Morality and Contentious Politics in Latin America: Abortion and LGBT Rights in Argentina and Mexico

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MORALITY AND CONTENTIOUS POLITICS IN LATIN AMERICA: ABORTION AND LGBT RIGHTS IN ARGENTINA AND MEXICO

By

Ana P. Morgenstern

A DISSERTATION

Submitted to the Faculty of the University of Miami in partial fulfillment of the requirements for the degree of Doctor of Philosophy

Coral Gables, Florida

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MORALITY AND CONTENTIOUS POLITICS IN LATIN AMERICA: ABORTION AND LGBT RIGHTS IN ARGENTINA AND MEXICO

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This study analyzes the factors that have facilitated or hindered liberalization of abortion and same-sex marriage in Argentina and Mexico. In particular, this project will examine the argument that differences in mobilization strategies, available resources, contrasts in framing and patterns of alliances in the political system have played fundamental roles in shaping divergent policy outcomes on these controversial social issues. Against the backdrop of democratization, changes in institutional configurations, and the rising acceptance of sexuality in the context of universal human rights, these policy issues are subject to the contingencies of contentious politics. The argument is twofold: First, international norm diffusion through transnational advocacy networks has had an important impact on the domestic transformation of gender policies (Finnemore and Sikkink, 1998; Keck and Sikkink, 1998; Risse and Sikkink, 1999; Risse and Ropp, 1999; Petchesky, 2003; Kollman, 2009). Second, simultaneous domestic mobilizations, which may claim legitimacy from international norms, are constrained by domestic institutions and the legal environment and their strategies for navigating these constraints may yield liberalization if effective alliances are forged to take advantage of open or moderately open political opportunity structures. In short, the argument departs from the premise that “social movements, organizations, and legal systems are clearly
interdependent in a myriad of ways” (Edelman, Leachman and McAdam, 2010: 668). Based upon this perspective, this study is situated within the growing literature of policymaking analysis of LGBT rights and women’s rights. Indeed, this study finds that the articulation of domestic and international contention has created new avenues for demands that were previously unthinkable. Argentina and Mexico show that because of globalization domestic structures are more porous and prone to claims through collective action. In addition, there is a “growing connection between internal contention and international conflict” (Tarrow, 2005: 212) that leads to the necessity of looking at the processes and the mechanisms by which transnational activists are able to act domestically.
Acknowledgements

The research herein is the product of many hours of work where I have incurred in many debts. I have received help and support from a wide range of people, as this project entailed intellectual as well as emotional resources. First, I would like to thank the direction and advice provided by my dissertation committee. I am extremely grateful to my advisor, mentor and Chair of this dissertation Dr. Bill Smith, who was patient enough to read the many drafts of these pages and provided me with excellent advice and mentorship throughout. His generosity with time and feedback kept me going. Since the early phases of the dissertation process our many conversations and meetings gave me invaluable insight into the writing process and gave me vital advice that I shall carry with me long after this project. I also want to express my gratitude to Dr. Bagley, whose sharp criticism has been on point and has allowed me to push myself. His guidance during all the stages of my graduate education at the University of Miami has no doubt influenced me in a positive way. In addition, I am thankful to Dr. Laura Gomez-Mera from whom I have learned a great deal about research design and organization. Her many interventions and influence make a big part of this work, always delivered through kind words. I am continually inspired by her example. Finally, I would like to thank Dr. Manuela Picq with whom I had great exchanges and conversations that helped me shape the ideas I wanted to convey in a clearer way. Her in-depth analysis made this research a more complete work.

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In closing, I would also like to thank the dissertation writing group (DWG) led by April Mann and Anna Stoute, who each week helped me renew my commitment to this project. My colleague in the DWG, Roxane, who is truly an amazing person; her feedback helped me and this project tremendously.
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<tr>
<td>CEDAW</td>
<td>Convention on All Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CLADEM</td>
<td>Latin American and Caribbean Committee for the Defense of the Rights of Women</td>
</tr>
<tr>
<td>FELGBT</td>
<td>Spanish Federation of Gay, Lesbian, Bisexual and Transgender Organizations</td>
</tr>
<tr>
<td>FCP</td>
<td>Feminist Comparative Policymaking</td>
</tr>
<tr>
<td>IPCD</td>
<td>International Conference on Population and Development (Cairo)</td>
</tr>
<tr>
<td>ILGA</td>
<td>International Lesbian and Gay Association</td>
</tr>
<tr>
<td>IGO</td>
<td>International Governmental Institution</td>
</tr>
<tr>
<td>IGLHRC</td>
<td>International Gay and Lesbian Human Rights Commission</td>
</tr>
<tr>
<td>IHCR</td>
<td>Inter-American Commission of Human Rights</td>
</tr>
<tr>
<td>NGO</td>
<td>Nongovernmental Organization</td>
</tr>
<tr>
<td>POS</td>
<td>Political Opportunity Structure</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCROC</td>
<td>Convention on the Rights of the Child</td>
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<td>WHO</td>
<td>World Health Organization</td>
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**Mexico**

Political Parties in Mexico

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<tr>
<td>PAN</td>
<td>National Action Party</td>
</tr>
<tr>
<td>PDS</td>
<td>Social Democratic Party</td>
</tr>
<tr>
<td>PMS</td>
<td>Mexican Socialist Party</td>
</tr>
<tr>
<td>PRD</td>
<td>Party of the Democratic Revolution</td>
</tr>
<tr>
<td>PRI</td>
<td>Institutional Revolutionary Party</td>
</tr>
<tr>
<td>PSUM</td>
<td>United Socialist Party of Mexico</td>
</tr>
<tr>
<td>PT</td>
<td>Labor Party</td>
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<tr>
<td>PVEM</td>
<td>Green Ecological Party of Mexico</td>
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Other Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ALDF</td>
<td>Federal District Legislative Assembly</td>
</tr>
<tr>
<td>CDD</td>
<td>Catholic Women for the Right to Choose</td>
</tr>
<tr>
<td>CNDH</td>
<td>National Human Rights Commission</td>
</tr>
<tr>
<td>CONAPRED</td>
<td>National Council for the Prevention of Discrimination</td>
</tr>
<tr>
<td>CONAPO</td>
<td>National Population Council</td>
</tr>
<tr>
<td>CLHARI</td>
<td>Rosario Ibarra Lesbian and Homosexual Support Committee</td>
</tr>
<tr>
<td>FHAR</td>
<td>Homosexual Revolutionary Action Front</td>
</tr>
<tr>
<td>FLH</td>
<td>Front of Homosexual Liberation</td>
</tr>
<tr>
<td>FNALIDM</td>
<td>National Front for the Liberation and Rights of Women</td>
</tr>
<tr>
<td>GIRE</td>
<td>Group of Information on Elective Reproduction</td>
</tr>
<tr>
<td>UAM</td>
<td>Autonomous Mexican University</td>
</tr>
<tr>
<td>UNAM</td>
<td>National Mexican Autonomous University</td>
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<tr>
<td>SUDAM</td>
<td>United Society for the Right to Marry Among Same-Sex Couples</td>
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ARGENTINA

Political Parties in Argentina
CC       Civic Coalition
CC-ARI   Civic Coalition – ARI
PJ       Justicialist Party
PS       Socialist Party
PRO      Republican Proposal
FREPASO  Front for Solidarity in the Country
UCR      Radical Civic Union

Other Acronyms
CHA      Homosexual Community of Argentina
CONADEP National Commission about the Forced Disappearance of People
ELA      Latin American Team for Gender Justice
FHL      Front of Homosexual Liberation
FALGBT   Argentine Foundation of Lesbian, Gay, Bisexual and Transgender Organizations
INADI    National Institute against Discrimination Xenophobia and Racism
INDEC    National Institute of Statistics and Census
Chapter 1 – Introduction: The Puzzle of Moral Policy in Highly Contentious Settings

In late December 2009, Marcelo Ebrard, the governor of Mexico City, signed into law a same-sex marriage bill for that city, making it the first Latin American city to provide legally a “gay marriage.” Similarly, during the summer of 2010, Argentina became the first Latin American country to legalize same-sex marriage at the federal level. These major advances stand in contrast to the slow-paced liberalization of female reproductive rights. On April 2007, the Mexico City Legislative Assembly passed legislation on abortion that would decriminalize abortion on demand; the years following this landmark legislation would see the tightening of laws in most of the other states in Mexico. However, in Argentina, several attempts to decriminalize abortion since the transition to democracy have been met with stiff resistance. These two policy issues same-sex marriage as well as female reproductive rights forms the core of this research project. A comparative analysis of these two issues is illuminating because they face the same political opposition and because they have crystallized fundamental differences in the way democratizing states respond to social demands of sexual and reproductive rights. The analysis of policymaking of these issues offers insights to the fluid political environment of democratizing societies in Argentina and Mexico.

The mixed record of success in terms of policy liberalization on issues concerning the regulation of sexuality stands out as a puzzling trend in a region usually depicted as socially conservative. Why has legal acceptance of same-sex marriage occurred at such a relatively fast pace, while the extension of female reproductive rights lag behind? Why do these issues occupy such a central place of importance in the democratic agenda? What are the factors that facilitate or impede policy liberalization on matters of sexuality?
This study analyzes the factors that have facilitated or hindered liberalization. In particular, this project will examine the argument that differences in mobilization strategies, available resources, contrasts in framing and patterns of alliances in the political system have played fundamental roles in shaping divergent policy outcomes on social issues regarding the state regulation of sexuality. Against the backdrop of democratization, changes in institutional configurations and the rising acceptance of sexuality in the context of universal human rights, these policy issues are subject to the contingencies of contentious politics.

The argument there is twofold: first, international norm diffusion through transnational advocacy networks has had an important impact on the domestic transformation of gender policies (Finnemore and Sikkink, 1998; Keck and Sikkink, 1998; Risse and Sikkink, 1999; Risse and Ropp, 1999; Petchesky, 2003; Kollman, 2007; 2009). Second, simultaneous domestic mobilizations, which may claim legitimacy from international norms, are constrained by domestic institutions and the legal environment and their strategies for navigating these constraints may yield liberalization if effective alliances are forged to take advantage of open or moderately open political opportunity structures (POS). In short, the argument departs from the premise that “social movements, organizations, and legal systems are clearly interdependent in a myriad of ways” (Edelman, Leachman and McAdam, 2010: 668). Based upon this perspective, this study is situated within the growing literature of policymaking analysis of lesbian, gay, bisexual and transgender (LGBT) rights and women’s rights.

More specifically, the research focuses on three different clusters of factors that, combined in different and shifting configurations, may lead to political liberalization,
policy changes, and the extension of citizenship rights. First, transnational advocacy networks may bring to bear normative pressure to put certain transgressive issues already present in international politics on the domestic agenda, thereby opening the door for norm creation and norm diffusion at the domestic level (Keck and Sikkink, 1998; Risse and Sikkink, 1999; Risse and Ropp, 1999; Risse, 2000). At the domestic level, the organized counter pressure of social movements is crucial to issue framing and agenda setting and for lobbying for the extension of rights as they are debated in the public arena (Banaszak, 1996, 2010; Costain, 1992; Stetson and McBride, 1995, 2000; McBride and Mazur, 2010). Another related strategy of mobilization operates through the judicial system (Wilson, 2006; Tarrow, 1996; Andersen, 2006). Although as we will see in Chapters 4 and 5 transnational social movements have been important in the policy process of same-sex marriage mostly but also of reproductive rights, this study does not suggest that the causal significance of international factors outweighs domestic factors or that transnational movements have occurred prior to domestic demands. Rather, transnational social movements are taken into account together with domestic explanations because they are a crucial part of the policy process. Transnational influences are not limited to the realm of ideas, but they provided brokerage influences and material resources to the campaigns in favor of same-sex marriage (see Chapter 4), and through institutional channels in the case of reproductive rights (see Chapter 5).

Second, the role of institutional settings, roughly characterized as political opportunity structures, is central to this analysis. At different points during the policy process, institutional barriers may present higher (or lower) restrictions, which thus affect the strategies and objectives of social movements. Third, a wide variety political actors
operate as “insiders” who are “incorporated officially within the specific functions of the state” (Banaszak, 2010: 12). Each of these clusters will be examined in more detail in Chapter 2 and in the case studies presented in Chapters 4 and 5. As we shall see, it is the intersection of international and domestic actors that shape the POS of each of these policy issues.

As suggested above, the new forms of political action such as women’s movements and LGBT rights mobilizations should be analyzed against the backdrop of broader processes of democratization and the extension of citizenship rights to previously excluded or marginalized subordinate sectors of Latin American society. New sources of contention are increasingly part of identity politics and, while distributive politics still provides a vibrant area for mobilizations, more movements are part of the public sphere than ever before, including non-traditional demands. With the backdrop of increased social inequality throughout the 1990s because of neoliberal reforms, the political sphere was open to challenges to political incumbents. In this context of transformation, why have countries categorized as socially conservative experienced such a surprising and rapid change in policymaking regarding reproductive and LGBT rights issues? This puzzling trend is perhaps even more perplexing when one realizes that changes on contentious issues of reproductive and sexual rights have been so uneven and disjunctive (Avritzer, 2002; Banaszak, 2010; Cohen and Arato, 1992; Franceschet, 2010; Htun, 2002; 2003; Waylen, 1994; 2007; Yashar, 2005).

Contextual evidence suggests that the kinds of rights under contention are illustrative of a broader region-wide transformation, which includes the penetration of liberalism not only in the economy but also in virtually all orders of social life. Activism
on sexuality is embedded on a rights-based discourse, which offers “the best available conceptual architecture for furthering the struggle to build a world in which sexual diversity and freedoms can be protected and expanded” (Correa, Petchesky, and Parker, 2008: 10). This discourse emphasizes the changing role of citizenship in a democratizing society, and the turn towards liberal individualism (Berkovitch, 1999; Cohen, 2002; Turner, 2008).

The challenge of gendering policy issues is central to this research project. This study seeks to explore these new policy issues through two in-depth case studies: Mexico and Argentina. The expectation is that a cross-national, cross-issue comparison will allow us to understand better which specific configuration of actors –once mobilization has occurred– leads to changes in policy. The assumption is that issues make it into the public sphere when they are defined in ways that “problematize” a question in a way that call for government action through new policy initiatives. In his seminal work, E. E. Schattschneider (1960) reminds us that policy-making is about a conflict of meanings, changing its scope alters conflict itself. While the contentious politics of LGBT rights and sexual reproductive rights may not be necessary for the development of democratic regimes, inquiry in these areas can tell us much about how these democracies operate and are still being shaped, indeed transformed, by contentious politics. In this regard, probing the puzzle of policy formation of sexual and reproductive rights, one is necessarily propelled beyond “normal” or mainstream social science inquiry in order to address normative concerns posed by recent work by queer and feminist scholars (Blofield, 2006; Currah, 2000; Corrales and Pecheny, 2010; de la Dehesa, 2010; Haas, 2011; Htun, 2003;
Why Compare Same-Sex Marriage and Female Reproductive Rights?

Female reproductive rights and lesbian, gay, bisexual and transgender (LGBT) rights have generally been studied separately. My contention, however, is that the subtleties of the politics shaping the policies informing each issue can be best understood if they are examined simultaneously in the context of careful comparative analysis. To begin with, activists promoting women’s and gay rights face similar opponents: the Catholic Church and the Christian Right, both of which see these demands as a threat to the preferred social organization—the so called “natural family.” Indeed, the Vatican’s agenda in defense of the “natural family” has become the most salient issue since Pope John Paul II brought it to the forefront in the 1980s, and has continued to the current papacy of Pope Benedict XVII.

Probing this connection further, Buss and Herman argue that “homosexuality creeps into reproductive rights in two ways. The first is through the language of ‘sexual rights’ and references to families, rather than the family, and the second is through the use of the term ‘gender’ and its presumed denial of women’s biological particularity” (2002: 64). Accordingly, both issues of sexual and reproductive rights face the same opposition from the Catholic Church, and at a global level of the Christian Right.1

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1 The term “Christian Right” is used to characterize a group of actors in international politics that ground their actions on theology (Buss and Herman, 2001; Clifford, 2012). It encompasses non-Christian faiths of legitimate authenticity and value such as Muslim traditions, Christian denominations and of course, the Catholic Church, which is the most important actor when analyzing Latin America. Chapter 3 presents in further detail the actions of the Christian Right at the international level. In addition, Clifford bob has termed this group of conservative transnational actors the Baptist-Burqa network (2012).
Furthermore, both advocates and opponents of women’s rights and LGBT rights understand that these rights go to the core of the state’s regulation of the social organization of sexuality. In this regard, gender, heterosexuality and homosexuality are constructed across cultural, institutional, and political-economic domains “while also working to uncover the multiplier effects of race and socioeconomic class on heterosexual [and homosexual] subjectivity” (Ward and Schneider, 2009). Both issues are about state’s regulation of sexuality or “private lives.” In both issues, a total ban implies that sexuality is subsumed within procreation matters and is more in line with religious views of private life.

On the other hand, complete liberalization would suggest that sexuality by itself has a value that does not need to be attached to procreation. Both these issues, abortion and LGBT rights are regulated through penal codes in all states, which criminalize individuals. In both cases, “penal regulations forbade the transgressions, upholding collective boundaries and the supremacy of procreative sexuality” (Frank, Boutcher, and Camp, 2009: 137). Both issues challenge heteronormative laws, and face the same opposition from religious and conservative groups. There are signs in the region that point to the continuation of contentious politics in this matter and perhaps uneven developments.

My objective is to address these difficult issues in order to contribute to the comparative policy literature on feminism and gender issues, a literature characterized by a lack of systematic cross-national analysis on feminist policy formation (Mazur, 2002: 20). In this regard, there is a dearth of studies on LGBT rights among scholars of democracy and democratization in Latin America. This is a serious omission, for as
Corrales (2010: 2) observes, “studying LGBT politics offers different and sometimes new insights about the democratization process – how it advances, stagnates, or reverses.” Moreover, as Beer (2009) points out, the literature on inequality and democracy largely ignores gender equality and the gender gray zones posed by LGBT rights, a serious oversight since equality is the foundation of modern democracy. Finally, although social scientists call attention to citizen demands of “full citizenship” (O’Donnell, 1996; Armony, 2004; Tulchin and Ruthberg, 2006; Levitsky, 2008), there is little research that includes sexuality in the definition of full citizenship. Accordingly, analyzing both abortion and LGBT rights will permit the inclusion of both gender concerns and the expansion of citizenship in the context of democratization in Latin America.

Consequently, even though political actors and scholars alike believe these issues are tightly linked, remarkably few studies within social science research make their connection clear. This dissertation will make the link explicit. In this regard, although there are increasing attempts to include women’s rights as part of measurements of democracy, LGBT rights are still a fairly new addition to studies of democracy or democratization, even of advanced democracies (Corrales and Pecheny, 2010; Kollman, 2009; Mucciaroni, 2008; Novkov, 2008; Pinnello, 2006; Smith, 2008). Moreover, because these two issues are about sexual politics and the social demands to liberalize sexual and reproductive rights. Therefore, there is an expectation that both will evolve in similar fashion, either toward a more conservative or a more liberal configuration of rights. However, this assumption has surprisingly little empirical support. In fact, there may be puzzling, and possibly contradictory tendencies, which require more in-depth research and will be the basis for case selection.
Finally, the politics of abortion and female reproductive rights highlight the new political terrain in which struggles take place. The way in which policy issues emerge, are framed and become part of the contested political landscape is changing as institutions change, and social actors are able to contest the status quo on new grounds. This study seeks to bridge institutional explanations with social movements, both literatures have remained separate. Also, the argument is in line with the need to take “our analysis down one level, from the regime to particular aspects of the exercise of citizenship and the linkages between citizens and their representatives and their governments” (Hagopian, 2007: 50). Consequently, analyzing both abortion and LGBT rights will permit the inclusion of both gender concerns and the expansion of citizenship in the context of developing democracies in Latin America.

At its core, abortion is a gender issue and it is part of a larger discussion on the role of social reproduction in a national context. Decriminalization of abortion laws breaks the tie between sex and reproduction, giving women choice. In terms of citizenship rights, this choice is important in creating an equal terrain of rights and responsibilities. The issue of citizenship becomes relevant in these transitional democracies since as O’Donnell argues, “citizenship never assumed a preponderant role in the forging of political identities” (1988: 9). Furthermore, in the context of democratization, feminists argue the legal status of abortion also speaks to the level of inclusion of women in the new regime and thus the quality of democracy (Garcia, 1994; Benítez Zenteno, 1994; Robles, 1994: 259-266; Kohen, 2009).
Comparing Mexico and Argentina

The genesis of this study came from the puzzling relationship between policy issues that seek to regulate sexuality in contemporary democracies. The choice of cases in this study came about after a review of a wide range of policies in female reproductive rights and LGBT rights in Latin America yielded surprising differences regarding how these issues have evolved (see Figure 1.1, Appendix II.1 and II.2). The advances on these issue areas in Latin America was striking, as democratic theory would suggest that developing economies should be more concerned with redistributive policies. Nonetheless, developments in the region suggest that the level of economic development previously associated with so-called post-material values may have been overly estimated.

A survey of the state of LGBT and reproductive rights in Latin America reveals that there exists substantial variation within and across issues. While most cases tend to either liberal practices on both issues or restrictive laws on both issues; Argentina and Mexico stand out as these countries present varying degrees of liberalization. Mexico, found on the upper left quadrant of Figure 1.1 below has a federal standard that although restrictive allows legal abortions in four cases: to save a woman’s life; when there is a danger of malformation; in cases of rape and illegal insemination; and in cases of rape of woman with a mental handicap. Most recently, the Supreme Court in Argentina ruled that abortion is valid in all cases of rape, but the ruling still faces challenges when it comes to implementation (see Chapter 5). The regulation of these issues along with the newly gained independence of the judicial system in Argentina and Mexico has opened the door to a new kind of activism that is now protesting through amparos as part of its repertoire of contention. While in the case of same-sex marriage and female reproductive rights the
courts have decided in a more liberal fashion (see Chapter 4 and 5), the judicialization of politics in Latin America remains a double-edged sword and sanguine conclusions about the role of the courts might be diminished by the high levels of impunity that are still experienced across most Latin American countries, including Argentina and Mexico (Sorj, 2007).

In addition, decriminalized abortion in Mexico City was later on challenged in the Supreme Court. It was subsequently ratified in August 2008. Mexico stands in contrast of Argentina, where the federal legal standard stipulates that abortion is only permitted in two cases: to save a woman’s life and in the case of rape of a mentally handicapped woman. Though in both cases there are sub-national variations, Figure 1.1 takes under consideration the federal standards only. In a different direction, there is the puzzling trend of liberalization of policy granting LGBT rights, in particular that of same-sex marriage. As stated earlier, Argentina has legalized same-sex marriage at the federal level, while in Mexico, a similar legislation was passed only for Mexico City but the Supreme Court upheld it and stated that the validity of these marriages would extend for all Mexican citizens. At the federal level, the only pro-LGBT rights legislation in Mexico includes an Anti-Discrimination Bill that was passed in 2005, and explicitly bans discrimination on the basis of sexual preference or sexual identity. This law provided a launching pad for policy issues that dealt explicitly with sexuality, since it passed during the Vicente Fox administration from the PAN, who was not in support of that bill. The bill created the agency Consejo Nacional para la Prevencion de la Discriminación (CONAPRED) but it gave it little independence from the executive branch.

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2 In the case of a mentally handicapped woman, Article 86 of the Penal Code stipulates a legal guardian must be present in order to carry out the procedure.
Figure 1.1 Abortion and LGBT Rights in Latin America

Source: Data compiled by author, see Appendix II.1 and II.2.

Figure 1.1 shows the variation of legal codes at the federal level in Latin American countries. The scale 1-8 was devised as a tool to get a sense of how liberal or conservative legislation is at the federal level as it currently stands. The higher the scale, the more liberal federal legislation would be. Upper left and lower right quadrant show those cases where these policy issues have moved in contrary fashion. Because these are the outliers, Argentina and Mexico were chosen, as they have similar institutional arrangements and similar sized economies. Panama was excluded as it would not be a fair comparison since institutional and size differences would not allow control, adding more
factors to the mix. Furthermore, once we take a closer look inside Argentina and Mexico, variations are even greater at the provincial or state-level, suggesting a highly contentious environment for policymaking.

As Ronald Inglehart argues, “Latin American societies have a distinctive character in global perspective. They emphasize traditional religious values more strongly than most other cultural zones, while also emphasizing the self-expression values linked with postindustrial societies far more strongly than other societies at comparable levels of economic development” (2009: 94). While there is significant variation with regard to conservatism, democratization processes, global trends and increasing pluralism present multiple challenges to the traditional values extolled by the Catholic hierarchy (Hagopian, 2009: ch. 1). Most citizens consider themselves Catholic, although the meaning of this identity has changed over time. The World Values Survey ranks the region as traditional, in a traditional-secular continuum.3 The traditional values dimension depicts societies that have a preference for traditional family values, reject abortion, euthanasia, and suicide (WVS, 2008). These preferences resonate when observing the policy process of female reproductive rights; however, they stand in contrast to recent developments in the area of same-sex marriage, which is a puzzling outcome.

The policy process on same-sex marriage has moved at a faster pace than the extension of female reproductive rights, which is not only puzzling but also a problematic trend. Mobilization around LGBT issues in Mexico and Argentina has expanded quite

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3 The World Values Survey offers these rankings based on public opinion surveys. While the objective here is not to evaluate public opinion on the matter, this ranking serves as a proxy for culture and general attitudes toward moral issues. According to the WVS mapping of preferences on moral issues based on public opinion, the whole region seems to have similar views on moral issues.
rapidly since political liberalization and democratization, but so too have women’s movements with also a long history of collective action. Interestingly, reform in some areas of LGBT rights has not met as much resistance as other issues related to sexual regulation. Demands for recognition of same-sex rights as an identity present a new challenge for Latin American democracies, and an interesting avenue for exploring democratic dynamics in transitional settings. As more groups demand self-expression, it is likely the LGBT community will increasingly mobilize to seek access to the political process and further demands. The traditional demands from the LGBT community include marriage, domestic partnership, recognition of gay families, employment rights and protection from violence, religious recognition, freedom of cultural expression, and access to political power (Kranz and Cusick, 2007). These demands show a clear intention to not only participate in society but also to construct a political identity recognized by the state and the legal system.

Studies that focus on the politics of LGBT rights in Latin America concede that some of the strategies employed by social movements involve linkages to women’s movements, yet they fail to compare the stunted policy process of female reproductive rights in the region (Bimbi, 2010; Brito, 2005; Corrales, 2010; Diez, 2010; De la Dehesa, 2010; Encarnación, 2011; Pecheny, 2010). This research seeks to make that connection as the separation is artificial, in practice, transnational advocates have advanced the notion that every person has a right to sexuality; it is a component of human rights and sexuality does not need to be tied to reproduction. This connection will be discussed further in Chapter 3. Furthermore, the problematic extends to the gendered context of policymaking “sexuality and reproduction are separate domains of human (and some non-human)
activity is as old as women’s aspirations to be defined as ‘citizens’ and not confined as procreators, and underlies campaigns for birth control in countries across the globe beginning in the mid-nineteenth century” (Correa, Petchesky and Parker, 2008: 175). While international norms, established in large measure through transnational advocacy, acknowledge that sexuality is an important part of life and as such subject to rights-based demands, the receiving domestic contexts in Mexico and Argentina show mixed results in adopting them and displaying norm-consistent behavior.

**Sexuality Studies in Social Science: A Valid Policy Issue Area?**

Although questions that deal with the state regulation of sexuality are often overlooked and at times discredited by social scientists, feminist approaches have made important contributions to the field, as have studies on women’s rights. In addition, contention on these policy issues is on the rise around the world, as Gary Mucciaroni notes, “sexuality and gender are fundamental aspects of human societies that reflect power relations and increasingly have become the object of public policy” (Mucciaroni, 2011: 17). This trend in politics is on the rise, and as value conflicts in society are not settled, morality will stay in the policy arena. Currently, ten countries have a comprehensive policy that permits same-sex marriage from places as varied as Netherlands (2000), Belgium (2003), Spain (2005), Canada (2005), South Africa (2006), Norway (2008), Sweden (2009), Portugal (May, 2010), Iceland (June, 2010), Argentina (July, 2010). Some of these countries are Catholic, some are not; some are developed and some less developed. Likewise, female

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4 In a recent survey of APSA membership, of which there were 2,215 respondents, Novkov and Barclay found that 41% of respondents said that the study of LGBT issues was “very appropriate,” and 35% responded it was “appropriate” (2010: 100). The study also points out that some of the respondents appear to have serious doubts about how to deal with the issue of sexuality in politics.
reproductive rights are in considerable flux around the world. The Center for Reproductive Rights reports that most women in Latin America and Africa face the toughest restrictions in terms of access to abortion and even contraception (Mapping the Trends, 2011). Finding ways to assess power relations that contribute or hamper liberalization in a systematic manner is the best way to analyze these changes in politics while also contributing to the field of comparative politics.

The issues under consideration, same-sex marriage and female reproductive rights, do not have a long history as a subject of study in the social sciences. However, as Paisley Currah contends, “sexuality is a high-stakes issue in contemporary electoral politics that is policed through legal codes and is the subject of policymaking” (2011: 13). The contentious nature of the issue makes it all the more interesting, and a valuable addition, in particular LGBT rights stand out as a fascinating area since it is surprising the fast paced liberalization in policymaking arenas of Latin America.

**Methods and Data**

This project employs a small-N analysis that, following Ragin, views the comparative method as a “qualitative comparison that allows examination of constellations, configurations and conjunctures. It is especially well-suited for addressing questions about outcomes resulting from multiple and conjunctural causes –where different conditions combine in different and sometimes contradictory ways to produce the same or similar outcomes” (1987: x). This methodological perspective offers the appropriate tools for examining why the policy process on same-sex marriage and reproductive rights in Argentina and Mexico has led to differing outcomes. The small-N approach, best
suited for qualitative research also allows the inclusion of the role of international norms in domestic policymaking and the tracing of domestic mobilizations tactics that gave way to unpredictable policy outcomes.

The qualitative approach in this case lends itself to an in-depth analysis of the conditions that are more conducive to liberalization. The complex interaction between social movements, transnational social movements and institutional openings in the political opportunity structure provide a nuanced explanation of why Argentina liberalized same-sex marriage at the federal level while Mexico did so only at the sub-national level; while liberalization of abortion occurred at the sub-national level in Mexico and at a moderate pace in Argentina. This study employs process tracing as it is the best alternative for evaluating the complex and fluid nature of political opportunity structures. As George and McKeown put it, “[t]he process-tracing approach attempts to uncover what stimuli the actors attend to; the decision process that makes use of these stimuli to arrive at decisions; the actual behavior that then occurs; the effect of various institutional arrangements on attention, processing, and behavior; and the effect of other variables of interest on attention, processing, and behavior” (1985: 35). Process-tracing is one of the best tools for within-case analysis of qualitative data. The method relies on description of trajectories of change and causation (Mahoney, 2010).

In other words, this analysis follows, with close attention, the sequences of factors leading to liberalization, from the transnational norm formation to mechanisms of domestic adoption, from norm diffusion to attribution of similarity, which operate in fluid domestic POS. As we seek to explain why there is liberalization on LGBT rights, while female reproductive rights remain as a pending legislation, the role of social movements
deserves close attention. Through a sequence of mechanisms that include navigating and at times shifting the policy environment, to lobbying or directly connecting with political parties, to creating alliances with policy entrepreneurs, process tracing offers a means for navigating the complex policymaking terrain in Mexico and Argentina.

This research draws from data obtained from fieldwork in Mexico and Argentina including interviews with activists. The interviews were semi-structured open-ended interviews, which is consistent with the qualitative approach in process tracing and allowed a more inclusive format to generate new data (Auberbach and Rockman, 2002). In addition, analysis of federal and sub-national civil codes in the case of same-sex marriage and penal codes as well as state-level constitutions in the case of reproductive rights was conducted. Appendix II.1 and II.2 present an overview of the federal legal codes used in figure 1.1. Appendix III.1 and III.2 present those legal codes at the subnational level, when there is variation between the federal and the sub-national standards. The variation occurred mostly in the issue of female reproductive rights in Mexico, there is a slight variation in Argentina that was also captured for the sake of comparison.

Furthermore, in order to analyze the norm formation stage at the international level this research examines some documents produced by international organizations or international bodies that specifically deal with reproductive rights or LGBT rights (see Chapter 3). Other primary sources such as news articles and relevant speeches were utilized. Legal documents emitted by the lower courts were selected on the basis of the

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5 These types of interviews give enough flexibility to tailor each interview for each individual, such as elite interviews would but they still conserve some elements in common to be able to direct the interview.
issue. Once legal decisions were cited or became part of the policy process itself, they were also included in the research.

It is therefore a qualitative analysis that starts by presenting the norm formation at the international level and then moves to the specific contexts of Mexico and Argentina at the domestic level.

**Organization of Chapters**

This project addresses two key questions: First, why are there varying degrees of liberalization in reproductive rights and same-sex marriage? Second, what are some of the strategies and tactics of social actors in engaging with the state in democratizing contexts? In order to answer these questions, Chapter 2 sets forth a theoretical framework for analysis. Explaining the variation in degrees of liberalization of same-sex marriage and female reproductive rights in Mexico and Argentina, a myriad of actors are involved. In order to study their insertion into the political process and weigh their influence, several strands of literature are consulted. First, the transnational advocacy groups have a long history in international relations (IR) theory, by posing the role of international norms in domestic policymaking (Keck and Sikkink: 1998, Tarrow, 2005; Risse and Sikkink, 1999; Smith, 1998; Risse, 2000; Simmons, 2009). In addition, the actors pushing for liberalization in the domestic setting and their tactics are also central protagonists. Consequently, consulting the literature on women’s rights and feminist policymaking helps to elucidate the relevant actors for these issue areas. In particular, the role of women’s movements, expanded from the social movements paradigm, which operates through a set of major constituting variables —opportunities, resources and
framing— merits attention. These characteristics vary among women’s movements and LGBT movements, but their strategies set the two issues apart.

In Chapter 3, we investigate the international and domestic conditions that contributed to the policymaking environment of abortion and same-sex marriage. At the international level, we examine the transnational work that led to norm formation of female reproductive rights and LGBT rights and their insertion into the human rights discourse via the United Nations (UN) system. By establishing how the international context has evolved and the insertion of sexuality into the international legal system and the human rights discourse, part of the process that has influenced domestic policymaking is elucidated. Because there is a degree of norm diffusion, this chapter establishes how the human rights framework has included the right to sexual difference and elective maternity.

In addition, this chapter establishes the antagonist discourse of liberalization opponents, mainly the Catholic Church but with allies in other conservative groups such as the Christian Right. In addition, Chapter 3 investigates the domestic institutional setting in both Mexico and Argentina. Social movements there must navigate a complex set of institutions and legal infrastructure that has a relatively recent history. The transition to democracy in Argentina dates back to 1983, while the 2000 election marks the shift from one-party hegemonic party rule to competitive elections. In addition, the simultaneous establishment in 1997 of both Mexico City and the City of Buenos Aires as autonomous districts significantly opened the political opportunity structure (POS) for activists. In particular, within the context of decentralization of these federal states, the newly empowered legislative arenas in Mexico City and the City of Buenos Aires
increased the points of entry to the policymaking process for social actors. These changes are discussed in further detail in this chapter.

Chapter 4 analyzes the policymaking process of same-sex marriage in Argentina, which led to full liberalization, and in Mexico, with partial liberalization concentrated in Mexico City. The starting point is a presentation of the transnational sources of influence, which show there is a degree of norm diffusion in both cases. Transnational influence goes even further in the case of Argentina, where norm entrepreneurs from Spain were crucial in the framing stages to sharing strategies that included engaging the courts. Similarly, mobilization in Mexico included a judicial strategy, but the role of policy entrepreneurs from political parties in the left turned out to carry weight as an explanatory factor.

In Chapter 5, the analysis focuses on the contentious politics of female reproductive rights. In Argentina, the analysis turns to the different strategies of women’s movements to frame the issue over time. The chapter analyzes the role of alliances with policy entrepreneurs such as female legislators, the role of women’s policy machineries, and the mobilization strategies within the courts system. In the case of Mexico, the liberalization of policy in Mexico City stands in contrast to the tightening of restrictions in other states instead of policy diffusion. The chapter makes the case that alliances sought by the women’s movement in Mexico City intersected with political competition, thereby making the issue not only contentious, but also an electoral issue.

