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International Influence, Domestic Activism, and Gay Rights in Argentina

OMAR G. ENCARNACIÓN

IN JULY 2010, ARGENTINA BECAME THE FIRST NATION in Latin America, and only the second one in the developing world after South Africa, to pass a law legalizing same-sex marriage; shortly thereafter, the country enacted what is arguably the most progressive transgender law of any country in the world. It allows for a change of gender without undergoing surgery or receiving authorization from a doctor or a judge. Both laws have put Argentina in a select group of nations regarded as being on the cutting edge of gay rights and atop international rankings of countries most open to issues of concern to the lesbian/gay/bisexual/transgender (LGBT) community, such as the recently developed “Gay Friendliness Index.”¹ Neither societal factors nor political conditions could have predicted this cascade of gay rights advances.

Argentina is overwhelmingly Catholic (the world was reminded of this in March 2013 with the near hysterical rejoicing that greeted the selection of Buenos Aires Cardinal Jorge Mario Bergoglio as the first “New World” Pope); its history of repression of homosexuality among Latin American nations is exceeded only by that of Communist Cuba; and the national

¹On the GFI, see Javier Corrales, Mari Crook, and Mario Pecheny, “Argentina: World Champion in LGBT Rights: How Did This Happen?” (paper presented at the 2011 annual meeting of the American Political Science Association, Seattle, WA, September 1-4).

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culture celebrates machismo. From the national dance of the tango, with its precisely choreographed movements by the dominant male and the compliant female; to the mythical figure of the Gaucho, the rough and tough horseman of the Pampas; to the high-testosterone generals who ruled the nation for much of the twentieth century, Argentina reeks of macho symbols. Support for same-sex marriage from President Cristina Fernández de Kirchner came only in 2010; prior to 2010, she had said virtually nothing on the subject. The President was probably mindful of the social conservatism of many in her Peronist Party, which has a longstanding reputation for homophobia.² Former Peronist President Carlos Saúl Menem proudly boasted that “There are no militant gays and lesbians in my party.”³

So what accounts for Argentina’s emergence as a gay rights trailblazer? If there is a conventional wisdom about this question, this wisdom suggests validation of a spillover effect in the spread of gay rights from the developed North into the developing South. This popular view grew out of the historiography of the American gay rights movement that posited the 1969 Stonewall riots—the series of spontaneous and violent confrontations in the west side of Manhattan between ordinary gays, lesbians, and transvestites and members of the New York City police—as the touchstone for the contemporary gay rights movement.⁴ A large and diverse social science scholarship has since reinforced the “Stonewall-centric” view of the global spread of gay rights.

A key contention of the literature on the “socialization” of states is that human rights norms (which today include gay rights, even though the 1948 Universal Declaration of Human Rights makes no explicit reference to issues of sexual identity) are adopted by developing countries through a “spiral” model of human rights change that is anchored around several steps, including “strategic bargaining,” “moral consciousness-raising,” and “shaming and persuasion,” driven by Western-based “transnational advocacy networks.”⁵ More recently, scholars of “global queering” have promoted the provocative claim that globalization has led to the “Americanization” of homosexuality through the exportation of practices that originated in gay communities in the United States—such as gay pride parades intended to

²See Omar Acha and Pablo Ben, “Amorales, patoleros, chongos y pitucos: La homosexualidad masculina durante el primer Peronismo, 1943–1955. Trabajos y Comunicaciones, Universidad Nacional de la Plata, 2004–2005.

³CHA archives, consulted on 25 March 2012.

⁴See, especially, Martin B. Duberman, *Stonewall* (New York: Dutton, 1993).

⁵Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practices” in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights* (New York: Cambridge University Press, 1999), 11–13.

affirm gay identities, safe-sex campaigns designed to curb the spread of HIV/AIDS, and same-sex civil unions and same-sex marriage.⁶ According to one study, “like McDonald’s and Disney, global queering began in the United States and has transformed the planet’s queer cultures by cultural borrowing or cultural imperialism as a result of American global hegemony.”⁷

There is much to be said for the conventional wisdom. During the 1990s, Argentina, along with the rest of Latin America, endured considerable criticism from international human rights organizations for its horrid treatment of homosexuals, including a well-publicized report by Amnesty International.⁸ Demands for same-sex marriage in Argentina gained momentum only after 2005, when Spain became the first Catholic-majority country to legislate same-sex marriage. Argentine legislators actually used Spain’s same-sex marriage law “as a blueprint.”⁹ In both cases, extending marriage to same-sex couples required a simple alteration in the section of the civil code pertaining to marriage, changing the gender-specific words “man and woman” to the gender-neutral word “applicants.” Less known is that after 2005, the Spanish government made LGBT rights a priority in its foreign policy toward Latin America, and that between 2000 and 2010, Spanish non-governmental organizations (NGOs) spent some 2 million dollars promoting LGBT rights in the region, including \$150,000 in Argentina alone around the time the same-sex marriage bill was being debated.¹⁰ Not by accident, in both Spain and Argentina, the campaign for “gay marriage” shared the same slogan: “We want the same rights with the same name.”

But the conventional wisdom obscures more than it reveals. It tells us little about why developing countries exposed to the same external influences, even those sharing a similar culture and levels of social and economic development, vary so greatly in the speed and scope at which they have embraced gay rights. The very uneven development of gay rights across Latin America underscores this point. While some countries (such as Argentina, Brazil, and Uruguay—countries that recognize same-sex

⁶See Gilbert Herdt, *Same Sex, Different Culture: Gay and Lesbians Across Cultures* (Boulder, CO: Westview Press, 1997).

⁷Peter A. Jackson, “Capitalism and Global Queering: National Markets, Parallels among Sexual Cultures, and Multiple Queer Modernities,” *Gay and Lesbian Quarterly* 15/3 (2009): 357–395, at 358.

⁸*Breaking the Silence: Human Rights Violations Based on Sexual Orientation* (London: Amnesty International, 1994).

⁹Omar G. Encarnación, “Latin America’s Gay Rights Revolution,” *Journal of Democracy* 22/2 (2011): 104–118, at 105.

¹⁰Elisabeth Friedman, “The Same Rights with the Same Names: The Impact of Spanish Norm Diffusion on Marriage Equality in Argentina,” *Latin American Politics and Society* 54 (Winter 2012): 29–59, at 29.

marriage) have made astonishing progress, others remain basically unchanged (Peru and Venezuela), and others have moved to curtail gay rights by banning same-sex marriage (Honduras and the Dominican Republic), part of a gay rights backlash that can be seen throughout the developing world. This backlash is attributed, oddly enough, to the desire by some countries to curb external homosexual influence, itself evidence that such influence is a double-edged sword that can both hinder and facilitate the spread of gay rights.¹¹

Clearly, we have to account for how international influence is mediated by the domestic context. At the heart of this mediation, this study contends, is the gay rights movement, a movement that in the Latin American context has for the most part been ignored, even by scholars of Latin American social movements.¹² While international influence can provide powerful stimuli for advancing gay rights, whether these rights make headway depends largely upon the capacity of local activists to mold themselves to their own environment. The point is not only to absorb whatever trends are percolating in the international environment but also to capitalize upon the “political opportunity structures” afforded by the domestic context to support these trends.¹³ This suggests the importance of “modeling” in the struggle for gay rights, with emphasis on “modeling for” the domestic context rather than “modeling after” any particular international path.

Anyone aware of the arc of gay rights in the developed West would find the Argentine experience somewhat familiar: first came “negative” rights, then “positive” rights, and, finally, “equal” rights.” Negative rights demand little of the state other than to let gay people be who they are by decriminalizing homosexual behavior. Positive rights require extending civil rights to the homosexual population, such as protections against discrimination and recognition of same-sex relationships. Equal rights entail, above all, equality in the way the state treats homosexual and heterosexual relationships, by extending the right to marry and adoption to same-sex couples.

But how the transition from negative rights, to positive rights, to equal rights was prodded along in Argentina is a uniquely Argentine story, one that goes back some four decades before the legalization of same-sex

¹¹On this backlash, see *Together, Apart: Organizing around Sexual Orientation and Gender Identity Worldwide* (New York: Human Rights Watch, 2009).

¹²One of the most popular texts on Latin American social movements completely overlooks gay and lesbian groups. See Susan Eckstein, ed., *Power and Popular Protest: Latin American Social Movements* (Berkeley: University of California Press, 1989).

