

# THE CATHOLIC CHURCH'S LEGAL STRATEGIES THE *RE-NATURALIZATION* OF LAW AND THE *RELIGIOUS EMBEDDING* OF CITIZENSHIP

Juan Marco Vaggione



SexPolitics: Trends & Tensions in the 21st Century

Working Paper 2



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THE *RE-NATURALIZATION* OF LAW AND THE *RELIGIOUS EMBEDDING* OF CITIZENSHIP

SexPolitics: Trends & Tensions in the 21st Century – Working Paper 2

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# Prologue

With great pleasure, Sexuality Policy Watch (SPW) launches the third publication resulting from its most recent round of transnational analysis: Working Paper 2, titled *The Catholic Church's Legal strategies - The Re-naturalization of Law and the Religious Embedding of Citizenship*, authored by Juan Marco Vaggione.

SPW was created in 2002 under the name Working Group on Sexuality and Social Policy, which would be changed to our current denomination in 2006. At that point in time, the dynamics prevailing in our field of work remained connected with undercurrents of previous decades – democratization in the global South, the unexpected effects of HIV and AIDS, and the intense global debates on social issues and human rights that ensued at the end of the Cold War Era – which had stimulated a significant increase in both public discourses and research on gender and sexuality matters as well as their rapid transnationalization. But we had already entered the times when gender and sexuality frays were no longer played out at the periphery, but rather in battles fought at the core of broader geopolitical power dynamics, or of what we called “global sex wars”. As we know, since then these tendencies have not exactly relented in pace, but rather have amplified in their scale and effects. The aim of this new series of SPW publications is therefore to critically assess the transnational state of sexual politics in the late 2010s.

The new series started with the launching of *Sex at Dusk and the Mourning After: Sexuality Policy in the United States in the Years of Obama*, authored by Susana T. Fried and Cynthia Rothschild.<sup>1</sup> This was followed by the first edited volume, *SexPolitics: Trends & Tensions in the 21st Century – Critical Issues*, which was published in September, 2018, comprising four articles: “Desert, Rainforest or Jungle: Navigating the Global Sexual Rights Landscape”, by Sofia Gruskin, Alice Miller, Jane Cottingham and Ester Kermodé; “Legal Developments in the Domain of Sexual Rights”, by Laura Saldívia and Ryan Thoreson; “Legal and Safe Abortion: A Global View as Seen from Latin America”, by Maria José Barajas e Sonia Corrêa; and “Mapping Trends: Power Imbalances and

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<sup>1</sup> Available at: <https://sxpolitics.org/trendsandtensions/uploads/trends&tensions-wp1.pdf>

the Circulation of Information on Sex Work”, by Laura Murray, Elsa Oliveira and Debolina Dutta.<sup>2</sup>

Vaggione's critical reflections in *The Catholic Church's Legal Strategies* pertain to another domain that, however, overlaps in various ways with the analyses previously published. It looks at the intersection between sexual politics and the politics of the religious, with a particular focus on Vatican's doctrines and political strategies. It provides a number of sharp analytical lenses to charter undercurrents underway that are now sweeping over so many societal landscapes, particularly in the Americas and Europe. This is so because despite many heterogeneities implied in waves of moral conservatism now intersecting with right wing populism, as noted by a number of authors the role played by Vatican in propelling these waves cannot be circumvented, in particular as the mastermind of the anti-gender crusades now escalating in the most diverse settings.<sup>3</sup>

One initial aspect examined by the paper concerns gender and sexuality legal battles in which, for many decades now, feminists and sexual diversity movements sought to politicize sexuality and extract it from long-standing moral tenets, while conservative religious forces concurrently invested in relation to legislation to “re-enshrine” sex laws in moral terms. While this is not an unusual object of social and political science analysis, Vaggione's main contribution is to remind us that to more fully understand the contemporary conditions presiding over these legal skirmishes it is necessary to critically revisit the long history of intertwining between the law and religious morality in Western history:

“The history of Western modern law is or it is supposed to be the history of its distinction and separation from the religious. This myth of separation has, at times, hindered a better understanding of the intricate ways in which secular law and religious conception were imbricated in the past and continue to be so today...The trace of the religious in the law is not just a major obstacle to the democratization of the sexual order, it is also the covert way through which secular law absorbs and fosters the Catholic doctrine through invisible means, so to speak”.

Furthermore, and perhaps more importantly, at the center of legislative battles underway Vaggione identifies

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2 Available at: <https://sxpolitics.org/trendsandtensions/uploads/volume1-2018-21092018.pdf>

3 See the Special Issue of Gender & Religion “Habemus Gender” edited by Sarah Bracke and David Patternote (2016)

systematic efforts made by conservative Catholic actors to propel a return to natural moral order that in Vatican theological parlance “*precedes and unites all rights and duties*” (Pontifical Council for Justice and Peace, 2004, paragraph 140). Vaggione also notes that in order to achieve the re-naturalization of sex, gender and reproductive related laws, the Vatican and other Catholic actors systematically appropriate and politicize, in their own terms, certain strands of human rights language.

A second main strand of analysis developed in the Working Paper concerns the complex and contradictory ways in which citizenship and identity are being articulated in today's public spheres in relation to gender and sexuality, on the one hand, and religious affiliation, on the other. Vaggione observes that in the same manner as feminists and other subjects of sexual diversity politics claim rights based on their differential identities, for many years now the Vatican has framed and deployed strategies for the mobilizing of the faithful grounded on their religious Catholic identity.

Vaggione underlines that at the heart of this identity-based turn that now characterizes both the politics of gender and sexuality and the politics of the religious lies the de-privatization of these dimensions of social life that, in the classical models of political liberalism, remained apart from public life. This is not a trivial shift, in particular because it impacts directly on premises and practices of secularity and *laïcité*. In addition to the conceptual challenges this simultaneous de-privatization of the sexual and the religious is what explains the intensity (not to say virulence) of political battles underway today in so many settings, which go far beyond and impact on electoral politics and the very configuration of states' structures and modalities of action.

Vaggione does not offer a solution for the conflicts and risks these undercurrents propelled by Vatican doctrines and political strategies imply. But he certainly provides us with a smartly crafted roadmap to more finely grasp what is happening and be able to respond.

Good reading!

Sonia Corrêa and Richard Parker  
Co-Chairs, Sexuality Policy Watch

## Sexuality and Law: The Religious as a Challenge

One of the features of contemporary sexual politics is the growing juridification of sexuality that results from claims raised by feminist and sexual diversity movements.<sup>4</sup> Although these movements are engaged in various forms of politics, the path of legal reform has been a relevant strategy (perhaps the most crucial) to attain more just and equal societies. Juridification is a term describing political work that ranges from the critique of how legal systems sustain heteropatriarchy to efforts aimed at the legal recognition of diverse sexual practices and identities. One main achievement of this investment in juridification was that it made visible the ways in which the law, under the assumption of neutrality and universality, protects a determined sexual order. By criminalizing certain conducts and/or by unequally distributing prerogatives, legal systems have always played a central role in the creation of sexual hierarchies. To make this role visible, to de-naturalize this function is one key element in the politicization of sexuality carried out by the feminist and sexual diversity movements.

Another manifestation of juridification is the legitimacy that sexual and reproductive rights (SRR) have achieved in transnational and national arenas where norms are codified. Despite setbacks and restrictions witnessed in the past few years in these legal domains, the *vade mecum* of rights resulting from these processes constitute one privileged site of politicization of sexuality and reproduction. For many decades now, feminist and sexual diversity movements have prioritized the submission of legal bills and the filing of judicial cases as paths towards more democratic sexual regimes. The contemporary politicization of sexuality in the form of juridification aims at widening the recognition of rights as to overcome inequality and exclusion. The struggles for sexual and

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<sup>4</sup> The concept of juridification is used to describe the expanding political resource to legal norms to resolve social and political problems. The subject is examined in depth by Blichner & Molander, 2008

reproductive rights have been criticized for the risks of assimilation and demobilization they imply.<sup>5</sup> Even so they constitute an alternative paradigm to address and engage with the law in ways that not only alter the articulation between the state and the body but that also enhances a more plural understanding of sexual ethics. In current debates and struggles around sexuality the frontiers between legal-illegal and between moral-immoral are contested and shifted.<sup>6</sup>

