Absolute divorce in Argentina, 1954–1956.

Debates and practices regarding a short-lived law

1. Introduction

After the Council of Trent (1545–1563), when marriage became a sacrament and an indissoluble bond under the exclusive jurisdiction of the Catholic Church, the institution underwent a lengthy transformation which culminated in the Napoleonic Code of 1804. From that point on, the juridical structure that supported civil marriage began, very slowly, to fall apart (Giordano, 2012). In Latin America, as part of the centralization of the state, laws began to be codified towards the middle of the 19th century under the influence of Napoleonic legislation.

Although the region's earliest civil laws varied from country to country, they eventually adopted civil marriage as the norm. But certain features of the institution reflected religious marriage as understood by the Roman Catholic Church, one of the strongest forces at play in the construction of Latin American states: indissolubility continued to characterize the marriage bond, becoming the object of petitions on the part of both jurists and social and political players, who claimed that it obstructed the rights of men and women alike (Lavrin, 1995). In particular, the reform, feminist, and women's movements that arose from the modernization of Latin American society and states saw indissolubility as detrimental to the equal rights they considered central to modernity.

Current debate has shed light on two complementary aspects of this legal phenomenon. Two studies by Dora Barrancos (2000 and 2007) focus on how the influence of the Napoleonic Code in Latin America effectively led to the obstruction of certain rights. These studies set out to show the problems the indissolubility of the marriage bond brought to the organization of the families or de facto unions that were formed as a direct consequence of this indissolubility, notably the reduced status of the

women and children involved. Another group of studies posit that the situation was not simply an obstruction of women's rights, as one of the novel features of the Napoleonic Code was the appearance of what Elisabeth Guibert-Sledziewski (1993) calls "civil woman" (Giordano, 2012; Rodríguez Sáenz, 2006). These studies specify that the civil and contractual nature of marriage and divorce (initially in the form of legal separation and later as absolute divorce) led to an understanding of women as being entitled to rights by recognizing their mutual consent.

From a comparative perspective, only a few countries in Latin America passed laws enabling absolute divorce prior to 1930, specifically those countries in which radical liberalism prevailed during the process of establishing legal rights: Venezuela under Cipriano Castro (1904), Uruguay during the first presidency of José Batlle y Ordóñez[1] (1907 with reforms in 1913), and Revolutionary Mexico (1914)[2]. Even though legislation existed regarding the right to divorce, its use as a legal solution to private problems was infrequent, and relations between the sexes continued to follow patterns that closely reflected patriarchal values (Cano, 1993 and 2006; and Vaz, 2006).

In other countries, the power of conservative political forces meant that legislation governing the right to absolute divorce was slow to emerge. As is evident, throughout this long journey, the Catholic Church exerted a powerful influence on the social order. Thus, as Verónica Giordano (2012) has shown, in Brazil absolute divorce became legal in 1977, at the height of the military dictatorship. This was due to a legal loophole designed by the regime for its own political benefit, namely the reform to the way majorities could be obtained in order to introduce amendments to the constitution

[1] José Batlle y Ordóñez led the faction of the Colorado Party that hegemonized the construction of the Uruguayan state. Batlle's ideas were of a radical liberal order, with certain libertarian features regarding the rights of women. For more on women in the context of "Batllism," see Ehrick (2005) and Lavrin (1995).

[2] Around 1930, absolute divorce was legal in Costa Rica, Cuba, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, and the Dominican Republic, as well as in Venezuela, Uruguay, and Mexico, as already mentioned. See de Galíndez (1949); Mc Gee Deutsch (1991).

(which had established the indissolubility of marriage since 1946). In effect, the mechanism of simple majorities was taken advantage of to legalize absolute divorce, which conservative forces had resisted so strongly. Another striking case is that of Chile, where absolute divorce only became legal in 2004. There, the role of the Catholic Church in the struggle for human rights and the importance of the Christian Democratic Party in the transition from the dictatorship of Augusto Pinochet to democracy gave the two a degree of legitimacy in imposing their visions of marriage and the family (and, thus, effectively delaying the legalization of divorce).

In Argentina, the specific law on absolute divorce came at a time when political democracy was being feverishly revalued. In 1983, Argentina had emerged from the bloodiest dictatorship in its history through elections in which the presidential candidate of the Unión Cívica Radical (UCR) party, Raúl Alfonsín, was victorious. In the new context of democracy, as Mario Pecheny points out (2009: 96), in November 1986,

> after a favorable trial court ruling—in the context of Alfonsín's bid for a politically liberal majority in the Supreme Court and his wish to make a clean break with authoritarianism—the Supreme Court ruled with a three-vote majority in favor of the former judge Juan B. Sejean, who petitioned for divorce by pointing out the unconstitutional nature of article 64 of Law 2.393, which establishes the indissolubility of the marriage bond.

The way was then clear for the passing of the Divorce Law as Law 23.515 in 1987.

In order to tackle the issue of divorce in Argentina, we look at it in three dimensions: event, structure, and conjuncture. These three concepts—coined by Fernand Braudel—allow us to provide an explanation in which the "dust" of events takes on volume and density when combined with the conjuncture and the structure. From this perspective, it should be pointed out that the sanction of absolute divorce in 1987 was the culmination

of a long legal process. Between 1888 and 1954, Argentina's Congress debated more than forty divorce law bills (Cosse, 2009). Divorce was a well-established demand but the conservative opposition held firm. At the turn of the 20th century, the typical arguments of political liberalism—of which divorce was one of the most prominent—had led to it being permitted in other countries in the region. In Argentina, however, the weakness of such positions, together with a reform movement that sided with conservative forces over the eventual path of such transformations, effectively prevented any recognition of Argentinian men's and women's autonomy when making decisions regarding their family lives (Barrancos, 2006). Nor did the crisis of 1930 lead to the issue being reexamined in radical liberal terms. As stated above, divorce finally became legal in Argentina in 1987, when the need to defend democracy from an authoritarian past enabled more liberal measures such as recognizing the autonomy of the members of a family.[3] Then in 1954 came a landmark moment in this century-long saga: Law 14.394.

The new legislation dealt with three issues: the age of criminal responsibility, death *in absentia*, and homestead properties. Article 31 introduced absolute divorce, but its effects were very short-lived. The law was passed during Juan Domingo Perón's second term in office, which began in 1951. On March 1, 1956, the *de facto* government known as the *Revolución Libertadora* [Liberating Revolution]—which had actually come to power by overthrowing President Perón in 1955—"suspended" absolute

[3] In 1985, through Law 23.179, Argentina ratified the Convention on the Elimination of All Forms of Discrimination against Women. That same year, through Law 23.264, the regulations on custody of children and filiation were modified, establishing a regime of joint custody over minors. For more on this point see Giordano (2009). The role of Peronist forces in 1985 differed from that of 1954: in 1954, they legalized absolute divorce; in 1973, President María Estela Martínez de Perón had vetoed a law passed by Congress granting either parent custody over minors. As in 1954, the government's relationship with the Catholic Church was a key issue. However, it is significant that one of the bills discussed in Congress during the legislative process for the law that was eventually passed was drafted by three female Peronist representatives.

divorce through Decree Law 4.070 and ordered all related judicial proceedings to be brought to a halt and for new petitions to be rejected.

The law containing an article that in 1954 legalized absolute divorce—albeit briefly—is ripe for historiographical inquiry. Firstly, it invites an analysis of the 1950s, which in more conventional periodizations of Latin American history are usually overshadowed by the 1920s and the 1960s, understood as decades of change, and the 1930s, seen as years of crisis (Ansaldi and Giordano, 2012). Our examination of the 1950s in this article reveals the possibilities and realities surrounding divorce in Argentina. The object of our study, Law 14.394, formed part of a political situation that demonstrated the importance both of conservative forces in the construction of the social order (an element of continuity in the century-long saga described above) and of forces wishing to make significant changes to such well-guarded institutions as the family. Likewise, by focusing on Argentina, we show the features of a legalization process that was quite singular. This process was not based on the same liberal arguments that had given rise to the legalization of divorce in other Latin American countries, but nor was the indissolubility of the marriage bond expressly laid out in the constitution, as it was in other countries in the context of nationalist ideologies. Instead, the arguments invoked during the passing and applications of Article 31 of Law 14.394 are a very particular mix of those most typical of both liberalism and nationalism.

