

Same-sex marriages and partnerships in two pioneer countries, Canada and Spain

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Short abstract

The legalisation of same-sex marriages in 12 countries around the world, together with the legal recognition of same-sex partnerships in other 21 countries has considerably changed the marriage institution worldwide (Cherlin 2004). Some authors consider that same-sex marriage is not only a major legal change but also a real new social phenomenon (Chamie and Mirkin 2011). Nevertheless, the difficulties in enumerating same-sex couples with available official data (Festy 2007) make it difficult to evaluate really the incidence of same-sex nuptiality. In this paper, we focus on Canada and Spain, two countries that legalized same-sex marriage in 2005, just after the two pioneers, Belgium and The Netherlands. First, we review previous literature in order to discuss the limits of enumerating same-sex couples with census data and marriage records. Second, and taking these limitations into account, we try to understand how prone are gays and lesbians to marry when they have the choice to do so by comparing the incidence of heterosexual and homosexual non-marital cohabitation. Third, we analyse the socio-demographic profiles of same-sex partners and spouses.

I. Introduction

In July 2005, Spain and Canada became respectively the third and the fourth country in the world, after the Netherlands and Belgium, to legalize same-sex marriages countrywide. After them, Argentina, Iceland, Norway, Portugal, South Africa, and Sweden followed. In the U.S. and Mexico, where these matters are not decided by the federal government, some states changed their legislation to allow same-sex marriage. The legalisation of same-sex marriages in these 12 countries was accompanied by the legal recognition of civil unions and registered same-sex couples in 21 other countries.¹ These widespread legal innovations obviously implied a widening of the civil rights of all citizens regardless of their sexual orientation (Festy 2006). Moreover, they considerably changed the marriage institution worldwide (Cherlin 2004).

Nevertheless, this wave of legal change was not followed by a general increase in same-sex nuptiality indicators in official statistics (Festy 2007; Black and Gates 2000). Obviously, marriage records adapted their classifications to distinguish two different types of marriages according to the sex of the spouses, even if some statistical offices do not publish yet the disaggregated figures.² The main problem lies in producing relative indicators out of the crude figures of marriages. First, it is difficult to establish a good denominator identifying the population at risk or the reference population. Second, after a radical legal change, the levels in the first year might be clearly inflated by the cumulated delay (spouses having waited to get married while it was not permitted) and by the effect of marriage migration (spouses travelling to get married where it is legal). Things are not easier in the enumeration of the stock of couples. The low prevalence of same-sex couples in the population clearly limits the possibility of sampling: "when small populations are to be counted, surveys are not adequate tools" (Festy 2007). Therefore, population registers and censuses appear to be the best data sources, but they have only recently started to provide some useful data.

In this paper, we first review previous literature in order to discuss the limits of enumerating same-sex couples with census data and marriage records. The international perspective adopted in the paper should allow evaluating, for example, how the

¹ Andorra, Austria, Brazil, Colombia, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greenland, Hungary, Ireland, Isle of Man, Liechtenstein, Luxembourg, New Zealand, Slovenia, Switzerland, United Kingdom, Uruguay.

² On second thought, maybe not so obvious. In Canada, the registration of marriage is done by the provinces. In Ontario, the Registrar General did not even change the registration form to allow for the collection of the sex of each spouse. This decision is one of the reasons why Statistics Canada has ceased publishing any official statistics on marriage. The only published estimates of marriage among same-sex couples in Ontario have been computed by a private source which gathered the information from municipalities. In Quebec, the registration form has been modified to allow for the collection of the sex of each spouse, and the information is made available for statistical purposes to ISQ, the provincial statistical office, as well as to researchers. Interestingly, the ISQ recently revised the official estimates of the TMR and age-specific marriage rates that had been published since 2004 to include marriages by same-sex couples.

different census questionnaires perform in their task of enumerating a small population such as same-sex couples.

Second, we are interested in describing the socio-demographic profile of same-sex spouses and partners, together with their family structure (whether they reside with children or not) and couple composition. Previous research has shown how in Spain, like in many other countries, marital homogamy, in terms of age, education and citizenship, tends to be lower in those couples than in heterosexual ones (Cortina and Cabré 2010; Jepsen and Jepsen 2002; Kurdek 2004; Andersson and Noack 2006; Schwartz and Graf 2009). This should be tested in the Canadian case as well.

Third, and taking the data limitations into account, we try to understand how prone are gays and lesbians to marry when they have the choice to do so, by comparing the incidence of heterosexual and homosexual non-marital cohabitation. Even if some authors consider that same-sex marriage is not only a major legal change, but also a new social phenomenon (Chamie and Mirkin 2011), further research is needed to establish whether same-sex partnerships rather than marriages arise as the real new social phenomenon.

II. Changing legislation in Canada and Spain

II.1. Changes in the attitudes towards homosexuality as a basis for legal innovation

The process of legalization of homosexual partnerships in Europe started during the 90's and took different forms in each country. While some countries opened the way to the registration of homosexual unions in the context of registered cohabiting partnerships (Norway, France, Germany), others accepted same-sex marriage establishing a direct equivalence with heterosexual couples (Sweden, the Netherlands, Belgium and Spain). In both cases, the legalization of the couples constitutes an extension of the rights of the spouses although such rights are not usually equated to those of heterosexual couples (even in those cases where gay marriage is legalized). This is the conclusion of a comprehensive and rigorous study by Waaldijk (2005) where he carries on a comparison of the legal consequences of the legalization of homosexual unions in nine European countries.