The claiming for the recognition of sexual and reproductive rights is a multifaceted phenomenon with many manifestations, which has decidedly impacted on transnational and national politics. The mid 1990s are generally viewed as a turning point in this trajectory due to the gains then achieved by feminists, including lesbians, at the United Nations conferences, in particular the International Conference on Population and Development of Cairo, in 1994, and the 1994 IV World Conference on Women in Beijing. After years of activism, feminists from all over the world then began to influence human rights debates in multiple global arenas, including by conceptualizing a comprehensive agenda of sexual and reproductive health and rights (see Corrêa and Petchesky, 2007; Germaine, Sen and Corrêa, 2015). Another example of the advance of rights in these domains is, from the early 21st century onwards, the expanding recognition of same-sex marriage in national legal frames. After the legal reform in the Netherlands (2001) a cascade of reforms ensued in a large number of countries that left behind the premise of sexual complementarity as a pre-condition for marriage. The decriminalization of abortion countries is another example of the expansion of SRHR, even in Latin America where these processes have been limited and uneven. In some countries, the legal spaces for voluntary abortion have been widened, as new circumstances allowing for abortion have been included to the law. But also, in few cases, access to legal abortion on demand up to twelve weeks has been made legal.<sup>7</sup> Gender identity recognition has also been recognized as right in various international and national contexts. A landmark in that respect was the development, in 2006, of the *Yogyakarta Principles for the Application of International human*

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5 There are many critiques on the use of law to attain emancipatory sexual politics. The caveats appointed by scholars include the risks of co-optation, normalization, or domestication (Richardson 2004; Warner, 2000). Other approaches, particularly Northern queer theorizing focus on the risks of neocolonialism (Puar, 2007) or pinkwashing.

6 In this complex dynamic of the exclusionary effects of law, while some subjects have their rights legitimized, others may be excluded or stigmatized.

7 Colombia exemplifies the first case, while in Uruguay and Mexico City abortion rights are now granted by law.



*rights law in relation to Sexual Orientation and gender Identity.* This international achievement has been paired by legal reforms and judicial cases in some countries. It is important to mention the Argentinean Gender Identity law (granted in 2012) not only for recognizing these Principles but also for being a relevant precedent for other legal changes around the world.

Even when the juridification of sexuality remains incomplete, presents limitations and implies caveats, it has provoked strong reactions on the part of main religious forces around the world (see Correa et al, 2008). The speed at which SRHR began to be debated - and, in some cases, recognized -- has encountered virulent reactions on the part of religious institutions and actors who oppose these rights. Although this virulence is taken to the extreme in the case of abortion rights and same-sex marriage, it spreads across many other areas, such as the distribution of contraceptives, the use of condoms for HIV/Aids prevention, gender identity laws, artificial insemination and the provision of sexuality education in schools. This is so because sexual and reproductive rights claims challenge power relations as well as the logic of identities' formation that has been deeply naturalized. To affirm that religion is a central cleavage in regard to these tensions around sexuality regulation is, of course, commonsensical, but the complex and dynamic ways in which religious traditional actors and discourses have been politicized in reaction to the debate and recognition of SRR is a novelty.<sup>8</sup>

The juridification of sexuality implies that law has become a main site of political struggle<sup>9</sup>. Against the restrictive morality upon which religious doctrines and norms are based, secular law appears as a potentially democratic scaffold that is more open to ethical pluralism. Without overlooking the multiple arenas in which hierarchical sexual orders are criticized and contested, the realm of legal regulations constitutes a political priority for feminist and sexual diversity movements and it is also a site in which the main religious sectors that oppose these claims intervene politically. Religious institutions, and civil society sectors that are aligned with them, have also turned to the law as a privileged locus in which to defend their moral tenets around sexuality, not

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8 In previous works I have proposed the concept of "reactive politicization of the religious" in order to capture this dynamical process (Vaggione, 2005; 2011)

9 For a pioneer work on law as a site of struggle from a feminist perspective see Smart (1989).

exclusively to guide the conduct of believers but as a frame to which all citizens are to be submitted. While the feminist and the sexual diversity movements seek to “un-enshrine” the legal system through the politicization of sexuality, conservative religious sectors make efforts to influence legislative processes in an attempt to “re-enshrine” it in moral terms.

The main purpose of this article is to critically look into some consequences of these processes of juridification of sexuality so as to better understand the articulation between religion and law in contemporary democracies. The first block focuses on the main challenges posed by feminist and sexual diversity movements for religious doctrines, especially Catholicism. It examines the interconnected facets of the sexualization of law, which made abrupt, sharp confrontations with the Catholic Church and examines how these processes have made visible the many ways in which religion is imprinted in secular law. Not less importantly, it traces how these movements have legitimized an alternative paradigm for the articulation between the law and sexuality.

Then the article analyses the reactive politics of the Catholic Church in response to the political impacts generated by the processes propelled by feminist and sexual diversity movements. It explores how, far from abandoning the realm of secular law as a contested arena, the Church is strengthening its centrality and significance as a space to resist the juridification of sexuality enhanced by sexual and reproductive rights politics. In this shift the law is seen by the Catholic Church not only as a dimension of politics but also as key instrument to moralize societies. Furthermore, it has re-articulated its engagement with the law in two complementary directions. Firstly, by re-naturalizing the law that emerges from the application of human rights premises and then by mobilizing and strengthening what it calls religious citizenship.

Before moving forward it is, however, necessary to make a couple of disclaimers. Firstly, much caution is required when speaking of the Catholic Church, because it is not a monolithic institution but rather an assemblage of realms and organizations (secular and religious) that disagree amongst themselves on many topics, and sexuality is no exception. While recognizing this complexity, this article focuses on the Catholic Church as a global political machinery with a very defined sexual politics agenda that is, in general, construed at the Vatican level and subsequently implemented in the most diverse national contexts. The Vatican is a powerful axis of this

regressive politics because it provides the main guidelines that are to be followed by Church and other actors in transnational and national arenas. For that reason, the analysis developed here scrutinizes the Vatican's main documents from which the core guidelines of the Catholic Church on sexuality emanate and spread transnationally across all regions of the globe.

Secondly, in analyzing the legal strategies presently used by the Catholic Church it is also necessary to look back into longer historical cycles. Although some of the processes and deliberations analyzed in this article illustrate today's Church's reactive politicization to confront the SRHR agenda, they must be situated in relation to past deliberations and positions that have preceded in many years or even centuries, the emergence of these rights claims. The current Church's strategies in relation to the law combines a millennial tradition of sexual morality and natural law with contemporary reactions and adjustments aimed at curtailing the impact of feminist and sexual diversity movements.

## **Sexualizing the law: laicization, pluralization and des-imbrication**

The history of Western modern law is or it is supposed to be the history of its distinction and separation from the religious.<sup>10</sup> This myth of separation has, at times, hindered a better understanding of the intricate ways in which secular law and religious conception were imbricate in the past and continue to be so today. The secularization of the state, as one of key component of modernity, did not necessarily meant the erasure of the religious, i.e. its full disappearance from the law. Rather it implied the re-inscription of the religious in various new forms.<sup>11</sup> Precisely, the modern legal regulation of sexuality constitutes a domain in which the many complexities of the articulation between the religious and the law are quite evident.

The contemporary sexual order and the regulations upon which it is based have been inherited, largely, from

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10 For a general presentation of the interrelation between religion and law see the introduction by Sullivan et al (2011) to the book *After a Secular Law*

11 During the past decades, there has been an important body of scholars critically analyzing the main dimensions and assumptions of secularization theory. Casanova's work (1994) has become a classic study in dismantling this theory (3 sub thesis) and providing a critical assessment of its limitations.

all major religious traditions. This is why legal regulations of the family, kinship and reproduction have been and still are imbued with religious worldviews in such a way that it often makes the distinction between the religious and the secular in these laws to be quite problematic.<sup>12</sup> The mutual imbrication of secular laws and religious premises is quite flagrant in Latin America, for example, where the long-standing influence of the Catholic Church has left behind a cultural matrix of intelligibility that goes far beyond the religious realms and permeates the overall social and political formation. When the contours and boundaries of these two realms that are so deeply interwoven – as useful as these distinctions may be for strategic purposes – are too sharply delineated, the dynamics at plays at the intersections of secular and the religious are simplified and a fictional sharp separation between the two realms is projected in political debates. The recognition of this complex overlapping does not imply entirely ignoring that the distinction between secular laws and religious norms became more pronounced throughout the 19th and 20th centuries. However it requires that – in addition to the tracking of separation and rupture – one must also pay careful attention to the continuities and porosities between the legal and the religious.<sup>13</sup>

Against this backdrop, the impact of feminist and sexual diversity movements in sexualizing the law has inaugurated a new stage in respect to this differentiation *cum* continuity between religious and legal norms. This sexualizing not only made visible the multiple ways in which religion influences the law-making processes but has also devised and politicized an alternative paradigm of law making based on premises of gender and sexual citizenship. This paradigm extends citizenship rights in relation to gender and sexuality by making the institution of marriage more flexible, and allowing for greater reproductive autonomy. It also implies contending not only with religious hierarchies but also with the sexual morality and cultural patterns that have insidiously been turned into secular law. The mobilization for SRRH implies an inevitable and direct confrontation with religious power in its multiple manifestations. In juridifying their demands, feminist and sexual diversity movements

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12 There are some authors who have critically considered the religious-secular dichotomy such as Talal Asad (2003) or William Connolly (1999)

13 There is an important group of scholars who critically analyses the boundaries between the religious and the secular when considering modern legal discourse. For example: Jakobsen and Pellegrini (2004), Connolly (1999) or Sullivan et al (2011).

opposed the power of the religious not only in regards to its capacity to influence the political but also as to the contents and contours of the legal.