Studies on divorce in Argentina abound, but little attention has been paid to the 1954 law, especially regarding how it was applied. This article aims to contribute to the debate in two ways: first, by reexamining a particularly revealing moment in the history of divorce in Argentina (along the lines of what Pierre Bourdieu calls “unrealized possibilities”); and second, by using a specific gender-focused methodology to analyze the legal phenomenon in question. Regarding the latter, numerous studies have questioned positive law (Carrillo, 1994), and feminist theorists have favored

reinterpretations that have opened up profound debates, proving that the question of gender—in terms of both stereotypes and stigmatization and the upholding of male-dominated relations—does not lie outside legal theory but is instead a constituent part of it (Benhabib, 2006).[4]

Within this critical context, it is worth pointing out that methodologically oriented studies are the exception, and among these, Alda Facio Montejo's work is paramount. We focus on a single aspect of her analytical-methodological approach to revealing discriminatory legal mechanisms: "analyzing the text through the three components of the legal phenomenon," namely "1) the formal/normative component; 2) the structural component; and 3) the political/cultural component." The first of these refers to the formal law as it appears in writing. The second refers to both the content bestowed on the law through the administration of justice and to the access that people have to said administration. The third point refers to those who write the law, the legal doctrine on which it is based, which traditions and customs are valued, laws that have not been formally enacted, the knowledge people have of laws and the use they make of them, and the political and economic interests of the most powerful social groups, among other factors.

Having explained our theoretical and methodological perspective and justified the time and place our case study focuses on, we would like to set out certain fundamental hypotheses that inform the interpretative historiographical debate around Perón's first two terms in office. Most studies subscribe to the notion of continuity in the gender models promoted by Peronism and highlight the conservative values that persisted from the 1930s through the 1950s, particularly with regard to Peronist public

[4] Despite their differences, the various schools of critical feminist thought largely agree on this point. At the more liberal extreme lie Betty Friedan's classic studies and Iris Young's more recent ones. In terms of difference feminism, the contributions of Carole Gilligan, Nancy Chodorow, and Luce Irigaray stand out. Finally, the central figure of so-called radical feminism is Catherine MacKinnon.

policy (Bianchi, 2011; Caimari, 1994; Di Liscia, 1997; Torrado, 2003 y Zanatta, 1999). More recently, other studies have qualified these interpretations by focusing on the confrontations between Peronists and their political opponents. These studies show the heterogeneity that characterized both the legislative work of Peronism in terms of disagreements over political rights, especially during the government's first years in power (Valobra, 2010; Palermo, 2011), as well as the the social policies that were implemented (Biernat, 2007; Biernat and Ramacciotti, 2008; Ramacciotti and Valobra, 2004; Ramacciotti, 2004). Although studies in this second group do not focus on a specific analysis of divorce, they do provide interpretations that facilitate understandings of the internal struggles that typified Peronism, which have tended to be overshadowed in studies on specific issues.

Among the interpretations of Peronism, a common explanation for the legalization of divorce emphasizes the conflict between the Peronist government and the Catholic Church, its ally during the early years but later its most furious critic, which reached its high point in 1954 (Bianchi, 2001; Caimari, 1994, Rodríguez Molas, 1984; Zanatta, 1999). Another, more recent line of interpretation has argued that Peronism proposed a family-centered social model and that divorce was seen not as disrupting this, but rather as a way of moderating those families which had not been built on a basis of love and matrimonial harmony. These family-based understandings fostered by Peronism gave rise to the notion of a complementary relationship between spouses. Within this conception, divorce is seen not as a rupture but rather as a way of repairing a lost marital order. Studies in keeping with this recent line of interpretation have only considered divorce as a secondary issue or have dealt with the contrasting ways it has been represented (Acha, 2005; Cosse, 2004 and 2008). However, they have paid very little attention to the legal aspects of the topic.

Our research intends to question the body of literature that has interpreted the legalization of absolute divorce as being driven by the conflict between Perón's government and the Catholic Church. We also wish to question the literature that sees Peronist family laws as representing the political desire to include "deviant" cases within the ideal of the "normal" family. Although it cannot be denied that both these elements played a role in the passing of the law, we have traced another influential factor in this process: a preexisting pro-divorce tradition in the juridically and ideologically diverse movement that is Peronism. The construction of family-related rights in 1954 forms part of a paradigm shift that changed the way the law was perceived, notably the tension between private and public law. This paradigm shift entailed increasing personal freedom and improving the equality between men and women through devices that bestowed rights upon individuals by first bestowing them on the group that they were part of—in this case, the family. In connection with this premise, we interpret the object of the reform to be a rebuilding of the foundations of the family (a conservative goal), on the basis of parameters that have been long overlooked: the contractual autonomy of the parties that make up the family (a transgressive goal).[5]

In our study, we propose to use the methodology outlined above and frame it within a sociological and historical perspective of the phenomenon of divorce. Firstly, we analyze the bill for Law 14.394 and the debates that led to its being passed by Argentina's Congress. Secondly, we examine absolute divorce sentences taken from a corpus that is based on the records of rulings and other files in the Archive of the Supreme Court of Buenos Aires Province. We began our investigation at the first ruling, which was passed in the city of La Plata on March 8, 1955, and went up to rulings

[5] As part of a line of inquiry that merits further exploration, Ezequiel Abásolo (2006) has pointed to the "diversity of the legal policies implemented during Perón's first two presidencies" in connection with the Constitution of 1949.

passed on December 31 of the same year, the date when the official recess period of the law courts started.[6]

2. The legislative procedure[7]

The Civil Code of 1869 and the Civil Marriage Law of 1888 (Law 2.393) established the indissolubility of the matrimonial bond in Argentina. Although a form of divorce existed at this time, it was not absolute legal divorce. Instead, it permitted the physical separation of man and wife but did not enable them to remarry. The only way to dissolve the matrimonial bond (absolute divorce, also known as *divorcio ad vinculum*) was through the death of one of the spouses.

In this context, mutual consent was not adequate grounds for separation. Indeed, both the Civil Marriage Law and the Civil Code only permitted separation on the following grounds: (1) adultery on the part of either spouse; (2) an attempt on the life of one spouse by the other (either as the main perpetrator or as an accomplice); (3) the provocation of one of the spouses by the other to commit adultery or other crimes; (4) cruelty; (5) serious slander—when assessing the degree of seriousness the judge was to take into consideration the level of education and social position of those in question, and any other relevant circumstances; (6) ill treatment, even if not serious, when so frequent as to make marital life intolerable; (7) voluntary and malicious abandonment. Due to these limits, divorce became the focus of numerous struggles from the very moment when the Civil Marriage Law was passed (1888) up to the sanction of a

[6] The record books of sentences contain the files for 373 rulings on divorce and separation. The information provided in each file varies from case to case. We examined 46 files in the course of this research: 21 for absolute divorce; 16 for legal separation; and 9 for *ultra petita*.

[7] All citations included in this section are taken from the Congressional Record of Argentina's House of Representatives for December 13–14, 1954. We have not included, unless specifically mentioned, references to the Congressional Record of the Senate, as the arguments put forward there were very similar, and the longer and more colorful of the two debates was that of the Lower House.

specific law permitting absolute divorce (1987). As we have already suggested, the passing of Law 14.394 in 1954 was a milestone event in this hundred-year process.

In 1943, Colonel Juan Domingo Perón began to gain power after forming part of a military coup that overthrew a government that was itself of questionable legitimacy, in that its electoral victory was due to fraud and other coercive tactics. After a series of conflicts that led to Perón being removed from the office of vice president, he ran as a presidential candidate in the 1946 elections. Thanks to his alliance with the Catholic Church and Argentina's labor unions, together with less institutionalized support from the working class, his bid was successful. The politicians who ran on Perón's ticket came from diverse political backgrounds, including conservative forces, socialism, and the UCR, as a result of which his first years in government were marked by great hetereogeneity within the Peronist bloc (Rein, 2006; Panella, 2006).

It is generally agreed that from the 1950s onwards, this political diversity was counteracted by an effort on the part of Perón himself to control these unruly forces. To this end, an attempt was made to impose uniform thinking through means which included different forms of repression. These were applied to both the opposition and other political parties and to Perón's own party, within which there were purges, threats, and persecutions (Plotkin, 1994; de Privitellio, 2011). However, this verticalization came hand-in-hand with an expansion of social rights (improvements to working conditions and salaries), an increase in holders of rights (a law enabling female political rights was put into practice and certain national territories were converted into provinces), and a general improvement in living standards (Torre and Pastoriza, 2002). In 1951, Perón was reelected as president and a Peronist majority emerged in the legislature, which—for the first time in Argentina's history—included female representatives. It was in the context of this second term in office that the law containing an article legalizing absolute divorce was passed.

