

## Sexuality, Law, and Religion in Latin America: Frameworks in Tension

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### Abstract

One challenge opened by contemporary sexual politics in Latin America is to rethink the relations between religion and law. The debate on the regulations of sexuality, reproduction or the family makes visible the complex interconnections between religious worldviews and the legal system. Particularly, how the secularization of law has been compatible with an imbrication process in which law traduces and conserves catholic sexual morality into secular regulations. The article offers an analysis of the ways in which stakeholders in conflict over sexual and reproductive rights in Latin America mobilize religion and the law to pursue their agendas. First, the article considers the main strategies implemented by the feminist and sexual diversity movements in order to overcome the power and influence of the Catholic Church on lawmaking processes. Although these movements tend to share an anti-clerical standpoint, they present a complex and dynamic construction of religion. Second, it presents different adaptations by Catholic sectors in defense of a natural sexual order. In their quest to influence state legal systems, these sectors deploy a dynamic and strategic understanding of religion and its impact upon public and legal debates. Building upon these considerations, the article contributes to the question of the complex articulations between religion and law in contemporary Latin America.

### Keywords:

Latin America; sexual rights; Catholic Church; LGBTQ rights; religion; sexual politics.

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## Introduction

Latin America is undergoing a period of strong politicization of sexuality promoted by the feminist and sexual diversity movements.<sup>1</sup> In most countries of the region, advocates are challenging political limits from new points of view, including in public debate regarding the regulation of intimacy, kinship, and reproduction. Unlike at other times or in other debates, one of the characteristics of this politicization is the prominence of the law as the main vehicle through which the principal positions are articulated. With intensifying demand, and with equal resistance, groups are advocating for reforms that expand the legal margins for different sexual practices and identities. These rights, recognized under the heading of sexual and reproductive rights, include such different topics as abortion, the rights of same-sex couples, universal access to contraception, artificial insemination, sex education, and gender identity, among others.

The consequences of this policy-based approach to sexual and reproductive rights have been diverse. In some cases, there have been significant legal changes with respect to abortion or the recognition of same-sex couples. These include, for example, the 2007 depenalization of abortion during the first 12 weeks in Mexico City<sup>2</sup> and Uruguay,<sup>3</sup> as well as new marriage equality legislation (also known as same-sex marriage)<sup>4</sup> and a legal reform protecting gender identity in Argentina (Gender Identity Law).<sup>5</sup> These reforms, together with other laws and court decisions, have recognized rights that were previously unthinkable in the region. However, this process is far from homogeneous across countries; not only is this type of reform difficult, but in some cases existing regulations continue to become stricter. Abortion is an example of these difficulties. Decriminalization of abortion is resisted in many countries, which has led to the creation of laws to protect life from conception and/or removing the existing exceptions, thus further criminalizing abortion.<sup>6</sup> There has also been a systematic attempt to outlaw the use of emergency oral contraception, which in some circumstances has risen to the level of the prohibition of their sale and distribution (Dides 2006).

A common aspect of contemporary sexual politics is the multifaceted presence of religion as part of discussions of the law (Htun 2003; Lemaitre Ripoll 2013; Peñas Defagó et al. 2012; Ruibal 2014). Various religious actors, most often linked to Catholic and Evangelical churches, are engaged in discussions of regulation of sexuality or reproduction. The dismantling of Catholic heritage, in the forms of the traditional social and moral norms defining family and sexuality, is a still incomplete process in the region; therefore, it is not surprising that the Catholic hierarchy remains a leading actor in the resistance against sexual

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<sup>1</sup> The term 'sexual diversity' is used here to encompass defense of a multitude of identities and practices outside the realm of heteronormativity.

<sup>2</sup> By reforming the Penal Code by the Asamblea Legislativa. See <http://www.ddeser.org/wp-content/uploads/2016/05/Gaceta-ILE-DF.pdf>.

<sup>3</sup> Law No. 18.987, Voluntary Interruption of Pregnancy, Establishing Rules (2012) (Uru.), available at <http://reproductiverights.org/en/node/3933/map-popup>.

<sup>4</sup> Law No. 26.618, July 21, 2010, [CXVm-] B.O. 31.949 (Arg.).

<sup>5</sup> Law 26.743, May 23, 2012, 32.404 B.O. 1 (Arg.).

<sup>6</sup> For example, the 2010 constitutional reform in Dominican Republic (article 37 affirms that the right to life is inviolable from conception to death), or the complete criminalization of abortion in Honduras (1997), El Salvador (1998), Nicaragua (2006).

and reproductive rights legislation. Also, conservative sectors within the evangelical Churches mobilize in close alliance with the catholic hierarchy.

