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Argentina: Congress Passes Marriage-Equality Law

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In the pre-dawn hours of July 15, after a 15-hour uninterrupted session, three months of debate in various legislative committees, and a three-year campaign by the homosexual community, the Argentine Senate approved a law giving same-sex couples the right to marry under the same conditions as heterosexual couples. Argentina became the tenth country to recognize marriage equality.

In closing the legislative debate, Partido Socialista (PS) Sen. Rubén Giustiniani summed up the sentiments of the majority of Argentines: "This is a historic day, which will be recorded as a positive milestone by a Congress that decided to move past discrimination and give rights to those who don't have them."

Hours later, in the first radio programs of the day, Bishop Héctor Aguer reiterated the position that the Catholic Church had maintained since Cardinal Jorge Bergoglio, archbishop of Buenos Aires, called the faithful to wage "God's war" to block approval of the law. "It was a victory for the devil. There is a group within the political sectors that denies the natural order and tries to change the essence of marriage and the family," said Aguer each time he was questioned by radio hosts. Giustiniani and the Catholic Church represented, that day, the two poles that cut through Argentine society, beyond ideologies, political parties, social strata, ethnic groups, and creeds.

Same-sex couples gain all rights derived from marriage

From now on, not only may same-sex couples marry, they have the rights of adoption, inheritance, succession, pension, retirement, and social work (a program financed by the state, employers, and workers that provides them and their families with health care).

The equal-marriage law implies a series of changes in the Civil Code. It modifies the traditional formula of heterosexual marriage. No longer will it refer to "husband and wife"; from now on it will be "persons united in marriage."

The crux of the change is a phrase added to Article 172 of the code: "Matrimony will have the same requirements and effects regardless of whether the persons marrying are of the same sex or of different sexes." The other modifications are a direct consequence of Article 172 and basically consist of a change in terminology. Rather than "husband and wife," it will say "persons marrying"; "father and mother" will be replaced by the word "parents." The law also defines bases for new forms of maternity, such as that of lesbian couples with children produced by in vitro fertilization.

The equal-marriage bill was introduced in Congress by sectors of the progressive opposition to President Cristina Fernández de Kirchner's administration. It was approved in April by the lower house with the support of lawmakers from all parties, whose votes were split, as later occurred in the Senate.

Strong Catholic Church opposition fails to block law

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However, when the bill moved to the Senate for consideration, beginning with the pounding from the Catholic Church, the opposition campaign centered on attacking the government. In the days leading up to the vote, the bishops carried out, basically outside the capital, an aggressive campaign that even included physical threats against senators who voted for the bill.

In the central province of Córdoba, the second-largest in the country, the archbishop stripped Fr. Nicolás Alessio of his clerical faculties and began a canonical trial against him. Since early June he has not been allowed to say mass because he publicly supported the bill. In recent weeks, the country experienced a situation similar to that in 1985, when the vote on the bill to legalize divorce polarized society and left the Church alone.

The political ultraright, allied with the Catholic Church, quickly adopted the language used by Cardinal Bergoglio in a June 22 letter to the Carmelite nuns: "We fervently pray that they [the senators] defend the Argentine family at this time. Let us recall what God told the people in a moment of great anguish, 'This war is not yours, but God's.' Let them help, defend, and accompany us in this war of God's." The Cardinal's letter, which became a battle cry for the most reactionary sectors of society, continued, "Let us not be naïve: it is not simply a political struggle, it is a destructive attempt to destroy God's plan. It is not a mere legislative proposal—this is only an instrument—but rather a game by the father of lies who wishes to confuse and deceive the children of God....It is through the devil's envy that sin entered the world."

The cardinal ends his letter to the Carmelites by saying, "Jesus tells us that to defend us from this lying accuser he will send us the Spirit of Truth. Today, given this situation, the country needs special help from the Holy Spirit to bring the light of the Word to the darkness of error; it needs this advocate to defend us from the spell of so many specious arguments used to justify this bill."

In putting itself in the position of advancing "God's war," the Catholic Church became the big loser in this decision in which Argentina, as Giustiniani said, gave rights to those who did not have them."

Thus, without having been an enthusiastic promoter of equal marriage, the Fernández administration was able to capitalize politically from the vote.

"In Argentina we are living in a historic moment for humanity, because a space for the maximum guarantee of the rights of same-sex couples has been opened, and anyone in the world will be able to enjoy [that right] by just traveling to the country," constitutional lawyer Andrés Gil Domínguez told the daily Página 12. The state Universidad de Buenos Aires (UBA) professor stressed this aspect, noting that "persons with citizenship or residence abroad have no obstacle, constitutionally, from coming to Argentina to marry. The constitutional rights are for everyone in the country, even those in transit. Whether this marriage is valid in the couple's country of origin is another question, but Argentina became one of 10 nations that maintains this right for the 198 countries of the world."

The first country to institute marriage equality was Holland in 2001, followed by Belgium (2003), Spain and Canada (2005), South Africa (2006), Norway and Sweden (2009), and Portugal and Iceland (2010).

Will Mexico be next?

The new Argentine law immediately raised expectations in other countries in the region, where the homosexual communities redoubled their efforts to obtain the same benefit. Uruguayan Claudia Castro said that she doubts that conditions in her country—where civil unions between persons of the same sex are recognized—are ripe for legislators to approve a law similar to that of Argentina.
Deputies and senators of the governing progressive Frente Amplio (FA) have presented a bill that does not yet have "parliamentary treatment," that is, it has not undergone all the required study and analysis for a bill to be submitted for debate and a vote in Congress. Colombia, where civil union also exists, is reportedly in the same situation as Uruguay.

Argentine lawyer Florencia Kravetz said, "It would be logical for Mexico to be the next Latin American country to pass a marriage-equality law." The logic to which Kravetz refers is that Mexico City has a similar law and, since it went into effect in March, 271 same-sex marriages have been registered (an average of 60 per month in a population of almost 9 million). In Chile and Paraguay, the possibilities are much more remote.

A day after the law passed, on July 16, the daily La Nación summed up in a brief headline the sense of defeat felt by the political right and the Catholic hierarchy. "A strategic error," wrote Mariano de Vedia, a Catholic columnist intimately tied to ultraconservative sectors of Catholicism. "The church recognizes that [using] the cardinal's letter to the Carmelite nuns was a strategic error [because] with the vote in sight its distribution played against the Church and awakened government critics, whose spokespersons identified the cardinal with obscurantist positions characteristic of the Inquisition."

The analysis tries to downplay Bergoglio's responsibilities, making an almost scornful reference to the recipients of the letter. ("Remember that the letter is nothing more than a note written to contemplative nuns, whose life is spent in prayer.") Nevertheless, de Vedia's column seemed to portend difficult days for the Catholic Church and especially for the cardinal. The columnist says the next chapter will be in November when all bishops in the country will come together for their annual meeting and pastoral exchange.

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