In terms of public visibility, by the time same-sex marriage was debated at the Senate, half a dozen homosexual couples had already been married. Spanish Prime Minister Rodríguez Zapatero’s phrase: “We’re not legislating for remote and strange people, (...) [but] for our neighbors, for our fellow workers and for our relatives”<sup>11</sup> crystallized the widespread coverage of families that publicly exposed their diversity: one legislator “confessed” being the father of a gay son, and children of gays and lesbians (invisible until then) showed up at Senate committee hearings. I stress the “familiar” component

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<sup>11</sup> Discourse of the President of the Spanish Government, José Luis Rodríguez Zapatero at the Legislature to defend the reform of the Civil Code, Madrid, June 30. 2005

of gay and lesbian visibility and its effective impact on the public sphere: the discourse promoted by grass-roots LGBT organizations (“our families already exist”) made visible the politics of exclusion towards the children of gay and lesbian couples. Though partly, this fact diverted the debate from the discussion on whether lesbian and gay couples should be allowed adopt, to a matter of equality of rights for all children and families.

Given our interest in grasping the processes and transformations of the public sphere, this particular stage calls becomes significant because it frames the question on the rules and participants entitled for the debate. Two aspects were key in how the issue was settled: one had to do with the alleged tensions around federalism, democracy, and representation; the other was the possibility of holding a plebiscite on the matter. After the approval at the Lower House and before the debate at the Senate, an itinerant *forum* was created so that the “citizens of the provinces” could speak their minds to the General Legislation Committee, to which the bill was assigned. Although proposed by opposing senators, it would “guarantee everyone’s participation”. The proposal was, on the one hand, incontrovertible: who would oppose the inclusion of more voices into the debate. On the other hand, it played out the issue of Buenos Aires’ centralism eclipsing the “deep Argentina”. The committee raid that followed traveled across nine provinces,<sup>12</sup> renovating the old tensions of the country’s federal organization, and, in particular, updating what I defined elsewhere as the “progressive imaginary” on the city of Buenos Aires:

This imaginary upholds a dichotomy between the City of Buenos Aires and the rest of the country, where the former appears as ‘progressive,’ more accepting of plural lifestyles, respectful of individual rights (civil and political rather than social ones) and less judgmental towards what is different. For some interviewees, this situation derives from two reasons: one is the greater access to secondary and higher education in Buenos Aires; the other is a matter of “class,” which renders Buenos Aires as a rich city. As opposed to that, the rest of the nation (*el interior*, “hinterland”) is defined by its relentless adherence to traditional values, always linked to the Catholic Church, where ‘social tyranny’ is the main control mechanism, operating through the institution of rumor and other social control strategies common in smaller-size communities. This setting would hinder the expression of non-normative sexual practices and identities and prevent the promotion of rights, because local politicians would agree with these traditional values. Even if they didn’t, they are always influenced by what the legislators call the ‘factors of power’ (the Catholic Church more specifically) (Hiller, 2009:58).

One of the differences between the Committee sessions and these travelling hearings is that whereas for the former invitations were sent to various personalities, the latter was

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<sup>12</sup> The hearing took place in Resistencia (Chaco), Corrientes, Salta, San Fernando del Valle de Catamarca, San Miguel de Tucumán, Córdoba, San Juan, San Salvador del Jujuy and Mendoza. Strikingly, no province from the Patagonia region was chosen (the proposed hearing in Neuquén was later rejected).



open to citizens who had previously signed up to participate. This mechanism resulted in very large sessions that promoted a form of massive “democratic debate”. Nonetheless, unequal access to public discourses and visibility forms persisted and multiplied in this setting as well. The hearings confirmed previous assumptions: a large number of people from Argentina’s hinterland were in fact against the bill. The minoritarian voices in favor were also ‘marked:’ their arguments were either particularistic (the “common citizens” who spoke were in fact gays, lesbians or trans), or politically driven (human rights, grass-roots, etc. organizations), all far from that “common” citizenship that senators, the “provinces’ voices”, ought to represent.

During the Senate session, the hearings became the authorized spaces for public debate, the “true celebrations of democracy”. After fifteen thousand kilometers and one thousand and eighty seven speakers proving a majority opposition to the bill, one could assume that their arguments would be replicated at the Senate. The transcription of an excerpt from Senator Fellner’s extended speech is telling. She addresses her contacts with Church officials while challenging the space created at the hearings:

“The hearing started a bit late because at the Governor’s Palace Senator Negre de Alonso, Senator Jenefer and I stayed around talking about something we’re very proud of: the bishopric, that is, where our bishop lives. It’s truly a beautiful house, right in front of the Belgrano Park. Senator Negre de Alonso was having breakfast before the hearing with my Province’s bishop. Then, we started talking about the house, about other things, etcetera, and we missed the hearing (...). It’s true that a lot of people argued against the bill, but once the hearing was over, a lot of people did not get the chance to talk, so they told me (...). As a result, we agreed on having another meeting—not a hearing like the one of the General Legislation Committee—at one of the largest cities of Jujuy, where the debate continued. So I tell Senator Negre de Alonso that one of these days we’ll have to incorporate these arguments, because she only saw one side of what’s going on in Jujuy. We walk around the province, we know that part of this society; the part I got to listen in that city, beyond the General Legislation Committee. In conclusion, the issue depends on how you look at it” (Senator Fellner, July. 14 and 15, 2010, Senate session).