Finally, Chapter 6 outlines the conclusions through a comparison across issues. Even though there are similarities in the way these two issues are normatively established at the international level as human rights, there are tensions in the nature of both issues
that could partly explain the way domestic legislation has varied across cases. In addition, the strategies from framing to lobbying and accessing the court system may indicate that the political opportunity structures across issues is also quite mutable. The process tracing in each of the empirical chapters reveals the different outcomes are partly a function of differences in mobilization strategies. In the case of LGBT rights it has been an advantage that the issue has gained international legitimacy, at the same time that POS began to open in both cases. This combination allowed mobilizations and transnational advocacy coalitions to be more effective at targeting and reaching liberalization of policy. On the other hand, the complex ebb and flow of female reproductive rights, from the international down to the domestic level, complicated the policy process of this issue. The actors presenting issue frames for liberalization are numerous. Constructing a unifying frame has been in part a hurdle, while counter-mobilization is consistent and targeted with a single unifying frame.
Chapter 2 Sexuality and Politics – A Framework for Analysis

The main purpose of this study is to analyze the policy-making processes of female reproductive rights and LGBT rights. In doing so, we first analyze how mobilized women and LGBT operate and attempt to influence the political process to further their objectives. The policy process is quite complex, with many points of entry, so a myriad of political factors can affect the ways in which movements are able to influence policymaking. Because the policy process is intensely dynamic, the study lends itself to analysis through either case studies or small-N analysis. Previously, those studying the impact of mobilization on policy issues that affect the status of women in Latin America have primarily conducted single case studies (Alvarez, 1990; Baldez, 2001; Franceschet, 2005; Haas, 2010), although some have analyzed these issues from a comparative perspective with a few cases (Blofield, 2006; Htun, 2003; Mazur, 2001; Stetson, 2002). This is a small-N analysis, which compares two issue areas that arouse intense reactions, because these policy outcomes have important implications for the most intimate aspects of the daily lives of millions of women and men.

The explanatory factors under consideration arise from recent advances in the literature of social movements (domestic and transnational), policymaking analysis, and feminist comparative policymaking relevant to the causes of liberalization of same-sex marriage or female reproductive rights under transitional settings. What are the configurations of political actors that enhance the likelihood of liberalization? To what extent do international norms on reproductive and LGBT rights, posited now as human rights, impact the domestic policymaking context of Argentina and Mexico? As we shall see, the extant literature posits that it is a configuration of forces rather than a single
cause that explains how social movement campaigns can succeed or fail in the policymaking arena.

Before interrogating the academic literature and hypotheses that will guide the analysis in the following chapters, it will be useful to examine briefly—and largely dismiss—a frequently invoked explanation for shifting public policies, name the impact of public opinion.

**Alternative Hypotheses: The Impact of Public Opinion on Policy Processes**

Policy scholars have long postulated that changes in public opinion are one of the main determinants of policy change (Page and Shapiro, 1983; Monroe, 1998; Brewer, 2002; Burstein, 2003; Lax and Philips, 2009). Based on the thesis that political culture—that is the beliefs of citizens—has a causal impact on policy reduces the policy process to a reaction undermining the complexity of involvement of social actors (domestic and transnational) and institutional constraints.

The literature on LGBT rights and public opinion comes mainly from American Politics and suggests that positive change in public opinion will lead to positive developments in terms of public policy (Brewer 2008). Similarly, Lax and Phillips (2009) find that public opinion support in the United States leads to policy responsiveness, but findings are inconsistent: in some cases even supermajorities in support for gay rights policies do not result in pro-gay policy.

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6 Lax and Philips consider the impact of public opinion on policy responsiveness with one caveat; their argument rests on the saliency of the policy issue. When issues are increasingly salient, policy responsiveness increases; while less salient issues yield outcomes more consistent with the preferences of legislators (2009). Still, this argument highlights the reductionist tendency of explanations grounded on political culture.
These arguments are only partially correct, as they share the assumption that LGBT rights issues are already on the agenda, and are salient enough to produce policy initiatives that would be considered as viable in the legislative arena. The cases of Mexico and Argentina show that public opinion may in fact change after the issue has been introduced to the public realm and not the other way around. While Latin America has always been considered conservative on social policy issues, recent legal developments have impacted public opinion. The following graphs show changes in public opinion as measured by Latinobarómetro, which has been asking ‘How Justifiable is Homosexuality?’ for the last ten years. Respondents are able to choose from a range of responses from ‘Never Justified’ (1) to ‘Always Justified’ (10). Though the likert scale is broad, it gives a sense of what the public thinks about homosexuality in general and signifies probable support for policies that promote raising the status of LGBT people.

Figure 2.1: Public Opinion on Homosexuality in Argentina

![Graph: Public Opinion on Homosexuality in Argentina](source: Data from Latinobarómetro)

7 The reference to Latinobarómetro responds to the consistency of their surveys. This is the organization that has been consistently measuring approval for homosexuality for longer. In addition, the data collected utilizes the same criteria across cases, which makes it comparable. Although other surveys are mentioned as examples, Latinobarómetro depicts a long-term pattern of slow but steady increase in the approval for homosexuality in Argentina and to a lesser degree in Mexico.
In Argentina, acceptance for homosexuality has increased dramatically from 15.8% of complete approval in 2002, to 26.6% of complete approval by 2009, a dramatic increase; but the most dramatic change occurred among those who completely disapproved of homosexuality. In 2002, 47.3% of respondents said that homosexuality was never justified, while less than a decade later those always disapproving declined to an all-time low of 16.8%, in 2008, before nudging up slightly in 2009 to 21.2%. At the middle of the scale are those who are neutral about homosexuality; this number is almost as high as those who approve of homosexuality and in general the graph reveals an upward trend as time progresses. In 2010, a poll carried out by Perfil noted that 50% were in favor of the same-sex marriage law, while 42% were against it, showing a very split public (Gambale, 2010). The poll, carried out by Ipsos-Mora included Capital Federal, Gran Buenos Aires, Mar del Plata, Rosario, Córdoba, Mendoza, San Miguel de Tucumán and Neuquén. Most of the supporters were young, and the coverage was presented in a positive light since at the time of the poll some unions had already occurred through the amparo mechanism in the courts (see Chapter 4 for more on the role of the courts).

The next graph details public opinion in Mexico, where the most dramatic change occurred among those respondents who viewed homosexuality as ‘never justifiable.’ In 2002 disapproval of homosexuality was at 51.4%, then reaching an all-time low in 2008 of 19.3% and finally moving to a level of 29.3% in 2009. On the other end of the spectrum, who clearly approve of homosexuality, were more moderate and changed less than in the case of Argentina. On average, those who responded homosexuality was ‘always justifiable’ only reached 18.4% during the four
years the polls were taken. However, there is a similar positive trend as it is in the case of Argentina of a decrease in those who responded homosexuality was never justified (see chart below). What is different in both of these issues from the United States (and thus does not conform to previous explanations) is the domestic context under which the issue of LGBT rights appeared. While in the United States, and to a certain degree Canada, the issue was part of a larger agenda of ‘cultural wars,’ in Latin America, these issues appeared at a time of political opening with a background of positive international developments (see Chapter 3), and an environment of increased political competition. In a way, the issue was new enough that there were no precedents that would sway policy entrepreneurs inside the system in one way or another.

**Figure 2.2: Public Opinion of Homosexuality in Mexico**

*How Justifiable is Homosexuality? Mexico*

Source: Data from Latinobarómetro.
It is significant to note that in both Argentina and Mexico, traditional views on public policy would suggest that embarking on public policy on any LGBT issue would be counterproductive as a majority of the population disapproved of homosexuality. Nonetheless, it was after the campaigns of social activists in both Mexico and Argentina that the issue would gain salience and enough traction to be considered as a viable issue and even enter the public arena. In fact, it was only after mobilizations gained visibility that the percentage of respondents stating homosexuality was never justifiable began to decline. It is likely then, that in this case it was actually the policy process itself, along with activism through media outlets providing support during the campaigns, that subsequently had an impact on public perceptions of homosexuality. In Mexico, El País held a poll in November 2010 that would reveal that 41% of respondents did not agree with the same-sex marriage law, while 39% agreed and 21% agreed slightly. Furthermore, when asked what the reasons were to disapprove of the law, the majority of the respondents, 39% stated moral reasons, 32% stated that same-sex marriage would be detrimental to society, while only 22% cited religious reasons.

The issue of abortion is no different; public opinion in both countries was not in favor of liberalization, which would suggest policy processes would not be amenable for liberalization. Abortion, though salient is not an issue that public opinion scholars pay much attention when testing the responsiveness hypothesis. Studies find inconclusive results, though there are correlations between fluctuations in public opinion and abortion liberalization (Burstein, 2003; Wetstein, 1996). It is likely that the hypothesis mostly applies to other types of issues, mainly those that are economic in nature (Smith, 1999; Stimson, Mac Kuen and Erikson, 1995).
Public opinion in Argentina is not favorable to liberalization on abortion. A national survey carried out by the *Latinobarómetro* shows that the majority of the population still believes abortion is never justifiable, under any circumstances. While there appears to be a downward trend, a majority of the population still opposes abortion. In 2002, 67.1% of all respondents agreed to the statement ‘Abortion is Never Justifiable,’ but in 2004 55.7% of the population agreed with that statement, and finally during the latest reported round of interviews, in 2007, respondents who agreed with that statement had slightly decreased to 53.9%. Nonetheless, the respondents who stated that abortion is ‘Always Justified’ in 2002 were 6.3% of all respondents, which increased to 7.5% in 2004, but in 2007 it dipped to 3.2% of all respondents. It has also been reported by some of the media outlets that Cristina Fernández de Kirchner’s personal views on the subject are opposed to liberalization (*Página 12, Clarín*). While no public statements have been released, her signals to the public may sway some of the public opinion, reinforcing the framing of conservative groups.

**Figure 2.3: Public Opinion on Abortion in Argentina since 2002**

![Figure 2.3: Public Opinion on Abortion in Argentina since 2002](image)

Source: Data compiled from the Latinobarómetro Survey
Public opinion on abortion in Mexico has also not been particularly favorable to complete liberalization. Similar to attitudes on homosexuality, the majority of the public believes that abortion is not justifiable. The trends in the 2000s follow this pattern; in 2007 there is even a slight increase in the amount of respondents who qualify abortion as ‘Never Justifiable,’ from 50.4% in 2002, to 63.3% in 2007. In addition there was a drop from 17.6% to 4.4% of those who responded that abortion was ‘Always Justifiable.’ The fluctuation occurred as the ideological programs of the biggest parties in Mexico did as well. Again, a result of policy changes, not the other way around. It is likely that the trend in continuing legislation of polarizing moral issues will continue. The changes in public opinion in the short time span showcase the malleability of these issues and the importance of framing.

Figure 2.4: Public Opinion on Abortion in Mexico, since 2002

Source: Data compiled from the Latinobarómetro Survey
The argument here is that public opinion provides background information about the policy environment that, as will be shown was and continues to be averse to liberalization, which is why it is so puzzling that processes have moved toward liberalization so quickly, in particular in the case of same-sex marriage. On the contrary, policy processes to include mobilizations have actually impacted public opinion toward a growing level of acceptance for the rights-based framework. Having set aside the public opinion hypothesis, we can now turn to an interrogation of the scholarly literature and hypotheses most relevant to our topic.

**Transnational Advocacy Networks and Norm Diffusion**

As stated earlier, the goal of this study is to investigate the causes of liberalization of female reproductive rights and same-sex marriage in the domestic context. Because pressures that lie beyond national boundaries also affect the policy process, this analysis relies on research on international norms, which outlines how their creation and endorsement may contribute to intense political contestation. The term norm refers to “collectively defined rules for behavior in a group; international norms thus establish the rules of appropriate behavior” (Checkel, 2012; see also, Risse, Ropp and Sikkink, 1999: 7-8). Extant norms are usually transmitted to different contexts through the work of norm entrepreneurs, who are those individuals or organizations with the capacity –because of resources or a privileged position within their structural context–, to influence policy (Checkel, 1997, 2012; Finnemore and Sikkink, 1998; Ropp and Sikkink, 1999; Keck and Sikkink, 1998; Tarrow, 2005). As norm entrepreneurs are deeply committed to an idea, they wield their influence in disseminating and framing that idea in order to create
acceptance, usually working alongside transnational and/or domestic social movements. The mechanisms by which norm entrepreneurs or transnational social movements are able to diffuse these principled ideas are varied. In this study, we rely on theoretical constructs that include different mechanisms of diffusion. *Relational diffusion* refers to the transfer of information along established lines of interaction through attribution of similarity and the networks of trust it produces (Lee and Strang, 2003 cited in Tarrow, 2005: 104). Nonrelational diffusion occurs between groups that have very little or no contact and no social ties, such as “through the media and the internet” (Tarrow, 2005: 101). Finally, the last mechanism is *mediated diffusion* occurs mostly through weak linkages across networks that are kept alive through the work of brokerage of either committed individuals or institutions (Tarrow, 2005; Sageman, 2004). These mechanisms may be present one at a time or several during the same episode of contention. As we will see in the case of same-sex marriage in Argentina all three are present, but in the case of same-sex marriage campaigns in Mexico nonrelational and mediated diffusion are present.

In this analysis, we take on reproductive rights and same-sex marriage as issues that have been normatively established as human rights within international spheres. However, as will be underscored in Chapters 4 and 5, there are significant tensions between international norms and domestic acceptance of controversial issues, thus creating bottlenecks in policymaking settings that have important implications for social orderings in society –to include gender roles.

In the case of Latin America, international pressures have become quite relevant since the transition to democracy. Because social movements do not operate in a vacuum,

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8 For more on this statement, see Chapter 3.
international advances as well as transnational activism represents an important source of norm diffusion. In agreement with Finnemore and Sikkink (1998), this analysis also posits that “new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest.” The emergent international norms of LGBT rights, to include the equality of marriage have a recent history (see Chapter 3); have certainly influenced social movement campaigns in Argentina (more of this on Chapter 4). And, while reproductive rights framed as human rights are more or less established in the international arena since the UN Beijing Platform, the translation of these advances into the domestic realm is not in all cases a direct export.

Transnational influence depends in large part in their moral authority in that their claims are believed to be morally right (Khagram, Riker and Sikkink, 2008; Keck and Sikkink, 1998). Because international spheres and democratic state structures are more permeable, the evolution of some contentious issues depends, at least in part, on this type of actors. Transnational activists are individuals and groups of cosmopolitans who “mobilize domestic and international resources and opportunities to advance claims on behalf of external actors, against external opponents, or in favor of goals they hold in common with transnational allies (Tarrow, 2005: 29). In addition to actors and the strategies, the norms themselves hold weight when being translated to domestic political contexts. There are several mechanisms by which international norms can influence domestic policy settings: diffusion, brokerage, mobilization and certification. Similarly, the pathways of transnational diffusion of norms include several possible strategies such
as relational diffusion, which is produced through the attribution of similarity (Checkel, 1997; della Porta and Tarrow, 2011; Lee and Strang, 2003; Tarrow, 2005; True, 2001).

Diffusion here is used here to refer to information that is transferred through established lines of interaction, while brokerage for instance, links social sites that were previously unconnected (Strang and Meyer, 1993; McAdam and Rucht, 1993; Diane, 2003; Tarrow, 2005). This concept will be particularly important in analyzing both feminist and LGBT movements. Attribution of similarity has been an important vehicle for connecting the claims of women through shared experiences and for LGBT movements through AIDS campaigns. Furthermore, since LGBT movements were late-comers in the international arena in comparison to feminist movements, they have bridged their campaigns to those issues raised by feminists. Snow and Benford (1988, 1992) have termed this process “frame bridging.” As Chapters 4 and 5 explore, the LGBT movement has capitalized and benefitted from feminist mobilization, but the gains from LGBT movements have largely not translated into similar gains for the feminist movement.

The second mechanism, brokerage, creates linkages between the norm originators and the norm adopters, as it is the case of the campaign for adoption of same-sex marriage in Argentina and to some extent in Mexico; in addition certification, which is the legitimation of the issue by authoritative actors is another mechanism by which transnational movements are able to make connections and influence the domestic policymaking arena. The difference between diffusion and brokerage mechanisms is best explained by Mac Adam (2001: 26):

Although diffusion and brokerage often combine in major movements, there are significant differences in the character and likely impact of scale
shift depending on which of the two predominates as the mediating mechanism. Contention that spreads primarily through diffusion may be dramatic and consequential in its effects, but because it never transcends existing lines of interaction, it will almost always remain narrower in its reach and impact than contention that spreads substantially through brokerage.

This theoretical clarification will be employed further in Chapters 4 and 5 on the international framing and contention of LGBT and reproductive rights. In particular in the same-sex marriage campaign in Argentina brokerage was one of the mechanisms by which social movements there were able to articulate a national campaign that gained legitimacy through resonance with nascent international norms.

**Mobilization and Influence: Social Movements for Sexual Rights**

Social mobilization is a *sine qua non* condition for policy changes on human rights issues, in particular those policies aiming to change the status of women in society (Alvarez, 1990; Banaszak, Beckwith and Rucht, 2003; Banaszak, 2010; Outshoorn, 2010; Haas, 2010; Jacquette, 2009). The connection between policy processes and the impact of social movements has been established in cases that analyze the role of women movements in politics (Costain, 1992; 1998; Stetson and Mazur, 1995; Wolbrecht, 2000). The issues under analysis in the following Chapters find that mobilization is necessary to entrance into the policy process, as it is social movements that problematize equality issues such as civil unions, marriage and control over female reproductive choices. Consequently, this study sides with the view that “politics and policymaking is about a conflict of meanings” (Schattschneider, 1960: 68). As a result, the point of departure is the existence of a critical and mobilized group of citizens that can frame issues in a way that they are a call to governmental action in the form of policy (Bachrach and Baratz,
1970; Cobb and Elder, 1972). Framing entails the use of organized ideas to define policy issues and policy goals (Benford and Snow, 2000; Gamson, 1998; Zald, 1996), providing “coherence to a designated set of elements” (Ferree, 2002: 105). Framing may be a key element in determining liberalization of social issues, as we will analyze in more detail in the coming chapters. The frame of equality utilized by the LGBT community resonated much more than reproductive rights as human rights, or reproductive rights as a health problem⁹ (see Chapters 3 and 4).

Though strategies may vary, a common feature in Mexico and Argentina is the existence of social movements. On the issue of female reproductive and LGBT rights, a common hypothesis derived from the social movement literature is that pressure from organized groups generates shifts in framing of issues leading to policy reforms enacted through and enforced by political institutions (Shepard, 2006; McBride Stetson, 2001; Valiente, 2001; Mahon, 2001; Bouvier, 2009). When social movements participate in institutional politics, they may be able to create opportunities for change through direct participation, discourse manipulation (or framing), and direct linkages through brokerage by norm entrepreneurs¹⁰ (Keck and Sikkink, 1998; Tarrow, 2005). The account of social movements includes a two-step analysis where international mechanisms are analyzed first to later move on to domestic mechanisms.

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⁹ Partly, the one of the obstacles for the women’s movement has been to consistently frame reproductive rights. There are a myriad of frames in the policy debates on this issue. From personhood of the fetus (a more conservative frame), to human rights (as discussed on Chapter three, a resonant frame in UN venues), to a woman’s choice or a health problem as WHO and ECLAC have framed it—a prescription to a preventable death.

¹⁰ The concept is comparable to Kingdon’s concept of policy entrepreneurs, which states: “the role of policy entrepreneurs is critical; these are strategic actors who bring an issue for policy change when they can sense the environment is ripe for their own proposal” (Kingdon, 1995, esp. ch. 8).
In the first instance, a boomerang pattern occurs when “domestic NGOs bypass their state and directly search out international allies to […] pressure their states from outside” (Keck and Sikkink, 1998: 12-13, see also Klotz, 1995; Risse and Sikkink, 1999). Here, there is a triangulation between the state (in which there is a demand for liberalization) and an international institution or another state, where that claim has received validation. Another possible international mechanism is the spiral model, which operationalizes how norm socialization occurs in phases. During the first phase, a repressive state or norm-violating states will be targeted and placed on the international agenda through transnational advocacy (Keck and Sikkink, 1998; Risse and Sikkink, 1999); to some degree, the feminist movement has done this since the 1970s through CEDAW and other international conventions.11 The second phase in the spiral model is denial, where there is a refusal from the target state to accept the international norm for which there is a violation (as we will see in the case of Mexico and Argentina, this process is not straightforward under federal decentralized political systems). The third stage to this model is tactical concessions, where domestic mobilization is triggered. The fourth phase is “prescriptive status,” where either through discourse or by institutionalization, the norm is recognized as a valid normative idea. Finally, in the fifth and last phase will see the target state acting under a “rule consistent” behavior; for this to occur domestic and transnational movements usually act together to ensure states abide by their commitments.

Both the boomerang and spiral models are useful theoretical constructs that guide the analysis, especially in Chapter 3, where it is established that transnational activists

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11 At that stage however, most of the claims were subsumed to concerns over democracy, which was at the top of the agenda. Chapter four however, outlines some of the early developments by feminist movements especially at UN forums.
have framed both LGBT and female reproductive rights as human rights. However, to explain the variations of liberalization at the domestic level, a closer examination is necessary in both same-sex marriage and abortion. Chapter 4 analyzes how Argentina liberalized same-sex marriage at the federal level but in Mexico a semi-liberalization has occurred at the subnational only, with the Supreme Court leaving the door open for further liberalization. On the other hand, the process to liberalize female reproductive rights remains stalled; in Mexico, there was also semi-liberalization followed by a backlash in 18 of the 32 states; while in Argentina the Supreme Court has just recently relaxed slightly penalties for abortion by adding rape of all women as an exception. Indeed, these two cases illustrate the complexity of real-time policymaking, which forces us to look beyond these transnational models to account for domestic institutions.

**Policy Environment: Engaging with the State**

The structures that govern the state are not taken as a monolith. In her seminal work *Theorizing Feminist Policy*, Amy Mazur (2002) argues for the need to bring the patriarchal state back into research agendas. Mazur’s call for action has not gone unheeded. Indeed, looking at the ways in which the state creates gender divides through policy is one of the theoretical underpinning of this analysis. In Latin America, women’s movements have a long tradition, their engagement in international arenas and during the transition plays an important role in how they participate in policymaking arenas today (Alvarez, 1990; 1992; Frohman and Valdés. 1993; Jacquette, 1994; Lind, 1992). As Jane Jacquette argues, “along with other ‘new social movements,’ women’s movements helped legitimize democracy, in part by shifting the agenda away from the class politics
that had polarized the region during previous decades” (2009: 5). Beyond participating in the democratic agenda, women’s movements made inroads in changing the political context and institutionalizing several demands such as gender quotas, with results that often left much to be desired (Franceschet and Piscopo; Htun and Jones, 2002; Marx, Borner and Cominotti, 2009; Peschard, 2003). Another achievement has been the institutionalization of measures designed to curtail violence against women. Here also, accounts also show mixed results with uneven implementation or a lack of state resources directed towards the issue (Alvarez, 1998 Haas, 2010; Piovesan, 2009; Smulovitz, 2011). As we shall see, this research project agrees with the assessment regarding mixed results in terms of women’s issues. In fact, the difficulty that female reproductive rights policies represents to the movements in the region are symptomatic of a larger difficult process of women engaging in the public sphere with sparse advances.

For social movements in Latin America, engagement with the state takes many forms, especially as we shall see, in decentralized policy environments such as those in Mexico and Argentina. The concept of political opportunity structures (POS) is central to the social movements’ paradigm. The term refers to “consistent – but not necessarily formal, permanent or national – dimensions of the political environment that either encourage or discourage people from using collective action” (Tarrow, 1998: 18). This concept allows us to understand how institutional changes or shifts in political alignments increase the likelihood of mobilization and the chances of reform for those mobilized. Institutions shape incentives, constraints, and opportunities in which political actors respond to demands for inclusion by disadvantaged groups (Hero and Wolbrecht, 2005: 2-3). When speaking of Mexico and Argentina, not only the process of democratization,
but also the process of decentralization has changed the POS and opened points of entry at different levels. While policymaking in these two countries used to be equated almost exclusively with presidential politics, the new political terrain includes parliaments, sub-national states and the judicial system, which has recently been reformed in both countries.

**Political Parties: Strategies and Ideologies**

Scholarship on feminist and social movements’ scholarship tends to agree that in general the political Left is a political ally to women’s and LGBT movements. Although the case studies show that seeking support from the left is in general a successful strategy for social movements in Latin America, we shall encounter a few differences from previous analyses that mainly focus on post-industrial societies. As Baer (1993) has argued, political parties are the “missing variable” in women and politics research. In order to get a full picture of developments of constellations that lead towards liberalization, parties are one key piece of the puzzle as they are “the basic institutions for the translation of mass preferences into public policy” (V. O. Key, 1967: 432). Although the inclusion of women’s rights into party agendas was slow in coming and there is still a somewhat uncomfortable fit of party platforms and LGBT rights, political parties have been crucial in explaining policy change in the cases of Mexico and Argentina.

Linkages between political parties (usually from the left) and women’s social movements has been touted as one of the explanatory factors that brought about greater policy sensitivity on gender issues in Scandinavia and Western Europe (Githens, 1996; Mazur, 2002; Sawer, 2002; MacBride-Stetson, 2002; Molynneaux, 2004). Therefore,
while the linkage has been established, this analysis needs to be taken a little further by including other mechanisms for policy change, as well by considering the specific character of the left in Latin America.

In 1987, Mary Fainsod Katzenstein already pointed out that the feminist movement “appears to be most successful in political systems where the Left is either most or least strong. The relationship of the feminist movement to gender consciousness, party alliances, and state structures; all point to this same message” (1987: 15). This analysis however, refers to established democracies, where the party linkages are stronger and more defined. When looking at the relationship between women’s movements and the left in Latin American democracies, one discovers that these coalitions are neither obvious nor successful every time. In general, when talking about the left, we mean a political party that “aims to change the status quo, it is the torch bearer of equality and solidarity, and what passes for either of these is verified through polemics” (Arditi, 2008: 61). Nonetheless, given the history of the left in Latin America, a more specific classification is in order.

Following the political transition in the region, the Left has generally been reconfigured based on fissures between the new and the old Left, creating more openings for women’s issues and sexual minorities, at least in its official discourse. Since democratization, the left in Latin America has struggled with its programmatic proposals because of neoliberal economic policies and economic re-structuring. Several scholars have distinguished different strands of left-of-center parties in the region. A relevant point of departure is Jorge Castañeda’s (2006) classifications that depict the left as either modern or populist, placing the focus on the ideological nuances of the leftist parties.
Left-wing parties are either “modern, open-minded, reformist and internationalist [...] or born out of the great tradition of Latin American populism, is nationalist, strident, and close-minded” (Castañeda, 2006: 29). It is the “modern” or “new” left where more feminists and sexual minorities found their closest allies. As we will see in the case of same-sex marriage in Mexico, one of the policy entrepreneurs and staunchest supporters of the same-sex marriage bill came from a small new leftist party, whose Mayor of Mexico City signed into law the “abortion on demand” and “gay marriage” bills.  

Other classifications focus on how the parties position themselves in light of the available national resources. In this view, there is an interventionist left that relies on rents from abundant natural resources, and a more disciplined left that accepts international constraints to achieve competitiveness and economic progress (Weyland, 2009). A third explanation focuses on path dependence, arguing the timing of the left’s emergence impacts their behavior. In this framework, liberal left parties emerged before the debt crisis in the 1980s, but interventionist left parties arose after economic structural reforms, as a response to the waning support for structural market reforms, the latter tends to lean toward populist tendencies (Madrid, 2010). Finally, a convincing argument stresses that leftist parties behave strategically under electoral and economic constraints. According to this argument, leftist parties “have had to reshape themselves and adapt to political and social changes, which have forced them to appeal to a more fragmented constituency” (Panizza, 2005: 729). In this categorization, some countries have seen the left refashion itself to appeal to new citizen demands and social movements. In a bid to become more successful electorally, the emerging left movements are looking for ways to

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12 The case of Mexico illustrates the argument made by Castañeda closely, perhaps his whole argument is based on Mexico as an example extrapolated to the rest of Latin America.
stand apart, while not proposing a complete overhaul of current economic policies. In this study, we adhere to this last categorization, where political parties accept that democracy is “the only game in town” (Przeworski, 2001), and accordingly adapt their strategies to compete in the electoral arena. Indeed, the leftist alternative is not only about who governs, but how they govern putting “big questions” back on the governing agenda and fostering societal linkages with those sectors that routinely contest the status quo (Levitsky and Roberts, 2011; Yashar, 2011).

The “new” more pragmatic left in more institutionalized polities is concerned with regulation as opposed to overhaul of the economic system, and with identity politics. In the case of Argentina and Mexico, the focus will be on how social movements and the left forge alliances on specific policy issues while recognizing that these alliances are neither automatic nor equal in all issues; rather alliances will generally still need to be crafted on an ad hoc basis for each issue. As a result, the promotion of women’s or LGBT issues will very much depend on the connections activists are able to make. In the following Chapters I also argue that the strategy of the Left to incorporate sexuality concerns into its agenda not only responds to the ‘New Left’/ ‘Old Left’ distinction described in the literature, but also to a lack of programmatic linkages in the presence of high electoral competition. As the Left incorporates electoral calculations into its political strategy, the platform is bound to change from a purely economic redistribution programme to include other demands (Przeworski, 1985). In Latin America, the contested boundaries of the separation of Church and State are one of the issues included in the left’s agenda.
Diversity and Women’s Policy Agencies

The concept of women’s policy machinery (WPM) constitutes another explanatory factor, helpful in elucidating why some movements are more successful than others in the policymaking arena. In particular when gendering public policy processes, analysts employ the category of women policy machineries, to explain how government agencies may “develop opportunities for society-based actors – feminist and women’s advocacy organizations – to exert influence on feminist policies” (Mazur and Stetson, 1995: 274).

In general, these agencies act to represent women’s interests when connecting social movements to policymakers and to insert demands that advance the status of women in society. These agencies may, at times, only act in symbolic ways because either their power is curtailed by lack of funding or because of weak political will.

While in Latin America these WPMs and their engagement with social movements is relatively recent, some studies link advances of the women’s movement and their insertion to the policymaking process to the actions of WPMs. For instance, Haas (2010) links the Servicio Nacional de la Mujer (Sernam) to the women’s movement and argues that its role was crucial in ensuring some of the advances in policy that women’s movements were seeking, such as domestic violence legislation and, to a lesser degree, the legalization of divorce. However, with respect to abortion, has finds that when Sernam did not support the policy few advances were achieved (Haas, 2010: ch. 4). These findings are in line with previous studies dealing with WPMs, suggesting that the nature of the abortion issue severely constrains the response from these state agencies, making it difficult to go beyond rhetoric support.
In the case study chapters, we look at these agencies and add the diversity policy machineries (DVPs), which play a similar role than WPMs but have been created to promote sexual diversity. In the case of Argentina, the DVP is the Instituto Nacional contra la Discriminación Xenofobia y el Racismo (INADI), which played an important role in connecting activists with policymakers and even the president. In Mexico, the DVP Consejo Nacional para Prevenir la Discriminación (CONAPRED) played only a symbolic role as it was created under the Vicente Fox administration and staffed during the same-sex marriage campaign by an appointee of the Felipe Calderón government; in both cases, support for social movements by both conservative governments of the Partido Acción Nacional (PAN) did not go beyond rhetoric support.

The role that WPMs have played in accessing the policy process for women’s movements in Mexico and Argentina is also mixed. In both cases, the WPMs have been firmly aligned with the executive position as these are mainly staffed by political appointees, with funding dependent on the executive power. In Argentina, the Consejo Nacional de la Mujer (CNM) mostly focuses on the executive agenda of promoting laws that prevent violence against women. In Mexico, the Instituto Nacional de las Mujeres (INMUJERES), which has been in place since 2001, is focused on promoting ‘equal pay for equal work’ policies.13

**Epistemic Communities**

The role of epistemic communities is also important in analyzing policy dynamics. These communities are characterized by technical knowledge on a particular issue that makes

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13 In fact, the current president of INMUJERES Rocio García Gaytán is so in line with the executive position, she pronounced herself against abortion back in 2007, the year of her appointment.
them “experts” they are also like-minded and value-driven, they have a vested interest in a particular policy outcome (Baumgartner and Jones, 2002; Haas, 1993). In the case of this study, we shall see that epistemic communities have played a more crucial role on women’s issues because of their influence in framing debates, particularly in the case of medical doctors who have played a key role in shaping the terms of the debates on female reproductive rights. Policy battles on women’s rights have created a more professionalized base of NGOs and advocacy groups operating as issue-specific interest groups. In the case of LGBT rights, experts have come primarily from the legal field, helping to advance a discourse of rights (Chapter 4 discusses this point in further detail).

Some analysts liken the role of epistemic communities to that of social movements. However, these are two distinct forces operating in the policy process. Epistemic communities are usually a group of specialists that operate in the same language; i.e. doctors, lawyers, academics, etc. These groups often find their way into the policy process depending on the issue area, and do not necessarily have to fight for legitimacy, since they are already considered professional experts in their own right. Social movements however, are different in the way they form and operate. Social movements tend to be more organic, and form “from below.” They are comprised by activists who may not necessarily claim expertise on the issue but become involved by way of normative or ideological commitment. Social movements may find legitimacy, but this is not necessarily a given, as is usually the case with credentialed professional groups.
Conclusion

As we have seen, the relevant literature reviewed in this chapter supports the hypothesis that engaged networks of transnational and domestic activists and epistemic communities operating in the contested terrain of policy formulation and implementation are likely to play a central role in shaping state’s response on the policy process of abortion and same-sex marriage. Moving forward, I will examine the role of transnational social movements and advocacy networks in order to probe how the norms affecting controversial issues have evolved at the international level and the connections to the particular domestic policy contexts.

The analytical narrative then turns to a focus on the domestic institutions that have constrained or facilitated the diffusion of such norms at the national level by shaping the strategic actions of actors in the policymaking process. These two processes are not disconnected. On the contrary, they generally unfold simultaneously, but for the sake of presentation, international connections will be discussed first, followed by the analysis of the domestic processes that emerged for each issue area.

As we shall see, LGBT politics in each of these countries is highly dynamic, yielding policymaking processes that are frequently puzzling at first glance. Close analysis of the mechanisms of mobilization (through brokerage and norm diffusion) as well as institutional imbalances of power, however, help in assessing policymaking in the region. The analysis henceforth is conveyed through international advances in the form of agreements and legislative projects introduced at the domestic level. The ebb and flow of the strength of political parties, along with the strength of existing institutions shapes trajectories of policy change, as we shall see.
As the comparative study of policy reform of women’s rights demonstrates, significant, comprehensive reform generally stems from specific configurations of alliances among women’s movements, policy entrepreneurs in political parties, bureaucracies such as policy machineries and groups with specialized knowledge that represent or articulatce those demands advocated by women’s movements (Htun, 2003; Lovenduski and Norris, 1993; Mazur, 2002). Indeed, the argument we shall explore focuses on the sum of actors that might induce changes in the policymaking process. As Laver and Shepsle put it, “policy reflects not an amalgam or blend of party preferences, but a set of fixed points that varies according to which party controls what ministry. Coalitions may articulate a platform for the purposes of campaigning […] actual policy implementation depends on the will of particular politicians” (1996: 8). The account offered in the next chapters seeks to provide a nuanced explanation of the policymaking process from formation and articulation of policy to project proposals and passage in a complex environment filled with competing actors.
Chapter 3 – International Norms: The Making of Reproductive and Sexual Rights

“Will localizes us, Thought Universalizes Us”
Henri-Frédéric Amiel

Norms or “principled ideas,” can have an important impact on domestic policy processes in several ways. First, norms establish rules of appropriateness for international behavior of state actors (Checkel, 1997; Risse, Ropp and Sikkink, 1999) and the creation and acceptance of international norms have important consequences for state behavior that are crystallized in changes of domestic institutional arrangements. Second, norms help shape identities for transnational actors “shared beliefs construct the interests and identity of purposive actors” (Finnemore and Sikkink, 2001: 392). Establishing first where the norms came from and, second, how transnational activists were able to exert pressure for an agenda of liberalization in international venues and through domestic channels compliments insights from the FCP and social movements’ literatures, which will be explored further on Chapters 4 and 5.

This chapter seeks to explain how the broadening of the international political opportunity structures that allowed both pro-liberalization and conservative forces to intervene in the making of the human rights regime has impacted the constellation of actors through boomerang and spiral effects led to a norm cascade (Smith and Korzeniewicz, 2007). The rival networks that first clashed in UN conferences directly impacted the domestic political opportunity structure by shifting discourses of reproductive and sexual diversity rights and imbuing them with legitimacy. At the same time, shifts in the institutional setting of Argentina and Mexico would also create openings in the POS creating enabling opportunities for mobilization at the domestic level (Tarrow, 2005). While at the international level, transnational activism would create
the conditions for legitimization of a discourse of sexual and reproductive rights; the domestic institutional arrangements (Correa, Parker and Petchesky, 2008; Risse and Sikkink, 1999; Simmons, 2009); a number of domestic institutional factors may contribute to facilitating or impeding policymaking that favors sexual and women’s rights (McBride and Mazur, 2010; Outshoorn, 2010; Rucht, 2003). This chapter provides an overview of these dual forces, which would create the policy environment under which abortion and same-sex marriage were debated.

In addition, this chapter advances the argument that differences in mobilization strategies, from resources, framing to alliances in the political system have led to divergent policy outcomes on abortion and same-sex marriage. By establishing that domestic institutional changes paved the way for some of the strategies of domestic mobilizations, this chapter creates the basis for understanding the role of POS on those strategies for mobilization. Most significantly, the role of the courts in Argentina and Mexico since its reform in the 1990s (Finkel, 2008), which has created a judicialization of politics (Sieder and Domingo, 2001; Sieder, Schjolden and Angell, 2005).