The bill for Article 31 began to be debated in Congress on December 13, 1954. The text had been written by the congressional committees on general legislation and criminal legislation in their respective offices and was based on a bill introduced into Congress on December 8 by the executive branch regarding the Laws on Minors and the Family. Article 31 of the bill stated: "should death *in absentia* be declared, the marital bond is dissolved and the spouse of the absent party is authorized to remarry."[8] The objective of the initiative, according to the speech Perón gave when he presented it, was to avoid

> the inconsistency of the current legislation, which considers the absent party to be dead with regard to certain legal relationships (control of assets, joint ownership upon marriage) but considers him or her to be alive with regard to other situations (the spouse's inability to remarry).

Article 83 of Law 2.393 forbade the absent party's spouse from dissolving the marriage and remarrying until there was irrefutable proof of their death.

In the early hours of December 14, when voting on the bill was about to take place in the Lower House, the Peronist representative Delia Parodi, first vice president of that chamber, proposed an amendment to the bill and an addition to the aforementioned article on behalf of the congressional authorities and the majority of representatives. The new text of the bill maintained the initial concept of dissolving the marriage in the case of death *in absentia* but also added:

> In addition, after one year has passed since the ruling declaring the separation of the spouses, either spouse can appear before the judge who passed said ruling and petition for the bond of matrimony to be dissolved if

[8] Death *in absentia* is a legal declaration intended to remedy judicial situations (e.g., the protection and administration of assets) generated by the prolonged absence of one of the spouses without any word from him or her.

> both spouses have not previously declared to the court in writing that they have reconciled. The judge will pass sentence without further ado, in accordance with the evidence of proceedings. This ruling enables both spouses to remarry.

In legal terms, the phenomenon referred to in this part of Article 31 is not strictly speaking absolute divorce, but is instead a "conversion" of the separation. Even so, this formula significantly expanded the concept of the dissolution of the marital bond, and thus brought with it great controversy.

The debate actually began not long after four o'clock in the afternoon, but the bill was only put to the vote around midnight, when it was passed with only eight votes against it, all from representatives of the UCR. Each specific article of the bill was then voted on, but when the controversial Article 31 came under consideration, the president of the Lower House announced that some "amendments" and "additions" put forward by the house authorities and the majority bloc would be read by the congressional secretariat. After a lively debate, the president of the UCR representatives, Carlos Perette, announced his bloc's position: they would not "play along" with the majority and would instead leave the house (and therefore not participate in the vote on the bill). As Dora Barrancos (2009) has pointed out, "divorce became legal in Argentina without the support of one of the most high-profile liberal political forces. More serious still is the fact that they rejected it on the grounds that it offended the Church."

According to the Congressional Record, the "amendments" that were introduced meant that the statement "should death *in absentia* be declared, the marital bond is dissolved and the spouse of the absent party is authorized to remarry" was replaced by "the declaration of death *in absentia* authorizes the remaining spouse to remarry." In contrast to the original wording, in the modified bill the "marital bond" is not automatically dissolved until "this second marriage takes place."

This difference in wording was not a minor issue. The argument of the Peronist bloc was that it respected "the feelings of those who, despite the ruling of death *in absentia*, wish to wait for the absent party" (*Congressional Record of the Senate*, December 14, 1954).

The above point is significant as it ties in with the "logic" through which the "addition" to Article 31 was introduced. The concept of "conversion" had been taken almost literally from the draft bill for the legal reform of the Civil Code that had been drawn up in 1933 by the jurist Juan Antonio Bibiloni, for whom absolute divorce was not a religious problem.[9]

The amendment introduced in the first part of Article 31 implied that absolute divorce be considered as an option, in contrast to the initial version of the text which made it automatic once death *in absentia* had been declared. This amendment brought unity of meaning to the concept of divorce in the new version of the text, as the addition that introduced the right to convert a legal separation into absolute divorce was also founded on the fact that this conversion was optional.

In the Lower House, both Delia Parodi and Ventura González, the congressman who stated the motives for the new wording of Article 31, tried to move the discussion away from the issue of Government *vs.* Church by suggesting that the article proposed absolute divorce without imposing it on anyone. Thus framed, the argument put forward by Parodi and González was that the law did not oblige anyone to a specific course of action, but rather opened up possibilities. Those whose "moral scruples or conscience" prevented them from accepting it—in other words, Catholics—did not have to make use of it. As such, the law enabled citizens to make a decision that ultimately depended on their individual wishes.

[9] Bibiloni was a well-known civil jurist who belonged to the so-called Generation of 1896, a group that maximized the scientific assumptions of positivism with the intention of providing an organic answer to social issues.

There is no doubt that the hurried addition of Article 31 was yet another political instrument in the confrontation that was taking place at the time between the government and the Catholic Church. Indeed, certain aspects of the political situation point to this being the case: on November 25, President Perón, Vice President Alberto Tesaire, and the leader of the female branch of the Peronist Party, Delia Parodi, spoke at a rally at Luna Park stadium amidst banners which—amongst other things—called for the legalization of divorce (*La Prensa*, November 26, 1954). The conflict, which had been under way for some time, mobilized a wide range of Catholic sectors. For example, the Catholic processions that took place on December 8 of the same year, the feast day of the Immaculate Conception, were true displays of opposition to the government. As was mentioned above, this was the same day President Perón presented the bill in Congress that would be passed as Law 14.394 on December 14 with the subsequent amendments and additions.

However, another—complementary—interpretation of the government's motives for pushing the issue of divorce is possible, without excluding explanations rooted in political antagonism. The conflict with the Church may have enabled the law to be passed, but the diversity of forces within Peronism should also be considered to be able to understand how events unfolded. Indeed, with regard to the issue of divorce, two schools of thought can be identified within the spectrum of Peronism. The first of these was the position set out in the 1954 draft bill for the reform of the Civil Code written by Jorge J. Llambías, a well-known Catholic, at the government's request. This did not include the conversion of a personal separation between spouses into absolute divorce because it understood that Article 37 of the Constitution of 1949 demanded that the principle of indissolubility be maintained to guarantee the protection of the family. The second position was that put forward in the debates in both houses surrounding the bill for what would become Law 14.394, specifically in the speeches of Delia Parodi and

Ventura González in the House of Representatives and José G. De Paolis, Hilda Castañeira de Baccaro, and Ilda Pineda de Molins in the Senate. For these politicians, according to the Constitution of 1949 and the subsidiary Second Five-Year Plan passed in 1952 during Perón's second term in office, divorce was an instrument for the protection of family life and the creation of a "new" reality (in keeping with the "New Argentina" the Peronist government sought to build).

To explore this alternative interpretation, we will organize our analysis using two of Facio's guiding questions for the gender-oriented examination of legal phenomena. These are: a) who drafted the legal text and how many women were involved in the process? and b) which judicial doctrine was most highly valued during the process?

a) Who drafted the legal text? How many women were involved in the process?

It is difficult to determine precisely who drafted the text for the law. However, two figures undoubtedly played a central role: Ventura González and Delia Parodi. González was significant because he presented the statement of motives for the law. These statements accompanying bills are considered by jurists to be the doctrinal bases for the subsequent interpretation of legal texts. Delia Parodi, in turn, was a key component of the Peronist party-movement-government machinery. She embodied the Peronist policy of making women full citizens and bore the mark of Eva Perón, the "spiritual leader" of Peronist women, who was evoked time and again by female legislators in a creative exercise of memory and power (Valobra, 2010).

González referred to Bibiloni's draft bill through the principle that admitted "absolute divorce." In fact, in his speech he transcribed an article (Article 644) from this earlier bill:

> When three years have passed since the sentence of personal separation, this will become a sentence of absolute divorce on the petition of either of the spouses, even if he or she is the guilty party, if they have not been reconciled.

As is evident, the text of the addition to Article 31 was inspired almost literally by this source.

With regard to women's involvement in the drafting of the law, the sources do not allow us to establish how far Parodi was involved, but they do reveal that she was the one who explicitly identified women as beneficiaries of the law. Although referring to the large number of women who took part in the vote is not an adequate explanation of the gender-oriented vision implicit in the reform, it is still noteworthy as a political factor. After the 1951 elections, women made up about 22 per cent of the legislature. Evita had not achieved the equal distribution of representatives she had fought for, which would have reflected the tripartite structure of the Peronist movement (the Female Peronist Party, the Male Peronist Party, and the Labor Union Branch). However, to take up an idea of Anne Phillips's (1996), this proportion nonetheless signifies a major step forward in the policy of presence, which assumes that the number of female representatives is relevant insofar as it approaches a more accurate reflection of the population distribution.

Moreover, an explanation based on the gender distribution of the legislature takes on greater significance if we bear in mind that Parodi represented the only sector with female representatives—that is, the Peronist bloc. In other words, the only female voices to defend the bill in Congress were Peronists, not only because the UCR had left the debate but also because the party had no women candidates on their ticket and thus no female representatives in Congress.

