

CHAPTER TWO

THE DISCOURSE OF DISCRIMINATION IN A CONTEMPORARY NORTH AMERICAN CONTEXT

Introduction

The philosophical, theological and historical points of view that are generally used to explain the tense relationship the members of the Catholic Church and the diverse gay and lesbian groups were analyzed in chapter one as well as an argument in favor of a modification of the Church's views on homosexuality, based on the idea that it has modified its ideological stance in the past. This chapter intends to explore the modern discourse that the Catholic Church uses to discriminate homosexuals and how the discourse is used to influence state policies, particularly in a North American context. This entails explaining the relationship between the state, the gay and lesbian community and the Church, summarizing the ideological divisions that exist in the North American countries and the polarization of thought between Liberal and Conservative ideologies.¹

Although scripture and tradition are used to justify certain positions that discriminate against homosexuals, some members of the Church believe that a “new” crusade² should be launched, one which tries to salvage old beliefs, traditions and systems that are believed to have existed in the past and which are categorized by some as “moral

¹ A third line could be added in the Marxist thought that influenced the Liberation Theology, though the influence of that group within Catholicism has waned since the 1970's and particularly since the accession of Pope John Paul II and the collapse of Communism in the Eastern European block. For a quick reference on the debate of Theology of Liberation see Paul Barry Clarke and Andrew Linzey, *Dictionary of Ethics, Theology and Society* (London & New York: Routledge, 1996), 521-525.

² Similar to the older ones, which seek to stamp out lifestyles and beliefs that the Catholic Church considers heretical in people that know what the true faith is according to the Church accepted doctrine. Although this type of Crusade does not entail liberating the Holy places in Israel and Palestine from Muslim influence or stamping out a heretic belief through warfare in a certain region like the Albigensian Crusade did in Provence. See the creation of the Mendicant Orders in the previous chapter.

values.”³ Certain groups, particularly self-identified conservatives, believe that some ideologies currently or theoretically held in the past –particularly those inspired by the Christian tradition– are deemed better than the belief systems offered currently. The fight which seeks to restore purportedly old belief systems or suppress new ones is currently being debated in the political arena of the three North American countries.

This chapter explains how the discrimination is carried out by the conservative agenda of the three countries and whether or not the governments of Mexico, the United States and Canada are trying to do anything to stop or modify the attempts of this religious movement to repress the public expressions and the identity of the members who identify themselves as part of the gay and lesbian community. This chapter also discusses whether it is necessary for the governments of the three states to intervene on behalf of the sexual minorities or not. This will be achieved by answering the question posed in the introduction to this thesis: How can (or how have) the liberal democratic governments of each North American state attempted to deal with the consequent inequality that the discrimination of homosexuals entails? To answer this it is important to focus on what discourse the Catholic Church is currently using in the region, what actions it is undertaking at present to discriminate against people who have same-sex desires and, what influence it has on the state in each of the three countries.

Exploring these points will demonstrate that the discrimination of homosexuals is currently justified as a fight to stop “the destruction of the traditional family unit”⁴ and “the

³ *Catecismo de la Iglesia Católica* (México D.F.: Coeditores Católicos de México, 2000), 639 [my translation]. “La Iglesia expresa un juicio moral, en materia económica y social `cuando lo exigen los derechos fundamentales de la persona o la salvación del as almas` en el orden de la moralidad, la iglesia ejerce una misión distinta de la que ejercen las autoridades políticas: ella se ocupa de los aspectos temporales del bien común a causa de su ordenación al Supremo bien.”

⁴ *Catecismo de la Iglesia Católica*, 590-1.

values for which the family stands.”⁵ The justification of the discrimination is based on the assumption that homosexuality or any sexual movement that upsets purportedly “old beliefs” or “old values” that are considered to be “good” by conservative groups sets a bad example for the vulnerable elements of the population: the children and teenagers of the “normal” families⁶ which consist in the majority of heterosexual individuals.⁷

The discrimination will be demonstrated by exploring the public relations problem that the Catholic Church had in the last decade of the 20th century and the first years of the 21st century, when it used the sexual abuse scandal of children and teenagers by members of the male clergy to further the discrimination of gays by claiming that it was in fact homosexuals within the Church who were responsible for those actions. One of the criticisms leveled against the Catholic Church’s bureaucrats concerns the discourse it chose to use when it failed to differentiate between the homosexual, pedophile and ephebophilic tendencies of the priests who molested children and teenagers and sent a message to its followers that it was fighting modernism and liberalism by standing as a safeguard of the family unit against homosexuals.⁸

⁵ *Catecismo de la Iglesia Católica*, 592. “La familia debe ser ayudada y defendida mediante medidas sociales apropiadas. Cuando las familias no son capaces de realizar sus funciones, los otros cuerpos sociales tienen el deber de ayudarlas y sostener la institución familiar. La importancia de la familia para la vida y el bienestar de la sociedad entraña una responsabilidad particular de esta en el apoyo y fortalecimiento del matrimonio y de la familia. La autoridad civil ha de considerar como deber grave el reconocimiento de la auténtica naturaleza del matrimonio y de la familia, protegerla y fomentarla, asegurar la moralidad pública y favorecer la prosperidad doméstica.”

⁶ David Rayside, *Queer Inclusions, Continental Divisions: Public Recognition of Sexual Diversity Canada and the United States* (Toronto, Buffalo and London: University of Toronto Press, 2008), 20.

⁷ David Rayside, *Queer Inclusions, Continental Divisions*, 21.

⁸ The Catholic Church has generally sided with Conservative governments since the French Revolution to safeguard its interests, though it has flirted with Liberalism at times, as can be seen by the Vatican II Council. Two examples of the Church’s conservatism can be demonstrated in the cases of Pope Pius IX and St. Leo X. For Pope Pius IX see Kenneth L. Woodward, *Making Saints: How the Catholic Church Determines Who Becomes a Saint, Who Doesn’t and Why* (New York: Touchstone Books, 1996), 312-13. A paragraph of the encyclical *Quanta Cura: Condemning Current Errors* can give the reader an idea of what Pius IX believed, [f]or you well know, venerable brethren, that at this time men are found not a few who,

The sexual abuse scandal had an impact on the Church in the three North American countries; though doing a case-by-case exploration is beyond the scope of this thesis, it is interesting to note that the message of the Church did not change from country to country but remained the same: homosexuals were responsible for the abuse. A particular incident demonstrates how globalization has impacted the life of the Catholic hierarchy and the way it perceives itself and this relates to the scandal which occurred in both Mexico and the United States dealt with in the next section.

applying to civil society the impious and absurd principle of "naturalism," as they call it, dare to teach that "the best constitution of public society and (also) civil progress altogether require that human society be conducted and governed without regard being had to religion any more than if it did not exist; or, at least, without any distinction being made between the true religion and false ones." And, against the doctrine of Scripture, of the Church, and of the Holy Fathers, they do not hesitate to assert that "that is the best condition of civil society, in which no duty is recognized, as attached to the civil power, of restraining by enacted penalties, offenders against the Catholic religion, except so far as public peace may require." From which totally false idea of social government they do not fear to foster that erroneous opinion, most fatal in its effects on the Catholic Church and the salvation of souls, called by Our Predecessor, Gregory XVI, an "insanity,"² viz., that "liberty of conscience and worship is each man's personal right, which ought to be legally proclaimed and asserted in every rightly constituted society; and that a right resides in the citizens to an absolute liberty, which should be restrained by no authority whether ecclesiastical or civil, whereby they may be able openly and publicly to manifest and declare any of their ideas whatever, either by word of mouth, by the press, or in any other way." But, while they rashly affirm this, they do not think and consider that they are preaching "liberty of perdition;"³ and that "if human arguments are always allowed free room for discussion, there will never be wanting men who will dare to resist truth, and to trust in the flowing speech of human wisdom; whereas we know, from the very teaching of our Lord Jesus Christ, how carefully Christian faith and wisdom should avoid this most injurious babbling." Also see ⁸ Eugene Kennedy, *The Unhealed Wound: The Church and Human Sexuality* (New York: St. Martin's Press, 2001), 74. On September 8, 1907 Pope Pius X condemned what he termed the errors of "Modernism" in an encyclical *Dominici Gregis*. These errors included most attempts... being made by European Catholics, priests and laity, to incorporate the most recent non scholastic research in to the development of theology and scripture studies ... {including} historical criticism, literary exegesis {and} cautioned against all systems of thought by whatever name which expounded on evolutionary theory of religion, or suggested that the Church reshaped external truths in every period of history according to its understanding, or otherwise threatened the validity and stability of dogma. Also see appendix 1 of this thesis.