The sexualizing of the law by the feminist and sexual diversity movements confronts and reverts the effects of religious power over the state, particularly the influence of the Catholic Church and have many consequences in what concerns the articulation between the religious and the law. In order to understand these effects this article looks more closely into three areas that roughly correspond to strategies used by the feminist and sexual diversity movements to transform the law: reclaiming *laïcité*, emphasizing pluralism and dis-imbricating the religious (Vaggione, 2014). Although interconnected, each of these strategies contests and strain dominant religious views and power in different ways.

The most politicized strategy adopted by feminist and sexual diversity movements to alter the dominant logic that articulates sexuality and the law has been to reclaim principles of political secularization or *laïcité* (Vaggione, 2011). The claim of *laïcité* challenges religious power in general, and the power of the Catholic Church in those countries where it is present and powerful. Principles of *laïcité*, if properly applied, de-legitimize the policy influences of its hierarchy on the state and create conditions for tracking the traces of religious beliefs underlying legal interpretation and the sanction of the law. The politics that advocates *laïcité* sets a normative horizon to contain or even reverse the influence of the Catholic hierarchy over the governments that we have been witnessing in many countries around the world, but particularly in Latin America, regardless of their ideological affiliation. Demands around *laïcité* are far from new and have taken distinctive form in different historical moments. But, feminist and sexual diversity movements have taken these demands to a new threshold. In Latin America, for example, these movements are calling for the enlargement of *laïcité* and are using the 'sexual' as a privileged lens to make visible and contest the lack of autonomy of the state in relation to the religious.

Feminist and sexual diversity movements have indeed enhanced a renewed momentum in regional debates on *laïcité*. Through the politicizing of sexuality, these movements openly contend with religious hierarchies symbolic and material privileges. They have also propelled new alliances and strategies around this matter and have developed and spread novel analytical and normative understandings in regard to the interactions

between the religious and state politics. These calls for the deepening and widening of *laïcité* have been accompanied by the politicization of religious pluralism. Although many sectors within the feminist and sexual diversity movements have strong anti-clerical and, even in some cases, anti-religious views, these groupings have also opened the doors to emerging religious communities and discourses that also advocate for sexual freedom and diversity. This is exemplified by “Católicas por el Derecho a Decidir” (Catholics for a Free Choice) whose agenda combines the commitment to Catholicism and the defense of abortion rights, as well as by the growing presence of LGBT actors and organizations that are publicly identified with other religious strands, for example the Afro-Latino spiritual traditions or Christian dissident currents. These new trends point towards an expanding politics of religious ‘dissent’ propelled by sexual and reproductive claims. Against a construction of the religious as inevitably patriarchal and heteronormative, feminist and sexual diversity movements are making visible the heterogeneity and pluralism that pervades the religious in what concerns the constructions around gender, sexuality and reproduction.

Without ignoring that the deep influence and imprint of the religious on state politics is a major obstacle for the enlargement of *laïcité* – and within it of sexual and reproductive rights - this shift towards the politicization and pluralization of the religious sphere is vital, because it contests the supposed monopoly of interpretation of religious hierarchies. Certain actors and organizations within feminist and sexual diversity movements do not depoliticize the religious but rather they make its heterogeneity and pluralism visible by publicly identifying as religious. This means that when sexual and reproductive rights are being proposed it is vital that religious voices and discourses that support these reforms and antagonize their own hierarchy are also made visible.<sup>14</sup> By politicizing religious pluralism, the feminist and sexual diversity movements confront the religious hierarchies’ hegemony over morality, evidencing the ample and diverse visions that inform the sexual ethics of the community of believers. The creation of spaces for the processes of legal reform to count with a plurality of religious voices goes beyond the classical liberal accommodation of the religious in relation to state norms, because it implies the inscription of marginalized religious voices and identities in relevant political debate in ways that fracture

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14 When debating, for example, same-sex marriage it is common to observe the presence of religious groups supporting the legal reform, even from within religious traditions that officially oppose it (for Argentina, see Vaggione and Jones, 2015)

the pretended homogeneity of religious traditions.<sup>15</sup>

Finally, feminist and sexual diversity legal strategies have also dis-imbricate the religious influences over the law. The image of imbrication is used here to capture the complex ways in which secular law overlaps with the religious without necessarily displacing the influence of the latter; thus, secular law reproduces religious heritages at the same time making them invisible. This overlapping derives from the legacy and deep influence of Catholic natural law on secular legal thinking and practices. Catholic natural law theory sustains a model of a complete imbrication between the religious and secular aspects of the law, making positive law, natural law and religious law coincide. Its influence generates an assemblage in which secular regulations are defined -- in more or less coherent ways -- with religious norms. In this assemblage Catholic sexual morality operates as a (not always evident) matrix for different branches of law thinking and application. When addressing sexual matters, the overlapping between the influence of Catholicism on cultural meanings, politics and moralities greatly complexifies the (dis) connection or distinction between the religious and the secular.

This overlapping implies that -- despite separating the religious and the secular -- laïcité is compatible with a system in which secular law and Catholic religious principles interweave to sustain a system of moral control over sexuality. The legal regulation of family, kinship or reproduction is a domain of codification in relation to which the metaphor of differentiation between the secular and the religious is insufficient, or better said inaccurate to properly grasp the ways in which secular normativity is construed. The trace of the religious in the law is not just a major obstacle to the democratization of the sexual order, it is also the covert way through which secular law absorbs and fosters the Catholic doctrine through invisible means, so to speak.

The politics of feminist and sexual diversity movements has introduced a wedge in this overlap between secular law and religion doctrine. The politicizing of sexuality made this imbrication visible, re-delineating the

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<sup>15</sup> *Católicas por el Derecho a Decidir* is an example in this respect because it politicizes a Catholic identity (and politics) that is compatible with reproductive rights and with abortion decriminalization. This is particularly relevant in Latin America due to the strong influence of the Catholic Church on the political realm and culture.

boundaries between the religious and the secular. When contemporary sexual politics de-essentializes historical constructions and ideological discourses on sexuality it enhances a renewed criticism of how religious power infiltrates the state and the law. The naturalization of certain legal regulations is suspended when they are critically portrayed in public debate as remnants of the religious in the law. This politics goes even further as it critically retraces (in more or less accurate ways) the religious genealogy of key legal frames that sustain and control the sexual order. Contemporary sexual politics re-designs the boundaries between the religious and the secular, making evident, among other aspects, the artificiality of essentialist definitions of both the religious and the secular. It also calls for new conceptual and methodological approaches that may allow for capturing these complexities.<sup>16</sup>

To summarize, the strategies of laicization, pluralization and dis-imbrication used to propel the reform of sexuality laws confront and contest religious power in a variety of ways. The call for *laïcité* demands the separation between the state and the religious to be made deeper and sharper, including by contesting the material and symbolic privileges of the Catholic Church. In most Latin American countries, this entails, for example, the flouting of formal and informal rules that normalize the power exercises of Catholic hierarchies over law and public policy. The pluralization strategy propelled by feminist and sexual diversity movements politicizes the religious to make visible the plurality of views and practices amongst the believers and to show that even when most hierarchies sustain the heteropatriarchal system, a large number of people and organizations also mobilize their belief systems in favor of sexual and reproductive rights. This strategy challenges the interpretative monopoly of conservative religious leaders, making evident that despite their regressive positions, there are religious voices that are favorable to sexual freedom and sexual rights. Finally, the dis-imbrication strategy allows for critically revisiting the deep cultural legacy of Catholic doctrines including in what concerns modern secular law. This strategy denaturalizes inherited legal constructions, inspiring rethinking of the always-artificial boundaries between the religious and the secular in lawmaking.