¹³This term is borrowed from Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (New York: Cambridge University Press, 1998).

marriage with the rise of Latin America's oldest gay rights movement. Almost since its birth in the mid-1960s, the Argentine gay rights movement has functioned as a filter for international gay rights trends. Nowhere in Latin America did the Stonewall riots have as big an impact as in Argentina, owing to the effective channeling by local gay activists of the energy of "gay liberation" unleashed by Stonewall to reshape, ideologically and organizationally, the nascent Argentine gay rights movement. Functioning as a domestic filter of international gay rights trends actually intensified in the post-transition period, strengthened by international connections made by gay activists during the most-recent years of military rule (1976–1983), when many of them were forced into exile in Western Europe and the United States.

In the years since the democratic transition of 1983, gay activists have also exploited every opportunity that has come their way to advance their goals. They certainly have benefited from societal and historical trends favoring gay rights in Argentina, like high levels of social development, a changing religious landscape marked by a decline in Catholicism, an influential human rights movement, and a strong tradition of separation of church and state.¹⁴ This tradition is reflected in a long history of anti-clericalism and in the relatively unimportant role that religion plays in national politics. There is nothing comparable in Argentina to the influence of Catholic groups such as Opus Dei over conservative parties in Mexico and Colombia, or the political clout of Evangelicals in Brazil; and there are no major Catholic-backed parties in Argentina, like the Christian Democratic parties of Chile and Venezuela.

Less apparent, and arguably more important, is the exploitation of political opportunity structures that on the surface would appear to be of no significance to gay activism. The prosecution of the old regime on war crimes gave gay activists the opportunity to use human rights arguments to tie ending anti-gay discrimination to the democratization of the political system. An amendment to the Argentine constitution in 1994, which created the Autonomous City of Buenos Aires, allowed gay activists to transform the Argentine capital into a laboratory for gay civil rights. The dramatic collapse of the economy in 2001 and the vigorous social justice movement that it triggered, provided a rare opportunity for advancing gay civil rights while enhancing the political clout of the gay community. By the time left-wing legislators introduced a same-sex marriage bill on behalf of

¹⁴For a more extensive discussion of this point, see Javier Corrales and Mario Pecheny, "Six Reasons Why Argentina Legalized Same-Sex Marriage First," 30 July 2010, accessed at <http://americasquarterly.org/node/1753>, 31 August 2013.

gay activists, societal acceptance of homosexuality in Argentina was the highest in Latin America and the risk for politicians, from both the right and the left, of embracing gay rights had been dramatically diminished. Indeed, the common view that President Fernández de Kirchner was “pandering” to the gay community with her support for same-sex marriage speaks volumes to the success of the campaign for gay rights.

THE RISE OF GAY ACTIVISM

A thriving male homosexual subculture began to flourish in Buenos Aires in the 1880s, around the time that homosexuality was de-criminalized in Argentina. This subculture was fueled by a massive immigration wave from Europe and the countryside and an expansive urban economy that created a critical mass of single males severed from their families with a like-minded sexuality.¹⁵ Yet it was not until 1967 that a group of ten workers affiliated with the postal union formed *Nuestro Mundo* (Our World), reputed to be Latin America’s first gay rights organization. Its creation, as noted by historian Osvaldo Bazán, was “an entirely indigenous event; the founders had no idea of any gay organizations outside of Argentina.”¹⁶ The catalyst for the group’s formation was the advent of the military dictatorship of Juan Carlos Onganía in 1966. Under this new regime, “the state became increasingly repressive and used police forces to control moral issues such as dressing codes, extra-marital sex, youth culture, etc. In this context homosexuality was deemed a risk to the social system and persecuted.”¹⁷

There was no political project behind *Nuestro Mundo*’s activism. As its founder, Héctor Anabitarte, recalls: “We were not intellectuals or ideologues and our vindications were more reformist than revolutionary.”¹⁸ But this would soon change. In 1971, *Nuestro Mundo* joined the lesbian group *Safo*, the student organization *Eros*, the anarchist group *Bandera Negra*, and the Catholic group *Emanuelle*, to create the *Frente de Liberación Homosexual* (FLH), the most significant Latin American offspring of New York’s Gay Liberation Front, the main gay rights organization to have emerged from the Stonewall riots. The poet and anthropologist Néstor Perlongher, one of the founders of the FLH, leaves very little doubt about

¹⁵See Osvaldo Bazán, *Historia de la Homosexualidad en la Argentina: De la Conquista de America al Siglo XXI* (Buenos Aires: Marea, 2004).

¹⁶Author’s interview, Buenos Aires, 1 June 2012.

¹⁷Pablo E. Ben, “Peronism, the LGBT Movement and Authoritarian Rule in Argentina in the 1960s and 1970s” (paper presented at the 125th meeting of the American Historical Association, Boston, MA, 6–9 January 2011).

¹⁸Author’s electronic correspondence with Mr. Anabitarte, 12 July 2012.

the influence of the Stonewall riots when noting that “In August of 1971, a group of intellectuals inspired by the *Gay Power Americano* gave birth to the FLH of Argentina.”¹⁹ Like sister organizations in the United States, Britain, and France, Argentina’s FLH worked to advance civil rights for gays even as it questioned the nature of sexual identity and the value of the assimilation of gays into mainstream society. “We don’t have to liberate the homosexual, we must liberate the homosexual in everyone,” was the FLH’s provocative slogan.²⁰

At the core of the struggle for liberalization was breaking down conventional social constructions of gender; consequently, for the FLH, the open display of effeminacy by gay men and of masculinity by lesbians was regarded as “positively subversive.”²¹ The FLH was also broadly concerned with civil rights, as the first organization to lobby for the abrogation of the infamous *edictos policiales* (police edicts). First enacted in the late 1800s, and strengthened in the wake of the “infamous decade” of the 1930s (a period of great social and political upheaval ushered in by the Great Depression), the edicts allowed for detention and arrest for any number of “immoral” behaviors, including flirtatious language, cross-dressing, public acts of affection by same sex couples, and men dancing together, on the grounds that they were unconstitutional. Advancing women’s rights was another concern for the FLH. The Grupo Política Sexual, an autonomous movement within the FLH founded by Perlongher, combined sexual liberalization, feminism, Marxism, and psychoanalytical studies to fight the male hierarchy that they believed existed in Argentina.

Driven by the repression of the “Process of National Re-organization,” the official name of the military regime in place between 1976 and 1983, the FLH self-dissolved, and its leadership fled to Spain. The “dirty war” against political dissidents and “social deviants” that resulted in as many as 30,000 killings characterized the repressive policies of the new military regime.²² During this period, there were at least two instances when the military specifically targeted the gay community. The first came around the time Argentina hosted the 1978 World Cup. Targeting gays became part of a “cleansing” campaign that preceded the soccer tournament, which, according to some accounts, included members of the Federal Police “sweeping the

¹⁹Néstor Perlongher, *Prosa Plebeya: Ensayos 1980-1992* (Buenos Aires: Colihue, 1997), 77. Emphasis on *Gay Power Americano* added.

²⁰CHA archives, consulted 25 March 2012.

²¹Stephen Brown, “*Con discriminación y represión no hay democracia:*” The Lesbian and Gay Movement in Argentina,” *Latin American Perspectives* 29/2 (2002): 119–138, at 128.

²²The official figure of the disappeared from the CONADEP is 10,000, but human rights organizations, such as Las Madres, insist the actual number exceeds 30,000.

streets in search of homosexuals,” and “savagely beating in public view those resisting arrest.”²³ The second instance arrived between January 1982 and January 1983, during the twilight of the military regime, when a former member of the FLH and 17 additional gay males were murdered, in a wave of anti-gay violence that came in the wake of a pronouncement by the paramilitary group Comando Cóndor that it intended to “wipe out homosexuals.”²⁴

While in exile, Argentine gays became exposed to prevailing trends in international gay rights activism and began to chart the next steps of the Argentine gay rights movement. A case in point is Carlos Jáuregui, Argentina’s best-known gay rights leader and the first president of the Comunidad Homosexual Argentina (CHA), the pre-eminent gay rights organization in the post-transition period. Jáuregui spent the years of military dictatorship as a graduate student in France, where he was exposed to a post-sexual liberation brand of gay activism that made the case for the assimilation of homosexuals into society by making them seem less threatening to heterosexual society. According to his biographer, Mabel Bellucci, while in France Jáuregui not only decided to become a gay activist, he also sketched the future of gay activism in Argentina.²⁵ A particularly impressionable moment for Jáuregui was the 1981 march to celebrate the Socialist victory of President François Mitterrand, which featured thousands of gay activists marching alongside representatives of human rights organizations.

Democracy’s return to Argentina in 1983 brought about the restoration of political freedoms, but the societal climate for gays in Argentina remained downright inauspicious, as gays continued to be persecuted and marginalized. It is estimated that between 20 December 1983 and 21 March 1984, under the *Ley de Averiguación* (Law of Inquiry) 21, 342 people, the vast majority of them gay, were arrested for “background checks.”²⁶ The law was publicly supported by Minister of the Interior Antonio Tróccoli, “who was a firm believer that homosexuality was an illness.”²⁷ Until 1998, it was still routine for the police to harass and even to imprison gays by relying on the police edicts. Unsurprisingly, as recently as 1995, participants in Buenos Aires’s gay pride parade partially covered their faces, fearful of reprisals by the police.²⁸

²³CHA archives, consulted 24 March 2012.