2.1 Casting Stones: The Catholic Church's Moral Dilemma and How it Blamed Homosexuals for the Pedophile Scandal

On June 6, 2002 an arrest warrant was issued to detain Nicolas Aguilar, a Catholic priest in the Archdiocese⁹ of Puebla, who was accused of child molestation in dioceses in both Mexico and the United States. The case made national and international headlines¹⁰ when one of the young men who had been allegedly raped by the priest went to court in Los Angeles County and sued not only the priest who raped him, but also the people he held responsible for shuffling the priest from one church to another while he continued molesting children. The accused priest is Nicolas Aguilar,¹¹ his alleged protectors are Cardinal Norberto Rivera,¹² Archbishop of Mexico City, and Cardinal John Mahoney,¹³ Archbishop of Los Angeles.¹⁴ For the first time in the history of Mexico a cardinal was subpoenaed to testify in an American court system.¹⁵ The victim, Joaquin Aguilar (no

⁹ For a definition of Archdiocese see Felician A. Foy, *1990 Catholic Almanac* (Huntington IN: Our Sunday Visitor's Publishing Division, 1989), 297. "An ecclesiastical jurisdiction headed by and Archbishop. An Archdiocese is usually a metropolitan see, i.e., the principal one of a group of dioceses comprising a province."

¹⁰ Sanjuana Martínez, *Manto Purpura: Pederastia clerical en tiempos del cardenal Norberto Rivera* (México: Grijalbo, 2006). Also see Sanjuana Martínez, "Norberto Rivera supo todo y protegió al pederasta Nicolás Aguilar Rivera," *La Jornada* (Nov. 13, 2006 [cited Nov. 11, 2009]): available from <http://www.jornada.unam.mx/2006/11/13/index.php?section=politica&article012n1pol> Also see Jessica Bernstein-Wax, "Group: Mexican Cardinal knew of abuse," *USA Today* (Sept. 12, 2007 [cited Nov. 11, 2009]): available from http://www.usatoday.com/news/topstories/2007-09-12-1302636488_x.htm

¹¹ For a biographical sketch of Father Nicolas Aguilar see Sanjuana Martínez, *Manto purpura*, 39-41.

¹² For a biography on Cardinal Norberto Rivera Carrera see "Cardenal Norberto Rivera Carrera, Arzobispo Primado de Mexico," *esmas* ([cited 11 Nov. 2009]): available from <http://www.esmas.com/noticierostelevisa/biografias/306964.html> For a character description of the Cardinal see Jason Berry and Gerald Renner, *Vows of Silence: The Abuse of Power in the Papacy of John Paul II* (New York: Free Press, 2004), 210. "Rivera was cut in the mold of a John Paul (II) prelate. As a critic of globalization for its effects on the poor, he had provoked the government of President Carlos Salinas; he also closed a seminary he considered too sympathetic to Liberation Theology. In 1997, Rivera was fifty five, his name starting to appear as a *papabile*."

¹³ For a biography on Cardinal Mahoney see "Biography of Cardinal Roger M. Mahoney," *Los Angeles Almanac* ([cited 11 Nov. 2009]): available from <http://www.laalmanac.com/religion/re07.htm>

¹⁴ Mexico City is considered to be the biggest Mexican city and Los Angeles is considered to be the second largest Mexican city in the world. Luis Paredes and Enrique Cid, *Los secretos del Yunque: Historia de una conspiración contra el Estado mexicano* (México: Grijalbo, 2009), 62.

¹⁵ Martínez, *Manto Purpura*, 130.

relation), was convinced that the Mexican legal system would not prosecute Father Nicolas, because of the influence the Catholic Church still has on the Mexican legal system. However, with the support and advice that the Survivors Network of those Abused by Priests (SNAP)¹⁶ gave him, he was able to use the American legal system to prosecute and possibly punish the alleged pedophile priest, while receiving economic compensation for the troubles that the priest caused him.

The case of Nicolas Aguilar is relevant because it highlights the interconnectedness of two North American countries –Mexico and the United States– and the way that the priest sex abuse scandal in one country has an effect on its neighbor, by helping to expose the scandals that occurred in both countries. The case made national Mexican headlines and Cardinal Rivera issued statements publicly which showed him to be appalled by the accusations made against him for allowing a possible child molester to be transferred from the diocese of Tehuacán to the archdiocese of Los Angeles and by so doing allowing the accused priest to abuse more children.¹⁷

The story highlights the crises that confronted the Catholic hierarchy in the North American continent in the last decade of the 20th century and the first of the 21st century.¹⁸ The stories of sexual abuse broke out in the national media's of Canada,¹⁹ the United

¹⁶ See the SNAP website for more information and many accounts of alleged and convicted sexual abuse within the Church. Available online at: <http://www.snapnetwork.org/>

¹⁷ Martinez, *Manto Purpura*, 153.

¹⁸ For the problems the Catholic Church faces in Mexico and the United States see Roderic Ai Camp, *Cruce de espadas: Política y religión en México*, trans. Héctor Acosta Ariza (México D.F.: Siglo veintiuno editores, 1998), 17-9. And David Gibson, *The Coming Catholic Church: How the Faithful are Shaping a New American Catholicism* (New York: Harper San Francisco, 2003), 147-220.

¹⁹ See B.A. Robinson, "Sexual abuse by Catholic Clergy: The Canadian situation," *Religious Tolerance Ontario Consultants on Religious Tolerance* (Mar. 26, 2006 [cited November 11, 2009]) available from http://www.religioustolerance.org/clergy_sex3.htm

States²⁰ and Mexico²¹ roughly about the same time; the most shocking revelation was that some of the male representatives of the Church—an institution that encouraged abstinence and was decidedly against any type of sexual intercourse outside of heterosexual marriage²²— were responsible for the sexual molestation of boys, girls and teens of both sexes. The scandal involved the explosive mixture of sex, abuse of power and authority by adult men who used their position within the Catholic Church to prey on defenseless children that had been entrusted to their care.

The importance of the crisis for the relations between the Church and the gay community²³ cannot be understated because the stance utilized by the Catholic Church blamed homosexual men within the institution for the molestation of young people. Attention has been drawn to the basic point by Yallop, who mentions that “[a]ccording to John Paul II and many of his Bishops, ‘modern society’ is guilty of the epidemic of sexual abuse committed by priests, Monks, Brothers and Nuns against victims who range from boys and girls to handicapped teenagers, religious or lay.”²⁴ The priests who had been responsible for the sexual molestation of children and adolescents were, in other words, homosexuals who had managed to slip through the cracks in the Catholic Church seminaries and who were consecrated priests or brothers operating within the folds of the

²⁰ Gibson, *The Coming Catholic Church*, 163-195.

²¹ Martínez, *Manto purpura*. And also see Salvador Guerrero Chiprés. *El círculo del poder y la espiral del silencio: La historia oculta del Padre Marcial Maciel y los Legionarios de Cristo* (México: Grijalbo, 2004). Also see Jason Berry and Gerald Renner, *Vows of Silence*, 200.

²² *Catecismo de la Iglesia Católica*, 626. “La sexualidad esta ordenada al amor conyugal del hombre y de la mujer. En el matrimonio, la intimidad corporal de los esposos viene a ser una garantía de comunión espiritual.”

²³ In this instance I am not referring to lesbians because the scandal in the press did not point them out as victimizers, and the Catholic Church did not blame the homosexual women in their fold for the abuse. The only case I found is chronicled in Paul Pfeifer, “Catholic Order of Nuns Settles Claim by Three Who Say They Were Abused,” *Star Tribune for Minneapolis- St. Paul Minnesota*. (Sept. 25, 2008 [cited 11 Nov. 2009]): available from <http://www.startribune.com/local/29748154.html?page=1&c=y>

²⁴ David Yallop, *El poder y la gloria: Juan Pablo II ¿santo o político?* (México D.F.: Editorial Planeta Mexicana, S.A. de C.V., 2007), 363 [my translation].

institution. The hierarchy's answer to stop priests from molesting children in the future was to prohibit homosexuals from entering the priesthood²⁵ for it was their tendencies or preferences that made them prone to abuse children.²⁶

Whatever good intentions the Catholic Church may have had at deflecting the attention from itself, the statements against homosexuals perpetuated the perception that Catholicism promoted the discrimination of self-identified members of the gay and lesbian community. The Church refused to make a clear statement that differentiated homosexuals, pedophiles and ephedophiles, and it used the word 'homosexual' as a synonym of the word sodomy, the purpose of which was to describe any type of deviated sexual conduct. The unfortunate choice of words seemed geared to provoke anxious parents to guard their children, not from the Catholic priests, but from homosexuals—men who obviously couldn't control their sexual desires.²⁷ The clarification of the differences between homosexuality and pedophilia are important because they are clearly not the same.