When debating the legal regulation of the sexual order, the relative autonomy and differentiation among the religious and secular spheres (sustained by secularizing legacies of modernity) have become complex and diffuse. Taking this into account, the article uses the term of mutual imbrication (or overlap) to capture, at least partially, an alternative way to articulate the relationship between secular law and Catholic doctrine. Given the strong influence of religion upon the legal system, their relationship is increasingly legible, if in different ways. The politicization of sexuality, then, opens up an alternative trajectory through which we can reflect on links between religion and the law – the main purpose of this article. Sexual and reproductive rights both circulate and construct links between the state and sexuality that bring into view different, yet often innovative, tensions and articulations between religion and the law.

In particular, the article focuses on the complex overlapping of and tensions between religion and law by considering the strategies and arguments circulated by the two conflicting sectors in contemporary sexual politics. First, the article considers strategies that the feminist and sexual diversity movements have used to counter religious influence in regulating the sexualized body. To advance sexual and reproductive rights requires to confront the power of religious institutions and discourse on the state and lawmaking processes. Secondly, it presents some conservative Catholic activist strategies that attempt to impede sexual and reproductive rights. Together with the conventional forms of influence of the Catholic Church on the state, it is important to consider novel adaptations and mutations by conservative activists in order not to lose (or regain) the impact on the legal arena. From both sides of the debate, therefore, contemporary dynamics have shifted and/or re-articulated the links between law and religion. The emergence of demands related to abortion, same-sex couples, or gender identity, among others, offer new patterns and ways to rethink religion and its (dis)articulation with the law.

The purpose of the article is to offer some general trends, an overview, that characterize Latin American as a region without going into the specificities of the national contexts. This does not mean ignoring the differences that occur not only among countries, but even within them, which deserve further attention. However, this article seeks to frame some regional processes in order to identify existing similarities and parallelisms in the region.

## Law and Religion: Boundaries in Tension

Most contemporary democracies are characterized by the prominence of religion in public debate. Latin America is, of course, part of this ‘religious deprivatization’ process as it was called (Casanova 1994). The political influence of the Catholic Church is still a reality in most Latin American countries though in complex and multifaceted ways (Levine 2012). Among the various analyses on religion and politics, there are two topics that have received increasing attention (Vaggione and Morán Faúndes 2017): the incomplete process of political secularization or *laïcité* (for example Blancarte 2000; Mallimaci 2015) and the increase presence of evangelical churches in the public realm (for example Campos Machado 2006; Stewart-Gambino and Cleary 1997).

One area where religion is present with particular intensity, that has not been systematically researched in the region, is the legal norms that stratify and rank the sexual order. Although the formation of a modern legal system assumes, at least in the Western tradition, detachment and autonomy from religious heritage, religious influences have remained relevant in legislation regarding family, kinship, or sexual reproduction. Modernity, as a historical process, has not necessarily involved the dismantling of religious influence, but rather has meant the adaptive survival of religious influence in different times and contexts. Regarding the means of regulating the sexual order, secularization (either social or political) is far from stable and linear but instead reflects a multifaceted presence of religion.

Beyond the provisions of constitutional law or the existing degree of church and state separation, the enactment, interpretation, and application of the law in connection with the sexual order has been (and continues to be) impregnated by Catholic worldview due to historical and contemporary circumstances. The impact of Catholicism began with the processes of conquest and colonization, which carried forward Catholic principles, formalized at the Council of Trent (1545–1563).<sup>7</sup> Marriage and confession were central institutions used to control the population of the 'new' continent (Bidegain 2005). Through renewed and adapted means, this influence continued during the consolidation of nation-states. Although they grappled with the Catholic Church for autonomy, nation-states tended to protect Catholic doctrine regarding the regulation of bodies. The construction of the 'Catholic nation,' which spanned the main political imaginaries of most Latin America countries throughout the twentieth century, also reaffirmed religious principles as crucial aspects in legal regulation.

The influence that the Catholic Church has had on the legal field should also be noted. In particular, the theory of natural law, inspired by St. Thomas Aquinas, was relevant in the teaching of law and the formation of a legal consciousness in Latin America. Recognizing its limitations and complex formulation<sup>8</sup> (which exceeds the scope of this article), the impact of St. Thomas's theory in the region propelled a legal model that combined Catholic doctrine, universal morality, and laws of the state – or in St. Thomas's terms: eternal, divine, natural and human laws. Reflecting an objective moral order, natural laws are universal and immutable, and on them rests the legitimacy of state laws (or positive law). Undoubtedly, this is a theological perspective that bases itself on the existence of God's plan and the natural laws that respond to it, but argues that these laws (natural law) can be accessed through reason and without faith. While this theological framework stopped being dominant in classrooms, parliaments, and courts, it has persisted in the thinking of experts and lawmakers, with particular impact upon the legal regulation of sexuality (Lemaitre Ripoll 2013).

One effect of the impact of the Catholic version of natural law in Latin America is the legitimation of secular law based upon religious principles. In a region where the Catholic Church has had a quasi-hegemonic influence on moral debates. The appeal to the laws of nature allows for a (hyper) moralization of

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<sup>7</sup> In response to the Protestant Reformation, the Catholic Church reinforced discipline of sexuality (Fox 2000).