The gender distribution of the legislature is also highly significant for its symbolic implications. In effect, the female legislators represented, in many ways, Evita's legacy. Evita had shaped them as members of the Female Peronist Party and the Eva Perón Foundation (Navarro, 1994; Sanchís and Bianchi, 1988; and Barry, 2009). She had then indicated that they were suitable candidates on account of what she considered their main virtue: loyalty. As such, once elected, the representative function carried out by these female legislators was mediated, in that they represented Evita first, and through her, the people. However, Evita's premature death in 1952 entailed a latent struggle over power and over becoming the bearers of her memory (Peláez and Valobra, 2004 and Valobra, 2010). According to the testimonies of some congresswomen, Parodi legitimized the divorce project among her fellow party members by claiming it was part of Evita's plan, although according to other congresswomen, Evita had never mentioned such a law. These misunderstandings were made manifest in the House of Representatives when some congresswomen went so far as to consider resigning if the divorce law was sanctioned. Indeed, two of them did so, privileging their loyalty to ecclesiastic rules over loyalty to the party.[10]

All the same, Parodi was the only female voice in the Lower House to make specific gender-related remarks on the issue. For her, the reform dealt with a "truly significant problem, on which the happiness and well-being of men, women, and the family depend," given that all human beings had "the right to happiness in lasting love and a respectable marriage." Parodi was categorical with regard to whom the law was aimed at. Through her vote, the congresswoman demonstrated her support for the "reasonableness, competence, and fairness" of the new wording, declaring her "desire, as a woman" to "interpret the distress, anxiety, and disappointment of thousands and

[10] Adriana Valobra, Interviews with the senator (MC) Hilda Castañeira and the congresswomen (MC) Ana Macri and Urbelina Tejada, November 2001.

thousands of women who, seeking genuine happiness in marriage, instead found in it disappointment and anguish." Parodi underlined her own gender: "as a woman," she said she was raising her voice to enable the existence of "perfect legal and moral formulas". In her eyes, divorce would "legalize moral situations that, I repeat, have to do with the reputation of women, marriage, and the family." [11]

Parodi did not break with the family-oriented model that had historically shaped the law in Argentina, but her repeated references to women's happiness and her insistence on her own status as a woman reveal a definition of the problem that stresses the universal nature of equality as a value associated with the human condition and in which women should be included. At the same time, said inclusion was justified on the basis of sexual difference—that is, the identification of women with their condition as mothers and wives, a "paradox" that has been pointed to by Joan Scott (1996).

This definition of gender is not a novelty brought to the table by Peronism, as the same paradox runs through the entire 20th century (Giordano, 2012). The novelty, in the context of "Peronist doctrine", was that "equality in the eyes of the law" was public policy, and included within it women as a specific category. This brings us to the next point.

b. Which judicial doctrine was most highly valued during the process?

With regard to the value placed on legal doctrine, positions within Congress were as polarized as party policy itself. While members of the UCR attacked the law, which they considered "dangerous" to "positive law," Peronists discredited the "potential of abstract solutions," which they implicitly laid at the door of liberalism in general and the UCR in particular. Instead, they defended the "national doctrine," which was

[11] This position is of interest given the fact that in most of the letters sent to the government regarding the Second Five-Year Plan, those petitioning for divorce (and for the opening of brothels) were men. See Guy, 2011: 261.

"Peronist," and "belonged to Perón" and "to Eva."

Carlos Perette, a congressman for the UCR, described the law as an "omnibus law" that contained "unconnected, heterogeneous issues" and as "a law with no ongoing solution." In response, the Peronist representative Raúl Bustos Fierro founded his decision on the "unifying goals" of Part II of Article 37 of the Constitution of 1949, which established, among other things, that "the state protects marriage, guarantees *the legal equality of the spouses* and custody" (our emphasis).

It is true that the Second Five-Year Plan, which was passed as a national law in 1952, gave preferential status to the family and to women within it (Novick, 1993; Di Liscia & Rodríguez, 2004). But it is also true that the clause of equality between men and women within marriage should be examined more closely as it reveals the range of voices within the Peronist movement, and thus the existence of a pro-divorce sector. Susana Bianchi (1999) has drawn attention to this diversity: "the government's refusal to include the indissolubility of marriage within the declaration of the 'Rights of the Family' in the Constitution of 1949 revealed these differences." Furthermore, as Isabella Cosse (2006) has pointed out, the first Five-Year Plan established the indissolubility of marriage yet, as was pointed out above, this principle did not appear in either the Constitution of 1949 or the Second Five-Year Plan. This is proof of the ideological twists and turns of Peronism and reveals the predominance of a pro-divorce sector in the Peronist ranks, which in 1954 were able to translate this position into a new law.

The paradigm shift from a liberal state of law to a social state of law brought with it new legal formulas. However, it must be said that this shift did not take place in the same way in every country. It is true that that new legal ideas brought with them the replacement of divorce as a sanction with divorce as a solution. But the legalization of absolute divorce was not possible in all Latin American countries. As we have said

before, in contrast to Argentina, Brazil, for example, introduced the indissolubility of the bond of matrimony into its Constitution of 1946, and for many years absolute divorce could not be legislated there as it was unconstitutional.

In Argentina, as has been mentioned above, a new conception of divorce was legislated without this leading to any profound legal change. A change of this sort would have meant passing a more comprehensive divorce law and changing the grounds for divorce stated in the Civil Marriage Law, such as by introducing a mutual consent clause.

In contrast, in Argentina's Congress of 1954, the arguments in favor of absolute divorce (according to the final text of Article 31) can be grouped under two points, both of which were contained under the umbrella argument of "the national doctrine." The first is the notion of the "torturous or disturbed home," which was very much in keeping with the idea of protecting the family. The second point, which derives from the first, was that the legalization of absolute divorce provided a solution to the problem of marriages and divorces performed abroad. As we have already said with regard to the concept of gender underlying the reform, these two arguments were not new, but they were now part of state policy and the Peronist modernization project.

Regarding the first point, Parodi avoided the long-running dispute between pro- and anti-divorce campaigners, and instead emphasized her own role as an activist. Once again, one of the defining concepts of Peronism was heard in the house: "we are realists." This claim served to identify the ideological significance of the reform: "we are not pro-divorce." Parodi's position—which may appear to contradict the proposal for legalizing divorce that she was campaigning for—actually shows that she did not consider divorce to be a desirable institution, in that it demonstrated the failure of another institution, marriage. However, having established this, Parodi had no doubt that, should marital relations reach this point, divorce was preferable to the unhappiness

of a loveless or mismatched union. As such, Parodi's stance was founded on empirical arguments, on an exaggerated sensibility, and on a commonsense approach that opposed ongoing unhappiness when the solution to this (that is, divorce) did not imply a greater ill than this unhappiness was already causing.

For his part, Ventura González distanced himself from these activism-based arguments and set the problem more firmly within the legal field by using an argument that was predominantly logical. He claimed that

> From the point of view of the spouses, it is evident that mere separation forces the spouses to choose between perpetual celibacy or adultery (...) If spouses who have separated enter into extramarital relationships—as is usually the case—this will affect morality, the family, and society.

Two characteristics can be perceived in these voices representing the Peronist bloc: gender, demonstrating the importance of emotional factors in women's arguments (a sensibility which was very dear to Peronism in general but was more emphatic in women) and the question of profession, in that Ventura González's arguments can be ascribed to the fact that he was a lawyer. In relation to this, the issue of gender is also interesting because very few of the female representatives of the time had any experience in the liberal professions—the majority were housewives and teachers (Peláez and Valobra, 2004; Valobra, 2010).

Once again, individual decisions and wishes appear in relation to the social body, the units of which were the family, according to Peronist doctrine. By reiterating certain defining concepts of Peronism, González thus proposed absolute divorce as a way of constituting "a new family." He spoke of "legitimate moral unions" that would guarantee "the children's situation." The same concepts also appeared in Parodi's speech (and in the Senate). However, for these legislators, the new concept of the family

included greater freedom for its members (although, as stated above, this position was not shared by the entire Peronist bloc), as was anticipated by Part II of Article 37 of the Constitution of 1949.

The other, subsidiary, argument was in relation to the damage caused by divorces and remarriages abroad. Bibiloni had already contemplated the sanction of absolute divorce in his draft bill as a palliative measure against the negative effects this phenomena had on the family and children. And, once again, González set out the pro-reform position using Bibiloni's own terms:

> There are two options: either serious measures are adopted with regard to the legal effects of divorces authorized by courts with no jurisdiction and to the validity of the new marriages in question—which would aggravate the situation, probably without impeding the acts themselves if divorce continues to be restricted—or absolute divorce is established as an institution in order to define it in prudent terms. What is not an option is leaving things as they currently stand.