Obviously, this process of legalization has had important implications for the understanding and dynamics of marriage and partnership, in the same way that the expansion of the phenomenon of cohabitation in Europe had previously had. But reverse-ly, the process would not have been possible if, on its turn, marriage had not already change beforehand. The Norwegian sociologist Moxnes (cited by Andersson 2006) considers that the legalization of gay marriage would not have been acceptable if prior

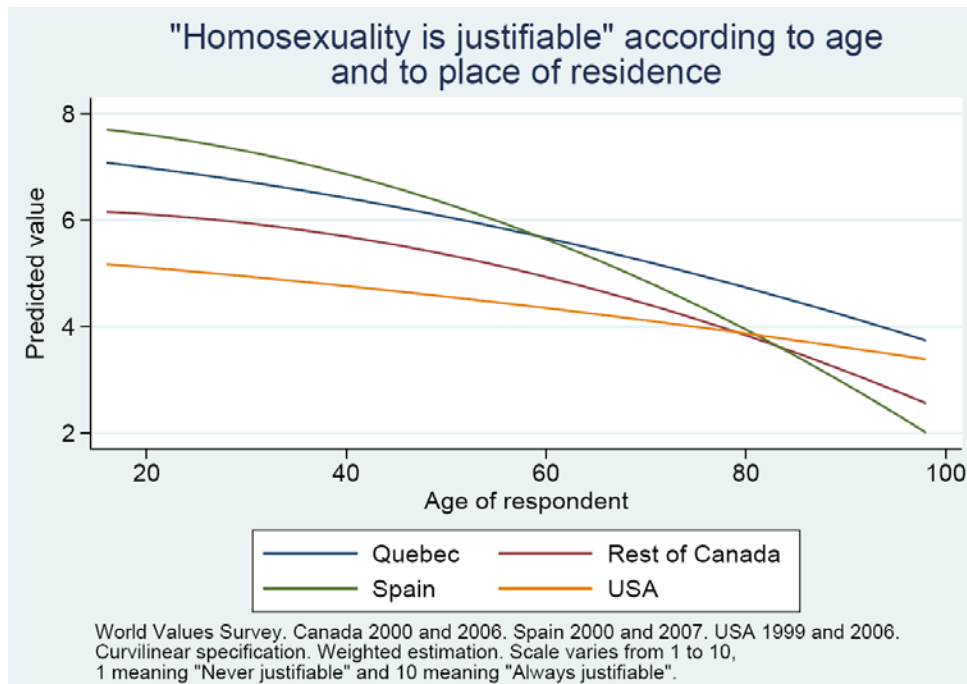
marriage had not been emptied of contents as an institution, ceasing to be the exclusive pathway of transition to adulthood, sexual activity and motherhood/parenthood.

Calvo (2010) suggests a “test of recognition” to evaluate when a society is ready for a change in legislation as the one we are referring to. This test demands the satisfaction of a twofold condition: firstly, democracies must be prepared to accept even the most costly of the demands as presented by the representatives of sexual minorities; secondly, public policies must show respect to the prevailing model of citizenship, not imposing visions of difference when difference-based claims are treated with disregard in the political community, and, conversely, not pursuing assimilation and homogeneity where the prevailing tradition points at policies based on the recognition of difference and diversity.

In this regard, it is crucial to understand how individual and social attitudes towards homosexuality and towards same-sex marriage have changed and how this change has affected the tolerance of sexual diversity. However, it is not so obvious to obtain appropriate data to measure the attitudes towards homosexuality. For example, and referring to one of our case studies, there are no Canadian surveys available. This is related to two things: 1) the fact that sexual orientation has been added to the *Canadian Human Rights Act* in 1996 and 2) the fact that people of the same-sex have been definitely granted the right to marry in 2005. Since then, measuring attitudes and opinions on gay and lesbian rights has lost relevance, although obviously not all Canadian people agree with those changes.

On the contrary, there are several Spanish surveys with questions referring to attitudes towards homosexuality since the 1980s. The main problem is that the question keeps changing from one survey to the next, with new wordings that can really alter the results on the degree of tolerance. Some questions measure abstract tolerance, others tolerance to homosexual behaviours in society or tolerance towards homosexual behaviours in the family or even tolerance towards own feelings or behaviours. In Spain, in any case, the sociological interest in this regard has been large, and a lot has been said about its crucial role in legislative innovation. As we will see, the decision to make same-sex marriage legal in 2005 was adopted by the socialist government with the certitude that a large majority of Spaniards would approve the measure because the tolerance towards homosexuality had largely increased in the last decade of the 20th century.

Figure 1. Attitude towards homosexuality by age. Canada, Spain and USA.



Source: own elaboration.

Despite the problems with the national sources of values and attitudes (scarcity in one case and excessive variety in the other) we can however use the World Value Surveys. These surveys provide information for both countries (in the case of Canada, allowing to distinguish between Québec and the other provinces), and moreover for some other countries to compare with (for example de US). In Figure 1, one can clearly see how older respondents agree less with the idea that homosexuality is justifiable. The differences across countries are remarkable. The age gradient is much more intense in the Spanish case, which appears to be the country with the higher levels among young people and at the same time the lowest levels among old people. This is a clear sign of the speed of the attitudinal change on that particular aspect, which goes in line with a broader social change (especially important has been the process of secularization of the Spanish society, Requena 2005). The comparison between countries in Figure 1 also indicates that the tolerance is lower in the US, where there has been an important increase in the recent years though. Internal differences are important in Canada, with a more tolerant attitude in Quebec than in the rest of the country. This difference does not come as a surprise: Laplante, Miller, and Malherbe (2006) show how attitudes towards homosexuality and other matters related to sex and family life have evolved in Quebec and Ontario from the 1950s to the 1990s, the previously more conservative Quebec public opinion turning more progressive than that of Ontario.

The remarkably high approval of homosexuality in Spain, according to the World Value Surveys, is supported by national surveys. By 2004, one year previous to the legalisation of same-sex marriage, 66.2 % of the Spaniards did approve the same-sex marriage (CIS 2004) and 79% considered homosexuality as an option as respectable as heterosexuality. However, the self-perception of the tolerance towards the homosexuality was biased, because in the same year 2004, only 52% of the Spaniards considered that the Spanish society was tolerant towards that option. This proportion had not changed much since 1994, when it was of 41%, proving that the citizens had not adjusted correctly the rapid changes. Therefore, a gap in the perception of the aggregated attitude appeared, but it should be noted that it was not a brake for the legislative innovation, as we will see.