²⁴Brown, *Con discriminación y represión no hay democracia*, 121.

²⁵Mabel Bellucci, *Orgullo: Carlos Jáuregui, Una Biografía Política* (Buenos Aires: Editorial Planeta, 2010), 42.

²⁶*Ibid.*, 45.

²⁷Author’s interview with Mabel Bellucci, Buenos Aires, 16 May 2012.

²⁸“Gay Rights in Latin America,” *NACLA Report on the Americas*, May 1995.

In light of the above, it is hardly surprising that state violence toward gays was a mainstay of everyday life in Argentina even after the return of democracy. This issue made international headlines in 1991 when, for the first time in Canadian history, a homosexual was granted refugee status. The case involved a 28-year-old former engineering student from the University of Córdoba who testified to the Immigration and Refugee Board, an independent agency within Canada's Ministry of Immigration, that while under arrest in 1989 and 1990, he had been raped and tortured by Argentina's federal police. He said that he had fled Argentina for Canada in 1990 because "he could not tolerate this police terror," noting that "the fact that they know me as a gay man and I am on file makes me vulnerable."²⁹

It was this environment of repression and violence toward gays that prompted a "politically diverse group of gays and lesbians" to gather at the bar Contramano on 17 April 1984 to form the CHA after the police arrested 200 gay males during a raid of the discotheque Balvanera two months before.³⁰ It would be years, however, before the CHA was afforded *personería jurídica* (legal recognition), a requirement for holding public activities and making petitions to the state. The Menem administration rejected the organization's first petition for legality in 1989, a decision upheld by the Supreme Court in 1991, on the grounds that the constitutional right of freedom of expression was circumscribed by the state's duty to uphold public morals for the common good.

The court's decision underscored the marginalization of gays in the new democracy, which extended to the political sphere. Until 1990, a law in Buenos Aires province actually barred gays from voting, though (for obvious reasons) this provision was unenforceable. Gays in Argentina were also shunned by the major parties of both the left and the right. During the 1980s, of the ten existing left-wing parties, only the Trotskyite organization Movimiento al Socialismo, whose platform called for the extension of human rights protections to sexual minorities, supported the CHA.³¹ Understandably, during the 1980s and 1990s, the Argentine gay movement looked with envy at its Brazilian counterpart. Lamenting the political picture for gays in Argentina when contrasted with the situation in Brazil, one scholar noted: "There is no equivalent in Argentina to Brazil's Workers'

²⁹Clyde H. Farnsworth, "Argentine Homosexual Gets Refugee Status in Canada," *The New York Times*, 14 January 1992.

³⁰Carlos Jáuregui, *La Homosexualidad en la Argentina* (Buenos Aires: Tarso, 1987), 202.

³¹Author's interview with Mabel Bellucci, Buenos Aires, 16 May 2012.

Party, which has forged a working relationship with a broad range of social movements, including the lesbian and gay one.”³²

HUMAN RIGHTS AND THE HUMANIZATION OF GAYS

As might be expected, ending anti-gay discrimination was the CHA’s first and most urgent objective. This entailed, in essence, a pursuit of “negative” rights. Central to this struggle, according to Cesar Cigliutti, a founding member of the CHA and its president since 1997, was promoting what became a core tenet of early CHA activism: “that gays are not different people deserving of special treatment but rather ordinary people entitled to the same rights accorded to everybody else.”³³ This point about the ordinariness of gay people was powerfully conveyed in April 1984, when two CHA members, Carlos Jáuregui and Raúl Soria, were willing to out themselves in a cover story of the magazine *Siete Días* with the title of “The Risks of Being Homosexual in Argentina.” The article succeeded on at least two fronts. It galvanized the gay community, prompting scores of gays and lesbians to declare their homosexuality; and it encouraged media focus on the issue of homosexuality, including a May 28 article in *Clarín* about gay rights, human rights, and democracy. It was one of the first sympathetic treatments of homosexuality in Argentina to appear in a mainstream publication.

The CHA’s discourses on homosexuality reflected pointed lessons drawn from the activism of the FLH, which, as seen previously, had privileged sexual liberalization over social integration. For CHA leaders, the FLH’s sexual liberation stance had undermined the integration of gays into society by offending the values of Argentine society. Accordingly, while the FLH had no problem with encouraging gays and lesbians to show signs of non-conformity in dressing and behavior, the CHA emphasized showing gays and lesbians without any overt signs of difference. Jáuregui, according to Marcelo Ferreyra, another founding member of the CHA, was the ideal face of the new gay movement: “He was blond, very masculine in appearance, and most importantly, professional, educated, and affable.”³⁴ Such an emphasis on the ordinariness of gays led the CHA to avoid any association with transsexuals and transvestites, and to reject the concept of a gay pride march to promote gay self-identification.

As part of making the case for the ordinariness of gay people, CHA leaders promoted ending discrimination against gays as a human rights

³²Brown, “*Con discriminación y represión no hay democracia*,” 124.

³³Author’s interview, Buenos Aires, 7 June 2012.

³⁴CHA archives, consulted 26 March 2010.

obligation, something rooted in the universality of human rights rather than in Argentine law, a point powerfully conveyed in the CHA's founding motto: "The Free Exercise of Sexuality Is a Human Right."³⁵ Human rights also shaped the CHA's organizational orientations. On 20 May 1984, CHA leaders drafted the group's constitution with the explicit political goal of "positioning themselves among human rights organizations."³⁶ A follow-up policy document published in *El Boletín de la CHA* on 8 September 1985 noted that "Our only commitment is the struggle for human rights in Argentina; bringing dignity to homosexuals is only one component of that struggle." In June 1986, a human rights division was created within the CHA devoted to advancing the notion that sexuality and human rights are intrinsically linked and that Argentina's human rights aspirations could not be fulfilled as long as homosexuals continued to be repressed.

Conjoining gay rights and human rights as a means to gain social acceptance for gays put Argentine gay activists at the cutting edge of international gay rights politics; it was around this time that gay rights groups in the United States and Western Europe began to argue that "the relationship rights of gays and lesbians are human rights."³⁷ But it was domestic opportunities rather than international influence that made CHA's human rights strategy so effective. In particular, the prosecution and eventual conviction of eight generals on human rights charges allowed gay activists to portray acts of discrimination and violence against gays as part of a larger narrative of human rights abuses by the old regime and to connect themselves to the influential human rights movement born with the democratic transition. That movement was headed by the world-famous Madres de la Plaza de Mayo, the organization of mothers and grandmothers seeking justice for the disappearance of their children and grandchildren while under the custody of the police.

The CHA's first paid advertisement to promote gay and lesbian rights, published in the daily *Clarín* on 28 May 1984, with the headline "With Discrimination and Repression There is No Democracy," invited readers to connect the suffering of gays under military rule with those of the rest of Argentine society. The advertisement argued that "There will never be a true democracy if society permits the existence of marginalized sectors and the methods of repression are still in place." It concluded by noting that more than 1.5 million Argentine gays were "preoccupied with the national

³⁵CHA archives, consulted 27 March 2012.

³⁶CHA archives, consulted 26 March 2012.

³⁷Kelly Kollman, "Same-Sex Unions: The Globalization of an Idea," *International Studies Quarterly* 51/2 (2007): 329–357, at 330.

situation” and that “they experienced with the rest of the nation the hard years of dictatorial rule.” In this way, the struggle for gay acceptance in Argentina was cast as part and parcel of the broader democratization of the political system.

By and large, the CHA’s human rights strategy proved successful, not only in advancing the idea of gays as ordinary people but also in extending recognition of gays as a legitimate part of the political community. The CHA’s projection as a human rights organization allowed the organization to access the bureaucratic apparatus created by the administration of President Raúl Alfonsín (1983–1989) to coordinate human rights efforts between the government and human rights organizations. As early as 1984, CHA officials began to hold periodic meetings with Eduardo Rabossi, Sub-Secretary for Human Rights at the Ministry of the Interior, to discuss the state of affairs of the gay community.³⁸ The most urgent issue discussed with Mr. Robossi was the safety of the gay community, in light of continuing police harassment and violence toward gays.