This study focuses on explaining liberalization of domestic policy of same-sex marriage and abortion in Mexico and Argentina. The aim in this chapter is to examine how the creation of a norm at the international level may affect discourse by subsuming LGBT rights and reproductive rights under the larger umbrella of human rights. The hypothesis is that the rights-based approach adopted by LGBT and feminist transnational activists created the basis for claims at the international level and influenced domestic activism and some domestic political actors, who would in turn; act as policy entrepreneurs at the domestic level. In sum, the goal in this chapter is two-fold: first, to
establish the norm formation stage of reproductive and LGBT rights in international venues; and, second, to examine the mechanism of “downward scale shift” by discussing the differences in the “internalization” of these norms in Argentina and Mexico (Tarrow, 2005). Because transnational activism is one of the explanatory factors in the domestic policy process, this chapter first establishes how these principled ideas emerged in international regimes through interactions between transnational and international actors. In this regard, this chapter supports the view that “human rights are a discursive field […] where] the process of defining with greater specificity who is responsible for rights violations and where and how restitution should be made is part of an ongoing political struggle” (Petchesky, 2003: 27).

In addition, I argue that these political battles are able to influence domestic policy processes through diffusion mechanisms such as emulation and attribution of similarity. The categorizations and definitions of ‘sex’ are part of a “complex construct of multiple discursive framings and political struggles” (Correa, Petchesky and Parker, 2008: 1). As we shall see, the UN served as the site for discursive struggles between the “Christian Right” or transnational conservative movements with a theological foundation, and transnational activists seeking to incorporate LGBT and reproductive rights into the larger human rights discourse (Buss and Herman, 2002; Petchesky, 2003; Bob, 2012). The relevance of the UN cannot be understated as “a venue for showcasing pressing economic, social, and political issues at the international level is indisputable” (Friedman, 2003: 313).

The first section of this chapter looks at the historical context of norm formation first of reproductive rights and later of LGBT rights and makes the argument that these
advancements would not have been possible without the work of transnational activists, many of them from Latin America. Examining the norm formation from a transnational perspective is relevant as it helped domestic activists claim legitimacy and frame their claims and in the case of same-sex marriage Argentina. The second section focuses on the backlash from right-wing movements at the international level. As Risse and Sikkink argue, “there are moral discourses which challenge the validity claims of the norm itself” (1999: 13). In the case of reproductive and LGBT rights, the loudest voices against liberalization come from the Catholic Church and, more generally, the Christian Right. Finally, the last section of this chapter provides an overview of the domestic conditions in Argentina and Mexico that have created plausible conditions for social movements to enter the policy process on controversial issues.

A Long Struggle: Female Reproductive Rights in the UN System

The international arena has long been a venue for women and feminists to present their claims and advance their causes. The UN System in particular is open to organizations from civil society that have voiced their frustration on matters of women’s rights. In particular, engagement of women from Latin America with the UN system during the 1990s and earlier reflected a challenging political and social environment domestically where many of the women distrusted their governments and would not commit to alliances (Friedman, Hoechstetler and Clark, 2001). What is more, on issues of gender relations and specifically of reproductive rights, Latin American groups have been split even though the agenda at the UN has moved forward on the issue of reproductive rights.
These UN proceedings are also relevant for LGBT rights, as some of the arguments and conventions used by reformers of reproductive rights have been taken up by LGBT activists. Through a series of conferences an understanding that reproductive rights are part of a broader set of inalienable rights emerged at the international level. Also at the international level, there is a growing if imperfect consensus that reproductive health is a fundamental part of human rights involving “the ability to reproduce, to regulate fertility, and to carry reproduction to a successful and healthy outcome” (Simmons, 2009: 223). Early on, the inclusion of reproductive rights, reproductive freedom and reproductive choice became intertwined with health considerations as transnational advocates were not only concerned with the issue of forced maternity and abortion, but also high rates of maternal mortality (Petchesky, 2003).\textsuperscript{14} The evolution and rise of reproductive rights as a human right can be traced primarily through UN Conferences. The following chart briefly outlines the most important conferences that first raised this issue and later institutionalized it as a core human right.

\textbf{Table 3.1 UN Conferences – A Discursive Struggle for Reproductive Rights and International Law}

<table>
<thead>
<tr>
<th>Conference</th>
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<tr>
<td>Universal Declaration of Human Rights</td>
<td>1948</td>
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<td>International Covenant for Civil and Political Rights</td>
<td>1966</td>
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<td>CEDAW</td>
<td>1975</td>
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<td>Convention for the Elimination of All Forms of Discrimination - ratified by Argentina in 1980 and put into effect by 1985; the Optional Protocol was ratified in 2006 (Kohen, 2009). Mexico</td>
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<tr>
<td>Mexico City</td>
<td>1984</td>
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<td>International Conference on Population</td>
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<td>Viena</td>
<td>1993</td>
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<td>Second Conference on Human Rights. First declaration of the rights of women and girls as</td>
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\textsuperscript{14} This evolving frame is also apparent on domestic debates of depenalization of abortion, which has been framed from a rights-based perspective as is the case of Mexico City, but also from health considerations as is the prevalent frame in the case of Argentina.
The centerpiece and first advance in international law promoting gender equality and better access to a range of other rights such as access to education and employment opportunity was the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This Convention outlined broad commitments but addressed equality of women as a salient and important issue that states should monitor and enforce. The Convention created what has been called a “Bill of Rights” for women and at the time represented a paradigm shift. As Noeleen Heyzer, first director from the south to the UNIFEM, observes, “women’s rights are human rights in a realistic and viable form have only recently been accepted by the international community as part of the human rights lexicon” (Heyzer, 1998).

In addition, CEDAW created a space for domestic groups to target and account for their country’s progress on women’s rights. For example, feminist groups in Mexico received a boost from these conference proceedings, as lip service paid by the government paved the way for subsequent transnational mobilization. In the case of Argentina, the process was not as straightforward. During the first round of CEDAW, the Argentine government refused to sign the Convention. It was until the mid-1980s that
CEDAW gained legal standing because ratification “in Argentina encountered strong conservative resistance, as some feared it would open the door to other sensitive issues such as abortion” (Kohen, 2009: 84). In contrast, Mexico signed CEDAW in July, 1980 and ratified the Convention in March, 1981. The commitment did not come from the ruling party, but was the result of transnational advocacy.

The next important international meeting took place in Mexico City in 1984. There, demands for equality between men and women became the main topic, and advisory committees were created to follow-up and report on national compliance. The Mexico City conference marked the first time that evaluations on state policies on population control took place and debates sought to connect these critiques to development and health concerns, something that was a special concern from participants of the global South (Petchesky, 2003; Harcourt, 2009). The shift in discourse is visible also in the 1993 Viena Declaration, which was “the first UN document in history to make explicit reference to sexuality (as opposed to biological sexes) and implicitly to draw on the principle of bodily integrity in relation to sexual matters (Petchesky, 2003: 34; see also, Correa, 1994; Petchsky, 2000). These debates emphasized women’s rights as an overlooked area of human rights deserving of protection beyond considerations of sovereignty, culture or traditional practices.

The most important advance in establishing reproductive rights as human rights came at the Cairo Conference in 1994, a follow-up of the Mexico City Conference on Population, where the Programme of Action affirmed that abortion should be legal and that the procedure should be accessible and safe. Chapter VIII of the Cairo Declaration affirmed that “women should have access to quality services for the management of
abortion-related complications, and post-abortion counselling, education and family-planning services should be offered promptly, which will also help to avoid repeat abortions” (UN Res., A/CONF.171/13/Rev.1, 1995). It was during this time also that the Holy See began to mobilize within the UN seeking support from Islamist states to block the mention of abortions and preserved the “natural family” and developed the Baptist-burqa network (Bob, 2012: 41).

The platform of Beijing Declaration in 1995 and Platform for action included the creation of regional commissions that would appraise the developments of each country. In this regard, a recent 2010 report laments the general lack of progress on matters of reproductive rights and cites Mexico and Argentina has having made some progress in access to contraceptives. The same report also observes how “the most ‘neglected’ group, in terms of the absence of State policy, are adolescents of both sexes” (LC/L. 3175: 9). At this conference, disagreements in Latin American women’s groups and state representatives arose on reproductive rights and definitions of gender, where official delegates from Argentina, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Peru and Venezuela “followed the ‘Vatican line’ on gender relations –to some extent and opposed the views of their own NGOs” (Friedman, Hoechstetler and Clark, 2001: 29). On the other hand, representatives from Bolivia, Brazil, Colombia, Costa Rica, Cuba, Haiti, Mexico, Panama, Paraguay and Uruguay were either supportive or non-critical of the use of gender as a multi-dimensional concept and the inclusion of reproductive rights (Friedman, Hoechstetler and Clark, 2001; Friedman, 2003).
The creation of working groups responding to the agendas set by women’s movements in the UN system not only legitimated claims and provided a feedback mechanism for periodic evaluation of progress every five years, but also certified women as social actors. Certification is “the validation of actors, their performances, and their claims by authorities” (Tarrow, 2005: 194). In this case, female reproductive rights, and abortion in particular, are part of the issues that in this international context have been certified. This certification gives these institutionalized NGOs a legitimate platform. Nonetheless, as Chapter 5 will explore further, the translation of these international processes to domestic action is complex. As we shall see, decentralization processes in these newly democratized regimes might weaken the influence of this certification mechanism.

Even though the Cairo and Beijing documents are not revolutionary, the mere inclusion of reproductive health and references to reproductive choice was an advancement that moved away from controls on population growth to a concern on individual rights, linking reproductive rights to fundamental human rights (Germain and Kyre, 1995; Zampas and Gher, 2008). Weaknesses in the Cairo and Beijing processes included a lack of funding, which limited these advancements in practice (Petchesky, 2000; 2003; Berer, 2003).

The Cairo+5 produced specific advances with benchmarks and specific targets stated in the document “Key Actions.” Cairo+5 made progress on putting women’s concerns in writing. As Petchesky argues, “women’s health and well-being have superseded population control in the framework of international health and development politics” (2003: 50). Beijing+10 accomplished another forward step in the feminist
agenda (Harcourt, 2003; Jacquette, 2009), by including HIV and AIDS on the international agenda as a rising health concern; the global spread of this disease opened the door to discussions of sex, sexuality and sexual rights by reaffirming the Cairo Programme (see UN, E/CN.6/2005/2: 11-12). Though the UN mechanisms obviously lack the power that some feminists were looking to radically transform international and domestic power structures; it has provided a platform for coordinating transnational activism, a forum for norm creation and institutional channels connecting transnational and domestic activists. Therefore, the UN opens the door for spiral or boomerang strategies that may in turn impact domestic policy processes (Risse and Sikkink, 1999; Sikkink, 2004).

The emergence and spread of international commitments on women’s issues resulted from an opening of international political opportunity structures, this contributed to the growing influence of organized transnational social movements (Shepard 2006). The active participation of women from all parts of the world created venues for issues and agendas, but the UN system and the institutionalization of CEDAW and Population conferences, established the lines of interaction that are necessary for norm diffusion (Checkel, 1997; della Porta and Tarrow, 2011; Lee and Strang, 2003; Tarrow, 2005; True, 2001; Zwingel, 2012). This brief account is not meant to be exhaustive, rather by focusing in the UN, the intent here is to identify a norm that has been substantially legitimated at the international level. Codification in UN Conventions is important, “states are increasingly held to account by international civil society […] they have made the choice to use international law as a tool to enhance individual rights seem plausible” (Simmons, 2009: 55). The spread of these international commitments takes on a new
force when domestic civil society actors can take advantage of openings in the political opportunity structure, in particular through newly democratized judicial systems, imperfect as these may be. The result of a long discursive struggle, women’s rights are now legitimate in the international arena. In domestic politics, these international commitments have become one of the many tools in the arsenal of mobilizations for women’s rights. As we shall see in the next section, the trajectory of LGBT rights, which is inextricably tied to the work of feminists on reproductive rights, has followed a broadly similar path.

**Equality and LGBT Rights in the International Arena**

Transnational advocacy has successfully introduced LGBT rights in international forums, framing them under the banner of equality and embedding them within the broader human rights discourse. Partly influenced by the feminist movement, transnational LGBT activists have promoted ‘equality’ under the human rights regime. A brief overview of the insertion of LGBT rights at the international level reveals a rapid integration in the human rights regime, in comparison with the long struggle of feminist and women’s transnational movements. LGBT transnational advocates first promoted a rights-based approach outside the UN, and it was only recently that official UN discourse has included considerations of sexual diversity or sexual rights. The two most significant international pronouncements by LGBT transnational advocates are the Declaration of Montreal, issued in 2006, the first document outlining concrete demands and an agenda from the transnational LGBT community and the Yogyakarta Principles (Bob, 2012; Kollman, 2009; Swiebel, 2009).
An International Lesbian Caucus was formed at the 1975 Conference on Women in Mexico, which was the precedent to the creation in 1978 of the International Lesbian and Gay Association (ILGA), a federation of NGOs and advocacy groups from around the world. Resistance within the UN was high, as the Baptist-burqa network blocked any allusions to homosexuality early on (Bob, 2012). Nonetheless, the Dutch state was the first to support gay rights in the UN, which created an alliance necessary to include considerations on sexuality (Kollman, 2012). However, success at the UN for LGBT activists would be far from reach in the 1980s and 1990s, not only was there strong opposition from the global Christian Right as Buss and Herman (2002) call it, or the Baptist-burqa network as Bob (2012) as termed it in the UN; but there was also confusion and tensions between lesbian and heterosexual feminist activists about the term "sexual rights" (Correa, Parker and Petchesky, 2008: Chapter 8). As Francois Girard points out,

With issues like abusive family planning practices and unsafe abortion pre-eminent in the activism of the transnational women’s movement (during the 1980s to early 1990s), sexuality and reproduction remained linked in the thinking of many activists and academics, with sexuality often subsumed under reproduction and heteronormativity going largely unchallenged. Girard, 2007.

With proceedings at the UN leaving more frustration the LGBT advocates launched the Declaration of Montreal in 2006, which called for protection against state and private violence, and the recognition of gender identity and sexualities. The text challenges the universal Declaration of Human Rights, as it states that the protections offered are not necessarily universal, since sexually diverse communities are left out of the protections extended in that declaration (Kollman, 2009; Swiebel, 2009; Waites, 2009). The text calls for “LGBT rights to be mainstreamed into global debates about
social and political issues” and to stop the prosecution of sexually diverse people through criminal codes (Declaration of Montreal: 3). Although this is not an instituted piece of legislation in international law, it did serve as a platform for action for activists and policymakers. As a normative discourse, the Declaration of Montreal has served as a resource for those activists entering the arena on international law, and served as the precedent for the Yogyakarta Principles (Swiebel, 2008).

Following on the footsteps of the Declaration of Montreal, one of the first international declarations that actually had an impact in international law is the Yogyakarta Principles, which includes gender identity and sexual orientation to the definition of human rights (Yogyakarta Principles, 2007). These are intended as “a coherent and comprehensive identification of the obligation of states to respect, protect and fulfill the human rights of all persons regardless of their sexual orientation or gender identity” (O’Flaherty and Fisher, 2008: 207). These principles were developed by human rights experts, as a set of standards intended to improve the quality of life for LGBT people around the world. The 29 principles are designed to incorporate the concerns of LGBT people into international law principles. The first article of the declaration calls for the depenalization of homosexuality around the world.

As O’Flaherty and Fisher put it; “the Yogyakarta Principles appear to pass the crucial test of being relevant to the actual situation of affected communities and being faithful and coherent reflection of the existing international legal standards” (2008: 247). As such, the principles are meant to fill a void in international law acknowledging the existence of sexual minorities and their specific needs for protection from sexually-based violence, discrimination, and protection of privacy. Because international law previously
lacked guidelines to address gender identity or sexual orientation, the Yogyakarta Principles seek to engage with the international law discourse to make the practice more amenable to concerns raised from gender identity issues. By introducing more general terms such as gender identity, the Principles compliment and make more inclusive the framework of universality encompassed in the original Declaration of Human Rights. The Yogyakarta Principles also have created a more ‘doable’ plan of action, as they engage with the discourse of international law in terms that make it possible to create concrete policy. As Thoreson reports, “they have been used by elites to formulate policy for localities and nation-states” (2009: 327). Because the latter Principles are not necessarily explicitly normative, but focus on already extant rights, they are more likely to create the basis for different types of rights depending on the domestic context. The Yogyakarta Principles thus create a pivotal basis from which the human rights framework can be expanded and applied in different situations.

These principles were launched within the UN system on November 2007; their insertion and promotion within the UN system was carried out by Brazil, Argentina and Uruguay (Dittrich, 2008: 245). It is interesting that the first insertion of LGBT rights crystallized under the Yogyakarta Principles was promoted in the UN by a small group of Latin American countries. The velocity with which the acceptance of LGBT rights has spread in Latin America is also worth noting as it occurred at the same time as political liberalization took place in many countries.

As early as 2004, there were official pronouncements in the UN, in favor of sexuality as a core component of human rights. Paul Hunt, Special Rapporteur on the Right to Health, issued a report that stated: “sexuality is a characteristic of all human
beings. It is a fundamental aspect of an individual’s identity. It helps to define who a person is” (Hunt, 2004 cited in Correa, Parker and Petchesky, 2008: 164). Currently, the UN has called for respect of sexually diverse people by issuing an official report on the rights on LGBT people. The report, which was issued in November 2011, states that the UN “has integrated issues of sexual orientation and gender identity into their work” (2011: 3), and “LGBT persons are entitled to enjoy the protections provided for by international human rights law” (2011: 4). The report, issued by the UN High Commissioner for Human Rights, also recommends that the organization track discrimination activities on the basis of gender or sexual orientation and encourages investigations on violations of human rights of sexual minorities. The move signals international preferences for liberalization of policies on LGBT rights and an acknowledgement of sexuality as an immutable characteristic.

This is a huge change in the U.N., as not every country in the Charter backs this salient norm. Nonetheless, the report demonstrates that transnational advocacy networks in LGBT rights have been able to influence the organization. The discursive elements of the report are consistent with the equality frame in that it calls for the enforcement of human rights when they appear to be denied to some solely on the basis of their sexual orientation or gender identity.

This is a groundbreaking decision that was co-sponsored by and passed with the backing of 23 states, while two abstained and 19 voted against.  

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15 Co-Sponsors of the resolution included: Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Honduras, Iceland, Ireland, Israel, Italy, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Timor-Leste, United Kingdom of Great Britain and Northern Ireland, United States of America, and Uruguay. The States supporting the resolution included: Argentina, Belgium, Brazil, Chile, Cuba, Ecuador, France, Guatemala, Hungary, Japan, Mauritius, Mexico, Norway, Poland, Republic of Korea, Slovakia, Spain, Switzerland, 


Furthermore, the authoritative speech act by Hillary Clinton following that report confirmed the broad acceptance of this norm:

This recognition did not occur all at once. It evolved over time. And as it did, we understood that we were honoring rights that people always had, rather than creating new or special rights for them. Like being a woman, like being a racial, religious, tribal, or ethnic minority, being LGBT does not make you less human. And that is why gay rights are human rights, and human rights are gay rights. Clinton, December 6, 2011.

The endorsement by the U.S. is significant, as it shows that there is a norm in a nascent stage, and it is not only promoted by a transnational advocacy network but also backed by powerful states. It provides an explicit definition of “right” and “wrong” and the longer version of the speech also underlies a level of shaming for states that do not abide by this norm (Checkel, 1997; Risse and Sikkink, 1999; Kollman, 2009).

**The Rise of the Right: Backlash Against Liberalization of the “Private”**

Religion has discursive influence in some segments of civil society, and it can play a role as a “mobilizing discourse” (Herbert, 2003: 283). Catholicism, in particular, has an
important influence in the Americas. It is also one of the oldest global institutions, and “continues to act globally in important ways” (Berger, 19: 2005). In as much as globalization has aided social movements to bring their claims at the transnational level; the same forces have increased exchanges of religious-based civil society. Additionally, similar to secular social movements, religious groups also seek to shape the content of policies at the international level, often using the human rights discourse as well. As Bob argues, “transnational politics is ideologically diverse and conflictive […] the battles [between opposing groups] cut across institutions and borders”\(^\text{16}\) (2012: 5). Religious-based activism usually follow the lead of the Catholic Church, and derive much of their identity from the teachings and leadership provided by the Vatican. Similarly, the Catholic Church “is a global transnational religious actor which potentially challenges the Westphalian order through its assertion of the transnational nature of the Church, of the right of the pontiff to make pronouncements on spiritual issues which are considered binding on all Catholics […] and in its affirmation of the universal dignity and rights of man” (Shani, 2009: 315). While the Church upholds human rights as the moral foundation for other rights, a particular view of human rights is endorsed. Certainly, the expansion of human rights outlined above, to include sexual rights as well as reproductive rights, clashes with the particular view endorsed by the Catholic Church, Christian denominations and Muslim traditions. The vision of human rights from the global Christian Right is universal, but not necessarily liberal or secular and is built on the core of the “natural family” (Buss and Herman, 2002). In particular, the Catholic Church focuses a great deal of attention to prevent liberalization of both abortion and same-sex marriage as:

\(^{16}\) Original text includes the emphasis.
Abortion and gay marriage are in many respects unique issues. Few other policies provoke comparable degrees of outrage and inspire positions at absolute extremes, among both opponents and advocates. For its part, the church cares much more about abortion and marriage than about contraception, sex education and divorce. The former epitomize the core of Roman Catholic doctrine on the sanctity of human life and the nature of marriage as an institution. (Htun, 2010: 351-352).

Furthermore, the Holy See has expressed its view on human rights via the encyclical letter *Evangelium Vitae* issued by John Paul II in 1995, denying the inclusion of abortion, contraception or more generally reproductive rights as a human right. This encyclical marks the basis of the current pro-life campaigns, which have been grounded on the view that life begins at conception and that the value of life trumps any other consideration. As Buss and Herman note, “the Vatican has endeavored to marginalize feminism by constructing it as, first, western-dominated movement that is unrepresentative of women of the economic south; second, as an outdated version of feminism that is unrepresentative of even western women” (2003: 114). The clash of ideologies involves also the use of terms from secular, pro-liberalization movements such as gender and feminists, to signify enemies as the Christian Right opposes these terms and considers them a direct affront.

In this way, and with tragic consequences, a long historical process is reaching a turning-point. The process which once led to discovering the idea of "human rights"-rights inherent in every person and prior to any Constitution and State legislation-is today marked by a surprising contradiction. Precisely in an age when the inviolable rights of the person are solemnly proclaimed and the value of life is publicly affirmed, the very right to life is being denied or trampled upon, especially at the more significant moments of existence: the moment of birth and the moment of death. John Paul II, *Evangelium Vitae*, 1995.

Religious activism at the international level responds pro-liberalization movements as a rivaling network. Once secular, pro-liberalization movements entered
international forums and seemed to threaten core beliefs of religious-based groups, these became more active at the international and transnational levels. Since the 1995 UN Beijing Conference on Women, religious organizations have become more active at the international level. The position of the Vatican as Holy See in the UN makes international action quite accessible, and gives it institutional power.

The Catholic Church as a sovereign state is an important international actor and represents a vast array of interests through its institutions, “as a transnational actor the Holy See directs a truly global church” (Hertzke, 2009: 51). Religious congregations have been meeting in non-state fora, and equally try to leverage moral claims against the state. As Rudolph argues, “ecumenical forces are revisiting the idea of religious universality not in the form of a universal church, but in the formation of universal religiosity” (2005: 194). This religiosity entails agreement on moral goals, rather than theological ones and makes the Catholic Church a brokerage agent with other religious leaders who may hold similar moral views, and act together internationally as there is a degree of attribution of similarity. Clifford Bob traces back the existence of an alliance between the Catholic Church, Christian groups and Islamist delegates to the 1994 Cairo Conference in what he terms the Baptist-burqa network (2012: 41-43).

Ultimately, what is at stake in the international level is the ability to claim moral legitimacy. According to some religion scholars, there is a global resurgence of religion as an important vehicle for shaping identities at the international level (Shani, 2009; Teschke, 2003; Haynes, 2009; Kaldor, 2003). Globalization has opened the door to increases in exchanges by faith-based groups. Additionally, globalization has “called into
question the claims of the state to unconditional sovereignty thereby creating space for the (re)emergence of transnational religious actors in global politics” (Shani, 2009: 308).

In 2003, at the time Canada debated the legalization of same-sex marriage, the Vatican released an official statement authored by then Cardinal Joseph Ratzinger, which stated:

Homosexuality is a troubling moral and social phenomenon, even in those countries where it does not present significant legal issues. It gives rise to greater concern in those countries that have granted or intend to grant – legal recognition to homosexual unions, which may include the possibility of adopting children [...] The common good requires that laws recognize, promote and protect marriage as the basis of the family, the primary unit of society. Legal recognition of homosexual unions or placing them on the same level as marriage would mean not only the approval of deviant behaviour, with the consequence of making it a model in present-day society, but would also obscure basic values which belong to the common inheritance of humanity. (Ratzinger, 2003).

This statement summarizes the frame deployed by conservative movements around the world against same-sex marriage. The adoption of the same frame exemplifies the extent to which norms have diffused. At the height of the debates in same-sex marriage in Argentina, on July 2010, Archbishop Jorge Mario Bergoglio in an open letter explained:

Let’s not be naïve, homosexual marriage is not only about a political struggle it is the destructive pretention under which God’s Plan can be squandered. This is not just a mere legislative project (this is only the instrument); it is a “move” a lie that intends to confuse and fool the children of God. (Bergoglio, 2010).

The framing of same-sex marriage by the Catholic Church is mostly based on moral considerations and protection of the family as a foundation of society, rather than legal considerations. In Mexico, the Catholic hierarchy also condemned same-sex marriage law, but frames deployed have not always been consistent. A spokesperson for
the Mexican Archbishop, Hugo Valdemar, stated that “the law is immoral because the Church only sanctions a marriage between a man and a woman” but he went on to say that the Church “will not excommunicate those who marry a person of their same sex” (El Universal, 2009). This would suggest that the church in Mexico is not as adamantly opposed to same-sex marriage as the Vatican, but still qualifies it as a wrongdoing.

In Latin America, there is ambivalence about the role of the Church in politics. According to Shepard, religion in Latin America forces a double discourse because “the hierarchies of a hegemonic religion exercise considerable influence over state policies, imposing the religion’s moral codes on legal norms” (2006: 15). In line with this assessment, there would be little distinction between legal codes and moral codes.

Although Catholic heritage is widely recognized throughout the region, the Catholic Church does not enjoy the same position it once did under authoritarian rule. Along with democratization and economic liberalization, other religions have also started to penetrate the region. However, the Catholic Church still holds an important position. To this day, “44% of all the world’s Catholics” reside in Latin America (Hertzke, 2009: 57). As a result, the Church has a big stake in the region, and its organizations are largely embedded in some aspects of the day-to-day life of the region, with varying degrees. During the authoritarian period, the Catholic Church operated sometimes as a safeguard for human rights, and civil society, and at other times as a source of legitimacy for the dictatorial regimes. The transition period is then challenging what the role of the Catholic Church will be like under the democratic regime. In Mexico for instance, “cooperation and mutual support between church and state developed within a framework of informal rules; the authoritarian political regime found a reliable support in the patriarchal social
order promoted by the church, and the conservatism and passivity necessary for the acceptance of the set of values associated with Catholicism contributed to the support of an authoritarian political order” (Loaeza, 2009: 104-5). Similarly, “the Argentine hierarchy supported an authoritarian regime” (Hagopian, 2005: 258). Furthermore, the Argentine case stands out in comparison with other military dictatorships in that it opposed moderate liberalization in the regime and “it staunchly defended the grim repression of a military regime that left 30,000 dead” (Hagopian, 2009: 270). In Mexico and Argentina, the Church played a role in maintaining and supporting the authoritarian regime, as it was beneficial for its agenda.

Political competition has made the Catholic Church less relevant in politics where there is democratic liberalization and new players in the religious market. In both Mexico and Argentina the Catholic Church is not as strong as it once was. In Mexico, there is a “growing evangelical presence and an increasing religious plurality […] Mexico also has rooted laicism and an increasingly secularized society” (Blancarte, 2009: 227). For its part, “the Argentine church is more isolated politically, as neither of the two major political parties appears willing to advance church interests” (Hagopian, 2009: 297). One could also add here that although the Argentine Church has decried efforts to liberalize abortions and same-sex marriage, its alliance with politicians is neither strong nor consistent (Htun, 2009). Where the Church may hold more weight is in its support of civil organizations at the domestic level, which it can mobilize to oppose policy that threatens its core moral values.

Democracy “has produced contradictory effects on the church’s ability to enforce its moral agenda” (Htun, 2009: 357). There is ambivalence towards the church and its
moral code, while some perceive it to be outdated and does not reflect the practices of most citizens, some others find it difficult to accept the change in laws as those reflect the ideal they should be striving for. This ambivalent reality if what Shepard (2006) has called the “double discourse” in policymaking arenas in Latin America. However, the political opportunity structure has shifted where electoral competition and decentralization make it possible for norm entrepreneurs to advocate for controversial issues that were previously met with absolute resistance.

**Shifts in the Institutional Landscape in Argentina and Mexico: Opportunity Structures under Democratizing Regimes**

Although both Argentina and Mexico transitioned to democracy in a peaceful way, during the same wave of democratization, there are some differences in the type of authoritarianism from which each country transitioned. In the case of Argentina, the transition from a bureaucratic authoritarian regime with one of the most violent ‘dirty wars’ shaped the current political system as an electoral democracy, which has also been deemed by O’Donnell (1999) as an “delegative democracy” with “low intensity citizenship;” meaning that while there are electoral proceedings as well as provisions of rights, their enforcement is not consistent. There is a weak party system and weak horizontal accountability, as a result social accountability has become more important and since the transition to democracy there is an increase in the number of citizen organizations (Smulovitz and Peruzzoti 2003; 2006). A judicial system that enforces rights without consistency or a diminished rule of law causes this low-level citizenship O’Donnell refers to, and creates barriers for the development and consolidation of democracies. In the case of Mexico, the transition from a hegemonic party autocratic rule
that was characterized by co-optation and holding elections that served as a method to share power among ruling party politicians (Magaloni, 2006). However, the current situation can also be characterized as a low-intensity democracy.

The hegemonic party in Mexico was also characterized by a very strong executive, which made it difficult, if not impossible for women’s movements to access the public space if they sought policy reform. Women who participated in the political system would have a better chance by participating in one of the groups that were of interest to the executive. Demands and policy processes involving the creation of third generation rights such as social and gender rights opens the door for further enforcement through the judicial system or via social movements. Policy processes initially might then convince incumbents to put laws in the books without capacity or a strong commitment to enforcement, but these laws set a precedent for future action by previously unempowered or disenfranchised social actors. Similarly, antiquated laws on the books that may have not been enforced previously could open the door for sanctioning rules that are in detriment of human rights, such as the backlash of reproductive rights in Mexico.

Because POS are partially external to social movements, they are out of the control of mobilized groups. However, they impact how and when episodes of contention occur (Fish, 1995; Kriesi, 1995; Tarrow, 2005; 2011). The transition toward electoral politics meant in both Mexico and Argentina that groups would have access to political parties, as they would need help in mobilizing voters. In Mexico in particular, social movement leaders would become viable as electoral contenders, either through small parties or via co-optation by larger parties. These changes would encourage mobilization
as it removed the threat of repression. The next important shift occurred in the process of judicial reform, which will be explored in more detail in the following section.

**Judicial Reform in Argentina and Mexico**

The policy process of any issue operates within the confines of the institutional setting of a particular country. For both Mexico and Argentina, the institutional setting was in some flux, since after the democratic transition there are still tensions between newly formed democratic institutions and authoritarian remnants in bureaucracies as well as stronger authoritarian enclaves in particular sub-national states. Both Argentina and Mexico, along with other countries in Latin America, have undergone substantial judicial reforms in the 1990s (Domingo and Sieder, 2001; Finkel, 2008). Nonetheless, the results of such reforms have been mixed (Calleros, 2010; Ungar 2002; Finkel, 2000). This is an important feature of the political institutions since it is one of the main branches of government charged with protecting civil and political rights.

In other words, the advancement of equality, and the extension of rights through citizenship is tied to the fate of the judicial branch. In particular, research focusing on LGBT rights in advanced democracies demonstrates (Andersen, 2006; Keck, 2008; Grundy and Smith, 2007; Smith, 2009). However, in Latin America judicial reform and neoliberal restructuring created the conditions for increased citizen activism in the courts. “Failure of neoliberal policies to alleviate poverty have prompted ordinary people to resort to the courts or ‘court-like’ structures to try to press their claims and secure their rights” (Sieder, Schjolden and Angell, 2005: 1). As we shall see, this rise in legal
activism may suggest that the sites of contention have expanded as POS change the landscape of possible reform avenues.

The influence of societal activism is also analyzed via their engagement with the judicial system. The claims the LGBT movement has been able to articulate through judicial actions include the creation of a legitimate political class that recognizes sexuality as a valid category for discrimination, the right to marriage. Similarly, reproductive rights have been in flux due to different actions carried out in the courts. In the context of policy change, the courts may up the stakes of a particular political decision and impact politically a determined policy environment. LGBT activists have been especially successful with this strategy, but as the following chapters will show, the courts have been crucial in the case of abortion depenalization in Mexico City. The courts are a crucial institution because they lend legitimacy to different policies and delineate the terms and language utilized in political debates. Furthermore, legal actions legitimize social actions and as such are actively pursued by social activists, Ewick and Silbey argue the rule of law “is an emergent feature of social relations rather than an external apparatus acting upon social life. As a constituent of social interactions, the law—or legality—embodies the diversity of the situations out of which it emerges and that it helps structure” (1998: 17). The courts have a special place in that legal opinions have often a crystallizing effect on political debates since they represent an independent platform. Law is socially and historically constructed, and changes in it represent changes in the political power of different groups.

17 The strategy of going to the courts is an addition to the LGBT movement’s repertoire of contention based on gains made in international law through a similar strategy. Finding the specific wording in the law that makes gay marriage not essentially different from civil marriage is one of the strategies used by LGBT activists.
Argentina in the Transition

Because of the horrors lived through during the ‘Dirty War,’ there is a massive support for the democratic regime in Argentina. The impact of the bureaucratic authoritarian regime on the political culture gave rise to a “rights-oriented politics” that has also seen the growth of movements from below and awareness of citizenship (Peruzzotti, 2002). Furthermore, the existence of a vigorous and independent media has aided the rise of an active civil society by naming and exposing state abuses, thereby raising the costs of these behavior resulting in the existence of “societal accountability” (Peruzzotti and Smulovitz, 2000; 2006). These two forces have created the conditions for the existence of a lively civil society. However, on the other side of the coin, there is also a persistent institutional weakness that pervades the state. The 2001 crisis not only created distrust in government and its institutions, but it also weakened the party system and “in the absence of stable rules of the game, time horizons narrowed, and politicians, business leaders, piqueteros, and even Supreme Court Justices turned to praetorian practices (Levitsky, 2008: 109).

The overall political environment of Argentina after the restoration of democratic governability has been characterized by these dual forces of, on the one hand, a very active civil society and, on the other, a weak institutional system. In more recent years, since the administration of Néstor Kirchner there has been some strengthening of political institutions. Kirchner strengthened the executive power and governed in a centralized fashion, his presidency “enjoyed considerable political success in large part because of a booming economy […] and a move toward nationalist practices” (Levitsky, 2008 115-120). Nonetheless, the party system remains weak and this has created both obstacles and
opportunities for social activists. In addition, the polity can be qualified as fragmented since there is a bicameral, federal and decentralized political system, so there is a myriad of actors in the policymaking arena. On the one hand, as the case of LGBT rights shows, the lobbying of particular legislators paid great dividends, but this strategy would not have worked without the help of insiders from the Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI). On the other hand, for the case of abortion and reproductive rights, the weak party system has meant that creating a coalition that supports pro-reform efforts is more difficult than in cases where coalitions with strong parties are available.

Furthermore, the strengthening of the executive has also meant that for social movements seeking policy reform, it will be a necessity to court the presidency. In the case of LGBT rights, closeness to the presidency was also achieved in large measure due to the work of policy entrepreneurs working with the LGBT movement (see Chapter 4), in addition however, there was support from Néstor Kirchner (Bimbi, 2010), and an enthusiasm for liberalization also coming from President Cristina Fernández de Kirchner, though the reasons for this are not clear (Encarnación, 2011). On the other side of the spectrum, abortion rights have not seen the endorsement of Cristina Fernández de Kirchner, who opposes liberalization on this issue (La Nación, 2011). The opposition of the executive creates obstacles in forming a coalition that would be willing to support any campaign, even though the latest campaign was backed by a group of female legislators that can be categorized as policy entrepreneurs.

One of the most important changes since democratization has been the creation of the City of Buenos Aires. Since the Constitutional reform of 1994, the City is
institutionally analogous to any of the other provinces. The city has its own constitution and elects its own executive or Mayor and has a legislative body comprised of 60 members. The first Mayor, Fernando de la Rúa, was elected in 1996. The creation of the City was an important shift in the POS, since it created an additional point of entry to the public arena (Avritzer, 2002). The City is also the most densely populated unit in the country and it is where the federal institutions are located, so access for social movements would increase thereby creating opportunities for mobilization.