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16 A pioneer work on re-thinking the religious and the secular divide is Asad (2003).



## Catholic Church reactions: the law as a political priority

For the Catholic Church, secular law is a political priority. Although the Church has recognized the separation and autonomy between religion and politics<sup>17</sup> and between civil law and religious law<sup>18</sup>, it has always reaffirmed the dependence of secular law upon natural law. The Church's philosophy of law sustains a correspondence between the Catholic doctrine, morality and state laws, or in the terms defined by St. Thomas between divine law, natural law and human law. The *Compendium of the Social Doctrine of the Church* that follows this Thomistic view states that: "*Human law is law insofar as it corresponds to right reason and therefore is derived from the eternal law*" (Pontifical Council for Justice and Peace, 2004: 398). In this frame, which aims at reflecting the objective moral order, natural laws are universal and immutable and on them rest the legitimacy of secular laws. The Church's position on natural law requires secular law (civil laws) to include and recognize "*a natural moral law, of a universal character, that precedes and unites all rights and duties*" (Pontifical Council for Justice and Peace, 2004: 140).

The recognition and acceptance of *laïcité* by the Church is, therefore, combined with the re-affirmation of a complete dependence of secular laws on natural morality. The Church as a public actor aims to have a voice in lawmaking processes because it "is duty-bound to offer, through the purification of reason and through ethical formation, her own specific contribution towards understanding the requirements of justice and achieving them politically." (Benedict XVI, 2005: 28). According to this position, the Church is not defending a religious tradition when it participates in lawmaking processes, it is defending moral norms not as confessional values but because "*such ethical precepts are rooted in human nature itself and belong to the natural moral law*" (Congregation for the Doctrine of Faith, 2012). This political defense of natural law theory implies, however, a paradox. On the one hand, it distinguishes between the secular and the religious when it publicly maintains that morality is encrypted in natural laws. On the other, from a sociological point of view the morality and legality

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17 Since Vatican II in *Gaudium et Spes*, 1965,

18 John Paul II, Message for the 1991 World Day of Peace: «If you want peace, respect the conscience of every person», 4: AAS 83 (1991), 414–415.

defended by the Church strongly depend upon, or are embedded in, a religious worldview.

The universal morality that the Church claims to be the source of secular laws is opposed to the ethical plurality implied in the project of sexual and reproductive rights. According to Church doctrines, one main problem of the contemporary world is “cultural relativism” manifested as ethical pluralism because it is eroding the main principles of natural law (Congregation for the Doctrine of Faith, 2012). In this perspective, relativism -- which has been named in different ways by Vatican thinkers -- negates the core moral and legal tenets of the sexual act: the mutual self-giving among the spouses (the uniting dimension) and the openness to life transmission (the procreative dimension). Using this frame, the Church, on the one hand, denounces the existence of a “culture of death” (John Paul II, 1995) that, deriving from a hedonistic mentality, aims to legalize abortion and contraception, which are the *“fruits of the same tree”* (John Paul II, 1995). As to protect the “culture of life” the Church defends an *“objective moral law which, as the ‘natural law’ written in the human heart, is the obligatory point of reference for civil law itself”* (John Paul II, 1995:70).

On the other hand, in recent years, the Vatican has also propelled a systematic denunciation of gender theory as another threat to natural law. The theory is portrayed as “gender ideology” because it sustains that *“gender identity is merely the cultural and social product of the interaction between the community and the individual, independent of personal sexual identity and without any reference to the true meaning of sexuality”* (Pontifical Council for Justice and Peace, 2004: 224). The Church response to the ‘erosion resulting from gender ideology’ is to proclaim a theory of complementarity<sup>19</sup> that, in its view, pertains to natural law and must be preserved by secular legal regulations: *“it is obligatory that positive law be conformed to the natural law, according to which sexual identity is indispensable, because it is the objective condition for forming a couple in marriage”* (Pontifical Council for Justice and Peace, 2004, 224).

Thus, the defense of legal frames embedded in or imbricate with natural law is the main argument of the Vatican

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19 “Physical, moral, and spiritual difference and complementarity are oriented toward the goods of marriage and the flourishing of family life” (Catechism of the Catholic Church, 2333).

to oppose legislation that allows for distinction between sexuality and reproduction and the variability of sexual desire and identity. These Church's positions on natural law can be traced back to the longstanding tradition of Catholicism in regard to these matters. However, as the contemporary feminist and sexual diversity movements pushed the contestation of these doctrines to deeper levels, the Catholic Church has virulently reacted through using two combined routes: the first was to re-naturalize law through the strategic appropriation of human rights language and the second was to embed citizenship rights in the ground of religious beliefs.

## Re-naturalizing the law: human rights as a universal discourse

As previously mentioned, the struggles of the feminist and sexual diversity movements have disclosed the insufficiencies of *laïcité*, the privileges of the Catholic Church vis a vis States, and the imbrication between secular and religious conceptions. The sexual and reproductive rights paradigm calls for the democratization of sexuality and is grounded on a critique of sex essentialism. These stances frontally oppose the marked essentialism of natural law that underlies Church doctrines. Furthermore, this paradigm proposes a separation between secular law and religious morality in order to open the juridical order to plurality. The Catholic Church, in contrast, defends a model in which a direct correspondence is established between secular law and morality. This is illustrated by one of the many speech of John Paul II is his defenses of a 'culture of life':

“...there is a need to recover the basic elements of a vision of the relationship between civil law and moral law, which are put forward by the Church, but which are also part of the patrimony of the great juridical traditions of humanity” (John Paul II, 1995: 71)

It is not surprisingly the Catholic hierarchy has been opposing the progressive sexualizing of law by claiming the primacy of natural law. To say it differently, as to confront the critique of essentialism and naturalization, the Catholic Church re-naturalizes the law to protect its sexual morality tenets. In doing so, the Church behaves as a defender of a universal morality as a strategy to promote the incorporation of its doctrines in lawmaking. In order to reject legislation favorable to same-sex couples, access to contraceptives, abortion decriminalization, or even access to condoms to prevent HIV, the Church systematically resorts to natural law arguments and de-

legitimizes all secular laws that contradicts them (Benedict XVI, 2009). Given that natural law theory sustains dogmatic and non-negotiable stances, Catholic activism is at odds with democratic lawmaking processes. As previously mentioned, the Catholic Church politically opposes any legislation that contradicts its sexual morality, even when these have been adopted through consistent democratic procedures

One of the routes taken by the Church to re-naturalize the law has been the appropriation and politicization of certain strands of human rights language. The trajectory of Church relations with human rights is very complex. Throughout the 19th century and in the first decades of the 20th century, the Vatican opposed human rights because of their intimate connection with the Enlightenment and political liberalism. However, since after the Second World War it has appropriated human rights premises in articulation with its own perspective on Natural Law (van der Ven, 2013). Genealogical aspects have facilitated this appropriation because natural law is one fundamental source of the human rights tradition (Douzinas, 2000). Although much can be debated about the connection between the Catholic tradition and the human rights agenda, it is necessary to recognize the influence of Aquinas in the elaboration and expansion of natural law theory as an antecedent of human rights. By reconnecting human rights with the Catholic traditional doctrines, the Vatican now uses this language as a legitimate secular discourse but with contents that derive from the natural law tradition. This is quite flagrant in Pope Benedict XVI (2008) definition of human rights:

“...[These rights] are based on the natural law inscribed on human hearts and present in different cultures and civilizations. Removing human rights from this context would mean restricting their range and yielding to a relativistic conception, according to which the meaning and interpretation of rights could vary and their universality would be denied in the name of different cultural, political, social and even religious outlooks.”