More important, perhaps, the human rights strategy succeed in incorporating gay organizations into the human rights community, an investment that paid dividends all the way to the fight for same-sex marriage. Acceptance as a human rights organization, however, was a struggle in its own right. According to journalist Mabel Bellucci, “while some human rights leaders embraced the CHA at a personal level, such as Laura Bonaparte of Las Madres, this was not the case of the human rights community as a whole, with some human rights activists seeing gay activists as “extra-terrestrial” and regarding their involvement with gay issues as “detrimental to their own cause.”³⁹ Cigliutti recalls that “At the inception of democracy not a single human rights organization supported the CHA as a legitimate human rights organization, but we persevered—we went to all the marches convened by the human rights organizations with our flag and banners, and we also joined the Mothers on their weekly demonstrations, and slowly we came to be accepted and our struggle was folded into their struggle.”⁴⁰

Persistence on the part of the CHA appears to have paid off. On 20 September 1984, a CHA delegation attended the public ceremony held in the historic Plaza de Mayo in which the National Commission on the Disappeared (CONADEP) delivered to President Alfonsín its report [popularly known around the world as *Nunca Más* (Never Again)]. This was a bittersweet moment for gay activists, since their lack of political clout and

³⁸CHA archives, consulted 26 March 2012.

³⁹Author’s interview, Buenos Aires, 7 June 2012.

⁴⁰Author’s electronic communication with Mr. Cigliutti, 3 July 2013.

hostility toward homosexuals among some human rights groups during the early years of democracy prevented the incorporation into the report of information about the prosecution of gays under military rule, prompting CHA president Jáuregui to complain that “The gays are the disappeared among the disappeared.”⁴¹ It has been reported, however, that a member of the commission estimated that at least 400 gays and lesbians “disappeared” under military rule, although it is not clear whether their fate was connected to their homosexuality or their left-wing political affiliation, a reason that the report failed to identify the victims as gay.⁴²

Finally, human rights arguments paved the way for the public’s acceptance of equality for gays under the law, a point made by several analysts around the time of the enactment of the same-sex marriage law. Analia del Franco, general director of the polling firm Analogías, observes that although there is no long-term data that illustrate the trajectory of the public’s acceptance of homosexuality and of same-sex marriage in particular, “a turning point in people’s perception of gays (which traditionally has veered toward a caricature), was when they began to view them as ordinary people, with jobs, feelings, etc.”⁴³ She adds that “once people began to relate to gays as ordinary people they concluded that they are just like me.” Sociologist Beatriz Gurevich notes that “After the dictatorship ended in 1983 people became aware of the importance of being respectful about human rights and being tolerant toward different ideas, ideologies, sexual orientation and ethnic and racial differences.”⁴⁴

BUILDING A GAY CIVIL RIGHTS MOVEMENT

A shift in gay activism came alongside the advent of the Menem administration in 1989. The old strategy of ending discrimination premised on human rights appeals was replaced by explicit demands for civil rights for gays and lesbians. This new strategy for “positive” rights was driven by two main factors. The first was the blow to the human rights movement that resulted from Menem’s controversial military pardon and a broader policy of amnesty toward past human rights abuses. Intended to shore up the political stability of the new democracy, these new policies, among other things, limited the political space for human rights organizations to air their grievances against the state.

⁴¹Author’s interview with Cesar Cigliutti, Buenos Aires, 7 June 2012.

⁴²Brown, “*Con discriminación y represión no hay democracia*,” 121.

⁴³Author’s interview, Buenos Aires, 29 June 2012.

⁴⁴Brian Byrnes, “Wary of Past Abuses, Argentine Capital Approves Gay Rights,” *The Christian Science Monitor*, 14 July 2003.

The second factor behind the new strategy was the advent of the HIV/AIDS epidemic, and the new administration's indifference toward it. Although the HIV virus was first detected in Argentina in 1982, the country did not develop publicly funded AIDS prevention campaigns for many years, due to negative stereotypes about gays and ignorance about the spread of the virus. Buenos Aires Archbishop Antonio Quarracino spoke for many Argentines when in 1994 he referred to homosexuals as "a dirty blemish in the face of the nation" and called for them to be segregated.⁴⁵

Thus it was left to the gay community to shoulder the responsibility of battling the HIV/AIDS crisis. By 1987, the CHA was devoting virtually all of its energy and resources to STOP-SIDA, Argentina's first AIDS prevention campaign, and to establish links with groups in the healthcare sector to provide treatment for those affected by the epidemic.⁴⁶ According to Cigliutti, the CHA "had no choice but to focus all of its energy on the AIDS crisis. For many gays, AIDS was a double crisis: they had the virus and they were being blamed for the epidemic."⁴⁷

The HIV/AIDS crisis also created some noticeable fissures within the CHA, with some members demanding a more politically defined agenda for battling the discrimination and marginalization faced by AIDS victims. These internal disagreements led to the emergence in 1991 of a splinter organization, Gays por los Derechos Civiles (Gays DC). Its goal was to "work for gays and lesbians' civil (not human) rights," thus signaling a more contentious and legalistic style of gay activism than was typical of the CHA.⁴⁸ Gays DC's motto, "Our struggle originates in the desire for all types of freedom," hinted that the goal of Gays DC was not just about advancing the integration of gays into society, but rather about transforming society by obtaining legal protections for gays and lesbians as well as sexual minorities largely ignored by the CHA, especially the transsexual and transvestite communities. In particular, Gays DC wanted a more aggressive campaign for civil rights, including the recognition of same-sex relationships, gay adoptions, and anti-discrimination laws to protect those battling AIDS. They also wanted a more "colorful and performance oriented" gay movement, including pride marches and demonstrations, which the CHA had been reluctant to embrace. In sum, the goal of Gays DC was an "American-style model of gay activism."⁴⁹

⁴⁵Pan American Health Organization, *Campaigns Against Homophobia in Argentina, Brazil, Colombia and Mexico* (Washington, DC, 2008), 13.

⁴⁶Author's interview with Cesar Cigliutti, Buenos Aires, 7 June 2012.

⁴⁷*Ibid.*

⁴⁸Brown, *Con discriminación y represión no hay democracia*, 129.

⁴⁹Author's interview with Mabel Cellutti, Buenos Aires, 16 May 2012.

Lacking much in the way of support at home, Argentine gay activists were forced to look abroad for financial assistance and political expertise. This operation eventually grew to involve a wide net of international gay rights organizations, as attested by the transnational collaboration between American and Argentine gay activists triggered by President Menem's first official visit to the United States in 1991.⁵⁰ The Argentine President faced protests everywhere he went in the United States, from Washington, DC to San Francisco, for his refusal to legalize gay organizations and for his administration's inaction on AIDS, from groups such as the International Lesbian, Gay, Bisexual, Trans and Intersex Association, the United States National Lesbian and Gay Task Force, the World Congress of Gay and Lesbian Jewish Organizations, and AIDS Coalition to Unleash Power (ACT UP).⁵¹ This transnational campaign yielded extraordinary results. On 17 May 1992, the Menem administration legalized the CHA, a first for an Argentine gay rights organization. In making note of this landmark event, the American magazine *The Advocate* noted that it was the "shaming" that Menem experienced while traveling in the United States that prompted the Argentine president to soften his attitudes toward homosexuality.⁵²

Despite its legalization, the CHA struggled to survive until at least the late 1990s, when it was reconstituted by some of its early founders, such as Cigliutti, after the folding of Gays DC. The new CHA was downsized to make it more nimble and effective by allowing only serious activists to have a say in the organization's activities. More important, the organization embraced a new mission as the nation's foremost proponent of civil rights for gays. This entailed a focus on eliminating all existing legally sanctioned forms of homosexual discrimination, as well lobbying the government, at all levels, to extend legal protections to gays and lesbians.

The constitutional reform process of 1994, which granted the city of Buenos Aires the right to elect its own legislature and its own chief executive, and to enact its own laws, as long as these laws did not contravene the national Constitution, immeasurably aided the CHA's new agenda. One of the first tasks undertaken by the new city government was an anti-discrimination charter. Much to the chagrin of gay activists, the first draft of the charter failed to recognize discrimination based on sexual orientation. In protest for this exclusion, gay activists stormed city hall armed with blown-up photos of CHA founding President Jáuregui, who had died of

⁵⁰This section draws from several interviews with CHA leaders.

⁵¹Author's interview with Cesar Cigliutti, Buenos Aires, 7 June 2012.

⁵²Robert Julian, "A Decisive Time for Argentine Gays," *The Advocate*, 17 December 1991.

AIDS only the week before. Later, the activists, accompanied by members of the press and television crews, tracked down the members of the commission responsible for writing the new charter and chided them for speaking the language of human rights while ignoring the repression prevalent within the gay community. When finally approved, on 30 August 1996, in honor of Jáuregui, Buenos Aires became the first territorial entity in Latin America to enact legislation explicitly banning discrimination on the basis of sexual orientation.