<sup>8</sup> For an analysis of the main principals of natural law and its criticisms from a feminist perspective, (see Skerrett 2007).

sexuality that aspires to become secular law. In particular, the generative nature of the sexual act proposed by St. Thomas Aquinas<sup>9</sup> was later updated throughout the centuries as a sexuality designed for reproduction; in this way, sexuality is also a 'virtue' the law must protect and guard, even by the criminalization of conducts and practices. Despite the saturation of religious influence, this model does not require an appeal to religion for justification. On the contrary, Aquinas considers that it is the rational nature of individuals which allows to identify and define moral law (which should be the basis for secular ones). The law grants that reason should be a model, at least in some understandings of it, that complies with the main requirements of modernity (separation between and autonomy of the religious and the secular). While this model can be criticized as an appeal to an objective, universal moral order,<sup>10</sup> it is based on the separation of the religious and the secular. Here, paradoxically, autonomy does not mean independence or autonomy but rather total dependence of secular laws from moral and religious ones.

To this web of meanings cemented in culture and law, it should be added that the Catholic Church never renounced its role as an influential political actor. If with different tones and accents, the Church has maintained its role as guardian of sexual morality over the centuries for both believers and citizen in general. Sexuality is a topic about which the Catholic Church has shown marked rigidity and resistance in adapting its position to the various changes and challenges of modernity (including the breach between believers and the Church hierarchy around many sex topics). It is common in contemporary national and transnational forums for the Catholic hierarchy to be the leading advocate of a heteronormative order. In Latin American countries, the Catholic hierarchy exercises direct influence over the state and over the regulation of the sexualized body. Of course, there are ruptures and variations throughout the region, but the regulation of sexuality has typically been a topic on which the Catholic hierarchy has maintained constant and active surveillance.

The periodic crises of legitimacy that characterize many of the region's governments further enhance the power of the Catholic hierarchy. These crises make state officials and politicians less autonomous, given their need for support from an institution that retains the highest percentage of trust among citizens.<sup>11</sup> Therefore, there is a (relatively stable) patronage link between rulers and the Catholic hierarchy. This link implies an exchange of support and legitimacy between the Catholic hierarchy and the ruling classes: The Church retains its privileges as a religious institution and the ruling classes defend the Church's position on sexual mores, as a part of secular law. While this exchange is in alignment with the beliefs of conservative parties and leaders – especially during times of authoritarian regimes – progressive sectors are not completely detached from this system.

This influence on cultural, legal, and political dynamics means that sexuality is a topic where the (dis)connect between law and religion is complex.

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<sup>9</sup> See *Summa Theologiae*, vol. 43, 2a2ae, questions 153 and 154.

<sup>10</sup> Natural law has even been considered by some as an anti-democratic approach to the public debate (Lemaitre Ripoll 2012). For a critical analysis of new natural theory, (see Amforth et al. 2007).

<sup>11</sup> See data from (Latinobarometro).

Secularization – a concept that describes and proposes a process of differentiation and separation of the religious and the secular – is not sufficient to understand the forms of legal regulation of the sexualized body. Without denying that this differentiation has had its impact, it is necessary to identify the existence of linkages between law and religion that transcend the model associated with secularization. Legal regulation of family, parenthood, or reproduction are topics on which the assumption of differentiation of spheres is not adequate for understanding the construction of secular law; although this does not mean it is wholly inaccurate. Accepting the historical importance of this separation – sin is not a crime, the commandments are not legal obligations, or priests are not judges – can also imply recognizing that this separation is compatible with an overlap between religious heritage and secular law.

Besides understanding the processes of secularization of law as a process of autonomy of the religious and the secular, it is also necessary to consider (at least when regulating the sexed body) the diffuse and dilute frontiers between law and religion. In this respect, different authors have proposed the need to reconsider and to provide alternative accounts of the interconnection between law and religion (Asad 2003; Connolly 1999). In general, these works tend to present a critical understanding of the secular; one that traces its connections with the religious. With a focus on sexuality, Jakobsen and Pellegrini (2003) or Beaman (2013), for example, have considered the overlapping of and imbrications between religious (Christian) ideas about sex and legal regulations.

The term imbrication allows for an understanding of an alternative link between religion and law, a link that has been obscured by the theories of modernity and secularization. Imbrication, as a relationship, captures the ways in which secular law tends to be based on religious tradition without necessarily displacing it or overcoming its influence. It responds to a process of superimposition, of assembly, whereby secular regulations were built, more or less coherently, overlapping with religious ones. Therefore, Catholic sexual morality functions as a matrix of meanings for different branches of the law. Criminal law, for example, has served as an instrument of sexual control in contiguity with religious tenets. Adultery, at a particular time, and abortion today retain meaning from religious tradition (both acts are considered a sin), making these acts crimes while defending a sexual order that prioritizes marriage and procreation. These crimes play as a reminder of a moral order that is not consistent with the practices and decisions of individuals. Civil law has established privileges and exclusions as a way to preserve a sexual hierarchy according to religious doctrine. For example, family law has protected marriage as a legitimate form of intimacy and parenthood while marginalizing other arrangements by denying recognition and rights. It has been common in the region to give different rights to children according to the type of relationship that their parents have. Adulterous, natural or extramarital children have been some of the labels used by legal system in order to defend marriage as a social and moral institution.