This appropriation of human rights was one of the Vatican's reactions to the impact of feminisms and of sexual diversity movements on human rights regimes following the Cairo and Beijing Conferences. After taking this step the Church began intensively disputing the meanings and scope of human rights. While the social movements amplified the boundaries human rights so as to incorporate reproductive rights, first, and sexual

rights, later, the Catholic Church re-crafted and politicized a certain conception of human rights precisely to antagonize these rights. According to the Church, the gains made by these movements (in particular in what concerns abortion) has implied a “tragic negation” of human rights. Pope John Paul II, for example, affirmed that these rights -- as well as new legal norms granting death with dignity-- had been achieved through a “*strong contradiction*” because:

*“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, 1995:18)

In examining further this ‘contradiction’, the Encyclical Letter *Evangelium Vitae* states that the feminist and sexual diversity movements are inspired by “*a notion of freedom which exalts the isolated individual in an absolute way*” (19) and that they are also aligned with the “the eclipse of the sense of God and of man, typical of a social and cultural climate dominated by secularism” (21); the text also adds that within this frame “*the body... is reduced to pure materiality... sexuality too is depersonalized and exploited...*”(23) “*.. the life which could result from a sexual encounter thus becomes an enemy to be avoided at all costs...*” (13) (John Paul II, 1995)

This version of human rights discourse – as it also happens with natural law arguments -- allows the Church to deny the legitimacy of legislations that decriminalize abortion or grant rights to same-sex couples. Church legislative advocacy does not aim to expand the participation in debates on how sexuality and reproduction are regulated, neither it is oriented towards consensus building. Rather, the Church politics is fundamentally aimed at revoking or reversing the validity of legislation that has been already sanctioned. The argument justifying these draconian positions reads as follows:

“To refuse to take part in committing an injustice is not only a moral duty; it is also a basic human right. Were this not so, the human person would be forced to perform an action intrinsically incompatible with human dignity, and in this way human freedom itself, the authentic meaning and purpose of which

are found in its orientation to the true and the good, would be radically compromised. What is at stake therefore is an essential right which, precisely as such, should be acknowledged and protected by civil law.” (John Paul II, 1995: 74)

When it promotes this re-articulation of human rights in regard to issues pertaining to sexuality the Vatican leaders behave as universal guardians of sexual morality and the Catholic Church assumes the role of a global leader in the defense of human rights that oppose sexual and reproductive rights. The privileged status of the Church at the United Nations, through the recognition of the Holy See as a Permanent Observer – which makes the Catholic Church the only religion with a presence in this policy arena -- amplifies this power and influence over the international community and further feeds its role as a global leader in the resistance to re-constructed human rights discourse that now also encompasses a broader conception of gender and sexuality.

Over the past few years, the Vatican has also sponsored a number of conferences and generated a vast array of documents and declarations on human rights.<sup>20</sup> A central concern in this vast intellectual production is, precisely, the increasing impact of sexual and reproductive rights. For example, the *Introduction to the 15th Plenary Session of the Pontifical Academy of Social Sciences on Catholic Social Doctrine and Human Rights* states that a key contribution to clarify the current debates and developments in relation to human rights requires investments:

*“... to rediscover the pathway of their universality. This is located in the unchanging nature of man and not in a certain individualistic and relativistic Western culture, which is not founded on being but on power. The contemporary drift of human ‘rights’ leads to the proclaiming of the right to an abortion, the right of a couple of the same sex to adopt children, and the right to avoid juridical precision as regards concepts such as ‘the person’, ‘life’ and ‘the family’, as rights. These negative trends, with their injurious*

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20 An example from this direction is the debate the Pontifical Social Sciences Academy organized on the “Catholic Social Doctrine and Human Rights”.

*consequences, must be condemned in the name of the rational coherence of human rights.” (p. 26)<sup>21</sup>*

It is also important to acknowledge that a wider range of Catholic actors support today the efforts made by the Holy See interventions at the United Nations to influence the transnational construction of human rights. One example is the Center for the Family and Human Rights (C-Fam) -- created in 1997 and that has been granted Special Consultative ECOSOC Status in 2014 – which has the explicit purpose to monitor and influence UN debates. As the organization declares publicly, its creation was a consequence of the outcome of the Cairo Conference and directly linked to Holy See efforts to build new political alliances and influence the re-laboration of human rights, so as to contend with the feminist impact over the United Nations (Butler 2006, p. 94). In fact, John Paul II's call to contain feminist gains in multilateral conferences was the main motivator behind the creation of C-Fam<sup>22</sup> as watchdog of UN activities<sup>23</sup> and in particular of closed room negotiations. In his view this investment was urgent because the “feminist invasion” of the UN had been quite successful. They had not only ‘invaded’ different UN bodies but had also been able to generate a high level of policy legitimacy, which should be interrupted.<sup>24</sup>

As one main player of Catholic activism at the United Nations, C-Fam implements a variety of activities to impact human rights debates. One of its priorities is to prevent the emergence of policy consensus on sexual and reproductive rights by using a strategy to de-legitimize agreements that rely on denouncing what it names as the “feminist ideology”. C-Fam circulates materials critically analyzing the ‘feminist invasion’ and accusing feminists of political manipulation.<sup>25</sup> C-Fam also invests much in persuading groups of member-states to vote against what the Holy See and C-Fam itself consider to be anti-family dispositions. The long-term goal of these

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21 <http://www.pass.va/content/dam/scienze-sociali/pdf/actapass15.pdf>

22 Interview with Douglas Sylva.

23 Interview with Douglas Sylva.

24 C-Fam identifies three main channels where this invasion has been produced in more concrete terms. Two UN bodies, the Children's Fund (UNICEF) and the Population Fund (UNFPA), are presented as feminist bastions for switching the global agenda. Catholics for a Free Choice (CFFC) is the third organization identified as crucial for the feminist invasion at the UN.

25 It is similar to the Christian Right strategy at the UN (see Buss and Herman Globalizing Family Values p. 42-3)

efforts is to create a permanent pro-family block to be “deployed” whenever needed to prevent the adoption of texts that move away from the concept of natural family. According to C-Fam manuals, a group of only 12 states is enough to achieve a successful pro-family block<sup>26</sup>. A related strategy is to also activate domestic actors to influence states at capital levels not to support what is seen by the Vatican as anti-family positions being adopted at the UN. C-Fam has built a vast array of connections with networks and organizations working at national levels in all regions of the world.

Another strategy implemented at the United Nations by conservative Catholic groups is to continuously trigger disputes over the language and meanings of human rights discourse. According to C-Fam one of the most powerful and dangerous strategies implemented by radical feminism has been to propose the use of certain language in UN normative documents that -- step by step and dribbling the awareness of many States – have generated the transformation of international human rights law. In their own words: *“If a phrase like reproductive health services is repeated enough times in enough countries it becomes binding as international law... Even upon countries that do not ratify the documents in which the phrase appears”*.<sup>27</sup> C-Fam has therefore also politicized the language adopted by UN documents as to confront *“the feminist invasion”*. This politics of semantics and meaning is done through the careful monitoring of *“everything that is going on at the United Nations”*.<sup>28</sup> C-Fam checks a vast range of UN documents to identify what type of language is being used and to denounce what they see as attacks against the natural family. C-Fam also *“advises member states on the risks and dangers of particular documents and helps delegations to analyze and craft language”*.<sup>29</sup>

These actions taken at the transnational level are complemented by the presence and political intervention of Catholic activists, lawyers and scholars at countries' levels, where they also elaborate, apply and politicize human

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26 Ruse quoted in Washington Post, June 17, 2002; page A01.

27 In their own words: “When delegation needs help coming up with language or assessing language, they call us and we help them” (from an interview with Douglas Sylva)

28 Interview with Douglas Sylva

29 Interview with Douglas Sylva



rights discourses in opposition to sexual citizenship. An example in that regard is the increasing judicialization of sexual and reproductive matters on the part of conservative Catholic actors across Latin America (Lemaitre, 2013; Peñas Defagó y Morán Faúndes, 2014). Even when these judicial cases concern national laws it is possible to detect in their processing a strong imprint of arguments based on interpretations of human rights that are aligned with Catholic Church thinking. Sectors in academia, particularly in Catholic universities, are also returning to the traditional theory on natural law and adding to their curricula contents imbued with the Vatican vision about secular human rights debates. The central postulations of the Catholic Church regarding family and sexuality are also being debated and adjusted to the normative and philosophical requirements of liberal democracies (Skerrett 2007).<sup>30</sup>

## Religiously embedded citizenship: religious beliefs and the lawmaking processes

The impact of feminist and sexual diversity movements on the theoretical and political debates on “sexual citizenship” is also connected to the more embryonic “religious citizenship” agenda.<sup>31</sup> Against classical liberal tenets that separate the citizen from the believer – the premise that citizenry should empty itself of religious beliefs -- debates are underway in many scholarly and political circles about the need to re-introduce religious dimensions in public spheres that are indeed characterized by a strong pluralism of belief systems.<sup>32</sup> These debates are connected with the effects of migratory processes, which have revealed how deeply certain citizenship matrices – particularly in Europe -- that are insensitive to belief systems foster inequality and exclusion in ways that further impact on populations already immersed in precariousness.<sup>33</sup> Some of these positions of religious pluralism, in fact, propose a critical review of the secular foundations of modern constructions of citizenship,

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30 These debates have produced, particularly in the United States, the consolidation of a New Natural Law Theory (John Finnis y Germain Grisez; Mary Ann Glendon).