However, behind these arguments lurked a hidden possibility: divorce on the grounds of mutual consent. During the debates, UCR representatives Carlos Perette and Santiago Fassi accused their Peronist counterparts of implicitly wanting to impose this. Both rejected the concept, even though an eminent member of the UCR had proposed divorce in a 1949 bill which explicitly contemplated the dissolution of marriage on the grounds of mutual consent. It is worth noting once more that the 1954 law legislated the right to petition for the dissolution of the marital bond in cases where a legal separation had already been ruled upon, which itself depended on the grounds contained in Article 67 of the Civil Marriage Law, which were not to be changed. As such, the concept of divorce remained limited and tied to traditional conceptions of relationships between men and women. However, there are indicators that suggest that some representatives

and judges were willing to go beyond the limits established by this formal aspect of the law.

3. The application and interpretation of the law

In line with Facio (1992), we understand that the formal-normative component of the law influences, limits, and defines the structural component in different ways, in that "there exist procedures and/or procedural and administrative practices that have been formally enacted within the formal regulatory component."

This is revealed in the fact that the subsections of Article 67 of the Civil Marriage Law were the only ones that could be taken into account when passing sentence. In other words, it is relevant that, with regard to rulings on legal separation (regardless of whether these were subsequently converted into divorce), certain subsections of the Civil Marriage Law were given priority over others. If we take a set of rulings for which we know the specific subsections they were based on (74 cases), it can be seen that the most frequently recurring were subsections (5), serious slander (39 per cent); (7), voluntary and malicious abandonment (28 per cent); and (6), ill treatment (18 per cent). As a grounds for separation, adultery—subsection (1)—was notably masculinized: in 70 per cent of cases in which it was the grounds for the ruling, it was the husband who had petitioned for the separation. Although developing this point is beyond the scope of this paper, we would like to point out its importance to a gender-oriented reading of the problem of divorce. In effect, the fact that there were different definitions (and punishments) for adultery for men and women is significant proof of the double standards of sexual morality that governed society at the time. In this sense, the fact that women turned less to the subsection on adultery can be interpreted in terms of the difficulty in fitting the reality of an adulterous husband into the only available social formula: cohabitation within the home. That is, if adultery on the part of the man

did not take place within a relationship of cohabitation, it was not considered adultery, legally speaking. In contrast, women were considered adulterers even if the relationship in question was not habitual nor had taken place within the home.

By delving into the files on absolute divorce in detail, we can appreciate another of Facio's (1992) points: how the (specific and repeated) interpretation or application of a law gives it a meaning that may be broader (or more limited) than that intended by legislator who enacted it. In other words, how the structural component affects the formal regulatory component.

As is evident, to understand how a law is interpreted or applied, we must examine the behavior of judges. As such, we have made a "thick description" of the rulings, in the sense suggested by Clifford Geertz (1973), in order to understand the decisions of judges at the time, which configured a set of profound relationships with regard to divorce with a view to innovations within the idea of the family.

In a pioneering investigation, Ezequiel Abásolo (2002) specified the way in which the Supreme Court was "Peronized" during Perón's terms in office, but he also recognized that although the Supreme Court supported the government's actions unanimously, it did not always do so for the reasons the government desired. This is demonstrated by the existence of two different legal and philosophical understandings within Peronism, the relative importance of which with regard to one another varied over time, and which even coexisted. Tending less towards concessions in terms of his political reflections, José Marcilese (2006) focuses on the government's intervention in the judiciary in July 1952—proof of the subordination of the judicial sphere and of federal interference in provincial matters—and on how judges' decisions affected the interests of the ruling party. Taking up these precedents, we wish to probe how legal-philosophical traditions operated with regard to divorce as described by Abásolo and discuss some of Marcilese's conclusions.

a. Regarding the date from which Law 14.394 was considered to have come into force

One initial topic on which judges' opinions differed was the date at which the law came into force once passed. Indeed, six petitions for absolute divorce were rejected on the grounds that they did not respect the clause of Article 31 that established that 90 days must have gone by since the date on which the law was passed in order for petitions to be valid. Some took the starting date as that when the law was sanctioned (December 14) and others as the date of its enactment (publication in the Official Bulletin of December 30).[12] Two judges who used the earlier starting date were Luis R. Agnus Dei and Ricardo P. Williams, both well-known Peronists who had taken oaths of office in May 1955.

A different position was taken by certain "severe" judges who interpreted that they were to add together the 90 days set out in Article 31 and the 90 days established in Article 57 as the period that must elapse between the publication of the law and its coming into force. In other words, they presumed that a total of 180 days had to go by before a petition could be made.

In these more severe interpretations, another component of the legal system shows up: the Attorney General's office, the official watchdog for proceedings regarding the fulfillment of the norms of due process. This office understood that the law came into force after 180 days; that is, after June 30. In a document dated April 12, 1955, the public prosecutor Alfredo Noceti stated that

> any interpretation that differs from that expressed here falls outside the legal code, which judges, as upholders of the law, cannot violate under any

[12] Cases: ExJ15S10, F. T. / E. M; J7S15, C. E. F / S. De. F. De F., J7S22 (Judge Luis Reinaldo Agnus Dei), J. T. S / A. D. De S.; J20 (1) S3 (Judge Ricardo Pablo Williams), M. J. P. E. / M. I. E. S.; J23 (3) S17, J. B. / M. B. M. De B.; J23 (3) S17, E. J. G. / E. B.

> circumstances. To do so would be to neglect their duty and cast aside the oath they swore when taking office.[13]

This warning was made in regard to Judge Williams, who had previously acted otherwise but who on this occasion, prompted by the public prosecutor, accepted the guidance offered.

However, there were those who simply ignored the norm regarding these time periods. This was the case with Judge Mario E. Verga, a well-known Peronist sympathizer, who in April 1955 ruled on the dissolution of a marriage that had been petitioned on March 28 of the same year.[14] The general situation regarding the validity of petitions was inconsistent, and the media noted these differences.[15]

b. On the length of time between legal separation and absolute divorce

The law stipulated that one year had to go by between the date of the legal separation and the date of the petition for absolute divorce. With regard to this condition, we have identified two types of interpretation on the part of judges.

On the one hand was the case in which the one-year period was calculated from the date of the ruling, but this was objected to by the Attorney General's office, which claimed to be a party and thus requested that the period be calculated from the date plaintiffs were notified of the ruling. However, the issue of notification had long been a source of conflict due to the delays the Attorney General's office could bring about if it was counted as a party in proceedings. As such, its position had been questioned in some legal circles (Acuña Anzorena, 1955).

---

[13] Case of R. S. de R. vs R. R, Court No. 1, Secretariat No. 7.
[14] Case of V.S. vs. A.G. de S. 18 J 6 S 20
[15] *La Nación*, "TRIBUNALES La nueva legislación del divorcio plantea distintas interpretaciones" [LEGAL Varying interpretations of the new divorce legislation],' March 24, 1955.

Another position emerged in cases in which the rulings took into account issues beyond those included in the petition (cases of *ultra petita*), in which legal separation and absolute divorce were ruled at the same time. It is also worth mentioning that these particular cases were resolved by secretariats that depended on a single court, number 10, which was overseen by Judge Ángel P. Gobbi, another well-known Peronist sympathizer who had recently been appointed. In effect, in July 1952, the national government intervened in the judiciary of Buenos Aires Province, replacing judges, secretaries, and other members of the legal system with well-known Peronists.[16]

The four cases in question rested on serious grounds involving cruelty or adultery on one or both sides. Among the cases that the judge believed worthy of a simultaneous ruling of separation and absolute divorce due to the severity of the grounds is the first case in which Article 31 was applied, which can be taken as a leading case.[17] The severity of the offenses in question were interpreted as grounds for absolute divorce. In addition, in this first case, the plaintiff was a woman, but she did not benefit from the new law in the way that Parodi had predicted. The female plaintiff was also demanding custody of her children, but the outcome of the process was in stark contrast to the expectations Parodi had announced: the woman was found guilty and lost the custody suit.

The case made an impact in the media and in legal circles at the time due to the way in which it ignored the time periods set out in Article 31.[18] Even certain pro-divorce activists believed that this first ruling could not "set a legal precedent either

---

[16] As Marcilese (2006) has pointed out, this is evidence of federal interference in the provinces. However, at least in relation with divorce cases, rather than a subordination of the judiciary to the executive, what can be seen are different interpretations of the norms and regulations on the part of the judges, independently of what the legislature had established in these.