The Left in Argentina

In Argentina, the party system is not as strong and has a history of dealing with severe confidence issues. Left-leaning parties have had to adapt to the structural reforms after the 2001 crisis. During the 1980s, the Peronist party, a populist-labor based organization would restructure itself by severing linkages with organized labor and becoming a patronage-oriented machine party (Levitsky, 2003). Under the leadership of Kirchner, the PJ would move “toward a new policy orientation, as well as to build strong linkages to social groups outside the PJ machine” (Etchemendy and Garay, 2011: 286). In this context, and in the aftermath of the 2001 crisis and the following economic restructuring, social groups would find new openings in the political party system. Because economic restructuring made it harder of the left to have a viable alternative economic program; Kirchner “prioritized alliances with the more moderate Peronist unions and social movements and limited those linkages to policy concessions and state positions rather than to the partisan sphere” (Etchemendy and Garay, 2011: 303). Kirchner’s government
strategy would make it easier for social movements to find an opening to policymaking arenas in Argentina.

Furthermore, Latin American democracies feature extremely low rates of party identification. The most recent survey by the Latin American Public Opinion Project (LAPOP) states that only about 44% of Mexicans identify with a political party and in Argentina the figures are even lower at 35%, which is at the low end for the entire region. However, despite the crisis of confidence, the Argentinean electoral democracy has survived and as judicial reforms were launched by Kirchner, stability has improved. The low rates of identification do not mean that there is no engagement in political action; rather, engagement is usually via movements from below (Smulovitz and Peruzzotti, 2006).

As a result, alliances with the left could be crafted on an issue-by-issue basis and because of the relatively weaker party system; social movements could become important as electoral machinery substitutes (Roberts, 2003). Social movements in LGBT rights and female reproductive rights will have to rely on policy entrepreneurs, insiders and effective framing in order to achieve success in any campaign.

*The Church in Argentina*

Previous accounts of how the Church has inserted itself into the policymaking process of moral issues in Argentina argue that the church frequently has exercised an informal veto power on the legislature when “bishops act to ensure that little electoral benefit will be gained by violating their principles” (Htun, 2009: 337). Htun’s argument rightly assumes that it is electoral calculations that drive political parties to back certain policy projects
over others. As a result, the role that the Catholic Church may play in the policymaking process lies in its institutional power.

At a broad level, the Catholic Church in Argentina closely follows pronouncements from the Vatican. Up until the Menem presidency, the anti-abortion movement enjoyed broad support from the executive. According to Htun, “Menem attempted to use the process of constitutional reform to advance his anti-abortion position. During the constitutional convention held in 1994, Menem and his justice minister, Rodolfo Barra, attempted to add a phrase to the Constitution granting the right to life ‘at conception in the maternal womb until natural death’” (2003: 162). At this time, it was also the height of the anti-abortion campaign directed at the international level by the Vatican. Even though the hierarchy still lashes out against any social policy that goes against the “natural family,” public support for these views has declined. Since pluralism has opened the doors to increased competition, the role of the Church has been somewhat diminished (Levine, 2009). Furthermore, in Argentina part of the protests by LGBT movements and some women’s movements, have included taking part in collective apostasies (or public renouncements of the Catholic faith). The campaign held in March 2009 and December 2010 included other Latin-American countries such as Mexico, Ecuador, Peru and Colombia and an internet page\(^{18}\) that invited others to join the movement (\textit{Página 12, 2010}).

\textbf{Mexico: From PRI to Free and Fair Elections}

In 2000, the presidential election marked the end of the hegemonic-party rule and the first democratically elected president took control. The PAN was victorious and the Vicente

\(^{18}\) See: http://apostasiacolectiva.org/ where instructions on how to carry out the process are also provided.
Fox administration was the first opening in that his appointed cabinet represented a heterogenous group, the first departure from corporatism (Camp, 2008). Since the 2000 election, Mexican elections have become more competitive while “the party system and the political class have become further removed from societal interests” (Dresser, 2008: 244). Because of the lack of reeelections and a direct control from a strong party system, there is little in the way of vertical accountability. As a result, the political class relies on directives from the party and develops little in the way of programmatic linkages. This pervasive system has created incentives for social movements to court parties specifically and even join as “double” militants. For citizens, this system has meant that while they have seen the rise of political rights, social rights have also diminished.

In addition, the Mexican political regime is often paralyzed by the lack of cooperation between the legislature and the executive. Since the 2000 elections, the flaws in the institutional design have become apparent; without a legislative majority the executive lacks the power to push forward initiatives. This situation, coupled with the strong party system, often leads to stalemate (Linz, 1994). While the Fox administration did not fulfill any of the high hopes Mexicans had for democracy, the 2006 election was also marred by dispute. According to Peschard, “the PRI gambled on the strength of its electoral machinery to regain power six years later and the PRD calculated that the popular leadership of its former party leader and then mayor of Mexico City (Andrés Manuel López Obrador) would catapult it towards the presidency” (1996: 69). Neither of these calculations proved correct, and in fact less than half of a percentage point would make Felipe Calderón, the candidate from the PAN, the winner of the 2006 presidential election (Bartra, 2007). The outrage that resulted from this close election would send
López Obrador to establish a parallel government that would soon be seen as illegitimate; his protests were detrimental to the left in the short run and were also inconsistent with democratic institutions. Along these lines, Dresser noted “the quandary for the left as an electoral alternative is that López Obrador called for the destruction of a political system in which the PRD had just achieved its largest gains ever” (2008: 254). Since then, the message from the left has still resonated and much of the public sees the party as a legitimate political alternative.

The current challenges of democracy to some degree create high barriers of entry to the political system for social movements. Political competition and gridlock in the legislative arena mean that the chances for cooperation at the federal level are slim to none. Broad political alliances usually have an electoral motive, in terms of moving issues through the legislative arena there are not only high barriers of entry but also few possibilities of success when different political parties are in control.

Moreover, because the political careers of career politicians are tied to the fate of their political parties, there is often a high degree of discipline on the part of appointed politicians who usually follow party lines (Ugalde, 2000). This behavior is observed even in the federal cabinet. As a result, social movements often direct their strategies toward the sub-national level to the state legislature where the likelihood of finding an opening to the policymaking process is more promising.

Similar to Argentina, one of the most relevant developments in the shifts of domestic POS in Mexico is the creation of the Distrito Federal as an independent unit of government. This is also the most densely populated unit where Federal government offices and major buildings are housed. The city was granted autonomous status in 1997
and since then it has been governed by the left-of-center PRD. Its legislative body, *Asamblea Legislativa del Distrito Federal* (ALDF) is one of the most progressive legislative bodies in the country and, as we will discuss further on Chapter 4 and 5, the first place where public debate discussed seriously sexual rights and reproductive rights.

*The Left in Mexico*

In Mexico, the strongest party associated with the Left, the PRD is the result of a fissure within the hegemonic party, the PRI in the 1980s. The division within the PRI elite came as a result of electoral challenges, where one of the internal factions sought a nomination but it was unable to obtain it; the division was not a truly ideological challenge. The initial platform of the PRD associated with Cuauhtémoc Cárdenas did not mention the status of women or sexual minorities. While the dominant faction of the PRI came to be known as the ‘technocrats,’ the faction represented by Cárdenas was separated as it did not fit within that ruling faction. In sum, the PRD was a response to “the anticipation of better electoral prospects outside the PRI” (Magaloni, 2010: 53).

As a result, the ideological affinities that the literature on feminist comparative policymaking point out as a feature of policy change of gender issues was not necessarily part of the agenda in the foundational years of the PRD (Mazur, 2010; Stetson and Mazur, 1995; Wolbrecht, 2000; Wolbrecht, Beckwith and Baldez, 2010). Nonetheless, electoral reform in Mexico opened the way to a number of smaller political parties. On the left, *Partido del Trabajo* (PT) was founded in 1990, *Convergencia* was founded in 1997; these two are still present in the electoral arena. Other political parties from the left were also created at the time of the political opening during the late 1990s; *the Partido de
la Rosa, which ran for the first time in the 2000 election was the first to include sexual diversity and gender equality among the core issues of its platform. Similarly, the Partido Social Demócrata (PSD), which was key in promoting the issue of same-sex marriage and consistently voted in favor of liberalization of reproductive rights, and other women’s rights. These last two parties have currently disappeared, as electoral reform tightened the rules on the existence of political parties, which now require at least 2% of votes in a federal election to gain or maintain registration as a political party. The inclusion of sexual diversity and women’s concerns in major political parties such as the PRD came after political actors from either mobilized groups or smaller political parties were co-opted by larger organizations. The PRD now has a commission for sexual diversity, 19 which has a working relationship with most LGBT political activists in particular in Mexico City. Although a similar commission for women equality does not exist in the party, the PRD is more likely to support gender issues when in strong competition with the conservative PAN.

The Church in Mexico

Mexico has a long history of secularization. Since the creation of the modern Mexican state, a great deal of attention has been paid to limiting institutional power of the Catholic Church. The Church faces are restrictions to the way it can behave as a political actor. As Haas has argued, “the strength of the institutional Catholic Church in Latin America constitutes a major impediment to feminist policymaking” (2010: 46). Furthermore,

19 A full description and a calendar of activities is offered through: http://diversidad.prd.org.mx/ The link offers limited information but shows a connection to Judith Vázquez, one of the most recognizable faces of the LGBT community, as she was in the first couple to be married under the same-sex marriage law in Mexico City. During the July 2009 Federal elections, the PRD ran a spot that promoted the sexual diversity commission asking for votes from those who believed in that cause (http://youtu.be/FI9U3C8QqmE).
Blofield (2006) has argued that the Catholic Church’s media ownership allows it to shape public opinion on social and political issues. However, in contrast to other Latin American countries, in Mexico the Church is not allowed to own any print or media outlets and religious broadcasts require governmental permission, which limits some of its power in the political arena. The influence the Church may hold as an institutional actor is limited to the discursive arena, as resources have been limited for political use.

During the PRI 70-year rule, the Church-state relationship was characterized by a mutual understanding where enforcement of anti-clerical laws was almost nonexistent while the Church reprieved from engaging in open politics and supported the maintenance of the status quo (Loaeza and Lajous, 1990; Puente; 1992). At this time also, there was a growth of organizations affiliated with the Catholic Church, such as private schools, the Opus Dei, the Legionaries of Christ and Pro-Vida, who were able to participate in political life (Kulczycki, 2007). These organizations have seen challenges since the democratization process began, but remain active. Both the Opus Dei and Pro-Vida have ties to North American pro-life organizations and are connected through the conservative Christian Right transnational social movement (Bob, 2012).

We are in agreement with Loaeza’s argument that “the Catholic Church in Mexico does not have the resources to fight or even slow down a secularization process that poses a major challenge to its claims of value hegemony and political influence” (2009: 98). Across the country there is an increase in not only political competition but also an increasingly diverse religious landscape that poses challenges to the Catholic Church (Trejo, 2009). While the institutional strength of the Catholic Church is not able to impede policy advances, as previously argued by Htun (2003; 2009), the civil
organizations that identify strongly with the theological teachings of the Catholic Church mays still exert pressure and oppose liberalization projects that threaten “family values” (Buss and Herman, 2003). As Chapter 4 discusses further, LGBT activism was able to confront these groups in a more effective manner by claiming legitimacy through civil and human rights discourse. However, Chapter 5 presents a more troublesome picture in the policymaking of female reproductive rights not only in Mexico, but also in Argentina.

**Conclusion**

The intent here has not been to provide with an exhaustive history of the political climate and institutional framework of Mexico and Argentina, but rather to provide a brief account of the prevailing conditions under which social movements must maneuver at the domestic level and the international norms under which the issues of abortion and same-sex marriage operate.

As Rosalind Petchesky argues, “participation in the UN conferences has been a critical vehicle for strengthening and broadening transnational coalitions” (2003: 70). As the accounts on conservative forces show, the UN is also considered a site of legitimacy by the global Christian Right, “religious conservatives have decided that the UN cannot be neglected. It is too important and offers avenues for their interests to be realized” (Bob, 2012: 54). It is in the UN where the first confrontations over reproductive and LGBT rights would take place and some of the strategies for dealing with rival networks as well as framing discourses come from these early encounters. Though lack of state commitment and funding allocated to resolutions prevails, innovative discursive elements subsist and aid in the norm creation process—an essential step in framing demands that
can be deemed legitimate. Additionally, UN conferences have built bridges among transnational activists, essentially creating a springboard for transnational advocacy networks, which facilitates exchanges and coordinates strategies. In the case of women’s rights UN Conferences saw the creation of the Latin American and Caribbean Committee for the Defense of the Rights of Women (CLADEM), which has delegates from both Mexico and Argentina directly connecting it to domestic activists (who are often double militants).

The transnational advocacy network on LGBT rights has achieved a degree of recognition at the international level that empowers domestic activism. As Risse argues, once a norm is in existence at the international level and is accepted through even discursive practices, there is a boomerang effect directed toward states that, with sustained domestic mobilization, can lead to enforcement of that norm (Risse, 1999). The continued attention to unequal treatment of LGBT people through monitoring mechanisms and discursive inroads in international law provide an institutionalized way for transnational advocacy groups to engage with states. This mobilization, coupled with an influx of resources coming from different foundations and organizations point to the establishment of LGBT rights viewed as an extension of the human rights norm. This shift has empowered weaker domestic pro-liberalization groups by a now porous domestic political opportunity structure.

For both the Catholic Church and its conservative allies, advances on same-sex marriage, LGBT and reproductive rights are deeply disturbing. However, the salience of these issues today provides a new area for understanding how international norms may impact domestic policy processes, and is relevant to understanding how international law
has become a site for discursive struggles (Simmons, 2009) that—as Chapters 4 and 5 seek to demonstrate—have an impact on domestic policy. Finally, the incorporation of LGBT and reproductive rights into an emergent international Human Rights regime corresponds to a broader trend of regulation of sexuality across the globe, wherein “change delegitimated definitions and criminal regulations of sex rooted in the collective order and procreation imperative, and it brought forth new definitions and regulations prioritizing the individual liberty and the rule of consent” (Frank, Camp and Boutcher, 2010: 887-888). This change in priorities is but an example of the paradigm shift in global politics.

In addition, the changes in the institutional setting of Argentina and Mexico have impacted how social actors engaged with the polity. In Argentina, the Constitutional reform of 1994 created a more receptive environment for international norms and actors. This institutional change may separate Argentina from Mexico, as it aided the LGBT movement create legitimacy and momentum for their claims. In both countries, judicial reform created spaces for continued protest. The process of decentralization would suggest that the number of points of access to policymaking arenas has increased. However, as the cases show, the newly created polities of Mexico City and Buenos Aires are more receptive of societal demands. In Mexico, the process of decentralization and institutional reform in the electoral arena present a political opportunity that is relatively closed when comparing it to Argentina. As a result, Mexican social actors would see their repertoire for contention somewhat diminished and tend to rely more on policy entrepreneurs and brokers.
Finally, the preferences of the executive are underscored, as the case of Argentina will show in Chapters 4 and 5; different preferences make a difference for policy change as in the case of same-sex marriage the final acceptance of President Cristina Fernández de Kirchner created a more favorable environment for that policy process, while abortion still remains highly contested. In Mexico, President Calderón’s opposition to liberalization of both same-sex marriage and abortion, make the policy process at the federal level a more complicated proposition. However, his opposition has also meant that these issues became strategic for other political parties, especially in the Left. The following chapters examine in-depth the dynamics of these issues.
Chapter 4 – LGBT Rights in Mexico and Argentina, the Pursuit of Same-Sex Marriage under the Equality Banner

In December 2009, Mexico City became the first city in Latin America to legalize same-sex marriage. After a heated debate and vote in the local assembly, the proposed bill passed with 43 votes in favor and 17 votes against, and was quickly signed into law by Mayor Marcelo Ebrard that same month. The sweeping change surprised many observers and received much domestic and international media coverage. The dramatic and fast-paced change also stands in contrast to the arduous policy process of liberalization of abortion (see Chapter 5).

Only a few years later, same-sex marriage was legalized in Argentina, but at the federal level, marking an even more surprising outcome. The bill passed on May 5, 2010 in the lower house with a vote of 125 in favor and 109 against. Later that year, in July of 2010, the Senate passed the bill with 33 votes in favor and 27 against (9 absentees) after a heated debate that lasted 15 uninterrupted hours. President Cristina Fernández de Kirchner signed the bill that legalized same-sex marriage on July 21, 2010. The Argentine bill not only amended the Civil Code but also included the right of couples to adopt. Argentina thus became the first country in Latin America to legalize same-sex marriage throughout the entire country. In Argentina, civil unions were already in place in the City of Buenos Aires as a possibility for same-sex couples. However, this provision excluded same-sex couples from a host of social benefits attached to marriage, such as the ability to inherit property, inherit pensions or adopt children. In addition, civil unions were circumscribed by provincial law. In the words of activist María Rachid, civil unions are a “marriage lite” (Bimbi, 2010).
The puzzling trend of relatively rapid liberalization of same-sex marriage, an issue that entered the public arena only a few years ago, raises some important questions. Why would a mostly Catholic country accept liberalization of a policy that stands against the agenda of the Church and other conservative allies in the Christian Right? How could a small minority of activists gain access to policymaking arenas and secure controversial changes? What can the policymaking process on this issue teach us about the inner workings of the political system of the new democracies of Argentina and Mexico?

Although the issue of homosexuality is not new, the engagement and success of the LGBT movement in the policymaking arena is quite recent. In Argentina, the LGBT movement can be traced back to the Front of Homosexual Liberation (FHL), one of the first groups organized during the authoritarian period, the result of several organizations coming together under the leadership of Néstor Perlongher, a well-known poet and sociologist who wrote extensively about the homosexual experience in Argentina and the sexual revolution (Bazán, 2010). LGBT mobilization during the authoritarian period was sporadic and short-lived. After the 1983 transition the most important group to appear was the Comunidad Homosexual Argentina (CHA), which brought together over 150 members under the leadership of Carlos Jáuregui; this organization would later lead the way in advocating for civil unions for same-sex couples in the City of Buenos Aires.

In Mexico, LGBT activism was also present prior to democratization. Gay liberation groups appeared first on the public sphere in the 1970s. For example, in 1971 El Frente Liberación Homosexual (FLH) was formed in Mexico City to protest the firing of gay employees at Sears’ stores. Other important movements appeared in Guadalajara. These early groups attempted to forge alliances with the left but did not find a permanent
place in the public sphere “as a generational shift in beliefs and values began taking root, particularly among middle-class youth. This generational shift would ultimately find expression within the partisan left as well, paving the way for its opening to homosexual liberation” (de la Dehesa, 2010: 70).

In both Argentina and Mexico, there is a historic trend of LGBT mobilization, but the goals and tactics of the movements have evolved significantly. Partly because the political opportunity structure is somewhat more open, groups are now able to engage in policymaking arenas. Although there are still groups that remain critical and choose not to engage with political actors, this study focuses on those groups seeking policy change as the main focus is to examine the contingent factors that led in each case to the enactment of same-sex marriage.

Liberalization of same-sex marriage in Argentina and Mexico City is rooted in several factors, some of which are long-term and structural (democratization, decentralization and a growing autonomy of the judicial branch), while others are short-term and contingent (political alliances, mobilization, and norm diffusion through transnational brokerage and ties). This chapter argues that the relative weight of these factors varied in each case, and disaggregates the explanation by first examining the transnational ties and mechanisms of norm diffusion in both Mexico and Argentina. Second, it examines the contingent factors in each case, identifying shifts in political opportunity structures that may lead to popular participation or by groups previously excluded from policymaking arenas (Banaszak, 1998; 2010; Kriesi, 1995; Tarrow, 1998; 2011). As we shall see, the role of institutional actors as policy entrepreneurs was also crucial, as alliances were made in order to secure policy liberalization. In both cases, the
legislation that produced liberalization needed a sponsor that had to come from a political party; in both cases it was a left-of-center politician who played the role of policy entrepreneur. In Argentina, the head of the newly created Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), María José Lubertino, brokered meetings and compromises on behalf of the LGBT movement, while in Mexico, David Razú of the small leftist PSD\textsuperscript{20} was an important policy entrepreneur in the process of liberalization of same-sex marriage in Mexico City.

In addition, the importance of the role of the judicial sector is underscored. As was mentioned in Chapter 4, the independence gained by the judicial branch in both Argentina and Mexico created opportunities for social actors to mobilize, protest and gain rights (Domingo, 2005; Domingo and Sieder, 2001; Finkel, 1998; 2008; Sieder, Schjolden and Angell, 2005; Smulovitz, 2005). The liberalization of same-sex marriage underscores how contentious politics has changed in the region as the courts became new sites of protest. Finally, this chapter examines the importance of framing, from transnational normative discourses that emphasized LGBT rights as human rights (see Chapter 3) to domestic articulations of civil rights under a specific constitutional framework.

This chapter presents findings on the policy process of same-sex marriage in Argentina first and Mexico second with a focus on the factors outlined above. The analysis relies on “the interplay of meaningful actions and structural contexts” (Skocpol, 1984: I). In other words, we shall examine the role of social movements and political actors within the institutional framework existent in these democratizing environments.

\textsuperscript{20}Partido Socialdemócrata (PSD) has now disappeared after it lost its status after a reform of electoral rules, which limited the existence of political parties giving status only to those that could gather at least 2\% of votes in federal elections.
Finally, the last section of the chapter offers a comparison of the policy divergence among these two cases.

**Argentina: Marriage for All and Equal Rights**

Argentina stands out in Latin America not only because it liberalized first, but because the process of liberalization took place first in the courts and later in the legislative arena. Indeed, the complicated process included *amparos* in different jurisdictions, and innovative challenges posed by the legal team of the main activist group, the *Federación Argentina de Lesbianas, Gays, Bisexuales y Transexuales* (FALGBT) underscore the multi-layered nature of the policy process.

The first demand for same-sex marriage occurred on February 14, 2007, María Rachid and Claudia Castro showed up in the footsteps of the Civil Registry of the City of Buenos Aires to apply for a marriage license. The couple was denied a license. Instead, they were offered a license for a civil union but the couple had already taken advantage of such contractual agreement. In fact, civil unions had been previously legalized in the Autonomous City of Buenos Aires in 2003 through the No. 1004 law, which amended the Civil Code. However, the application for a marriage license by Rachid and Castro was a well-orchestrated demand. The couple included two lesbian activists who founded *La Fulana*, an NGO that would become a key player in the quest for legalization of same-sex marriage. The couple were also among the founders of the FALGBT, an umbrella

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21 *Amparos* are the prevalent legal recourse of protection for individual rights. The figure also exists in the Mexican judicial system. Because *amparos* are somewhat inexpensive they are widely used in the region. The combination of an *amparo* along with media attention can make a big statement, so it is a viable outlet for rights-based claims.

22 The first article of the law No. 1004 states: “a civil union is a union of two free individuals independent of their gender or sexual orientation.” The Unions were also valid if a couple had been residing in the same domicile for 2 years or longer and could be easily terminated via a dissolution because it does not entail sharing of property or adoption rights.
organization formed as a federation of smaller LGBT organizations and allied individuals created after the model of the Spanish FELGBT and ILGA, the international federation of LGBT organizations from around the world. FALGBT houses about thirty LGBT organizations from Argentina (FALGBT, 2011; Bimbi, 2010). The creation of the organization is in itself an example of relational diffusion (Tarrow, 2005), where the Spanish model was adopted by Argentine LGBT social activists and implemented with their help (Bazán, 2010; Bimbi, 2010; Friedman, forthcoming). LGBT mobilization was deeply connected to transnational movements seeking liberalization of same-sex marriage.

This first demand for a marriage license was also backed by María José Lubertino, a long-time politician known as an outspoken feminist who, at the time, headed the INADI. The couple’s legal counsel was Mariana Podetti of the Universidad de Buenos Aires (UBA), who helped them with the strategy that also served as the launching pad for using the courts to claim the unconstitutionality of articles 172 and 188 of the federal Civil Code (Osojnik, 2007).

This strategy continued as an appeal to the Supreme Court to reverse the denial of a marriage license in the lower courts. The first amparo was presented at the Civil Family Court (Justicia Nacional en lo Civil de la Familia), where the marriage license was also denied. Then the couple, presented an appeal in the Civil Appellate court (Cámara de Apelaciones en lo Civil) also denied by a judge. Finally, in late February, 2008 the final amparo was presented in the Supreme Court (Bimbi, 2008). However, the case of Rachid and Castro was never settled by the Supreme Court, as legalization through legislative action occurred before the Supreme Court could issue a ruling on this case. In addition,
another such case was presented, part of the FALGBT campaign, where Alejandro Vannelli and the actor Ernesto Larresse demanded for an *amparo* when they were also denied a marriage license. Larresse attracted significant media attention since he is a renowned Argentine actor and gave interviews on several media outlets resulting in broader public support. The strategy by the FALGBT in the courts included having as much media attention as possible, so that the discursive elements of equal rights and equality under the law gained wider exposure.

The same strategy would find its way to other courts in different jurisdictions pressing for the judicial recognition of marriage. In all instances, the strategy was essentially the same: a couple requested a marriage license, followed by a group of lawyers and supporters. When the license is denied, the real protest occurs by mobilization through media coverage and requesting *amparos* from the Civil Code arguing that same-sex marriage was consistent with Constitutional rights and protected by international agreements such as the Universal Declaration of Human Rights (UDHR). Several couples were needed to keep constant media attention on the issue, thereby raising its profile in the public arena. In addition, several full-time journalists were also militants of the FALGBT, which had its own media strategy. In fact, the first marriage between two men, Alex Freyre and José María Di Bello, occurred as a result of judicial actions sanctioned by a newly-elected governor in Tierra del Fuego.

The FALGBT showed a united front with a very consistent strategy of mobilization, forming alliances with politicians either in political parties or with

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23 An early problem for the FALGBT was that not many couples were willing to demand a same-sex marriage license because they were afraid of the repercussions of “coming out” in public. Most of the couples then were activists but Vannelli and Larresse were the first couple of adherents that were not militants of the FALGBT and after their claim there was a snowball effect with many more couples willing to add demands via the courts (Bimbi, 2010).
sympathetic functionaries inside the state, with the goal of creating a rights-based language that included equality for all and removing second-class citizenship for sexual minorities. Where do these frames and strategies come from? Why were the campaigns so consistent throughout? The following section examines how influences from the Spanish experience with same-sex marriage, resulting in legalization in 2005, helped the Argentine organizations through diffusion mechanisms such as brokerage, and also provided ideational and material resources necessary to carry out the campaign. Indeed, as we shall see in the next section, the Spanish LGBT movement carried out relational diffusion, by exporting the movement and campaigns for same-sex marriage directly to Argentina.

Argentina and Same-Sex Marriage, Dispatches from the Motherland

The policy process on same-sex marriage in Argentina was directly influenced by Spanish mobilizations. These international linkages better exemplify the process of diffusion, where “the linking of two or more previously unconnected social actors by a unit that mediates their relations with one another and/or with yet other sites” (Tarrow, 2005: 190). The process usually involves face-to-face brokerage as well as relational and non-relational mechanisms where ideas directly influence ongoing campaigns, creating a network of deeply committed entrepreneurs. At the same time, strategies operated simultaneously at the national and local levels. The relation occurred as a scale shift of contention (McAdam, Tarrow and Tilly, 2001; Tarrow, 2005), where societies with a familiar domestic policy process influence one another through “spatial proximity,
interpersonal networks, and institutional linkages within particular societies” (Tarrow, 2005: 122). The relationship can be visualized as follows:

**Figure 4.1: Scale Shift Model**

![Figure from Tarrow, 2005: 123.](image)

The previous figure exemplifies the insertion of transnational activism to domestic or local policy processes. In this case, the creation of the FALGBT in Argentina with the goal of pursuing the same-sex marriage campaign was deeply influenced by the strategies deployed previously in Spain by the FELGBT. The mechanism by which the FALGBT was capable of mounting the campaign at the domestic level was in part the product of transnational activism through brokerage (Burt 1992, 2004). Underpinning these projects was the broad frame of “equality of rights” and “human rights” already established at the international level of rights for sexual minorities.

Because these actors in Argentina and Spain had direct contact through existing relational mechanisms, it became more likely that they would attribute similarity to each other. Pedro Zerolo and Beatriz Gimeno the main activists of the Spanish FELGBT were in constant contact with members of the FALGBT in Argentina, before the FALGBT was created; they both acted as norm entrepreneurs in the same-sex marriage campaign. Zerolo was identified as the “father of the same-sex marriage proposal” (Bimbi, 2010: 31), and was also an advisor to former Spanish President José Luis Rodríguez Zapatero.
and brokered exchanges between the Spanish FELGBT and FALGBT. Zerolo and his fellow Spanish activists not only provided the basis for the arguments that would later be presented as the same-sex marriage campaign, but also shared strategies regarding the reactions that could be expected during the legislative process from opponents, namely the Catholic Church and conservative advocates of the “natural family.” In anticipation, the campaign made a clear distinction between religious marriages and civil marriages.

The Spanish presence was felt early in the process. For example, on March 2006 the FALGBT organized a talk at the UBA \(^{24}\) featuring Beatriz Gimeno as the keynote speaker to an open forum under the title “Same-sex marriage: Legislative reform and advances of LGBT rights in Spain. Perspectives and Projects in Argentina.” Other attendants included María Rachid, leader of *La Fulana* \(^{25}\) and president of FALGBT, Osvaldo Bazán, a journalist, Vilma Ibarra and Eduardo Di Pollina. \(^{26}\) This was one of the first steps in the diffusion of strategies and modes of organizing, that not only influenced the tactics employed by the FALGBT in a clear adoption of the Spanish model down to the mobilizing frame of “Same rights with the same name,” the motto used by Spanish activists during the successful same-sex marriage campaign that culminated in 2005 with the passage of the same-sex marriage law.

In Argentina, those working in social movements have a long history of cooperation and openness to international influences stemming from the human rights campaigns during the dictatorships (Sikkink, 2008; Encarnación, 2011). Building upon these previous exchanges and networks, a symbolic gesture took place when Marcelo

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\(^{24}\) *Universidad de Buenos Aires*, the biggest national autonomous university in Buenos Aires.

\(^{25}\) *La Fulana* is one of the main lesbian organizations in Argentina; it was also one of the first to join the Federation, which is why María Rachid was the first president of the Federation.

\(^{26}\) Information recovered from the flyer of the conference, archived in FALGBT’s offices. Eduardo Di Pollina was the first legislator to present a project to amend the Civil Code, but this project did not make headway in the Parliament.
Suntheim and César Cigluitti, leaders of CHA\textsuperscript{27} and long-time LGBT activists married in Spain in January 2008. This was another demonstration of activism, which held weight because in the words of Suntheim, “We will ask this marriage to be recognized in Argentina because it is constituted and recognized in another country, that is Spain, which has important cultural ties with Argentina” (Cecchi, 2008). Norm diffusion here relied on the cultural linkages between Spain and Argentina that facilitated attribution of similarity and modularity (Tarrow, 2005, Tilly, 1995). The repertoire of contention for same-sex marriage was then able to transcend its locality and was transferred to a new site, in this case, Argentina. Furthermore, the demands were nested in the larger international context of human rights, which resonated with the particular context of Argentina and created “an innovative and effective campaign” (Encarnación, 2011: 105).

The influence of Spain was not only on activists, at the level of sharing information and strategies, but was also felt by legislators (Eduardo DiPollina and Silvia Ausberger from PS) who first introduced the proposals for same-sex marriage in Congress. They too had been exposed to the ideas presented by Pedro Zerolo and Beatriz Giménez of FELGBT through their participation in seminars organized by FALGBT and the subsequent lobbying from the same organization.

Through symbolic and material resources, the Spanish influence in Argentina was key in the policymaking process as it gave activists tools for mobilizing and anticipated the responses their campaign and project would have to deal with. Because norm entrepreneurs are agents who diffuse norms, and help create frames and occasionally even help shape new identities in the international system (Mische and White, 1998), the

\textsuperscript{27} CHA is the Sexual Community of Argentina (Comunidad Homosexual Argentina), one of the first registered organizations working in favor of LGBT rights. This organization was also one of the main proponents of civil unions in Buenos Aires.
Argentine case shows that the mechanism of brokerage from Spain to Argentina influenced the strategies and tactics of mobilization.

Transnational activism contributed to the formation of the political alliances brokered through the FALGBT with particular legislators and bureaucrats. In addition, the judicialization of protest would extend the language of international law and place it in the domestic context of Constitutional and legal language in Argentina. The next section analyzes the strategy in the courts followed by the alliances that helped boost the coalition on same-sex marriage and would ultimately bridge the judicial claims to a legislative project that would be approved in 2010.

**Legislative Projects**

The LGBT social movement worked to create alliances with legislators that not only backed their cause but also helped in presenting legislative initiatives in the Chamber of Deputies. There were several efforts to legalize same-sex marriage. The first one failed and the second one, at the end, gained the support of the executive, an important factor that would ensure its passage.

The first legislative project was presented by national Rep. Eduardo Di Pollina of the Santa Fé province, from the Socialist party. The proposal was presented in 2007 but was not able to gather enough support in the lower Chamber to be discussed in a plenary session. During that same year, Rep. Di Pollina stepped down as national deputy and returned to the Santa Fé provincial legislature. Consequently, the first project failed before being discussed and soon after also lost its most important policy entrepreneur. After this first failure, the task for the LGBT movement would be to find some other way to reintroduce a legislative project.
The second round of legislative battles would come with the project supported by 19 legislators. This time, the FALGBT was able to create a broader coalition of supporters willing to present another project through the legislative route. The new proposal was introduced by Silvia Ausberger, also from the Socialist party, and as a sign of support Di Pollina also signed the proposal even though he was no longer able to vote on it. The other supporters included Leonardo Gorbacz, Marcela Rodríguez, Marta Maffei, Delia Bisutti, Eduardo Macaluse, Carlos Raimundi and Fabiana Ríos from the Coalición Cívica (ARI). In addition Remo Carlotto, Araceli Méndez de Raimundi and Fabiana Ríos from the radical Civic Union (UCR) also signed, as well as Miguel Bonasso from Convergencia, María del Carmen Rico, from the Federal Peronismo, Norma Morandini and Claudio Lozano from the Partido Nuevo de Córdoba, and Carlos Tinnirello from Emancipación y Justicia (file 1907-D-2007). The project was openly supported by the FALGBT, which had launched the campaign “The Same Rights with the Same Names” (Osojnik, May 2, 2007). In this second round of legislative efforts, the FALGBT focused on its relationship with Senator Vilma Ibarra, who belonged to the oficialismo, the ruling coalition working with Cristina Fernández de Kirchner. Sen. Ibarra had been singled out because she had a history in promoting gender issues, and could also provide a link to the ruling coalition. In an interview with Página 12, María Rachid stated:

Just because the legislative project bears the signature of only of one member of the officialist faction from the Judicialist party [Ibarra], does not mean there are no more supporters. There is of course the possibility that there is a sector from the official bloc that may not agree with her.

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28 The theme of the campaign, as it turns out, was directly influenced by transnational ties with Spain that years earlier had launched a campaign with the same title “Los Mismos Derechos con los Mismos Nombres” (see Friedman, forthcoming).
position, but these types of projects are not presented in a vacuum, in particular during election times. My guess is that there is a degree of consensus within the officialist fraction for her to present her support during a time of electoral campaigns. María Rachid, *Página 12*, October 17, 2007.

Senator Ibarra was key in promoting the legislative process in the upper chamber, which was viewed by the FALGBT as the “tougher sale” for the same-sex marriage law. Again, it was not only the FALGBT that had been directly influenced by the Spanish case, but Senator Ibarra herself, who quoted the Spanish Minister of Justice, Juan Fernando López Aguilar, when presenting her reasons for supporting the legislative project. Senator Ibarra stated that she was in favor of civil unions, but the same sex marriage law was better at the national level because extending civil unions would “institutionalize and deepen a barrier of discrimination and differentiation that [the same-sex marriage law] wants to get rid of” (*Agencia Diario y Noticias*, October 15, 2007). This project was introduced in the Senate but did not get enough votes to pass.

Ibarra stepped down from the Senate in 2007, and was elected as a National Deputy for Buenos Aires under the Frente Para la Victoria (FPV), the coalition that Cristina Fernández was also part of. The next project was re-introduced by Ibarra in the lower chamber. The first audiences for the same-sex marriage law in occurred in October and continued in November, 2009 included the participation of Spanish activist Pedro Zerolo and Antonio Poveda of the FELGBT, who offered testimony during the debate in the lower chamber. However, even this second round in the legislative would fail. The lack of a quorum meant that the FALGBT would have to wait until the next session to reintroduce the project (*Clarín*, October 28, 2009; *La Nación*, October 27, 2009). According to Bimbi (2010), quorum would have been reached except for the impending
visit of President Cristina Fernández to the Pope in Rome. However, this is only a speculation.