II.2. New Canadian legislation

Although the scholarly history of the advent of same-sex marriage in Canada remains to be written, Larocque (2005) provides a valuable account of the events and ideas gathered largely through interviews with key actors. Other accounts, of which the Wikipedia article is typical (Wikipedia 2012), basically focus on the list of judicial decisions and pieces of legislations that preceded the Civil Marriage Act of 2005. There is a reason for that: in Canada, same-sex marriage became legalised after a fight that took place in the courts more than in the public opinion and the parliament. In order to understand the process, one has to look at the Canadian constitution, prior changes that occurred in the 1960s and 1980s, and, only ultimately, to the evolution of the public opinion.

Marriage in Canadian law

The Constitution Act 1867 (historically, the British North America Act 30 & 31 Victoria, c. 3, a statute of the British parliament) made legislating over marriage an exclusive power of the federal parliament, but legislating over the solemnisation of marriage, as well as on property and civil rights exclusive powers of the provincial legislatures. This division is usually explained by the will to give to the federal parliament the ability to declare which marriages are valid, and to the provinces the ability to maintain their local customs and resist the interference of the federal parliament in religious matters. This is certainly true, but the division is better understood by pointing out that it follows the traditional boundaries, or lack of, between the religious and secular powers over marriage: the federal parliament legislates over the requisites of marriage, traditionally a power of the Church, whereas the provinces legislate in matters of private law, traditionally a power of the secular authority. The solemnisation of marriage, a disputed territory at least since the times of the Reformation and of the Council of Trent, went to the provinces. Same-sex marriage implies changing one of the

requisites of marriage. If legislating over these had not been an exclusive power of the federal parliament, Canada could be today in a situation similar to that of the USA, with some provinces allowing same-sex marriage and others not.

All Canadian provinces but Quebec received the common law of England. Quebec originated as a French colony, kept French law despite becoming a British colony in 1760, and has a Civil Code since 1866. Despite this difference, in all Canadian provinces, marriages solemnised by members of religious societies have civil effects. However, within each province, the law governing marriage is the same for everyone: marriage is not a matter of personal law, and there are no special provisions for religious forms of marriage, as there were for canonical marriage in Spain until 1981 (Puig Ferriol 1984), or as there are for covenant marriage in some states of the USA since the end of the 1990s (Nock et al. 2008).

The provisions under which the solemnisation of marriage by members of religious societies has civil effects vary across provinces. However, in all of them, they need to get an authorisation from the proper provincial authority and follow the procedure established by provincial law for the marriages they solemnise to be valid and have civil effects. This relation between the State and members of religious societies and, oddly, the fact that its exact nature depends on the provincial legislatures rather than on the federal parliament explains the bizarre title of the federal statute that made same-sex marriage possible. From the *Reference re Same-Sex Marriage* (2004 SCC 79), it is clear that members of the federal government, uncertain of the consequences of provincial law—and perhaps influenced by the provisions of the UK Matrimonial Causes Act 1965 (s. 8) that explicitly free the members of the Churches of England and Wales from performing marriages involving divorced people—, were afraid that the new definition of marriage could force members of religious societies to perform marriage between two persons of the same sex. The title of the statute thus refers to “civil marriage” although there is no civil marriage as such in Canada (or, to be correct, there is no law of marriage in Canada but civil, or secular, law), but rather civil—or, to be correct again, secular—and religious solemnisations, and despite that in all provinces, members of religious societies may solemnise same-sex marriages, which some do.

Changes from the top

Despite differences across languages, religions, and regions, Canadian society as a whole underwent important transformations during the 1960s, especially in matters related to sex and the family. The most emblematic moments occurred at the end of the decade. In 1968, the federal parliament used for the first time its power over divorce to allow courts granting divorce. Until then, divorce was regulated by the provincial rules that prevailed before 1867; in most provinces, there were no such rules and,

as a consequence, divorce had to be petitioned through a lengthy process that required, among other things, introducing a private bill to the federal parliament. The following year, the Criminal Law Amendment Act 1968-69 withdrew sodomy as well as the advertising and the sale of contraceptives from the Criminal Code and allowed abortion in some cases; in Canada, criminal law, as marriage and divorce, is an exclusive power of the federal parliament. Both statutes had been promoted by the Justice Minister, Pierre Elliott Trudeau, who justified these policies stating that "There's no place for the state in the bedrooms of the nation" and "What's done in private between adults doesn't concern the Criminal Code." These statements may have been ahead of the opinion of many at that time, but they are since frequently regarded as guiding principles in Canadian politics. Without these, the debates over such matters could have taken the shape and colours they have in the USA.

Amending the Canadian constitution remained a power of the UK parliament until 1982. In 1982, in the aftermath of the Quebec referendum on independence, the government of Canada, with Pierre Elliott Trudeau as prime minister, requested the parliament of the UK to enact a statute that would transfer this power to Canada. With the Canada Act 1982 (UK), the UK parliament amended the Canadian constitution for the last time, transferring its remaining powers over it to the federal parliament and provincial legislatures, but also adding to the Canadian constitution a Charter of rights and freedoms whose inclusion in the Constitution itself transformed the relative roles of the legislative and judicial powers in Canada. Until then, the legislative power had the last say, as it still has today in the UK. Since then, the last say belongs to the Supreme Court of Canada, pretty much along the doctrine developed by the Supreme Court of the USA. In this new setting, political fights that would previously have been fought mainly in the political arena could be channelled through the judicial system as long as they could be framed as matters of rights and freedoms. Court decisions have been decisive in the advent of same-sex marriage in Canada. If Canada had kept the relative roles of the legislative and judicial powers it had before 1982, it could be today in a situation similar to that of the UK, same-sex marriage remaining disputed.