This process of imbrication also lead to the concealment or displacement of religious influence. The secular law 'transmutes' religious norms as social norms, the Catholic family as the national family, and sin as criminal offence. Imbrication produces a fiction of rupture because religious heritage seems to evaporate while actually renovating itself as secular law. As it has been said, opposing secular and religious spheres as distinct simplifies not only the way in which

the West constructs sexuality, but also the laws that regulate the sexual order (Connolly 1999). Law intertwined with religion has enabled a stable model of control: a system of integration between the religious and the secular that at certain times has been destabilized, revealing its constitutive complexity. It is in these moments that the engagement of secular law with religious tradition dis- or re-arms in ways not necessarily implying an effacement of the latter, but rather reinforcing its influence in more sophisticated ways.<sup>12</sup>

The impact of the feminist and sexual diversity movements is precisely one of these moments, as perhaps the most significant and potentially critical of the overlap between law and religion. These movements enable the understanding of the linkage between law and religion under a different perspective. By politicizing sexuality, the overlapping, mobile, and to some extent artificial boundaries between the secular and the religious become visible. The politicization of sexuality de-essentializes historic constructions and ideological discourses, enabling renewed criticism of religious power on the state and in law. Politicized sexuality disrupts the naturalization of certain legal regulations, reappearing in the public debate as remnants of religion in law. However, the politics of these movements do more than make the remnants of religion in law visible; they reconstruct, more or less accurately, the genealogy of the main religious institutions that control the sexual order. Contemporary sexual politics redraw the boundaries between the religious and the secular, reconfiguring what constitutes secular culture or secular law in relation to the religious. This impact reveals, among other things, the artificiality of essentialist definitions of religion – and for that matter of the secular as well – and the importance of an approach that better captures the dynamism of these processes.

As proposed in this article, to understand contemporary sexual politics in Latin America it is necessary to analyze the ways in which religion and law are re-articulated when discussing sexual and reproductive rights. The principal actors competing to regulate sexuality mobilize religion and law in different ways in order to impact the legal regulation of sexuality, reproduction and family. On the one hand, the feminist and sexual diversity movements employ different strategies to resist the ways in which religion permeates state powers. On the other hand, conservative religious activists use strategies that focus on the law in reaction to the agenda of feminist and sexual diversity movements. By analyzing these movements and their strategies, this article highlights the main features of contemporary sexual politics with respect to the ongoing processes of (dis)/(re) articulation of the relationship between religion and law.

## **Policies of the Feminist and Sexual Diversity Movements Regarding Religion**

In order to advance a sexual and reproductive rights agenda, the feminist and sexual diversity movements need to make visible the multiple connections

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<sup>12</sup> Throughout the history of the region, religious influence has become politicized, allowing for different enunciations of secular law without necessarily displacing religious dogma.

between law, sexuality and power. An important aspect of this is to question the role of law in preserving a restrictive and hierarchical sexual order. It comes as no surprise that the alleged universality and objectivity of legal norms sustain and strengthen patriarchal and heteronormative systems of control. The movements for sexual and reproductive rights seek to reverse, or at least reduce, the hetero-patriarchal character of the legal system. One side of this policy seeks to reverse the criminalization of behaviors and/or securing anti-discrimination legislation while the other side further aims to make alternative practices and sexual identities legal (Vaggione 2008).

In creating a discourse that condemns discrimination, inequality, and exclusion, the law has been used by feminist and sexual diversity movements. This redefinition coded under the title 'sexual and reproductive rights' promotes a different worldview regarding the relationship between the state and sexuality. With higher visibility since the mid-1990s, these rights have been present in national and international forums, meaning, in some cases, the weakening of rigid, hegemonic definitions of sexual practices and identities. Arguments based on nature, scientific knowledge and/or ethical-religious justifications – as the underlying principals used to construct legal regulations – have been criticized and alternative discourses on autonomy and sexual democracy have circulated.

The search for sexual and reproductive rights is accompanied, more or less directly, by a policy position on religion. In proposing an alternative link between the state and sexuality, movements for sexual and reproductive rights also open up the debate about religious influences on the law. It is not surprising then that the policy of the feminist and sexual diversity movements is to resist and confront the influence of religious hierarchy in the various branches of government. It is possible, at least analytically, to distinguish two types of strategies within these movements that politicize different facets of religious influence in contemporary societies: the defense of *laïcité* and the visibility of religious pluralism.