The bill to amend the Civil Code was again re-introduced to the lower Chamber by Vilma Ibarra in March 2010. The new strategy by the FALGBT was to create a “rainbow” coalition in the lower chamber to secure enough votes in the commissions that would ensure the law would be discussed and passed (Bimbi, 2010). The project had the support of several legislators at the onset, this time the FALGBT had worked to secure enough votes before re-introducing the bill (*Expediente 0574-D-2010*). Furthermore, the strategy of mobilization through the courts had granted the movement an impulse. An *amparo* case was resolved and judge Seijas had issued a ruling stating that preventing the marriage of same-sex couples was unconstitutional (see next section). The ruling changed the POS under which the last legislative debate took place. On a discursive level, the ruling also armed the FALGBT movement with legitimacy and arguments in favor of changing the wording on the Civil Code to make it more equitable. By this time several lawmakers had already announced their support publicly, but interestingly ex-President Néstor Kirchner was also in favor, which would sway the officialist bloc in favor of the measure (Ruchansky, March, 2010).

The legislative debate opened with pronouncements over the differences between civil marriage and religious marriage, making clear the state was in charge of facilitating civil marriages only. The primary policy entrepreneur, Vilma Ibarra, would address the plenary stating:

*The Supreme Court has said that in a constitutional state with rule of law we cannot give rights to some while we take them away from others without a plausible reason. [...] Giving rights to some while taking them away from others on the basis of sexual orientation does not seem*
reasonable. I say this because there is a contradiction evident in the Civil Code, and our Constitution and international treaties mandate that we do not discriminate. We cannot discriminate, differentiate or distinguish in the basis of sexual orientation. Vilma Ibarra, 2010.

Opposition speeches during the debate focused on the rights of children and how the “gay marriage” bill would impact families, as it included the right to adopt children. Congresswoman Cinthya Hotton partly framed the debate as “we want mom and dad” and stated that she opposed gay marriages because they posed a threat to children. The other important opposition came from Rep. Alberto Rodríguez Saá from San Luis, who claimed that marriage between a man and a woman “made sense” because it leads to procreation but the alternative did not (La Nación, 2010). The lower chamber passed the law with most of the left-of-center parties voting in favor. In the Senate, the vote also favored the law by 33 for, with 27 votes against. The debate was long and backers of the law would also mention the rights-based frame promoted by the FALGBT. Senator Daniel Filmus stated “we are talking about the state project where we want to live, one that does not reject fundamental rights” (Vallejos, 2010).

These legislative debates show that framing advocated by the FALGBT was one of the main successes. The LGBT movement was able to build the necessary coalitions to pass the bill, but the real victory was in terms of creating acceptance through a rights-based discourse, which would underscore denial of same-sex marriage as discrimination and violation of fundamental rights, individual rights as guaranteed by the Constitution and international treaties, which are incorporated into the Argentine law. The next section examines the strategy of protest in the judicial system, where the LGBT movement took advantage of the many avenues for claiming rights and in doing so would create an opening in the POS.
Out of the Streets and Into the Courts

Public support for same-sex marriage and other LGBT rights was extremely weak at the start of mobilizations. The court system thus served as a site of protest and articulation of demands. As Mucciaroni notes in examining the struggle for LGBT rights in the U.S., “the courts have the greatest potential impact on those issues for which public support is weakest” (2008: 253). Although the court system in Argentina (and Mexico) differs institutionally from the U.S. system, the same argument that Mucciaroni advances can be made for Argentina. In fact, it is not a surprise that the strategy of claiming rights through the judicial system was utilized, since there was a strong influence from transnational activism to do so. What is surprising is that the courts in Argentina would be the first instances to liberalize same-sex marriage.

The first challenge posed by María Rachid and Claudia Castro was not successful, but would signal the beginning of a strategy that would seek change through the legislative branch while also working on alliances with politicians and bureaucrats working inside the state to enter the legislative arena. The amparos Rachid and Castro sought went through family courts and reached the Supreme Court. The next significant challenge in the courts came from Alex Freyre and José María Bello, also activists but not from the ranks of the FALGBT. On April 2008, Freyre and Bello asked for a marriage license, which they were denied. After the denial they challenged the standing through an amparo but this time the strategy shifted to the lower courts on contentious and administrative²⁹ issues in the Autonomous City of Buenos Aires. Judge Gabriela Seijas stated in her decision that not allowing the marriage would violate Article 11 of the Buenos Aires Constitution, which prohibits discrimination, and was also be in violation

²⁹ Corte de lo Contencioso Administrativo.
of the International Declaration of Human Rights (*La Nación*, 2010). Furthermore, Judge Seijas’ ruling declared that articles 172 and 188 of the federal Civil Code were unconstitutional and ordered the lower courts to sanction the marriage of the couple.\(^{30}\)

After this ruling the couple would have been able to marry legally in the City of Buenos Aires if the Mayor allowed it. Although at the time the mayor there was the conservative Mayor Macri, declared in national media outlets that he would not block the marriage (*La Nación*, 2010). The change in strategy for the FALGBT paid off, by going to lower level courts in the City of Buenos Aires, they were able to access a more progressive setting. The newly created institution is staffed by young law practitioners that are deeply connected to international treaties and take seriously the Constitutional reforms of 1994. The POS was more open in this particular venue of the judicial branch and opened the debate in a serious way. In this case, the strategy borrowed from the Spanish FELGBT was adapted to the particular domestic context in Argentina.

While the conservative government decided not to appeal this action, it was subsequently blocked by Judge Alesina, a national judge who overruled the previous action by Seijas. This action came in response to a petition from the Corporation of Catholic Lawyers. Although Alesina did not have jurisdiction over the case, her interjection could only be overruled either by the Supreme Court or the Mayor. When Mayor Macri did not take action the process was stalled. A few months later the same couple tried to take their legal action to another jurisdiction, Tierra de Fuego, where Fabiana Ríos of the ARI was just elected as governor. Ríos had previously worked with FALGBT as she was one of the sponsors of the second legislative same-sex marriage bill.

\(^{30}\) This was a judge of the first instance of the administrative courts of the 15th Circuit. The legal document was accessed and translated, filed under: *EXP 34292 /0 Estado: EN LETRA* in the province of Buenos Aires.
Ríos signed the decree No. 2996 that allowed the marriage based on the favorable judicial ruling. This time the legal *amparo* worked and the couple was issued a marriage license on November 16, 2009. A couple of weeks later the first same-sex marriage occurred in Tierra de Fuego.

Recapitulating, this first marriage took place before the final legislative debate that would approve the same-sex marriage law. FALGBT used the publicity generated by the judicial ruling and the first marriage in Ushuaia, Tierra de Fuego, to keep the attention focused on the issue. Although the opposition from the Association of Catholic Lawyers was a constant throughout the judicial battles, the alliances FALGBT was able to forge with politicians created openings and proceeded without interruption. In addition to the aid received by Pedro Zerolo from the Spanish FELGBT was also important. This norm entrepreneurs had a big impact in the process not only by supplying information on possible strategies, but from the legitimacy afforded by the successful campaign in Spain.

The next section examines the final relevant factor in the policymaking process of same-sex marriage. The federal agency INADI would also play a crucial role in creating bridges between the FALGBT and the Executive and other legislators.

*Diversity Policy Agencies – INADI*

While the Feminist Policymaking literature has found the role of the women’s policy machineries (WPMs) to be relevant in some instances of policymaking, I propose here to look at the role of diversity policy agencies as a possible ally of the LGBT movement. The INADI is similar to WPMs elsewhere in the sense that it is part of the institutional structure of the state, and an alliance with the agency helped create a policy environment conducive to policy change. In this case, the leadership of María José Lubertino and her
successor Claudio Morgado, were in line with the policy goals of the FALGBT; it also facilitated the movement’s contacts with legislators and the executive. In this case, the alliance was crucial because it facilitated the entry of the movement to the policy arena, going from what might have been a moderately open POS to a fully receptive environment.

The role of the INADI as an ally to the LGBT movement created policy opportunities, as the agency leadership and staff were in effect policy entrepreneurs during the policy process. Their role was not merely symbolic, but they endorsed the campaigns from civil unions to same-sex marriage. The inclusion of the movement’s goals reinforced the frames of equality and human rights through official discourse by the agency, a factor that in combination with mobilization would lead to successful policy reform (Baldez, 2001; Haas, 2010; McBride and Mazur, 2010: ch. 4; Waylen, 1997).

María José Lubertino\(^{31}\) has a long history as a pro-women’s rights activist in government, but her full support for the same-sex marriage campaign, coupled with her position as INADI director created the conditions for a successful policy liberalization. Lubertino was present in most of the appearances to the courts in search of marriage licenses, INADI also provided institutional resources to the FALGBT in the form of legal counsel, helping the organization to articulate the strategy of mobilization through the courts. Her statements were so closely aligned with the goals of the movement that she was one of the most salient policy entrepreneurs. For example, she declared that:

Every person must have the same rights, in this case it is the right to form a family. We hope there is a democratic debate in the Parliament and we

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\(^{31}\) María José Lubertino was appointed by Néstor Kirchner and presided INADI from 2006 to 2009, after that term, Cristina Fernández de Kirchner appointed Claudio Morgado and more recently, in 2011 María Rachid was appointed vice-president of the organization.
also back the strategy of going through the judicial process because the main goal of these actions is to see the Constitution and international treaties in human rights take effect. February, 2008, Página 12.

In sum, the support of the DPM went beyond rhetoric and actually achieved the level of substantial support in the same-sex marriage policymaking process. The agency functions as “substantive representation” (McBride and Mazur, 2010: 76) of LGBT rights issues, and usually frames them as human rights.

**Mexico: Uneven Advances and Political Clashes**

The government of Mexico City was the first in Latin America to allow same-sex marriage when the reform was passed and signed into law by PRD governor Marcelo Ebrard on December 2009. The autonomous Federal District’s Civil Code was amended to include gender neutral terms, including the right to marriage and the right to adopt.\(^{32}\) Indeed, the campaign to gain first-class citizenship would become a reality when the same benefits for heterosexual couples were also granted to same-sex couples. The new law amended Article 126 of the Civil Code of Mexico City, which changed the definition of marriage from the union “between a man and a woman,” to “two contracting parties.”

In Mexico, the rights-based discourse was highly influenced by the separation of Church and state, an issue politicized early on in history through the 1920s Cristero war and often called upon by the Left when opposing the confessional, right-leaning PAN. While normative frames deployed internationally include LGBT rights in the human right regime (see Chapter 3), in Mexico, LGBT rights became the struggle for citizenship rights. The framing for same-sex marriage became somewhat embedded in the powerful frames from the *Leyes de Reforma* from the 1850s, where Constitutional reforms enacted

\(^{32}\) Articles 146 and 391 of the Civil Code in Mexico City were amended.
created the official separation of Church and state and there was a definition for civil marriage. The frames from that era are still a powerful signifier in domestic discourses often deployed by the left, and at times, the PRI. The next section briefly examines the extent of transnational ties and impact on the policy process of same-sex marriage in Mexico City.

**Mexico and ILGA, Transnational Critical Activism**

One of the most important activists in Mexico, Gloria Careaga, a long-time feminist, professor and founder of the lesbian NGO *El Closet de Sor Juana*, has been involved with the International Lesbian and Gay Association (ILGA) since its early days and later with the International Lesbian and Gay Association in Latin America (ILGA-LAC) since 1991, when the organization was formed. ILGA works as an international federation, bringing together organizations from different countries who can apply to join or be nominated by those already inside the organization (ILGA, Constitution). This model has been mirrored by other umbrella organizations in many other countries such as the FELGBT in Spain and FALGBT in Argentina. In Mexico, the same model is followed, but it is less structured and much more informal, relying much more on networks of activists and personal contacts. Nonetheless, the idea is that campaigns necessitate coordination and unification in order to be most effective (Mazur, 2002).

According to a local activist in Mexico, the party system makes it hard for LGBT groups to form alliances or lobby for policy change, “there are many pressures in terms of protagonism, often a project will only go forward if backed by a politician. Leaders of smaller groups will later on seek to join the ranks of that party or be nominated via the closed-list election” (Goldfederer, 2010).
The domestic context in Mexico then appears to be a complex terrain for policymaking, despite advances at the international level. Indeed, the “receiving context” of transnational influences in Mexico was more closed than in Argentina. A cultural interpretation presented by Rafael de la Dehesa (2010) argues that the case of Mexico presents a highly hybrid cultural configuration, which has led activists to appropriate only certain elements of transnational influence. The discourse of sexual diversity and calls for equality also “builds and resonates with a discursive frame introduced into public debate by the indigenous movement, which fundamentally challenged long-standing official constructions of Mexico as a *mestizo* nation in the singular” (de la Dehesa, 2010: 165). The frame seeks to incorporate everyone who was previously excluded from the hegemonic discourse of nation-building. As such, transnational influences of human rights are, in a sense, translated locally by the Mexican experience in which citizenship claims also come from indigenous communities and feminists.

Direct contacts from ILGA flow downward to particular movements at the domestic level. In Mexico, the norm diffusion and downward scale shift (Tarrow, 2005) lacks an institutionalized presence. Nonetheless, the activism at the international level has influenced the agendas and—to a certain degree the framing mechanisms deployed by the Mexican LGBT movement.

We are united as an LGBT movement. From ILGA we have aided mobilizations and as a movement we have been able to take control over certain issues. In the beginning we focused on depenalizing the condition of being lesbian or gay and it is great to say that this is now a reality in all Spanish-speaking countries. Gloria Careaga, initial remarks at the ILGA opening ceremonies in São Paulo, 2010.

The linkages between Mexican activists and transnational actors mostly take place within ILGA. The Mexican case is an interesting example of norm diffusion.
Linkages are not as direct as in the case of Argentina, and the “modularity” of certain norms in the domestic political context was less clear-cut. In Mexico, the promotion of LGBT rights has been a more decentralized and fragmented than in Argentina. Diffusion was mostly nonrelational, as advocates for same-sex marriage in D.F. were aware of the international normative context, but chose carefully which terms to incorporate as part of the framing borrowing mostly terms that emphasized equality of rights.

The international frames were often not directly employed in the domestic context. Social movements in Mexico have articulated a civil rights discourse that emphasizes a secular state, rather than purely a human rights discourse. In Mexico, secularization is “the frame that resonates strongly with the country’s history of anticlericalism and has gained particular salience with the Church’s growing political involvement since the 1990s and the political ascent of the PAN” (De la Dehesa, 2010: 163). In fact, PAN’s programmatic closeness to the Catholic Church that has pushed other political parties, in particular the PRD, to claim the opposite, secular terrain as an electoral tactic, under the heavily competitive electoral environment. In contrast, the PRI has remained at the margins of this ideological divide, either acting as a ‘swing voter’ or looking at the public’s pulse for cues on how to act. In general, the PRI is pragmatic and favors the status quo regarding social order issues.

In addition, as local Mexico City activist Lol Kin Castañeda explained: “we did not think we needed to ‘import’ any arguments. Our Mexican Constitution stipulates that there is equality under the law, and the Church should not intrude in the political context—that much is afforded by the Constitution” (personal communication, 2010). The policy frame that has become more dominant with LGBT activists relies on the cleavage of
separation of Church and state, where civil rights trump moral considerations. This is an important cleavage in Mexico given its long-time history with secularization. The LGBT movement has then embedded their claims in that existent cleavage, also relying in alliances with left-of-center politicians.

The repertoire of contention in Mexico is more consistent with civil and political rights. Although there is direct contact with the transnational social movement through ILGA ties, the campaign that was behind the same-sex marriage law in Mexico City relied more on local lobbying and alliances with the left. Some of the activists that have been transnational advocates for LGBT rights portray a lack of coordination among social movements. Diffusion of norms in this case is non-relational (Tarrow, 2005). Brokerage of transnational actors was limited, as the policy process often involves a level of co-optation between political parties and social movements. In short, activists in Mexico see possibilities mapped out through electoral politics and often engage in campaigns when there is a possibility for advancing personal careers (Careaga, 2010; Goldfederer, 2010).

As stated earlier, it is a combination of mechanisms that led to liberalization of same-sex marriage in Mexico City. In comparison to Argentina, in Mexico the domestic dynamics of policymaking carried a heavier weight than transnational ties. The domestic environment will be closely analyzed in the next section.

Policy Entrepreneurs and the Role of Political Alliances in the Same-Sex Marriage Law in Mexico City

One of the main alliances that made advances in gay rights possible was David Razú Aznar, a representative in the legislative Assembly of Mexico City (ALDF) from the left-leaning PSD who presented and championed the project and was the key policy
entrepreneur in this case. Activist LolKin Castañeda observed that, “if it was not for David, the project [for amending the Civil Code] would still be on the floor of the Assembly. Even though our activism supported the measure and adherents kept the campaign going, political maneuvering created the ultimate conditions for passage” (June 2010). Later on, Lol Kin (along with her significant other) would participate in the first same-sex marriage civil ceremony officiated in Mexico City.

Some of the main actors in the campaign to legalize marriage for same-sex couples in Mexico City included specific activists from social movements that in Mexico are largely loose organizations without much institutionalization. Meetings of these groups would take place in University campuses or cafes, and communication relied mostly on social media outlets. This rather loose assembling of individuals would succeed partly because of cooperation with sympathetic leaders within political parties from the left. For this reason, speaking of a unified ‘LGBT social movement’ in Mexico is far from reality. In fact, the push for same-sex marriage elicited debates that would expose segmented differences among LGBT groups. For some, the debate was about civil unions. Led by openly lesbian and elected lawmaker from the PRD Enoé Uranga, who presented the project of “cohabitation law” to the ALDF in 2001, some activists would push for civil unions, with its limitations. For others, marriage was a prerequisite for a status of equality under the law, which would pave the way for further demands. Some of the activists in the latter group included Lol Kin Castañeda Badillo, Judith Vázquez, Ilán Goldfederer, Gloria Careaga, Nadia Rosso, Eréndira Cruz and Guillermo de León. All of

33 An interview in July 2010, with Selene Ramos a spokesperson of the Grupo Lésbico Universitario (GLU), confirmed that the effort and campaign for same-sex marriage in Mexico was partly successful because smaller organizations came together with a single goal but these organizations remain quite loose and lack monetary resources. The GLU is organized because it relies on the infrastructure of the National University UNAM.
these individuals occupied leadership positions within their own organizations, which were very fluid. The loose organizations did not form a federation as occurred in the case of Argentina, Spain or with ILGA. Rather they created the Sociedad Unida por el Derecho al Matrimonio entre personas del mismo sexo (SUDAM), a single-issue NGO that would assemble members of other organizations advocating in favor of the same-sex marriage project that Rep. Razú presented in the ALDF.

The predominant frame in the campaign for same-sex marriage included an emphasis on the separation of Church and state: “in Mexico [activists] have consistently raised the banner of secular state, with its injunction to purge religious particularism from statecraft” (de la Dehesa, 2010: 163). The solid alliance that exists between the PAN and Catholic groups also provokes an anticlerical reaction in the biggest leftist party, the PRD and, to a more pragmatic degree, in the PRI, which emphasized “tolerance” as a signifier of difference.

This frame was clarified during a formal presentation of the proposal for same-sex marriage held in a round table debate inside the premises of the ALDF under the theme “Foro por el derecho al matrimonio entre personas del mismo sexo,” where legislators, media and members of the public were invited. The panelists included Rep. David Razú, LolKin Castañeda, the director of the SUDAM, and a representative from the Grupo Lésbico Universitario (GLU). During the event Castañeda framed the issue as a matter of discrimination. As she stated:

When we think of discrimination, we visualize a situation clearly, we see a woman an indigenous person, and so on. The situation seems clear, but in practice, discrimination marks those individuals who are the subject of differential treatment. We need to understand what this discrimination entails, so that we stop reproducing it. […] We call on the rights that the Constitution already gives us and on the Declaration of Human Rights,
which states all humans deserves equal treatment, and state that discrimination still exists and poses a challenge to our democracy. (Castañeda, November, 2009).

The rights-based frame was grounded in the notion of “discrimination,” which entered the public arena years earlier when during the Fox administration, which passed a federal anti-discrimination law in 2003, creating the National Council to Prevent Discrimination (CONAPRED) to enforce new protections. Article 4 of the Federal Law was amended to Prevent and Eliminate Discrimination. This article explicitly employed the term “sexual preferences” as one of the categories that would be recognized as discrimination. Since then, CONAPRED has already begun receiving and responding to complaints of discrimination on the basis of sexual preferences. The campaign confronted a very conservative and hostile environment at the federal level, an environment that paradoxically, would aid the LGBT movement by providing Constitutional language that identified sexual preference as a category of discrimination. In November, 2009 Rep. Razú on confirmed the extension of discrimination to the mobilizing frame in favor of same-sex marriage.

What we are trying to do is create citizens. What we are up against is not new, the arguments are not new. Some representatives are now even presenting the Cohabitation Law as an alternative, when only a few years earlier they opposed it […] But that law is not everything and is missing what I believe is the fundamental question in the same-sex marriage law: practical rights. (David Razú, November, 2009).

In fact, the framing promoted by the SUDAM and the coalition of leftist parties that promoted the same-sex marriage law was not really challenged by opposition groups. Rather, the opposition offered a moral argument regarding the place of marriage as the basis for families.
Cooperation with political parties during the same-sex marriage campaign also showcased the limitations of the party system. The political environment, and the almost exclusive focus on political rights as to the detriment of social rights also meant that programmatic linkages between parties and the electorate are generally weak, part of a more general “crisis of political representation” (Roberts, 2003; Hagopian 2008). Parallel to this phenomenon, in Mexico, there is also an increase of activism and a growth of civil society organizations, which is where many of the social demands are being channeled, rather than through the party system. The danger here is that collaboration may be occurring on a case-by-case basis, and that might not only limit the control of ideological programmes by political parties, but also create the conditions for the further erosion of programmatic linkages.

After the introduction and promotion of the same-sex bill by Rep. Razú in ALDF, the vote overwhelmingly supported the law. Of the 66 possible votes, there were 43 in favor and 17 against. The ALDF was no stranger to debates about sexuality and rights, as we will see in the next chapter; the assembly was the first to liberalize abortion. During the debate, Rep. Razú exposed to the plenary an argument to delink marriage from reproduction, a common argument in opposition of the law.

The unbreakable linkage that supposedly exists between marriage and reproduction ignores some of the advances that exist in our Constitution. Thanks to the feminist movement, Article 4 of the Constitution stipulates a guarantee for every person to have as many or as few children as they desire. The guarantee also applies to those with no desire to have children. To link marriage with adoption represents a double discrimination: it discriminates against those couples who choose not to have children and discriminates against those couples who have children outside of marriage. This is the model that is winning in the rest of the country, but here in Mexico City we can make a stand against those views. (David Razú, December, 21, 2009).
Following the partial success of the same-sex marriage ruling in Mexico City, a challenge came through the judicial system. Opposition came from even the executive, when President Calderón called the same-sex marriage law “unconstitutional.” The next section analyzes the role of the judicial branch in the policymaking process of same-sex marriage in Mexico City.

Alliances in the Federal Government? The Role of the CONAPRED

The National Council to Prevent Discrimination (CONAPRED) has received mixed reviews by local LGBT activists. Nevertheless, the council served as a mechanism in concession of more rights at the federal level. While CONAPRED did not ally with the LGBT group that sought to pass the same-sex marriage law; it did enforce anti-discriminatory measures. However, the CONAPRED is part of the federal government and its director is appointed by the president. As such, it is closed to those policy projects that do not align with presidential preferences.

CONAPRED as a possible ally to the LGBT movement offered representation that can be categorized as symbolic, rather than substantive (Baldez, 2001; Haas, 2010; McBride and Mazur, 2010: ch. 4; Waylen, 1997). While the agency does have the potential of being a direct link between the executive and LGBT social movements; that possibility is currently far-fetched as the POS at the federal level is fairly closed.

A Ground-breaking Ruling from the Supreme Court

The Mexican political system has slowly moved toward a more liberal democratic system, with demands on the protection of rights on the rise. Legal mobilization has become one of the strategies employed by LGBT activists, who have –to a limited

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34 Consejo Nacional para la Prevención de la Discriminación
degree, capitalized on the newly autonomous judicial branch. As Domingo argues, “fundamental changes at some levels of the judicial function of rights protection and limited government coexist in Mexico with deeply embedded illiberal structures of justice administration” (2005: 40). At least at the federal level, the Supreme Court has now become a major player in the Mexican political system.

After the controversial same-sex marriage law was passed in Mexico City, opposing groups soon presented a legal challenge, which was spearheaded by Attorney General Arturo Chávez, who argued that the amendment was unconstitutional because it violated the principle of “familial integrity” stipulated in the Mexican Constitution (Camarena, 2009). President Calderón supported this challenge, as he openly opposed the law. Nonetheless, the Supreme Court upheld the amendments on a 9 to 2 vote and declared that the validity of marriages would have to be recognized by every other state. Here again, the challenges through the court system and the resolution by the Supreme Court demonstrated how the democratizing environment was being tested and re-shaped by controversial social policy issues. While the judicial system was previously subordinated to presidential power, democratic rule has opened the door for the court system to regain its independent standing (Domingo, 2005; Finkel, 2005; 2008; Sieder, et. Al., 2005). The fact that the incumbent President was part of the challenge may have contributed to the position the Supreme Court took.

This issue marks one of the instances under which the judicial power asserts its independence and signals that it is in effect a counterbalance to the executive power since even justices that had been appointed by Calderón voted in favor of marriage and adoption for same-sex couples in place and valid throughout the country. In this regard, it
is worth noting that institutional structures play an important role in shaping social movement strategizing without an increasingly independent judicial system, this victory would have been unlikely.

A Comparison: Out of the Closet and into the Parties or Courts

As Armony and Shamis (2005) point out, in order to present a clearer picture of how uneven democratization, there is a growing need to pay attention to the different distributional patterns of citizenship in Latin America. Here, one finds greater concentrations of awareness, tolerance and acceptance of LGBT rights in capital cities, as demonstrated by the cases of Buenos Aires and Mexico City. Furthermore, concentrations of social movements as well as cultural activities enhance awareness and the power of bottom-up politics is also more concentrated in the capital cities. Although in the case of Argentina, same-sex marriage is extended throughout the country, due to its enactment as a Federal law, there are still significant variations in the level of acceptance (both perceived and experienced) in some of the more traditional provinces.

Strategies in each of these campaigns show that media exposure was one of the key factors in rallying support and a way to exert pressure during legislative debates. As a Mexico City activist observed, “support from the media was not only surprising for us, but was also one of the key elements that kept us charging ahead” (Judith vásquez, July, 2010). Both in Mexico and Argentina, the main news and media outlets are located in the capital city, so LGBT activists had direct access to those media outlets and found ideological allies among opinion leaders. In the case of Argentina, Bruno Bimbi served as director of institutional relations in the FALGBT, and was also a full-time journalist who
was able to provide contacts with media outlets and provide insights as to the main aspects of the campaign that would produce positive media coverage. As mentioned previously, the fact that most of the main federal offices and organizations are housed in Buenos Aires also made it easier for the media to have easy access to the many manifestations of LGBT activists. In the case of Mexico, while such a direct link with the media was largely missing, activists saw the media as the main outlet to expose their ideas and reach supporters. The SUDAM kept the message on same-sex marriage consistent: not as a “special right” but as an “equal right” the LGBT community was already entitled to have. The same-sex marriage law would only correct the discrimination the LGBT community suffered.

The current period is marked by significant policy differences between Mexico and Argentina. While Argentine politicians have found that the gay rights agenda is favorable to their own political pursuits and that they can benefit from international legitimacy, in the case of Mexico this has not been the case because of ideological differences and polarization across parties. It is possible that not only there is the need to have separation of Church and state, but secular parties are also necessary for changes in controversial social policy (Corrales, 2012). In contrast to Argentina, the political party in power, the PAN, is socially conservative and has remained to the right of the spectrum on social issues since its creation (Loaeza, 2009; Blancarte, 2009). Furthermore, the backlash in the provinces of Mexico to advances for LGBT rights in Mexico City and later in the Supreme Court show a country deeply divided when it comes to the regulation of issues of sexuality, the family and reproductive rights. Up to seven murders against LGBT activists have occurred in Puebla (CNN), a conservative state that has also
amended its constitution to protect life from conception. In addition, a rash of violence occurred in Mexico against young “emo” kids, a subculture of young people who dress and act “effeminate” challenging gender stereotypes. The movement was widespread, but the worst violence occurred in the conservative state of Querétaro (*Time*, 2008).

However, increasing levels of political competition may produce the conditions necessary for future advances.

**Conclusions**

Policy diffusion is a complex multi-mechanism phenomenon. Same-sex marriage offers an example of this diffusion in several ways. In Argentina, the *relational diffusion* of the same-sex marriage campaign through movement brokers from the FELGBT created emulation by the LGBT Argentine movement evident through the creation of the FALGBT and the framing of the campaign of marriage equality, which ultimately came to be widely known as “The Same Rights with the Same Names,” a literally equal campaign. In the case of Mexico, there is a degree of *mediated diffusion* between ILGA and the LGBT movement in general. However, the particular coalition that sought to liberalize same-sex marriage in Mexico (SUDAM) is more an example of *nonrelational diffusion*, where the move to make rights-based claims had to be adapted to the discursive environment in Mexico, which was deeply embedded in a discourse of separation of Church and state.

Although liberalization of same-sex marriage may not usher in sweeping social change on matters of LGBT rights. While the process highlights more tolerance and surveys would suggest a slight trend toward acceptance (see Chapter 2), the region still
faces many challenges, including the backlash from citizens who still do not accept homosexuality (Corrales, 2012). While the legal system has granted some rights such as same-sex marriage, attitudes towards same-sex couples and LGBTI individuals remain riddled with bias and sometimes even contempt.

In both the Argentine and Mexican cases, social movements have coalesced around the goal of expansion of citizenship rights (framed as civil rights), or more broadly the goal of equality. Nonetheless, for many of these activists, goals are broader in scope and include a re-engineering of social activities and citizenship in everyday life (Da Matta, 1987). Much like feminism, social movements are split in the ways they approach social change. Earlier movements of gay liberation were deeply critical and would not engage the political system with demands of policy change, but would rather approach social change from a critical perspective. However, broader more critical goals are much more difficult to pursue and to frame in a way that mobilizes critical masses to be able to reach the “tipping point” needed for mobilization. So, earlier gay liberation movements faded away quickly not only because of the lack of accomplished goals, but also due to persecution in authoritarian regimes. Furthermore, changing from expansive goals that involve a re-engineering of society to attainable, policy-oriented goals is also a result of transnational social movements’ influences.

Structural economic and political changes in Latin America, including neoliberal economic reform, and the spread of liberal democracy, underlay the transition from group demands to the rise of the individual and concerns of individual rights. In this context, claims for citizenship rights under the umbrella of human rights may be legitimated in the legislative arena, especially in a context of legislators and courts open to cosmopolitan
laws. In addition, the timing of the movements was also fortuitous, as international trends and transnational social movements helped pave the way for Argentina and Mexico making LGBT claims legitimate under the human rights regime. As Encarnación notes, “what mattered most to the gay-rights revolution in Latin America was an innovative and effective campaign by gay activists that belies the institutional weakness of the region’s gay-liberation movement” (2011: 105). In short, LGBT social movements capitalized on several factors to produce a successful policy outcome. First, a very open international POS, would set the tone and give legitimacy to their demands through a human rights discourse (see Chapter 3). Second, at the domestic level, a rights-based framing discourse would steer the debate from minority rights to equality or even civil rights, which has overall reduced opposition in public opinion and would also be successful against the framing centered on “families” or “children’s rights”. Finally, the impressive media coverage would make the issue a positive gamble for politicians daring to side with these campaigns (though in Argentina the gamble at the end was not quite as high, as same-sex marriage was legitimated through the judicial system).35

Changes in the policy arena have responded to the dynamic interactions between institutions and political actors, which have unfolded within a transitional setting. In the case of same-sex marriage it is worth noting that the courts have exerted the most influence, and in doing so, they have also asserted their place of independent judgment. The somewhat limited experience -in both Argentina and Mexico- with separation of powers created spaces in the public policy arena that social movements were able to

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35 In fact, in a recent interview, Zapatero stated that it is same-sex marriage that he is most proud of during his tenure as PM: “if I consider the degree of recognition and gratitude I have received then I think the gay marriage law is what I would be most proud of” said Zapatero in an interview with El Diario de León on December 26, 2011. The trend suggests that for those politicians who are successful in promoting gay rights causes, there are rewards such as name recognition as a progressive figure or a place in history, which appeals to many.
capitalize on. However, without the intervention of policy entrepreneurs like the role of David Razú Aznar in the case of Mexico City, or the case of María José Lubertino, then head of the INADI in Argentina, the policy debates would not gain traction in the legislative arena. In both cases, the policy objectives coincided with the ultimate policy outcomes.
Chapter 5 – Unfinished Business: Female Reproductive Rights in Mexico and Argentina

Abortion is the fulcrum of a much broader ideological struggle in which the very meanings of the family, the state, motherhood, and young women’s sexuality are contested.


On April 2007, Mexico City’s Legislative Assembly (ALDF) passed a bill decriminalizing abortion for any cause in the first 12 weeks of gestation. The landmark legislation occurred in a restrictive context. President Calderón, of the conservative PAN, is openly against abortion and public opinion in the country is not favorable to liberalization (see Chapter 2). Following this landmark legislative advance, a challenge by Mexico’s Attorney General and the National Human Rights Commission (CNDH) in the Supreme Court quickly followed. In August, 2008, the Supreme Court ruled that legal decriminalization of abortion in Mexico City was constitutional and upheld that bill. While the legal standing of abortion at the Federal level remains unchanged, at the sub-national level there was a strong backlash to the liberalization of abortion in Mexico City. At the sub-national level, more than half of all Mexican states modified their state Constitutions to protect life “from conception.” The sweeping wave of anti-abortion laws was again challenged in the Supreme Court, where not enough votes were obtained to overthrow those “anti-abortion” laws.

In contrast, in Argentina, a gradual liberalization of abortion has occurred. At the federal level, Argentina has an extremely restrictive legislation. The Penal Code considers the procedure of abortion non-punishable in only two cases: to save a woman’s life, and in the case of rape of a woman with a mental disability (Art. 86). Recent attempts to liberalize the strict rule have been met with resistance either in the legislative
arena or by opposition from the executive. The most recent advance included a bill debated in the Commission of Penal Legislation of the lower chamber. The bill did not make it to the plenary because it did not gather enough votes. Finally, in March, 2012, the Supreme Court authorized an abortion procedure for a minor who was the victim of rape. The Supreme Court set jurisprudence for all cases of rape: victims will not be criminalized and will not need previous judicial approval for the procedure according to the Supreme Court. However, the issue is still highly contested at the sub-national level.

Why is the policy process of liberalization of reproductive rights stalled in Argentina and Mexico? Given that as in the case of same-sex marriage, there are international norms that legitimize the practice of abortion, why does the domestic policy process yield such puzzling results? Why is criminalization of abortion so enduring even after the democratic transition?

This chapter seeks to explain the dynamics related to the policy process of reproductive rights in Argentina and Mexico. The analysis focuses on a few explanatory factors based on the theoretical expectations outlined in Chapter 2, including: (1) international pressure via transnational social movements or international organizations; and (2) the role of policy agencies including their type, proximity to the women’s movement, and policy orientation (3) mobilization tactics to include framing and alliances; (4) the role of political parties (Outshoorn, 2009, McBride and Mazur, 2010, Haas, 2010; Weldon, 2011; Wolbrecht and Hero, 2005). Taken together, these factors can provide an explanation of why some cases may lead to liberalization that are in favor the status of women as citizens and active democratic participants. The relative weight of these factors varies in each case. While there is a history of norm formation at the
international level, “a country’s support for a disputed norm is contingent primarily on domestic forces” (Bob, 2012: 185). This chapter seeks to fill the gap between international advances that incorporate reproductive rights into the larger human rights regime and domestic conditions in Argentina and Mexico, where short-term contingent factors such as shifting political opportunity structures (POS), framing campaigns and political alliances with women’s movements are crafted, and determine divergence in policy outcomes.

This chapter is organized as follows: first, an overview of the issue of abortion is presented. Unlike same-sex marriage, abortion is not a new issue; therefore, a brief overview of its development in the domestic arena is necessary. As we shall see, the history of domestic mobilization around the issue of abortion has created particular cleavages that make attribution of similarity and modularity in transnational diffusion harder than in the case of LGBT rights. Furthermore, the NGOization of women’s movements in Latin America (Alvarez, 1990) has created a sort of mediated diffusion between international organization, transnational movements and domestic movements.

The transnational environment which not only lent legitimacy to the issue of reproductive rights, but also armed domestic activists with credible information and resources to incorporate these norms into discourse and policy projects (Risse-Kappen, 1995; Sikkink, 2004; Tarrow, 2005). However, the nonrelational and mediated diffusion have also played a role in shaping the frames of the groups that oppose liberalization (see Chapter 2, and Bob, 2012). The difference with the women’s movement is that the opposition has articulated a single frame “the life of the unborn,” its consistency has paid off as it resonates with domestic opposition.
Finally, the domestic context is brought to the fore by analyzing developments in the legislative and judicial arenas. Similar to the campaigns mounted in favor of same-sex marriage, women’s groups have also channeled their demands through judicial channels. However, for the issue of abortion only partial liberalization has taken place, and in sub-national arenas reversals have occurred.