Homosexuality and pedophilia were linked in people's minds until 1906 when "physiologist Havelock Ellis used the term pedophile... to define a sexual abuser of a prepubescent child, and the sexual abuser of a teenager was defined as an ephedophile."²⁸ Throughout the history of the Church and most of the history of Western Civilization, homosexuality—categorized before the 19th century as the word sodomy— and child abuse were confused as one and the same action. "As early as the year 177 C.E., the Bishop of

²⁵ Gibson, *The Coming Catholic Church*, 176. "The favored solution in Rome to the scandal of sexual abuse was a blanket ban on ordaining gay men as priests. In March, the Pope's personal spokesman, Joaquin Navarro-Valls, went so far as to suggest that the ordinations of homosexuals already in the priesthood were invalid."

²⁶ Gibson, *The Coming Catholic Church*, 176. Besides molesting children Vatican Official, Father Andrew Baker wrote that men with same sex attraction were prone to "substance abuse, sexual addiction and depression."

²⁷ David Rayside, *Queer Inclusions, Continental Divisions*, 21.

²⁸ Yallop, *El poder y la gloria*, 364.

Atenágoras characterized adulterers and pedophiles as enemies of Christianity and subjected them to excommunication.”²⁹ Another saint who dealt with the issue of homosexuality and sodomy was St. Basil who

towards the end of the 6th century, reckoned homosexuality to be on a par with adultery, was a man acutely aware of his temptations ‘if thou are young in either body or mind’ he writes in his renunciation of the secular world, ‘shun the companionship of other young men and avoid them as thou wouldst a flame. For through them the enemy has kindled the desires of many and then handed them over to eternal fire, hurling them in to the vile pit of the five cities under the pretence of spiritual love...’ at meals, it is advisable to choose a seat far from other young men; when lying down to sleep, it is better to have an old man between you rather than run the risk of touching a young man’s clothing; and, if a young man should speak to you... it is better to reply to him with your eyes fixed firmly upon the ground.³⁰

The modesty of St. Basil highlights the temptations of a sexual nature that male members of the Catholic clergy had to fight against while they were priests in training. Members of the Catholic clergy to whom this knowledge has been imparted influence the parishioners who go to their churches through word or writing and make the Church an influential shaper of ideas and ideologies.³¹ With regards to homosexuality, one of the common beliefs is that the exposure of families and their children to any type of sexuality which is not natural is detrimental to themselves and consequently, to society.³² This belief shapes some Catholics’ political attitudes and the way they influence state policy.

In the United States the first decade of the 21st century has witnessed gay activists promoting gay unions in the legislation of several states, and being fought by conservatives that seek to deny them the right to marry, to adopt children or to approve “hate crime

²⁹ Yallop, *El poder y la gloria*, 364.

³⁰ Andrew McCall, *The Medieval Underworld* (New York: Barnes and Noble Books, 1979), 202.

³¹ Ai Camp, *Cruce de espadas*, 15.

³² Byrne Fone, *Homophobia: A History* (New York: Picador USA, 2000), 412. “The Roman Catholic Church continues to treat homosexuality as a violation of ‘moral’ or ‘natural’ law. An article in the Vatican’s official paper (...) urged Christians not to support political candidates who endorse same-sex marriages. The author, one Reverend Gino Concetti insisted (...) homosexual marriage would undermine the foundation of the family model upon which human civilization is built.”

bills.”³³ The Christian right³⁴ in the United States wages a campaign against same-sex civil unions because they believe it goes against the families’ rights.³⁵ Homosexuals who choose to marry members of their own sex and who adopt children have to tolerate discrimination from certain segments of the Catholic Church and its followers who believe that homosexuals are capable of raping and victimizing children at worst or rearing the children irresponsibly, leaving them incapable of having a less-than-normal adult life.³⁶

The belief the Church espouses is inspired by the importance it has traditionally assigned to the family in the past,³⁷ demonstrated by erecting the sacrament of marriage³⁸ which is administered by the Church with the sole purpose of generating issue. Despite St. Paul’s famous exhortation in his letter to Corinthians,³⁹ –love does not have much to do

³³ Mimi Hall, “Gay Rights advocates look past Maine’s repeal of Marriage Law,” *Usatoday* (November 5, 2009 [cited 11 Nov. 2009]) ed. Brent Jones: available from http://www.usatoday.com/news/nation/2009-11-04-gay-marriage-maine_N.htm “In all 31 states (...) where the issue has been put to popular vote, gay marriage has lost.”

³⁴ In this thesis represented by the Catholic Church and other Christian denominations

³⁵ For arguments used by Christians against gay marriage see Dr. James Dobson, “Gay Marriage Why Would It Affect Me? Ten Arguments Against Same Sex Marriage,” an excerpt from his book “Marriage Under Fire,” *Nogaymarriage.com* (2003-2005 [cited November 11, 2009]): available from: <http://www.nogaymarriage.com/tenarguments.asp>

³⁶ Rayside, *Queer Inclusions, Continental Division*, 21. “Gay male couples are even more likely than lesbians to be suspect since they are assumed to not have the advantage of whatever child rearing instincts are the province of women. Lesbians are no doubt commonly viewed as less naturally inclined toward motherhood than are heterosexual women (...) but men are more likely to be thought unstable in their relationships, narcissistic in their search for pleasure, and predatory on children.” Also see “Homosexuales son más propensos a abusar de hijos adoptivos, afirma experto,” *Aciprensa Lo que todo Católico debería de saber* (Aug. 14, 2006 [cited 17 Feb. 2009]): available from: <http://www.aciprensa.com/noticia.php?n=>

³⁷ *Catecismo de la Iglesia Católica*, 591. “Un hombre y una mujer unidos en matrimonio forman con sus hijos una familia. Esta disposición es anterior a todo reconocimiento por la autoridad pública; se impone a ella. Se la considerará como la referencia normal en función de la cual deben ser parecidas las diversas formas de parentesco (...) Al crear al hombre y a la mujer, Dios instituyó la familia humana y la doto de su constitución fundamental.”

³⁸ *Catecismo de la Iglesia Católica*, 590-91. “El matrimonio y la familia están ordenados al bien de los esposos y la procreación y educación de los hijos.”

³⁹ (1 Corinthians 13:13) “And now these three remain: faith, hope and love. But the greatest of these is love.”— a phrase on which Augustine wrote an entire volume (*Enchiridion on Faith, Hope and Love* [Washington: Regnery 1961] trans. J.B. Shaw) that has supposedly placed this sentiment at the center of the Christian doctrine ever since. It was, of course, *agape* (selfless love of God) and not *eros* that Paul was speaking of. For an excellent discussion of the different forms of love in earthly Christianity see Anders Nygren, *Agape and Eros* trans. Philip S. Watson (The University of Chicago: Chicago University Press, 1982), 482-503.

with marriage for the Catholic Church.⁴⁰ As a clear example of this a Catholic marriage can be annulled if it is incapable of producing offspring.⁴¹ It is thus important to clarify then what Catholicism understands as family which is defined in the *Catholic Encyclopedia* as

Christ... placed the family itself upon the plane of the supernatural. The family is holy inasmuch as it is to co-operate with God by procreating children who are destined to be the adopted children of God, and by instructing them for His kingdom. ...The most important external relations of the family are, of course, those existing between it and the state. According to the Christian conception, the family, rather than the individual, is the social unit and the basis of civil society. To say that the family is the social unit is not to imply that it is the end to which the individual is a means; for the welfare of the individual is the end of the family and of the state, as well as of every other social organization. The meaning is that the state is formally concerned with the family as such, and not merely with the individual. This distinction is of great practical importance; for where the state ignores or neglects the family, keeping in view only the welfare of the individual, the result is a strong tendency towards the disintegration of the former. The family is the basis of civil society, inasmuch as the greater majority of persons ought to spend practically all their lives in its circle, either as subjects or as heads.⁴²

The definition demonstrates the special relationship the Catholic Church has towards (its own interpretation of) families; the importance it sets on them and the fear that it implants in society about homosexuals being responsible for the child abuse scandal attempts to shape the way the state regulates the relationship between itself and the gay and lesbian community. Indeed

[a] year after the scandal it seemed that The Vatican, the Bush administration and Pope John Paul II were in agreement on a “Crusade” against homosexuals. With a few days apart, there where statements issued that “coincided” from the White House and the Congregation

⁴⁰ This can be corroborated by the many marriages the Church endorsed which suited the needs of the parents, but not the needs of the bride and groom. An example of this is the marriage of European Royalty in the 18th and 19th centuries who married for political convenience. See: Karl Shaw *Royal Babylon: The Alarming History of European Royalty* (New York: Broadway Books, 1999).