[17] The cases considered serious were: J10S8, E. N. D. de V. vs M. V., J. B. G. / A. Z. de G., J 14(10)S5, A. I. / A. I. Á. de I.; J10S18, V. / A. M. de D.

[18] *El Día*, "Resolvióse el primer juicio de disolución de vínculo matrimonial" [First divorce trial settled], March 9, 1955.

through its text or the legislator's intention" as it overlooked the period of time stipulated by the law in order to "avoid successive marriages and divorces, which would demolish the foundations of the institution of marriage" (Amallo, 1955).

However, Gobbi used this first ruling as a precedent in other cases in which he was involved. There were no appeals or interventions from the District Attorney's office in any of these cases. The judge believed, in line with the bases of the law put forward in Congress by the Peronist bloc, that "in the face of a torturous marriage beyond hope of repair, overlooking the stipulated time period has no effect on the aims of the law."

The joint future that a couple in this situation lacked was undoubtedly linked to the idea of happiness that Peronism hoped to spread as part of the new social order. As such, for Gobbi, fulfilling the specified time period was pointless in some cases and, above all, entailed an impediment to "the building of legitimate families [as], far from achieving the ends desired by the law, the period of time that must elapse before they are rebuilt creates a series of trials and tribulations."

c. Getting divorced in Mexico and remarried in Uruguay...

Recent research by Barrancos (2010) has shown how common it was for Argentinians from different parts of the country to remarry in Uruguay, and the assumption is that a percentage of these were previously legally separated in Argentina. Likewise, we also know from Amallo (1995) that, around the 1940s, Mexico became known as a country in which it was easy to obtain a divorce. The resulting legal circuit was facilitated by the facts that mutual consent existed as grounds for divorce there and that it was possible to give power of attorney to a legal representative for all judicial proceedings.

The international problems surrounding divorce were contemplated in several international agreements, such as the Montevideo Treaty of 1889 and the Havana

Convention of 1928, which sought for solutions. However, as not all countries were signatories to these treaties, the problems continued.

Argentina did sign the Montevideo Treaty, Article 13 of which established that the law of the marital home governed the issues of separation and the dissolubility of marriage. According to this, the alleged grounds for dissolving the marital bond had to be accepted by law in the country in which the marriage had taken place (de Galíndez, 1949).

According to jurists of the time, there were two positions on this issue within jurisprudence in Argentina. Both called into question the legal nature of the home declared by the divorcees but, regardless of this, denied the validity of divorce rulings from abroad. The more contemplative of the two positions conceded that these divorces could be considered legal separations, the only type recognized in Argentina. The other, more reluctant, position denied the validity of such rulings altogether (de Galíndez, 1949).

Our sample includes six cases involving divorce abroad, five of which were cases of *ultra petita*. These cases were also tried by Gobbi.[19]

If it had proved impossible for a couple to rebuild their life together after a conciliation meeting, Gobbi analyzed how to proceed given that he understood there to be no specific regulations on rulings from courts from another country, such as Mexico, which had not signed the Treaty of Montevideo. The mandate on judges obliged them to evaluate whether the ruling was comparable or equivalent to the doctrinal principles and procedural norms then in force in Argentina. Even though the legislation of both Mexico and Argentina recognized separation, given that Article 31 had not modified the grounds for this established in the Civil Marriage Law, for Gobbi the crux of the matter

[19] Validations of rulings obtained in Mexico were requested for the following cases: J10S8, A. A. A. de T. / R. T; E. H. T. / A. N. G.; J 14(10) S5, J. G. / R. E. de G. y J10S18, C. F. de M. / C. E. M. The validation of a ruling from Uruguay was requested for J10S8, V. E. V. / J. I. V.

lay in the fact that mutual consent was not admissible grounds for separation in Argentina, and as such it was not possible to recognize the ruling passed in Mexico as equivalent (mutual consent, as stated above, was accepted as grounds there).

As such, in order to deal with the issue, Gobbi believed that as well as fulfilling the obligation described above, judges should "sound out the problem the interested parties are going through; experience the reality of their distress, and then furnish them with solutions that are in keeping with current regulations, *be it in letter or in spirit* (our emphasis)." Having established this point of view, Gobbi's ruling did not stipulate any particular subsection of Law 2.393 as grounds, but instead expressed that "tolerance, the backbone of harmonious coexistence, must also be a guiding principle of the law."

He then advanced on another problem: previously, the rigidity of local regulations had "driven" couples to seek a fallacious legal solution abroad, which had then acquired social legitimacy. This exempted them from fraud against the spirit of the law. As such, "public order does not suffer as a consequence. On the contrary, by definition it implies acceptance, as we should seek to achieve happy coexistence."

In this sense, to paraphrase Sara Ahmed (2008), we could interpret happiness as being the end to all ends, and as such, everything becomes simply a means to happiness, including legal technique and procedure. According to Gobbi, therefore,

> putting the parties in a trial through all the distress of the normal legal process to reach an end that has effectively already been obtained would obviously be ridiculous, as it would imply prolonging and reviving unpleasantness and harsh, uncomfortable situations.

He then added that a ruling of absolute divorce at the same time would put an end to "ongoing illegitimate unions, which are widespread as a result of the circumstances described above." These "*de facto* situations", which made it impossible for couples to consummate their commitment to one another, justified suppressing the time periods

stipulated by the law and "caused [the law] no harm."

It is precisely with regard to the rulings of Judge Ángel Pedro Gobbi that we can call into question certain suppositions regarding the restrictions faced by judges when pronouncing their rulings, a position held by Marcilese. In the rulings of Peronist judges, notably those of Gobbi, a torturous or disturbed home was not considered legitimate, even though it may have been legal. In this sense, judges intervened to unite the legal and the legitimate through their interpretations of the time periods specified in the law, specifically by reducing or eliminating the time between separation and divorce, and through their consideration of divorces obtained abroad.

4. Final considerations

Academic studies have usually emphasized the fact that responding to social demands is the mainstay of populism. Some authors have even considered that the discourse of Peronism, as an example of populism, merged social demands and policies into a new concept of citizenship (James, 1990). Our article sheds light on the issue of civil rights, which have been less studied. The clause in Law 14.394 that signified, however briefly, the legalization of divorce under a Peronist government set an inescapable precedent in the history of such rights in Argentina. As we have mentioned, this study explores an issue that has not been examined to date, namely the way in which this new law was applied.

As we have pointed out, few studies on divorce in Argentina have taken the socio-juridical aspect of the issue into account. Our work hopes to contribute to the debate both by capturing the possibilities at stake in the context of the events of 1954–1956 in Argentina, and by capturing the way gender was perceived during that short-lived socio-juridical change.

With regard to absolute divorce, the Argentina of 1954–1956 is a case apart from those other Latin American countries in which divorce was made legal relatively early. It also contrasts with those countries that inscribed the indissolubility of marriage into their constitutions after the crisis in liberalism. It is these differences that pave the way for interesting comparisons to be made, underlining the importance of an analysis of the short-lived existence of absolute divorce in Argentina through the law in question.

Death *in absentia* was the crack through which "Peronist logic" slipped into the formal, abstract judicial logic of the time. Once individuals with absent spouses had been authorized to remarry, it was "logical" for the same right to be extended (on the principle of equality, which was very dear to Peronism) to individuals whose spouse was not absent but with whom they had a "torturous" relationship or to individuals who had divorced and remarried via Uruguay or Mexico.

This was the main argument for the reform introduced in 1954. But as we have seen in previous sections, the historical evidence shows that behind the understanding of divorce as a "logical" solution enabling men and women to reestablish their romantic relationships within a legal framework, there was a pro-divorce tendency that went beyond the formulas that, due to the political forces at stake, could be attended to institutionally.

The spirit of the reform, which was led in Congress by congresswoman Delia Parodi, who claimed to represent the interests of women as a group, was closely linked to the desire for a paradigm shift within the Argentinian family, voiced, in turn, by congressman Ventura González. In this sense, on the one hand, much was made of the individual rights of women which, according to the Peronist bloc, were obviously important to a government that had been responsible for women attaining political rights in Argentina. On the other hand, those in favor of the law spoke at length on the

importance of recognizing the right of women—and to a lesser degree, men—to form a new family. The reform, as it was seen by its Peronist defenders, did not imply the atomization of society—though nor did it entirely relinquish this—but instead mingled with pro-family proposals and the right to a "return" to family life, perhaps not exactly the same as that which had traditionally been legitimized by the law, but family life all the same, within the harmony of Peronism. All this affected the sexual contract (Pateman, 1988) implicit in the institution of marriage which had been for a long time founded around the indissolubility of the bond.