The court cases

In Ontario, marriage licences are issued by municipalities and marriages are registered by the Registrar General. The civil solemnisation of marriage is authorised by provincial law since 1950 (Hinz 1957: 59), but civil solemnisation should be a service offered primarily by municipalities, which, until very recently, were not interested in providing it. As a consequence, more than 95% of marriages are solemnised by members of religious societies. The Ontarian cases originated when eight same-sex couples wishing to have their marriage solemnised by a minister from a progressive Christian

Church requested a marriage licence from the municipality of Toronto. The municipality rejected their demand on the ground that in common law, marriage is the union of a man and a woman. Being denied a licence, they sought a judicial review. Another couple had their marriage solemnised by a minister of the same Church after the church resorted to a rarely used provision of the Marriage Act which allows solemnising a marriage without a licence by publishing banns. This case was initiated after the Registrar General had denied the registration of the marriage. The Court of appeal for Ontario eventually ruled that common law barred the marriage of two persons of the same-sex, and that this bar ran against section 15 of the Charter of rights and freedoms that states, among other things, that every individual has the right to equal benefit of the law without discrimination on sex. In British Columbia, the civil solemnisation of marriage dates back to 1865 (Hinz 1957: 72-73). Marriage are solemnised under the authority of the Director of Vital Statistics whose administration issues marriage licenses, registers marriages, authorises members of religious societies to solemnise marriage, and, since 1982, authorises marriage commissioners who solemnise marriages in a non-religious setting (Marriage Act, RSBC 1996, c. 282; British Columbia 2010: 2). The case was initiated when the Director of Vital Statistics denied a marriage licence to a same-sex couple who wished a civil solemnisation. The BC courts came to the same conclusion as the Court of Appeal for Ontario.

In Quebec, until 2002, the civil solemnisation of marriage was solely performed by a court clerk in a court-house. The ceremony had to be announced 20 days in advance on a special form posted in the court-house, pretty much as banns were traditionally published in a Catholic church. In Quebec, the case was initiated in 2000 after a same-sex couple was denied the form on the ground that according to the Civil Code, marriage is the union of a man and a woman. The issue was interesting from a legal perspective, as the section of the Civil Code which defines marriage is one of the very few that cannot be amended by the National Assembly. In 2002, the Superior Court, the first instance in such a case, came to the conclusion that the definition of marriage found in the Civil Code ran against the right to equal benefit of the law. Another interesting point is that the provincial government never appealed the ruling, whereas the federal government dropped its own appeal; the appeal to the Quebec Court of Appeal was lodged by the Catholic Civil Rights League. The court rejected the appeal. In 2002, in an attempt to provide a legal form of union to same-sex couples despite the state of federal law, the National Assembly of Quebec had modified the Civil Code to introduce the "civil union", a form of union that is solemnised in the same variety of ways and has the same civil effects as marriage, but is not named "marriage" and thus is not restricted by the requisites of marriage enacted by the federal parliament. The fight for same-sex marriage was more a fight for equal rights than a fight for a legal form of

union, and this close-to-perfect substitute was not a satisfying solution, and the new opportunity did not stop the couple from fighting the appeal.

Public opinion

The federal government explicitly authorised same-sex marriage in a statute because the courts left it with little choice. Provincial governments willing to bypass the federal decision, such as the government of Alberta, could not do it because the constitution did not provide them with the power to do so. Theories like that of Calvo (2010) do not seem to fit well with the Canadian case: the change occurred not because public opinion was directly or indirectly prepared for it, but because the constitutional setting centralises the legislative power over the requisites of marriage, and because the Charter and the courts are decisive when matters can be framed as involving rights, freedoms, and discrimination. Whether the public opinion would have supported such a change if it had been fought for in the parliament, rather than through the judicial system, is not easy to ascertain because of the lack of data. Statistics Canada surveys sometimes address issues such as discrimination or sexual orientation, but have avoided the same-sex marriage issue. Public opinion polls are commissioned and conducted by the private sector, and their data are rarely made available to academics. Some of those reports are made available to the public, and sometimes remain so only for a limited time.

A NFO poll shows that, in 2003, a slight majority of Canadians would have preferred to maintain the traditional definition of marriage, and most would have supported a different form of legal recognition of same-sex relationships (NFO Worldgroup 2003). These results are similar to those of a CBS News and New York Times poll of the USA adult population released on May 14, 2012 (CBS News and New York Times 2012). The NFO report also shows that opinions varied according to generation, region, and political affiliation. The youngest supported same-sex marriage and the oldest opposed it. The opposition was stronger among supporters of the two right-leaning parties and among residents of the Prairie region, more specifically in Alberta. Support for same-sex marriage was stronger among supporters of the Bloc Québécois (the Quebec political party promoting independence in the House of Commons) and the New Democratic Party (the left leaning party in the House of Commons). Some aspects of the variation across political affiliation and region require comments. Quebec residents were the most supportive (61%) and Prairie residents were the least supportive (33%) of same-sex marriage. Prairie residents were strong supporters of the two right-leaning parties. Quebec residents were, obviously, the only ones to support the Bloc Québécois. Until the end of the 1960s, Quebec public opinion on matters related to sex and family was more conservative than that of neighbouring Ontario; the reverse is

true since the end of the 1960s (Laplante, Miller and Malherbe 2006). This reversal has been linked to the rejection, by the local Catholics, of the traditional Western moral doctrine on these matters that followed the withdrawal of the local Church from a series of institutions (civil status, education and health, but also credit unions and a flurry of voluntary and civic associations) and the continuous rejection, by the Church, of contraception and divorce (Laplante 2006). The association between support for the Bloc Québécois and opinions related with religious belief has been observed more recently on creationism: among supporters of the federal political parties, supporters of the Bloc had the highest proportion believing that God played no part in the creation of human beings (51%) and the smallest believing that God created human beings like they exist today less than 10,000 years ago. (Canadian Press and Decima Research 2007).