⁴¹ Philip S. Kaufman, *Why You Can Disagree and Remain a Faithful Catholic* (New York: The Crossroad Publishing Co., 1999).106. “An annulment is based on the understanding that marriage is a contract. Just as civil courts throw out contracts where essential elements have not been fulfilled, so if the essential requirements for a valid marriage weren’t met at the time of marriage, marriage tribunals issue decrees of nullity.” Examples would be “when there was no clear intention not to have children.”

⁴² Kevin Knight, “Family,” *New Advent Catholic Encyclopedia* (2009 [cited November 11, 2009]): available from <http://www.newadvent.org/cathen/05782a.htm>.

for the Doctrine of the Faith (a new name for an old institution, the inquisition) against homosexual couples.⁴³

The Church seeks to influence the citizens and politicians of the three North American governments to get legislation approved that seeks to define what a family is from the Catholic Church's point of view.⁴⁴ This definition of family is discriminatory, not only toward homosexuals, but to others in society who do not comprise the traditional family unit, particularly single mothers. The significance of family then has within it the seeds of discrimination by categorizing what is good and acceptable and what is not. Even though the Church tries to influence the state, it is interesting to note how effective and influential the Church is at persuading the state to agree with its views and how it affects state policy.

2.2 The State, the Catholic Church and Homosexuals in North America

Anthony Gill points out that for most of the twentieth century the study of the relations between Church and state “was considered anachronistic.”⁴⁵ The commonly held view was that as society modernized the religiosity of the people would gradually disappear from the public sphere and even in the private space. The idea that contemporary society was drifting away from religion as it modernized is broadly captured under “secularizing theory”⁴⁶ which states the notion that “as society advances, religion will retreat [into

⁴³ Carlos Fazio, *En el nombre del padre: Depredadores sexuales de la iglesia* (México D.F.: Editorial Océano de México, S.A. de CV., 2004), 32.

⁴⁴ This was demonstrated in Chapter 1, with the text *1992 Considerations* which wanted to enlighten legislators about fighting the “gay and lesbian agenda” through legislation.

⁴⁵ Anthony Gill, *Rendering Unto Caesar: The Catholic Church and the State in Latin America* (Chicago: The University of Chicago Press, 1998), 3.

⁴⁶ Gill, *Rendering Unto Caesar*, 3.

obscurity]”⁴⁷ due to the intellectual and scientific advances that have occurred since the 17th century and which have disproved ideas, notions and superstitions that supposedly gave credence and were the bulwarks to any religion.⁴⁸ “This [belief] was perhaps the least questioned school of thought in academia”⁴⁹ throughout the 20th century. However the theory of the secularizing society does not seem to hold in the contemporary social context of the three North American countries in this study; over the last three decades the “secularization theory” has been challenged as the world has witnessed resurgence in religiosity.⁵⁰ It is thus relevant to study religion when the society which is being studied considers itself religious, and this shapes their perceptions of what is acceptable and what is not.⁵¹

In North America, religion plays an important role in the lives of many citizens that live in these countries and thus shapes their views of the world.⁵² In the study of the Social Sciences it is frequently forgotten that “religion is an integral component of the culture of society, which [consequently] includes its political culture.”⁵³ Many essays dealing with politics and religion view the state and religion as two antagonistic groups, believing “that religion confronts the political *status quo*.”⁵⁴ History nevertheless demonstrates that this

⁴⁷ Vexen Crabtree, “Secularization Theory: Will Modern Society Reject Religion? What is Secularization?” *www.humanreligions.info* (November 30, 2008 [cited November 11, 2009]): available from: <http://www.humanreligions.info/secularisation.html>

⁴⁸ Crabtree, “Secularization Theory: Will Modern Society Reject Religion? What is Secularization?”

⁴⁹ Gill, *Rendering Unto Caesar*, 3.

⁵⁰ Gill, *Rendering Unto Caesar*, 3.

⁵¹ Ai Camp, *Cruce de espadas*, 11.

⁵² Juan A. Herrero Brasas, *La sociedad gay* (Madrid: Foca, ediciones y distribuciones generales S.L., 2001), 187 [my translation]. Also see Ai Camp, *Cruce de espadas*, 13. “La influencia más importante de catolicismo (...) se produce en el ámbito de sus valores. El cristianismo está profundamente arraigado en la cultura y hasta los católicos nominales conservan fuertes lazos emocionales con la Iglesia. (...) Las instituciones religiosas pueden alterar los patrones sociales al impugnar las normas culturales subyacentes del individuo religioso que afectan su visión del mundo.”

⁵³ Ai Camp, *Cruce de espadas*, 11 [my translation].

⁵⁴ Ai Camp, *Cruce de espadas*, 11 [my translation].

has not been the case in the past because religion—in the case of this study, Catholicism—has legitimized or helped to legitimize the state: this is particularly true in the case of Mexico⁵⁵ and Quebec⁵⁶ even if there has been periods of antagonism between both institutions.⁵⁷ The Catholic Church has been instrumental in providing the state in the three North American countries with “cultural power” which is “the capacity to utilize cultural resources to affect political outcomes. These resources include symbols, ideologies moral authority and cultural significance.”⁵⁸ The Church, even if it is strong in influencing certain policies, does not necessarily influence every decision the state promulgates, and in the North American context, the state sometimes operates as a mediator between different interests groups, favoring one over the other or simply mediating between groups against the Church’s interests.

The importance of the state in the debate about legal rights for sexual minorities cannot be understated: it is the state that grants the gay and lesbian community the rights that they are lobbying for like the right to marry, to adopt children or to approve laws against “hate crimes”⁵⁹ and which involve punishment for people who attack people based on their sexual preference.

⁵⁵ Ai Camp, *Cruce de espadas*, 11 [my translation].

⁵⁶ Terrence J. Fay, *A History of Canadian Catholics* (Montreal and Kingston, London and Ithaca: McGill-Queens University Press, 2002), 280-282.

⁵⁷ Ai Camp, *Cruce de espadas*, 11. “Frecuentemente se olvida que la religión es un componente integral de la cultura de la sociedad, incluida su política cultural, y que a lo largo de la historia las instituciones religiosas fueron las más de las veces aliadas, y no antagonistas vociferantes del Estado. La religión y las instituciones religiosas son vehículos importantes para dar legitimidad a otras estructuras y agentes ‘mas políticos’.”

⁵⁸ Ai Camp, *Cruce de espadas*, 15. “La Iglesia es una fuente importante de lo que Demerath llama ‘poder cultural’, la capacidad de utilizar recursos culturales para afectar los resultados políticos. Estos recursos abarcan símbolos, ideologías, autoridad moral y significados culturales.”

⁵⁹ Steve Hogan and Lee Hudson, *Completely Queer: The Gay and Lesbian Encyclopedia* (New York: Henry Holt & Co. 1999), 271-2. “Hate Crime: Violent actions against a person or property motivated by hostility toward a particular race, religion, ethnicity or sexual orientation (...) As of 1997, 17 states had passed laws that included sexual orientation as part of the language defining hate crime. Some cities and states have also instituted special programs to train police and other investigative units.”

The reader may ask why it is important to protect the rights of the gays and lesbians, aside from the moral arguments that are used to justify the protection of any minority in peril from attacks of other groups in the population? Richard Florida states that the importance of gays and lesbians to the American economy and society is due to the positive bearing they have on the “creative economy,” by arguing that gays and lesbians tend to live by, and contribute to, the well being of the economy of the cities they inhabit which “were also the ones where high-tech industry located.”⁶⁰ Thanks to the use of the “Gay Index”⁶¹ the author was able to determine that the “openness to the gay community is a good indicator of the low entry barriers to human capital that are so important to spurring creativity and generating high-tech growth... Gays predict not only the concentration of high-tech industry, they also predict its growth.”⁶² What can be gleaned from all this is that gays are important to the economic development of the places they live in because as citizens of the state they are obligated to contribute economically by paying taxes which benefit not only the state, but the people that live in their community: the economic outpour of queers is known as the Dorothy dollar⁶³ and which is the amount of money that gays and lesbians spend- approximately \$350 billion dollars a year.⁶⁴

⁶⁰ Richard Florida, *The Rise of the Creative Class: And How Its Transforming Work, Leisure, Community and Every Day Life* (New York: Basic Books, 2002), 255.