## In Defense of *Laïcité*

Political secularization is an incomplete process in most countries in the region (see Blancarte 2006; Da Costa 2006; Esquivel 2009; Mallimaci 2010; among others). In addition to the formal and material privileges of the Catholic Church, the hierarchy has direct influence on the enactment and application of law. In order to reveal these privileges and deepen the legal separation of the state from religion, the feminist and sexual diversity movements, in partnership with other sectors, have resumed the defense of *laïcité* as a form of resistance to Catholic power in Latin America. In a region where religion permeates various sources of power, including the judicial, legislative, and executive branches of government, the gravitation towards *laïcité* is just as much a theoretical or analytical framework as it is a political strategy.

It is possible to observe a strengthening in the region, or even a return, to studies and political campaigns on *laïcité*.<sup>13</sup> While the issue has always been

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<sup>13</sup> For some English articles on this topic, see contributions in Vaggione and Morán Faúndes (2017).

relevant, the growing legitimacy of sexual and reproductive rights has intensified its importance and broaden different areas of investigation. Thus, sexuality provides a relevant analytical lens to rethink the main tenets of *laïcité*. In this sense, feminist and sexual diversity movements were able to include the regulations of the sexed body at the center of the debate about incomplete separation and autonomy of the religious and politics. Sexuality that for decades was closeted in the private sphere (thus saturated by morality) was inscribed as a central political cleavage to understand and criticize the insufficient political secularization that characterized most Latin American countries.

By combining a series of campaigns, public statements, and policy proposals, these movements confront the political influence of religion and thus allow for the construction of law with (more) autonomy from Catholic standpoint. The use of *Laïcité* as a strategy has made visible the impact of catholic morality on lawmaking processes opening up a political space to increase the disentanglement of religious from the legal system. Gradually, *laïcité* (or the lack thereof) is being considered from the perspective of the women's rights and sexual diversity movements. What until relatively recently was outside of the realm of public politics has become the analytical and policy focus utilized to discuss the incomplete autonomy between religion and politics in the region.

## Politicization of Religious Pluralism

Feminist and sexual diversity movements use another strategy to confront the catholic influences on secular law: the politicization of pluralism that characterizes contemporary forms of religious identification. Faced with the continued presence of such beliefs, these movements have incorporated religious pluralism as part of their campaigns and public positions. As indicated by various studies, the ways in which people identify with religion are plural and diverse. Characterized by fragmentation, syncretism, and mobility of beliefs, Catholicism, for example, enjoys a diversity of beliefs that characterizes other religious traditions as well. In this context, it is possible to identify a larger compatibility between religious influences and the acceptance of sexual and reproductive rights (see for example Dides et al. 2011; Mallimaci 2013; Rabbia 2014). For example, different analyses consider the ways in which religious beliefs allow a favorable view of rights for same-sex couples or the decriminalization of abortion.

One of the most notable examples of pluralistic politicization in the region is the non-governmental organization Catholics for the Right to Choose (*Católicas por el Derecho a Decidir*), which has had a significant role in the feminist movement in at least ten Latin American countries. Besides reclaiming the various ways to be Catholic, these organizations advocate a more inclusive Church and the recognition of sexual and reproductive rights with special emphasis on the legalization of abortion. With this purpose, they conduct campaigns that combat the idea that Catholicism is a homogeneous religion fundamentally opposed to sexual freedom and reproductive autonomy. To that end, they employ different theological arguments favoring sexual diversity and pluralism within the Catholic framework, or publicize public opinion surveys that reveal

many self-identified Catholics as supporters of sexual and reproductive rights (Vaggione 2007). These organizations publish a regional journal, *Revista Conciencia*, while also circulating videos and brochures, organizing workshops and courses, and conducting various other campaigns. The common goal of these interventions is to present Catholicism as a diverse and pluralistic tradition, even as the Church hierarchy resists all legal changes connecting to sexual and reproductive rights.

The politicization of religious pluralism can also be observed when rights related to sexual diversity are being discussed. During debates on the recognition of the right to same-sex marriage, strategies to confront the power of the Catholic hierarchy have also come from within the religion itself. In Argentina, for example, religious beliefs were mobilized as a strategy in favor of marriage for same-sex couples (Vaggione and Jones 2015). Since its inception, the Argentine Federation of Lesbians, Gays, Bisexuals, and Trans (FALGBT) has established a Ministry of Religious Diversity to integrate sexual diversity within multiple religious discourses. A similar situation can be found in different countries across the region where religious leaders and believers are either part of the sexual diversity movement and/or support different sexual rights.

The politicization of religious pluralism allows different sectors of society, both civil and political, to support sexual and reproductive rights because of their religious beliefs and not in spite of them. Thus, various politicians and lawmakers can potentially favor legal reforms that support sexual and reproductive rights based on their religious identification. While there is no scholarship that has investigated this phenomenon systematically in the region, during the debate over gay marriage in Argentina Parliament those legislators who publicly identified as Catholic did so in order to support 'gay marriage' (Vaggione 2011). Although the liberal democratic model emphasizes the distinction and autonomy of religious beliefs – considering such beliefs a private issue – this dichotomization becomes unstable, or at the very least, rather uncertain, in legal decisions related to the sexual realm. Instead of intensifying this gap, this strategy of engaging religious pluralism makes links between religious identities and the arguments in favor of legal reform, which include protections for sexual and reproductive rights, more visible.