The next milestone for gay rights in Argentina arrived with the enacting of a civil unions ordinance in the city of Buenos Aires, which granted gay couples marriage-like benefits such as pension benefits, health insurance, and hospitalization visitation rights, provided that they could prove cohabitation for at least two years. The significance of this law, according to Pedro Sottile, the CHA's legal adviser, was "monumental—the law marked a before and after moment for the gay rights movement in Argentina by changing the environment in favor of rights for our community."⁵³ Approved by the Buenos Aires city council on 12 December 2002, in response to a proposal introduced by the CHA on 28 August 2001, this ordinance represented the first time that same-sex relationships were legally recognized in Latin America. CHA President Cigliutti and CHA Secretary Marcelo Sunthein, who were joined in partnership on 18 July 2002, inaugurated the law. Other Argentine cities and provinces were soon to copy Buenos Aires, including the province of Rio Negro, the city of Villa Carlos Paz, and the city of Rio Cuarto.

In pushing for Buenos Aires's civil union ordinance, gay activists fully exploited the crash of the economy in 2001, "one of the most harrowing economic crises in Argentina's history."⁵⁴ While the causes of the crash remain contested—the excesses of Menem's neo-liberal economic program, fixed exchange rates, especially the pegging of the Argentine peso to the American dollar, and lack of economic competitiveness relative to its South American neighbors, especially Brazil, to name but the most notable—the consequences of the crash are not in dispute. Within six months, the Argentine economy had contracted by about a third (setting the gross domestic product back by almost a decade), the banking system was in tatters, the unemployment rate had soared to 22 percent, and one-and-a-half million people had been driven onto the rolls of the so-called new poor. The toll on the political system was equally severe: between October 2000

⁵³ Author's interview, Buenos Aires, 14 June 2012.

⁵⁴ Javier Corrales, "The Politics of Argentina's Meltdown," *World Policy Journal* (Fall 2002): 29–42, at 29.

and August 2002, there were two presidential resignations and five different ministers of the economy.

The conventional view of how Buenos Aires's civil unions ordinance was facilitated by the economic crisis is that as Argentina plunged into economic chaos and despair, nobody cared about denying rights to the gay community. As noted bluntly by Bazán, "When people are eating out of garbage cans it really does not matter if you are gay or not."⁵⁵ But in reality, how the economic crisis ended up benefiting gay rights required deliberate and strategic involvement by gay activists in a political environment that clearly favored such an involvement, especially the wave of social protests that hit the country in 2002, and which provided an auspicious environment for gays to raise issues of fairness, since the protests "made the politicians pay attention to the people."⁵⁶ The first deliberate action was persuading the city legislators that they had the authority to legislate family law, which opponents of civil unions argued belonged to the national congress. CHA leaders successfully counter-argued by noting that the issues at stake pertained not to "family" but rather to "love, sexuality, and even the rules of relationship."⁵⁷

When CHA officials presented the proposal for civil unions to Buenos Aires's human rights commission—the first official step—they brought the media along, an action that proved prescient. As noted by Cigliutti, "The commission was timid about considering the project at all. But with all the media around, they could not ignore us." CHA leaders also exerted maximum pressure upon city legislators. "We did *escraches* and the legislators got so scared that they had one of the longest sessions in recent history—almost 18 hours, uninterrupted, from 1:00 PM to 6:00 AM the following day," recalls Suntheim. The choice of *escraches*, or the noisy accosting of public figures, is suggestive of how localized the struggle for gay rights had become because of its origins in Argentina's human rights movement, and specifically the campaign to target and expose those individuals responsible for the "disappeared" during the dirty war.

Once it was clear that city legislators were reluctant to approve the civil unions measure, which remained under review for a year and a half, CHA officials enlisted the support of Mayor Mauricio Macri, a businessman turned conservative politician. CHA officials also showed some flexibility

⁵⁵Alexei Barrionuevo, "Macho Argentina Warms to Gay Dollars and Euros," *The New York Times*, 3 December 2007.

⁵⁶This section draws from interviews with Cigliutti, Sottile, and Suntheim.

⁵⁷Renata Hiller, "The Civil Union Law in Buenos Aires: Notes on the Arguments by the Opposition," in Javier Corrales and Mario Pecheny, eds., *The Politics of Sexuality in Latin America: A Reader on Lesbian, Gay, Bisexual and Transgender Rights* (Pittsburgh, PA: University of Pittsburgh Press, 2010), 221.

by agreeing to include heterosexual couples in the legislation. This was generally seen as a gesture to give broader appeal to the legislation by giving cover to conservative legislators, that is, they were not voting for a “gay bill.” But for gay activists, including heterosexuals in the legislation was a matter of self-protection, since no one wanted the civil unions registry to become a listing of homosexuals.

A more surprising legacy of the economic crash of 2001 was the ushering in of a “gay market” that made gays more visible than ever before and that brought gay culture into the mainstream. To jump-start the economy, the government devalued the national currency by nearly 75 percent, which paved the way for the emergence of Buenos Aires as South America’s new gay Mecca, a title long held by Rio de Janeiro. With what was once the most expensive city in South America a bargain for tourists, the Argentine capital became a hot spot in the international gay-friendly tourist circuit by hosting such events as the international gay world cup and the international gay tango competition. In a short time, as observed by *The Economist*, the influx of “pink money” had become “a pillar of the city’s economy.”⁵⁸ According to 2007 estimates, 20 percent of all tourists in Buenos Aires were gay—300,000 a year—and they spent some \$600 million.⁵⁹ It is thought that these figures have doubled since gay marriage became legal in 2010.⁶⁰

Since the recovery of the Argentine economy in the late 2000s, the gay market has been strengthened, as businesses linked to the tourism sector—airlines, restaurants, hotels, and retail stores—are today eager to cultivate and even stress their gay-friendliness. Such policies rapidly spread throughout the Argentine economy, as did direct business appeals to the gay community, a development spurred by the creation of the Argentine LGBT Chamber of Commerce, which is modeled after the American LGBT Chamber of Commerce. In making the pitch for why businesses should target homosexuals in their advertising, gay leaders in Argentina have made the familiar argument that gays have more disposable income than straights. “The gay market has more money to spend. There are families without children and families with few children and this impacts how spending decisions are made,” according to Pablo de Luca, President of Argentina’s LGBT Chamber of Commerce.⁶¹

⁵⁸“Going Pinker on the Plata,” *The Economist*, 4 December 2008.

⁵⁹Barrionuevo, “Macho Argentina Warms to Gay Dollars and Euros.”

⁶⁰Global Travel Industry News, “Gay Tourism in Argentina Set to Boom,” 22 July 2011, accessed at <http://www.eturbonews.com/17420/destination-news-gay-tourism-argentina-set-boom>, 15 April 2012.

⁶¹Silvia Naishta, “Empresarios de EE.UU. que apuestan al mercado gay,” *Clarín*, 23 July 2010.

A direct consequence of the emergence of the gay market was enhancing the political clout of the gay community under the administration of Néstor Kirchner (who is credited with stabilizing the economy after the 2001 crash). In response to the wave of mobilizations triggered by the economic meltdown, the Kirchner administration introduced a “social justice” agenda, which included, among other things, revoking the military amnesty approved by the Menem administration in the early 1990s, and direct dialogue with civil society organizations. In pursuit of this policy, in 2004, Minister of the Interior Aníbal Domingo Fernández invited CHA officials to discuss civil rights for gays. The importance of this moment, according to Pedro Sottile, the CHA’s legal coordinator, is two-fold. “First, it was a symbol of the Kirchner administration reaching out to the gay community—and not the other way around since Fernández initiated contact—acknowledging that we mattered. Second, it put the CHA in contact with Fernández, who has proven to be one of our most important allies in the fight for human rights.”⁶²

After Fernández became Minister of Justice under the new administration of Fernández de Kirchner, who succeeded her husband Néstor as president in 2007, collaboration between the government and the CHA led to important gay rights legislation. In August 2008, the national social security agency began to allow same-sex couples that had lived together for at least five years to collect the pensions of their deceased partners, the first nation-wide order affecting same-sex couples. In February 2009, the national congress passed a new military code that overturned a decades-old ban on gays serving in the armed forces, abolished capital punishment, and brought the military into the federal justice system. Gay activists hailed the lifting of the ban preventing gays from serving openly in the military as a milestone in the country’s history. According to Sottile, this was “a great symbolic action because not that long ago the military was notorious for the prosecution and murder of sexual minorities and now they were accepting of these same people.”⁶³

THE BATTLE FOR MARRIAGE EQUALITY

Argentina’s battle for same-sex marriage was officially launched in 2005 with the formation the LGBT Federation of Argentina (FALGBT), created specifically for the purpose of legalizing same-sex marriage. Developments in Spain spurred the creation of the FALGBT. According to FALGBT head María Rachid, “The arrival of marriage equality in Spain was a momentous

⁶²Author’s interview, Buenos Aires, 14 June 2012.