In this way, our inquiry into the issue of divorce in Argentina has allowed us to identify a preexisting pro-divorce tradition in the juridico-ideologically diverse movement that is Peronism. As we claimed at the start of the article, the 1954 regulations on divorce form part of a paradigm shift which changed the way the law and the tension between private and public law were perceived. This shift entailed rebuilding the foundations of the family (a goal colored by pro-family perceptions), and doing so on the basis of parameters that have long been concealed: the contractual autonomy of parties within the family structure (a goal which shattered—or at least opened cracks in—traditional perceptions of the family up until that point).

However, the implementation of this paradigm shift was put under strain by a regulatory legal framework that was a legacy of the nineteenth-century codification of laws but had not changed significantly since. We can speculate that such change would have endangered the ultimate goal of the reform, which was to legalize remarriage, at least for those whose marriages had already fallen apart in practice.

Despite the rupture brought about by the introduction of Article 31, the grounds for divorce still not include mutual consent. But as we have shown, although the spokespeople for the UCR bloc were right when they said that Law 14.394 was an omnibus law, they were also right when they suggested that the reform harbored the

hope of introducing mutual consent as grounds for divorce. In effect, this solution was the one that judges such as Ángel Pedro Gobbi favored, based on the "spirit" of the law, if not explicitly on its "letter". In this way, the reform introduced through Article 31, based on a desire to solve the problems of "deviant" families, took on a broader meaning that legislators did not explicitly voice ("We are not pro-divorce", as Parodi said to defend divorce with an argument that privileged sensibility and the attachment to "realism" that was so important to Peronism) but that judges put into practice.

The methodology suggested by Facio has served to interpret the phenomenon in question from a gender perspective. Women's political citizenship was the most emblematic example of the extension of rights during the period considered in our study. However, our research aimed to demonstrate that the push for citizenization also included civil rights. As we hope to have shown through our analysis of the debate in Congress, there was a clear gender bias to the spirit of the reform. Parodi, a woman, claimed to be representing women's interests. Divorce was presented, firstly, as a solution for women; and secondly, and as a consequence of this, for men[20].

Using a corpus made up of the rulings contained in the record books of divorce sentences and a detailed investigation into a set of files, we have shown how those who administered justice resignified legal norms by going beyond what was laid out in the relevant legal guidelines. In line with Facio's methodology, the results of our analysis of judges' behavior reveals that different philosophical and legal conceptions coexisted during the period in question, and the weight of the personal positions of certain judges influenced the importance of these. We have seen how Gobbi's rulings validating divorces obtained abroad skirted the issue of divorce by mutual consent by not making

[20] It is also important to note that the bases for the introduction to the chapter on the family in the Constitution of 1949 were taken from the Women and Children's Charter drafted at the Chapultepec Conference in 1945.

explicit mention of the articles taken as grounds for the divorces in question. These rulings, which according to other interpretations showed procedural errors, are also evidence of the fact that judges who were known to be Peronists could challenge the limits of interpretation of a law instigated by the Peronist bloc itself. Insofar as the categorization of grounds for divorce were not changed, the rulings were generally in keeping with binary gender stereotypes that demanded a productive husband who provided for the home and a stay-at-home wife dedicated to domestic tasks and childrearing. However, although the general trend reproduced these stereotypes, certain rulings did question these models. As such, although the letter of the law did not change, a new concept of divorce was introduced in legal practice: remedial divorce, using strategies that were based on mutual consent (although this was not explicitly acknowledged).

Our research highlights a social aspect of the legal phenomenon of divorce that has been little examined in specialist studies of the issue, which have generally focused on the 1954 law by stressing the political confrontation with the Catholic Church. We do not underestimate the specific circumstances of this confrontation, but by paying attention to the evolution of the legal criteria that culminated in the establishment of Peronist doctrine as the accepted national doctrine, we have been able to identify absolute divorce as a latent legal solution. In effect, a brief examination of the main government plans and regulations from the time reveals that although the First Five-Year Plan (1946) referred to the indissolubility of marriage, Article 37 of the Constitution of 1949 introduced the idea of "equality between spouses" and made no mention of indissolubility of marriage, which remained the case in the Second Five-Year Plan (1952). Without discarding the idea that it was the dispute between the government and the Catholic Church that led to the law, in this article we wish to draw attention to an aspect of the process that has been examined far less in other

historiographical studies to date: the change in the concept of the Argentinian family, which is expressed not only in Article 37 of the Constitution of 1949, particularly the notion of equality between spouses, but also in Article 31 of Law 14.394. Both these aspects of Argentinian civil law remain a fertile field for future analysis.[21]

References

Abásolo, E. (2002). La dimensión política de la Corte Suprema durante el régimen peronista (1947–1955). *Estudios Interdisciplinarios de América Latina (EIAL)*, 13(2). Retrieved from: http://www1.tau.ac.il/eial/index.php?option=com_content&task=view&id=579&Itemid=221

Acha, O. (2005, april), "Diferencia sexual y hegemonía política en los años finales de la primera década peronista (1954-1955)". Paper presented at *Género, Sociedad y Política*. *Jornada Homenaje a Marcela Nari*, Buenos Aires.

Acuña Anzorena, A. (1955). El divorcio en la Ley 2393. *Revista La Ley*, (78), 673–706.

Ahmed, S. (2008). The politics of good feeling. *ACRAWSA, e-journal*, 4 (1). Retrieved from: http://acrawsa.org.au/files/ejournalfiles/57acrawsa5-1.pdf

Barrancos, D. (2006) Problematic Modernity: Gender, Sexuality, and Reproduction in Twentieth-Century Argentina. *Journal of Women's History*, Volume 18, Number 2, pp. 123-150.

Barrancos, D. (2000). Inferioridad jurídica y encierro doméstico. In Gil Lozano, Fernanda [et al.] (Editors) *Historia de las Mujeres en Argentina.* Buenos Aires: Taurus.

Barrancos, D. (2007). *Mujeres en la sociedad argentina. Una historia de cinco siglos.* Buenos Aires: Sudamericana.

Barrancos, D. (2009, july). "Imágenes de Género: Repercusiones de la suspensión de la ley del divorcio de 1954 en la Argentina" Paper presented at *53º Congreso Internacional de Americanistas*, Mexico City, Mexico.

Barrancos, D. (2010, september). Casamiento oriental: Matrimonios de argentinos y de residentes en la Argentina en la República Oriental del Uruguay en las décadas 1920 y 1930. Paper presented at *X Jornadas Nacionales de Historia de las Mujeres y V Congreso Iberoamericano de Estudios de Género*. Buenos Aires: Universidad Nacional de Luján.

Barry, C. (2009). *Evita Capitana. El partido peronista femenino*, 1949-1955. Caseros: EDUNTREF.

[21] This idea has been strengthened by data arising from the analysis of rulings on divorce petitions from 1955: in rulings from between 1952 and 1955, a tendency to favor female plaintiffs can be appreciated (where previously sentences favored men); the notion of divorce through mutual consent can also be observed. In other research (Giordano and Valobra, 2009), we have built on this idea using data arising from the analysis of rulings from between 1952 and 1955, pointing at a tendency to favor female plaintiffs (where previously sentences favored men). The notion of divorce underlying those rulings was that of divorce through the fault of both parties.

Benhabib, S. (2006). *Las reivindicaciones de la cultura. Igualdad y diversidad en la era global*. Buenos Aires y Madrid: Katz Barpal Editores.

Bianchi, S. (1999). Catolicismo y peronismo la familia entre la religión y la política (1945–1955). *Boletín del Instituto de Historia Argentina y Americana Dr. Emilio Ravignani*, 3(19), 115–137.

Bianchi, S. (1993). Las mujeres en el peronismo (Argentina 1945-1955). In George Duby y Michelle Perrot (Editors), *Historia de las Mujeres en Occidente*. Tomo X. Siglo XX, Madrid: Taurus.

Biernat, C. and Ramacciotti, K. (2008). La tutela estatal de la madre y el niño en la Argentina: estructuras administrativas, legislación y cuadros técnicos (1936-1955). *História, Ciências, Saúde – Manguinhos*, Rio de Janeiro v.15, n.2, p.331-351, abr.-jun.

Bourdieu, P. (1974) Avenir de classe et causalité du probable. *Revue française de sociologie*, vol. 15,

n° 1, p. 3–42.

Caimari, L. (1994). *Perón y la Iglesia católica. Religión, Estado y sociedad en la Argentina 1943-1955*. Buenos Aires: Ariel.

Cano, G. (1993). Revolución, feminismo y ciudadanía en México (1915-1940). In Georges Duby y Michelle Perrot (Editors), *Historia de las mujeres en occidente*. Tomo IX. Madrid: Taurus.