The use of *laïcité* and religious pluralism as strategies emphasize how multifaceted the connections are between law and religion within the feminist and sexual diversity movements. On the one hand, the defense of *laïcité* allows these movements to destabilize certain naturalized boundaries between the religious and the secular regarding regulation of sexuality. In this sense, what was protected by law as part of the culture or of secular morality is understood now as remnants of the Catholic tradition. On the other hand, the politicization of religious pluralism offers an alternative model of agency to citizens and lawmakers. Without ignoring the risks of appealing to religious discourse, such as strengthen reductionist definition of sexuality or the symbolic power of the bible, this strategy allows to support diversity and sexual freedom from a believer standpoint.<sup>14</sup> Resisting religious oppression by exiting religion is not

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<sup>14</sup> Jakobsen and Ann Pellegrini call this risk the temptation to play the 'Bible Game' (2003: 89). I want to thank one anonymous reviewer for raising this point.

the only option; some activists and believers support sexual and reproductive rights from within their own belief system.

## Policies of Conservative Catholic Activism

The opposite end of polarized contemporary sexual politics consists of a network of religious and secular actors who actively advocate for a moral and legal order defined exclusively by reproduction and heterosexual marriage. While acknowledging the growing importance of conservative Evangelical activism, the Catholic Church leads and shapes the opposition to the movement for sexual and reproductive rights in most of Latin America. Though long-standing, the influence of the Catholic hierarchy has been renovating itself to adapt to different contexts and moments. While these adaptations are mostly designed by and implemented from the Vatican – due to the pyramidal structure of this institution – they have a direct impact on the countries of the region.

Contemporary forms of intervention by the Catholic Church in politics and law are the result of two processes of institutional change and adaptation. The first, generally considered the Church's entrance to modernity – albeit with certain limits – occurred in the mid-1960s. Despite vagaries and contradictions, the Second Vatican Council (1962–1965) began a process of *aggiornamento* (updating) in which it renounced its claim as the only universal church, accepted religious freedom (*Dignitatis Humanae* 1965), and affirmed the independence and autonomy of religion and politics (Pope Paul VI 1965). Decades after Vatican II, the Catholic hierarchy even recognized the importance of a 'healthy secularism' and of *laïcité* as different from an aggressive version with anti-religious standpoints (Benedict XVI 2008).

This adaptation does not mean that the Church renounced its participation in public debates and, particularly, in lawmaking processes. On the contrary, the law is a priority because, from the Vatican's perspective, 'civil laws are structuring principles of man's life in society, for good or for ill. [They] play a very important and sometimes decisive role in influencing patterns of thought and behavior' (Congregation for the Doctrine of the Faith 2003). As Benedict XVI affirmed, justice is where 'politics and faith meet' and that the aim of Catholic social doctrine is 'is simply to help purify reason and to contribute, here and now, to the acknowledgment and attainment of what is just' (Benedict XVI 2005). In various documents, from Vatican II onward, the Catholic Church reaffirms that when states fail to respect the 'objective moral order,' the Church and its members should oppose secular laws in various ways. Although Christians should recognize the existence of different viewpoints, they are called to reject 'a conception of pluralism that reflects moral relativism' because democracy 'must be based on the true and solid foundation of non-negotiable ethical principles, which are the underpinning of life in society' (Congregation for the Doctrine of the Faith 2002).

The other process connects to the rigid conception of sexual order that the Catholic Church has sustained along the 20th century in spite of ethical, legal and cultural changes. To understand the policies of the Catholic Church in the region, another component is the centrality of sexuality in the defense of the 'objective moral order.' The changes in sexual identities and practices and

the impact of the feminist and sexual diversity movements, in their quest to legitimize their demands, intensify the rigidity of the Catholic Church's public stance. In line with the Vatican, the Church hierarchy in Latin America began to adapt discourses and strategies to combat the advancement and growing recognition of sexual and reproductive rights. These rights have generated a process of reactive politicization in which various documents and instructions from the Vatican are produced in order to resist (or reverse) their validity (Vaggione 2005).

Though the Church has maintained a rigid conception of sexual morality, it has changed its public defense. This policy shift reached a turning point in the mid-1990s when, in reaction to the international advancement of feminism and of the women's movement at UN Conferences, the Vatican intensified its role as guardian of sexual morality in defense of the 'culture of life,' which it considered threatened by the 'contraceptive mentality' (John Paul II 1995). The Church interprets sexual and reproductive rights – although never directly named as such – as a 'tragic caricature of legality.' It notes that 'no circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church' (John Paul II 1995).