In a nutshell, there is evidence from public opinion polls that if the battle for same-sex marriage had been fought in the public opinion and the legislatures rather than in the court and at the federal level, Quebec would have allowed it, whereas Alberta and some other Prairie provinces would have banned it. The attempt, by the Alberta government, at redefining marriage in a provincial statute as well as the decision, by the Quebec government, to not appeal the decision of the Superior Court, provide additional evidence of the same. The published reports do not provide enough evidence to ascertain what would have been the decisions of other provincial legislatures. The most likely result is that Canada would have ended up in a situation very similar to that of the USA.

II.3. New Spanish legislation

As we have previously seen, the tolerance towards same-sex marriage was extremely high in Spain around 2004: according to a survey on social values conducted by the Spanish Sociological Research Centre (CIS 2004), 66% of the Spaniards approved same-sex marriages. This figure indicates a very high support, and even if it could to a certain extent overestimate the tolerance towards same-sex marriage, it clearly reveals that the political cost of innovating in this sphere would be limited. According to Calvo (2007), another element determining that the moment was appropriated for the new socialist government to approve same-sex marriage was that he counted with the clear support of social movement organizations, namely gay and lesbian rights organizations. The idea of “political opportunity” appears to be rather explicative in the Spanish case. Calvo suggests that after an important electoral defeat, the Spanish Socialist Party was seeking for new political messages based on post-materialist themes. The defence of gay rights appeared as the appropriated issue and “even if winning the right to marry had not been something that the gay and lesbian

movement had always pursued (...), possessing something that the PSOE wanted, the gay and lesbian movement found itself with an invitation to participate in the policy process, which, as we will see now, was promptly accepted". (Calvo 2007: 305).

In this context, in 2004, the newly elected socialist government, led by President José Luis Rodríguez Zapatero, began a campaign for its legalization, including the right of adoption by same-sex couples. After much debate, a law permitting same-sex marriage was passed by the Spanish Parliament on 30 June 2005, and enacted on 2 July 2005.³ Same-sex marriage became legal in Spain on Sunday, 3 July 2005, making it the third country in the world to do so countrywide, after the Netherlands and Belgium, and 17 days ahead of Canada.

This change counted with an important background of registration of non-marital partnerships, including both opposite and same-sex couples. Spain being a politically decentralised country, laws allowing partnership registration were first approved at the regional level (so was the case in another federal country like Switzerland). Between 1998 and 2005, 12 out of the 17 "comunidades autonomas" had already approved their own laws.⁴ These laws, which differ in the rights guaranteed to couples, gave a double response to social demand: on one side, they satisfied the need to give legal coverage to cohabiting couples and on the other, they opened the way to legal recognition of same-sex couples. They also implicated a clear element of pressure for the central government to legislate in the same direction (Pichardo Galán 2004). However, the Spanish same-sex marriage law was based on a clearly different principle: rather than creating an ad hoc formula for cohabiting couples of any sex outside marriage, it universalized the marriage contract.

The ratification of this law did not escape from conflict. Roman Catholic authorities in particular were adamantly opposed, criticising what they regarded as the weakening of the meaning of marriage. Other associations expressed concern over the possibility of lesbians and gays adopting children. Demonstrations for and against the law drew thousands of people from all parts of Spain. After its approval, the conservative People's Party challenged the law in the Constitutional Court, but no sentence from the Court has been delivered yet.

Shortly after the law was passed, questions arose about the legal status of marriage to non-Spaniards whose country did not permit same-sex marriage. A ruling from the Justice Ministry stated that the country's same-sex marriage law allows a Spanish citizen to marry a non-Spaniard regardless of whether that person's homeland recog-

³ Article 44: "*El matrimonio tendrá los mismos requisitos y efectos cuando ambos contrayentes sean del mismo o de diferente sexo.*"

⁴ Catalonia 1998; Aragón 1999; Navarra 2000; Valencia, Baleares and Madrid 2001; Asturias and Andalucía 2002; Extremadura, Canarias and Basque Country 2003; Cantabria 2005.

nizes the partnership. At least one partner must be a Spanish citizen in order to marry, although two non-Spaniards may marry if they both have legal residence in Spain.

III. Research goals: Same-sex marriage vs. same-sex non-marital cohabitation in a comparative perspective

In this paper, we first review previous literature in order to discuss the limits of enumerating same-sex couples with census data and marriage records. The international perspective adopted in the paper should allow evaluating, for example, how the different census questionnaires perform in their task of enumerating a small population such as same-sex couples.

Second, and taking these data limitations into account, we are interested in describing the socio-demographic profile of same-sex spouses and partners, together with their family structure (whether they reside with children or not) and couple composition. Previous research has shown how in Spain, like in many other countries, marital homogamy, in terms of age, education, and citizenship, tends to be lower in those couples than in heterosexual ones (Cortina and Cabré 2010; Jepsen and Jepsen 2002; Kurdek 2004; Andersson and Noack 2006; Schwartz and Graf 2009). This should be tested in the Canadian case as well.

Third, we try to understand how prone are gays and lesbians to marry when they have the choice to do so, by comparing the incidence of heterosexual and homosexual non-marital cohabitation. Even if some authors consider that same-sex marriage is not only a major legal change, but also a new social phenomenon (Chamie and Mirkin 2011), further research is needed to establish whether same-sex partnerships rather than marriages arise as the real new social phenomenon. In table 2 we see that 17% of the same-sex couples enumerated in the 2006 Canadian census were married spouses as were 20% of the US same-sex couples in 2010. These proportions seem rather large considering that marriage is legal in Canada only since 2005 and only in several US states (and in some of them, only very recently). However, these figures are a first step in the attempt to obtain better indicators of the intensity of same-sex nuptiality.