**Abortion and Female Reproductive Rights**

Around the world, 61% of the population lives in countries where women have the right to reproduction choice, and abortion is permitted for many reasons, in cases even provided as a state service (Center for Reproductive Rights, 2010). There is a strong and positive correlation between countries that allow abortion and democratic regimes. Although internationally there is a consensus that reproductive rights are a necessary feature of the human rights regime, domestic policy frameworks in Latin America have shown little progress. In fact, the region has some of the strictest laws in the world regarding abortion. According to the Guttmacher Institute’s latest report, “95% of all abortions in Latin America are unsafe” (2012: 3). In Mexico and Argentina there have been several attempts to liberalize legal codes that penalize abortion, or the voluntary interruption of pregnancy. While the political liberalization that was established as a result of democratization processes would seem to signal an opening in terms of social policy, the turn of events has actually reflected the complexity of the issues coupled with uneven transitions, weak institutions, and increased economic inequality.

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36 According to the Alan Guttmacher Institute (2012), the growing number of countries that permit abortion legally for the first 12 weeks of gestation is mostly democratic. The report also highlights a drop in the procedure where there is the possibility of safe and legal abortions.

37 The World Health Organization defines unsafe abortions as “a procedure for terminating a pregnancy that is performed by an individual lacking the necessary skills, or in an environment that does not conform to minimal medical standards or both” (WHO, 1992: 2).
The issue of reproductive freedom is important because “control over sexuality and reproduction is an important measure of a woman’s social status” (Petersen, 1996: 77). The argument has been used in terms of societal status, but also as a measure of development. As more women are capable to decide the timing and spacing of their children by having control of their reproductive life; they are able to better contribute to economic life.

In Mexico and Argentina, restrictive and sometimes punitive laws disproportionately affect women in the lower echelons of society. Given the high levels of inequality in Latin America, the criminalization of reproductive rights thus reinforces the structural inequality existent in the region. As the World Health Organization (WHO) reports, treatment for serious complications from unsafe abortions remains quite frequent and many women never receive care at all (2011). The unequal access to health services, coupled with the stigma of an abortion results in underreporting. Although Latin American countries have the infrastructure necessary to cope with the demands of women, the legal restrictions put women in this region at an even more disadvantaged position. Not surprisingly therefore, the following figure shows that South America and Western Africa have the highest incidence of unsafe abortions around the world. The trend of unsafe abortions significantly decreases when the legal status decriminalizes the practice. The rates of unsafe abortion for Latin America are quite high despite democratization levels in the region, which has brought a higher level of representation. For example, in both Argentina and Mexico there are now quotas for female participation in politics. Nonetheless, abortion continues to be penalized for much of Mexico and only with a few exceptions in Argentina.
In Argentina, unsafe abortions are the leading cause of maternal morbidity, according to the National Institute of Statistics and Census (INDEC). The official data indicates that this cause of death affects young women disproportionately. In 2000, about 9% of all hospitalizations due to unsafe abortion were for women between 15 and 19 years old. By 2007, the rate among the same age-group increased to 15% (INDEC, 2010). Because these deaths are mostly preventable through appropriate and timely medical care, they point to the necessity of liberalization. However, as the section on Argentina shows, there is a lack of consensus on how to frame the debates on abortion (Sauer, 2010), resulting in a decrease of the efficacy of social movement campaigns in favor of liberalization.

Instituto Nacional de Estadística y Censos de Argentina.
In Mexico, 7.3% of all maternal deaths are the result of abortion complications, and “abortion-related complications in public hospitals are the third most common cause of hospitalization among women of reproductive age” (Sousa, Lozano, and Gakidou, 2010: 301). Moreover, unsafe abortion procedures disproportionately affect indigenous and rural women, who undergo the procedure about three-times more often (Lara, Strickler, Olarravieta, and Ellertson, 2004).

As this brief overview makes clear, abortion and reproductive rights cut across a set of issues, including public-health issues related to complications with the practice of unsafe abortion, as well as social justice issues affecting disproportionately poor, young, or indigenous women.

The activism considered in this analysis will be limited to those groups that engage with political arenas in order to change the status of women through policy. The case of abortion is also a tough test of the extent to which debates can be gendered because “existing abortion laws reflect differing levels of commitment by the state to providing abortion and differing levels of state control over an abortion will be allowed (most commonly with medical professionals as gatekeepers) versus women’s control” (Berer, 2002: 34). The previous statement highlights the tensions inherent in the issue. As a result, different sources of framing create separate obstacles for a policy process leading to liberalization. The many competing frames transmitted from either transnational social movements or international advocacy groups make the politics of this policy issue more complex, and requiring coordination among groups.

The following section briefly analyzes the transnational sources of pressure in order to liberalize and restrict reproductive rights throughout Argentina and Mexico. As
Chapter 2 highlights, there is a normative framework that has emerged within the context of the UN that reproductive rights are human rights and the countermovement that seeks to defend fetal life. These two strands have influenced the domestic policy environment via a spiral model of continued contestation of norms (Keck and Sikkink, 1998; Risse and Sikkink, 1999).

Transnational Politics and Abortion

A transnational network of Latin American feminist movements emerged during the first UN conference on women in Mexico City in 1975 (Meyer and Prügl, 1999). Since then, Latin American women have frequently met in regional encuentros (Jacquette, 2009). One of such organizations is the Latin American and Caribbean Committee for the Defense of the Rights of Women (CLADEM), which issues compliance reports on matters of human rights on behalf of 15 countries, including Argentina and Mexico. Within the transnational network of feminists working in Latin America, tensions have emerged since democratization, as some groups have decided to work engaging with the state for policy change and others choose to remain working from below critical of all state actions (Vargas, 2011).

In Mexico, the two most important NGOs advocating for reproductive rights are the Grupo de Información en Reproducción Elegida (GIRE) and Grupo de Educación Popular con Mujeres (GEM). These organizations have benefitted from contact with transnational activists through the UN forums of debate. Advocacy work by both groups includes disseminating informative reports, which have aided in formulating fact-based policy options. These professionalized groups whose tactics are geared toward contacting
and convincing elites rather than protesting in the streets, generally advocate “insider” lobbying techniques, fighting “diligently to persuade the government to legalize abortion” and “to keep reproductive rights on the public policy agenda” (Rodríguez, 2003: 113). In the words of Lamas, the feminist movement has moved from “protesta” (protest) to “propuesta” (proposal) (Lamas, 2012). Indeed, the work at the international and regional level has given domestic activists the language with which compete on the public policy arena.

In Argentina, the NGOs that focus on reproductive rights have a distinctly judicial tone. The Equipo Latinoamericano de Justicia y Género (ELA) created in 2003 has connections to regional and international organisms through its founding members. The group recently launched an Observatory on judicial decisions in order to track international and domestic developments that may set jurisprudence on matters of reproductive rights. In addition, the Red Informativa de Mujeres Argentina (RIMA), has been created to monitor the domestic developments on women’s rights and to provide information for reporting to INGOs. Finally, the biggest organization advocating for reproductive rights is the Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito, which connects transnational and domestic activists as well as politicians. The domestic organizations that advocate reproductive rights are connected via formal and established channels to share information. The Argentine case shows a high degree of diffusion (Tarrow, 2005; Rheingold, 2002) through the brokerage of feminist activists at the UN and in regional forums such as the encuentros. The social bonds created through the UN system allowed a high degree of information sharing and relational diffusion as well as attribution of similarity, mechanisms that have played an important role in how
these groups engage with the state through organized campaigns that have re-framed the issue from a woman’s right to human rights or citizenship rights.

Although international law and normative frameworks at the UN raised the banner of reproductive rights as human rights, conservative forces also used the discourse of international law to oppose abortion on all accounts. According to Htun, “the antiabortion movement has successfully resisted domestic proposals to liberate abortion and helped create a climate in which few people are willing to advocate for abortion rights” (2003: 152). Specifically, the Universal Declaration of Human Rights is often deployed as a frame to protect the life of the fetus. In this way, the “rival entrepreneurs” (Bob, 2012) have remained active throughout in the same international and domestic venues as those advocating for liberalization of reproductive rights. According to Htun, antiabortion activism in UN conferences is related to reform within the Catholic Church by Pope John Paul II, who in response to Roe v. Wade, appointed theologically conservative bishops to Latin American posts and the growth of antiabortion movements (2002: 148-153).

The same international agreements are used by advocates and opponents of liberalization of reproductive rights complicating the political debates. International norms are used to pit against each other women’s rights and the rights of the unborn child. Furthermore, in Latin America, according to Gavigan, “the history of the law relating to the practice of abortion is inextricably bound up with the theological doctrine” (1984: 20). Some of the concepts deployed in the criminalization of the practice are handed down by religious doctrine. For instance, the recent waves of constitutional reform at the state level in Mexico include the protection of life beginning with
conception. In Argentina, some of the arguments for denying legal abortions also rest on the protection of life and international covenants such as Convention on the Rights of the Child (UNCROC).

However, medical advances, along with a separation of church and state, have led legal scholars to question the validity of the language used in the criminalization of abortion, which for most Latin American countries has remained unchanged for many years. In Argentina, the abortion clauses in the penal code date back to 1922, and in Mexico, it dates back to 1935. The medical field has advanced the idea that therapeutic abortions are necessary should not be penalized.

**Women’s Movements**

Women’s activism in the region has remained high during the period of democratic transition. As stated in Chapter 3, the international context and discussions in particular under the framework of the UNDP international gatherings have created between North-South linkages, as well as South-South linkages. In particular since the 1975 Mexico City meeting, where the issue of female reproductive rights was first raised, groups of NGOs and women’s movements got the opportunity to share ideas and form a discursive platform under the umbrella of human rights (see Chapter 3). Since then, democratization has increased the number of available entry points to the public sphere. International meetings helped create and maintain the amount of formal and informal networks where women are involved thereby increasing the organizational infrastructure of women’s movements.
The role of social movements in this issue has been crucial. Putting the issue on the political agenda would not be possible without pressures from below. As stated in Chapter 3, there is an international framework that has already liberalized the issues of female reproductive rights. Women’s movements in Latin America have a long trajectory, from the authoritarian period to today, and exchanges between local movements and transnational women’s movements that have diffused strategies and frames of contention. These exchanges, have aided the configuration of a policy framework for action for local women’s movements. For instance, the Fifth Feminist Encounter for Latin American and Caribbean women held in 1990 resolved to announce the “International Day of the Right to Abortion for Women in Latin America and the Caribbean” to be held that September 28 and every year after, used as a mobilization strategy to advocate for liberalization.

As has been frequently noted in the literature, advocacy networks may have a hard time finding cooperative alliances with social movements. According to Shepard, “the professional-technical character of the NGOs in Latin America complicates their insertion in a social movement” (2006: 45). In addition, some of these NGOs were constrained by the ‘global gag rule’ when receiving financial aid from the U.S. government. The level of professionalization of advocacy networks has also been blamed as one of the obstacles to winning public opinion support and reaching a wider audience (Martínez and Incháustegui, 1998: ch. 12). However, these women’s groups are dedicated to overcoming hierarchical differences between men and women, and most of the women

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39 The global gag rule (also known as the ‘Mexico City Policy,’ refers to the American policy launched on August 1984, where Ambassador Buckley on behalf of Reagan declared that the U.S. was suspending funding and international aid for any organization that so much as discussed abortion services. It has since been removed by President Obama, but institutionalized NGOs that would have been working at the time, would have to tailor their programmes based on the availability of funding.
in NGOs tend to be professionals who have been socialized in the public sphere by engaging in activism (Jaquette, 2009). The women’s movement in particular was latent during the authoritarian period and remained engaged at least in the international arena.

Since the political opening in democratization processes, there is an increase in women’s participation of political life. Though this is not a new phenomenon, the political opening has made women’s participation easier and more visible. The rise of civil associations in Latin America coupled with the existence of weak institutions is a phenomenon that has been analyzed from several perspectives, but in this case the interest in women’s movements comes as they are able to work with “femocrats,” a term used to describe those bureaucrats or allies in women’s policy machineries (WPMs) working toward policy change (Outshoorn, 1994; 2004; Sawer, 1990; Watson, 1990). The term “femocrats” assumes a degree of substantive representation. Following the Feminist Comparative Policy literature as well as the social movements’ literature this chapter makes the case that these movements are a necessary but not sufficient condition for policy change. The importance of movements is at its highest in the early stages of the policy process, during the agenda setting and framing. Once the issue has become salient, gaining support from within the ranks of policymaking circles is important. The next section evaluates the role of the political parties and its interactions with women’s movements.

**Argentina: Institutional Weakness and Policy Deadlock**

Argentina has a history of ‘pro-natalist’ policies (Blofield, 2006), that is efforts by the state to promote childrearing. In essence, these policies glorified childbirth under the
Imbued in these policies were not only Catholic thinking and practices, but also patriotic feelings and ideals. As a result, the environment for liberalization in Argentina can be seen as even more averse to reform than in Mexico. The period of Menemism (1989-2000) can be characterized as one of closed political opportunities structures with regards to abortion rights; it is no surprise then that women’s movements were obliged to adopt a more confrontational strategy (Smith and Korzieniewicz, 2007). It is also during this period that the courts failed to restrain executive power. The lack of horizontal accountability (O’Donnell, 1994), compounded by the high concentration of power Menem enjoyed during his tenure, made demands for female reproductive rights not only difficult but almost impossible. Menem tried to explicitly outlaw abortion in the 1994 constitution (Blofield, 2006: 134).

Family planning was prohibited by law between 1977 and 1986. As a result, the regulation of sexual reproduction was almost entirely in the hands of the state. Furthermore, pressure from the Catholic Church to preserve that status quo has remained a constant. In Argentina, “conservative sectors dominate public discourse on abortion, labeling it a crime” (Blofield, 2008: 403). The combination of Catholic doctrine and remnants of pro-natalist policies make even access to contraception difficult. As a result, abortion rates in Argentina remain relatively high.

Historically, demands for abortion in Argentina were concentrated in the capital city of Buenos Aires, but are now widespread across the country. Nonetheless, until recently, the subject remained off the debate agenda with no progress made in terms of policy outcomes. During the reform of the national constitution in 1994, then president Menem tried to include the protection of life from conception to the Constitution. Menem

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40 The term can be roughly translated to: ‘To build one’s own fatherland.’
also declared March 25th as the ‘Day of the Unborn Child’ in a campaign to protect the rights of the unborn. In response, as antiabortion activists “have attempted to manipulate principles of human rights to their advantage arguing democratic states must defend innocent fetal life” (Htun, 2003: 152).

These series of events triggered the emergence of NGOs in protest, and also mobilized supporters of the pro-life stance. Women’s movements organized under the umbrella of MADEL (Mujeres Autoconvocadas para Decidir en Libertad), which coordinated over 100 women’s NGOs with diverse backgrounds (Gogna, et. Al., 2002: 129). The main position of MADEL was to point out that delegates reviewing to reform the new Constitution did not have the public mandate to discuss abortion because this issue was absent from the agenda that had been set in advance by the political parties. In short, MADEL demanded that a national debate should be carried out to discuss the issue of abortion. At the end of the constitutional convention, the clause of the protection since conception was not passed, but the penal code outlawing abortion in most instances remained in place. As Blofield argues, the outcome was seen by the women’s movement as a victory (2006: ch 6). In contrast, the Catholic Church was also disappointed with the outcome, Archbishop Primatesa stated “God was left outside the door. He did not enter the Constitution” (El Clarín, 1994). Consequently, Article 86 of the Constitution remains in place, even though many women’s groups remain active in advocating the issue of abortion.

Women’s Movements

In Argentina the women’s movement emerged during the “second wave” of social movements in the late 1970s (Birgin, 2007). At this time, the authoritarian regime was
still in power, thus helping goals and strategies of the movement. Respect for human rights, for instance, was one of the main themes that bind together different groups. After the transition to democracy, the women’s movement became more organized and membership increased. Since 1986, “the Argentinean women’s movement has convened 22 national meetings with an ever increasing involvement; augmenting participation from 900 individuals during the first meeting to more than 30,000 in the last two” (Bonder, Radjavi, and Ramírez, 2008: 122). Increased participation has not necessarily meant a change in policies. However, an increase in mobilization raised attention to women’s concerns including abortion.

The most active groups in promoting the safe abortion law are a coalition of women first meeting in the XVIII Encuentro Nacional de Mujeres (National Women’s Reunion) held in Rosario in 2003, and the following year in Mendoza. During these proceedings feminists and women’s groups recognized the importance of prioritizing issues to enter the legislative arena with proposals to advance women’s rights. In Rosario, the issue of abortion was raised a salient issue and a sub-group was formed and named Asamblea por el Derecho al Aborto (Assembly for the Right to Abortion), which included the explicit intent to create draft a law that would be introduced to Congress. This was a change as previously demands were not organized as clear policy articulations. These activists subsequently created the Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito (National Campaign for the Right to Legal, Free and Safe Abortion), which focuses on the issue from a rights-based perspective. This organization is the result of an agglomeration of over 250 organizations throughout the country. Yamila Balbuena, a member of Las Azucenas, a group from La Plata, explained
of the collective: “The Campaign is a sort of heir to other feminist experiences, and other organizations in the country, we feel indebted to the former organization from the ‘90s, the Comisión por el Derecho al Aborto”41 (Prensa de Frente, December, 2010). The shift from street-based protests during the Menem administration to a coordinated effort lobbying specific lawmakers has gathered more supporters in Congress. However, detractors have been able to stall proposals in early stages of the legislative process.

Subnational Variations and Epistemic Communities

While international conferences offered a platform for increased demands, the official Argentine delegation to the 1994 Cairo conference was allied with pro-life groups, which included the Catholic Church and Muslim nations. In this case, the international setting is part of the context in which policymaking takes place, but did not have as much of an impact as in the Mexico, and the framing of reproductive rights as human rights did not resonate as much as ‘gay rights are human rights’ (Encarnación, 2011). In addition, the role epistemic communities have played in Argentina is important, highlighting the health crisis of women that go untreated (mostly young and poor), however, this frame is not as powerful as the larger human rights frame, and the inability to fully incorporate reproductive rights into the human rights frame in Argentina may partly account for the lack of success on this issue.

At the sub-national level Argentina has experienced varying degrees of liberalization. The city of Buenos Aires has spearheaded changes in policy through the Ministry of Health. While abortion is still penalized, there are several ways in which

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41 The term translates to Commission for the Right to Abortion, a former campaign which failed under the Menem period. Nonetheless, the new campaign makes mention of the previous organization since the tactics and repertoires of contention are different.
Health officials may broaden the scope of the ambiguous article 86. The process by which abortion is granted has also been relaxed in the provinces of Mendoza and Buenos Aires. In Mendoza, the state Supreme Court stated that there is no legal requisite that an allegation of rape has to be first proven under a judicial process, so the medical staff would have to use judgment in applying this law. Furthermore, in 2007, a new protocol (Resolución 304/2007) was introduced in the province of Buenos Aires that further relaxed restrictions upon abortion. The protocol added another exception to the prohibition of abortion in cases of rape that caused any type of mental distress to the woman; it also permitted abortions to be performed in a public hospital. The head of the Ministry of Health in Buenos Aires, Claudio Mate Rothberg said “we wanted to establish clarity with regards to the protocol of how doctors are to act when an abortion is requested” (Página 12, 2007). The liberalization of the protocol occurred after the request from the Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito, which protested in the case of a young mentally retarded woman (LMR), victim of a rape who had been denied a legal abortion.

This new interpretation of article 86 included all cases of rape, not just where a mentally handicapped woman is involved. Also, a law to decriminalize abortion passed by the local Congress in the province of La Pampa, in 2007, but was vetoed by the then newly-elected governor. After this, the Bishop of La Pampa applauded the veto. The issue has certainly become part of the political agenda. Nonetheless, there has not been a political party that has taken up the issue in a clear way as part of their ideological

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42 According to this new protocol, abortions should take place without delays and the need to access the judicial procedure. The new exception would open up abortion as a legal recourse to countless women that state mental distress brought on by rape. Adding the clause of public hospitals makes the practice available to women that could not otherwise afford an abortion, even if legal.
platform. Rather, a result of the weakness of the party system and institutional learning, women’s movements have changed their tactic to direct advocacy and lobbying of specific lawmakers rather than allying with a specific party.

In short, while federal law remains unchanged via the legislative process, provinces have different interpretations of the same code, thus resulting in some liberalization. However in other cases, legal change never reached the final stage of the legislative process. In this context, the politics of abortion remain highly contested, more social movements mobilize pressing the national agenda, while at the same time health officials at national and sub-national levels are becoming important challengers to the status quo by reinterpreting existing laws.

It is interesting to note that in Argentina the role of the bureaucracy has been more relevant than the courts in expanding certain women’s rights. According to Htun, Argentina has a “lack of judicial independence, limited provincial autonomy, and excessive use of presidential decree powers” (2003: 22). The judicial climate has changed since the Néstor Kirchner administration, as judicial independence has increased since the enacted reforms in 2003, which created a more independent judicial system. Nevertheless, in matters of reproductive rights the lower courts have generally taken conservative positions. In this case, the role of women’s policy machineries is reduced because these are dependent upon the executive. The position of the executive is against liberalization, alliances between women’s groups and women’s policy machineries are blocked for the time being creating a closed POS at the federal level.

Doctors have become increasingly important as epistemic communities, since they are changing current policies on abortion without necessarily changing the penal
In a recent survey of obstetricians’ views on abortion found that the majority of OBGYNs in the Buenos Aires area felt it was necessary to report a woman who has had an abortion to the authorities. As table 5.1 shows, the majority was opposed to restrictive laws, but only 38.5% thought abortion should be a woman’s decision or, in other words, depenalized (Reproductive Health Matters 2002: 10 (19): 132). In particular because determining if an abortion procedure is legal rests on a decision by a doctor, their views on the issue take on an important role. In order to have a therapeutic abortion, women need the authorization from their doctors.

Table 5.1. Views of Buenos Aires obstetrician-gynecologists on when the law should penalize abortion

<table>
<thead>
<tr>
<th>Situations in which abortion should or should not be penalized</th>
<th>Agree (%)</th>
<th>Disagree (%)</th>
<th>Does not know/ NR (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The law <em>should</em> penalize abortion in all cases</td>
<td>8.8</td>
<td>84.8</td>
<td>6.5</td>
</tr>
<tr>
<td>Threat to the life of a woman</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape or Incest</td>
<td>83.3</td>
<td>10.9</td>
<td>5.8</td>
</tr>
<tr>
<td>Fatal malformation</td>
<td>82.2</td>
<td>12.6</td>
<td>5.2</td>
</tr>
<tr>
<td>Autonomous decision of the woman</td>
<td>38.5</td>
<td>51.6</td>
<td>9.9</td>
</tr>
<tr>
<td>Difficult socio-economic situation</td>
<td>32.3</td>
<td>57.0</td>
<td>10.7</td>
</tr>
</tbody>
</table>


These views affect liberalization. Social movements may target physicians and bureaucrats rather than politicians, since the direction the issue is taking is through incremental liberalization via the Ministry of Health. However, it would seem that the Argentine political opportunity structure (POS) remains relatively closed. A report filed by the Human Rights Watch Group in 2005 states that “despite advances in women’s political and economic status, and despite continuous efforts, it has taken Argentina’s
women’s movements decades to obtain even minimal advances in women’s right to access modern contraception and essential health information” (2005: 7). Reproductive rights remain a divisive issue. In fact, while most doctors are in agreement of performing the procedure when it threatens the life of woman, about half of those polled stated they disagreed with performing the procedure when it is the autonomous decision of a woman. Furthermore, the National Academy of Medicine issued in 2010 a statement declaring that “a child about to be born scientifically and biologically is a human being […] and that destroying a human embryo means impeding the life of a human being” (Academia Nacional de Medicina, September, 2010). While individual doctors may be in favor of liberalizing reproductive rights, the organized group or epistemic community does not support the demand from advocacy groups for full liberalization.

In addition, the Corporation of Catholic Lawyers in Argentina has tried to block every advance that could open the door for liberalization of abortion. In opposition to the one legislative project that made it in 2011 to a commission in the lower chamber, the Association called upon the Universal Declaration of Human Rights citing that all individuals have the inalienable right to life, in this context they also consider the embryo as an individual (Asociación, 2011).

Policy Process and Legal Framework in Argentina

In 1994, the federal constitution was changed to include all international human rights treaties signed by the country as part of the country’s legal framework. The reform included CEDAW as part of the legal framework marked an advance from previous
constitution regarding women’s rights. However, the new Constitution also includes rights for the unborn child.

At the national level, articles 85 through 87 of the penal code regulate abortion and state penalties from 1 up to 4 years of prison-terms to those who voluntarily seek an abortion. In addition, the 2002 national law 25.673 established the National Program of Sexual Health and Responsible Procreation, which focused on promoting teens’ sexual health, preventing abortion and creating sexual education programs. The entire law has pro-life language and subscribed to the International Convention on the Rights of the Child. Based on this legislation, many provinces have also created similar local programs that they try to prevent abortions via education. The national law focuses on family and values, signaling that conservative frames have been more prevalent in Argentine legislation.

Beyond international agreements and federal legislation, Argentina’s policy system is further complicated by the existence of provincial jurisdiction over policy-making. The legal framework allows provinces to establish regulations beyond the federal level and thus complicates the paths for legalization. While most of the provinces subscribe to the legislation established in the conservative-leaning Law 25.673, there are some surprising variations (see Appendix III.2). For instance, the province of Mendoza defines sexual reproduction siding with the definition presented by the WHO: “reproductive health is not only the absence of illness or disorder of the reproductive processes, but a condition under which the reproductive function is developed in a state of complete physical, psychic and social wellbeing” (Article 1 of the Decree No. 2010/98). Other provinces such as Catamarca, for instance, does not have a specific law
for regulating reproductive rights, but created of ethical boards and hospital committees to deal with unwanted pregnancies and possible abortions under the provincial law 5057. Another interesting legislation is the more progressive law No. 3.999 of Río Negro, which declares the use of the emergency “morning after pill” as part of the available array of contraceptives. The law also stipulates that the state will be in charge of providing the pill as a medical service free-of-charge. Figure 5.2 summarizes the legal environment in Argentina at the provincial level. The figure’s scale 0-8 depicts the exceptions in the law for legal abortions. The less exception, the more restrictive the legal environment is. While there is not much variation, the figure showcases that the main site for incremental legislation is the city of Buenos Aires. In contrast to legislation that advances LGBT rights; reproductive rights face a stricter regulation in Argentina in some of the provinces.

Figure 5.2 Differences of Legislation at the subnational level in Argentina

Data compiled from legislation in Argentina at the provincial level. See appendix III.1.

43 The 1 – 8 marking includes all the possible exceptions for abortion that are subject to legislation, the more exceptions available, the more liberalized abortion is, from 0 which is completely penalized to 8, which would signal abortion on demand. The same categorization was used for the case of Mexico.
44 See appendix for specific laws and a detailed explanation.
Similar to LGBT rights, the city of Buenos Aires stands out as the primary domestic opening in the POS. However, utilizing a strategy through the judicial system might be more complicated in the case of reproductive rights since legal advances in the courts are making the terrain more difficult for liberalization as this issue pits “the human rights of the unborn child against the sexual and reproductive rights of women, both of which are protected by international human rights conventions” (Kohen, 2009: 107). The different laws at the federal level exemplify this contested terrain. While some legal codes like those in Chubut and Río Negro refer to the health of women and cite reproductive rights or even CEDAW proceedings, laws from Santa Fé and San Juan invoke the human rights of children and refer to protection of women limited to those times where she is pregnant or leading to motherhood.

Legislative Projects: From Closed to Moderately Open Political Opportunities

After the sweeping reelection of Christina Kirchner in October 2011, coming on the heels of the celebrated same-sex marriage law, a new debate legal project was presented in Congress to decriminalize abortion. The project Legal Interruption of Pregnancy,45 was developed by the Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito, this same bill first presented in 2008. Some of the relevant features of this project include: (1) the depenalization of abortion in cases of rape, fetal malformation or to save the life of the mother; (2) interruption of pregnancy will be the choice of the woman during the first 12 weeks of pregnancy; (3) abortion practices will have to be guaranteed as a public service, free of charge; (4) if the woman requesting the procedure is under the age of 14, parental consent will have to be provided; (5) there is a possibility for doctor’s

45 Proyecto de Ley Interrupción Legal del Embarazo (ILE).
to call on the principle of conscientious objector, however those who object the practice will have to be part of a national registry, and the procedure shall be guaranteed by the responsible authority. The difficulty in this proposal stems not only from liberalization, but also from the demand to provide the service free-of-charge, which would create costs for the state.

The project was set forth by Congresswoman Victoria Donda who had just been elected part of the Frente Amplio Progresista, a coalition created for the October, 2011 election that supported President Cristina Fernández de Kirchner, and Vilma Ibarra\textsuperscript{46} previously a Senator now re-elected to Congress representing Buenos Aires. The two national deputies, Ibarra and Donda were the main policy entrepreneurs on behalf of the Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito. Donda and Ibarra promoted the project in the Criminal Legislation Committee of the Lower House. During this first instance, the resolution passed with six votes in November, 2011, but it had to still pass in the Family and Health Committees. The heated debates that ensued resulted in the head of the Criminal Legislation Committee, Juan Carlos Vega (Coalición Cívica) declaring the previous resolution invalid (\textit{Página 12, Sociedad: 2011}). While the voting took place, not all Congressmen signed the petition, resulting in the technical voidance and rejection of the project. Nonetheless, Donda and Ibarra agreed that this first debate represents an important precedent for future projects of similar nature. Adherents to the grassroots campaign also used the rights-based framing while presenting the latest project of law. Some of the statements from lawmakers included:

\textsuperscript{46} Not a stranger to difficult policies, Vilma Ibarra was also one of the main supporters of same-sex marriage and promoted the law in Congress.
It is time to get out of the Penal Code and recognize the democratic right to decide for women. This is why we oppose pressure from religious and political hierarchies who still hold medieval beliefs. (Vilma Ripoll, MST, November 2\textsuperscript{nd}, 2011, \textit{Página 12}).

For the first time, since the re-instatement of democracy, Congress echoed the debate on abortion. It is no doubt a historic day, because until now the issue had been debated in all other realms of society but not here in Congress where legislation is actually produced. (Cecilia Merchán, Libres del Sur, November 2\textsuperscript{nd}, 2011, \textit{Página 12}).

Nonetheless, some of the opposing groups stated that legalizing abortion would not solve mortality problems and would create others that include the use of abortion as a viable birth control technique. Regardless of the failure to pass the bill, the policy process under Cristina Fernández de Kirchner second administration has already been deemed as a success for women’s groups, as they have been able to articulate a project that was introduced by legislators at the federal level. Estela Díaz, one of the members of the national campaign, stated that the inclusion of the debate in Congress was already a step in the right direction, and confirmed plans for the advocacy coalition to continue on pressing lawmakers at the federal level since this is the forum they consider most appropriate for the abortion debate regardless of the opposition from Cristina Kirchner (Leclerq, \textit{Realpolitik}: November 12, 2011).

While the project recently introduced in Congress is not new, the conditions under which the debate unfolds are different. The demands in this bill are framed in terms of access to quality of health services, which has an emphasis on citizenship broadly construed. The demands are also framed in terms of empowerment, where women may access a larger pool of economic resources. The construction of citizenship to include sexual rights is a move that, as noted in Chapter 3, has its roots in international
developments initially led by the North but now taken over by movements in the South. In this regard, NGOs have tried to steer the debate towards gender equality, in a call to depenalize abortion, in a move to have Congress re-open the abortion debate. However, the rights-based claims in the case of abortion have not yet been successful. This frame is quite new, but the one promising development is the coalition that the Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito has put together, presents a united front that could challenge conservative frames. This development underscores Franceschet’s observation that “transitions to democracy present rather narrow windows of opportunity for women to challenge fundamental gender relations in the formal political sphere” (2001: 211).

International Courts

International courts have also been part of the debate. In 2007, a 19-year-old mentally disabled woman was sexually assaulted, which resulted in a pregnancy and was denied a legal abortion. The victim, L.M.R. attended a special education school and resided in Guernica, a poor province of Buenos Aires. The case finally went to the Supreme Court, where there was a favorable decision on L.M.R.’s behalf affirming she had a right to a legal abortion under the stipulations demarcated by Article 86 paragraph 2 of the penal code. Nonetheless, this decision came too late for the victim, who had to undergo an illegal procedure since time elapsed in between trials had already exceeded twelve weeks.

The case was later presented at the UN Human Rights Committee by a coalition of groups including INSGENAR- Instituto de Género, Derecho y Desarrollo, Católicas por el Derecho a Decidir Córdoba, and CLADEM – Argentina. In April 2011, the UN
Human Rights Committee issued a decision on the case, which states that the state violated the rights of equality and non-discrimination of the victim, and ordered reparations to L.M.R.47 The decision by the international court represents a landmark case in that an international court has been called upon to demand fairness and equal treatment. The case can also represent an important precedent in the pro-abortion debate, in particular in Argentina where international law holds more weight than it would in Mexico.

Amnesty International has also supported liberalization in Argentina under the framework of human rights. While the latest debate was introduced in Congress, Amnesty International issued a press release in 2010 together with Human Rights Watch to decry the lack of attention to those who solicit abortions even within the framework of the law. These INGOs argue “in rape cases, despite numerous recommendations from the UN’s human rights bodies and other organizations, Argentine legislation continues to permit a lack of clarity that is detrimental to the lives and health of women and girls who are the victims of rape” (Amnesty International, 2010). This call for action also signaled the willingness of international organizations to work with pro-liberalization groups to mobilize international courts in favor of victims. In this case, the frame for action was human rights, with a reproductive rights core component.48

47 Resolution filed under case number CCPR/C/101/D/1608/2007, issued by the UN Committee of Human Rights during its 101st Session.
48 For a more detailed discussion on the international framework of human rights and how it has come to include reproductive rights, see chapter 3.
A recent case involving a woman who sued her ex-husband for the right to use two fertilized eggs for an attempted pregnancy referred to the fertilized eggs as a ‘person.’ The court decided in this case stated that in lieu of specific legislation on in-vitro fertilization, it would have to rely on civil law, where article 70 of the Civil Code recognizes personhood from the time of conception. The decision goes on to point out that the destruction of the “in vitro” fertilized eggs could also fall under the jurisdiction of Article 85 of the Penal Code, where premeditated abortion is typified as a crime, since the intent would be the same.49 This represented a backlash in a growing trend to give personhood to the fetus, “as lobbyists, antichoicers have sought to bolster their cause by interjecting the fetus-as-person argument into a wide variety of situations that would seem to have nothing to do with abortion” (Pollit, 2002: 282). In this case, the consequences are negative for the proceedings on the depenalization of abortion, while the legislative stalls proceedings on the different bills under consideration, the lower courts may advance rights for the unborn complicating proposals for abortion.

While the lower courts have defended the rights of the unborn, a recent ruling by the Supreme Court might influence the trend toward liberalization. The ruling came as the result of the case of a minor in the province of Chubut who was the victim of rape by her stepfather. The mother demanded a legal abortion that was rejected by a family judge in that province, the case then escalated to the Supreme Court (Hauser, 2012). The Supreme Court ruled that the minor should be able to carry out the termination of the pregnancy and that “all analogous cases will enjoy the same guarantee,” citing as precedent Roe v. Wade (F. 259. XLVI: 5-7). Furthermore, the Supreme Court called all

49 Court case number 94282/2008, from the National Civil Court number 92, in Buenos Aires.
cases of rape “involuntary pregnancy” and ruled that the correct interpretation of Article 86 of the Criminal Code includes all cases of rape, which is consistent with international treaties to which Argentina is a party.

The ruling opens the door for legitimizing claims advocated by the *Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito*, which applauded the effort and signaled it will reintroduce a legislative bill in the next session in 2012. This latest Supreme Court ruling underscores the influence of international legal codes as more legal practitioners exercise international precepts and younger lawyers bring to the forefront recent international developments and apply them to the domestic context of Argentina.

**Fragmented Politics, Reproductive Rights and Decentralization in Mexico**

In 2007, a legislative reform depenalized abortion in Mexico City. The reform was challenged by the Attorney General through an appeal at the Supreme Court. In 2008, the Supreme Court upheld the ruling. A backlash from conservative forces soon followed with 17 states passing Constitutional amendments protecting life since conception. Furthermore, in three of those states (Morelos, Jalisco and Yucatán), the penal codes were also amended giving personhood to the fetus and classifying abortions as murder.

As previously noted, most democratic nations around the world have either decriminalized abortion or offer go further by providing the procedure as one of the state-sponsored services via the welfare system (Allan Guttmacher Institute, 2012). Why did Mexico City liberalize the practice? Why did other states respond with such extreme measures as amending local state constitutions?
A Gentleman’s Agreement: The PRI and State Compromise

In Mexico, struggle for reproductive rights has a long trajectory. Even prior to the political liberalization in the 1990s there had been early forays into the public sphere. Of particular significance was the 1975 UN Population Council Meeting held in Mexico City, where groups from civil society were given a place at the table to discuss issues regarding population control. At the time of the Conference, the Mexican government launched a national campaign of family planning where Congress changed Article 4 of the Mexican Constitution and created the Consejo Nacional de la Población (CONAPO) (Ortiz Ortega, 1994). During this early period, there was a “gentlemen’s agreement” between the PRI –or broadly, the state–, and the Catholic Church not to decriminalize abortion, though the state did not prosecute women for carrying out the procedure (Ortiz Ortega, 2000). During this period there were attempts to decriminalize abortion but none passed since the single-party hegemonic system kept the POS closed to activists. However, this early period highlights the tensions between public health practices that were somewhat progressive, and raised awareness of reproductive issues, and the closed POS.