These shifts and mutations in the Church's public interventions include two strategies regarding the impact of prosecution and the application of the law in Latin America: growing secular arguments in opposition to sexual and reproductive rights and a displacement from religious leaders into a growing pro-life/pro-family movement.

## Intensifying Secular Arguments

As one of its key strategies, the Catholic Church has intensified the use of secular arguments and discourse in opposition to the agenda of the feminist and sexual diversity movements. From the Vatican, it summons intellectuals and academics to assist in defending the culture of life, calling on them 'to be present and active in the leading centers where culture is formed, in schools and universities, in places of scientific and technological research, of artistic creativity and of the study of man' (John Paul II 1995). Upon its creation in 1995, the Pontifical Academy for Life added the following objectives: 'to study and to provide information and training about the principal problems of law and biomedicine pertaining to the promotion and protection of life, especially in the direct relationship they have with Christian morality and the directives of the Church's Magisterium' (John Paul II 1994).

This shift can be seen in the various arenas where Catholic activism has interests and, of course, Latin America is no exception. Across the region, official Church documents defend Church positions and oppose sexual and reproductive rights with biological, psychological, human rights and bioethical arguments, among others (see Lemaitre 2012; Morán Faúndes et al. 2012; Mujica 2007; Peñas Defago 2010; Vaggione 2005). Of course, justifications based on the Bible or official Church teachings continue to circulate, but their influence in public debate is reduced in comparison to 'secular' arguments. For example, on the issue of abortion, catholic activists employ genetic explanations about the beginning of life or technological images that humanize the fetus, just as

research investigations inform women of the psychological damage of a terminated pregnancy. Meanwhile, the refusal to recognize rights of same-sex couples is supported through research claiming that the absence of sexual bipolarity creates obstacles for the normal development of children (Morán Faundes et al. 2012). Some Catholic universities in the region generate and/or circulate these kinds of arguments, supplementing the positions of religious institutions.

This shift to secular arguments aims to reinforce the defense of an imbricated model between law and religion. Instead of defending a (particular) religious standpoint, the conservative catholic activism defends a (universal) morality by adopting scientific (based on 'nature') arguments. This model, inherited from a Thomist tradition previously exposed, takes new forms and adaptations in the context of contemporary sexual politics. This does not mean the abandonment or suppression of religious arguments but the tendency to use them less during lawmaking debates and more in order in order to mobilize society as considered next.

## Pro-Life/Pro-Family Movement

The other strategy of conservative catholic activism is to call citizen, politicians and lawmakers to defend the 'culture of life' against 'gender ideology' (Vaggione 2017). Vatican documents call on lawmakers to express total opposition to the decriminalization of abortion and, in any case, support proposals aimed at limiting the harm done by such a law, diminishing its negative consequences at the level of culture and public morality (John Paul II 1995). With respect to sexual diversity, the Church holds that cases where people are expressly excluded for their sexual orientation are not 'unjust discrimination' (Congregation for the Doctrine of the Faith 2003). It also contends that recognizing their rights 'would mean not only the approval of deviant behavior, with the consequence of making it a model in present-day society, but would also obscure basic values which belong to the common inheritance of humanity' (Congregation for the Doctrine of the Faith 2003).

The Vatican also calls for faithful citizens to play an active role: 'a general mobilization of consciences and a united ethical effort to activate a great campaign in support of life. All together, we must build a new culture of life' (John Paul II). This public call to action connects with one of the main strategies promoted by the Catholic Church: since the mid-1990s, the Church has organized a series of periodic meetings under the name World Meeting of Families, conceived as a global space for the articulation of an agenda against sexual and reproductive rights.<sup>15</sup> Among other things, these meetings serve as spaces for stakeholders from different regions to express distinct discourses in defense of the family, which implies heterosexual marriage and reproductive sexuality.

These instructions are also replicated by the Catholic Church in countries across the region helping to consolidate a pro-life/pro-family movement. Formally or informally, publicly or secretly the Church's hierarchy calls lawmakers

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<sup>15</sup> Under the convocation of John Paul II, the first of these meetings took place in Rome in October 1994. Thereafter, every three years the meeting takes place in different countries.

to actively resist or revert sexual and reproductive rights. In accordance with the position of the Church, it is common for members of the legislature to carry out opposition through legal reforms. Frequently, lawmakers or members of political parties close to the Church form alliances of ideology or circumstance to spearhead opposition to the recognition of sexual and reproductive rights. As indicated by existing comparative research, the degree of closeness of political parties with the Catholic Church is a crucial indicator for why certain legal reforms favorable to women's rights and the sexual diversity movement are or are not possible (Díez 2015; Htun 2003).