⁶³Ibid.

occasion for us in Argentina. Before 2005, marriage equality existed only in a handful of places (Holland, in a few American states, and in South Africa, countries very different from Argentina); consequently, its approval in Spain, a country culturally similar to Argentina, both with a very strong Catholic Church, meant that it was also possible to do this in Argentina.”⁶⁴

Rachid’s organization consciously fashioned itself after Spain’s leading gay rights organization, the Federación Estatal de Lesbianas, Gays, Transsexuales y Biexuales (FELGBT). Like the FELGBT, the FALGBT functions as an umbrella organization. It currently represents some 66 separate groups, each enjoying a significant degree of autonomy, which stands in contrast to the centralized nature of the CHA. Since its inception, the FALGBT has also distinguished itself from the CHA by becoming more aligned with lesbian and feminist issues.

But the struggle for marriage equality in Argentina would take a very different form than in Spain, which in 2004 saw the rise of a Socialist administration headed by Prime Minister José Luis Rodríguez Zapatero. He came into office determined to modernize Spain once and for all with the implementation of a so-called second transition, a set of social policies that included the legalization of same-sex marriage.⁶⁵ In Argentina, there was no such support from the ruling party; hence, the struggle for marriage equality rested primarily on the shoulders of gay organizations. Consequently, this struggle lasted longer than in Spain and eventually required a broader outreach to civil society, the political parties, the media, and the courts.

The upstart FALGBT and its pro-marriage agenda posed a direct challenge to the CHA and its agenda for national civil unions. In 2005, CHA officials had convinced a number of left-wing legislators to introduce a bill in the national congress to legalize same-sex civil unions fashioned after Buenos Aires’s civil unions ordinance. The bill went nowhere, owing to lack of support from enough legislators, but it left behind an important legacy. To back the bill, the CHA rolled out a media campaign that featured Martín Farach and Andrew Colton, a gay couple and their five-year-old twins, Lucas and Julia, who identified themselves as a “a regular, boring family, like any other.”⁶⁶ The couple became a media sensation, and were featured prominently in newspapers, including the conservative daily *La Nación*,

⁶⁴ Author’s interview, Buenos Aires, 20 July 2012.

⁶⁵ See Bonnie N. Field, ed., *Spain’s Second Transition: The Socialist Government of José Luis Rodríguez Zapatero* (New York: Routledge, 2011).

⁶⁶ Marcela Valente, “The Final Battle for Gay Rights,” 26 August 2005, accessed at <http://ipsnews.net/news.asp?idnews=30038>, 20 March 2012.

alongside testimony from family experts “who stressed that what is important is the fulfillment of maternal and paternal functions, and not the gender of the person fulfilling them, thus tacitly endorsing adoption by same-sex couples.”⁶⁷

In 2007, the FALGBT persuaded Deputy Eduardo Di Pollima of the Socialist Party and Senator Vilma Ibarra of the Popular and Social Encounter Party (affiliated with the governing party) to introduce bills in their respective chambers to legalize same-sex marriage. The bills were doomed to failure—20 deputies endorsed them and only one senator offered his support—if only because 2007 was a presidential campaign year. But these bills planted the political foundation for two competing bills that were introduced in 2009 to recognize same-sex relationships, each one instigated by different wings of the gay rights movement. On behalf of the CHA, Deputy Silvia Augsburguer of the Socialist Party introduced a bill (Project Law 1737-D-09) to create a national registry of civil unions with many “marriage-like” benefits. Senator Ibarra introduced the second bill, a same-sex marriage bill (Project Law 0574-D-10), at the behest of the FALGBT. This bill was the same bill the Senator had introduced in 2007.

The lack of consensus within the gay movement on what form state recognition of same-sex relationships should take reflected the growth and diversity of the gay movement. More established groups, like the CHA, were ready to back a nationwide civil union law, believing that enough conservative lawmakers would support it, and mindful that the 2007 bill to legalize same-sex marriage had gone nowhere. Moreover, as Sottile argues, many within the CHA “were not happy with the institution of marriage. We wanted less government and interference in people’s personal lives, thus for us civil unions were more inclusive, more free, and with less entanglements and regulations.”⁶⁸ For the newer and more-militant FALGBT, it was marriage equality or nothing. As noted by Rachid, “We saw no reason for perpetuating inequality and injustice.”⁶⁹ She was also more than a bit critical of the CHA’s position on same-sex marriage. While acknowledging the CHA’s “historic role in advancing gay civil rights in Argentina,” Rachid criticized the group for being “a conservative homosexual male organization.”

Success for either bill was far from assured. For one thing, criticism from the Catholic establishment came down fast, and it was scathing. Buenos Aires Cardinal Bergoglio (today Pope Francis) warned that same-sex

⁶⁷Ibid.

⁶⁸Author’s interview, Buenos Aires, 14 June 2012.

⁶⁹Author’s interview, Buenos Aires, 20 July 2012.

marriage would “destroy the natural family,” adding that the bill “was no mere legislative bill. It’s an attack on God’s plan; it is a move by the father of lies to confuse and deceive the children of God.”⁷⁰ The most-important anti-gay marriage demonstration, organized by the Catholic Church, and attended by some 60,000 people, took place on 13 July 2010. The orange-themed protest featured children dressed in orange chanting “kids have a right to a mom and a dad.”

A bigger obstacle facing the gay marriage bill was uncertainty about the government’s support. It was only after the Committee on Family, Women, Children, and Adolescence of the Chamber of Deputies approved the bill supported by the FALGBT on 15 April 2010 that President Fernández de Kirchner expressed her support for marriage equality. But once she came on board, she staked her personal reputation on passing the bill. She instructed Peronist leaders not to fall for attempts by conservative politicians to put the issue of same-sex marriage to a national referendum or to compromise on the issue by agreeing to the creation of same-sex civil unions. She contended that leaving the fate of the rights of a minority in the hands of the majority was unbecoming for a democratic society, and that civil unions would stigmatize gays as second-class citizens. Most notably, however, Fernández de Kirchner used the bully pulpit to criticize those opposing the bill. Aiming squarely at Cardinal Bergoglio, the President proclaimed, “It is very worrisome to hear of such expressions as an attack on God’s plan and a devil’s project, things reminiscent of medieval times and of the Inquisition.”⁷¹

Fernández de Kirchner’s emergence as a gay rights crusader remains the subject of intense debate. She has defended her support of same-sex marriage as part of her commitment to human rights and equality for all. For her political foes, however, it was all about political opportunity rather than political conviction. “Kirchner doesn’t care about the gay community,” said opposition leader Elisa Carrió of the Coalición Cívica Party.⁷² Carrió’s comments are echoed in the analysis of the domestic and foreign media. Fernando Laborda of *La Nación*, wrote that “the Kirchners’ militant attitude in favor of homosexual marriage” is a naked political ploy, since “in their many years in power they had never concerned themselves with this issue and did not even raise it during the 2009 electoral campaign.”⁷³ According to *The Economist*, the politics of gay marriage changed

⁷⁰Uki Goñi, “Despite Church Opposition, Argentina Legalizes Gay Marriage,” 15 July 2010, accessed at <http://content.time.com/time/world/article/0,8599,2004036,00.html>, 30 August 2013.

⁷¹Mariano Obarrio, “La Presidenta lleva a China a opositoras del matrimonio gay,” *La Nación*, 10 July 2010.

⁷²Uki Goñi, “Defying Church, Argentina Legalizes Gay Marriage.”

⁷³Fernando Laborda, “Matrimonio homosexual: Las razones de los Kirchners,” *La Nación*, 13 July 2010.

dramatically once the President's governing coalition lost its congressional majority in 2009, and she began to look to the 2011 reelection campaign:⁷⁴

The Kirchners were looking for a controversial bill they could force through the legislature to prove the government could still get its way, and they settled on gay marriage as the best candidate. The topic would unite their leftist base, and enable them to demonize opponents of the measure—particularly the Catholic Church, with which they have long tense dealings—as retrograde bigots. Although several opposition senators pushed for a civil union law instead, which would not include adoption, the Kirchners made it characteristically clear the battle would be all or nothing.