IV. Data used and enumeration of same-sex couples in Canada and Spain

The appropriate data for our analysis are the Canadian and Spanish marriage records for the period 2005-2010. Apart from the aggregated marriage figures (see Table 1 below), these data sources allow the analysis of the spouses' profiles and couple composition by the following spouses' characteristics: age, sex, educational level, country of birth, and previous marital status. In the case of Canada, Statistics Canada does not publish series of marriage by sex of the spouses; therefore we use data from Quebec

only for the analysis. Data from Quebec and Spain marriage records are comparable in most variables, with the exception of nationality and profession of the spouses, as well as the range of marriage when spouses are divorced or widowed. Some variables contain slightly different codes –as in the case of educational attainment level- but comparisons are nevertheless possible.

In Quebec, the proportion of same-sex marriages has been 2.1% between 2004 and 2010. The low proportion in 2004 is likely a consequence of the fact that same-sex marriage became possible during that year. There are no traces of a catch-up except in 2006, where the proportion is about a third higher than the period mean.

Table 1 Same-sex marriages as a percentage of total marriages

	Belgium	Netherlands	Spain	Quebec
2001		2.9		
2002		2.1		
2003	3.1	1.9		
2004	2.5	1.6		1.2
2005	2.4	1.6	1.1	2.0
2006	2.5	1.7	2.2	2.8
2007	2.5	1.9	1.6	2.1
2008	2.3	1.9	1.8	2.0
2009	2.4	1.9	1.9	2.3
2010		1.8	2.1	2.3
Period mean	2.5	1.9	1.8	2.1

Source: Belgium: Central Bureau of Statistics; Netherlands: Statline, Central Bureau of Statistics; Norway: Central Bureau of Statistics; Spain: National Statistics Institute; Québec: Institut de la Statistique.

Note: We report data from Quebec rather than from Canada because Statistics Canada does not publish series on marriage by sex of the spouses.

As we are not only interested in same-sex couples marrying but in those cohabiting as well, we will rely complementarily on population censuses: 2001 Spain and 2006 Canada. These two censuses were the first in each of the countries to enumerate same-sex couples. Interestingly enough, each one used different methodology to do so. The Spanish one did not ask specifically about same-sex partnerships but simply allowed two people of the same-sex to identify themselves as partners in the section establishing the relationship with the members of the households. The Canadian one, instead, did include a specific response item. The Canadian census allows adequately estimating the probability of marrying among same-sex couples, whereas the last Spanish census data is prior to the legalization of same-sex marriage and therefore does not allow such analysis.

The use of census data is obviously affected by important limitations regarding enumeration. The main problems refer to the lack of trust of the respondents to declare their real couple status. Despite the confidentiality guarantees offered by the

census, some respondents might not be ready to reveal a condition which is not always socially recognized and accepted. Another source of error in the enumeration of same-sex couples is simply the misreporting of the sex of the individuals. For example, a recent analysis of the 2010 USA census (O'Connell and Feliz 2012) estimates that 28% of all same-sex couple households in tabulations are likely to be opposite-sex couple households. This problem is more severe for those couples who reported being spouses (62%) than unmarried partners (7%).

These problems arise when we analyse the available census data. Table 2 shows that same-sex couples are more common in Canada (2006) than in Spain (2001) and only slightly more common in Canada than in the USA. Previous research (Cortina and Cabré 2010) had already warned about the underestimation of same-sex couples in the Spanish 2001 census, for which no specific campaign to encourage same-sex declaration was implemented (in contrast with what happened in the US). The proportion of male couples among same-sex couples vary across countries: it is higher in Spain than in Canada, and higher in Canada than in the USA. Again the Spanish data is not really trustful.

Table 2 Proportion of same-sex couples over total couples (census data)

	Spain 2001	Canada 2006	USA 2010
Same-sex couples	10,474	43,350	646,464
Males	6,996	24,740	313,577
Females	3,478	20,610	332,887
Proportion males	.668	.571	.485
Proportion married*	-	.172	.204
Opposite- sex couples	9.500.603	7.482.780	116.069.828
Same-sex over total x 1000	1,1	5,8	5,5

Source: Spanish National Statistics Institute; Statistics Canada, US Census Bureau.

Note: *Same-sex marriage was not legal yet in Spain in 2001. Only 9 US states have legalized same-sex marriage.

V. Results

V.1 Sociodemographic profile of the spouses and composition of the marriages

Both in Québec and in Spain, since the legalisation of same-sex marriage, more man than women have married a spouse of the same sex. In the Spanish case the number of gay marriages almost doubles the number of lesbian marriages (Table 3). This important difference by sex goes in line with what has been found in other countries where same-sex marriage is legal, like Sweden and Norway; the authors have explained this gap by referring to a higher motivation to marriage among men than among lesbian women rather than by a different incidence of homosexuality across

sexes (Andersson et al. 2006). Data also shows that same-sex marriage occurs later in life than opposite-sex marriage. In both countries, the modal age category for opposite-sex marriage is 25-34 for men and women, but it is 35-49 for both types of same-sex marriage. This particular age structure might be affected to a certain extent by the recent legalisation of same-sex marriage, which determines that some couples are marrying while long after having started their partnership.

Marrying after a divorce is less common among men who marry men than among women or men who marry women. It should be noted that divorced spouses marrying during the first years after legalisation of same-sex marriage are likely to have been in a heterosexual marriage before. In Québec, both for men and for women the educational structure of same-sex partners is higher than the structure of opposite sex partners in Québec, while no important differences appear in the Spanish case.

Immigration is important in Canada: according to the 2006 census, about 20% of the population was foreign born. The proportion is smaller in Quebec: about 15% of Quebec residents were born abroad. The proportions of foreign born people among marrying people are close to the proportion of foreign born people in the general population, except for men who marry men for whom it is higher. This could be related to some form of exogamy — but results presented in table 6 do not support such an interpretation — or to “marriage tourism”, i.e. couples from another country who get married in Canada because they cannot do so in their own country. The slightly higher proportion of people who have English as their mother tongue among men who marry men supports the latter interpretation: Quebec has a frontier with the USA, where same-sex marriage is still illegal in most states. The relatively high proportion of people not having French or English as their mother tongue among men who marry men and the relatively low proportion of such people among women marrying women remain to be interpreted.