⁶¹ Florida, *The Rise of the Creative Class*, 255-6. “Working with the economists Dan Black, Seth Sanders and Lowell Taylor, [Gary] Gates has created a new measure that he called the Gay Index (...) which ranks regions by their concentrations of gay people.”

⁶² Florida, *The Rise of the Creative Class*, 255-6.

⁶³ “Business: The Economy, The Pink Pound,” *BBC Online Network* (Jul. 31, 2008 [cited 2 Dec. 2009]): available from <http://www.news.bbc.co.uk/2/hi/business/142998.stm> In 1999 it was estimated that gays spent \$6.46 billion dollars a year: the substantial difference on spending may be because more people are out of the closet; “New media empire to cash in on ‘pink’ economy,” *Asia Times online* (May 28, 1999 [cited 1 Dec. 2009]): available from <http://www.atimes.com/media/AE28Ce02.html>

⁶⁴ “Business: The Economy, The Pink Pound,” *BBC Online Network* (Jul. 31, 2008 [cited 2 Dec. 2009]): available from <http://www.news.bbc.co.uk/2/hi/business/142998.stm>

The state in the three North American countries has gradually begun to change its legislation on the ways members of the self-identified gay and lesbian community are treated. The legislations which have been enacted in the three countries modify policies that were influenced by Christian ideals⁶⁵ of what proper conduct was and what it was not 800 years ago.⁶⁶ The changing of the legislation has proceeded along different paths in each one of the three North American countries. In the United States and Canada the self-identified members of the gay and lesbian community have effected changes by appealing to the Supreme Court of Justice trying to overturn the sodomitic laws⁶⁷ which were enacted from the inception of the British colonies of North America,⁶⁸ and which spread through the American and Canadian parts of the continent as they expanded during the 19th century. The laws derived from the English legal system are still used in former English colonies throughout the globe to justify the discrimination of gays and lesbians.

An example of the consequences the laws that ruled the British colonies carry toward gays and lesbians can be found in the island of Jamaica, where Bruce Golding,⁶⁹ the Prime Minister of the Caribbean country “has proudly defended colonial-era laws that

⁶⁵ Louis Crompton, *Byron and Greek Love: Homophobia in 19th Century England* (Berkeley: University of California Press, 1985), 14. “William Blackstone emphasized the Biblical source of the capital punishment for homosexuality [in the laws].”

⁶⁶ John Boswell, *Christianity, Social Tolerance and Homosexuality. Gay people in Western Europe From the Beginning of the Christian Era to the Fourteenth Century* (Chicago: University of Chicago Press, 1980), 11. 334. “Beginning roughly in the latter half of the 12th century (...) a more virulent hostility appeared in popular literature and eventually spread to theological and legal writings as well. The causes of this change cannot be adequately explained, but they were probably closely related to the general increase in intolerance of minority groups apparent in ecclesiastical and secular institutions throughout the 13th and 14th centuries.”

⁶⁷ Hogan and Hudson, *Completely Queer*, 515. “In the US as of 1996, same sex sodomy remained a crime in 22 states; heterosexual sodomy, even between a married couple, is illegal in 16 states.”

⁶⁸ Crompton, *Byron and Greek Love*, 14. “British Parliament had made male homosexuality a capital offense in 1533.”

⁶⁹ “Opposition leader Bruce Golding has come out strongly against any change in legislation to sanction homosexuality in Jamaica, even as members of that community are moving for greater acceptance among locals.” “Golding says no to homosexuality,” *Jamaica Observer* ([cited 1 Oct. 2009]): available from http://www.jamaicaobserver.com/news/html/20070707T160000-0500_125077_OBS_GOLDING_SAYS_NO_TO_HOMOSEXUALITY.asp

criminalize sodomy”⁷⁰ and whose governmental stance of hatred towards gays and lesbians is accused of facilitating the assassination, torture and killings of gays and lesbians.⁷¹ These sodomy laws still in effect in Jamaica were until recently part of the Canadian and the American legal landscape. The post-colonial inheritance that the British legal system left in its former colonies, the legal system to which most geographical areas of the North American are still beholden to, still affects gays and lesbians by applying the sodomitical laws which decide whether they are eligible for rights or not.

Given this, it makes sense to ask what the state has done to stop the Church’s discriminatory discourse and how much the Catholic Church influences each North American country’s legislation? Despite the fact that the Catholic Church has tried to influence the way the governments of the three North American countries enact legislation for or against homosexuals, the rights of gays and lesbians and their acceptance on the part of society have increased over the last decades.⁷² The governments of the three countries have effected changes in the legal recognition and protection granted to so-called ‘sexual minorities’ in varying degrees. These laws have, as a rule, been issued within the federalist legal framework that each country possesses. The laws which the various federal entities approve range from sanctioning individuals who hurt people who have a same-sex

⁷⁰ Tim Padge, “The Most Homophobic Place on Earth?,” *Common Ground, Common Sense* (Apr. 12, 2006 [cited 11 Nov. 2009]): available from

<http://www.commongroundcommonsense.org/forums/lofiversion/index.php/t53992.html>

⁷¹ Hogan and Hudson, *Completely Queer*, 121. “Even more disturbingly, homophobic messages have been delivered by some of the region’s leading pop stars, such as the Jamaican singer Buju Banton, whose ‘Boom, Bye, Bye’ (1992) urged listeners to shoot and kill (‘boom, bye, bye’) a ‘batty boy’ (gay man). (...) Jamaican born writer and publisher Makeda Silvera believes Caribbean hostility toward lesbian and gay men is rooted in the particularly strong influence of the Bible in the Caribbean tradition. In colonial times, the Bible provided slaves with the chance to attain literacy and a source of strength and hope- as well as Old Testament condemnations of homosexuality.”

⁷² Charles Kaiser, *The Gay Metropolis: The Landmark History of Gay Life in America Since World War II* (San Diego, New York & London: A Harvest Book, 1997).

orientation (so-called hate crimes⁷³), to striking laws from the constitutions or civil codes which penalize a homosexual act (like sodomy, which until the 1990s was still penalized in several states of the American union⁷⁴). The laws enacted can also describe that marriage is an act that can only occur between members of the opposite sex (a man and a woman) or people of the same sex, depending on how ideologically liberal or conservative the citizens of the federal entity are considered to be. If a state or province is considered to be liberal, then the debate widens to approve legislation that allows for the legal union of gays and lesbians through marriage or civil partnerships and what rights can be given to them and which should be withheld.

The debate that “gay marriage generates” opens other questions of whether other rights should accrue to homosexuals that enter in to a legally sanctioned relationship, particularly the issue of whether gay and lesbian couples should be allowed to adopt children or not. This set of debates certainly underlines the pertinence of Rayside’s claim that “[marriage] is an institution that is seen not only as irretrievably encumbered with traditional and inequitable baggage, but as specifically oppressive of women and sexual minorities.”⁷⁵ The point is ‘political’ to the core. The institution of marriage is considered to be part of a Family regime⁷⁶ which almost always deals with “married heterosexual

⁷³ See definition in Hogan and Hudson, *Completely Queer*, 271-272.

⁷⁴ Hogan and Hudson, *Completely Queer*, 15.

⁷⁵ Rayside, *Queer Inclusions, Continental Division*, 11.

⁷⁶ For further explanations of what a Family regime is, with an explanation of the violence that can accompany it see Carol R. Ronai, Barbara A. Zsembik & Joe R. Feagin, *Everyday Sexism in the Third Millennium* (New York: Routledge, 1997), 109.

couples, unless proven to be inadequate, as fully entitled to all the relational of the relational and parenting rights and obligations available to couples.”⁷⁷

For the purposes of this thesis two measures will be used to explain whether the state has been capable of fighting discrimination against sexual minorities promoted by Christianity: the approval of the so-called gay marriage and the approval of hate crime bills by the state is a measure of how effective it has been at eradicating discrimination.

Until the 1990s the governments of the three counties and the Catholic Church could be described as endorsing the family regime. However, the state’s change of opinion regarding this regime is allowing for gradual modifications in the legislations of each country. This is particularly relevant to defending the hypothesis of this thesis, “even though the Catholic Church discriminates homosexual acts, there are several arguments suggesting that Catholicism could accept or tolerate homosexuals not as individuals who commit a sinful act, but as members of a minority community which have been discriminated in the past and which can be tolerated or accepted as a group within the Catholic Church” because of the opposition the Catholic Church has shown to legalizing any union between members of the same sex, particularly if the wording that is enshrined in the state constitutions, civil codes or national constitutions uses the word ‘marriage.’⁷⁸

⁷⁷ Rayside, *Queer Inclusions, Continental Division*, 20. In the family regime “[s]ame sex parents are regularly denied full official recognition. They are viewed as offering insufficiently gendered role models for their children, or (...) as providing models of corruption and ill health.”