Gay activists offer a less-cynical take on Fernández de Kirchner's support for same-sex marriage. They note the President's desire to improve her standing during the 2011 elections by appealing to urban and more-educated voters after the damage she had sustained among these voters. As noted by Sottile, support for same-sex marriage allowed Fernández de Kirchner to recast herself as a social progressive in the eyes of civil society after the attacks she endured for the "war" her administration waged against Grupo Clarín, the media conglomerate that owns newspapers and television stations, including the daily *Clarín*, a frequent critic of the administration.⁷⁵ Suntheim adds that "People distrusted the Kirchner government at that time, and saw many of their rights to a free and equally representative media as infringed upon. In a (successful) attempt to save face, the administration fell back on the ever-popular progression of social rights."⁷⁶

It is also likely that legal developments spurred Fernández de Kirchner to support marriage equality, inasmuch as she was undoubtedly aware that the courts were moving in that direction and probably wanted to get ahead of them. Since 2005, the FALGBT's legal team had filed several suits urging the courts to declare the ban on homosexual marriage unconstitutional. A key argument of the FALGBT's litigation strategy was that the ban ran contrary to the spirit of the constitutional amendment of 1994 that forced Argentina to comply with international human rights agreements. By 2010, legal efforts were bearing fruit. On 12 November 2009, judge Gabriela Seijas ordered the city of Buenos Aires to recognize the marriage of Alejandro Freyre and José María Di Bello, who had sued the city for failing to

⁷⁴"Gay Marriage in Argentina: A Queer Calculation," 15 July 2008, accessed at http://www.economist.com/blogs/newsbook/2010/07/gay_marriage_argentina, 30 August 2013.

⁷⁵Author's interview with Pedro Paradiso Sottile, Buenos Aires, 14 June 2012.

⁷⁶Author's interview, 24 July 2012.

recognize their union as a marriage. Much to the surprise of gay activists, Mayor Macri, who at the time was seen as a presidential contender, chose not to appeal the ruling, thereby allowing for the advent of gay marriage in Buenos Aires before it became legal for the rest of the nation. On his Facebook page, the mayor lauded the decision as “a very important step,” adding that “we have to live together and accept reality. The world is heading in that direction.” On 2 July 2010, just weeks before the final vote in the Senate on the same-sex marriage bill, several media outlets reported that the Supreme Court was ready to declare unconstitutional Articles 172 and 188 of the civil code that prevented same-sex couples from marrying.

All that said, in considering Fernández de Kirchner’s support for the same-sex marriage bill, the most compelling factor was the massive support that the bill enjoyed among Argentines. On the eve of the Senate vote, public opinion polls put approval of same-sex marriage at 70 percent.⁷⁷ The public’s support for marriage equality was fully reflected in civil society. Virtually the entirety of Argentina’s large network of human rights organizations, including Las Madres, supported the same-sex marriage bill, a reflection of how intimately interwoven gay activists were with the human rights community, and how far the human rights community had come in embracing gay rights. A joint letter to congressional legislators signed by 73 separate human rights organizations argued that “The new law needed to be adopted in order to end the restrictions of rights derived from marriage, like inheritance, the treatment of conjugal assets, custody of children, adoption and widow’s pensions and other benefits.”⁷⁸ For that reason, the human rights groups rejected the civil union proposal put forth by the opposition as an alternative to same-sex marriage. “Denying marriage on the grounds of sexual preference is a form of discrimination prohibited by the national constitution, and creating a separate institution is a flagrant violation of human rights.”

Argentina’s best-known celebrities recorded television advertisements that stressed how ordinary events that heterosexual citizens take for granted, like marriage, were being denied to the homosexual population. The Supreme Council of the University of Buenos Aires, the nation’s leading higher education institution, urged the extension of the right to marry to gays as a civil rights matter. Rabbi Daniel Goldman testified to the Argentine congress that in the Jewish faith “the concept of family is ever-evolving,

⁷⁷“Congress Begins to Debate Gay Marriage,” 10 July 2010, accessed at <http://m24digital.com/en/2009/10/28/congress-begins-to-debate-gay-marriage/>, 24 March 2012.

⁷⁸Marcela Valente, “Being Gay No Longer a Bar to Marriage,” 15 July 2010, accessed at www.globalissues.org/news/2010/07/15/6316, 13 September 2013.

so family models, across time, can be modified.”⁷⁹ This testimony served to blunt the negative views of Evangelical pastors Rubén Salomone and Rubén Proietti. They observed, respectively, that “when you go against God’s law the nation begins to disintegrate,” and that “the marriage of a man and a woman is the only formula for the perfect psychological development of children.” While the Catholic Church opposed the law, there were notable dissenters, such as the priest José Nicolás Alessio of Córdoba, who received nationwide attention when he called for the passage of the law, remarking that “homosexuality is a blessing, a gift from nature.”⁸⁰

Television delivered the most talked-about support for marriage equality. In the days leading to the congressional vote, the soap opera *Botineras*, a sports comedy, broadcast on *Telefe*, Argentina’s most-popular television network, featured a storyline that incorporated a strong message about marriage equality. It centered on Flaco, a soccer player who decides to reveal his homosexuality before the media outs him. When confronted by a journalist who wants to know Flaco’s views on same-sex marriage, he replies: “It is natural to be respectful, and what alters the natural order is, it seems to me, to deny the rights to those who are the same.” Flaco’s teammate, who is straight, comes to his defense by noting: “We are part of a community. It seems to me you cannot stand on the other side and speak. We are all equal.” The storyline also featured a kiss between Flaco and his boyfriend that rocketed *Botineras* to the top of the TV ratings.

Following a vote from the chamber of deputies of 125 in favor and 109 against held on 5 May 2010, the same-sex marriage bill moved to the Senate, where it faced an uncertain future, as most senators did not reveal their intentions until the last minute. Yet the momentum was certainly in the direction of approval. On 14 July, the eve of the Senate vote, the heads of four major voting blocks in the Senate—Frente para la Victoria (which incorporates the ruling Peronist Party), the Unión Cívica Radical, the Socialist group, and Coalición Cívica—gave their blessing to the bill and released their legislators to vote their conscience.⁸¹ In an effort to avoid making gay marriage a wedge issue, Senate leaders organized a press conference in which they stressed the importance of the vote for fulfilling Argentina’s aspiration for a more fair, humane, and equitable society, and noted that the vote arrived on the anniversary of the French Revolution,

⁷⁹Gustavo Ibarra, “Más voces contra el matrimonio gay en el senado,” *La Nación*, 30 June 2010.

⁸⁰“Un Cura apoyó el matrimonio gay y ya no prodrá dar misa,” 13 Julio 2010, accessed at <http://www.rosario3.com/noticias/pais/noticias.aspx?idNot=74222>, 30 August 2013.

⁸¹Rocio Llama, “Todos Unidos Votaremos,” 20 May 2010, accessed at <http://www.pagina12.com.ar/diario/sociedad/3-145981-2010-05-20.html>, 31 March 2012.

which “planted the seeds for individuals’ freedoms and those of society.” Gay activists invited to the ceremony urged the senators to “vote with courage, liberty, and information.”

On 15 July, thousands of people gathered in near-freezing temperatures in front of the congress to cheer the law or to pray for its defeat. After deliberating for nearly 15 hours, the Senate approved the bill by a vote of 33 in favor and 27 against. Three senators abstained from voting and nine skipped the vote. Gay activists greeted the vote as a vindication of their human rights struggles. “We can be proud to be the first Latin American country to make this progress in human rights,” said FALBGT head Rachid.⁸² Gay activists also credited the victory to Fernández de Kirchner, who was canonized as a gay rights heroine at the 2 November 2010 Buenos Aires gay pride parade. Playing loudly on the main stage was the speech the President gave during the signing ceremony of the same-sex marriage law on 21 July 2010. During that speech, delivered in the Gallery of Latin American Patriots of the Presidential Palace (the Casa Rosada), which features such notable Argentine historical figures as the revolutionary leader Che Guevara and former First Lady Evita Perón, Fernández de Kirchner predicted that the divisive debate over marriage “will be anachronistic in a few years.”⁸³

In her speech, Fernández de Kirchner also linked the struggle for gay rights in Argentina to those of other groups discriminated against in the past. In one of the more-poignant moments of the ceremony, the President pointed to the portrait of Evita, who, as head of the feminist wing of the Peronist Party, successfully fought to get women the right to vote in 1947, and to whom Fernández de Kirchner is often compared at home and abroad, and noted: “I wonder how she felt when she witnessed the conquest of women’s rights.” This reference to Evita earned the President the first round of applause from the crowd, including “militants who were still incapable of processing the shock of being part of a ceremony at the presidential palace.”

COMPARATIVE PERSPECTIVES

This analysis has sought to demonstrate how the domestic context mediated the making of same-sex marriage in Argentina, a perspective that is often

⁸²Marie Trigona, “Argentina Passes Marriage Law,” 15 July 2010, accessed at <http://mujereslibres.blogspot.com/2010/10/07/argentina-passes-gay-marriage-law.html>, 24 June 2013.