In Spain the proportion of foreign and/or foreign born spouses is clearly higher in same sex marriages than in opposite sex marriages. In this case the risk of this proportions being affected by “marriage tourism” is very low. The Spanish law establishes that both partners need to reside in Spain which really makes it difficult for two foreigners living abroad to take marry in Spain. Moreover, as shown in Table 4, the large majority of foreign spouses marrying in Spain are marrying a Spanish spouse.

Table 3. Sociodemographic profiles of same-sex spouses by sex

	Quebec, 2004-2010				Spain 2005-2010			
	Opposite-sex		Same-sex		Opposite-sex		Same-sex	
	Men	Women	Men	Women	Men	Women	Men	Women
Age group								
less than 25	16,3	28,4	6,0	7,7	5,0	11,8	5,8	5,5
25-34	49,9	45,1	20,9	24,2	64,0	66,7	29,4	35,8
35-49	23,1	19,2	46,3	45,0	25,3	18,6	44,1	46,8
50 and more	10,7	7,3	26,8	23,1	5,6	2,9	20,7	11,9
Marital status								
Single	77,0	79,0	84,5	78,4	88,1	89,4	93,0	88,6
Widow	2,9	2,9	0,6	0,8	0,9	0,6	0,2	0,3
Divorced	20,1	18,1	14,9	20,8	11,0	10,0	6,7	11,0
Educational attainment level								
Primary or less	13,3	11,1	4,1	5,2	10,9	13,4	15,4	14,4
Secondary level	30,2	31,0	21,9	30,8	28,9	23,4	25,2	26,2
Post secondary level	16,2	18,8	21,8	21,7	17,6	16,9	23,7	21,9
University level	24,9	25,1	39,7	31,0	16,0	20,1	16,3	19,9
Unknown	15,4	14,0	12,5	11,2	26,6	26,2	19,5	17,5
Nationality								
Spanish	-	-	-	-	90,4	87,7	72,1	83,2
Foreigner	-	-	-	-	9,6	12,3	27,9	16,8
Country of birth								
Quebec / Spain	76,4	79,8	63,6	77,5	89,3	86,3	64,2	76,8
Rest of Canada	4,8	4,3	8,2	6,3	-	-	-	-
Abroad	18,7	15,9	28,2	16,2	10,7	13,7	35,8	23,2
Unknown	0,1	0,1	0,0	0,0	-	-	-	-
Mother tongue*								
French	66,5	68,3	65,0	75,1	-	-	-	-
English	11,1	10,5	13,7	11,3	-	-	-	-
Other	14,5	13,9	16,1	9,3	-	-	-	-
Unknown	7,9	7,3	5,3	4,3	-	-	-	-
N	2004-2010	2005-2010	2004-2010	2005-2010	2004-2010	2005-2010	2004-2010	2005-2010
	623032	621565	3241	2464	1148509	1148509	24052	12392

Note 1 : mother tongue is not available in Spain and Nationality is not available in Québec

Note 2: in Spain, educational attainment level, and country of birth refer only to the period 2008-2010

Note 3: postsecondary level refers to College in Québec and 3 year technical degrees in Spain

Source: Registre d'Événements Démographiques du Québec (individuals), Spanish Vital Statistics, INE

The age gaps between spouses are smaller in Quebec than in Spain (Table 4). The age gap is slightly higher among female same-sex marriages than among opposite-sex marriages, and higher among male same-sex marriages. So is in Spain. Homogamy of origin, based on the province at birth, is higher among male same-sex couples than among opposite-sex couples or female same-sex couples, but the results reported in table 6 suggest that is probably a consequence of internal migration rather than of international migration. In Spain, the origin and national endogamy is clearly lower in same-sex marriages than in opposite-sex marriages. This goes in line with a higher educational heterogamy in these same marriages, which might partially be affected by differences in the age of the spouses (extremely high in the Spanish case).

Table 4. Composition of same-sex couples by type, Spain 2005-2010 and Québec 2004-2010

	Spain			Québec		
	Opposite-sex marriage	Male marriage	Female marriage	Opposite-sex marriage	Male marriage	Female marriage
Mean Age gap	2,42	8,2	5,2	1,8	2,5	2,1
Marriage order						
First marriage	82,6	87,0	79,7	-	-	-
Second or +	17,4	13,0	20,3	-	-	-
Educational homogamy*						
missing	28,2	21,9	19,7	-	-	-
Homogamy	37,6	38,4	42,5	51,2	49,9	54,2
Heterogamy	34,2	39,7	37,8	48,8	50,1	45,8
National endogamy						
Spanish-Spanish	82,2	52,5	72,5	-	-	-
Spanish-Foreigner	13,7	39,2	21,3	-	-	-
Foreigner-Foreigner	4,1	8,3	6,1	-	-	-
Origin endogamy*						
Both born in Spain/Québec	80,0	72,0	80,9	76,2	56,7	76,4
One in Spain/Québec - one abroad	15,6	20,4	12,2	13	30,2	14,9
Both born abroad	4,4	7,6	6,9	10,8	13,1	8,7
N 2005-2010 /2004-2010		12026	6196	519663	1386	1074
N 2008-2010		5990	3479			

* Educational and origin homogamy refer only to the period 2008-2010

Note: first marriage refers to those where both spouses are single

Source: Registre d'Événements Démographiques du Québec (individuals)

Source: Spanish Vital Statistics, INE

V.II. Marriage vs. cohabitation

According to Table 2, in 2006, already a 17% of same-sex couples were married in Canada, after only two years of legal marriage. Our most central question is whether or not, when they have the possibility to do so, same-sex couples choose to marry as much as opposite-sex couples do. From Table 5, the unequivocal answer seems to be not really, at least in Canada. When controlling for the differences other than sexual orientation that may be related to being married rather than cohabiting, the odds that a same-sex couple be married is about 10% of that of an opposite-sex couple, regardless of the sex of the partners.