It was only as recently as the 1990s that the “political opportunity structure elements were shifting to usher Mexico’s political alignments into a more modern period” (Haussman, 2005: 117). The opening toward civil society came at a time of increased political competition, as the dominant party began to cede some municipal and gubernatorial posts with the emergent opposition party, PAN, a conservative leaning

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50 The right to voluntary motherhood as the ability to choose the number and spacing of children was added at this time.
party. Clearly this opening did not favor feminists as much as it did conservative groups allied with the PAN.

In general, abortion politics in Mexico are indicative of the subordinate status of women in the country. As Loaeza argues, “one of the most salient transformations has been a general –if unequal– improvement in women’s lives and social status” (2009: 111). Education and participation in the economic life have changed dramatically the role and expectations of women. The democratization process has been a catalyst for increased participation and is associated with openings in the domestic political opportunity structure. However, on social issues such as abortion, this opening is questionable, at best. Contrary to expectations, political liberalization ushered in a conservative administration on social issues. While in Mexico there is a clear separation between church and state, the PAN has traditionally been associated with organizations closely aligned with the Catholic Church.

As Blancarte observes, “the victory in 2000 of the PAN’s presidential candidate, Vicente Fox, and the formation of a government heavily influenced by conservative Catholic thought resulted in confrontations concerning social policy, especially in such key areas as reproductive health, sexual rights, and public secular education” (2009: 226-7). Indeed, despite increased political competition and increased economic liberalization, social issues faced a tough conservative agenda. In addition, “under the banner of religious freedom, these [religious] groups wanted religious instruction in public schools, the right of the church to own electronic media, and greater involvement of the Catholic Church in public policy, particularly in the health sector (in order to slow or halt the availability of contraception and abortion)” (Blancarte, 2009:233). Nevertheless, the
reopening of social issues has also meant that other parties have had to take a position on the issue. The PRD, for example, has made social policy issues part of its agenda, starting in Mexico City.

*Legislative Framework at the Federal Level*

The Mexican Constitution contains certain provisions that potentially make it amenable to liberalizing reproductive rights. Most notably, Article 4 was amended in 1974 to recognize the right to universal access to reproductive health: “Every person has the right to decide in a free, responsible and informed way, the number and timing of their children.” Additionally, the Constitution also recognizes international treaties as law; Article 133 even stipulates that “the judges of each state will adhere to international laws and treaties even if those dispositions are contrary to State’s Constitutions.” The Mexican Constitution phrases the rights of the states as subsumed to those stipulated at the Federal level. However, more recently there has been a degree of decentralization and the case of the legal status of abortion is an example of this devolutionary process.

Nevertheless, the legislative framework at the federal level seems to present opportunities for liberalization. In addition to the Constitution, there are several regulations that also affect the status of reproductive rights. The *Ley General de Salud* (General Health Law or LGS from here on out) was established through Article 22 of the Federal Constitution in order to establish the purview of activities of the Secretary of Health. The LGS’ articles 67 through 70 regulate matters of reproductive rights. Article 67 stipulates that family planning is a priority and promotes the availability of sexual education and information for young people and establishes sanctions for those who
practice illegal sterilizations. The LGS also establishes, in a general sense, that the Health Secretary promotes the prevention of early pregnancies.

However, the political opportunity structure at the federal level remains closed. Groups lobbying at the state level have been able to change the laws, but liberalization has only occurred in Mexico City.

A Shift in the Public Debate and the Entrance of Abortion in the Public Sphere

In Mexico, one of the main events that triggered massive attention and public support for the issue of abortion was the “Paulina case” in 1999 (GIRE, 2010). This case involved a minor in the northern state of Baja California who had been a victim of rape and became pregnant. Her right to terminate that pregnancy was encoded in federal regulations, but her access to this right was denied. This case was also a key moment for conservative groups who deepened their connections through transnational ties by adopting the framework from the pro-life transnational movement that became increasingly active during the Reagan administration (1981-1988). The strategies by the conservative pro-life movements would deploy attribution of similarity through tactical maneuvering.

In the Paulina case, the local media called the refusal to perform a legal abortion on a thirteen-year-old rape victim “a negligence,” thus opening the door for feminist groups such as GIRE and GEM to put the issue back on the political agenda (Taracena, 2002). As Taracena argues, “abortion [in Mexico] has been clandestine, prohibited and morally incorrect for many years” (2002: 106). By opening the debate of a child’s rape in the media, groups in favor of liberalization were able to articulate the issue from viewpoints that took into account the girl’s life, thereby gendering the debate. This frame reinforced
the pre-existing law and opened the door to debating the Catholic view, which is opposed to all instances of abortion.

In 2002, the Paulina case was later presented to the Inter-American Commission of Human Rights (IHCR) by the Center for Reproductive Rights and domestic human rights organizations: GIRE and feminist activist Alaide Foppa. The case Paulina Ramírez v. Mexico, represents a landmark as the state of Baja California was obliged to pay reparations to Paulina and her son, and provide sexual education. The resolution was made public in 2006, helping the pro-abortion groups during the Mexico City debate.

**Political Openings: Mexico City and the Incremental Liberalization of a Right**

The creation of the Federal District as an autonomous political in 1997 body created an unprecedented opening for women and minorities (see Chapter 3). The creation of the Legislative Assembly (*Asamblea Legislativa del Distrito Federal*, ALDF) was characterized by debates that were markedly more liberal than elsewhere in the country. The first reform introduced in 2000 in ALDF was presented by Rosario Robles of the left-of-center PRD representative, backed by Martha Lamas of GIRE. The ALDF approved exceptions to the previous penal code regulating access to abortion services (de la Dehesa, 2010; Lamas, 2008).

The Robles law served as a launching pad from which women’s groups and NGOs could seek further liberalization of access to abortion. One of the strategies followed was organizing “prestigious national and international conferences aimed at physicians, particularly obstetricians and gynecologists that focus on the impact of

51 This law was also termed the “Robles Law.”
violence against women and propose ways in which they can help prevent, diagnose and treat the effects of domestic and sexual violence” (Billings et al., 2002: 89-90). The role of doctors as epistemic communities has been critical in liberalization of abortion in other countries such as the U.S., where the voice of doctors as specialized knowledge holders was able to change public attitudes on the issue. At stake here was the fact that liberalization first occurred by adding to the list of exceptions under which the procedure would be provided. However, confining the framing to medical or the judicial explanations also meant that it would be more complicated to gender the debate.

Two consistent frames were launched in the Mexico City campaign; one was that legalization would not spike abortions, and that it would decrease maternal morbidity/mortality. Although the rights-based frame was present, the more important reasons had to do with health and medical services. In addition, the second important frame was one of “social justice,” as abortion disproportionately affects poor women. The latter effectively included the left as a viable partner in the cause for liberalization. In fact Marcelo Ebrard, Mexico City’s mayor at the time of the passing of the legislation, called abortion “a woman’s cause but also a city’s cause” (Speech at the 2007 forum “Legal Termination of Pregnancy”). Because of the Robles law, local policy-makers had views supportive of liberalization. Effectively, the issue had been taken over by the PRD, at least at the local level. Furthermore, GIRE had gathered important information on over 15 years of campaigning for liberalization under leadership from Martha Lamas.

Together with allies such as Católicas por el Derecho a Decidir (CDD), the prevalent frames punctuated the fact that abortion was not a form of contraceptive but it represented a last resort recourse that should not take the life of women who are in dire
economic need. These two groups specifically courted the left, and the ties formed from previous advances under the Robles law proved efficacious.

The struggle for abortion in Mexico City follows a continued campaign of mobilization, which included framing of abortion as an already established international right and a Constitutional right that was being ignored or trampled upon by the practice of criminalization. Because the Article 4 of the Constitution recognizes the right of spacing and deciding on the number of children reared, the argument during the Mexico City campaign included the fact that criminalization of abortion took away the ability of truly controlling the spacing and number of children.

Lamas credits the Mexico City law to a change in the frames of public debates, which broadened the confines of the issue of abortion from a personal issue to a social issue, the cause then received the endorsement of public opinion leaders like Octavio Paz, Carlos Monsiváis, and Carlos Fuentes. In previous debates, advocates for liberalization called it a social issue or an economic justice issue. In addition, influenced by the UN transnational movements, the 1990s saw a rise in the framing of reproductive rights as development rights (Petchesky, 2003; Harcourt, 2009). In the case of the Mexico City law, consistent framing by advocates along with a gradual opening of the POS at the sub-national level would finally open the door for policy change.

If I say “my body is mine and I will do whatever I want with it,” in a certain way I am irritating a lot of people, because if your body is yours, the man standing right across from you does not feel committed at all. If, on the other hand I say, “abortion is a problem of public health, is a problem of social justice and a problem for democracy,” I will find that there’s lots of people who will feel involved or included. So, then we tried to change from “Abortion, yes or no.” […] Obviously there were lots of feminists who
did not like it, because it stopped being their issue and became a societal issue. However, this was a way in for politicians. We have to assemble the discourse for politicians, and for that one has to stop being a protagonist.
Marta Lamas, Mexico City, 2011.

In terms of framing, earlier attempts from GIRE included the use of activism coupled with citizen demands. However, this early approach changed as it needed to be adapted for the domestic conditions in Mexico. In 1997, Lamas suggested that “GIRE is trying to build a new discourse on citizenship that includes reproductive and sexual self-determination” (p. 65). The change in the discourse came as inclusion of other sectors of society became a strategy. As the feminist movement sought to engage in the policy-making arena rather than propose radical change. While GIRE and other feminists pursued the left, the liberalization was gradual and brokering alliances with key policy entrepreneurs marked the tipping point for liberalization.

The decriminalization of abortion was supported by PRD governor, Marcelo Ebrard, who was also a supporter of the same-sex marriage law. His willingness to liberalize set him apart and launched him unto the national political stage as a strong presidential candidate from the PRD. In particular, the timing of the law was right since in 2006 the PRD’s presidential candidate, Andrés Manuel López Obrador lost by a very small margin to the PAN’s conservative candidate, Felipe Calderón. Taking on social issues established the PRD as a serious electoral contender, and assured Ebrard an actual platform. Ebrard later he became one of the frontrunners for the nomination as the 2012 presidential candidate from the PRD, though the nomination again went to Manuel López Obrador. In addition to a change in social issues, the PRD’s hold of Mexico City (the
party has won every mayoral race since 1997) showcases a bellwether for the party’s programmatic linkages.

*The Backlash: State-Level Regulation Moves to the Far Right*

Soon after the liberalization of abortion in Mexico City, other states moved to enact restrictive laws against abortion. Thus, the Mexico City law did not have a positive impact on the rest of the Mexican states’ status. Instead, there was a re-writing of status to make laws more restrictive for women. Though the Mexican federal standard is more liberal than in Argentina (there is a possibility of terminating a pregnancy if it is the result of a rape), some Mexican states went as far as declaring the fetus a legal person, with rights. Since early 2008, seventeen Mexican states have amended their constitutions to protect life from the time of conception (not counting the state if Chihuahua, which amended its Constitution in 1994 to protect life from the time of conception). Each of these amendments was swiftly approved by local legislatures, an event in itself remarkable since seldom state-level reforms that require a legislature’s approval are approved this quickly. This issue of personhood has created another layer of regulation across states and opens the door to further contention. While the Mexico City law holds that the voluntary termination of pregnancy is open to anyone, not just Mexico City residents, there are still costs associated with accessing this service.

Not only it is clear that Mexico is undergoing an uneven transition, but also that there are still authoritarian enclaves embedded in the country’s political institutions, which compounds different problems for the quality of democracy and how it is distributed. In this regard, Htun’s (2003) explanation of why abortion laws have not been liberalized in Latin America highlighted the lack of enforcement as the culprit. Because
women are not punished for carrying out illegal abortions is seen as a non-issue. It is likely that while these circumstances have changed, women’s groups will continue to rank reproductive rights as a priority.

In all, the wave of legislation including the amendments of defining life beginning from the time of conception started in 2008. Although the conservative PAN was in many of those instances the party in power, the voting patterns associated with these reforms are not consistent with party lines. In the case of Chiapas, for instance, the governor was Juan Sabines of the PRD, and of the 40 votes which passed the legislation, 11 were from PRD state representatives. The fact is state-level policy-making concerning female reproductive rights showcases the strategic behavior of political parties. In D.F. where civil society organizations are strongest, and the left was also in power, the result was favorable to citizen demands.

Figure 5.3 shows the variation in the regulation of abortion at the sub-national level. The map shows those seventeen states that have recently passed amendments to their constitutions to protect life from conception. In Mexico City, the procedure is completely depenalized, so the map makes this distinction by highlighting it in green. The state of Chihuahua is not highlighted because it reformed its constitution in 1994, and therefore it is not part of the backlash of those states that modified their constitutions to protect life from conception after the Mexico City liberalization process. In addition, other states like Aguascalientes or Estado de México, introduced the measure but it did not make it to constitutional reform.
In October 2011, the Supreme Court responded to the challenges to overturn constitutional amendments submitted against the changes in the constitutions of San Luis Potosí and Baja California. Seven of the Supreme Court members ruled the reforms were unconstitutional, but this opinion was short of a vote to become a majority. So, even though there was a debate in the Supreme Court about the issue, the reforms that have swept the states protecting life from conception will remain the same for the time being. While Justices Franco Zaldivar and Sánchez Cordero declared these reforms stood
completely contrary to the rights of women, other Ministers, like Minister Aguilar, sided with the right of states to have the last word on this matter.

The future of the debate will depend on the upcoming 2012 election, shaping up to be a highly contested presidential race. Polls now show that the frontrunner is PRI’s pre-candidate Enrique Peña Nieto, former governor of the state of Mexico. In a recent interview in Mexico’s TV show “Es la Hora de Opinar,” Peña Nieto said he is not in favor of legalization of abortion, but he is also not in favor of criminalization of women. He then went on to explain he would maintain the illegality of abortion as it is under the Constitution, but he would refrain from enforcing the law. In other words, the statement by the presidential candidate would privilege the status quo at the federal level. Peña Nieto’s statement also showcases the high degree of pragmatism in the PRI, and a lack of programmatic commitment on sexual issues. It is likely that there would be a moderately closed POS under the PRI. In addition, during his tenure as elected governor of the State of Mexico, a bill was introduced to amend the Constitution of that state to protect life from the time of conception that was later sent to commissions for approval but has not been resolved. It is unlikely that a presidency of the PRI will take on a reformist position when it comes to reproductive rights or even other women’s rights issues that involve socioeconomic redistribution of any kind.

Furthermore, in this case the role of women’s policy machineries (WPMs) is also diminished since the blocking comes from the federal government. In Mexico, similar to Argentina, there is a closed POS at the federal level, so women’s movements have to go around those WPMs instead of finding alliances within them. The state-level politics will

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52 TV show “It is Time to Opine,” a roundtable format with Leo Zuckerman and Javier Tello, the particular show with Enrique Peña Nieto also featured Jorge G. Castañeda in that roundtable.
remain the site for action along with the courts as even though state constitutions have been amended; penal codes remain unchanged creating possibilities for liberalization through judicial action.

**Argentina and Mexico: Different Trajectories**

One of the historical differences between Mexico and Argentina has been the fact that in the former there is a concern with population control. Contrary to Argentine pro-natalist policies, in Mexico population control became a concern in the 1960s. Consequently, even though laws on abortion at the federal level are restrictive, there was a lack of enforcement across the board. As is well known, abortions were available at different costs for all women; the procedure is safer for those who could afford quality care (Htun, 2003; Blofield, 2006; Shepard, 2004). However, the stakes of abortion are now higher and it has become a salient issue on which Mexican politicians capitalize in an environment of increased intra-party competition.

In the cases of Argentina and Mexico, there are both influences from the medical field, clearly the most salient epistemic community in this issue area, as well as from the religious right. Organized opposition in Argentina mostly comes from groups associated with the Catholic tradition. However there are no political parties closely aligned with conservative or Catholic groups through programmatic ties. On the other hand, in Mexico the PAN is very closely aligned with Catholic groups and the bulk of its programmatic linkages have to do with its clear position as a socially conservative party.  

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53 As Soledad Loaeza (2003) has noted, the PAN’s doctrinal identity helped it survive the years of autocratic rule of the PRI. Its unique ideological standing made it different than the PRI and a viable alternative many years after its foundation in 1929; “a specific and original doctrine within the
difference is important as the PAN has functioned both as a political organization and policy entrepreneur in the anti-liberalization movement.

Another important element focuses on the legal framework. While the Supreme Court in Mexico upheld the Mexico City liberalization of abortion, it did not overrule the constitutional amendment of the state of San Luis Potosí, which gave personhood to the fetus. On the other hand, the Supreme Court in Argentina opened the door to further contention via the legislative route by declaring that the language of the national Penal Code in Art. 86 was ambiguous and that abortion is legal in all cases of rape, not just those where the victim is mentally handicapped.

**Conclusion**

The cases of Argentina and Mexico showcase that while political channels have become more accessible, there are still problems in connecting citizens to the political system. As the female comparative policymaking literature shows, connections between social movements and political actors that can act as policy entrepreneurs are necessary. However, even though there are more women participating in government, representation of reproductive rights has not translated to substantive representation in all cases. Furthermore, while increased representation was one of the ways in which the political system responded to women’s demands; an increase in numbers has not translated into substantive representation (Piscopo, 2010; Htun, 2003). In both Argentina and Mexico, the use of quotas has increased the number of women elected to Congress. However, the degree of substantive representation has not increased accordingly. In addition, the role of

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revolutionary regime was all PAN had in the absence of votes, voters and elected representatives” (Loaeza, 2003: 197).
the courts will likely continue to become important as some of the legal battles have
shaped and informed the debate on reproductive rights.

It is likely that as political competition increases, these controversial social issues
will continue to be in the rise in Latin America as political parties seek to differentiate
themselves from others. For politicians, controversial issues are a way to get name
recognition. For Marcelo Ebrard, for example, being recognized as a politician recognizes
the rights of women and takes separation of church and state seriously also were some
strategic moves. In addition, his support of the same-sex marriage (see Chapter 4) also
created a statement of the type of social politics the left-of-center PRD is willing to take
on, while also provided a platform to directly challenge the presidential incumbent Felipe
Calderón (PAN).

In the case of Argentina, the formation of a campaign unifying different state-
level groups from the provinces bodes well, as there is consensus on the importance of
the issue. However, finding the one frame that resonates with the rest of the country
remains a challenge. For policy entrepreneurs Donda and Ibarra, the abortion debate has
provided increased coverage and a larger platform. Media attention and a more organized
mobilization base could gain adherents to liberalization, as it did in the same-sex
marriage campaign.

However, unlike same-sex marriage, regulation of abortion is a socioeconomic
issue that forces the state to redistribute by providing the medical practice free of charge.
The state infrastructure would have to provide the service and effectively change some of
its infrastructure as it has happened in Mexico City. The measure in effect does change
the status of women in society by raising it to a more equal level. This policy issue then
demands more of the state apparatus and it is likely that this is one of the issues that add a layer of complexity. As framing campaigns have shown, the multidimensionality of the issue has proved one of the obstacles for women’s groups and have therefore strengthened conservative forces that reduce the issue to a single one: the right to life.

The long history of the issue of abortion in domestic politics differentiates it from the policy process of same-sex marriage. The different frames women’s movements have deployed internationally from health concerns to socioeconomic issues and human rights reflect tensions inherent in the complex issue of reproductive rights. The domestic context then takes on a privileged role for understanding the policy process of abortion, as it has become embedded in national politics. In addition, because in both Argentina and Mexico the executive is opposed to liberalization, framing campaigns have to rely on support from legislators that are somewhat independent, as a result, transnational frames or brokerage mechanisms may prove a more difficult proposition on this issue.
Chapter 6: Conclusions Advances and Setbacks in Argentina and Mexico

Mexico and Argentina are prime examples of the current terrain of the contentious nature of social policymaking in Latin America. The two case-studies show that policymaking processes brought about by societal demands are seldom the result of a particular cause. Rather, there is a multiplicity of causes that may lead to liberalization of policy issues of a social nature. While there have been some advances in liberalization of policies, there are still wide variations across cases. Many foundational issues for women’s and LGBT rights are far from settled. In particular, the courts have become the battle ground over policy reforms and what the limits of liberalization will be. Accordingly, future research on the politics of women’s rights and LGBT rights will have to focus on the role of the legal profession in current Latin American politics, in particular as the judicial system asserts its independence.

The configuration of the balance of power across institutional settings creates spaces for learning for activists. In Argentina, in particular, the role of “transnational legalism” or how easily the country can “borrow” international legal precedent to establish national law is one of the components to the POS that the LGBT movement has taken advantage of (Corrales, 2010; Simmons, 2009). Indeed, the articulation of domestic and international contention has created new avenues for demands that were previously unthinkable.

In particular, discourses grounded on human rights have become particularly potent in Argentina’s policymaking arenas. It was not only the change in the 1994 Constitution to include international treaties as a core component of domestic law, but also the impetus to human rights discourse by Néstor Kirchner’s administration that
continued during the Cristina Kirchner incumbency. As a result, transnational mechanisms of norm diffusion already grounded on human rights discourses and norms resulted extremely powerful and there was a higher degree of attribution of similarity and modularity than in the case of Mexico.

On the other hand, in Mexico the discourse on Church-state separation was prevalent, which resulted in differentiated framing which was grounded on the estado laico (secular state). As a result, mechanisms of diffusion were mostly non-relational and at times mediated. In both cases, the importance of understanding dominant domestic frames was an important strategy for domestic social movements to create opportunities for liberalization.

Argentina and Mexico show that because of globalization domestic structures are more porous and prone to claims through collective action. In addition, there is a “growing connection between internal contention and international conflict” (Tarrow, 2005: 212) that leads to the necessity of looking at the processes and the mechanisms by which transnational activists are able to act domestically. The downward scale shift of contention, allowed activists to transfer collective action from the international level to the domestic level, and in the case of Argentina even to lower courts in the sub-national level. Taking on new targets while making the claims of equality of rights expanded the opportunities for contention and exposed the openings in the POS. This research has explored these mechanisms and found that in Argentina there is a high degree of openness because of the 1994 Constitutional reforms. In Mexico, in contrast, international sources of framing are embedded are at times overshadowed by domestic cleavages.
Furthermore, the separation of powers via sub-national federalism adds an additional layer of complexity to these issues. Even when there are “resolutions” at the federal level, states and provinces can still re-negotiate the terms of policy issues such as LGBT and female reproductive rights. Institutional reforms for the deepening of democracy are likely to impact the fault lines of these debates in which parliamentarians or members of the progressive parties may act as policy entrepreneurs and forge alliances with social movements.

In Mexico, for example, new electoral rules raised the threshold for representation. As a result, smaller political parties struggle to remain nationally relevant as federal electoral rules make it more difficult for social causes to find alliances or enter the legislative arena through “double militancy,” a common occurrence in Mexican politics. As a result, the prospects for progressive alliances are relatively weak at the sub-national level, thus obliging social movements to solve coordination problems on their own and to seek strong mobilizations before seeking to influence the policy processes. Haas (2010) has refined the feminist policymaking approach by showing how in the case of Chile, the institutional balance of power contributed to dysfunctional policymaking dynamics within the state. This insight suggests that imbalances in institutional power in decentralized or federalist settings will also impact policymaking. This finding is strongly supported by this research. The theoretical advances of feminist policymaking have much to learn from cases in democratizing decentralized state. This study seeks to contribute to that debate by assessing how social movements exploit political opportunities in the sub-national level through a downward scale shift of contention. Future research needs to address the uneven character of democratization in decentralized states.
The political institutional environment constitutes a source of nuance for explanations of the policy process. The political structure in Argentina and Mexico privileges the role of political parties as organizations and has uneven points of entry for social movements and others who do not belong to a party. As a result, the strategies of social movements necessarily have to rely on connections to political parties or ‘insiders.’ As Smith argues for the U.S. and Canada, “the choices made by political leaders will be exercised within specific nationally defined institutional contexts” (2008: 196). Similarly, in the context of Argentina and Mexico, social movements not only have to devise and implement strategies that involve forging alliances with political actors inside the state, but also have to navigate a specific institutional terrain.

Additionally, historical legacies also work within specific institutional contexts. As this research argues, in the case of female reproductive rights, previous policies marked a specific trajectory, which includes approaching the issue from a framing perspective that excludes women’s right to control their own sexuality. In both Argentina and Mexico, feminists and women’s movements expanded the issue of female reproductive rights to include economic justice and health as primary sources of framing, thus opening the issue to a wider set of considerations. At least in the case of Mexico City, this broadening opened the door to solidarity with other groups. In the case of Argentina, framing of human rights was directly related to the historical legacy of the authoritarian period and the politics surrounding human rights. Similarly, as the issue of same-sex marriage shows, embedding the framing of the debate in human rights discourse was extremely beneficial for Argentine LGBT movements. On the other hand, in Mexico transnational frames had to undergo significant adaptation to function
effectively in a very different domestic context. In this case modularity and attribution of similarity were harder to achieve than in Argentina because the prevailing discourse there was embedded on the issues of separation of Church and state, a normative context strongly shaped by the liberal revisions to the 1857 Constitution and the *Leyes de Reforma*.

Finally, the role of political parties remains extremely critical on these issues. The main difference between Argentina and Mexico was how the conservative right intersected with political structures in both cases. In the case of Mexico, there is a tradition within one of the major political parties, the PAN to politicize these issues from a strong conservative and Catholic view of social issues, including gender roles and the definition of family. The roots of the PAN are inextricably linked to the Catholic tradition (Loaeza, 2009). Because of the PAN’s strong ideological postulation and organizational ties, the left has taken an opposite stance on social issues as strategic move to be differentiated programmatically and to compete electorally. On the other hand, the party system in Argentina lacks an electorally viable Catholic constituted party. Instead, legislators careers depend on provincial governors or party bosses (Jones, Saiegh, Spiller and Tomassi, 2002). Social movements in Argentina therefore, rely on lobbying to specific legislators rather than the parties, in order to open the doors of the legislative process.

The surprising variation of public policies regarding both abortion and gay rights in Argentina, Mexico and elsewhere animates questions regarding the unevenness and disjunctive nature of democratization in the region. While Latin America shares a common cultural heritage based on Catholic traditions and strong presidential systems,
the contentious politics around LGBT issues shows that the policy process is more complex and variegated than scholars have previously assumed. These two issues can help us further understand the politics of rights as people in democratizing states move toward active participation and the construction of models of active citizenship. While the transitions from authoritarian to democratic regimes largely was elite-centric, understanding the shape these democracies will take moving forward necessitates a “bottom-up” approach.

**Synthesis and Making Sense of the Messy Center**

Comparative politics scholars have called for the re-organization of the field into an “eclectic messy center” (Evans, 1995) where paradigms are not necessarily pitted against each other, but are part of a wide array of research strategies. As stated earlier, the use of qualitative methods here allowed for an in-depth analysis of policy processes not simply policy outcomes. This then is a configurative study that found no single causal explanation; rather, this research reveals there are several factors that aligned together in each case to produce policy trajectories that may seem more liberal in the case of same-sex marriage or more conservative in the case of female reproductive rights.

The finding here is that the intersection between transnational and domestic activism helped shape the political opportunity structure of these social actors. Therefore, the causal significance of international factors does not overshadow domestic factors, such as institutional constraints, dominant frames of action, as well as political and social actors. Just as McAdam, Tarrow and Tilly (1997) argued for a synthesis bringing together structuralist, rationalist and cultural approaches, current social phenomena such as
abortion and LGBT rights also compels analysts to bridge international and domestic processes on related issue areas. In particular the case-study on same-sex marriage showcases how transnational and domestic contention occurred simultaneously. As openness increases the fluidity of social actors, social phenomena are bound to create more challenges if there is an artificial separation between paradigms. Herein lies the core of this project, in the intersection between international and domestic explanations through qualitative research that draws from the same experimental logic utilized in quantitative research. As the dynamics of contention move beyond national boundaries, so should our theoretical toolkit in a more integrated fashion.

The Fate of Democracy or Why Democracies Should Care about Women and LGBT Demands

While this research does not find that expanding social policy in terms of rights is a necessary condition for the existence of democracy, it does, however, tell us something about how democracies in Latin America cope with controversial social demands that seek to expand citizenship. The decentralization of federal states such as Mexico and Argentina suggests that while several channels of access to the state apparatus may exist, access is not necessarily ensured. While political parties are the traditional vehicle for representation, the case studies in this project indeed show there is a “crisis of representation” in the region. In response, social movements have crafted a series of strategies from taking to the streets to lobbying specific lawmakers through other institutional actors, such as those inside state institutions designed to promote equality. The varied strategies analyzed in this research show that getting to the political actors inside parties was a necessity. Those who were able to form a relationship with elected
representatives were generally those who already had experience inside political parties, those with “double militancy,” as was the case of same-sex marriage in Mexico City.

Connections between movements and parties are necessary, if not sufficient, for legislative success, but in terms of democratic outcomes, the larger question is whether political parties are avoiding fostering new programmatic linkages with the electorate by utilizing already mobilized citizens. Instead of creating conditions for direct democracy or more inclusive representative mechanisms that include direct consultation, political parties lend support to social movements causes when, based on electoral calculations, doing so may raise their profile. In Mexico, the strong embeddedness of politicians in their political party machineries makes them reluctant to support causes that might not fit with the overall party line. In contrast, in Argentina there is a higher degree of flexibility in this regard.

**Time and Timing: The Importance of Political Opportunity Structures**

Time and timing are important elements in analyzing policy change. Contrary to static analyses that take political culture as a fixed or invariant feature of a particular country, this study shows that the politics of even controversial social policy issues can change relatively quickly in contexts previously considered adverse to change or conservative. Analysis might focus on the shifting interaction of domestic and international political opportunity structures that constrained and facilitated political action.

In the case of same-sex marriage in both Mexico and Argentina, international conditions have favored demands for liberalization. While gay liberation movements have a long tradition internationally, as well as they do in Mexico and Argentina,
international acceptance of LGBT rights as human rights, coupled with a discourse of equality actually helped boost the LGBT movements in both contexts. The political context of high levels of competition in both countries also helped LGBT movements negotiate alliances affect policy change. Furthermore, the strategy of these groups extended beyond the legislative arena to the judicial arena, adding pressure for liberalization and a legitimate platform that provide the discursive elements of marriage equality.

The dynamic nature of policymaking of these controversial issues also allows a look inside the state that shows a changing political landscape, where political parties are increasingly strategic and institutional roles are still in flux. Political opportunities change across each country, but the change is also within countries across issue areas. As a result, the analysis shows that continued pressure could still yield liberalization under different conditions.

**The Role of the Courts**

Some of the policy reforms analyzed in Chapters 4 and 5 should be seen as a step in the direction of less centrality of the executive branch and enhanced institutional capacity and autonomy of the judicial branch. The strengthening of the role of the judicial system and its increased interactions with segments of society through the judicial system are especially notable. While structural reforms are still necessary, the judicial branch has in fact restrained the executive or legislative powers (or both) thereby signaling a political will to enhance its own independence and to enforce the rule of law. The issues under examination in this study may be unique in the sense that they are somewhat new in the
political arena and there is more or less an acceptance of their appropriateness in the international legal arena. In this regard, the role of the courts constitutes a separate policy environment that, depending on the court level and its “reform” status, can be seen as a moderately open POS. In the case of Argentina and the pursuit of same-sex marriage, the level of the court system targeted as well as the timing of the reform mattered in terms of response and the level of support given to the petitions from social movements. In a way, the same-sex marriage policy tested the boundaries of the independence in the judicial system and its access “from below” by citizens and social movements. The area of judicial independence will be an important variable in the development of policy in the coming years. As Calleros (2009) affirms, this is one of the key areas where the deepening of democratization remains to be tested.

The rule of law (where general, democratically constructed and relatively stable laws are applied by independent, impartial and efficient courts) is a key arena for democratic consolidation in new democracies, once reasonably free and fair elections are held periodically as in a polyarchy (Calleros, 2009: 29).

In terms of the defense of sexual rights, the importance of the judiciary will likely be on the rise for the foreseeable future. In order to protect movement advances at the sub-national level, individuals as well as social movements will continue to seek sympathetic courts and demand the professionalization of judicial procedures such as appeals. In the case of conservative abortion laws in some of the Mexican states, demands for protecting women’s rights will test the validity of the current backlash sub-national constitutions amending to protect life beginning with conception. In the case of Argentina and reproductive rights, advances in the Supreme Court may slow down demands through the lower courts, but as the campaign prepares to re-introduce the bill to
depenalize abortion in the legislative, it is likely that they will continue to seek sympathetic judicial decisions, especially since the executive, Cristina Fernández de Kirchner, opposes liberalization.

There are wide variations in the reach of the law in Latin America. Even though judicial decisions tilt in a more liberal direction, there is still a high degree of impunity throughout the region that may render these decisions rhetorical (Sorj, 2007). Recent episodes of violence against LGBT people may be not only part of the backlash against decisions to liberalize same-sex marriage and other gay rights, but also showcase the limits of the judicial branch in these democratizing environments.

**Social Movements: Strategies and Obstacles**

The mobilization of social movements in these two policy issues was the *sine qua non* condition for putting LGBT and reproductive rights on the political agenda. However, it was not a sufficient condition for moving the policy process to promote the expansion of citizenship rights, as the case of abortion in Argentina demonstrates. The promotion of these issues required alliances with policy agencies or with political parties, especially with the left or progressive parties. These cases show that as the left has become a viable option in the electoral arena since the democratic transition, its tactics and platform have changed. At times, in lieu of programmatic linkages with the electorate, the left may seek alliances with social movements in order to mobilize certain sectors of society and gain electoral support.

Social movements are essential for gendering politics and introducing issues that determine sexual rights through policy. The strategies of social movements have an
important impact upon the evolution of the policy process, especially in earlier stages, when politicizing the issue in a way that can be framed in terms of a problem that requires a political solution.

Shifting political strategies and alliances shaping the pro-liberalization movement of abortion policies in Mexico City demonstrates that the policy process was arduous and that alternative scenarios may develop along the way. Given the controversial nature of these issues, many of would-be political allies for movements were reticent to endorse or side with the controversial cause.

However, the change in the tone of the discourse from the women's movement, including the frame of abortion as a woman's right to reproductive health care proved moderately effective. Rather than utilizing a discourse that would alienate policymakers, feminists struggled to find influential social figures who would side with them and changed the conversation from 'the female body,' to that of health and prevention of death. Since there is also a strong class component to this issue, part of the framing involved demonstrating how the lack of safe access disproportionately affects women in the lower income brackets. This strategic framing, coupled with the opening of the Mexico City POS, as the institutional context allowed for the entrance of new political actors, created the conditions that made the policy process more conducive to liberalization. The alliances with leftist political parties added to the configuration of variables that opened the policy process to incremental liberalization.

The legislative advances on reproductive rights in Mexico City bolstered the image of the PRD as a national contender and strongly installed these controversial social issues as part of the left agenda. Governor Marcelo Ebrard repeatedly supported the
liberalization of controversial issues, and his visibility and name-recognition were raised substantially at the national level. However, the high stakes of electoral competition would also mean that the issue would be taken by other political parties as well. The campaign for pro-life amendments to state constitutions meant that the opposition in other areas had successfully framed the issue as a “moral” issue, one of the elements Htun (2003) points out makes liberalization very difficult. The issue of abortion has now become a contentious wedge issue in electoral politics, much like in the United States. These power struggles are likely to continue, in particular as programmatic differentiation over economic policy issues becomes less relevant. Whether this will become a dominant policy debate in the national stage will depend on the electoral outcome of the 2012 race and future electoral alignments at the national and sub-national levels.

In the case of Argentina, the relevant frames became increasingly divisive, as Cristina Fernández de Kirchner was known to be in opposition to abortion rights. In addition, the many cases where women and sometimes underage girls saw their right to a legal abortion simply denied by local courts and administrative red tape underscores the strong resistance in Argentina. These cases demonstrate that the opposition in this conservative environment remains quite strong. While there is a general consensus in favor of liberalization, the women’s movement has only a limited impact on the policy process. The closest to liberalization was the recent bill introduced by Deputies Victoria

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54 The listing of cases that have brought attention to the lack of enforcement of those cases where a legal procedure did not take place is unfortunately long, including: the case of C.C.A., in Mendoza (2006); V.O., in Mar del Plata (2007); M.F.C, in Paraná (2007); Ana Maria Acevedo, in Santa Fe (2007); a 12 and a 13 year-old young girls in Mendoza (2008); G.N.R., in Bahía Blanca (2008); a 12-year-old in Viedma, Río Negro (2009); A.G. and María, in Comodoro Rivadavia, Chubut (2010); a 12 year-old in Adrogué, provincia de Buenos Aires (2010); T.N., in El Bolsón, Río Negro (2010); L.G.S, in Rawson, Chubut (2011); and a 14 year-old in Posadas (2011). These cases have been documented and have raised the question of legality as there are too many instances where, in particular young, lower-income women are denied a legal procedure either through stalling the process or creating administrative barriers.
Donda and Vilma Ibarra, which at the last minute was not able to garner sufficient votes to continue on to advance the debate in Congress.