31 In connection to the different criticisms to secularization theory, some scholars are also criticizing the strong secularism that characterizes debates about citizenship (for example C. Calhoun or J. Habermas). The concept of religious citizenship is one analytical alternative for capturing (and analyzing) the complex role of religious identities in contemporary citizenship.

32 Habermas (2006) is a relevant author in this respect because it has adapted his theoretical position allowing for a public role of religious reasons (at the level of civil society).

33 There are many critical approaches to the limitations of secular citizenship in connection with Muslim migration to France.

so as to ensure this enlargement.<sup>34</sup> The term religious citizenship, which is relatively new, can be employed to capture these emerging demands concerning the place and role of religious beliefs in public debates, as well as to chart various debates connected to religious rights.<sup>35</sup>

The concept of religious citizenship -- or of religiously embedded citizenship -- is particularly useful to understand some of the strategies used by the Catholic Church in relation to sexuality. As sexual politics of the past few decades sexualized citizenship and expanded the limits of the law in regard to sexuality and reproduction, the Catholic Church and its allies began using religious beliefs as another pillar of their reactive politics. If the progressive facet of contemporary sexual politics implies the expansion of sexual citizenship, its reactionary facet is manifested as a defense of religious rights – or the rights of the citizen as a believer – that may impose limits to this expansion. The incorporation of culture and identity in debates about citizenship that resulted, to a great extent, from feminist and gay-lesbian/queer theory and activism has now as its counterpoint the Church advocacy for religious beliefs to be fully recognized as another foundation of citizenship. As I have pointed out in previous articles, a mimetic politics can be, therefore, identified between the positions of feminist and sexual diversity movements and the claims made religious conservative groups in regard to citizenship, because the discourses and strategies deployed by each camp resemble one another, even when each of them pursue opposing goals (Vaggione, 2005; 2013).

The strengthening of religious citizenship, therefore, mirrors and opposes the advancement of sexual citizenship. The politicization of sexuality and its integration in human rights discourse is connected with the growing politicization of religious beliefs and both processes impact on the conceptualization and exercise of contemporary citizenship. The influence of religious beliefs on political opinions, attitudes and practices is not new, particularly when it comes to issues related to sexuality. What is new – and this is what this article aims to highlight -- is the systematic mobilization of these beliefs as component of a renewed 'citizenship model' crafted by dominant religious institutions. The Catholic Church is not an exception and has quite intensively

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34 An example in this direction is C. Calhoun (2011)

35 Nyhagen (2015) presents a mapping of some uses of the concept of religious citizenship.

stressed the importance of religious beliefs as a pillar of contemporary citizenship, as can be illustrated by the speech delivered by Pope Benedict XVI at the United Nations, in 2008:

*“It is inconceivable, then, that believers should have to suppress a part of themselves – their faith – in order to be active citizens. It should never be necessary to deny God in order to enjoy one’s rights. The rights associated with religion are all the more in need of protection if they are considered to clash with a prevailing secular ideology or with majority religious positions of an exclusive nature. The full guarantee of religious liberty cannot be limited to the free exercise of worship, but has to give due consideration to the public dimension of religion, and hence to the possibility of believers playing their part in building the social order.”*

This citation reveals the centrality of religious beliefs in the Church’s conception of citizenship. Where modernity has built differences and frontiers, separating the public citizen from private believers, the Catholic Church (and other religious traditions) are re-building continuities and imbrication. The believer as a citizen -- or the citizen as a believer – has become a central actor in the public defense of sexual morality by the Catholic Church.

While the concept of religious citizenship allows for different interpretations (Nyhagen, 2015), in the context of this article it refers to the expanding use of this notion by conservative Catholic activism to oppose sexual citizenship. In this respect, it is possible to distinguish three aspects of the religious citizenship frame that now informs Vatican’s sexual politics. Neither of them is new, but all of them are being activated as a response to sexual citizenship. Each of them sustains different legal interventions and political strategies to resist or revert the gains made in these new realms of citizens’ rights.

## Religious beliefs as political rights

The appeal to religious beliefs as an element of citizenship has two interconnected aspects that are relevant for the understanding of contemporary sexual politics. Firstly, the notion of religious citizenship legitimates beliefs expressed by the public opinion, in general, and by legislators, judges and politicians, in particular. As a reaction

to secularized versions of citizenship, the concept implies that religious beliefs are to be expressed by citizens' political mobilization. As previously mentioned, the right to express religious views or to act in accordance to religious belief is therefore being recast as one key component of citizen political rights. The appeal to believers to defend religious values as citizens is today a main strategy used by conservative religious activism. Secondly, this re-centering of beliefs as a core element of citizenship puts into circulation a peculiar model of political subjectivity. Religious identities are therefore a resilient aspect of contemporary politics and one relevant piece in the puzzle of political subjectivation processes.

For quite a long time the Catholic Church has considered religious beliefs to be central to citizen participation. During the Second Vatican Council, the Church already affirmed its request to believers, both as citizens and politicians, to play an active role in public and legal debates: *"the lay faithful are never to relinquish their participation in 'public life', that is, in the many different economic, social, legislative, administrative and cultural areas, which are intended to promote organically and institutionally the common good"* (Congregation for the Doctrine of the Faith, 2002:1). This particular construct of a citizen-believer has now become central to the Church strategies against the enlargement of sexual citizenship. When the Catholic hierarchy mobilizes religious beliefs to reject and attack the demands made by feminist and sexual diversity movements, it calls upon the faithful as citizens to also defend the "culture of life" against these 'threats' that it perceives as moral relativism and also against what it now calls the 'ideology of gender'".

The mobilization of religious citizenship by the Vatican is aimed at the general public but also at those sectors that compose the political society, be they civil society actors or public officials. As I have analyzed in another other article (Vaggione, 2012), the Catholic hierarchy calls upon Catholic citizens to play an active political role against sexual and reproductive rights because in its view "all have an important role to play". The encyclical *Evangelium Vitae*, in particular, states that: *"What is urgently called for is a general mobilization of consciences and a united ethical effort to activate a great campaign in support of life. All together, we must build a new culture of life..."* (John Paul, 1995: 95). One of the most visible consequences of this call is the creation and consolidation of civil society organizations, self-proclaimed pro-life and pro-family, which has been previously analyzed and that now plays a leading role in the defense of legal frames that are coherent with the Catholic doctrine (Vaggione,

2005, 2011). Although the creation of civil society catholic organizations is far from new, it has now become a leading strategy of conservative Catholic activism, in the most varied national and transnational arenas where we can see today the growing of presence of these Catholic organizations intervening in lawmaking processes and other forms of codification.<sup>36</sup>

The Church also calls upon politicians to take into account their religious beliefs when they take public decisions on regulations related to family, sexuality and reproduction. In particular, the Church instructs legislators, judges and public officials on how to behave regarding provisions that oppose the Church's official doctrine. In respect to topics such as the decriminalization of abortion or the recognition of same-sex couples' rights, the Church has produced specific documents that guide these public officials on what positions and decisions are to be made when these issues are the object of law or policy making. For example, regarding bills in favor of same sex couples' rights, *"the Catholic law-maker has a moral duty to express his opposition clearly and publicly and to vote against it"* (Congregation for the Doctrine of the Faith, 2003: 10). In those cases in which the legislation has already been approved, their obligation is to limit the *"harm done by such a law and lessen its negative consequences at the level of general opinion and public morality"* (John Paul II, 1995: 73).

Religious citizenship opens, therefore, the venue for the blossoming of political subjectivity and practices against the transformative effects of sexualizing the law. The believer as a citizen becomes a crucial actor in the games of this conservative sexual politics. The call to believers to have a political participation is not, of course, a completely new phenomenon within the Catholic tradition. However, in recent years, these appeals have intensified and the focus of this renewed participation has been, to large extent, displaced towards sexual morality. The "religious embedding of citizenship" can be therefore considered as a main feature of contemporary Catholic conservatism. It is reflected, among other arenas, in the proliferation of activism against SRR and defense of religious beliefs as a legitimate dimension of political processes.

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36 For example, a strong growth of such organizations has occurred in Argentina during the past two decades, with greater emphasis at the times when SRR are debated (Morán Faúndes, 2015).

## The enlargement of religious freedom

Religious freedom is another well-established, politicized tool against the advancement of legal reforms associated with sexuality and reproduction, as it can be easily observed in many countries across the world. Although the success of this strategy varies, it has been extensively used by articulated religious sectors that claim that the legalization of abortion or the recognition of rights for same-sex couples implies a violation and lack of recognition of religious freedoms and rights. The United States is a blatant example in this respect, as a massive number of judicial cases have been filed in the past few decades – many of them raised by Catholic organizations to protect religious freedom vis-a-vis women's reproductive rights or the civil rights of LGBT people (among other claims).