Table 5. Probability of being married rather than cohabiting according to couple composition and controlling for certain characteristics, Couples aged 15 to 40, Canada 2006. Logistic regression, coefficients reported as odds ratios.

Variable	Without control	With control
Couple composition		
<i>Opposite sex couple</i>		
Male couple	.077***	.109***
Female couple	.090***	.103***

Note: The variables controlled for are age of the youngest partner, family composition, province of residence, region of residence, educational homogamy, language homogamy, origin endogamy, and age homogamy.

Among opposite-sex couples, living with children increases almost threefold the odds of being married, not speaking the same language reduces it by about 40%, not having the same origin cuts it by half. Furthermore, these odds decrease as the age difference between the partners increases. Couples in which both partners have the same level of education are more prone to marry than other couples; couples in which the education levels of the partners are almost equal or the most unequal are the least prone to being married. Couples living in rural rather than urban areas are less likely to be married: the effect is important, their odds being 25% smaller than that of similar couples living in an urban area. There is no obvious interpretation for this difference. It could be related to education, income, or ethnicity. Our equation does not include individual income, and although it includes the difference in education between the partners and whether or not they share the same origin, it does not estimate nor control the effects of education or ethnicity per se. In Canada, people who are more educated or have higher income are more prone to live in urban areas, and immigration is concentrated in the three main metropolitan areas. Using Quebec as the reference category for the province or territory of residence highlights the demise of marriage in this province: all the coefficients associated with the other provinces and territories are significant and increase the probability of being married. The coefficients associated with the two variables that model the effect of age show that the growth rate of the odds of being married is high for low values of age and decreases progressively.

Things are different among couples made of two men. Living with children increases the odds of being married, but almost fivefold rather than a bit less than threefold. Not speaking the same language and not sharing the same origin do not have a significant effect. The age difference between the partners has no significant effect either. Living in an urban or a rural area seems irrelevant too. Educational homogamy matters. As for opposite-sex couples, couples in which both partners have the same level of education are more prone to marry than other couples. The pattern of effects is a bit different from that of opposite-sex couples, and the effects themselves are larger. A one-level difference reduces the odds of being married almost by half, a two-level difference, by 40%, and a three-level difference, by roughly 75%. By far and large, living with children and educational homogamy seem to be the most important determinant of the probability of being married for male same-sex couples in Canada. Marriage seems to be more common among male same-sex couples in Ontario and in the western provinces.

Table 6 Probability of being married rather than cohabiting by couple composition according to certain characteristics, Couples aged 15 to 40, Canada 2006. Logistic regression, coefficients reported as odds ratios.

Variable	Opposite sex	Male couple	Female couple
Age			
Youngest partner's age	1.67 ***	1.52 ***	1.39 ***
Youngest partner's age squared.	0.99 ***	0.99 ***	0.99 ***
Family composition			
<i>Not living with children</i>			
Living with children	2.83 ***	4.81 ***	1.54 ***
Province or territory of residence			
<i>Quebec</i>			
Newfoundland and Labrador	4.39 ***	1.26	0.51
Prince Edward Island	6.42 ***	2.36	—
Nova Scotia	4.10 ***	0.71	0.84
New Brunswick	3.71 ***	1.48	1.80 **
Ontario	5.99 ***	2.64 ***	2.10 ***
Manitoba	5.93 ***	0.99	0.90
Saskatchewan	5.75 ***	4.01 ***	0.92
Alberta	5.70 ***	2.03 ***	1.67 ***
British Columbia	4.95 ***	2.46 ***	1.86 ***
Yukon ¹	2.12 ***	—	2.53
Northwest Territories	1.99 ***	7.10	3.16 **
Nunavut ¹	1.30 ***	—	6.23 *
Region of residence			
<i>Urban</i>			
Rural	0.76 ***	1.19	0.92
Educational homogamy			
<i>Same level between partner's</i>			
One-level difference	0.75 ***	0.57 ***	0.75 ***
Two-level difference	0.84 ***	0.61 ***	0.87
Three-level difference	0.77 ***	0.26 ***	0.86
Language homogamy			
<i>Homogamy</i>			
Exogamy	0.68 ***	0.98	0.71 ***
Origin endogamy			
<i>Endogamy</i>			
Exogamy	0.49 ***	0.90 *	0.68 ***
Age homogamy			
Same age			
1-2 years difference	0.99	1.08	1.00
3-5 years difference	0.90 ***	1.08	0.94
6-9 years difference	0.78 ***	1.08	0.52 ***
More than 10 years difference	0.73 ***	0.93	0.69 **
Constant	0.00 ***	0.00 ***	0.00 ***
Log-constant	-9.30 ***	-8.44 ***	-5.95 ***
N	546,452	2,762	2,186
Log-likelihood	-1.3·10 ⁶	-5,717.20	-4,789.03

¹ Same-sex couples from some territories do not appear in the equation because their number is too low.

The variables associated with the probability of being married are not the same for women same-sex couples than for male same-sex couples, or have an effect of a different magnitude. Living with children increases the odds of being married, but only by 50%. Not speaking the same language reduces the odds by roughly 30%, as for opposite-sex couples. Not sharing the same origin reduces the odds by 30% too, less than for opposite-sex couples, but more than for male same-sex couples for which it seems irrelevant. Living in a rural or an urban area has no effect, as for male same-sex couples. Age difference matters, but only if it is at least five year: a six to nine year difference reduces the odds by almost 50%, a larger difference, by 30%. As for male same-sex couples, marriage seems more common in Ontario and in the western provinces.

VI. Discussion

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