The massive assistance to the hearings added up to a notion of democracy, understood as the power of the majority. This notion of democracy had been established earlier, at the time a plebiscite was proposed to settle the question. The proposal had been put forward firstly by Evangelical institutions (Aciera and Fecep) and spread throughout the country, gathering 634.000 signatures. Once again, this public sphere debated its own functioning rules. What can be subjected to a plebiscite? Are there any other issues that diverge from the calculation of the majority?

Other questions would follow: What is the role of the legislator? What does it mean “to represent”? Respecting the will of the majority? What happens when this will excludes

the rights of a minority? What is the legislator suppose to legislate: an average morality, or the majority's morals? How can they be calculated? And if the role of politics were something more than the administration of that which exists, would there be a transformative political work which would distance the legislator from that majority? Due to its mutating processes, the public space achieved around the same-sex marriage debate would make these questions possible to ask.<sup>13</sup>

Finally, and after a long debate, the moment of the voting arrived. The *Plaza de los Dos Congresos* was then occupied by those who expected a favorable resolution. This too changed the rules of political visibility: except for annual Gay Pride parades, LGBT actors lacked experience in large political manifestations.<sup>14</sup> Several organizations, political parties, grass-roots social movements and everyone willing to witness the defeat or celebrating the triumph in the company of others attended the *Plaza de los Dos Congresos* that night.

## Conclusion

It is now daylight and the demonstrators return to their homes. Some walk by themselves, others in the company of a new fling borne in the heat of celebrating flags. Many receive text messages from those who stood up all night watching the debate on TV, others make phone calls, awakening to a new day, the first day.

A few conclusions can be drawn from this saga:

The debate process that resulted in the approval of the same-sex marriage bill lasted several months, less than a year. Though the initiative had other precedents, it was through its incorporation into the institutional public space that the discussion acquired new dynamism. This fact raises the necessity of bringing pending issues into those spaces. The case indicates that the institutional agenda serves as an effective means for catalyzing debates. Instead of considering a controversial issue unsuitable for public debate, the same-sex marriage process confirms that the only channel to work through conflicts is the political one.

The speed of the process was encompassed by the almost constant definition and re-definition of what comprises the public sphere of debate: where would the question

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<sup>13</sup> Here I will not address the role played by the Executive Power during this process (See Hiller, 2011). To venture in that analysis, one would be compelled to revise the overall process and conclude in speculations rather than hypothesis about the weight and rationale behind President Cristina Fernandez's pronouncement in favor of the bill a few hours before the Senate session.

<sup>14</sup> For several months the same-sex marriage initiative developed without LGBT activists inviting the LGBT community to take part. The organization of a festival on June 28th reversed this. Later on, the LGBT community also participated in the ruidazos (loud noises as a form of protest) at several points of the city of Buenos Aires and the country to counter the July 13th march. In any case, the goal was to render the LGBT space visible beyond the number of participants.

be settled, under which rulings, and through which mechanisms of representation. The participants would vary along the process, and each of them would change as political actors as well. The demand itself changed along the process, from the legal recognition of gay and lesbian couples to “Egalitarian Marriage”.

We find the best keys to look ahead in this mutating process. As I put it in the introduction, the assessment of the democratic nature of this law relies not only in terms of the expansion of rights, but also in the mutations enabled during the dispute. The public space surrounding same-sex marriage put into question its own rules and mechanisms, thus contributing to a widening of its margins.

During the discussion, the debate expanded to the point of reaching to “informal public spheres”, which are the fleeting yet intense forms of everyday life that allow for debate and deliberation (Fraser, 1997). The process on the same-sex marriage bill mobilized controversies in various spaces, feeding on to the democratization of society. It endows people with the chance to become involved in public affairs, to exercise their citizenship, to become political, to be part—even for the opponents of the bill.

Hence we conclude that the same-sex marriage debate constitutes a step forward from which other issues can be publicly debated in Argentina. All arguments and transformations of the public sphere indexed, beyond its actual results, the immanence of social order. This is: the debate demonstrated that societies define and re-define their own rules. This multiplies the possibilities for new demands and political subjects.

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