A flagrant clash now exists between religious freedom (even when it can be subject to quite different interpretations) and the equality of LGBT people or the reproductive rights of women. Although the claims of religious freedom to oppose sexual citizenship is not as intense in Latin America as it is in the United States, its arguments are also being employed in a number of countries to curtail sexual and reproductive rights. The resource to the premise of religious freedom in these cases is usually done through collective complaints made by citizens who considered that their religious rights are infringed by sexual and reproductive rights legislation and policies.

The traditional conception of religious freedom was associated with the functioning of the religious arena: the state should guarantee this freedom as to harmonize the coexistence of religious majorities and minorities. However, in the late 20th century this premise started to be also used to “protect religions” from the impacts of secular ideologies and practices<sup>37</sup>. In these disputes the previously mentioned notions of “culture of death” and “gender ideology” are also being extensively deployed and portrayed as main threats to religious freedom.

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37 This use of religious freedom is included not only in the Catholic Church's documents but also in the works of Catholic public intellectuals such as Robert P. George (see as an example George, 2013)

It should be recalled, however, that until the Second Vatican Council, in the 1960's, the Catholic Church had a very complex relation with religious freedom. It was then, for the first time, it recognized that: *"This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such ways that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits"* (Paul VI, 1965:2). Currently, the Church view on the matter is that the recognition and protection of religious freedom in tandem with freedom of conscience *"is one of the highest goods and one of the most serious duties of every person who truly wishes to ensure the good of the individual and of society."* (Pontifical Council for Justice and Peace, 2004: 553). This elaboration led to the conclusion that the state must promote and protect this freedom because: *"The duty to respect religious freedom requires the political community to guarantee the Church the space require to carry out its mission"* (Pontifical Council for Justice and Peace, 2004: 424). Much more recently, Pope Benedict XVI reaffirmed the importance of religious of freedom in connection to the defense of Human Rights when, in 2008, speaking to the United Nations, he said: *"Human rights, of course, must include the right to religious freedom, understood as the expression of a dimension that is at once individual and communitarian – a vision that brings out the unity of the person while clearly distinguishing between the dimension of the citizen and that of the believer."* (Benedict XVI, 2008)

This means that religious freedom that was resisted by the Catholic Church in the past has now become another fundamental natural and human right, which is also being politicized to oppose the recognition of sexual and reproductive rights. One of the strategies used in that direction is, for example, to defend the religious freedom of the parent vis-a-vis public policies that allow access to information and rights to children and teenagers. Conservative Catholics consider that sexuality education policies that are in line with a sexual citizenship perspective, and ensure access to information, infringe the right of parents to decide on the values and religious beliefs to be transmitted to their children. The Catholic Church's view is that sexual education cannot be delegated to public institutions because it is an irreplaceable right of the family, the state cannot do more in relation to that than to perform a complementary role (the subsidiarity principle). Yet, in practice, sexuality education policies implemented by the state are predominantly portrayed as a threat to religious freedom as it can be exemplified by the vision of Pope Benedict XVI on the matter when maintaining that he: *"cannot remain*

*silent about another attack on the religious freedom of families in certain European countries which mandate obligatory participation in courses of sexual or civic education which allegedly convey a neutral conception of the person and of life, yet in fact reflect an anthropology opposed to faith and to right reason” (Benedict XVI, 2011)*

This same reasoning is applied against sexual and reproductive health programs that recognize children and youngsters under eighteen as subjects of rights. Conservative Catholic actors who occupy position in politics, lawmaking and the judiciary consider that the state violates the rights of parents when it provides access to contraceptives and information on reproductive health to young people (aged between 16 to 18). The absolute protection of parental authority and religious freedom is today a key argument against public policies aimed at guaranteeing access to contraceptive methods, as is made evident by numerous judicial litigations against these policies in various countries.

This re-appropriation of religious freedom implies paradox. While it calls for parents' rights to be ensured, it makes of children and teenagers political subjects. The child, the minor and the disabled are today key figures in the politics that opposes sexual and religious citizenship. These figures have been construed in conservative Catholic thinking as the main beneficiaries from religious freedom that, in the view of the Church, is now threatened by sexuality education, or more broadly, trampled on by secular education. This formulation of religious freedom safeguards parents or, yet more prominently, religious institutions from state secular intervention.

The argument that parents have the right to educate their children in accordance with their own religious and moral beliefs is having a massive negative impact on policies around the universal access to information, sexuality education and contraceptives. As made clear by the preceding examples, the expanding reach of this re-politicized use of religious freedom is articulated with the previously discussed conceptualization of religious citizenship, and both approaches are antithetical to sexual citizenship. The original normative frame of religious freedom aimed at excluding or reducing the presence of the religious in public spheres so as to ensure equality and freedom for all citizens, regardless of their religious affiliations. In contrast, the contemporary



re-appropriation of this premise aims at re- inserting religious beliefs as a basis of citizenship and as a requirement for freedom. In opposition to the secular citizenship tradition, which expressly transports religious beliefs to the private sphere, this shift brings them back as the foundation of rights opposed to lay education and sexual education.

### *Conscious objection as a collective right: the politics of camouflage*

Another main axis of Catholic contemporary sexual politics is to mobilize claims of conscientious objection in relation to a wide range of sexual citizenship domains. Given that sexual and reproductive rights, albeit with many obstacles, are now inscribed in the law and subject to public policies, the Catholic Church is politicizing the right to conscientious objection of citizens as believers to create barriers for these laws and policies to be implemented. The Vatican view on the matter as expressed in The Catechism of the Catholic Church is the following: *“The citizen is obliged in conscience not to follow the directives of civil authorities when they are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel”* (Catechism of the Catholic Church, 1992: 2242). This is just one example as many other Vatican documents also affirm the states' obligation to protect the right of the believers, as citizens, not to obey *“unfair laws”* (John Paul II, 1995).

Conscientious objection originated as contestation of militarism as an ideology of war. It was aimed at ensuring the prerogative of those who refuse to participate in armed conflicts not to be recruited by armed forces. The Catholic Church's current version of conscientious objection, however, is framed in strictly cultural terms to contest what is deemed by its authorities as “radical secularism”, “culture of death” and “gender ideology”, among other labels. In both past and present versions of the right to object, personal freedom is the value being protected. However, the Catholic Church has displaced and altered the meaning of this legal institution by turning the original understanding of conscientious objection as a personal ethical choice into a collective moral obligation. In contrast with the objection to military service in which the free decision pertains to the individual, the Catholic Church compels believers to resort to the right to conscientious objection so as to disobey certain laws and policies. Catholic persons ‘must’ become objectors when faced with abortion laws – regardless of

their own view on the matter - because in the Church's view these laws promote a "culture of death".

The text of *Evangelium Vitae* is sharply clear in that regard when it affirms that laws that are favorable to abortion or euthanasia must be deterred by conscientious objection. (John Paul II, 1995). The encyclical's position is not to support the right to object as an individual right of all citizens, including those who are believers, but rather to define it as an obligation of all believers who are faced with "*practices, which, even if permitted by civil legislation, are contrary to God's law.*" (*Evangelium Vitae*, 1995: 74). This compulsory interpretation of conscientious objection is repeated ad nauseam in several documents addressed to persons directly involved in the sanctioning and implementation of existing legislation, and to health personnel involved in the distribution and access to contraceptives, abortion methods and procedures and technologies of assisted reproduction. In the words put forward by the Pontifical Academy for Life in 2007, these individuals and professional groups have the obligation to "bravely resort to conscientious objection".

The second displacement mobilized by the Vatican consists in promoting conscientious objection to delegitimize laws that have resulted from widely accepted and consistent democratic procedures. This displacement implied a drastic shift in relation to the classical position of Catholic Church in respect to the right of individuals to object to military draft and recruitment, which was that persons exempted from performing military service on the basis of conscientious objection should perform a state civil service in exchange. Yet in the case of conscientious objection in regard to sexual and reproductive rights laws and policies that have been democratically sanctioned, the Church promotes this right to delegitimize and create barriers to these norms and programs. When it fails to prevent a legal reform in these domains, the Church acts toward eroding its legitimacy and efficacy. In the view of the Catholic hierarchy, laws that decriminalize abortion or euthanasia, or even those that propel a "contraceptive mentality" are contrary to the individual and common good and, therefore, "*completely lacking in authentic juridical validity' hence "a civil law authorizing abortion or euthanasia ceases by that very fact to be a true, morally binding civil law.*" (*Evangelium Vitae*, 1995: 72).