⁷⁸ Rayside, *Queer Inclusions, Continental Divisions*, 10. “Not everyone... agrees that the recognition of sexual diversity in formal institutional policy is worth seeking, or is effective if attained. This was the implicit theme in gay liberationist writing from the early 1970s, by the likes of Kenneth Plummer and Dennis Altman, which regarded the exercise of the State authority in entirely negative terms and rejected all family –centered norms. Michel Foucault and the many theorists influence (d) by him (including Shane Phelan, Mark Blasius, Judith Butler, and Michael Warner) have similar distrust of state regulatory authority and the constricting or normalizing role of traditional family regimes.”

2.2.1 Canada

In Canada change in the political legislation favoring gays and lesbians by approving gay marriage came due to the strength of the state and the progressive weakness of organized religion. Canada can be described as the most secular of the three North American countries,⁷⁹ and even though the Catholic Church still remains an important institution it has gradually weakened its hold on the Canadian consciousness. This trend has occurred since the 1950s particularly in Quebec,⁸⁰ when the perception of the intellectuals was that Catholicism was holding progress back.

Intellectuals, particularly of left-wing leanings, for example, believed that for Quebecois to progress they “had to be ‘free of political influence from the Catholic Church.’”⁸¹ In the particular case of Quebec, rejecting its Catholic heritage meant “rejecting the second-class status of being “Canada’s Other,” the so called French Canadians. The Quiet Revolution⁸² finally ‘laid to rest the century-long ideological representation of Quebec a piously Catholic, agrarian society.’”⁸³ It was the left-leaning members of the nationalist *Parti Quebecois* who adopted the first laws in the North American continent

⁷⁹ This of course does not mean that it is entirely secular; verify the statistics on the Catholic population in Canada that were inserted in the introduction.

⁸⁰ Elaine Pigeon, “Hosanna! Michel Tremblay’s Queering of National Identity,” in *In a Queer Country: Gay and Lesbian Studies in the Canadian Context*, ed. Terry Goldie (Vancouver: Arsenal Pulp Press, 2001), 29. “Previously the Church had taught Quebec’s agrarian nationalists ‘to be satisfied with a lesser lot in life (...) Under the old regime “messianic ideology sought to turn Quebec’s underdevelopment in to a virtue, ‘by which Quebec was to exemplify its spiritual, Latin ancestors in the New World.’”

⁸¹ Louise H. Fosyth, “Beyond the Myths and Fictions of Traditionalism and Nationalism: The Political in the Work of Nicole Brossard,” in *Traditionalism, Nationalism, and Feminism: Women Writers of Quebec*, ed., Paula Gilbert Lewis (Westport, CT: Greenwood Press, 1985), 157-72.

⁸² David Seljak, “Why the Quiet Revolution was “quiet”: the Catholic church’s reaction to the secularization of nationalism in Quebec after 1960,” An article from: *Historical Studies*, 1996, 110-11. Quoted in Fay, *A History of Canadian Catholics*, 281. “The Quiet Revolution was officially launched in 1960 with the election in Quebec of the Liberal government of Jean Lesage. The Laity took full control of the schools and the universities, the hospitals and social services, the trade union and cooperatives, and these institutions were secularized. (...) The Church allowed the revolution to remain quiet.”

⁸³ Renate Usmiani, Michel Tremblay (Vancouver: Douglas & McIntyre, 1982) Quoted in Pigeon, “Hossana!,” 29.

which effectively terminated discrimination based on sexual preference in 1976.⁸⁴ This distancing from the Catholic Church in the Canadian province with the most entrenched Catholic tradition may be a factor which has enabled the gay and lesbian community to obtain more rights than in their neighboring countries to the south. For the Quebecois the Catholic Church's ideology centering on "rural values, ethnic solidarity, religion, and a rejection of politics and the state was quickly swept away and replaced by a modern church that supported a multicultural and democratic society."⁸⁵ Consensual same-sex acts were decriminalized on May 15, 1969.⁸⁶

"By the middle of the first decade of the twenty first century Canadian lesbian and gay couples could marry. In 2003, the first marriages in the world without explicit discriminatory limitations were being performed."⁸⁷ Gay couples could marry and by doing so acquired the same rights that traditional couples did.⁸⁸ The legalization of gay marriage did not go unopposed, however. Resistance came particularly from church leaders⁸⁹ who expressed their concern that they would be obliged to perform the marriages by law "with (gay) couples taking them to court or human rights tribunals if they refused. The legislation, however, states that the bill only covers civil unions, not religious ones, and no clergy would be forced to perform same-sex ceremonies unless they choose to do so."⁹⁰

⁸⁴ Robert Schwatzwald, *Fear of Federasty: Quebec's inverted Fictions Comparative American Identities: Race Sex, and Nationality in the Modern Text* Ed. Hortense J. Spillers (New York: Routledge, 1991), 499-510. Quoted in Pigeon, "Hosanna!," 38.

⁸⁵ Fay, *A History of Canadian Catholics*, 282.

⁸⁶ Hogan and Hudson, *Completely Queer*, 119.

⁸⁷ Rayside, *Queer Inclusions, Continental Division*, 3.

⁸⁸ "Canada Passes Bill to Legalize Gay Marriage," *New York Times* (June 29, 2005 [cited July 13, 2009]): available from http://www.nytimes.com/2005/06/29/world/americas/29iht-web.0629canada.html?_r=1 accessed July 13, 2009

⁸⁹ "Canada Passes Bill to Legalize Gay Marriage."

⁹⁰ "Canada Passes Bill to Legalize Gay Marriage."

David Rayside's excellent overview reasons that one of the facts that helped this legislation through is there is not a strong national religious belief in Canada which helps to understand why Canadians enact laws that are considered more liberal. "Canadian political culture," he argues, no matter how variegated and hard to pin down, is less permeated by religious faith and social anxiety, and seems to be creating more room for diversity in sexuality as well as in other areas."⁹¹ The connections made in this and the last chapter between religious postures and anti-gay discrimination do much to help support Rayside's tentative conclusion that there is probably a link to the weakness of the religious culture, particularly Christian culture, and the approval of gay unions. Indeed, from what this thesis has argued so far, it seems almost certain that the strength of religious culture and identification plays an important part in the legal and social acceptance of GLBT unions. And while it is clearly not the only major influence on attitudes about gay-related policies, it often also affects some of the other influences on those attitudes at a deeper level too. Although the influence of Catholicism and Christianity cannot be discounted altogether, it is plausible to assume that compared to its two North American neighbors to the south, the level of religiosity is not as great and consequently the discrimination of sexual minorities, though it may occur, is not condoned by the state. In the United States, however, the political landscape for gays and lesbians varies widely.⁹²

⁹¹ Rayside, *Queer inclusions*, 5-6.

⁹² Barth and Parry, for instance, make a very solid empirical study to demonstrate how contact with gay and lesbian couples in the U.S. strongly affects attitudes toward the GLBT community and gay-related policies. They do find, however, and unsurprisingly, that the level and type of contact is affected significantly by "church attendance," though they do not specify the denomination of the church. See Jay Barth and Janine Parry, "2>1+1? The Impact of Contact with Gay and Lesbian Couples on Attitudes about Gays/Lesbians and Gay-Related Policies," *Politics and Policy* 37, no. 1 (Feb 2009): 31-50.

2.2.2 The United States

Unlike Canada, the United States is ideologically influenced by the religious right in the way it enacts its legislation on sexuality.⁹³ Much of what can be identified as gay or queer culture, its academic study and many of the political and social movements that define the way gays and queers are visualized emerged from this country. Yet, it is in a sense ironic that even though this is the case, in many respects the United States lags behind other first world countries in the recognition of rights for the self identified members of the gay and lesbian community.⁹⁴ There are many citizens, particularly those identified with the political right, who seek to abolish or deny any “special rights” that the gays and lesbians may want (issues that range from the approval of laws against hate crimes to the legalization of marriage). At the same time, gay activists in the United States are some of the most vocal in the world and the gay movement has shaped the way homosexuals view themselves throughout the globe.⁹⁵ The right to marry members of their same sex has become a major “goal of the Gay and Lesbian Rights movement, same sex marriage is defined as legally indistinguishable from conventional, different sex marriage.”⁹⁶

The first state in the U.S. to accept same-sex marriage “thanks to a state supreme court decision”⁹⁷ was Hawaii. But to overturn this ruling “Christian fundamentalists, Mormon, and, Roman Catholic groups of well-organized campaigns in more than 30 states to bar recognition of same sex marriages licensed in other states. Utah became the first state

⁹³ Rayside, *Queer inclusions*, 5.