Cano, Gabriela (2006). Debates en torno al sufragio y la ciudadanía de las mujeres en México. In Guadalupe Gómez Ferrer [et al.], *Historia de las Mujeres en España e Hispanoamérica* (535-552) Madrid: Cátedra, Vol. 4.

Carrillo, I. (1994). Algunas tendencias actuales de la teoría del Derecho. In Soberanes, José Luis (Editor*) Tendencias actuales del Derecho (78-86)*. México: Fondo de Cultura Económica.

Cosse, I. (2004). El orden familiar en tiempos de cambio político. Familia y filiación ilegítima durante el primer peronismo (1946-1955). In Ramacciotti K. y Valobra A. (Editors), *Generando el peronismo. Estudios de cultura, política y género, 1946-1955 (*171-195). Buenos Aires, Proyecto Editorial.

Cosse, I. (2006). *Estigmas de nacimiento: Peronismo y orden familiar 1946–1955.* Buenos Aires: Fondo de Cultura Económica/Universidad de San Andrés.

Cosse, I. (2008). El modelo conyugal en la ciudad de Buenos Aires de la segunda posguerra: el compañerismo de complementariedad y el impulso familiarista [On line]. *Trabajos y Comunicaciones*, (34). Retrieved from: http://www. fuentesmemoria. fahce. unlp. edu. ar/art re vistas/pr. 3724/ pr.3724.pdf

De Galíndez, J. (1949). Doctrina. El divorcio en el derecho comparado de América. In *Boletín del Instituto de Derecho Comparado*. Retrieved from: http://www.juridicas.unam.mx/publica/librev/rev/indercom/cont/6/dtr/dtr1.pdf

De Privitellio, L. (2011). Las elecciones entre dos reformas: 1900-1955. In Sábato, H. [et. al.], *Historia de las elecciones en la Argentina, 1805-2011* (135-233) Buenos Aires: Editorial El Ateneo.

Di Liscia, H. y Rodríguez A. M. (2004). El cuerpo de la mujer en el marco del estado de bienestar en la Argentina: La legislación peronista (1946–1955). *Boletín americanista*, 54, 63-85.

Di Liscia, M. H. (1999). Ser madre es un deber (maternidad en los primeros gobiernos peronistas), en Villar D. [et. al.], *Historia y Género. Seis estudios sobre la condición femenina*. (33-51). Buenos Aires: Biblos.

Di Liscia, M. H. (1997). Maternidad y discurso maternal en la política sanitaria peronista. In María H. Di Liscia [et al.], Mujeres, Maternidad y peronismo. Santa Rosa: Fondo Editorial Pamepeano.

Ehrick, Christine (2005). *The shield of the weak. Feminism and State in Uruguay, 1903-1933*. Albuquerque: University of New Mexico Press.

Facio Montejo, A. (1992). *Cuando el género suena cambios trae... Una metodología para el análisis de género del fenómeno legal*. San José de Costa Rica: ILANUD.

Geertz, C. (1973). *The Interpretation of Cultures: Selected Essays*. New York: Basic Books

Giordano, V. (2012). *Ciudadanas Incapaces. La construcción de los derechos civiles de las mujeres en Argentina, Brasil, Chile y Uruguay en el siglo XX.* Buenos Aires: Teseo.

Giordano, Verónica (2009). "María Florentina Gómez Miranda y 'la lucha denodada de la mujer argentina por sus derechos', en Adriana Valobra (ed.), *Mujeres en espacios bonaerenses* (225-237). La Plata: EDULP.

Giordano, V. y Valobra, A. (2009, october). El divorcio en Argentina: ideas y prácticas sociales en torno a la aplicación de la ley 14.394 de 1954. Paper presented at *XII Jornadas Interescuelas y/o Departamentos de Historia*, Departamento de Historia de la Facultad de Humanidades y Centro Regional Universitario Bariloche (CRUB) Universidad Nacional del Comahue, San Carlos de Bariloche, Provincia de Río Negro.

Guy, Donna (2011). *Las mujeres y la construcción del Estado de Bienestar. Caridad y creación de derechos en Argentina*. Buenos Aires: Prometeo.

Lavrin, A. (1995). *Women Feminism and Social Change in Argentina, Chile and Uruguay 1890-1940*. Lincoln, University of Nebraska Press.

McGee Deutsch, S. (1991). "Gender and Sociopolitical Change in Twentieth-Century Latin America" The *Hispanic American Historical Review*, Vol. 71, No. 2 (May, 1991), pp. 259-306

Marcilese, J. (2006). El Poder Judicial bonaerense en el primer peronismo: de la autonomía a la dependencia. Estudios Interdisciplinarios de América Latina (EIAL), 18(2). Retrieved from: http://www1.tau.ac.il/eial/index.php?option=com_content&task=view&id=194&Itemid=158

Navarro, M. (1994). *Evita*. Buenos Aires: Planeta.

Novick, S. (1993). *Mujer, Estado y políticas sociales*. Buenos Aires: CEAL.

Palermo, S. (2011). Quiera el hombre votar, quiera la mujer votar: género y ciudadanía política en Argentina (1912-1947). In Carolina Barry (Editor), *El Sufragio Femenino en América Latina*, Universidad Nacional de Tres de Febrero, (2011).

Panella, C. (2006). *El gobierno de Domingo A. Mercante en Buenos Aires: un caso de peronismo provincial*, La Plata: Archivo Histórico de la Provincia de Buenos Aires.

Pateman, Carole (1988). *The Sexual Contract*. Cambridge: Polity Press.

Pecheny, Mario (2009). Parece que no fue ayer: el legado político de la Ley de Divorcio en perspectiva de derechos sexuales. In Roberto Gargarella [et al.] (Editors), *Discutir Alfonsín*. Buenos Aires: Siglo XXI Editores.

Vaz, Wanda Maria Cabella (2006). Dissoluções e formação de novas uniões: uma análise demográfica das tendências recentes no Uruguai. (Doctoral dissertation). Universidad Federal de Campinas, São Paulo.

Peláez, S. y Valobra, A. (2004). '¡Sea legisladora...!' Una aproximación a la representación de las primeras legisladoras nacionales argentinas, 1952-1955. In Ramacciotti, Karina y Valobra, Adriana (Editors), *Generando el peronismo. Estudios de cultura, política y género*. (89-122). Buenos Aires: Proyecto Editorial.

Phillips, A. (1996). *Género y teoría democrática*. México: UNAM.

Plotkin, M. (1994). *Mañana es San Perón. Propaganda, rituales políticos y educación en el régimen peronista (1946-1955),* Buenos Aires: Ariel.

Rein. R. (2006). *Juan Atilio Bramuglia. Bajo la sombra del Líder: la segunda línea de liderazgo peronista,* Buenos Aires: Editorial Lumiere.

Rodríguez Molas, R. (1984). *Divorcio y familia tradicional*. Buenos Aires: Centro Editor de América Latina.

Sanchís, N. y Bianchi, S. (1988). *El partido peronista femenino (1949-1955).* CEAL: Buenos Aires.

Scott, Joan (1996). *Only paradoxes to offer: French feminists and the rights of man*. Cambridge: Harvard University Press.

Sledziewski, E. (1993). Revolución Francesa. El giro. In George Duby y Michelle Perrot (dirs.), *Historia de las mujeres en Occidente*. (41-56) Vol. IV. Madrid: Taurus.

Rodríguez Sáenz, E. (2006). Movimientos de mujeres y feministas en América Central. In Guadalupe Gómez Ferrer [et alii.] (coords.), *Historia de las Mujeres en España e Hispanoamérica*, Vol. 4 Madrid: Cátedra.

Torrado, S. (2003). *Historia de la familia en la Argentina moderna (1870-2000).* Buenos Aires: Ediciones de la Flor.

Torre, J. C. y Pastoriza, E. (2002). La democratización del bienestar, en Torre, J. C., *Los años peronistas (1943-1955).* (257-312*)* Tomo VIII, Colección *Nueva Historia Argentina*. Buenos Aires: Sudamericana.

Valobra, A. (2010). *Del hogar a las urnas: Recorridos de la ciudadanía política femenina. Argentina, 1946–1955.* Rosario: Prohistoria.

Zanatta, L. (1999). La reforma faltante. Perón, la Iglesia y la Santa sede en la reforma constitucional de 1949. In *Boletín del Instituto de Historia Argentina y Americana "Dr. Emilio Ravignani",* tercera serie, Nº 20, 111-130. Buenos Aires: UBA.

Zanatta, L. (1999). *Perón y el mito de la nación católica. Iglesia y Ejército en los orígenes del peronismo. 1943-1946*. Buenos Aires: Editorial Sudamericana.