The Church position on conscientious objection is not aimed at creating legitimate spaces in which the citizens can express their beliefs and views in regard to laws that have majority support. Rather its main purpose to

demonstrate the 'injustice and illegitimacy' of sexual and reproductive rights. As affirmed in the *Letter to Health Care Workers*: "In addition to being a sign of professional loyalty, the conscientious objection of the Health Care worker, when its motives are authentic, has the greater significance of a social denunciation of an illegal injustice perpetrated against innocent and defenseless life" (Pontifical Council for the Pastoral Care of Health Care Workers, 1995).

This displacement reveals a politics of camouflage. While the right to object is grounded on personal and ethical foundations, its re-construction, as proposed by the Catholic Church, has converted it into a collective right with a political objective. While the right to conscientious objection protects the individual right to dissent, the Church uses it to confront and eventually alter legal frames that it considers contrary to its values. Conscientious objection is usually supplemented by additional duties and activities that compensate for the fact of dispensing with a legal obligation. But the way in which the Church has re-constructed it to contest sexual and reproductive rights, also posits that the objector should not be burdened with compensatory measures because he or she does not recognize the legitimacy of the policy and juridical duty being objected to.

This politics of camouflage is a structural aspect to be taken into account when debating conscientious objection as a tool to contest the egalitarian rights and plurality pushed forward by feminist and sexual diversity movements through the use of freedom of religion arguments. The right to object in this case is not just a legal construct, but rather a fundamentally political instrument that responds to the conditions of a particular time and certain correlation of forces in societies. It is crucial to desacralize the understanding of this legal institute, without ignoring the values that it seeks to protect, so as to make visible its political dimension as one of the most powerful strategies being propelled today by forces that advocate exclusionary conceptions of family and sexuality.

## To conclude

This article has focused on the law as a contested arena of contemporary sexual politics. The feminist and sexual diversity movements have moved from demanding the politicization of sexuality to claim for its inscription in the law. The main demands of these movements were codified as rights that aim at dismantling regulations that

oppress sexual practices and behaviors and enhance people's autonomy and freedom in relation to sexual and reproductive practices and identities. Dominant religious strands have not been indifferent to these processes. On the contrary, they have created a block to resist these demands and transformations. The Catholic Church, in particular, is a leading global actor in efforts made to preserve legal frames based on restrictive morality.

As analyzed in this article, this juridification of sexuality has impacted, in many ways, on the complex articulation between law and religion. The analysis of the previous pages has used the images of imbrication/dis-imbrication to capture the interconnections between sexuality, law and religion in contemporary democracies. Its hypothesis is that the impact of feminist and sexual diversity movements has widened and deepened the des-imbrication between secular law and Catholic morality. Such a dis-imbrication contests the philosophy and politics of the law defended by the Catholic Church, which for centuries has impacted on secular legal culture in many countries, particularly in Latin America. While the Church defends a model of complete embedding of the secular law in sexual morality and a religious worldview, the politics of sexual and reproductive rights requires these connections to be dismantled and these two domains to be distinguished. In mobilizing for these rights the feminist and sexual diversity movements confront not only the influence of the Catholic Church on legality and morality, but also its power to define what belongs or not to the cultural or national heritage of each context. These struggles are not just about enlarging legal and moral frames in order to encompass sexual diversity and freedom but also a dispute about the boundaries between religious and the secular in regard to the law.

On its side, the Catholic Church has reacted by mobilizing a global political machinery to resist this dis-imbrication process. What is new is not exactly what the Church is defending as its positions, given that concerns with the family, reproduction, sexuality and the resource to natural law theory are constitutive of the long history of its doctrines. The novelty lies in the crafting of political and legal strategies to strongly defend these positions in reaction to the impact of feminist and sexual diversity claims. The article proposes two analytical frames to better understand how these political and legal strategies have been unfolding. The first is to focus on the re-naturalization of law enhanced by Catholic thinkers to capture the contemporary use of human rights language and principles. As to confronting the juridification of sexuality, the Catholic Church is reviving natural law principles to contest the enlargement of human rights interpretation and application in both

national and transnational arenas. If the feminist and sexual diversity movements have been relatively successful in incorporating sexual and reproductive health in human rights frames, the Church is politically re-interpreting human rights in tune with its natural law doctrine. The genealogical traces of natural law in human rights theory and the political presence of the Holy See at the United Nations maximize the capacity of the Catholic Church to push for this re-interpretation so as to resist or even revert the recognition of sexual and reproductive rights.

The critical focus on the religious embedding of citizenship is the other proposed analytical frame to capture the ways in which the Catholic Church is now impacting lawmaking processes. Aside from the model or level of *laïcité* established in different countries, religious beliefs everywhere still determine major cleavages in public debates and public opinion in relation to matters of sexuality, family and reproduction. The Catholic Church is now mobilizing these beliefs within a reframed model of citizenship that opposes sexual and reproductive rights. The Church has politically portrayed the feminist and sexual diversity movements as the mobilizers of a “culture of death” and/or of a “gender ideology” that threatens the family and life itself. The citizens as believers are called to act in response to this threat, to mobilize in defense of the legal order that protects the “natural” aspects of the family and sexuality. This frame also allows for analyzing how the Church has politicized the recognition of sexual and reproductive rights as an attack on religious freedom that justifies the resource to conscientious objection. In a variety of ways, the Church also advocates for the rights of citizens to act in accordance to their religious beliefs. This proposition, although not necessarily new, is now targeted at parliamentarians and court members who must also directly contest the equal rights for LGBT persons and women’s reproductive rights. This open politicization reveals that the Catholic Church is now more concerned with the defense of the legal order that with sustaining moral standards. This is not a politics that intends to influence the sexual conduct of Catholic and non- Catholic faithful communities in their private lives. Rather it is a politics that intends to directly influence secular legal frames so as to sustain a normative and symbolic order that will impact on the conduct and decisions of all citizens.

A final point, not directly addressed in the article but that needs to be added to these overarching analyses concerns the implications of the Francis I papacy for the sexual politics propelled by the Catholic Church. The first aspect to be raised in that regard is that, almost immediately after the Argentinean Pope was elected,

a debate began about a potential *aggiornamento* of the Church's formal positions in regard to sexuality. Furthermore, since 2013, a number of the new Pope's performances and declarations have ignited hopes that the Vatican was moving towards greater flexibility in regard to sexual morality, leaving behind its obsession with the gains made by sexual and reproductive rights in recent years.<sup>38</sup> Nevertheless, as no substantial changes have occurred in the various fronts covered under the gender and sexuality umbrella, doubts are arising about the willingness or ability of Francis I to dismantle the reactive political machinery built by his predecessors. After initial hopes, the Pope has made speeches and taken decisions indicating that continuities in the Vatican views on sexuality are still at work, even that they may now be blended with his own personal touch and style. As the previous two Popes, Francis I has explicitly named "gender ideology" as a main threat because it eliminates "the anthropological basis of the family" and affirmed that "It is one thing to be understanding of human weakness and the complexities of life, and another to accept ideologies that attempt to sunder what are inseparable aspects of reality" (Francis I, 2016: 56).

The various relevant analyses and critiques that the Pope has delivered against the injustices of neoliberalism or in favor of environmental sustainability go, therefore, hand in hand with insistent attacks on feminist and sexual diversity movements as threats to sexual morality and nature itself. If the great expectations that the election of Francis I mobilized in regard to a potential transformation of that will make the Church positions with the environment and with economic exclusion may have been fulfilled, quite clearly, in his view, gender inspired theories are part of these structural problems. For example in 2015, in his address to the United Nations the Pope declared that "*the defense of the environment and the fight against exclusion demand that we recognize a moral law written into human nature itself, one which includes the natural difference between man and woman... and absolute respect for life in all its stages and dimensions...*" (Francis I, 2015).

Without disregarding the progressive standpoints of Francis I on economic injustices and the environmental crisis, many strong signs suggest that the Church reactive political machinery against the democratization of

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38 A moment of impact in this respect happened when, in the middle of a press conference in 2013, the Pope stated that "if a person is gay and seeks the Lord and has goodwill, who am I to pass judgement on them?"

gender and sexuality remains untouched. Even if Francis wants to modify or dismantle this machinery—and so far until now this does not seem to be the case – the question remains of whether he will be able to do it. As partially shown in this article, the Church reactive political machinery that was created and empowered in response to the increasing legitimacy of sexual and reproductive rights has a life of its own and it is now deeply entrenched in national and transnational sexual politics.

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