⁹⁴ Rayside, *Queer inclusions*, 19.

⁹⁵ Rayside, *Queer inclusions*, 19.

⁹⁶ Hogan and Hudson, *Completely Queer*, 380.

⁹⁷ Hogan and Hudson, *Completely Queer*, 380.

to pass such legislation in 1994. By early 1997, 16 states had passed similar laws.”⁹⁸ The conservative view was that the so called gay marriage was a threat to the well being of the family. “President Bill Clinton signed the... Defense of marriage Act”⁹⁹ on September 20, 1996. The Act barred gay and lesbian spouses from receiving federal benefits and expressly allowed... states the right to refuse recognition of other states same sex marriages.”¹⁰⁰

Even though the politically conservative legislation was approved in many states within the Union, some other states comprised of citizens with a decidedly more liberal bent enacted laws recognizing the *de facto* gay marriage or legalizing civil union which protected the right of gay and lesbian partners.¹⁰¹ In California the members of the gay and lesbian community rejoiced on May 15, 2008 when the California Supreme Court “struck down the state’s ban on same-sex marriage... the 4-3 ruling declared that the state Constitution protects a fundamental ‘right to marry’ that extends equally to same sex couples.”¹⁰² This changed in November of 2008 when the ruling was struck down at the same time as the presidential election, and when a majority of the citizens of the state of California decided that marriage between members of the same sex would be illegal within

⁹⁸ Hogan and Hudson, *Completely Queer*, 380.

⁹⁹ Defense of Marriage Act: Bob Barr, Steve Largent, Jim Sensenbrenner, Sue Myrick, Ed Bryant, Bill Emerson, Harold Volkmer and, Ike Skelton, “Defense of Marriage Act,” *Congress of the United States House of Representatives* (May 7, 1996 [cited Nov. 20, 2009]): available from <http://www.lectlaw.com/files/leg23.htm>

¹⁰⁰ Hogan and Hudson, *Completely Queer*, 380.

¹⁰¹ The States that approved gay marriage are: Massachusetts and California (overturned). “Where can Gays Wed?” *Newsweek* ([cited Nov. 20, 2009]): available from <http://www.newsweek.com/id/142307> Civil Unions were approved in: Connecticut, Iowa, Vermont and New Hampshire and New Jersey. “Same Sex Marriage, Civil Unions and Domestic Partnerships,” *The New York Times* (Nov. 5 2009 [cited Nov. 20, 2009]): available from

http://www.topics.nytimes.com/reference/timestopics/subjects/s/same_sex_marriage/index.html

¹⁰² Los Angeles Times ([cited March 4, 2009]): available at <http://www.latimes.com/news/local/la-me-gaymarriage16-2008may16,0,6182317.story>

the state of California.¹⁰³ According to newspaper articles,¹⁰⁴ the overturning of gay marriage was due to the influence of the Catholic and the Latter Day Saints (Mormon) church, who believed that the enactment of a law that granted members of the same sex the right to call themselves a married couple contravened central tenets of their religion. Again, Rayside's claim that "[t]he strength of religious conservatism may well be the most distinguishing feature of the American body politics,"¹⁰⁵ has a distinctly ominous tone when it comes to seeing how the politics of gay and lesbian bodies are played out and influenced by the Catholic Church in various parts of the United States.

As a federalist country, in the United States the role of the state is limited by the role of the states. In this political scheme it is up to each state to decide what rights it can grant or deny to the gay and lesbian community. This system, with its many qualities may not always be fair toward the rights of minorities, in this case gays and lesbians, because as a minority they will always be outnumbered in the elections. As long as the majority of citizens vote against the rights of gays and lesbians –because of their belief that they are morally flawed individuals because of their actions or their choice of lifestyle–, homosexuals will resort to other instances to obtain the recognition of the rights that they claim they should have if liberal equality of opportunity, and liberal justice–as-fairness¹⁰⁶ is to be upheld.

¹⁰³ Mark Memmott, "Proposition 8 Passes In California," *USAToday* (Nov. 5, 2008 [cited Nov. 20, 2009]): available from <http://www.usatoday.com/topics/post/Proposition+8/58077928.blog/1>

¹⁰⁴ Mary E. Hunt, "Newsweek Takes a Bullet on Gay Marriage," *Religion dispatches* (December, 2008 [cited Nov. 20, 2009]): available from http://www.religiondispatches.org/archive/sexandgender/865/newsweek_takes_a_bullet_on_gay_marriage

¹⁰⁵ Rayside, *Queer inclusion, Continental Division*, 34.

¹⁰⁶ For the theoretical and moral arguments involved here, see the groundbreaking contemporary liberal theory penned by John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1973).

In the particular case of the United States, gays have sued the state to obtain legislation that is favorable towards them. In 1998 the police in Houston responded to a “gun disturbance at the Houston home of John Lawrence.”¹⁰⁷ When the police entered the apartment they discovered two males, Lawrence and Tyrone Garner, engaging in sexual conduct. They were arrested and charged under the “Texas 1974 Homosexual Conduct Law.” The two pled no contest and were each fined two hundred dollars,” both men “appealed their convictions”¹⁰⁸ and these “ended in the Supreme Court, where arguments were heard in March 2003.”¹⁰⁹ In June of the same year a 6-3 majority determined that the Homosexual Conduct Law of 1974 was unconstitutional. This was a huge achievement for the human rights campaign that American gays, lesbians, bisexuals and transgendered people had been fighting for since the Stonewall riots.¹¹⁰

Americans have founded different organizations that seek to give a voice to the gays and lesbians who feel that they are being oppressed by the state. The largest national gay and lesbian political organization is the Human Rights Campaign, which “was the first national gay and lesbian political action committee. Besides supporting lesbian- and gay-friendly candidates to the U.S. House and Senate, HRC lobbies Congress and the federal government on relevant civil rights, health and safety issues.”¹¹¹ This can be upset by elections which let the majority decide what is right or what is not, but unlike Canada the gay movement has been moderately successful in pressing their agenda although the United States influence on the gay movement cannot be underscored globally. It is the United

¹⁰⁷ Janet R. Jakobsen and Ann Pellegrini, *Love the Sin: Sexual Regulation and the Limits of Religious Tolerance* (Boston: Beacon Press, 2004) p. ix.

¹⁰⁸ Jakobsen and Pellegrini, *Love the Sin*, ix.

¹⁰⁹ Jakobsen and Pellegrini, *Love the Sin*, x.

¹¹⁰ Stonewall Riots are considered to be the beginning of the movement to decriminalize homosexuality and make it acceptable to mainstream society.

¹¹¹ Hogan and Hudson, *Completely Queer*, 297.

States which has created many of the concepts and the culture that we associate with same-sex behavior.¹¹² The creation of gayness and gay culture by the United States and mostly English-speaking countries has been criticized by members of other cultures as invasive and as not reflecting the true culture to which they belong. But even though these complaints may ring true “the emergence of North Atlantic constructions of gay culture has resulted in the circulation of a ‘universal gay identity’ across various national boundaries.”¹¹³ The case of Mexico is, nevertheless, and unsurprisingly, different from both that of Canada and the United States in some interesting ways.

2.2.3 Mexico

In Mexico the recognition of gay rights is entirely determined by its relationship with the state. Unlike the “United States [and Canada] which provides a rich substrata for group differentiation,”¹¹⁴ the Mexican state is the most influential institution in the country and the institution which determines what is acceptable behavior and what is not through legislation and its official attitudes. Mexico’s political situation can be described as similar to France’s in the sense that “the French state often approaches specific groups with a view to privatizing them, repressing them, dispersing them, or subjecting them to centralized, hierarchical control”¹¹⁵ in Mexico the state is “a dominant force.”¹¹⁶ This is an important consideration because “in societies where the state plays a forceful role, politics itself

¹¹² William L. Leap and Tom Boellstorff eds., *Speaking in Queer Tongues: Globalization and Gay Language* (Urbana & Chicago: University of Illinois Press, 2004), 2. “Many ways of talking that figure prominently in (...) transnational interchanges are languages (...)define[d] as ‘gay men’s’ English.”

¹¹³ Denis M. Provencher “Vague English Creole: (Gay English) Cooperative Discourse in the French Gay Press,” in Leap and Boellstorff, *Speaking in Queer Tongues*, 23.

¹¹⁴ Leap and Boellstorff, *Speaking in Queer Tongues*, 25.

¹¹⁵ Leap and Boellstorff, *Speaking in Queer Tongues*, 25.