In Latin America, this appeal has led to a process of NGO-ization within conservative Catholic activism (Vaggione 2005). Pro-life or pro-family non-governmental organizations (NGOs) are increasingly visible in the region. By employing a variety of strategies, these organizations actively try to prevent the effectuation of sexual and reproductive rights. One of the strategies is participation in processes of litigation and lobbying connected to the growing presence of Catholic lawyers mobilized against sexual and reproductive rights (Lemaitre 2012; Peñas Defago et al. 2014). These lawyers have intervened against the liberalization of various laws related to the criminalization of abortion, rights for same-sex couples, use of embryos for scientific research, and emergency hormonal contraception, among others. Three specific kinds of arguments have a greater presence in the region, and are repeated in different contexts to invalidate sexual and reproductive rights: the defense of conscientious objection, the right of parents to educate their children, and the need to protect religious freedom (Alegre 2009; Puga et al. 2013).

These strategies reflect the strong adaptability of the Church amidst different times and challenges. For example, the use of scientific arguments reflects the institution's adaptation to the conditions of liberal and laic democracy. Beyond the defense of a sexual reproductive order motivated by religious beliefs or objective moral truths, the public defense of these issues is achieved through secular arguments. The crux of the debate has moved from the religious to the secular, from the Bible to academic journals, and from priests to scientists. In turn, the instructions given to legislators and lawmakers allow for the articulation of a pro-life/pro-family activism powered by the institutional design of the Church. It oversees the powerful pyramidal structure that generates principled positions, discourses, and practices while maintaining a network of transnational, national, and subnational representatives that allows for the expression of major decisions.

## Conclusion

The debates surrounding sexual and reproductive rights provide a framework of intersectionality where it is possible to observe the complex constructions of, and tensions between, sexuality, law, and religion. The discussions surrounding universal access to contraceptives, the rights of same-sex couples, gender identity, and abortion interrogate the interconnections between religion and law. In particular, these debates question the relatively stable and naturalized articulation between law and religion regarding sexual order in the region. The influence of the Catholic Church on the culture and politics of Latin America

has produced a process of imbrication between legal regulations and catholic morality. More than autonomy and separation, as postulated by most theories of secularization, secular law tends to be imbricated with the Catholic doctrine, producing its own dynamics. Of course, this is not the first time that such an overlap has been emphasized, but it is possible to conjecture that the political influence of the feminist and sexual diversity movements bring greater visibility, while ramping up criticism of this relationship to a completely new level.

Through analysis of the main strategies used by competing sectors, this article identifies some of the shifts and re-articulations between law and religion as part of contemporary sexual politics. On the one hand, the feminist and sexual diversity movements have employed a complex strategy when confronting religious influence on law. In coordination with various sectors, these movements have energized *laïcité* as a political discourse to defend a position that limits religious influence in the enactment and enforcement of law. However, their appropriation of *laïcité* discourse does redefine the very frontiers between the religious and the secular. The politics of these movements allow for criticism of religious heritage imbedded in law and the questioning of what is 'natural' and 'objective.' These movements not only enforced the need for more autonomy between the legal and the religious but they also redefined what religion is by labelling as Catholic heritage what had been naturalized as culture or secular morality. Another strategy is to politicize the existence of religious actors (leaders and believers) that favor sexual and reproductive diversity. The politicization of religious pluralism opens up the possibility that citizens, state officials, and legislators may support legal reforms because of (and not in spite of) their religious beliefs. This strategy interrupts the construction of religious beliefs as antithetical to progressive sexual politics and made public (so visible) the existence of religious actors and arguments in favor of sexual diversity and freedom. In a region where catholic influences tend to be conflated with the culture, to politicize Catholicism as plural not only strengthen the possibilities of critical standpoints to religious hierarchy and official interpretations but also visibilize this tradition as complex, heterogeneous and adaptable.

On the other hand, the Catholic Church also enlists distinct strategies in response to contemporary sexual politics aiming to impact the lawmaking processes. In line with the defense of natural law as an expression of a moral order, the Catholic Church appeals to genetics, biology, and psychology, as arguments for the criminalization of abortion or the rejection of rights for same-sex couples, among other sexual and reproductive rights. In addition, the Vatican calls on legislators, state officials, and lawyers to defend a moral order that is conceptualized as a 'universal' common good and goes beyond particular values across diverse communities. Far from being a remnant of the past, these strategies are emerging as a new conservative policy that falls within the main parameters of liberal democracy. Without ignoring the rigidity of an agenda that defends an objective, universal, and unchanging moral sexual, these mechanisms and strategies tend to refine what religion is (and is not) when aiming to impact the legal arena. In this sense, conservative catholic activism is producing innovative, though still imbricated, articulations between law and religion.

Contemporary sexual politics highlight different paths in the (dis) articulations between religion and law. While acknowledging the distinction between the religious and the secular as an important part of modern law, it is also necessary to consider alternative analytical and political frameworks to understand both

the tensions between them and their complex mutual imbrications. The mobilization for and against sexual and reproductive rights is also accompanied by different understandings of the roles of religion in lawmaking processes. It does not only debate how to regulate the sexed body but also how to understand, even to trace, the borders and frontiers between the religious and the legal.

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