⁸³This section draws from Gisele Sousa Dias, “Cristina promulgó la ley de matrimonio homosexual en un clima de festejos,” *Clarín*, 22 July 2010; Viviana Mariño, “En un clima de fiestas, la presidenta promulgó el matrimonio igualitario,” 22 July 2010, accessed at <http://tiempo.infonews.com/notas/clima-de-fiesta-presidenta-promulgo-matrimonio-igualitario>, 24 June 2013.

overlooked when examining the evolution of gay rights in the developing world. Without ignoring the impact of external influences, this analysis has sought to show how Argentina's gay-rights movement succeeded in its struggles by filtering international gay-rights trends and by molding their strategies to the local context. These strategies ranged from using a rising consciousness about human rights triggered by the political trials of the transition to help advance societal acceptance of homosexuality, to employing the ravages of the HIV/AIDS crisis and the economic implosion of 2001 to build a viable gay civil rights movement, to engaging multiple political platforms, such as the state, civil society, the media, the party system, and the courts to support marriage equality.

The importance of domestic modeling in the struggle for gay rights is further underscored by the contrasting experience of neighboring Brazil, the country that students of Latin American politics had predicted as the most likely candidate for the title of regional gay rights champion, if only because of Brazil's reputation as a haven of sexual permissiveness. This reputation is bolstered by the virtual absence of anti-gay discrimination in Brazilian law. Since its independence from Portugal, Brazil has never criminalized homosexual behavior. Numerous aspects of Brazilian life also suggest broad acceptance of homosexuality, such as the popular *telenovelas* (television soap operas), which regularly feature flamboyant gay characters; the annual debauchery of carnival in Rio de Janeiro, in which cross-dressing is common, and São Paulo's gay pride parade (the world's largest); and the high number of Brazilian public personalities who flaunt their homosexuality. By the mid-1990s, the ubiquity of homosexuality in Brazilian culture had prompted Jackson A., a gay columnist for the influential newspaper *Folha de São Paulo*, to famously declare, "O gueto acabou, querida" (the ghetto is over, darling).⁸⁴

The evolution of gay rights in Brazil, however, has been quite lethargic, at least when compared to the situation in Argentina. In May 2011, Brazil's Federal Supreme Court legalized same-sex civil unions after the national congress had failed for almost two decades to enact any major gay rights legislation, leaving Brazil embarrassingly behind Argentina, Uruguay, Colombia, and Mexico in expanding gay rights. In 2013, the country legalized same-sex marriage, again by judicial fiat, this time by action from the National Council of Justice, a body that supervises the judicial branch, to bring an end to the patchwork of same-sex marriage laws across

⁸⁴Charles Klein, "The ghetto is over, darling: emerging gay communities and gender and sexual politics in contemporary Brazil," *Culture, Health and Sexuality* 1/3 (1999): 239–260, at 241.

the various Brazilian states. But this may not be the end of the road for same-sex marriage in Brazil, as conservative groups in the congress are appealing the decision on the grounds that the Council does not have the power to legislate marriage policy.

Behind this “lackluster” performance is a powerful Evangelical lobby within the Brazilian congress that is fiercely opposed to gay rights and a very fragmented and undisciplined party system, which makes passing any legislation in Brasilia cumbersome. Survey data also suggest that Brazilians are less accepting of homosexuality than stereotypes might suggest. According to the Latin American Public Opinion Project, as of 2010 only 39.8 percent of Brazilians believed that same-sex marriage should be legal, compared to 57.7 of Argentines.⁸⁵

But it is also apparent that the strategies pursued by gay activists have mattered a great deal, if not more. In Argentina, as seen already, the campaign for gay rights was framed as a human rights issue, in keeping with the view of gay rights as rooted in universal truths rather than in Argentine law, and it engaged multiple political arenas, including the government, the party system, the courts, and civil society, aimed at changing hearts and minds as well as the law. In Brazil, by contrast, the campaign for gay rights has been defined as a civil rights struggle, and it has depended primarily upon working with the Workers’ Party (PT), the first major party in Latin America to offer explicit support for gay rights, to enact legislation to incorporate gay rights into Brazilian law.

On the whole, the approach in Brazil has proved to be a mixed blessing for the gay-rights movement. While the PT provided gay organizations with resources, visibility, and access to the legislative arena that other gay movements in Latin America could only dream of, especially during the Party’s earliest and most radical phase (1978–1988), incorporation of the gay-rights movement into the PT put the focus on the struggle for gay rights almost exclusively on the legislature and state agencies, thereby ignoring the bigger battle of building support within civil society and the culture at large. During the 1980s and 1990s, gay-rights activists attempted and failed to include a ban on discrimination based on sexual orientation in the country’s 1988 constitution. That laudable effort was spectacularly defeated with only 23.2 percent of members of congress voting in support of the measure. Other proposed legislation included bills seeking to legalize same-sex civil unions, to include sex-reassignment operations for transsexuals under the

⁸⁵Latin American Public Opinion Project, “Support for Same-Sex Marriage in Latin America,” Americas-Barometer Insight 2010 (No. 44), accessed at <http://www.vanderbilt.edu/lapop/insights/I0844.enrevised.pdf>, 10 October 2013.

national healthcare system, and to establish a National Gay Pride Day. All of these proposals were defeated; many of them were not even put to a vote, in no small measure because of internal squabbles within the PT about how hard to push for gay rights.

As the PT grew into a mainstream center-left party, gay leaders routinely saw their goals compromised, suppressed, and at times dismissed to appease other “progressive” elements of the Party, such as the Catholic left, and to make the Party more palatable to the general electorate.⁸⁶ Ironically, the undermining of gay rights happened most clearly after 2002, with the rise to power of PT founder Luiz Inácio “Lula” da Silva, the first Latin American head of state to publicly embrace the gay community. Lula, already a lame-duck incumbent, did not fully engage with gay issues until 2008 by convening the first National Conference of Gays, Bisexuals, Transvestites, and Transsexuals. The conference highlighted the federal government’s national plan for promotion of the citizenship and human rights of the LGBT community. In his speech to the conference, Lula labeled homophobia “a perverse disease” and pledged to do “all that is possible so that the criminalization of homophobia be approved.”⁸⁷ But the fact that the conference stopped short of calling for same-sex marriage, already legal in several European countries and American states, gave what Lula labeled the most progressive package of pro-gay legislation promoted by any government a decidedly anachronistic flavor.

Beyond suggesting the importance of domestic modeling, the case of Argentina raises two other points that, although seeming self-apparent, bear highlighting. The first point is the need to “de-center” gay politics when looking at the experiences outside of the developed West. The point is not to show how the local is trumping the global but rather to get a broader understanding of the historical factors at work in the emergence of gay rights movements, together with a deeper perspective on how different social and political environments are shaping divergent outcomes with respect to the embrace of gay rights in the developing South. It is telling that for all of the presumed influence of the West in shaping gay rights across the globe, in many parts of Africa, the Middle East, and the post-Communist world, a gay rights backlash is underway, as seen most suggestively by Russia’s new anti-gay law, a law so broad that, in principle, it outlaws pride parades, public

⁸⁶See Juan P. Pereira Marsiaj, “Political Parties, Culture and Democratization: The Gay, Lesbian, and Transvesti Movement in the Struggle for Inclusion in Brazil” (paper presented at the 2005 annual meeting of the American Political Science Association, Washington, DC, September 1–4).

⁸⁷Pink News, “Brazil’s President Backs Same-Sex Unions,” 19 September 2008, accessed at <http://www.pinknews.co.uk/news/articles/2005-9048.html>, 30 August 2013.

displays of affection by same-sex couples, and symbols of the LGBT community such as the rainbow flag.

A second point is to make note of the role of gays in charting their own rights revolution. So much of the literature on “social rights” denies activists any agency of their own, preferring instead to focus on processes like modernization, the inroads of capitalism, and the rise of so-called post-material values.⁸⁸ More recently, conservative intellectuals, in their battle to stem gay rights, have come to regard same-sex marriage not as something that gays actually want but as a scheme by liberals to bash traditional society. Princeton’s Robert P. George argues that the push for same-sex marriage is driven by liberal elites who have made it “a non-negotiable price of admission into the liberal or progressive club ... anyone who declines to embrace it is labeled [as] those hicks and rubes who refuse to get on the right side of history.”⁸⁹ But in Argentina, as in other parts of the world, it is hard to make the case that without the active and sustained engagement of gays, little of what has been achieved would have been possible.*

⁸⁸See, especially, Ronald Inglehart, *The Silent Revolution: Changing Values and Political Styles among Western Publics* (Princeton, NJ: Princeton University Press, 1977).

⁸⁹Robert P. George, “Sex and the Empire State,” 28 June 2011, accessed at <http://www.nationalreview.com/articles/270662/sex-and-empire-state-interview>, 30 August 2013.

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