¹¹⁶ Ai Camp, *Entrepreneurs and Politics in Twentieth Century Mexico*, 8.

becomes all encompassing.”¹¹⁷ Camp continues, “[i]f there is a common dogma among the intellectual, the member of Congress and the ideological jurist in Mexico, it is the dogma of the ontological preeminence of the state over civil society.”¹¹⁸

There are no laws against same-sex relations: since the 19th century, Mexico was one of the countries that adopted the principles of the *Code Napoleon*¹¹⁹ which ended punishment for sodomy in the 1860s.¹²⁰ “[B]ut it is well known that the government and the police harass individuals and organizations because of their sexual preference.”¹²¹ There are a few enclaves in Mexico known for their gay subculture, two cities which are often associated with more acceptance for gays and lesbians are Guadalajara¹²² and Mexico City.¹²³ For gays to obtain any rights they have to be incorporated into the political system. At the present moment and at a federal level that is not possible because the country is currently ruled by the PAN, a party considered to be on the Right in the political spectrum and which has the support of the Catholic Church. Gays and lesbians can obtain rights in the states if they are not ruled by a conservative party aligned with the Catholic Church.

¹¹⁷ Ai Camp, *Entrepreneurs and Politics in Twentieth Century Mexico*, 8. “Octavio Paz, Mexico’s leading intellectual of the older generation, could say that politics dominated the culture and the economy. Mexican’s perception of the State has progressed so far that it is embedded in elite mythology. If there is a common dogma among the intellectual, the member of Congress and the ideological jurist in Mexico, it is the dogma of the ontological preeminence of the State over civil society.”

¹¹⁸ Ai Camp, *Entrepreneurs and Politics in Twentieth Century Mexico*, 8.

¹¹⁹ Crompton, *Byron and Greek Love*, 37. “The new liberal law *Code pénal de la Révolution Française*, promulgated in 1791, which decriminalized sodomy, (...) the Napoleonic Code of 1810, preserved this reform and eventually set the standard for the rest of Europe.”

¹²⁰ Hogan and Hudson, *Completely Queer*, 389.

¹²¹ Hogan and Hudson, *Completely Queer*, 389. “In 1992 six gay activists- one of whom, Francisco Estrada Valle, was an internationally recognized AIDS educator and physician- were found bound, gagged, and murdered. Investigations of this and other hate crimes have been lax.”

¹²² For a study on homosexuality in Guadalajara see Joseph Carrier, *De Los Otros: Intimacy and Homosexuality Among Mexican Men* (New York: Columbia University Press. 1995).

¹²³ *UsaToday* ([cited Octo. 23, 2009]): available at http://blogs.usatoday.com/ondeadline/2006/11/mexico_city_oks.html Mexico City is only one of two entities that allows legal Civil Ceremonies for gays and lesbians.

Overall the protection afforded to gays and lesbians in the North American continent is the least effective in Mexico.

Out of the three North American countries, Mexico is where the Catholic Church exerts most influence. An overwhelming majority of the population¹²⁴ calls itself Catholic. Historically the state and the Catholic Church were perceived¹²⁵ as foes as recently as the 1980s. Since the election of Carlos Salinas de Gortari in 1988 and his policies to recognize the political *status quo* of the Catholic Church, the Mexican *curia* has been politically ascendant¹²⁶ and has been able to influence the state in the ratification of certain laws that benefit it by extending the Catholic ideology through the political legislation.

An example of the influence of the Church on state politics was the creation of legislation that seeks to actively limit the rights of the gay community to marry. Currently there are civil unions recognized in two federal entities within Mexico: the Federal District and Coahuila.¹²⁷ In 2009, several states controlled by the PRI and the PAN enacted legislation which, among other things,¹²⁸ restricted the possibility of accepting these civil unions between members of the same sex. Some of the states' legislations used the apostolic exhortation *Familiaris Consortio*,¹²⁹ issued by Pope John Paul II on November

¹²⁴ 88% of the population claims to be Catholic.

¹²⁵ I use the term perceived as foes, because even though the Catholic Church was legally not recognized as an institution by the National Government, the relations between both the State and the Church existed de facto. The Church legally had no status but it existed and was respected to a certain degree by the Mexican Government.

¹²⁶ Ai Camp, *Cruce de espadas*, 15.

¹²⁷ These civil unions are designed to allow any person who is not married to enter within the civil society for tax purposes and certain other benefits. It is not necessarily for members of the gay and lesbian communities.

¹²⁸ One of the most criticized parts of the legislation was the recognition of the rights of the fetus from the moment of its conception, effectively converting the act of abortion in to an act of murder.

¹²⁹ The Holy See Apostolic, *Exhortation Familiaris Consortio of Pope John Paul II To The Episcopate, to the Clergy and to the Faithful of the Whole Catholic Church On the Role of the Christian Family In the Modern World* ([cited March 11, 2009]): available at

22, 1981, in which they seek to make some of the central tenets of the document a law. In the state of Puebla the initiative was presented by the president of the local congress, Otón Bailleres, and the initiative carried his name. Reporter Selene Rios Andraca writes:

[t]he Bailleres initiative seeks to break the Lay state and introduce religious concepts to the Puebla Constitution based on the letter *Familiaris Consortio* issued by The Vatican on August 22, 1983 under the pontificate of Pope John Paul II. The preambles of the aforementioned letter, as well as its articles three, four and five, have almost the same wording than the polemic considerations and fractions I, II, IV and IX of article 18 for the initiative of Reform for the Constitution and which throws over board any possibility of legalizing abortion, the domestic partnership laws and passive euthanasia, establishing marriage as the only nucleus for family.¹³⁰

The legalization of these laws inspired by the writings of Pope John Paul II clearly demonstrates that the influence of the Catholic Church within Mexico is still important. The introduction of Catholic doctrine into state legislation demonstrates that the Church still influences the enactment of legislation. The lack of popular protest is taken to presuppose that the citizens are in agreement with this type of legislation which denies certain rights to women and homosexuals. In the case of Mexico, as in the other countries, the recognition of certain rights for homosexuals must come from legislation which positively seeks to protect sexual minorities, because as is the case in the United States, the majority of the population are either indifferent or frightened by granting sexual minorities any rights that go against the popular traditions and beliefs which are still imbued with the Catholic teachings.

http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio_en.html

¹³⁰ Selene Ríos Andraca, "Propuesta priista está inspirada en Juan Pablo II: La panista Leonor Popocatl reconoce que utilizaron de base la carta de la Santa Sede," *La Quinta Columna.com.mx* (Mar. 2009 [cited 11 Apr. 2009]): available at http://www.laquintacolumna.com.mx/2009/marzo/politica/pol_100309_sel_propuesta_inspirada_iniciativa.html (my translation).

Conclusion

This chapter intended to answer what the role of the state is in the ongoing debate between the Catholic Church and the self-identified members of the gay and lesbian community. The relation between both groups has been tense for the last two decades and it has been particularly aggravated by the sexual molestation of children and teenagers at the hands of male clergy, and the blame the Catholic Church put on homosexuals for the ensuing sexual scandals. The Catholic Church's choice of words promoted the discrimination of homosexuals by utilizing the word to describe any type of sexual conduct that is considered corrupt in western society, particularly by equating homosexuality with pedophilia.

The stance the Catholic Church assumes regarding same sex conducts is geared towards influencing its followers to discriminate against gays and lesbians, using an argument that blames homosexuals for the destruction of the family, the basic framework on which Catholicism believes society is founded on. The Catholic Church's desire to influence its followers is also geared to make them form a political opinion, which—the Catholic Church hopes—will alter legislation favoring gay and lesbian lifestyles. It is particularly adamant about not allowing gays and lesbians to marry people of their same sex, viewing this as a moral wrong that can damage society as it stands. The Catholic Church's influence—as well as the influence of other Christian groups—has been instrumental in the passage of laws that favor or hinder gay and lesbian rights. This is particularly visible in the case of Canada, where marriage between people of the same sex is allowed at a federal level, and it can also be considered the North American country where religion plays a minor role, compared to its neighbors to the south.

On the other extreme, Mexico is the country still most influenced by Catholic ideology to the extent that legislation was approved in several states which reaffirmed the teachings of the Pope and that discriminate not only gays and lesbians but women as well. The state determines whether it should give protection to these groups or not, but it does so influenced by the ideology of the majority of the voters. This poses a problem for sexual minorities because they are underrepresented, and need the state to grant them rights that seek to protect them, particularly legislation against hate crimes. This type of legislation is discussed at a local level, but has not yet been discussed at a national level in the cases of Mexico and the United States, in part due to the influence of Christianity.