**The Politics of Reproduction versus the Politics of LGBT Rights**

Argentina and Mexico demonstrate the existence of varying policy profiles across issue areas in the regulation of sexuality. The individual nature of same-sex marriage and its articulation under either an ‘equality’ or a ‘human rights’ campaign in essence does not challenge the fundamental nature of the state as a liberal democracy. In addition, there seems to be a consensus that same-sex marriage and sexual diversity issues are themselves *progressive*. However, the right to marry for same-sex couples does not in essence change the functions of marriage and does not fundamentally challenge notions of individual rights consistent with liberal democracies, but in fact it fits quite well. Same-sex marriage is the most visible success of the LGBT movement, and perhaps its less challenged policy proposal as it recognizes sexually diverse people as citizens and folds them into the state structure while at the same time reaffirms marriage as an institution of the rather than a religious institution. Furthermore, marriage promotes social stability (Mucciaroni, 2008), which may help explain why conservative reactions are not as strong as in the case of reproductive rights. Same-sex marriage then strengthens the state as an apparatus of social regulation (Pinion, 2012).

Furthermore, same-sex marriage may in fact strengthen state capacity and autonomy as it reinforces the separation of Church and state. One of the main functions and sources of power of the Catholic Church in Latin America is its presence in everyday activities and intimate aspects of daily life (Levine, 1986). By de-linking marriage from
the hierarchy of the Church the state is able to fill this vacuum and even offer an alternative to heterosexual couples. This policy then not only does not challenge the state apparatus but strengthens its presence as it legitimizes and regulates relationships. In addition, it does not entail redistributive measures like demands for liberalizing reproductive rights do.

On the other hand, the issue of reproductive rights pertains to an unsettled terrain, where policymaking strategies have been entangled with the meaning of motherhood (Luker, 1984), and the role of women in society. The regulation of reproduction affects gender relations and the definition of gender itself (Orloff, 1984). In addition, the recognition of reproductive rights through the provision of abortion services generates an economic strain on the state apparatus. It thus represents an initial investment that is not only politically risky; it is also an economic burden on the state. As feminists have argued, liberalization of abortion is not only an issue of state control over a woman’s body (Molyneaux, 1998), but it is also a socioeconomic issue that, as demanded, involves redistributive measures.

Underlying issues in these two demands interrogate the content or meaning of citizenship. On the one hand, same-sex marriage is compatible with individual rights and it does not necessarily mean the provision of state protections such as the provision of health benefits or social insurance, which is more compatible with a conservative view of citizenship. On the other hand, the proposals for the provisions of a free and safe abortion are compatible with a view of citizenship where the state intervenes to correct inequalities and promote social rights. This latter view is traditionally more compatible with articulations of citizenship from the left, which are also more progressive (Yashar,
2011). These underlying tensions may help explain why even though both issues faced opposition from conservative forces, one of the issues remains a laggard.

**Is Policy on Social Issues About Values?**

As we have observed in the cases of female reproductive and LGBT rights, values and personally held beliefs do not necessarily reflect the changes in the policy arena of reproductive and LGBT rights. The consolidation of representative democracies means that left-of-center parties have had to craft new strategies to compete in the electoral arena (Panizza, 2005). In this context, it is likely that alliances between left-of-center parties and mobilized social movements with demands over identity or re-crafting citizenship will take place.

While framing by opposition groups in terms of “moral values” does decrease the likelihood of reform (Htun, 2003), the separation of powers at the federal level, or the institutional imbalances of power (Haas, 2010) does allow room for maneuvering. While in general it is true that feminist mobilization is a prerequisite for policy change, we have seen that the influence by these movements is filtered or refracted through the existing institutional arrangements, especially political opportunity structures. The evolution of feminist policy, as well as that of LGBT rights can tell us much about the political development of countries, in particular from a comparative perspective. In particular, this study makes the case that international and domestic political opportunity structures are not static. Previous studies seem to assume that political opportunity structures are relatively inert, but further analysis indicates that especially in transitional settings they can be highly dynamic.
In addition, the study of LGBT and female reproductive rights here has relied on domestic institutional theoretical expectations articulated by the feminist comparative policymaking literature. However, in the context of increased transnational activism on these issues, this literature must be complimented by analyses that take into account international arenas as an additional avenue of contention for domestic policy processes. Even in advanced democracies there is a degree of openness that might impinge upon domestic policy processes, while this varies, the case of Argentina shows that some states are especially susceptible to changes in international law and transnational contention. Hopefully, this study has contributed to the mainstreaming of the study of sexuality in Latin American politics, which for the most part, is an unexplored aspect of modern democratic politics.

**Sexual Politics in the Region: Unchartered Terrain**

As Latin America continues to consolidate a regime of electoral politics with relatively little substantial institutional reforms, the public sphere will remain highly contentious, in particular when demands involve value-laden reforms in conservative societies. Nonetheless, the cases examined in this research demonstrate that even in the most contentious policy environments reforms are possible when there is a strategy that combines strategic framing with alliances with institutional actors.

Though deepening democracy may require broad reforms to the existing democratic institutions, advancing a gendered policy process is a step forward in the region. Although the issue of reproductive rights remains unsettled, debates at the legislative level have opened the door for further discussions and possible political
realignments. Furthermore, the assessment of issues that are understudied by mainstream can also “assist us in thinking about the ways in which we might work successfully within the realities of institutions and even about how we might want to reform them” (Smith, 2008: 195). In particular, in the face of other challenges, such as economic reform and security concerns, it is noteworthy that women and sexual minorities are mobilizing for progressive liberalization. Now that the political terrain has shifted, and “marriage equality” and “safe abortion” are defined as political problems, they are more amenable to policy change. It is probable that the terrain of controversial social policy issues will see much more change in coming years. Hopefully the research reported here will make a contribution as social scientists attempt to grapple with the significance and implications of ongoing social, cultural and political transformations.

55 The case of Uruguay is prime example of this, where a presidential election changed the executive position in a centralized environment. Soon after, the decriminalization of abortion would receive wide support from the legislative, where the Senate voted in favor of decriminalization in December 2011.
Appendix I.1: Institutional Review Board Approval

January 19, 2011

William Smith, Ph.D.
Department of International Studies
1000 Memorial Drive
Coral Gables, FL 33146

HSRO STUDY NUMBER: 20100960
STUDY TITLE: Morality and Contentious Politics in Latin America: Abortion and LGBT Rights in Argentina and Mexico
IRB ACTION DATE: 1/5/2011
STUDY APPROVAL EXPIRES: 1/4/2012
SPONSOR NAME: There are no items to display
FWA: FWA00002247

On January 5, 2011, an IRB Chair approved the following items under the expedited review process, with a waiver of Signed Consent.

APPROVAL INCLUDES:

New Research Protocol
Research Materials (English Versions Only)

- Verbal Consent Script
- Recruitment Letter
- Questionnaire

NOTE: Translations of IRB approved study documents, including informed consent documents, into languages other than English must be submitted to HSRO for approval prior to use.

Sincerely,
A request to continue this study must be submitted to the HSRO at least 45 days before IRB approval expires. If this study does not receive continuing IRB approval prior to expiration, all research activities must cease, and it may be officially suspended or terminated.

cc: IRB File

Ana Morgenstern
Appendix I.2:

List of Interviews

Mexico Interviews

Anonymous Interview, CONAPO, Sub-Unit Director. June, 2010.
Gloria Careaga, ILGA Latin America Director, UNAM Researcher, June, 2010.
Lol Kin Castañeda, Director of SUDAM, Activist, May, 2010.
Marta Lamas, Activist, June, 2010.
Nadia Rosso, Activist, GLÚ Director, June, 2010.
Judith Vázquez, Member of SUDAM, Activist, May, 2010.

Argentina Interviews

Anonymous Interview, INADI, Sub-Unit of Judicial Advising. September, 2011.
Claudia Castro, Founder La Fulana, September, 2011.
Gabriel Oviedo, de SentidoG.com and FALGBT, October, 2011.
Diego Tretorola, CHA, Área de Cultura, September, 2011.
Appendix II.1:
Federal Legal Codes in Latin America on Abortion

The index on Figure 1.1 is a summary of the following data, which tracks the legislation on abortion at the Federal level. The 1 to 8 measurement was devised by adding the exceptions under which abortion is permitted. The lower numbers 1 – 3 signal a restrictive legislation at the federal level, while the measurement of 4 – 7 would indicate a more liberal legislation. Finally 8 is designated for those countries were abortion is legalized and thus permitted for any reason.

<table>
<thead>
<tr>
<th>Country</th>
<th>State of the Law</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua y Barbuda</td>
<td>Abortion is illegal, punishable for up to 10 years. Only grounds for abortion is to save the life of a woman.</td>
<td>Offences Against the Person Act of 1873, Part IX. Attempts to Procure Abortion: Articles 53 and 54 Infant Life (Preservation) Act</td>
</tr>
<tr>
<td>Argentina</td>
<td>Abortion is illegal. Permitted in to save the woman’s life or in the case of rape of a woman with a mental disability.</td>
<td>Under the Penal Code. Articles: 85 through 88</td>
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<td>Recent judicial decision in the Supreme Court liberalizes the law for all cases of rape (May, 2012).</td>
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<tr>
<td>Bahamas</td>
<td>Abortion is illegal. Permitted only in cases to save the woman’s life</td>
<td>Under the Penal Code of 1924 in articles 315, 330, and 334. Penalty is imprisonment for up to 10 years</td>
</tr>
<tr>
<td>Barbados</td>
<td>Abortion permitted in cases of incest. Abortion permitted in cases of fetal impairment. Abortion permitted in cases of rape. On juridical and socio-economic grounds. It specifies that when determining if the continuation of the pregnancy would involve a risk of injury to the health of the pregnant woman, “the medical practitioner must take into account the pregnant woman’s</td>
<td>Abortion laws were significantly liberalized in Barbados in 1983, with the introduction of the Medical Termination of Pregnancy Act (Act No. 4 of 11 February 1983) and the 1983 Regulations to that Act</td>
</tr>
</tbody>
</table>
social and economic environment, whether actual or foreseeable,” and that the written statement of a pregnant woman that she reasonably believes that her pregnancy was caused by an act of rape or incest is sufficient to constitute grave injury to her mental health. If the pregnant woman is under 16 years of age or of unsound mind, the approval of her parent or guardian is required.

<table>
<thead>
<tr>
<th>Country</th>
<th>Abortion laws</th>
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<tbody>
<tr>
<td>Belize</td>
<td>Abortion illegal except when performed “by a registered medical practitioner, if two registered medical practitioners are of the opinion, formed in good faith (a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the physical and mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or (b) that there is a substantial risk, if the child were born, that it would suffer from such physical or mental abnormalities as to be seriously handicapped.” In determining whether the continuance of a pregnancy would involve a risk of injury to health, the Code also provides that account may be taken of the pregnant woman’s actual or reasonably foreseeable environment; consequently, abortions can be performed on socio-economic grounds.</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Abortion illegal except in cases of rape and incest. However, it’s been reported that safe abortions are nearly impossible to come by, even in cases of rape.</td>
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<table>
<thead>
<tr>
<th>Country</th>
<th>Abortion Laws</th>
<th>Legislation referrals</th>
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<tbody>
<tr>
<td>Brazil</td>
<td>Abortion is illegal except in cases of rape</td>
<td>Legislation in the Penal Code, articles 124 through 128.</td>
</tr>
<tr>
<td>Canada</td>
<td>Abortion has been depenalized</td>
<td></td>
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<tr>
<td>Chile</td>
<td>Abortion is illegal under all circumstances. The issue of depenalization of</td>
<td>Legislation in the Penal Code, articles 342 through 345.</td>
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<td></td>
<td>Therapeutic abortion was revived during the December elections</td>
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<tr>
<td>Colombia</td>
<td>Previously very restrictive, now highly regulated and abortion is only allowed</td>
<td>May 2006, highest court ruled that the procedure can be</td>
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<td></td>
<td>in cases where the mother’s life is in danger, or the pregnancy is the result</td>
<td>performed in cases in which the mother's life or physical</td>
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<td></td>
<td>of rape or incest.</td>
<td>health is in danger, in cases of rape or incest, or in</td>
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<td></td>
<td>pregnancies involving fatal or life-threatening fetal</td>
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<td>abnormalities</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Abortion is illegal, except in cases where the woman’s life is at stake</td>
<td>Legislation in the Penal Code, articles 118 through 122.</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>Abortion in the Dominican Republic is illegal under all circumstances</td>
<td>Legislation in the Penal Code under article 317</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Abortion is illegal except in cases where the woman’s life is at stake, or</td>
<td>Legislation in the Penal Code under articles 441 through</td>
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<td></td>
<td>in cases of rape of a woman with a mental disability</td>
<td>447. Abortion is also criminalized under Article 35 of the</td>
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<td>constitution which provides that the child will be</td>
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<td>protected from its conception</td>
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<tr>
<td>El Salvador</td>
<td>Abortion is illegal in El Salvador in all cases, even when doctors consider</td>
<td>Changes to the law came in 1998, when a new penal code</td>
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<td>the procedure to be medically necessary. Moreover, the government vigorously</td>
<td>was enacted and removed all prior exceptions to</td>
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<td></td>
<td>enforces the ban.</td>
<td>prohibition on abortion. Articles 133 through 137.</td>
</tr>
<tr>
<td>Grenada</td>
<td>Abortion is illegal except for the cases where the woman’s life is at stake</td>
<td>Abortion laws are governed by sections 234, 247 and 250 of</td>
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<td></td>
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<td>the Criminal Code. The Code authorizes the performance of</td>
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<td>abortions for therapeutic purpose</td>
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<tr>
<td>Guatemala</td>
<td>Abortion is illegal except to save a woman’s life</td>
<td>Article 3 of Chapter I in Title II of the Constitution</td>
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<tr>
<td></td>
<td></td>
<td>grants the right to life since conception. Also in the</td>
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<td></td>
<td></td>
<td>penal code from articles 133 through 140.</td>
</tr>
<tr>
<td>Haiti</td>
<td>Abortion is illegal altogether</td>
<td>Legislated in the penal code under article</td>
</tr>
</tbody>
</table>

57 Data from http://pewforum.org/docs/?DocID=167#latinamerica
<table>
<thead>
<tr>
<th>Country</th>
<th>Abortion Policies</th>
<th>Legislation Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Honduras</td>
<td>Abortion is illegal altogether</td>
<td>Legislated on the penal code Article 126 to 128 and 132</td>
</tr>
<tr>
<td>Jamaica</td>
<td>Abortion is illegal, except to save the woman’s life or to preserve physical health; as well as to preserve mental health</td>
<td>Legislation falls under the Offences Against the Person Act of 1864. Based on English common law, follows the holding of the 1938 English <em>Rex v. Bourne</em></td>
</tr>
<tr>
<td>Mexico</td>
<td>Federal state where abortion is determined at the state level. The national level legislation prohibits abortion except for rape cases and cases of fetal impairment</td>
<td></td>
</tr>
<tr>
<td>Nicaragua</td>
<td>Abortion is banned in all circumstances</td>
<td>Came into effect in October 2006. Legislation under the penal code, Articles 162 through 165.</td>
</tr>
<tr>
<td>Panama</td>
<td>Abortion is illegal, except for cases of rape, and cases of fetal impairment</td>
<td>The Criminal Code of 1922 made abortion illegal in all instances, amended in 1982, the exceptions were included but the penalties became harsher for medical practitioners. Current legislation is under the penal Code, articles 141 through 144.</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Abortion is prohibited altogether</td>
<td>Legislation is under the The Paraguayan Penal Code (Law No. 1160/97) of November 1997 Articles 109 and 349 through 353.</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>Abortion is illegal, except to save a woman’s life, to preserve physical health, or to preserve mental health</td>
<td>Policy legislated under the Offences Against the Person Act of April 1925, Articles 56 and 57.</td>
</tr>
</tbody>
</table>

⁵⁸ The amendment of 1991 made penalties more severe, going from two possible years of incarceration and provision of community service for up to 104 days to the maximum penalty of 4 years of imprisonment and eliminated the possibility of community service.
<table>
<thead>
<tr>
<th>Country</th>
<th>Abortion Policies</th>
<th>Legal Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uruguay</td>
<td>Abortion is illegal except to save a woman’s life and in cases of rape</td>
<td>Under the Criminal Code of December 1933, articles 325 through 328.</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Abortion is illegal, except to save a woman’s life</td>
<td>Legislated in the penal code articles 432 through 436. The penalty for abortion ranges from 6 months to 2 years. This penal code dates back to 1964</td>
</tr>
</tbody>
</table>

59 According to the UN’s Population Policy Data Bank, Uruguay is believed to have a high rate of abortion; most of these abortions are illegal. In fact, abortion appears to be a major means of fertility control in the country, as well as the single most important cause of maternal mortality. Despite the lack of precise statistics on abortion, the most conservative estimates indicate that there are at least as many abortions as live births. See: http://74.125.47.132/search?q=cache:XmnIkdo -DkJ:www.un.org/esa/population/publications/abortion/doc/uruguay.doc+uruguay%26+abortion+policy&cd=2&hl=en&ct=clnk&gl=us&client=firefox-a
Appendix II.2:

Federal Legal Codes in Latin America on Homosexuality

The index on Figure 1.1 is a summary of the following data, which tracks the legislation on homosexuality at the federal level in Latin America. A similar scale is used for 1 – 8 by adding the instances where legislation criminalizes the condition of homosexuality in several ways: the existence of sodomy laws (or that homosexual acts are legal), the existence of non-discrimination laws (that explicitly include sexual preference), employment protection for sexual minorities, allowing sexual minorities to serve in the military, the existence of domestic partnerships, the existence of civil unions and finally the existence of same-sex marriage. Each of these categories represents a point in the scale, so higher ranks mean that the country has more liberal codes to reflect LGBT rights, while lower ranks would mean that codes to allow LGBT rights are either non-existent or explicitly forbidden. The table below encompasses those findings.

<table>
<thead>
<tr>
<th>Country</th>
<th>State of the Law</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>2003: First country in Latin America to legalize same-sex unions</td>
<td>Same-sex acts are legal since 1887.</td>
</tr>
<tr>
<td></td>
<td>2008: Argentina grants partner pensions to gay couples. This is a federal resolution that allows same-sex partners that have cohabited for at least 5 years inheritance rights.</td>
<td>Anti-discrimination law on the basis of sexual orientation is existent for the province of Buenos Aires.</td>
</tr>
<tr>
<td></td>
<td>2010: Same-sex marriage was legalized at the federal level</td>
<td>Civil unions are legal in the City of Buenos Aires, the Province of Río Negro (2003), and the City of Villa Carlos Paz (2007)</td>
</tr>
<tr>
<td></td>
<td>2012: Law of gender identity was passed to allow transgender individuals to obtain federal identity documents after undergoing gender reassignment procedures.</td>
<td>Gays are allowed to openly serve in the military since a military reform in February, 2009.</td>
</tr>
<tr>
<td>Country</td>
<td>Legal Status of Same-Sex Sexual Activities</td>
<td>Laws and Regulations</td>
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<tr>
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<td>----------------------</td>
</tr>
<tr>
<td>Belize</td>
<td>Same-sex sexual activities are illegal and carry a sentence of up to 10 years.</td>
<td>Sodomy laws are in place.</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Same-sex sexual acts are legal. Same-sex unions are banned by the 2007 Constitution</td>
<td>Article 14 of the 2009 constitution however, bans discrimination on the basis of gender and sexual orientation.</td>
</tr>
<tr>
<td>Brazil</td>
<td>Same-sex sexual activities are legal since 1830.</td>
<td>Penal code amended in 1830 decriminalized same-sex sexual activities.</td>
</tr>
<tr>
<td></td>
<td>2010 – Same sex adoption is legalized through a court decision.</td>
<td>There is no explicit ban for sexual minorities to serve in the military, though sexual relationships are forbidden in the service. Same-sex adoption is legal based on a decision in the Supreme Court.</td>
</tr>
<tr>
<td>Canada</td>
<td>1969: Same-sex sexual activity becomes legal</td>
<td>There is a ban for discrimination and hate speech against sexual minorities.</td>
</tr>
<tr>
<td></td>
<td>1992: Gays allowed to serve openly in the military</td>
<td>Same-sex marriage and civil unions became legalized country-wide in 2005, they were legal in the province of Quebec since 2003.</td>
</tr>
<tr>
<td></td>
<td>2005: Same-sex marriage legalized country-wide</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2007: Prohibits discrimination on the basis of sexual orientation.</td>
<td>The Constitutional court upholds a lower court’s opinion that grants same-sex couples the same rights and benefits as common law heterosexual couples.</td>
</tr>
<tr>
<td></td>
<td>2007: Constitutional Tribunal recognizes same-sex unions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2009: Same-sex couples are recognized by the courts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Allows homosexuals in the military</td>
<td></td>
</tr>
<tr>
<td>Costa Rica</td>
<td>1971: Same-sex sexual activity was decriminalized.</td>
<td>Same-sex sexual activity was decriminalized since 1971 but an amendment to the legal code in 2002 removed all mentions of sodomy from Article 382.</td>
</tr>
<tr>
<td></td>
<td>1998: Discrimination on the basis of sexual orientation became illegal. The measure also includes employment protection.</td>
<td>Article 48 of the Costa Rican General Law 7771 included sexual orientation as one of the categories under which discrimination</td>
</tr>
<tr>
<td>Country</td>
<td>Status in 1997</td>
<td>Status in 1998</td>
</tr>
<tr>
<td>------------------</td>
<td>-----------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>Same-sex sexual activity is legal</td>
<td>Same-sex sexual activity is legal</td>
</tr>
<tr>
<td>El Salvador</td>
<td>Discrimination on the basis of sexual preference is outlawed by the Constitution of El Salvador. However, the UNCHR reports wide discrimination⁶⁰</td>
<td>Constitutional amendment of 04/ 2009 defines marriage to be “between a man and a woman” Same sex couples are also barred from adopting</td>
</tr>
<tr>
<td>Guatemala</td>
<td>There are no sodomy laws in place. Homosexual acts are legal.</td>
<td>The first ever gay march was held in 2000. A bill limiting the legal concept of family was passed in 2007.</td>
</tr>
<tr>
<td>Honduras</td>
<td>1899: Same-sex sexual activity was decriminalized.</td>
<td>Same-sex sexual activity became legal in 1899.</td>
</tr>
<tr>
<td>Jamaica</td>
<td>Same-sex sexual activity between women is legal. Same-sex sexual activity between men is illegal and punishable by up to 10 years in prison.</td>
<td>The Criminal Code penalizes same-sex sexual activity between men in Articles 77, 78 and 79.</td>
</tr>
<tr>
<td>Mexico</td>
<td>2003: Federal Antidiscrimination Law that includes sexual orientation</td>
<td>Civil Unions are legal in the state of Coahuila (January 11, 2007). In Mexico City, civil unions are allowed since 2006 under Ley de Sociedad y Convivencia</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>2008: Same-sex sexual activity was decriminalized.</td>
<td>The new Penal Code of 2008 removed all restrictions on same-sex sexual activity and equalized the age of consent to 18.</td>
</tr>
<tr>
<td>Panama</td>
<td>Article 19 of the Constitution protects against discrimination. However,</td>
<td>Homosexual acts were decriminalized by executive decree 332 in July, 2008</td>
</tr>
</tbody>
</table>

⁶⁰ For the full report see: http://www.unhcr.org/refworld/country,,,QUERYRESPONSE,SLV,4562d94e2,48d22378c,0.html
<table>
<thead>
<tr>
<th>Country</th>
<th>Year 1</th>
<th>Law 1</th>
<th>Year 2</th>
<th>Law 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paraguay</td>
<td>1880</td>
<td>Same-sex sexual activity is decriminalized.</td>
<td>1880</td>
<td>Same-sex sexual acts are decriminalized. Federal law also issued a ban on same-sex marriages by passing a constitutional amendment in 1992 defining marriage as between a man and a woman.</td>
</tr>
<tr>
<td>Peru</td>
<td>1837</td>
<td>Same-sex sexual activity is decriminalized.</td>
<td>1837</td>
<td>Same-sex sexual acts are decriminalized.</td>
</tr>
<tr>
<td>Uruguay</td>
<td>1834</td>
<td>Same-sex sexual activity is decriminalized.</td>
<td>1834</td>
<td>Same-sex sexual activity is legal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2007: Civil Unions legalized for same-sex couples.</td>
<td></td>
<td>1999: Discrimination on the basis of sexual orientation was outlawed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2009: Adoption is legalized for same-sex couples.</td>
<td></td>
<td>2007: Civil Unions legalized for same-sex couples.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2009: Gays are allowed to serve openly in the military.</td>
<td></td>
<td>2009: Adoption is legalized for same-sex couples.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2009: Gays are allowed to serve openly in the military.</td>
</tr>
</tbody>
</table>
Appendix III.1:

Reproductive Rights in Argentina at the Sub-national Level

In Argentina, the federal regulation on reproductive rights is typified in Articles 85-86 of the Penal Code. However, each sub-national unit may slightly deviate from that standard, which is why a survey of legal recourses at the sub-national level is presented below. In addition, a national law, *Ley N° 25.673. Programa Nacional de Salud Sexual y Procreación Responsable. Ministerio de Salud y Ambiente de la Nación*, establishes further regulations on reproductive rights, which limits contraceptives to reversible and non-abortive measures. The table below presents additional regulations on the terms established in the Penal Code and the National Law 25.673.

<table>
<thead>
<tr>
<th>Province</th>
<th>Legal Code</th>
<th>Content on Reproductive Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ciudad Autónoma de</td>
<td>Ley N° 418 de <em>Salud Reproductiva y Procreación Responsable de la Ciudad Autónoma de Buenos Aires</em> (2000)</td>
<td>Law No. 418 adheres to the national standards, but provides mechanisms for accessing free contraception methods and education. Law 1044 provides guidelines for medical practitioners to provide legal abortions without judicial approval.</td>
</tr>
<tr>
<td>Buenos Aires</td>
<td><em>Ley 1044 – Sobre procedimiento en los establecimientos asistenciales del sistema de salud de la ciudad, respecto de toda mujer embarazada con un feto que padece anencefalia o patología análoga incompatible con la vida</em> (2003)</td>
<td></td>
</tr>
<tr>
<td>Catamarca</td>
<td>No specific Law</td>
<td>N/A</td>
</tr>
<tr>
<td>Province</td>
<td>Legislation</td>
<td>Description</td>
</tr>
<tr>
<td>---------------</td>
<td>----------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Córdoba</td>
<td>Ley No. 9073 – Programa de Maternidad y Paternidad Responsables (2003)</td>
<td>It adheres to the national standard but prohibits the distribution or use of contraceptive methods that are abortive in nature.</td>
</tr>
<tr>
<td>Entre Ríos</td>
<td>Ley 9.501 – Creación del Sistema Provincial de Salud Sexual y Reproductiva y Educación Sexual (2003)</td>
<td>It adheres to the national standard but prohibits the distribution or use of contraceptive methods that are abortive in nature.</td>
</tr>
<tr>
<td>Formosa</td>
<td>Ley 1230 – Educación Sexual y control de adicciones (1986)</td>
<td>Gives the state-level Ministry of Culture and Education the authority to carry out the law. It is not specific about reproductive rights.</td>
</tr>
<tr>
<td>Jujuy</td>
<td>Ley Provincial No. 5133 (1999)</td>
<td>States as a goal the need to decrease abortions but proposes to do so through education and information (Art. 2).</td>
</tr>
<tr>
<td>La Pampa</td>
<td>Ley Provincial No. 1363 – Creación el Programa Provincial de Procreación Responsable (1991)</td>
<td>Stipulates the free delivery of contraceptive methods by the state that are not abortive in nature.</td>
</tr>
<tr>
<td>La Rioja</td>
<td>Ley No. 7049 – Educación Sexual y Reproductiva (2001)</td>
<td>The law contained a progressive education on matters of sexual health but it was derogated in 2003.</td>
</tr>
<tr>
<td>Mendoza</td>
<td>Decreto No. 2010/98 And Ley 6433 – Salud Reproductiva, which stipulates the creation of further education on sexual matters.</td>
<td>Cites the WHO and defines reproductive health as “not only the absence of sickness but also the physical condition where reproductive functions are carried out in a state of complete physical and mental wellbeing.” Stipulates the distribution or</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Province</td>
<td>Legislation</td>
<td>Details</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Misiones</td>
<td>Decreto 92/98 Planificación Familiar Integral (1998)</td>
<td>It adheres to the <em>Ley Nacional</em> 23.179 but cites CEDAW’s Article 75 and acknowledges the establishment of the right to freely decide on reproductive matters as a human right. Secures the provision of contraceptive methods that are not abortive in nature.</td>
</tr>
<tr>
<td>Neuquén</td>
<td>Ley 2222 – Programa Provincial de Salud Sexual y Reproductiva (1997)</td>
<td>It adheres to the national standard but prohibits the distribution or use of contraceptive methods that are abortive in nature.</td>
</tr>
<tr>
<td>Río Negro</td>
<td>Ley No. 3999 (2005)</td>
<td>The standard for this province is slightly more liberal as Art. 3 states that health centers have to dispense contraceptives free-of-charge and also emergency pills. The province assumes the charges for provision of the emergency pill.</td>
</tr>
<tr>
<td>Salta</td>
<td>Ley No. 73113 Sexualidad Responsable (2004)</td>
<td>Art. 2 of this law states the protection of life since the time of conception. However, the rest of the law does not overrule the federal standard.</td>
</tr>
<tr>
<td>San Juan</td>
<td>Ley No. 7.338.- Protección integral de los derechos de todos los niños y adolescentes (2002)</td>
<td>Establishes the protection of children and women while they are childrearing. Article 2 defends life from the time of conception.</td>
</tr>
<tr>
<td>San Luis</td>
<td>Ley 5.344 – Procreación Responsibile Decreto 127/2003 Creación del Programa Provincial Integral de Salud Reproductiva (2003)</td>
<td>It adheres to the national standard but prohibits the distribution or use of contraceptive methods that are abortive in nature.</td>
</tr>
<tr>
<td>Province</td>
<td>Law Title</td>
<td>Description</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Santa Cruz</td>
<td>Ley 2.656 Adhesión a la Ley Nacional 25.673 de Creación del Programa Nacional de Salud Sexual. (2003)</td>
<td>Adheres entirely to the national standard and does not add further causalities for abortion procedures and prohibits the distribution or use of contraceptive methods that are <em>abortive</em> in nature.</td>
</tr>
<tr>
<td>Santa Fé</td>
<td>Ley No. 1188 – Programa Preventivo Procreación Responsable (2001)</td>
<td>Article 2 states as an objective to protect the right to life from the time of conception. It stipulates education and information as the main activities of this state in prevention of undesired pregnancies.</td>
</tr>
<tr>
<td>Santiago del Estero</td>
<td>No specific law</td>
<td>N/A</td>
</tr>
<tr>
<td>Tierra del Fuego</td>
<td>Ley 509 Salud Sexual y Reproductiva (2001)</td>
<td>It adheres to the national standard but prohibits the distribution or use of contraceptive methods that are <em>abortive</em> in nature.</td>
</tr>
<tr>
<td>Tucumán</td>
<td>No specific law</td>
<td>N/A</td>
</tr>
</tbody>
</table>
## Appendix III.2:
### Reproductive Rights in Mexico at the Sub-national Level

#### Constitutional Amendments to Protect Life since the Time of Conception

<table>
<thead>
<tr>
<th>State</th>
<th>Governor</th>
<th>Congress Composition</th>
<th>Date the Initiative was Approved</th>
<th>Reform</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baja California</td>
<td>PRD Narciso Agúndez</td>
<td>PRI: 2 PAN: 2 PRD: 9 PT: 3 Conv: 2 PANAL: 2 MRPS: 1</td>
<td>10/15/2009</td>
<td>Article 7 of the state Constitution would protect life from conception to natural death</td>
<td>Approved and impugned in the Supreme Court</td>
</tr>
<tr>
<td>State</td>
<td>Party</td>
<td>Approved by:</td>
<td>Approved on:</td>
<td>Article</td>
<td>Last approved effective since:</td>
</tr>
<tr>
<td>------------</td>
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<td>--------------</td>
<td>--------------</td>
<td>---------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Guanajuato</td>
<td>PAN</td>
<td>Juan Manuel Oliva Ramírez</td>
<td>05/08/2009</td>
<td>Article 1 of the state constitution now states that every human being from the time of conception has all the rights granted by that state.</td>
<td>05/26/2009</td>
</tr>
<tr>
<td>Jalisco</td>
<td>PAN</td>
<td>Emilio González Márquez</td>
<td>03/26/2009</td>
<td>Article 4 of the state constitution now states that every human being from the time of conception has all the rights granted by that state.</td>
<td>07/02/2009</td>
</tr>
<tr>
<td>Morelos</td>
<td>PAN</td>
<td>Marco Antonio Adame Castillo</td>
<td>11/11/2008</td>
<td>Article 2 of the state constitution now states that every human being from the time of conception has judicial protection guaranteed.</td>
<td>12/11/2008</td>
</tr>
<tr>
<td>Nayarit</td>
<td>PRI</td>
<td>Ney González Sánchez</td>
<td>04/17/2009</td>
<td>Article 7 of the state constitution now states that life is recognized at the time of conception and guarantees the right to life to every individual.</td>
<td>06/06/2009</td>
</tr>
<tr>
<td>State</td>
<td>Party</td>
<td>Approved with</td>
<td>Date</td>
<td>Article</td>
<td>Effective Date</td>
</tr>
<tr>
<td>--------------</td>
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<td>-------------------------</td>
</tr>
<tr>
<td>Puebla</td>
<td>PRI Mario Marin Torres</td>
<td>Approved with 29 votes: PAN: 8 PRI: 20 PANAL: 1</td>
<td>03/12/2009</td>
<td>Article 26 of the state constitution now states that life has to be protected since the time of conception and until its natural death.</td>
<td>Approved and effective since 06/03/2009.</td>
</tr>
<tr>
<td>Querétaro</td>
<td>PAN: Francisco Garrido Padrón</td>
<td>Approved with 21 votes: PAN: 14 PRI: 4 Convergencia: 1 PVEM: 1 PANAL: 1</td>
<td>09/01/2009</td>
<td>Article 2 of the state Constitution now states that the state recognizes and protects the right to life from the time of conception.</td>
<td>Approved and effective since 09/18/2009.</td>
</tr>
<tr>
<td>Quintana Roo</td>
<td>PRI Félix González Canto</td>
<td>Approved with 18 votes: PRI: 13 PAN: 4 PVEM: 1</td>
<td>04/21/2009</td>
<td>Article 13 of the state Constitution now states that the state recognizes and protects the right to life from the time of conception.</td>
<td>Approved and effective since 05/15/2009.</td>
</tr>
<tr>
<td>State</td>
<td>Party</td>
<td>Voting Details</td>
<td>Date</td>
<td>Article Details</td>
<td>Status</td>
</tr>
<tr>
<td>---------------------</td>
<td>-------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>San Luis Potosí</td>
<td>PAN: Marcelo de los Santos Fraga</td>
<td>Approved with 21 votes: PRI: 3, PAN: 14, PRD: 1, PT: 2, PCP: 1 Votes against: PVEM: 1, PRD: 1, PRI: 2</td>
<td>05/21/2009</td>
<td>Article 6 of the state Constitution now states that the state recognizes and protects the right to life from the time of conception. Also finds that abortion is not punishable for therapeutic reasons, as a result of an insemination or in all cases of rape.</td>
<td>Approved and effective since 09/03/2009.</td>
</tr>
<tr>
<td>Sonora</td>
<td>PRI</td>
<td>Votes in favor: PAN: 13, PRI: 13, PT: 1 Votes against: PRD: 3, PANAL: 2</td>
<td>03/31/2009</td>
<td>Article 1 of the Constitution adds that the state of Sonora will protect life from the time of fecundation. Adds the exception of abortion in cases of rape or for therapeutic reasons.</td>
<td>Approved and published on 04/06/2009.</td>
</tr>
<tr>
<td>Tamaulipas</td>
<td>PRI</td>
<td>PRI: 19, PAN: 8, PRD: 2, PANAL: 1, PVEM: 1 Votes against: PT: 1, PVEM: 1</td>
<td>15/12/2010</td>
<td>Article 16 of the state constitution now states that the state will provide protection of life from the Approved and effective since 12/23/2010.</td>
<td></td>
</tr>
</tbody>
</table>
Yucatán | PRI Ivonne Ortega Pacheco | Approved with 24 votes: PRI: 4, PAN: 9, Other: 1 | 07/15/2009 | Article 1 of the state constitution now states that life begins at the time of conception and that the state will protect and guarantee the life of every individual. | Approved and effective since 08/07/2009.

References


